

BAIL SLIP

The Appellant viz., Sunny @ Sunny Jain, aged 24 years, S/o.Parasmal Jain, was directed to be released on Bail on 15.06.2011 in M.P.No. 1/2011 in CrI.A.No. 337 of 2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.08.2019

C O R A M

THE HONOURABLE Mr.JUSTICE P.VELMURUGAN

CrI.A.No.337 of 2011

Sunny @ Sunny Jain

.... Appellant

-Vs-

State rep. by
The Inspector of Police,
C1, Flower Bazar Police Station,
Chennai.
(Cr.No.52/2010)

.... Respondent

Criminal Appeal filed under Section 374 of Cr.P.C, praying to set aside the judgment dated 20.05.2011 passed in S.C.No.351 of 2010 by the learned Additional District and Sessions Judge, Fast Track Court-II, Chennai.

For Appellant : Mr.C.D.Johnson
Mr.K.Ethirajalu
Legal Aid Counsel

For Respondent : Mr.T.Shanmugarajeswaran
Government Advocate

JUDGMENT

This Criminal appeal has been filed to set aside the judgment dated 20.05.2011 passed in S.C.No.351 of 2010 by the learned Additional District and Sessions Judge, Fast Track Court-II, Chennai.

2. The respondent police registered a case in Crime No.52 of 2010 against the appellant herein for the offences under Sections 307 and 506(ii) of IPC. After completing investigation, the respondent police laid a charge sheet in PRC.No.68 of 2010 against the accused before the learned VIII Metropolitan Magistrate, George Town, Chennai. The learned Magistrate, after taking the charge sheet on file, found that the offence was triable by the Court of Sessions and committed to the learned Principal Sessions Judge, Chennai. The learned

Principal Sessions Judge, after taking the case on file in S.C.No.351 of 2010 made over the case to the learned Additional District and Sessions Judge, Fast Track-II, Chennai for disposal. The learned Sessions Judge, after completing the formalities, framed charge against the appellant for the offence under Sections 307 and 506(ii) of IPC.

3. During trial, in order to prove the case of the prosecution, on the side of the prosecution as many as 8 witnesses were examined and marked 12 documents and 6 Material Objects. After completing evidence, incriminating circumstances culled out from the prosecution witnesses was put before the accused, he denied as false. On the side of the defence, one witness was examined and marked 2 documents. The learned Sessions Judge, after hearing the arguments and considering the oral and documentary evidence produced on either side, found that the appellant was not found guilty for the offence under Section 307 of IPC, however, he was found guilty for the offences under Sections 326 and 506(ii) of IPC and sentenced him to undergo 3 years Simple Imprisonment and fine of Rs.1,000/-, in default, 2 months Simple Imprisonment for the offence under Section 326 of IPC and to pay fine of Rs.500/-, in default, 2 weeks Simple Imprisonment for the offence under Section 506(ii) of IPC, by judgment dated 20.05.2011. There against, the present appeal has been preferred by the convict before this Court.

4. The learned counsel for the appellant would submit that there are material contradictions between the prosecution witnesses. The learned Trial Judge has failed to consider the contradictions. Further, he would submit that there is a delay of 12 hours in registering the FIR and the prosecution has not explained the reason for the inordinate delay in registering the case. He would submit that when the injured was admitted in the hospital, he has informed to PW-6/Doctor that he was assaulted by one unknown person. When the allegation is that the injured was assaulted by unknown person, the prosecution has not conducted the identification parade to identify the accused in this case. Therefore, there is suspicious as to whether the appellant is committed the offence as alleged by the prosecution witnesses. Further, the blood group has not been identified, which creates doubt as to whether the blood stain found in the material object is that of the injured person. There is no motive has been established by the prosecution for the offence under Section 307 of IPC. Even the prosecution has stated that there is no strong motive to charge under Section 307 of IPC. The prosecution has not investigated the matter as to whether any Hawala transaction between the appellant and the victim. Even though the injured sustained stab injury, the prosecution has stated that PW-2 was initially taken to the Amrith hospital. After taking the first-aid treatment, they went to the Billroth Hospital and since they have not admitted in the Billroth hospital, they have taken to Apollo hospital, Kilpauk

and intimidated to the police. It is not believable that a person, who is having stab injury, moving other place without giving complaint to the police, which also creates suspicious. The police, after connivance of the deliberation, foisted a false case. Therefore, the benefit of doubt has to be extended to the accused. The learned Trial Judge has failed to appreciate the evidence of the prosecution that PW-1 is only hearsay witness and also there is a doubt that who is the author of the complaint has not been examined before the trial Court. The prosecution has failed to appreciate the evidence of the prosecution on giving effect to the contradictions between the prosecution witnesses, which warrants interference.

5. The learned Government Advocate (Crl. Side) appearing for the respondent would submit that PW-2 was running a shop at Door No.25, Kasi Chetty Street. PW-1 is the uncle of PW-2 and he was also running a shop by name Vinayaga Enterprises at Door No.28, Kasi Chetty Street. On 23.01.2010 PW-2 opened the shop at 9.30.a.m and at about 10.30.a.m the appellant/accused came to the shop of PW-2 and asked him to give some goods for rent. When PW-2 refused to give, immediately the appellant/accused took a hammer, which was kept on the table at the shop, attacked PW-2 and thereafter, he took the knife from his pocket and stabbed PW-2 at his stomach and also threatened him not to reveal the same to anyone. When PW-3, who was the neighbour, came there, the appellant/accused left the place. PW-2 went to the shop of his uncle/PW-1 with bleeding injury and PW-1 took him to Amrit Hospital, where he was referred to Billroth Hospital, due to lack of bed, he was again referred to Apollo Hospital, where a surgery was made to him and thereafter, informed the police about the occurrence. The police recorded the statement of PW-1. The evidence of PW-6/Doctor, PWs-1 to 3 and also Ex.P6/Forensic report show that the blood stain found in the knife is a human blood. PW-2 also identified the appellant in the Court during trial. From the evidence of PWs-1 to 6, it is seen that the prosecution has proved its case beyond reasonable doubts. The trial Court rightly appreciated the evidence and given the reason for all the queries raised by the learned counsel for the appellant. Therefore, there is no merit in the appeal and the same is liable to be dismissed.

6. Heard the learned counsel appearing for the appellant, the learned Government Advocate (Crl.Side) appearing for the respondent and also perused the entire materials available on records.

7. The case of the prosecution is that the appellant/accused is alleged to have attacked PW-2, who was running the shop at Kasi Chetty Street, for not providing the goods for rent.

8. As stated by the learned Government Advocate (Crl.Side) that the injured witness was examined as PW-2, who has clearly narrated that he was running a fancy store at

No.25, Kasi Chetty Street. On 23.01.2010, the appellant came to the shop and enquired about certain goods and prices of the goods. When he asked to give the same without money, the injured refused to give, he was assaulted with hammer and subsequently, stabbed with knife at his stomach. Therefore, PW-2 immediately went to PW-1 and intimated the same and thereafter, he was taken to the hospital. PW-3, who is the eye-witness, has clearly deposed that at the time of the occurrence, he has gone to the shop of PW-2 at that time, there was a wordy quarrel between the appellant and PW-2, immediately, the appellant attacked PW-2 with hammer and subsequently, stabbed him and threatened him with dire consequences. PW-1 has deposed that he was running the shop by name Vinayaga Enterprises at Door No.28, Kasi Chetty Street. PW-2 is the niece of PW-1 and when PW-2 went to the shop of PW-1 with bleeding injury, PW-1 took him to Amrit Hospital, where he was referred to Billroth Hospital, due to lack of bed, he was again referred to Apollo Hospital, where a surgery was made to him and thereafter, informed the police about the occurrence. Since PW-2 was not in a position to give any statement, PW-1 given the complaint to the respondent police. PW-6 is the doctor, who has stated that at the time of admission he was told that one unknown person attacked PW-2 and he has seen the injuries on head and also stab injury on his stomach. PWs-4 and 5 Mahazar witnesses, who have spoken about the investigation done by PW-8/Investigating Officer. PW-6-Doctor has deposed that PW-2 sustained injuries. Ex.P6/Forensic Lab report shows that the blood stain found in the material object is the human blood. From the evidence of PW-2-injured witness and PW-3, who is the eye-witness and also PW-1, it is seen that the prosecution has proved its case beyond reasonable doubts. Though the learned counsel for the appellant submitted that there was a delay in lodging the FIR, considering the facts and circumstances of the case that the injured was brought to various hospitals and subsequently, surgery was also made, the delay in lodging the FIR is not fatal to the case of the prosecution. The Trial Court has also observed the same. When a person sustained stab injury in his stomach, they would think about to save the life of the injured and not about preferring the complaint. After admitting and treating the injured, the intimation will be given to the police through the hospital or by the person, who admitted the injured or who knows about the occurrence. Considering the facts and circumstances of the present case, mere delay in filing the complaint may not be the reason for disbelieving the case of the prosecution. Though the leaned counsel for the appellant submitted that PW-1 stated before the doctor that one unknown person attacked him, no evidence to show that the accused and victim are either close relatives or friends or well known persons. Mere mentioning of unknown person is not the sole ground to disbelieve the case of the prosecution. Though the facts remain that from the evidence of PW-6, PW-2 sustained injury on his head and also his stomach and he was taking treatment in the hospital. Though

in the accident register the nature of injury has not been mentioned, the evidence of PW-6 clearly shows about the injuries sustained by the victim. Though the learned counsel for the appellant would submit that the blood group has not been identified, whether it is tallying with the victim is not the fatal to the case of the prosecution. In this case, PW-2 is the only injured witness, who has clearly deposed that the appellant alone attacked him. PW-3 is the eye-witness, who has clearly corroborated the evidence of PW-1. When there is an independent witness to the occurrence and also the injured himself is an eyewitness, the contention of the learned counsel for the appellant is not acceptable. The Trial Court also given the reason for rejecting the contention for the learned counsel for the appellant and believing the case of the prosecution. On seeing that PW-2 sustained injuries on 23.01.2010 at 10.30.a.m at his shop and PW-1 has also spoken about taking the victim to the hospital and also preferred the complaint. The doctor also clearly stated that PW-2 sustained grievous injuries. Though Trial Court found not guilty for the offence under Section 307 of IPC, considering the serious nature of the injuries, convicted the appellant for the offence under Section 326 and 506(ii) of IPC.

9. On reading of the entire materials, this Court is of the view that the appellant has committed the offences under Sections 326 & 506 (ii) of IPC. There is no reason to interfere with the judgment of the Trial Court and there is no sound ground to allow this appeal and the same is liable to be dismissed.

10. Accordingly, this Criminal Appeal is dismissed. The judgment dated 20.05.2011 in S.C.No.351 of 2010 passed by the learned Additional District and Sessions Judge, Fast Track Court-II, Chennai, is hereby confirmed. The Trial Court is directed to secure the accused to undergo remaining period of sentence, if any. The counsel for the appellant/accused on record, who was appointed by the Tamil Nadu State Legal Services Authority, Chennai from the Legal Aid Panel is entitled for the fees as per the rule.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

KMI

To

1. The Additional District and Sessions Judge,
Fast Track Court-II, Chennai.

2. The Inspector of Police,

<https://hcservices.ecourts.gov.in/hcservices/>

CI, Flower Bazar Police Station, Chennai.

3. The Public Prosecutor,
High Court, Chennai-104.

4.The Secretary,
Tamil Nadu State Legal Services Authorities,
Chennai.

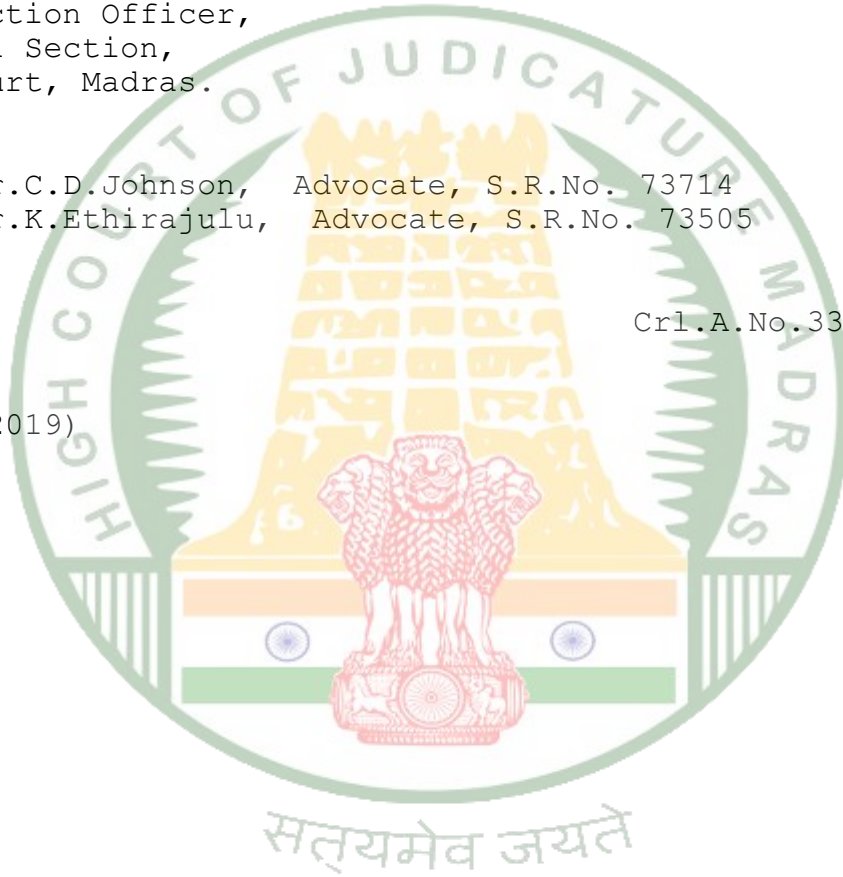
5.The Superintendent of Prison,
Central Prison, Puzhal,
Chennai.

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

+2cc to Mr.C.D.Johnson, Advocate, S.R.No. 73714
+1cc to Mr.K.Ethirajulu, Advocate, S.R.No. 73505

CrI.A.No.337 of 2011

PPA(CO)
GN(13/11/2019)



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