

BAIL SLIP

The Appellant herein/Accused No.1 namely Kannan, S/o.Ammasi, was directed to be released on bail as per order of this Court dated 04.03.2011 made in M.P.No.1 of 2011 in CRL A No.145 of 2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 02.04.2019	Pronounced on: 09.04.2019
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Coram:

The Honourable Dr.Justice G.Jayachandran

Criminal Appeal No.145 of 2011

Kannan,
S/o.Ammasi,
Maraiamman Koil Street,
Sripuranthan, Udayarpalayam Taluk,
Ariyalur District. Appellant/Accused-1

/versus/

The State Represented by:
The Inspector of Police,
Vikkiramangalam Police Station,
Ariyalur District.
(Crime No.111 of 2006) ... Respondent/Complainant

Prayer: This Criminal Appeal has been filed under Section 374(2) of Cr.P.C, to call for the records and to set aside the conviction judgment passed on the appellant in S.C.No.102 of 2010, dated 29.12.2010 by the Hon'ble Additional District and Sessions Judge, Fast Track Court, Ariyalur and set the appellant at liberty.

For Appellant : Mr.T.D.Vasu,
Legal Aid Counsel
For Respondent : Mrs.Kritika Kamal.P
Government Advocate

J U D G M E N T

The appeal is directed against the judgement in S.C.No.102 of 2010 dated 29.12.2010, on the file of Additional District and Sessions Judge, Fast Track Court, Ariyalur.

2. The appellant was charged for offence under Section 307 of I.P.C, for attempt to murder one Soundararajan. On 06.07.2006, at about 6.00 p.m, when Soundararajan demanded the repayment of Rs.5,000/- borrowed from him Kannan along with one Boominathan stabbed Soundararajan on his left side rib with knife also caused hurt to Soundarajan, on his head and left shoulder using stick. Hence, Kannan was charged for offence under Section 307 of I.P.C and Boominathan for offence under Section 323 of I.P.C.

3. Before the trial Court, the prosecution has examined 12 witness. Marked 12 Exhibits and 2 material objects were marked. On behalf of the accused 2 witnesses and 2 Exhibits were marked along with 2 material objects.

4. The trial Court, while acquitting A2 from all charges, convicted A1 for offence under Section 325 of I.P.C and sentenced him to undergo 5 years R.I and to pay a fine of Rs.5,000/-, in default one year R.I.

5. Aggrieved by that, the 1st accused Kannan has preferred the appeal. Though the appeal was preferred, when the matter was taken up for final disposal, the learned counsel filed a memo saying that he has no instruction from his client and therefore, filed memo of revoking appearance. Hence, this Court has requested the Legal Service Authority to appoint counsel to represent the appellant. Accordingly, Mr.T.D.Vasu, was appointed as counsel by the Legal Service Authority.

6. The learned counsel for the appellant had presented the case vividly in which, he has canvassed that the prosecution had deliberately omitted to place the entire materials collected during the course of investigation. The lopsided investigation suppressing the injury sustained by Ammasi (DW.2), the father of the accused and the act of aggression committed by PW.1 not been placed before the Court. Before, the Trial Court, the defence has examined the doctor who treated Ammasi (DW.2) and also Ammasi, father of the accused as defence witnesses, produced the accident register of DW.2 and the opinion given by the Doctor as Exhibit along with x-ray report as material objects.

7. The trial Court below has erred in not considering the injury sustained by DW.2 contrarily a false complaint given by PW.1 to escape from the act of aggression and crime has been taken up for investigation by police and final report was filed. Alleged lopsided investigation by the respondent and the perversity in the trial Court judgment. Therefore, the learned counsel would submit that the trial Court judgment is liable to be set-aside and the appellant is entitled for acquittal.

8. Per contra, the learned Government Advocate would submit that the appellant borrowed a sum of Rs.10,000/- from Soundrarajan. He repaid only Rs.5,000/- but was evading to pay the balance sum of Rs.5,000/-. Irritated by the repeated demand of re-payment by PW.1, the accused decided to kill him and therefore, on 06.07.2006, at about 6 o' clock, when PW.1 came near pump house in Sripuranthan to Arangottai cement Road, he stabbed PW.1 on his left side rib. The injured witness has spoken about the incident and in the same transaction, PW.2 son of PW.1 was also sustained injury. A-2 assaulted Chinnaraja (PW.2) on his head and left shoulder with stick. The injury sustained by PW.2 supported by the accident report given by the doctor.

9. The trial Court, considering the evidence of injured witness and the accident report, the recovery of knife has held that the contradictions and discrepancies between the witnesses does not shack the case of the prosecution as far as, the guilt of A1. But, having failed to prove that A1 has committed the crime with intention to cause death, the trial Court has convicted the accused for offence under Section 325 of I.P.C instead of Section 307 of I.P.C. The evidence adduced by the prosecution clearly proves the guilt of the accused person, which requires no interference.

10. The prosecution witnesses (PW.1 and PW.2) are father and son. According to PW.1, Kannan the 1st accused borrowed Rs.10,000/- from him. One month prior to the occurrence, he repaid only Rs.5,000/- and failed to pay the balance Rs.5,000/-. On the date of occurrence, when he and his son Chinnaraja (PW.2) while coming back from purchasing grocery, Kannan stabbed him with Knife (M.O.1). Boominathan attacked his son Chinnaraja (PW.2) with stick (M.O.2) on his shoulder and head. When he was in Ariyalur Hospital, police enquired him. PW.2 - Chinnaraja son of Soundararajan (PW.1) was present at the time of occurrence, had deposed that on 05.06.2006, his father Soundararajan (PW.1) gave Rs.10,000/- to Kannan (A1). Kannan returned Rs.5,000/- but, refused to pay the balance Rs.5,000/-. The day previous to the occurrence, in the morning 7 'o' clock, there was quarrel between the accused and his father. The public nearby came and pacified them. The next day on 06.06.2006, at about 6.00 am, when he and his father were returning home, after purchasing grocery, the first accused stabbed his father, when he tried to catch him, the 2nd accused attacked him on his head and shoulder. He has further deposed that he fainted, after sustaining injury and his mother came and took him to hospital, from Ariyular Hospital then shifted to Thanjavur Medical Hospital. Both Soundararajan (PW.1) and Chinnaraja (PW.2) in their deposition had stated that the incident took place near the bridge. In the accident report,

which is marked as Ex.P.5 and Ex.P.6, it is mentioned that the incident took place on 06.07.2006, at about 6.00 p.m, at the house of PW.1 and PW.2.

11. From the complaint of PW.1 and the deposition of PW.2 reveals that the day before the incident, at about 7.00 a.m in the morning, there was quarrel between Kannan (A1) and Soundararajan (PW.1). The father of the appellant was examined as defence witness. The defence theory is spoken through Ammasi (DW.2). According to DW.2, he mortgaged a vessel for Rs.300/- with Soundararajan (PW.1). Though, he has repaid the loan money, PW.1 refused to give back the vessel. So, there was quarrel between them. When he asked PW.1 why he is not returning the vessel in spite of receiving the money, PW.1 scolded him and told him to come to his home and get it back. When he went to his house to collect vessel, PW.1 and his son PW.2 attacked him. There was quarrel between them. One Magalingam also joined them and attacked him with wooden log. He went to the police station and gave a complaint about the incident. After getting his Thumb impression, police sent him with a memo to the hospital. His son (the appellant) came to the hospital to see him, the police did not take any action against PW.1 on his complaint.

12. The doctor who admitted DW.2 Ammasi was also examined by the defence as DW.1. The accident register and opinion given by the doctor for the injury sustained by Ammasi (DW.2) are marked as Ex.D.1 and Ex.D.2. The x-ray's indicating fracture of 4th and 5th finger were marked as Ex.D.M.O.1 and Ex.D.M.O.2. He has opined that the injury sustained by Ammasi (DW.2) is grievous in nature.

13. To the Investigation Officer PW.11 Natarajan, it has been suggested the same transaction Ammasi (DW.2) father of the 1st accused sustained injury and admitting in the hospital and treated by same Doctor but he has not investigated about that. PW.11 has denied the suggestion. However, the evidence of DW.2, the injured person and the Doctor who has treated him, which is corroborated by the accident register and x-ray report, clearly proves that on the same day and during the same transactions, which is the subject matter of the present appeal, the father of the appellant had sustained grievous injury. He has given a complaint against PW.1 and PW.2. The respondent police has not investigated the counter complaint. Even for argument sake, the incident alleged by DW.2 was of different transaction failure to register the case in counter is fatal.

14. Considering the evidence which has been adduced by the defence, when complaint about cognizable offence made out and the injured person was admitted in the hospital, based on

the memo given by the police station, the Investigation Officer has totally suppressed the material evidence.

15. From the sequence of events narrated by PW.1 (Soundararajan), PW.2(Chinnaraj) as well as DW.2(Ammasi), it is obvious that there was quarrel between PW.1 and PW.2 on one side and 1st appellant and D.W.2 on the other side. PW.1 (Soundararajan) and DW.1 (Kanmani) have sustained severe injuries.

16. For the reason best known, the prosecution has taken up the complaint of PW.1 and totally thrown to ground the counter complaint of A-2. The complaint of DW.2, through the I.O, has been elicited that the recovery mahazar and other relevant documents were not forwarded to the Court immediately. The complaint of PW.1 has been registered belatedly, after more than 24 hrs. The alleged recovery of M.O.1-knife and M.O.2-stick also been very doubtful. The trial Court, while appreciating the evidence has found the discrepancy and contradictions in the prosecution case and acquitted the 2nd accused is concerned, but considering the injury found on PW.1, it has convicted the 1st accused.

17. The trial Court has failed to consider the defence. Exhibit and witnesses, which clearly establishes it a is case and counter wherein, the prosecution has totally screened from the view of the Court the counter case. When the investigation is not impartial and the material facts not placed before the Court for appropriate appreciation, it is unsafe to convict the appellant based on the interested witnesses, who are also the aggressor in the counter case.

18. For the said reason, this Court holds that prosecution has failed to place the records properly before the Court and failed to investigate the case properly. For the said failure, the accused is entitled for acquittal. Hence, the Criminal Appeal is Allowed. Bail bond executed shall stand discharged.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

bsm

To,

1. The Principal District and Sessions Judge,
Ariyalur.
 2. The Additional District and Sessions Judge,
Fast Track Court-V, Ariyalur.
 3. The Inspector of Police,
Vikkiramangalam Police Station, Ariyalur.
 4. The Superintendent,
Central Prison, Trichy.
 5. The Public Prosecutor,
High Court, Madras.
 6. The Section Officer,
Criminal Section (Records), High Court, Madras.
 7. The Judicial Magistrate, Jayankondam.
- +1 cc to Mr.T.D.Vasu, Advocate Sr.No.35146

NRJK(CO)
CSL/05.07.2019

Order in
Criminal Appeal No.145 of 2011

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