

BAIL SLIP

The Appellant herein/accused Viz; M.Natesan S/o.Marappan was directed to be released on bail as per the order of this court dated 26/06/2003 made in CrI.MP.No.3998/2003 in CrI.A.No.699/2003.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN
Criminal Appeal No.699 of 2003

M.Natesan

... Appellant/Accused

Vs.

State, Rep. by
The Inspector of Police,
Pollipalayam Police Station,
Namakkal District

... Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374 of Cr.P.C., against the Judgment and Conviction dated 21.03.2003 made in S.C.No.27 of 2003 on the file of learned Additional Sessions Judge (Fast Track Court No.III) Namakkal and prays to set aside the same.

For Appellant : Mr.N.Chandrasekharan
for Ms.C.V.Charanya

For Respondent : Mrs.T.P.Savitha
Government Advocate (CrI.Side)

JUDGMENT

This criminal appeal has been filed against the judgment dated 21.03.2003 in S.C.No.27 of 2003 passed by the Learned Additional District and Sessions Judge, Namakkal (Fast Track Court), convicting the appellant U/S. 307 (2 counts), IPC and sentencing him to undergo 10 years R.I on each count and pay a fine of Rs.1000/- for each count, in default to undergo one year R.I and directed the sentences to run concurrently.

2.The facts in short are as follows:-

The victim namely Selvam @ Sengottaiyan on 6.8.97 at 2.30 PM while standing near Velliyam Palayam bus stop of Namakkal District was intercepted by the Appellant/ accused namely Natesan and was questioned as to why he had visited to see appellant's wife on 5.8.97. In pursuant to a wordy quarrel, the accused attacked the victim with a sickle (MO1) and thereby causing multiple injuries had attempted to Murder the victim.

3.The scene of occurrence as described by the prosecution is as following that the accused and the victim are relatives belonging to the same village. On 06.08.1997 at 2.30 p.m. while standing opposite to a Barber shop belonging to PW3 namely Moorthy, near Velliyam Palayam bus stop, the Appellant Natesan intercepted the victim namely Selvam and warned him that he should not further visit his wife Kanagam. However as the victim disregarding the warning of the accused had stated that Kanagam being his relative he will visit her and made clear that the appellant can have no say over his visit. Triggered by the words of the victim, the accused attacked the victim with a sickle he brought with him in his TVS 50 bike and thereby causing multiple injuries attempted to Murder. Thereupon attacking victim, the accused moved from the scene of occurrence in his TVS 50 bike, by placing the sickle in bike's side box.

4.Earlier to the above attack on victim by the accused, PW1 namely Lakshmi standing nearby the place of occurrence intervened to stop the quarrel between accused and victim, however the above Offence had taken place. Immediately PW1 with the aid and assistance of one Gnanasekaran & the PW5 namely Sathasivam took the victim to the nearest Hospital at Thiruchengodu and after first aid, he was forwarded to Government Hospital at Erode and admitted therein. As PW2 victim was unable to speak out of injuries, PW1 the witness to the occurrence made a complaint before the Police for which FIR in Crime No.205 of 1997 was registered for the offences under Section 307 I.P.C by the respondent police.

5.PW1 and PW2 adduced evidence corroborating each other stating that the Appellant Natesan intercepted the victim namely Selvam and warned him that he should not further visit his wife Kanagam. However as the victim disregarding the warning of the accused had stated that Kanagam being his relative he will visit her and made clear that the appellant can have no say over his

visit. Provoked by the words of the victim, the accused attacked him with a sickle causing multiple injuries and thereby attempted to Murder. The investigation in this case was taken over by the PW12 and he inspected the place of occurrence and drawn sketch and prepared Ex-P2 Mazahar, in the presence of the witnesses PW6 namely Rukmani the mother of the victim and PW7 Duraisamy. He further recovered M.O.1 the Sickle by recording Ex-P6 and collected the blood stained floor particles M.O 4 and 5 vide recording recovery mahazar in Ex P3. Further he recovered M.O. 2 and M.O. 3 the blood stained green coloured lungi, white terricotton shirt and white coloured Banian respectively by recording Ex P4 Recovery Mahazar. Thereafter he has also examined the victims and recorded separate statements.

6. On 01.03.1999 Ex-P7 Wound certificate was issued to PW2. The Intimation Report from the Government Hospital, Erode to the Respondent police is marked as Ex.P8. In the meantime the accused surrendered before the Judicial Magistrate No:I, Namakal on 24.08.1997. Thereafter PW12 Investigation Officer completed the investigation and filed charge sheet against the accused for the offence U/S. 307 IPC. Since the offence Under Section 307 is triable by Sessions Court, the learned Judicial Magistrate, Thiruchenkodu committed the above said case to the Principal District and Sessions Court, Namakkal and was made over to the learned Additional District Sessions Judge, Namakkal, and numbered as S.C.No.27 of 2002.

7. Based on the above materials, the trial court framed charges under Section 307 I.P.C. The accused pleaded innocence. The prosecution in order to prove the guilty of the accused examined PW1 to, PW12 and exhibited Ex.P1 to Ex.P12 documents and produced M.O.1 to M.O-6.

8. When the above incriminating materials were put to the accused under Section 313 Cr.P.C he denied the same as false. However, the trial court, on the basis of the available records come to the conclusion that the appellant is found guilty of the offence under section 307 I.P.C and accordingly punished him. Aggrieved against the same, the accused is before this Court by way of this criminal appeal.

9. I heard Mr.N.Chandrasekharan for M/s.C.V.Charanya, learned counsel for the appellant and Mrs.T.P.Savitha, learned Government Advocate (Criminal Side) for the respondent and perused the records.

10. The record reveals that it is the specific case of the prosecution that in pursuant to a wordy quarrel, the appellant on 06.08.1997 at 2.30 p.m. attacked the victim while standing

near Velliyam Palayam bus stop with a sickle (MO1) causing multiple injuries had attempted to murder the victim by questioning as to why he had visited to see appellant's wife on 05.08.1997. Therefore it is obvious that the motive put forth by the prosecution is with regard to a question as to why the victim had visited to see appellant's wife on the previous day. However on careful perusal of the deposition of PW1, she admits that no such reason has been stated in Ex-P1 and as well in her statement also. Secondly the alleged occurrence is said to have been taken place opposite to the shop of PW3 Moorthy, however he had turned hostile.

11. Thus P.W.1 had not supported the case of the prosecution that the victim (P.W.2) had provoked the accused by saying that as to why he visited the wife of the accused.

12. This Court is further able to see that when PW1 is questioned in her Cross Examination as to whether she is a relative of PW2 Victim, it is specifically denied by her that she is not a relative to victim (P.W.2), whereas contrarily P.W.1 herself on further examination has deposed that she is a relative of PW1. In such event this Court is not inclined to rely upon the version of PW1, in view of the fact that PW1 might be a tutored witness to facilitate the prosecution case. Hence the contention of the Appellant that PW1 is an interested witness and hence her statement is not trustworthy, have much force.

13. There is also huge discrepancy and doubt over the mode of seizure of MO1 and also the nature of the weapon actually involved in the case on hand. In this regard it is noteworthy that P.W.9 Mahazar witnesses had stated that a Knife was recovered in his presence, whereas the recovery record denotes that a Koduval, kind of Sickle is the weapon involved in the Offence and was seized. More so, the weapon under recovery had not been sent for the forensic report, to establish the use of such weapon in commission of the offence. Again M.O.1 was not sent to Chemical Analysis, which remains fatal to prosecution.

14. Thus there are major contradictions and improvements in the depositions of the prosecution witnesses. It appears that other witnesses being the co-villager must have heard the above allegations. However these witnesses have not been examined by the prosecution.

15.Looking to the deposition of P.W.5 he is not an eye witness the alleged attack over the victim by the appellant or by anyone else. P.W.5 has stated that on receipt of a call from PW1 intimating the above incident he accompanied PW1 to admit PW2 in hospital. Thus, absolutely P.W.5 is hearsay witness. However the Learned Judge, despite having held that there are material contradictions between the depositions of PW1 and PW2 in describing the place, time and scene of occurrence, but has chosen to convict the accused.

16.It is needless to say that the onus is on the prosecution to prove that the chain is complete and that the infirmity or lacuna in the prosecution cannot be cured at the cost of conviction of the accused. The Learned Judge, once having concluded that there are material contradictions between the depositions of PW1 and PW2 as to the case of prosecution, ought to have seen that the accused is entitled for acquittal by giving benefit of doubt.

17.In view of the discussion made above, the prosecution has failed to prove the case beyond reasonable doubt. Therefore the conviction of the trial court found to be conjecture and surmise. Therefore the accused is entitled for acquittal by giving the benefit of doubt.

18.In the result, this Criminal Appeal is allowed and the judgment and conviction dated 21.03.2003 made in S.C.No.27 of 2002 on the file of Additional Sessions Judge (Fast Track Court) Namakkal is hereby set aside.

Sd/-

Assistant Registrar(CS IV)

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Sub Assistant Registrar

To

1.The Additional Sessions Judge,
(Fast Track Court No.III),
Namakkal.

2.The Principal Sessions Judge,
Namakkal (for information)

3.The Chief Judicial Magistrate
namakkal (for information)

4.The Judicial Magistrate Tiruchengode

5.The Superintendent Central Prison,
Coimbatore

6.The Inspector of Police
Pollipalayam Police Station
Namakkal District

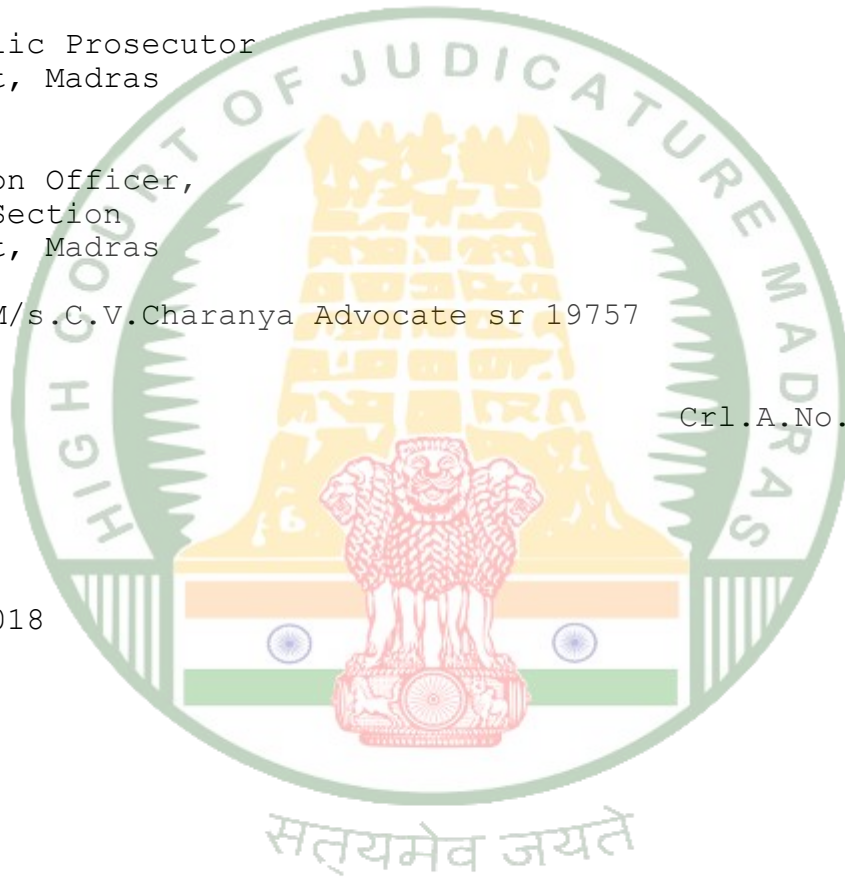
7.The Public Prosecutor
High Court, Madras

copy to
The Section Officer,
Criminal Section
High Court, Madras

+1 cc to M/s.C.V.Charanya Advocate sr 19757

Crl.A.No.699 of 2003

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