

Bail Slip

The Appellant/Accused namely Sudhanthira rajan S/o. Perumal was directed to be released on bail as per order of this Court dated 24.08.2011 in M.P. 1/2011 in CrI.A.No.527 of 2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.08.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CrI.A.No.527 of 2011

Sudhanthira rajan ...Appellant/Accused

-Vs-

The State rep. by  
The Inspector of Police,  
Killai Police Station,  
Cuddalore (Dt).  
(Crime No.345 of 2000)

...Respondent/Complaint

This Criminal Appeal is filed under Section 374 of Cr.P.C. praying to call for the records in judgment of conviction passed by the learned Additional District Judge, Additional District Court/Fast Track Court No.1, Chidambaram, in S.C.No.377 of 2007, dated 09.08.2011, and set aside the same.

For Appellant : Mr.C.KM.Appaji  
For Respondent : Mr.T.Shanmugarajeswaran  
Government Advocate (CrI.Side)

JUDGMENT

This criminal appeal has been filed against the judgment of conviction made by the learned Additional District Judge, Additional District Court/Fast Track Court No.1, Chidambaram, in S.C.No.377 of 2007, dated 09.08.2011.

2 The respondent police registered the case against the appellant and yet another in Crime No.345 of 2006 for the offence punishable under Section 341, 307, 326 and 324 of IPC. Ater completing investigation, the respondent police laid a charge sheet before the learned District Munsif-cum-Judicial Magistrate, Parangipettai, which was taken on file in P.R.C.No.39 of 2006 and since the offence charged against the appellant is triable only by the Court of Sessions, the learned District Munsif committed the case to the learned Principal

District and Sessions Judge, Cuddalore, which was taken on file in S.C.No.377 of 2007 and the same was made over to the learned Additional District Judge, Additional District Court/Fast Track Court No.1, Chidambaram.

3 Before the trial Court in order to prove the case of the prosecution, P.Ws.1 to 11 were examined and Exs.P1 to 13 were marked besides Material Objects 1 & 2. After completing prosecution witnesses, when incriminating circumstances culled out from the prosecution witnesses and put before the accused, they denied as false. On the side of the defence, no one was examined and no document was marked.

4 The learned Additional District Judge, after trial, by judgment dated 09.08.2011, convicted the accused and imposed fine of Rs.500/- each, in default, to undergo simple imprisonment for a period of three months for the offence under Section 341 of IPC and was sentenced to undergo rigorous imprisonment for a period of four years with fine of Rs.3000/-, in default, to undergo simple imprisonment for a period of one year for the offence under Section 326 and A2 was imposed fine of Rs.1000/- each, in default, to undergo simple imprisonment for a period of three months each, for the offence under Section 324 of IPC (two counts). Aggrieved against the said judgment of conviction, the first accused had preferred this criminal appeal.

5 The learned counsel appearing for the appellant would submit that there is material contradictions between the evidence of prosecution witnesses, which has not been considered by the learned trial Judge. Prosecution has failed to explain the injuries sustained by this appellant and the same is fatal to the case of the prosecution. To support his contentions, the learned counsel has relied on the decision of the Hon'ble Supreme Court reported in (1976) 4 SCC 394 (Lakshmi Sing and others vs. State of Bihar). The Doctor, P.W.8, who treated the injured witness, had opined that the injuries sustained by the victim is grievous in nature and X-Ray was also taken, but it was not marked before the Court. In support of his contention, the learned counsel has relied on the decision of this Court reported in 2000 (3) MWN (Cr.) 91 (Arunachalam & Others vs. State rep. by Sub Inspector of Police, Nanguneri P.S. Tirunelveli District). The evidence of the Doctor and medical records are not tallied with the injuries sustained by P.W.1 and the other injured witnesses. Prosecution has not proved its case beyond reasonable doubt and when the prosecution could not establish its case and when two views are possible, the view which favours the accused should be taken into account and benefits of doubt should be extended to the accused. The learned trial Judge has failed to consider the fact that the confession

recorded only from A2 and weapon was also recovered from A2, there is no weapon recovered from this appellant/A1 and therefore non recovery of the material object from the appellant/A1 is fatal to the case of the prosecution. Further, the accused need not come into witness box and disprove the case of the prosecution, it is for the prosecution to prove its case beyond reasonable doubt. In this case, prosecution has not proved the fact that which weapon they have recovered from this appellant/A1 and by using which material object, this appellant caused injuries to the witnesses. Further, injuries sustained by A2 was explained by the prosecution, whereas, prosecution has failed to explain the injuries sustained by this appellant/A1 and it has not proved the case against this appellant/A1. Therefore conviction and sentence recorded by the trial Court against this appellant/A1 is liable to be set aside.

6 The learned Government Advocate (Crl.Side) would submit that in this case there are three injured witnesses, who had categorically stated about the overt act attributed against this appellant. Even though, weapons have not been recovered from this appellant, the evidence of P.W.1, which is very clear that the appellant attacked P.W.2 with sickle and caused grievous injuries. Non recovery of the material object from this appellant and non production of X-Ray are not fatal to the case of the prosecution, since the index finger of P.W.2 was amputated by this appellant, which was clearly evidenced by deposition of P.Ws.1 & 2 and the injury, which is grievous in nature itself speaks about the offence committed by this appellant. There is no injury sustained by A1 and A2 alone sustained injuries, which was clearly explained by the prosecution and the same has also been spoken by P.W.1. All the injured eye witnesses had categorically stated that A1 & A2 came along with deadly weapon and attacked them. Prosecution has clearly proved its case beyond reasonable doubt and the trial Court has also rightly convicted this appellant, which does not call for any interference.

7 Heard the learned counsel appearing on either side and perused the materials available on record.

8 Case of the prosecution is that the defacto complainant is the resident of the Chidambaranathanpettai Colony and her husband is working as Post Graduate Teacher at the same Village. Both the accused are residing at the same village and there was enmity between the accused and the family of the defacto complainant with regard to the village and temple issues, for which problems arose frequently and complaints were also lodged by the family of the defacto complainant and are pending before the respondent police. While so, on 25.08.2000 at about 6.00 p.m., when the defacto complainant, elder brother of



her husband/P.W.2, his wife/P.W.3 and their daughter/P.W.4 were proceeding towards Mariyamman temple by walking from south to west along with the field belongs to one Chinnadurai, the accused came with deadly weapons and wrongfully restrained them and uttered the words "are you leading a happy life, after having lodged a complaint against us; we will not allow you to live; we will do away with". The appellant/A1 attacked P.W.2 with bill hook on his neck, but, when P.W.2 prevented the same with right hand, as a result of which his index finger was chopped off and sustained injuries on the other fingers also. The second accused attacked P.W.3 and her daughter P.W.4 on their heads with bill hook and when A2 attempted to attack the defacto complainant, he fell down and sustained injuries on his left fore hand. Therefore a case was registered, which was ended in conviction, against which present appeal has been preferred by the first accused.

9 It is contended by the learned counsel for the appellant that the injuries sustained by this appellant has not been explained by the prosecution and no material object was recovered from this appellant. It is seen from the records that A2 alone sustained injuries and the same was properly explained by the prosecution and the witnesses have also spoken about the same, but, on reading of the entire materials, nowhere it is stated by any of the witnesses that this appellant sustained injuries. Even rite from the remand report of appellant and other materials does not show that this appellant also sustained injuries and no suggestion was put by the defence before any of the witnesses P.Ws.1 to 4 that this appellant sustained injuries, except the investigating officer, during cross examination by the defence has stated that this appellant sustained injuries. Merely, the Investigating Officer, during cross examination, without applying his mind, stated that this appellant also sustained injuries, would not suffice to say that this appellant sustained injuries, when there is no materials to prove the same. Therefore, the decisions referred to by the learned counsel appearing for the appellant for non explanation of injuries sustained by the accused is fatal to the case of the prosecution, is not applicable to the present case on hand, since in that case, the appellant in fact sustained injuries and the same has not been explained by the prosecution, whereas, in the present case on hand, as contended by the learned counsel for the appellant that the injuries sustained by this appellant itself is in doubt and was not proved.

10 The other decision referred to by the learned counsel stating that non production of X-Ray is fatal to the case of the prosecution for the reason that in that case, there was internatal injuries and fractures and to prove the same no x-ray was produced, but, in the present case on hand, the index finger

of P.W.2 was amputated and the Doctor P.W.8 has given wound certificate, which shows that the injuries sustained by P.W.2 is grievous in nature. On reading of the evidence of injured eye witnesses, it reveal that they have clearly narrated the incident and other witnesses have also corroborated with each other. Further the evidence of the Doctor/P.W.8, who treated the injured witnesses and the medical records Exs.P4 to 9 had clearly proved the case of the prosecution. Further it is not the case of the defence that the witnesses are only the aggressor to the incident, from the evidence of prosecution witnesses, which is cogent and trust worthy, it is clearly proved that the accused attacked the witnesses with deadly weapons. The trial Court by appreciating the evidence of prosecution in a right manner, had convicted this appellant and this Court being an appellate Court, while re-appreciating entire evidence, does not find any reason to interfere with the judgment of conviction recorded by the trial Court.

11 In the result, the criminal appeal is dismissed as devoid of merit and substance. Trial Court is directed to secure the appellant to undergo remaining period of imprisonment, if any.

-s/d-

Assistant Registrar(CS-I)

True Copy

Sub-Assistant Registrar

cgi  
To

1. The Additional District Judge, Additional District Court/  
Fast Track Court No.1, Chidambaram.
2. The Chief Judicial Magistrate, Cuddalore
3. The District Munsif cum Judicial Magistrate  
Parangipettai
4. The Inspector of Police, Killai Police Station,  
Cuddalore (Dt).
5. The Superintendent, Central Prison, Cuddalore
6. The Public Prosecutor, High Court of Madras.

Copy to

The Section officer  
Criminal Section(Records)  
High Court, Madras 104.

+3 CCS to Mr.C.KM.Appaji, Advocate sr 69698 & 69256.

Cr1.A.No.527 of 2011

KK(CO)  
SP(01/11/2019)