

BAIL SLIP

The Appellant herein/Accused namely Mr. Palanisamy, S/o.Kaliyan (in S.C.No.23 of 2009 on the file of the Assistant Sessions Judge, Chidambaram) was directed to be released on bail by order of this Court dated 20.02.2012 and made in CrI.M.P.No.1 of 2012 in CrI.A.119/2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.02.2019

Pronounced on: 01.03.2019

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal No.119 of 2012

and

M.P.No.1 of 2012

Palanisamy

... Appellant /A1

-Vs-

State by

The Inspector of Police,
Chozhatharam Police Station,
Cuddalore District.

(Crime No.84 of 2008)

.. Respondent/Complainant

Criminal Appeal has been filed under Section 374 (2) of Criminal Procedure Code praying to call for the records and to set aside the conviction and sentence dated 08.02.2012 by the learned Assistant Sessions Judge, Chidambaram in S.C.No.23 of 2009.

For Appellant :Mr.G.Pugazhenth

For Respondent :Ms.P.Kritika Kamal, GA

J U D G M E N T

The appellant herein is the first accused before the trial Court. The appellant herein was tried along with 4 other accused for the offences under Sections 147, 148, 294 A, 324 (2 counts), 323 and 307 IPC.

2. The Trial Court held the appellant guilty of offences under Section 307(ii part) IPC. Sentenced him to undergo 10 years Rigorous Imprisonment and fine of Rs.10,000/-; in default 2 years Rigorous Imprisonment. Further, the trial Court ordered to pay a sum of Rs.5,000/- from out of the fine amount as compensation to the victim PW.1. The period of imprisonment undergone was ordered to be set aside.

3. The case of the prosecution:-

The defacto complainant Chakravarthi (PW.1) on 08.09.2008 gave a written complaint (Ex.P.1) against Palanisamy (Appellant) and 7 others alleging that named accused persons are residing next to his house. On 02.09.2008, they were released on bail in connection with the criminal case registered against them for assaulting him. He had land dispute with them. To settle the dispute through Court, he issued notice through his lawyer to the accused parties. They received the notice on 04.09.2008. On receipt of the lawyer notice, they got infuriated. At about 4.15 p.m., they all trespassed into his house. Cut his throat with knife. Cut his wife hand, who tried to protect him. When he tried to fled, they shouted not to leave him alive and attacked him at his knee. Took him to the water drum and immersed him in it. One Kuppusamy came and rescued him. He and his wife were taken to Government Hospital, Chidambaram by his relatives. This was witnessed by Kuppusamy and Kuppammal. Based on the complaint FIR (Ex.P8) was registered against those 8 named persons and the case was investigated by PW.10-the Inspector of Police attached to Srimushnam Taluk Police Station. On completion of investigation, final report filed against 5 persons.

4. Before the trial Court, 10 witnesses were examined. 11 documents were marked as Ex.P.1 to Ex.P.11. One knife was marked as M.O.1. On appreciating these evidence, the trial Court held that the prosecution has proved A1 caused cut injury on the neck of PW.1 with the knife M.O.1. The seat of the attack being a vital organ of the body, if not properly treated the injury would have caused the death of PW.1. Since it has caused hurt, punished him for the offence under Section 307 (ii part) with imprisonment for a term of 10 years. For want of evidence all other charges against A1 and all charges against the other accused were held to be not proved.

5. This appeal, the learned counsel for the appellant would contend that, the occurrence alleged to have taken place on 04.09.2008, the complaint and the FIR is dated 08.09.2008. The delay of 4 days in giving the complaint not explained by the prosecution. The embellishment of the prosecution complaint

could easily be inferred from the very fact that the complaint was against 8 persons for the alleged unlawful assembly and attempt to murder. Whereas after the investigation, charge sheet was filed only as against 5 persons. The nature of the injuries alleged to have sustained by the victims (PW.1) and PW.2 are simple in nature as per the doctors opinion. The Accident Register of the Government Hospital, Chidambaram, for these witnesses are marked as Ex.P.6 and Ex.P.7. It is recorded in the accident register that they informed the doctor that they were assaulted by 4 known persons. Admittedly, the doctor has intimated to the police about the incident on 04.09.2008 itself. However, the FIR is registered only on 08.09.2008 with bundle of falsehood. The new facts spoken for the first time in the Court by PW.1 to PW.4, which does not form part of their previous statements. The previous enmity between the accused and the prosecution witnesses PW.1 to PW.4; the unexplained delay in registering the FIR; contradictions among the prosecution evidence. The injuries sustained by the accused not explained by the prosecution were not considered by the trial Court. Therefore, the trial Court judgment ought to be set aside.

6. The learned Government Advocate for the respondent police would submit that the injured witnesses PW.1 and PW.2 have deposed about the overt act of the accused person who caused the injuries to them. The doctor certificates Ex.P.6 and Ex.P.7 list out the injuries noted by the doctor. The version of the injured witnesses tallies with the wound certificates. The complaint came to be registered after the defacto complainant gave his written complaint. The delay in registering FIR was due to delayed receipt of the intimation. The A.R's are dated 04.09.2008. The doctor has deposed PW.1 and PW.2 got admitted in the hospital for treatment to the cut injuries sustained by them. Though the AR says 4 known persons assaulted them, in the written complaint PW.1 has stated 8 persons came and trespassed his house. He has not stated any specific overt act to them in the complaint. In the investigation it was found only 5 persons were involved in the crime. The overt act of A1 causing cut injuries to PW.1 being proved, the Court below has applied grain and sheaf theory. It has removed the grains from the sheaf. After eliminating the doubtful portion of the evidence, held A1 caused the cut injury found in PW.1 neck is proved.

7. Heard the counsels. Records perused.

8. Falsus in uno falsus in omnibus is unknown to Indian Criminal Jurisprudence. No doubt, the delay in FIR embellishments in previous statement and the deposition before the Court, the close relationship between PW.1 to PW.4 may be the reason to doubt their evidence, but the proven fact that

PW.1 has sustained cut injury on his neck and treated for the injury at Government Hospital, chidambaram is not a doubtful fact. The injury sustained by PW.1 is a cut wound on the front side of the neck 5X2X2 on size and a cut wound in the right and left knee 5X2X2 on size. PW.1 was discharged from the hospital after 4 days of treatment on 06.09.2008. The injury sustained by PW.2 are abrasion on the right side of the neck and cut wound in the left forearm.

9. The assault has happened after the lawyer notice received by the accused persons. The evidence proves it was A1-appellant caused the injuries noted in Ex.P.6 and Ex.P.7. M.O.1 knife is the corpus delicti used in the crime. Same has been recovered under Mahazar Ex.P.3 based on the confession of the accused. The witnesses to recovery PW.5 and to the admissible portion of the accused confession, have turned hostile. However, when the injured witnesses have spoken about the injuries, weapon used to cause the injuries and the person who caused the injuries which has inspired the confidence of the trial Court, which had the opportunity of noticing the demeanor of the witnesses, conviction cannot be faulted.

10. In the instant case, the prosecution able to prove the guilt of A1 that the injuries found on PW.1 and PW.2 was caused by A1. Though the doctor has opined it is simple in nature, the trial Court has taken into consideration the seat of attack and has imposed 10 years R.I while holding him guilty of offence under Section 307 IPC, the sentence part may appear to be excessive, if one consider the nature of injuries alone forgetting about the seat of injury. But if the seat of injury (front neck) taken into consideration the appellant has to be punished adequately.

11. Taking into consideration, the circumstances under which the crime has taken place and the nature of injuries caused by the accused, it is suffice to sentence the accused/appellant to reduce R.I for a term of 4 years. The period of imprisonment already undergone shall be set off under Section 428 Cr.P.C. Bail bond shall stand cancel. The accused shall surrender before the trial Court to undergo the remaining period of sentence.

12. In the result, the Criminal Appeal is partly allowed. The conviction passed against the appellant by the trial Court vide judgment dated 08.02.2012 in S.C.No.23 of 2009, on the file of the Assistant Sessions Court, Chidambaram is confirmed. The sentence imposed on the appellant is modified 10 years R.I is reduced to 4 years R.I. Fine amount imposed, remains

unaltered. Consequently, the connected miscellaneous petition is closed.

rpl

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Assistant Sessions Judge,
Chidambaram.

2. The District Munsif cum
Judicial Magistrate,
Kattumannarkoil.

3. The Superintendent of Police,
Central Prison,
Cuddalore.

4. The Inspector of Police,
Chozhatharam Police Station,
Cuddalore Dist.

5. The Chief Judicial Magistrate,
Cuddalore.

6. The Public Prosecutor,
High Court, Madras - 104.

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

+1cc to M/s.G.Pugazhenthir, Advocate, SR.No.19610

Criminal Appeal No.119 of 2012
and
M.P.No.1 of 2012

Kak(21/04/2019)