

BAIL SLIP
CRL.A.NO. 707 OF 2011

The Appellant herein/Accused namely Thameem Ansari was directed to be released on bail as per order of this Court dated 06/01/2012 made in Crl.Mp.No. 1/2011 in Crl.A.No. 707/2011.

BAIL SLIP
CRL.A.NO. 195 OF 2012

The Accused/appellant namely Thasthageer was directed to be released n bail as per order of this Court dated 26/03/2012 made in Crl.Mp.No. 1/2012 in Crl.A.No. 195/2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal Nos.707 of 2011 and 195 of 2012

Thameem Ansari .. Appellant in Crl.A.No.707/2011
Thasthageer .. Appellant in Crl.A.No.195/2012

Vs

State by
Inspector of Police,
D-2, Anna Salai Police Station,
Chennai.

(Crime No.1022/2010)

सत्यमेव जयते

Respondent in both Crl.As

Common Prayer:- These Criminal Appeals are filed under Section 374 Cr.P.C., to call for the records and set aside the conviction and sentence imposed against the appellants on 17.05.2011 in S.C.No.476 of 2010, on the file of the learned Additional District and Sessions Judge (Fast Track Court - 4) Chennai.

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

COMMON JUDGMENT

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Aggrieved by the conviction and sentence imposed by the trial Court for the offence under Sections 341 and 307 r/w 34 I.P.C., the appellant who is A.1 has filed Crl.A.No.707 of 2011.

2.Aggrieved by the conviction and sentence imposed by the trial Court for the offence under Sections 341 and 307 r/w 34 I.P.C., the appellant who is A.2 has filed Crl.A.No.195 of 2012.

appellants/A.1 and A.2 and arrested them. Based on the confession statement, the blade used for the offence was recovered from A.1, in the presence of two independent witnesses under mahazar - Ex.P.3.

4.The Doctor, who treated the injured Murugesh, opined that the injury sustained by him is simple in nature. On receiving the opinion of the Doctor and on completion of the investigation, final report was filed against the appellants.

5.The learned Magistrate committed the case to the Court of sessions since, the offence was exclusively triable by the Court of Sessions. Charges for offences under Sections 341, 294 (b), 307 r/w 34 I.P.C., were framed against the appellants.

6.To prove the case, the prosecution examined eight witnesses and marked 9 exhibits and one material object. After appreciating the evidence, the trial Court held A.1 and A.2 guilty of offences under Sections 341, 307 r/w 34 I.P.C., and sentenced them to undergo simple imprisonment for one month for the offence under Section 341 I.P.C., and sentenced them to undergo four years rigorous imprisonment for offence under Section 307 r/w 34 I.P.C. The accused were in prison during the period of trial. Hence, the trial Court did not impose any fine.

7.Aggrieved by the conviction and sentence, the appellants are before this Court with these Criminal Appeals.

8.According to the learned counsel for the appellants, the time of occurrence as per the accident register is 25.07.2010 at 19.00 hours. Whereas, in the First Information Report given by the injured victim - P.W.1, the time of occurrence was shown as 22.10 hours. The accident register indicates that the victim informed the Doctor that four known persons assaulted him using knife. Whereas, in the F.I.R., it is two persons who attacked P.W.1 with blade (M.O.1). After registration of F.I.R., the respondent Police has arrested the accused persons and recovered Blade (M.O.1). The recovery mahazar - Ex.P.3 does not disclose from whom the said blade (M.O.1) was recovered. The witness to the recovery mahazar - Sathish Kumar was examined as P.W.5 was also not able to identify or recollect from whom, the blade M.O.1 was recovered.

9.In the said circumstances, the trial Court ought not to have convicted the accused/appellants when the contradiction is glaring in the Accident register and F.I.R., regarding the time of occurrence, number of persons assaulted and the nature of weapon used. The prosecution case as such, does not have any legs to stand but, the Court below without considering this glaring contradictions have convicted the appellants. Hence, the judgment of the trial Court has to be set aside.

10.The learned Government Advocate (crl.side) appearing for the respondent Police would submit that the injured witness - P.W.1 and his brother P.W.2 were both friends of the accused persons. Due to previous enmity, A.1 has questioned P.W.1 while they were carrying the idol of "Adhigaranandhi" on 25.07.2010. The injured victim has narrated how the second accused caught hold him and how the first accused assaulted him with blade (M.O.1). The nature of injury and the slit of injury using a sharp weapon clearly attracts the ingredient of Section 307

intention of A.1. So, relying upon the ocular evidence of P.Ws.1 and 2 and the medical evidence Exs.P.6 and P.7, the learned Government Advocate (crl.side) would pray that the trial Court judgment is based on the evidence placed before it and proven facts.

12.Heard the learned counsel for the appellants and the learned Government Advocate (crl.side) appearing for the State.

13.The Point for consideration is that "Whether the prosecution has proved the charges framed against the accused persons/appellants and if so, whether the sentence is proportionate to the proved offences?"

14.The assailants and the victim are known to each other and from the deposition of P.Ws.1 and 2, it appears that a year before the incident, there was a petty quarrel between P.Ws.1, 2 and the accused 1 and 2. Incidentally, in this case, P.Ws.1 and 2 are blood brothers like A.1 and A.2. On 25.07.2010, when P.Ws.1 and 2 were carrying through the streets the idol, the second accused caught hold of P.W.1 and the first accused has caused cut injury. The blade used for the crime later recovered but neither the recovery mahazar nor the witness to the recovery mahazar has supported the case of the prosecution.

15.Regarding the opinion of the Doctor who has treated P.W.1, the prosecution witnesses have informed that the injury was caused due to assault by four persons. Whereas, the complaint given immediately after occurrence indicates that the victim has identified only two persons as assailants. So, this contradiction though appears to be very significant, the bare fact that A.1 caused the cut injury to P.W.1 is un-assailed and un-controverted. The medical certificate indicates the injury as simple in nature. P.W.1 in his deposition has said that suture was done by the Doctor.

16.At the time of occurrence, the second appellant/A.2 was around 19 years. Therefore, considering the direct evidence, given by P.Ws.1 and 2, which are cogent and reliable, the conviction of the trial Court is bound to be confirmed. Though it was single cut, the blade M.O.1 and a seat of injury coupled with the fact that the first appellant/A.1 has caused the injury saying the victim "get lost" disclose the intention of the first accused. Therefore, holding both A.1 and A.2 guilty of offences under Section 341, 307 r/w 34 I.P.C., considering the age and the circumstances under which the offences have been committed, this Court is of the view that, some leniency may be shown to the appellants in sentence.

17.In the result, both the Criminal Appeals are allowed in part, in the following terms:-

(i)The conviction imposed by the trial Court on the appellants/A.1 and A.2 for offences under Sections 341 and 307 r/w 34 I.P.C., is confirmed.

(ii)The sentence imposed on the appellants for offence under Section 341 I.P.C., is confirmed.

(iii)The sentence imposed on the first accused for offence under Section 307 r/w 34 I.P.C., is modified and he is sentenced

period of sentence, for the offence under Section 307 r/w 34 I.P.C.

(v)The trial Court is directed to secure the presence of A.1 and to commit him to prison to undergo the remaining period of sentence, if any.

(vi)The period of imprisonment already undergone shall be given set off.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

jbm

To

- 1.The Metropolitan Magistrate,
No.XIII Egmore, Chennai.
- 2.The Chief Metropolitan Magistrate,
Egmore, Chennai.
- 3.The Officer in charge,
District Prison,
Pudukottai.
- 4.The Additional District and Sessions Court,
Fast Track Court - 4, Chennai.
- 5.The Inspector of Police,
D2 Annasalai Police Station,
Chennai.
- 6.The Public Prosecutor,
High Court, Chennai.
- 7.The Superintendent,
Central Prison, Chennai.
- 8.The Superintendent,
District Prison,
Pudukottai.
- 9.The Director General of Police,
Mylapore, Chennai-4.

+1cc to Mr.P.Pugalenth, Advocate, S.R.No. 20113

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CrI.A.Nos.707 of 2011 and 195 of 2012

EV(CO)
GN(04/04/2019)