

Bail Slip

The Petitioner/Accused viz Pannerselvam S/o.Sivasangu was released on bail as per the order of this Court dated 14.06.2010 in MP.NO.1&2/10 IN CRL A.NO.216/2010 on the file of this Hon'ble court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.03.2018

DELIVERED ON : 02.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Criminal Appeal No.216 of 2010

Panneerselvam

... Appellant

Vs

State: Inspector of Police,
Tiruvarur Town P.S.
(Cr.No.359/07)

... Respondent

Prayer: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code, against his conviction and sentence made in S.C.No.66 of 2009 on the file of the Assistant Sessions Judge, Chief Judicial Magistrate, Tiruvarur, dated 19.03.2010.

For Appellant : Mr.A.Padmanaban

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

JUDGMENT

The Appellant preferred this appeal against his conviction and sentence made in S.C.No.66 of 2009 on the file of the learned Assistant Sessions Judge, Chief Judicial Magistrate, Tiruvarur, dated 19.3.2010, wherein the learned trial judge sentence the appellant to undergo 10 years Rigorous Imprisonment for the offence under section 307 (2 counts) of IPC and imposed fine of Rs.10,000/- (for each count) and in default to undergo simple imprisonment for a period of 6 months.

2.The brief case of the prosecution:

Jayaraman PW1 is the son of Sivasangu PW2 and brother of the appellant/accused namely Panneerselvam. They belong to the village Vilvanampadugai. Pulivalam, Tiruvarur District. PW1 and the accused were not in good terms due to a partition of land belonging to his father Sivasangu PW2. Jayaraman PW1 was residing with his father in his house at Nadutheru, Vilvanampadugai. On 24.09.2007 at about 7.00 p.m., PW2 drove away the goats belonging to the appellant/accused, which had occupied his place where he sleeps and annoyed by this, the appellant came to the residence of PW2 at about 10.00 pm on the same day and picked up a quarrel in which he threatened both his brother and father of dire consequences and then again came back with an aruval, attacked his father causing injuries on his left shoulders, upper part of left eye and on his back and PW1, who tried to prevent him was also attacked on his leg and right hand which resulted in grievous injury on his right hand fingers.

3. PW12 Head Constable of Police Tiruvarur Taluk Police Station went to the hospital examined the injured and recorded their statements and registered FIR Exhibit P8 in Cr.No.354 of 2007 under section 307 of IPC. PW13 Inspector of Police went to the scene of occurrence and prepared an observation mahazar Exhibit P9 in the presence of the witnesses Nagooran PW7 and Marimuthu PW8. Then proceeded to the Government Hospital Tiruvarur where PW1 and PW2 were taking treatment and recorded their statements and also examined PW5 Kumar and PW6 Madhavan, who are the eye witnesses to the occurrence. PW13 arrested the appellant/accused on 25.9.2007 at about 12.00 noon near Pulivalam bazaar and recorded his confessional statement and the admissible portion is marked as Exhibit P11. Based on Exhibit P11, the PW13 recovered the aruval (M.O.1) from the roof of the appellant/accused house under the cover mahazar Exhibit P12 in the presence of witnesses PW9 and PW10. Then PW15 Inspector of Police took up the case for further investigation and recorded the statements of the PW11 Doctor, who issued wound certificates, Exhibits P6 and P7 and filed the final report against the appellant/accused under sections 326 and 307 of IPC.

4. The learned trial Court framed the charge against the appellant/accused under section 307 (2 counts) of IPC and examined PWs-1 to 15 and marked Exhibits P1 to P12 and material object (M.O.1). The evidence against the appellant/accused were explained to him and questioned under section 313 of Cr.P.C. and he denied as false and pleaded not guilty. The appellant/accused did not examine any witness on his side.

5.The learned trial Court, after completion of the trial, found guilty of the appellant/accused and sentenced him to undergo 10 years Rigorous Imprisonment for the offence under section 307 (2 counts) of IPC and imposed fine of Rs.10,000/- (for each count) and in default to undergo simple imprisonment for a period of 6 months and ordered both sentences to run concurrently. Hence this criminal appeal is filed.

6.I heard Mr.A.Padmanaban, learned counsel for the appellant and Mrs.T.P.Savitha, learned Government Advocate (Criminal Side) for the respondent and perused the entire materials available on record.

7.The learned counsel for the appellant submits that the trial Court has overlooked the fact that PW1, the brother of the accused gave complaint in which he has mentioned that he was cut by 2 persons before the Doctor and sustained injuries at the hands of 2 known persons.

8.The learned counsel for the appellant submits that the trial Court has overlooked the fact that there was inordinate delay in dispatching the complaint to the Court.

9.The learned counsel for the appellant submits that the delay obviously indicates that the FIR is fabricated and offence alleged does not attract section 307 of IPC.

10.The learned counsel for the appellant submits that the trial Court has failed to notice that the injuries caused were not in vital organs and at best could attract only section 326 of IPC.

11.The learned counsel for the appellant cited the following decisions in support of his submissions:

(1) AIR 1972 SCC 1764 (Jai Narain Mishra and others v. The State of Bihar)

(2) 2008 Cri LJ 3744 (Bholu alias Hanuman and Ors. Etc. v. State of Rajasthan)

12.The learned Government Advocate (Criminal Side) appearing for the respondent support the findings of the learned trial Court and sought dismissal of this appeal.

13.I have bestowed my anxious considerations to the submissions made on both sides and perused the records secured from the trial Court.

14.In the instant case, the appellant/accused had inflicted injuries on the left shoulders of PW1 and on the fingers of PW2 and the injuries are also grievous in nature as opined by the Doctor. A perusal of the copies of Accident Registers Exhibit P6 and P7 shows that both PW1 and PW 2 have deposed before the doctor PW 11 that they were attacked by two known persons. PW1 and PW2 have stated that their statements were recorded by PW12 at about 2.00 am on 25.9.2007. The FIR Exhibit P8 was also sent to Court on the same day and there exists no suspicious circumstances. PW2, the father of the appellant/accused had been attacked by his own son, the appellant/accused just for the sake of a property and there is no valid material contradiction to discard the evidence of PW2 especially when he was cross examined at length. According to the Doctor, the four injuries which the Medical Officer noted, one injury was of a grievous nature while the other three injuries were simple in nature. It may well be presumed that the intention is to cause death. In the present case however, three injuries are of simple nature though deadly weapon is used and the grievous injury caused by appellant, though endangering life could not be deemed to be an injury which would have necessarily caused death but for timely medical aid. In this view of the matter, it is highly difficult to believe the evidence of P.W.2 in this regard. Learned Sessions Judge in the light of the evidence of PW.1 has held that there is a hidden motive on the part of the appellant/accused. If the motive is hidden, there cannot be any evidence in that regard. In the absence of any acceptable evidence, in my opinion, learned Sessions Judge is not justified in holding that there was any motive on the part of the accused. Thus, absence of motive on the part of the accused is a strong circumstance which would negate the theory that the act of assault was with an intention to do away with the life of P.W.2. The benefit of doubt must, therefore, be given to the appellant with regard to the injury intended to be caused and, in my opinion, the accused cannot be convicted under Section 307 IPC, instead he could at all be convicted only under Section 326 IPC. Accordingly, he is convicted under Section 326 IPC and sentenced to undergo 3 years R.I. and imposed

fine of Rs.1000/- in default, he has to undergo 3 months R.I. In view of the above, the conviction and sentence under Section 307 IPC is set aside.

15.In the result, subject to the modifications in the conviction and sentences of the appellant as stated above, the criminal appeal is partly allowed.

Sd/-

Assistant Registrar(CS vi)

//True Copy//

Sub Assistant Registrar

vs
To

The Assistant Sessions Judge,
Chief Judicial Magistrate, Tiruvarur.

2.The Chief Judicial Magistrate, Tiruvarur

3.The Superintendent,
Central Prison,Coimbatore

4.The Inspector of Police,
Tiruvarur Town P.S.

5. The Public Prosecutor, High Court ,Madras.

Criminal Appeal No.216 of 2010

A.SK(04/02/2019)

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