

BAIL SLIP

The Appellants herein/Accused 1 and 2 namely (1) Rakesh, S/o.Gopinath aged about 18 years and (2) Kolanji, S/o.Periyasamy, aged about 19 years were released on bail as per order of this Court dated 25.01.2007 and 27.03.2006 respectively, made in MP No.80 of 2007 and CRL MP NO.2004 of 2006 in CRL A No.266 of 2006 respectively on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2019

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.A.No.266 of 2006

1.Rakesh
2.Kolanji

... Appellants/Accused 1 and 2

Vs.

State of Tamil Nadu rep. By
Inspector of Police,
Basin Bridge Police Station.
(Crime No.455 of 2003)

... Respondent/Complainant

Prayer: Appeal filed under Section 374 (2) of Cr.P.C. seeking to call for the entire records in respect of S.C.No.563 of 2005 on the file of the Additional District and Session Judge, Fast Track Court No.II, Chennai-1 and set aside the judgment dated 17.03.2006 and acquit the appellants herein.

For A1 : Mr.S.Senthilvel

For A2 : M/s.V.Kannadasan

For Respondent : Mr.R.Ravichandran
Government Advocate (Crl. Side)

J U D G M E N T

The appellant has filed this appeal seeking to set aside the judgment dated 17.03.2006 made in S.C.No.563 of 2005 by the

learned Additional District and Session Judge, Fast Track Court No.II, Chennai-1.

2.The appellants are A1 and A2 respectively in the case in S.C.No.563 of 2005. The brief case of the prosecution is as follows: On 03.08.2003 at about 07.00 p.m., in view of the Mundakanniamman Temple Festival at Sivarajapuram, when chariot procession was coming near Gandhi Nagar, A1, A2 and three others were dancing in front of the said procession without permission. On seeing the dance of A1 and A2, the complainant PW1 asked about the act of the accused persons. Thereafter, they formed themselves into unlawful assembly, waylaid the complainant and assaulted him on his cheek repeatedly with hands and caught hold of him and A1 with intention to kill him cut him on his neck with knife. Thereafter, the accused persons criminally intimidated the general public who came to the rescue of the complainant with dire consequences and created panic in the general public. Thereby, P.W.1 filed Ex.P1 complaint.

3.P.W.9 is the Sub-Inspector of Police, and F.I.R. Registered in Crime No.455 of 2003 under Sections 341, 323, 307, 506(2) I.P.C. under Ex.P6. The Investigation Officer took up the case for further investigation and then he went to the place of occurrence and prepared an observation mahazar (Ex.P9) and rough sketch Ex.P10 and seized the material under seizure mahazar (Ex.P.11) in presence of independent witnesses and after examining the Medical Officer who treated PW.1 and other witnesses, arrested the accused and filed a final report.

4.Based on the materials produced before the Trial Court, the Trial Court framed charges as against the accused and the same was explained to the accused in Tamil. When the accused were questioned about the same, they pleaded not guilty. Thereafter, trial was proceeded against the accused.

5.On the side of the prosecution, 12 witnesses were examined as P.W.1 to P.W.12, 12 documents were marked as exhibits Ex.P.1 to Ex.P.12 and 4 material objects were marked as M.O.No.1 to M.O.No.4. The defence side neither choose to examine any witness nor marked any exhibit.

6.After trial, the Trial Court convicted the first appellant/ A1 for the offence under Sections 148, 307 and 506 (ii) of IPC and sentenced him to undergo one year Simple Imprisonment each for the offence under Sections 148 and 506 (ii) of IPC and to undergo seven years Rigorous Imprisonment for the offence under Section 307 I.P.C.

7.The Trial Court convicted the second appellant/ A2 for the offence under Sections 147, 307 r/w 34 and 506(ii) I.P.C. and

sentenced him to undergo one year Simple Imprisonment each for the offence under Sections 147 and 506 (ii) of IPC and to undergo seven years Rigorous Imprisonment for the offence under Section 307 r/w 34 I.P.C.

8.The Trial Court ordered the sentences to run concurrently. The Trial Court acquitted the accused from the charge under Sections 323, 341 and 324 of IPC. Aggrieved by the said conviction and sentence, the appellants / A1 and A2 have filed this appeal before this Court.

9.Heard the learned counsel appearing for the appellants and the learned Government Advocate (Crl. Side) appearing for the respondent.

10.The learned counsel appearing for the appellants would submit that there is no material evidence whatsoever available on record to prove the charge under Sections 307 of IPC and other offences against the accused. Ex.P1 is totally contrary to the evidence of other witnesses. Admittedly, there was a Chariot procession coming through Gandhi Nagar for the festival of Mundakanniamman Temple. At that time, the accused and 3 others were dancing in front of the chariot procession. However, the said act was questioned by P.W.1 and a wordy quarrel arose in between them which led to some altercation. He would further submit that the evidence of P.W.11/ Doctor clearly indicate that P.W.1 sustained only simple injuries.

11.The learned counsel appearing for the appellants would further submit that P.W.1 and accused are residents of the same place and they know each other and due to over enthusiasm only the accused danced before the procession. He would further submit that there was no previous enmity between P.W.1 and the accused and would further submit that the accused had no intention to commit murder of P.W.1. Hence, convicting the accused under Section 307 of IPC is unsustainable one. Accordingly, he prayed for acquittal of the accused.

12.Per contra, the learned Government Advocate (Crl. Side) would submit that P.W.1 has clearly spoken about the incident. Though initially there was a wordy altercation in between P.W.1 and the accused, thereafter, the accused came with long size blade and assaulted P.W.1 and A1 cut P.W.1 in his neck while the other accused caught hold of his shirt. The evidence of P.W.2 and P.W.3 corroborated with the evidence of P.W.1. The accused persons had clear intention to commit murder of PW.1. The Trial Court elaborately discussed the issue and convicted the accused. Hence, the well considered judgment of the Trial Court need not be interfered with.

13.Heard the arguments advanced on either side and perused the materials placed on record.

14.In the light of the above submissions, now it has to be analyzed whether the prosecution has proved the guilt on the accused beyond reasonable doubt and whether the accused had intention to commit murder of P.W.1.

15.PW.1 in his evidence has deposed that on 03.08.2003 at 07.00 p.m., when he was standing at the entrance of Gandhi Nagar, the accused and others caught hold of his shirt and attacked his hand and leg and beat him brutally. The first accused Rakesh took out a knife and cut on the neck of PW.1. PW.2 and PW.3 are also neighbours and they were present at the scene of occurrence. Their evidence indicate that there was an altercation.

16.Further the evidence of P.W.2 indicate that A1 warned P.W.1. Thereafter, he came along with other persons and attacked PW.1. However, P.W.2 compromised the issue in between A1 and P.W.1 and pacified and solved the issue there itself.

17.The evidence of PW.3 indicates that P.W.3 know A1 for the past 10 years and he denied the occurrence and he did not depose clearly as to what has happened at the time of occurrence. P.W.4 is the mother of PW.1 and she has deposed that she knows A1 and other persons. P.Ws.4 and 5 are not eye witness to the scene of occurrence. However, they deposed that P.W.1 and accused belong to the same area. P.W.7 is the Doctor who initially treated P.W.1 and in his evidence he has stated that P.W.1 had an incised wound on his left side neck.

18.On perusal of the entire prosecution evidence, it is clear that there was a festival in Mundakanniamman Temple for which there was a Chariot procession. While the Chariot procession was coming near Gandhi Nagar, A1, A2 and three others were dancing in front of the chariot without permission. When the complainant PW.1 asked the accused as to why they were dancing in front of the procession, the accused scolded him in filthy language and left the place. Thereafter, on the same day at 07.00 p.m., when P.W.1 was standing on the entrance of Gandhi Nagar, the accused and others caught hold of his shirt and attacked his hand and leg and beat him brutally. The first accused Rakesh took out a knife and cut on the neck of PW.1.

19.P.W.7 Doctor was examined and in his evidence he has stated that P.W.1 had an incised wound on his left side neck. The said injury is only a simple injury and not grievous injury. However, the injury sustained by the victim is not relevant to implicate the accused under Section 307 of IPC. The ingredients

required to implicate the accused under Section 307 of IPC is that there must be an intention to commit murder.

20. In the present case, there was a wordy altercation during the Chariot procession and thereafter the accused persons caught hold of P.W.1 and attacked him. However, the prosecution miserably failed to establish the ingredients for implicating the accused under Section 307 of IPC i.e., the intention to commit murder of P.W.1.

21. Admittedly, P.Ws.1 to 5 and accused are resident of the same area and no evidence was adduced to prove that there was intention to commit murder of P.W.1. In order to justify conviction under Section 307 of IPC, there must be an intention coupled with some overtact execution thereof and it is not essential that bodily injury capable of causing death should have been inflicted and the nature of injury is also not relevant and the act requires the intention of the accused to commit the same.

22. However, in the present case, the prosecution did not establish that there was enmity in between the accused and P.W.1, thereby the accused person had intention to commit murder of P.W.1. In the absence of any material, this Court has to necessarily interfere with the conviction and sentence imposed by the Trial Court and the same is liable to be set aside.

23. However, in the considered opinion of this Court, there are materials available to implicate the first appellant/ first accused under Section 324 of I.P.C. and therefore, the conviction and sentence imposed by the Trial Court require modification.

24. In the result, the criminal appeal is partly allowed in respect of the first appellant/ first accused. The conviction and sentence imposed by the learned Additional District and Session Judge, Fast Track Court No.II, Chennai-1 in S.C.No.563 of 2005 under the judgment dated 17.03.2006, on the first appellant/ first accused for the offence punishable under Sections 148, 307 and 506 (ii) of IPC are set aside and instead, the first appellant/ first accused is convicted for the commission of offence under Section 324 of I.P.C., and sentenced to undergo Simple Imprisonment for a period of four months and to pay a sum of Rs.10,000/- (Rupees Ten Thousand Only) as compensation to P.W.1 in default to undergo Simple Imprisonment

for one month. The first appellant/ first accused is acquitted of the charge under Sections 148, 307 and 506 (ii) of IPC.

25.This Court during the pendency of the appeal, has suspended the substantive sentence of imprisonment. In the light of the modification of the conviction and sentence, the bail bonds executed by the first appellant/ first accused, shall stand terminated/ discharged and the Trial Court as well as the Investigation Officer shall take necessary and expeditious steps to secure the custody of the first appellant/ first accused to undergo the remaining part of the sentence.

26.The criminal appeal is allowed in respect of the second appellant/ second accused. The conviction and sentence as against the second appellant/ second accused in the judgment dated 17.03.2006 in S.C.No.563 of 2005 passed by the learned Additional District and Session Judge, Fast Track Court No.II, Chennai-1, are set aside. The second appellant/ second accused is acquitted from the charge under Sections 147, 307 r/w 34 and 506(ii) I.P.C. The bail bonds executed by him, shall stand terminated/ discharged.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

stm/pri

To

- 1.The X Metropolitan Magistrate, Egmore, Chennai.
- 2.The Chief Judicial Magistrate, Egmore, Chennai.
- 3.The Additional District and Session Judge,
Fast Track Court No.II, Chennai-1.
- 4.The Superintendent, Central Prison, Chennai.
- 5.The Superintendent, Central Prison, Vellore.
- 6.The Inspector of Police,
Basin Bridge Police Station.

7.The Public Prosecutor,
High Court, Madras.

8.The Director General of Police, Mylapore, Chennai.

9.The District Collector, Chennai.

10.The Commissioner of Police, Chennai.

11.The Section Officer,
Criminal Section, High Court, Madras.

+1 cc to Mr.V.Kannadasan, Advocate SR.No.442

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SAI (CO)
CSL/05.02.2019