

BAIL SLIP

The Appellant/Accused namely Anbu, S/o.Sivamurthy was directed to be released on bail as per the order of this Court dated 19.10.2011 in Crl.M.P. No.1/2011 in Crl.Appeal No.615/2011 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.03.2019

PRONOUNCED ON : 22.03.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal No.615 of 2011

Anbu

..Appellant/Accused No.1

-Vs-

State rep. By
Inspector of Police,
G-5, Secretariate Colony
Police Station,
Chennai.

..Respondent/Complainant

Prayer:- This Criminal Appeal is filed under Section 374 Cr.P.C., against the judgment and order of conviction passed in S.C.No.317 of 2011 dated 27.09.2011 on the file of the Additional District and Sessions Judge, Fast Track Court III, Chennai.

For Appellant : Mr.S.N.Arun Kumar

For Respondent : Mrs.Kritika Kamal.P,
Government Advocate (crl.side)

JUDGMENT

The appellant herein, is the first accused in S.C.No.317 of 2011 on the file of the Additional District and Sessions Court (FTC III) Chennai. Case was registered by the respondent police against 5 persons and a juvenile for offences under sections 147 ,148, 341, 307, 324 and 506 IPC. The appellant

herein is the first accused. The trial Court convicted the first accused/the appellant herein for offence under section 326 IPC and the second accused for offence under section 324 IPC. Rest of the accused persons were acquitted. The second accused did not prefer appeal.

2.The trial Court sentenced the first accused/appellant herein to undergo five years simple imprisonment and to pay a fine of Rs.1,000/- in default to undergo three months simple imprisonment for offence under 326 IPC though he was charged and tried for offence under section 307 IPC. Aggrieved by the conviction and sentence, the present appeal is filed.

3.Brief facts of the case:

On 13/02/2011 at about 12.00 pm, due to previous enmity, when the appellant herein was constructing a shop near his house, Tilak Raj (PW-1) the neighbouring house owner objected. First there was a wordy quarrel between them. Later, the appellant and his relatives came with dangerous weapons and attacked Tilak Raj (P.W.1) and his family members who gathered there. In the said fight, A-1 and the split up accused Venkatesan (Juvenile) attacked Tilagaraj (PW-1) with knife. Tilagaraj sustained grievous injury on the head. A-2 and A-4 attacked Gemini (PW-6) the mother of Tilagaraj. She sustained simple injuries over her body. A-5 attacked Lazer (PW-2).

4.PW-1 reported the incident to the police. Based on his complaint, the first information report was registered in Crime No.130 of 2011 against 6 persons including the appellant herein. Venkatesan was shown as split up accused being a juvenile at the time of occurrence. On completion of the investigation, the respondent filed final report. Based on the report, the trial Court framed charges under sections 147 , 148, 341, 307 and 506(ii) of IPC.

5.To prove the charges, the prosecution examined 11 witnesses (P.Ws.1 to 11). 12 exhibits (Exs.P.1 to P.12) and three material objects (M.Os.1 to 3) were marked. The trial Court, held that the prosecution has failed to prove the charges against A-3 to A-5. Held the offence committed by A-1 is punishable under section 326 IPC and also found A2 guilty of offence under 324 IPC. The present Criminal Appeal is directed against the above said sentence and conviction.

6.The learner counsel appearing for the appellant would submit that when the appellant was constructing a shop behind his house, the defacto complainant (P.W.1) along with family members armed with weapons restrained the appellant from putting up construction since, it will affect their business. PW-1's mother Gemini (PW-6), his uncle Lazer (PW-2) and others came

and assaulted Sakthivel A-4 and others. In the fight, free for all, PWs-1 and 6 sustained injuries. Police suppressed the complaint given by A.1/the appellant herein and the injuries sustained by Sakthivel - A.4. PW6 Gemini assaulted wife of the first accused. Without registering their complaint, the Police has taken up the defacto complainant case which is an exaggerate version to escape from the criminal prosecution. PW-1 had given a complaint exaggerating the occurrence implicating all the family members of A-1.

7.The prosecution witnesses does not corroborate the substantiated charges. The sole independent witness - PW-4 has turned hostile. The other witnesses to the occurrence are all family members of PW-1. Even among them, there is no consistency. While PW-1 has deposed that A-2 and A-4 attacked his mother PW-6, the injured witness - PW-6 had said that all the accused attacked her (P.W.6) all over the body. The recovery of material objects from the residence of the accused is unbelievable, since, all the accused are not staying in one place. They all reside at different places. Since, the evidence of PWs-1 and are exaggerated, the trial Court itself has not believed the case of the prosecution, implicating all the accused. Due to the embellishment and falsehood, the conviction against first accused/appellant should also be set aside.

8.Per contra, the learned Government Advocate (crl.side) would submit that due to previous enmity, the accused persons attacked PW-1 and others. The Learned Government Advocate (crl.side) would submit that PWs-1, 2 and 6 are the injured witnesses. PWs-3 and 4 are the witnesses who saw the occurrence. Though PW-4 turned hostile, PW-3 corroborated the version of PWs-1 and 6. The injuries sustained by PWs-1 and 6 is proved through the accident register and wound certificates which are marked as Exs.P-4 to P-7.

9.Dr Thanikaimani PW- 9 has opined that the injury sustained by PW-1 is grievous in nature. The weapon used by the accused to assault were recovered pursuant to the confession and marked as a MOs-1 to 3. The nature of the injuries, the weapon used and the ocular evidence of the injured witnesses clearly establishes and proves the guilt of the accused, particularly, the appellant herein. Therefore, the learned Government Advocate (crl.side) would submit that the conviction and sentence imposed on the accused/appellant has to be confirmed.

10.Heard the learned counsel for the appellant and the learned Government Advocate (crl.side).

11.The contention of the appellant is that the prosecution case bristle with contradiction and infirmity. Pointing the contradiction between the evidence of PW -1 and PW -6 regarding the assailant and nature of injury sustained through them, the learned counsel for the appellant submit that their evidence is unbelievable and exaggerated. The only independent witness examined by the prosecution is PW-4. He has not supported the case of the prosecution hence, declared hostile. The rest of the witnesses are family members of the defacto complainant, hence, not reliable.

12.The learned counsel for the appellant would further contend that the counter case given for the assault on A-4 was suppressed from the trial Court by the police. Since, the learned Counsel contended that one of the accused, in this case, sustained injury in the free for all fight which was initiated by the defacto complainant family, this Court called for the immaterial records from the Court below to verify, 'whether the Learned Magistrate noted any injuries on the accused person at the time of their first remand. The appellant along with the other accused were arrested and remanded before the Magistrate on 15/02/2001. Magistrate has noticed one of the accused Sakthivel (A-4) with bandage over his left shoulder. She has interrogated that accused about the injury. A.4 has informed that he fell down from the two wheeler on 1.11. 2011. The wound certificate along with the remand request indicates that A-4 was treated as outpatient at KMC Hospital on 1.11.2011 for the injury sustained on his shoulder due to fall from two wheeler. Therefore, the contention of the learned counsel for the appellant that the injuries found on one of the accused person (A.4) not explained by the prosecution and in the free for all fight between two groups one among the accused sustained injury appears to be not correct.

13.The trial Court after due consideration of the evidence before it, has found few embellishments and exaggerations in the case of the prosecution. The fact that the injured witnesses gone to the place of accused objected him putting up construction and had invited trouble for themselves has been recorded by the trial Court. In view of that, the trial Court after removing the grain from the sheaf had acquitted all other accused of all charges and also acquitted A-1 and A-2 from all other charges except 326 IPC and 324 IPC respectively.

14.While convicting A-2 for offence under 324 IPC the trial Court has imposed fine of Rs.2,000/- and imprisonment till rising of the court. A-1 the appellant herein sentenced to undergo 5 years simple imprisonment and fine of Rs.1,000/- in

default 3 months simple Imprisonment. The learned counsel for the appellant would submit that the punishment imposed on A-1 is excessive considering his age and the overt act alleged against him. He would also submit that the appellant is now in sick bed and will not sustain incarceration.

15.The trial Court has held that there was no intention or knowledge to cause death and the fight has taken place in a fit of anger, therefore, tried the appellant for offence under section 307 IPC, held guilty only for offence under section 326 IPC. The embellishment and exaggerations in the prosecution case has led to acquittal of other accused and the appellant from the charge of unlawful assembly. It is true that the prosecution case is based on the evidence of the interested witnesses. Nevertheless, the injury sustained by PW-1 as found in the wound certificate and the ocular evidence of the injured witness indicates that the appellant herein has caused the hurt found on A-1.

16.In the light of the above proved fact, while confirming the judgement of the Court below, the sentence imposed on the appellant for offence under Section 326 I.P.C., is modified as under taking note of facts and circumstances of the case.

17.The case records indicates that the appellant was remanded to prison on 15/02/2011. He was released on bail on 19/10/2011. Therefore, sentence of simple imprisonment for a term of 5 years is modified as the period of imprisonment already undergone. The fine amount and default sentence stands confirmed. Accordingly, the criminal appeal is partly allowed.

jbm

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The Addl. District and Sessions Judge,
Fast Track Court III,
Chennai.

2. The Inspector of Police,
G-5, Secretariat Colony,
Police Station,
Chennai.
3. The Metropolitan Magistrate,
No.V, Egmore, Chennai.
4. The Chief Metropolitan Magistrate,
Egmore , Chennai.
5. The Superintendent of Central Prison,
Puzhal, Chennai.
6. The Public Prosecutor,
High Court, Chennai.

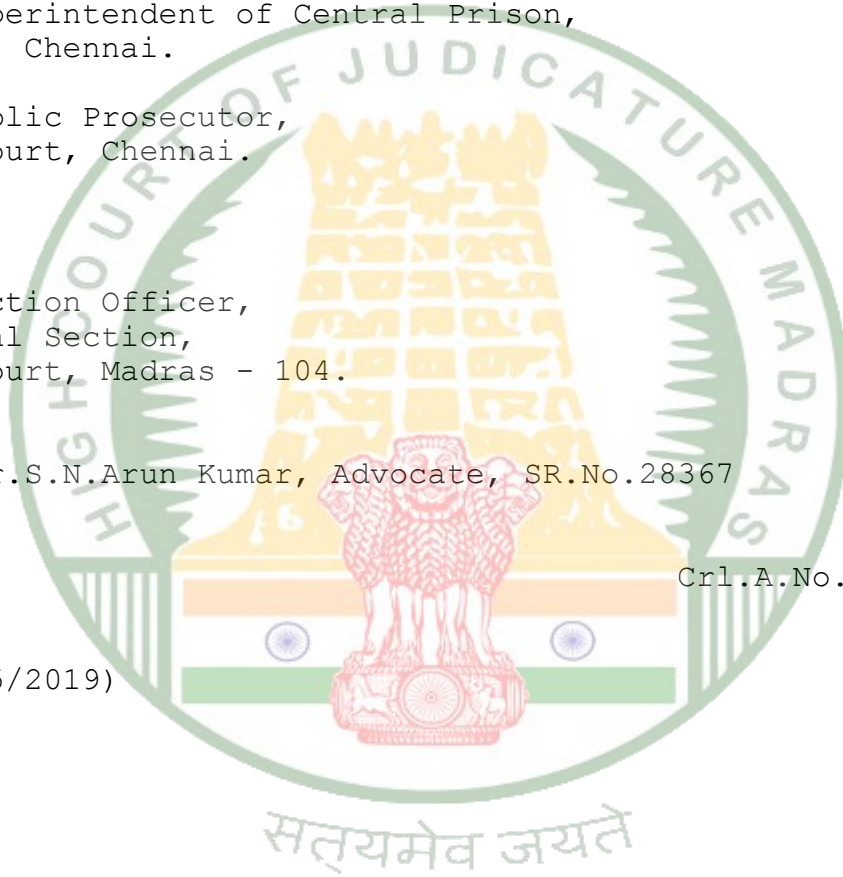
Copy to:-

The Section Officer,
Criminal Section,
High Court, Madras - 104.

+1cc to Mr.S.N.Arun Kumar, Advocate, SR.No.28367

Crl.A.No.615 of 2011

Kak(30/05/2019)



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