Bail Slip

The Appellant/Accused Namely P.Jambhukesavan 41 Years S/o Murugesan was directed to be released on bail as per the order of this Court dated 30/03/2012 in Crl.M.P.Nos 1 & 2 of 2012 in Crl.Appeal No.223/2012 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.A.No.223 of 2012 and
M.P.No.3 of 2012

P.Jambhukesavan ... Appellant

vs.

The state of Puducherry U.T. Rep. by
The Inspector of Police,
Karaikal Town Police Station,
Karaikal, U.T.Puducherry.
(Crime No.54 of 2009) ... Respondent

The Criminal Appeal has been filed under Section 374(2) of Cr.P.C, to set aside the judgment of conviction dated 28.02.2012 passed against the appellant in S.C.No.72 of 2011 on the file of the learned Additional Sessions Judge, Karaikal, UT of Puducherry and acquit him from the charges of the offence.

For Appellant : Mr.K.Ravikrishnaswamy

For respondent : Mr.V.Balamurugane,
Addl. Public Prosecutor (Pondy)

JUDGMENT

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This criminal appeal has been filed against the judgment of conviction made by the learned Additional Sessions Judge, Karaikal, Union Territory of Puducherry, in S.C.No.72 of 2011, dated 28.02.2012.

2 The respondent police registered a case against the appellant for the offence under Section 307 and 324 of IPC in Crime No.54 of 2009 and after investigation laid a charge sheet before the learned Judicial Magistrate II, Karaikal, and the Magistrate taken the charge sheet on file in PRC.No.8 of 2011

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and since the offence was triable only the Court of Sessions, has Committed the case to the Sessions Judge, Puducherry. The learned Sessions Judge, Puducherry, in turn, made over the case to the learned learned Additional Sessions Judge, Karaikal, for disposal, which was taken on file in S.C.No.72 of 2011.

3 Before the trial Court, in order to prove case of the prosecution, P.W.1 to P.W.7 were examined and Ex.P1 to Ex.P12 were marked and Material Objects 1 to 4 were produced. On the side of the defence, no one was examined and Ex.D1 was marked.

4 The learned Additional Sessions Judge, after completing trial and after hearing both the parties, by judgment dated 28.02.2012, convicted the appellant/accused for the offence under Section 324 (2 counts) and sentenced him to undergo rigorous imprisonment for a period of one year for each count and to pay a fine of Rs.500/- each count, in default, to undergo simple imprisonment for twenty days, and acquitted the appellant/accused from the offence under section 307 IPC. Challenging the said judgment of conviction, the accused is before this Court with the present appeal.

5 According to learned counsel appearing for the appellant, there is material contradictions between the prosecution witnesses and medical evidence are not supported the case of the prosecution and there is major discrepancy with regard to recovery of weapon. Prosecution has failed to explain that the weapon alleged to have been recovered from the appellant/accused has been used in the occurrence and further the same has not been identified and compared with the blood stained cloths of P.W.1 and P.W.2 to prove that all are the same blood group of injured witnesses. Therefore the nexus between the crime and the appellant is not proved. The motive attributed by the prosecution has not been proved. The main motive attributed by the prosecution is that P.W.4 and P.W.2 loved each other and P.W.2 wanted to marry P.W.4 and therefore the appellant/accused got disappointed and therefore he attempted to murder P.W.2. The said suggestion was denied by the appellant and in the absence of any proof for the motive, the trial Court was not justified in convicting the appellant. The nature of injuries sustained by P.W.1 and P.W.2 are not proved by the prosecution through the Doctor, who treated them. The wound certificates which were marked as Ex.P6 and Ex.P7 are issued by P.W.5, but he is not the Doctor, one who treated the injured witnesses. The Doctor, one who treated P.W.2 was not examined before the Court and right of the accused to cross examine the Doctor was denied, which caused prejudice to the appellant/accused. The Sessions Court has failed to consider the defence taken by the appellant altogether that P.W.1 to P.W.4 are all friends and they have previous enmity with the appellant

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and therefore there is every possibility and likelihood to lodge a false complaint against him and other evidences cannot be relied upon. Prosecution has not proved that the vehicle alleged to have been used in the offence is that of the appellant/accused and the vehicle was not seized and produced before the Court. Therefore, the conviction made against the appellant/accused is liable to be set aside.

6 The learned Government Advocate (Crl.Side) would submit that motive for the occurrence and the enmity between the appellant and P.W.2 was established by the prosecution and evidence of P.W.1 and P.W.2 is cogent. P.W.1 and P.W.2 are injured witnesses and their evidence has been corroborated with each other. Mahazar was also proved through the evidence of P.W.3. Even though, P.W.4 is not an eye witness to the occurrence, during cross examination she has deposed that she had given complaint at General Hospital, Karaikal, after getting information from P.W.1. P.W.5, the Doctor, had deposed that on 14.02.2009 at 9.00 p.m. he treated P.Ws.1 and 2 and they told that they were assaulted by one known person with knife and wound certificates were also issued and marked, which proves that P.W.2 sustained grievous injuries on right hand and right shoulder and therefore prosecution proved its case beyond reasonable doubt and the appellant is one who caused injuries to P.W.1 and P.W.2. From the evidence of P.Ws.1 to 5 and the documents produced by the prosecution, prosecution has clearly established that the appellant/accused has committed the offence under section 324 of IPC. Even though, the trial Court acquitted the appellant for the offence under Section 307 of IPC, by appreciating the evidence on record has rightly convicted him for the offence under section 324 of IPC, 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 appellant on 14.02.2009 at about 20.30 hrs at the junction of Mariamman Koil Street and Thirunallar Road, near Ayeeran Vaisiyar Marriage Hall, Karaikal, attempted to commit murder one Krishnasamy by assaulting him with Sickle and thereby caused grievous injuries to him and the appellant also assaulted P.W.1, the complainant with the same weapon and thereby caused simple injuries to him due to previous enmity. Based on the complaint given by P.W.1, the respondent registered case and laid charge sheet and the case was ended in conviction. P.Ws. 1 and 2 are the eye witnesses to the occurrence and they have sustained injuries, which has been caused by the appellant. P.W.1 in his evidence has clearly stated that marriage was arranged for P.W.2 with P.W.4 against the willingness of the family of P.W.4 and P.W.1

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and P.W.2 went to purchase things for the marriage and near the tailor shop, the appellant came in Motor Cycle at that time P.W.1 was driving his Motor Cycle, in which, P.W.2 was billion rider. The appellant attacked P.W.2 with knife and they both fell down and P.W.1 tried to safeguard P.W.2 and the appellant assaulted P.W.1 also, which shows that the appellant caused injuries to P.W.1 and P.W.2.

9 P.W.2, the injured eye witness has clearly deposed that he had love affair with P.W.4 when he informed the same to the family of P.W.4 and sought permission to marry P.W.4, they refused the offer. Therefore P.W.2 and P.W.4 married in the Registrar Officer and had been living in their respective homes. When parents of P.W.4 arranged marriage for her with another man, P.W.2 took P.W.4 and arranged their marriage without consent of parents of P.W.4 and therefore the appellant, being a maternal uncle of P.W.4, had enmity with P.W.2 and attempted to murder P.W.2 and thereby caused grievous injuries to him and P.W.1. On reading of the evidence of P.W.1 and P.W2, it reveal that it corroborates with each other. There is no reason to discord the evidence of P.Ws.1 and 2. P.W.3 is the Mahazar witness and he has supported the case of the prosecution. Even though, P.W.4 is a main cause for the occurrence and she is not an eye witness to the occurrence, but, however, after receiving information from P.W.1 about the injuries sustained by P.W.2, she went to Hospital and made complaint before the Police Station. The Accident Register shows that P.Ws.1 and 2 were assaulted by one known person and also prosecution has received wound certificates of P.Ws.1 and 2 and marked the same as Ex.P6 and Ex.P7, which goes to show that P.Ws.1 and 2 had sustained injuries. From the evidence of P.Ws.1 and 2, the injured witnesses and P.W.5 the Doctor and Wound Certificates, prosecution has proved its case beyond reasonable doubt. It is contended by the appellant that prosecution has not proved that the recovered weapon has been used in the occurrence and the same was not subjected for comparison of blood group, and the vehicle alleged to have been used in the occurrence has not been seized and there is flaw in the investigation, but, on reading of entire evidence of P.Ws.1, 2 and 5 and Ex.P6 and Ex.P7, the wound certificates, this Court finds that prosecution has established its case beyond reasonable doubt and there is no specific defence taken by appellant and the defence taken by the appellant has not been established. There is no reason to disbelieve the evidence of P.W.1 and P.W.2, who are injured witnesses, since they have clearly spoken about the occurrence, which corroborated with each other and medical evidences also strengthen the case of the prosecution. This Court does not find any reason to interfere with the judgment of conviction made by the trial Court.

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10 In the result, the criminal appeal is dismissed as devoid of merit. Consequently connected miscellaneous petition is closed. Trial Court is directed to secure the appellant/accused to undergo remaining period of imprisonment, if any.

Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar

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To

1. The Additional Sessions Judge,
   Karaikal, UT of Puducherry.

2.The Judicial Magistrate No.II,
  Karaikal, Puducherry.

3.The Chief Judicial Magistrate,
   Puducherry (For Information)

4.The Officer Incharge,
   Sub Jail, Karaikal.

5.The Inspector of Police,
   Karaikal Town Police Station,
   Karaikal, U.T.Puducherry.

6.The Additional Public Prosecutor,
   High Court, Madras.

7.The Public Prosecutor,
   Puducherry.

+1cc to Mr.K.Ravi Krishnaswamy, Advocate Sr.54797
+1cc to the Public Prosecutor for Puducherry Sr.54618

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