

Bail Slip

The Appellant/Accused namely Mr.Velusami, S/o. Manickam, was directed to be released on bail by the order of this Hon'ble Court in M.P.No. 1 of 2011 dated 02/02/2012 in Crl.A.No.842 of 2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated 26.02.2019

CORAM:
THE HONOURABLE MR. JUSTICE DR.G.JAYACHANDRAN

Criminal Appeal No.842 of 2011

Velusami ..Appellant/Accused
Vs

State represented by
Inspector of Police
B-9 Saravanampatti Police Station
Coimbatore
Cr.No.643 of 2008.

..Respondent/Complainant

Prayer: Criminal Appeal is filed under Section 374 of the code of Criminal Procedure, praying to set aside the Judgment and conviction dated 13.12.2011 made in SC No.178 of 2010 on the file of Additional District & Sessions Judge (Fast Track Court No.II), Coimbatore.

For Appellant : Mr. T. Sirish Chowdhry
for Mr.T.Munirathnam Naidu

For Respondent : Ms.Kritika Kamal - Government Advocate

JUDGMENT

This Criminal appeal is directed against the Judgment of conviction by the trial Court.

2. The appellant/ accused tried for the offences under Sections 294 (b) and 307 IPC. The trial Court after examining the witnesses and appreciating the evidence has held him guilty for the said offences and convicted him to undergo 5 years Rigorous Imprisonment and a fine of Rs.5000/-, in default 6 months rigorous imprisonment for the offence under Section 307 IPC and 3 months imprisonment for the offence under Section 294 (b) IPC. The period of sentence ordered to run concurrently.

3. The brief facts of the prosecution case:

On 09.08.2008 at about 4.00pm., while the accused was cutting the tree in the public place near the victim Gnanamoorthy house, Gnanamoorthy questioned why he is cutting a live tree, for which, the accused abused him in filthy language and said that he will also cut him if he objects. Thereafter, he climbed down from the tree and attacked Gnanamoorthy on his face with the Aruval. Due to the attack, the victim sustained cut injury on his lip. Two of his teeth were uprooted. Gnanamoorthy was taken to the hospital at about 5.25 p.m. The injuries sustained by him was noted by the doctor Bhuvana PW-9.

4. After got discharged from the Hospital, the victim came to know that the police has not taken any action on his complaint. So, he reported the matter to the Superintendent of Police, thereafter the case was registered against the accused on 21.08.2008 in Crime No.643 of 2008. On completion of investigation, final report was filed against the accused/appellant. The trial Court after appreciating the evidence placed before it, held the accused guilty and convicted him as mentioned above.

5. The learned counsel appearing for the appellant would submit that the Court below has failed to appreciate the inordinate delay in registering the First Information Report, which has paved way to concoct the facts. The alleged injuries sustained by the victim not been substantiated by proper medical evidence. The scene of crime not been consistently spoken by the witnesses. The inconsistency and contradiction regarding the scene of crime makes the case of the prosecution doubtful. The omission to name the accused before the doctor is fatal to the prosecution case. The natural witnesses for the occurrence have not supported the case of the prosecution. The witnesses of the Seizure Mahazar and Observation Mahazar have turned hostile. PW-1 to PW-5 are interested witnesses. In such circumstances, the trial Court ought not to have held the appellant/accused guilty. In support of his submission, the learned counsel would rely upon the following Judgments:

Sl.No	CITATION	DICTUM LAID
1	(2010) 1 MLJ (Cr1) 687 (SC) Prabir Mondal and another Vs State of West Bengal	For Delay in FIR and Non-disclosure to the Doctor regarding the history of injury
2	(2018) 1 Supreme Court Cases 128 State of Uttarakhand Vs Jainail Singh	Failure to send the knife and blood stained clothes to Forensic examination

Sl.No	CITATION	DICTUM LAID
3	2011 (1) MWN (Cr.) 132 (DB) K.Dhanavel Vs. State by Inspector of Police, Ayyampettai Police Station, Thanjavur District	Hostile Witnesses for Seizure Mahazar and Observation Mahazar

6. Per contra, the learned Government Advocate appearing for the State would submit that the incident took place on 09.08.2008 at about 4.45 p.m., in front of the victim's house. Soon after the incident, the injured victim/PW-1 was admitted in the hospital. Accident Register copy marked as Ex.P.7 discloses the fact that the victim PW-1 taken to the hospital by his wife Balamani PW-2 on 09.08.2008 at about 5.25 p.m. The Accident Register also discloses the fact that the police was intimated about the medical legal case. While so, the victim who was admitted as in-patient for the grievous injuries got discharged from the hospital and found that the police has not registered his complaint. So, he reported the matter to the Superintendent of Police. Thereafter his complaint has been registered for further action. This fact has been deposed by PW-1 in his testimony. Having explained the cause for delay, the contention of the learned counsel for the appellant that the delay in registering the First Information Report is after consultation and there is chance of fabrication is not sustainable. Referring the deposition of PW-1, the injured witness, PW-2 Balamani, his wife, PW-4 Kavitha, the neighbouring residents and her father PW-3 Santhanam, the learned Government Advocate would submit that they were eyewitnesses to the occurrence and they given a cogent evidence about the overt act of the accused and the manner in which he assaulted the victim PW-1. The weapon used was recovered by the Investigating Officer in the course of investigation. Though not the recovery been supported by the Mahazar witnesses, the fact that the victim was assaulted by the Aruval M.O.1 has been otherwise proved by the prosecution through the injured victim and the eyewitness. Therefore, the learned Government Advocate would submit that when the witness who sustained injury in the hands of the accused had identified the accused as well as the weapon used has been cogently proved. The minor lapse on the part of the investigation or the minor contradictions regarding the place of their respective residence has no consequences.

7. The learned Government Advocate would also submit that the witnesses have spoken about the words uttered by the accused while attacking the victim PW-1. The weapon, the seat of attack, the word uttered by the accused clearly proves the intention of the accused. Since all the ingredients required for 307 IPC is

attracted and proved through the witnesses, the findings of the Court below is unassailable.

8. Heard the learned counsel for the appellant and the learned Government Advocate.

9. The first point canvassed by the learned counsel for the appellant is delay in registering the First Information Report. The evidence of PW-1 explains the reason for the delay. The fault of the Station House Officer, who has failed to register the First Information Report despite receiving intimation from the hospital, cannot be a reason for the assailant to escape the prosecution. In case of delayed First Information Report, Court should always ensure that the delay has not led to fabrication of the facts. The Hon'ble Supreme Court Judgment in *Prabir Mondal and another Vs State of West Bengal*, (2010) 1 MLJ (Cr1) 687 (SC) has held that when several lacuna in the prosecution is coupled with the fact of delayed First Information Report, there is possibility of fabrication of facts after consulting others.

10. As far as the facts of the case in hand, there is no such infirmity or probability of fabrication. The earliest document in this case is the Accident Register which is marked as Ex.P.7. In this Accident Register the Doctor Bhuvana PW-9 has recorded the version of the victim regarding the history of injury. The injured person Gnanamoorthy PW-1 was brought to the hospital by his wife Balamani PW-2. The doctor was informed that the injuries were caused by one known person.

11. The learned counsel for the appellant would submit that if really Gnanamoorthy was attacked by Veluchamy, there is no reason to withhold his name to the doctor. The omission to name the assailant is very insignificant as far as the Accident Register is concerned. The doctor in the causality ward is not concerned with the name of the person who caused the injury, but only concern about the nature of the injury sustained by the patient. When the injured person sure about the assailant and disclosed that the injury was caused by the known person, it is the concern of the Investigation Officer to get the name of the known person from the victim and it is not the concern of the doctor. In the Judgment relied on by the learned counsel for the appellant reported in 2008 (1) SCC 128, the victim has informed the doctor as "some sardar." Therefore, the Hon'ble Supreme Court has held that if the victim knows about the identity of the assailant, need not have said "some sardar". In the instant case, the assailant has specifically disclosed to the doctor that he was assaulted by a known person. Further, in this case, the victim has sustained injury and same has been witnessed by 4 others. The assailant is not a stranger, but the resident of the same place. Therefore, there is no substance in the submission made by the Counsel for the appellant regarding the delay in

registering the First Information Report and absence of the assailant name in the Accident Register.

12. The next contention raised by the Counsel for the appellant is that the blood stained cloth and the weapon were not sent for serology test. In normal course, prudence warrants prudent forwarding material objects for Serology test, if there is any blood stain. At the same time, mere omission to do so, the genuineness of the investigation will not become doubtful. As far as this case is concerned, the complaint itself was registered after 12 days. Thereafter, the weapon M.O.1 has been recovered. There is no indication from the records that while the Investigating Officer PW-11 recovered Aruval M.O.1, there was any blood stain on it. The Investigating Officer has not recovered any cloth of the victim. In the said circumstances, the Court need not search for matters not before it. It has to consider the matters, the material placed before it, for proof of fact as defined under Section 3 of the Evidence Act. So far as this case is concerned, the matters placed before this Court are the ocular evidence of the victim and other witnesses who have seen the occurrence. The admission of the victim in the Hospital, the treatment given by PW-9, and opinion of the Doctor about the nature of the injury. On cumulative assessment of these matters placed before the Court, the factum of grievous hurt caused by the accused is proved beyond doubt.

13. When considering whether the injury was caused with an intention or knowledge to cause death to attract Section 307 of IPC, the words uttered by the accused, while causing the hurt and the weapon used by him and the seating of attack gets relevant. If these points are taken into consideration, this Court finds the accused had no intention to cause death, the accused had caused the grievous hurt without any intention to cause death or knowledge that the injuries are likely to cause death. Therefore, the act of the accused shall fall under 326 IPC and not 307 IPC.

14. The trial Court while holding the accused guilty for offence under Section 307 of IPC sentenced him to undergo 5 years rigorous imprisonment. Considering the facts and circumstances of the case, the same is modified as follows.

15. The accused is found guilty for the offence under Section 326 IPC for voluntarily causing hurt using dangerous weapon. He is sentenced to undergo rigorous imprisonment for a period of 3 years and to pay a fine of Rs.5,000/-. So far as the offence under Section 294(b) of IPC is concerned, the sentence imposed by the trial Court is confirmed. The period of sentence is to run concurrently. The period of imprisonment already undergone by the accused/appellant be set off under

section 428 of Cr.P.C. Accordingly, this Criminal Appeal is partly allowed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vrn

To

1.The Judicial Magistrate No.II,
Coimbatore.

2.-do- Thro' Chief Judicial Magistrate,
Coimbatore.

3.The Additional District &
Sessions Judge (Fast Track Court No.II),
Coimbatore.

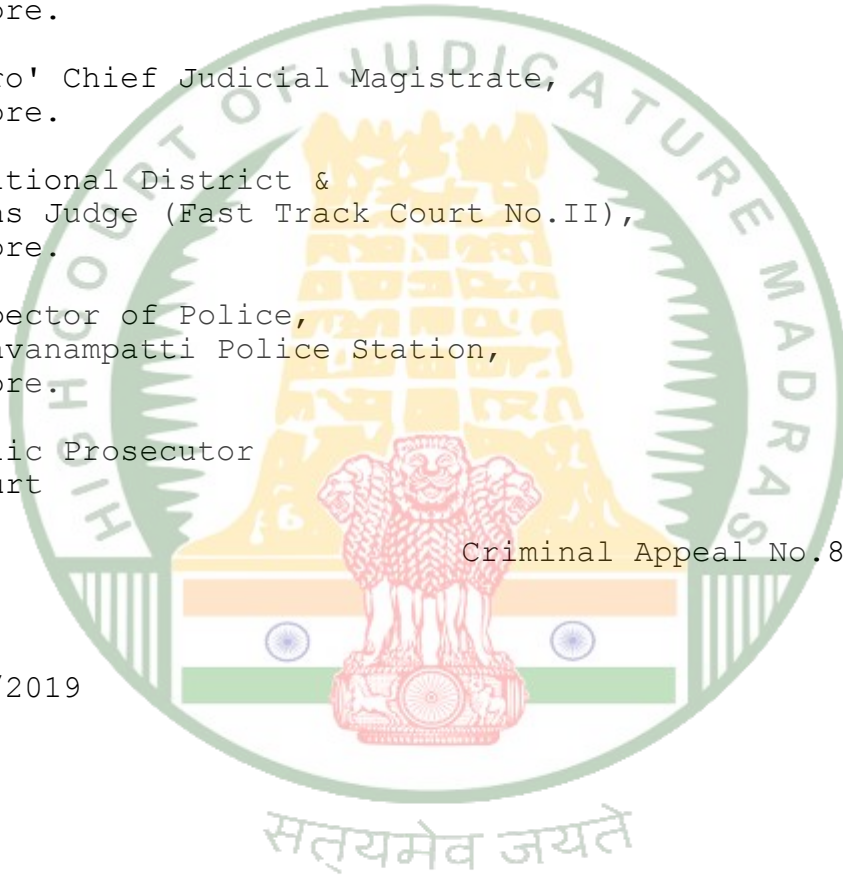
4.The Inspector of Police,
B9, Saravanampatti Police Station,
Coimbatore.

5.The Public Prosecutor
High Court
Madras.

Criminal Appeal No.842 of 2011

RJI (CO)

rrs 23/03/2019



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