

BAIL SLIP

The Appellant herein/Accused namely Karuppaiyan S/o.Kaliyaperumal (in S.C.No. 6 of 2012 on the file of Additional District and Sessions Judge, Ariyalur) was directed to be released on bail by order of this court dated 24.07.2012 and made in Crl.M.P.No. 1 of 2012 in Crl.A.414 of 2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.03.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.A.No.414 of 2012

Karuppaiyan

.. Appellant/Accused

Vs.

State Rep.by
Inspector of Police,
Thoothur Police Station,
Ariyalur District.
(Crime No:113/2010)

.. Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, to set aside the conviction and sentence imposed in S.C.No.6/2012 dated 25.06.2012 on the file of the Additional District and Sessions Judge, Ariyalur.

For Appellant : Mr.K.Gandhi Kumar

For Respondent : Ms.P.Krithika Kamal
Government Advocate (Crl.side)

J U D G M E N T

This Criminal appeal is directed against the conviction and sentence ordered against the accused in the judgment dated 25.06.2012 made in 25.06.2012 on the file of the Additional District and Sessions Judge, Ariyalur.

2. The appellant is sole accused in S.C.No.6 of 2012 on the file of Additional District and Sessions Court, Ariyalur. By this Judgment, the accused/appellant is found not guilty under section 307 IPC, but, was found guilty under section 325 IPC

and convicted under Section 325 of IPC. He was sentenced to undergo rigorous imprisonment for 4 years and to pay a fine of Rs.5,000/-, in default, to undergo 6 months rigorous imprisonment. The period of imprisonment already undergone was directed to be given set off under Section 428 of Cr.P.C. M.O. 1 Aruval ordered to be destroyed after the Appeal time is over. Challenging the said conviction and sentence, the present appeal has been preferred.

3. The case of the prosecution is that the appellant/Karuppaiyan and the Defacto complainant/Chitrarasu are having lands in Thoothur Village and there was enmity between them with regard to the lands. On 06.11.2010 Chitrarasu and his wife Seethai went to the field at 9.00 am and after finishing their work in their field, while they were returning to their home, the accused came from back side of the complainant and attacked Citrarasu with Aruval indiscriminately saying that unless he finishes the defacto complainant, he cannot have peace. Thereafter, the Defacto complainant was taken to the hospital and treated for his injuries. The doctor who treated him, has noted six injuries. The injury on the left forearm was opined as grievous and the other lacerated injuries were opined as simple injuries.

4. In order to prove its case, the prosecution has examined P.Ws. 1 to 15 and marked Exs.P1 to P25 and one material object. On completion of the evidence on the side of the prosecution, when the accused was questioned under Section 313 Cr.P.C. on the incriminating circumstances found in the evidence of the prosecution witnesses, he denied them as false. Neither any witness was examined nor document was marked on the side of the defence.

5. The Trial court, after hearing the arguments advanced by either side and on considering the materials available on record, took the view that the prosecution has miserably failed to prove the charge as against the accused under section 307 IPC beyond reasonable doubts and hence has not found guilty of this accused for the above said charge. However, as far as offence under section 325 IPC is concerned, the Court held that prosecution has proved its case beyond reasonable doubts and consequently, convicted the accused and awarded punishment as referred to above.

6. The P.W.1 is the injured victim and his wife C.Seethai is examined as P.W.3. Other eye witnesses i.e., P.Ws 2, 4, 5, 6, 7, 10 and 13 turned hostile. The material object used to assault P.W.1 was identified by P.W.3 and marked as M.O.1. The complaint regarding the crime was given by P.W.1 while he was in the hospital. Based on the complaint, the police registered the FIR on 07.11.2010. The printed FIR is

marked as Ex.P9. The trial Court relying upon the evidence of P.W.1 and P.W.3 has held that the accused has caused the injury to P.W.1 using MO1. Considering the nature of the injury and the medical evidence, the Trial Court has held that the accused is guilty of offence under Section 325 of IPC and not for offence under Section 307 of IPC. Since the prosecution has not established any intention of causing death.

7. The learned Counsel for the appellant would submit that the prosecution has failed to explain the delay in registering the FIR, when the prosecution witnesses P.W.1 and P.W.3 have categorically deposed that immediately after the occurrence on 06.11.2010 at 6.00 pm they went to the police station and reported the matter to the police and thereafter only they went to the hospital, the FIR has been registered only on the next day after getting intimation from the hospital. The earlier complaint given by P.W.1 has been suppressed. Further, the learned counsel would also doubt the case of the prosecution regarding the scene of crime. According to the learned counsel for the appellant, P.W.1 has not identified the weapon alleged to have been used by the accused. Further, the presence of P.W.3 at the scene of crime is highly doubtful and P.W.1 also has not mentioned about her presence in his complaint. The learned counsel for the appellant would further submit that P.W.1 is the interested witness, therefore, her evidence should not be taken into consideration. In these circumstances, the learned counsel for the appellant would submit that the case was deliberately foisted on the appellant and the prosecution has not proved the case beyond reasonable doubt and therefore, the Trial Court ought not to have convicted the appellant.

8. Per contra, the learned Government Advocate appearing for the State would submit that though the occurrence took place on 06.11.2010 at about 6.00 PM, it was brought to the notice of the police only through the intimation from the hospital. Whatever P.W.1 and P.W.3 has spoken in their deposition about their previous intimation to the police, the same has not been supported by documentary evidence. The delay whatsoever occurred in this case in registering the FIR is due to the letter intimation by the victim and the police cannot be found fault with. The injured victim had deposed about the assault and the weapon used by the accused while attacking P.W.1, which clearly establish the intention and the gravity of the crime. In such circumstances, the learned Government Advocate would submit that the prosecution had proved the case beyond reasonable doubt and the Trial Court had rightly convicted the appellant and under the circumstances, the judgment of the Trial Court does not warrant any interference at the hands of this Court.

9. Heard the learned counsel on either side and perused the materials available on record.

10. From the evidence of P.Ws, it is seen that P.W.1 is the injured person and P.W.3 is the wife of the injured. Ex.P1 is the complaint given by P.W.1. The Aruval used by the accused at the time of occurrence is marked as M.O.1. Ex.P2 is the signature in the Observation Mahazar belongs to P.W.5. Observation Mahazar was prepared in the presence of P.W.6. P.W.6 made his signature in the Observation Mahazar. P.W.8 is the V.A.O. P.W.8 made his signature in the confession. Ex.P5 is the signature in the seizure mahazar belongs to P.W.8. M.O.1 is the Aruval which was brought by the police from the house of the accused. Ex.P3 is the Observation Mahazar. Exs.P7 and P8 are the signatures in the confession and seizure mahazar respectively belongs to P.W.10. P.W.12 is the Doctor, who gave treatment to P.W.1 and noted the injuries on the body of P.W.1. Ex.P10 is the Accident Register. The Doctor has opined that injuries could have been caused by M.O.1. P.W.9 has admitted the P.W.1 in the Thanjavur Medical College Hospital on 6.11.2010 and discharged him on 19.11.2010. The injuries sustained by P.W.1 on the left hand is grievous in nature. P.W.11 has received statement from P.W.1 on 07.11.2010 and has registered a case in Crime No.115/2010 under section 307 IPC. Ex.P9 is the First Information Report registered by P.W.11. P.W.11 took investigation in the case and went to the place of occurrence on 07.11.2010 at 9.00 a.m. and prepared Ex.P11 Observation Mahazar and Ex.P12 Rough Sketch in the presence of the witnesses. He has also examined P.Ws. 1 to 8 and recored their statements. He has also arrested the accused/appellant on 09.11.2010 and recorded the confession statement in the presence of the P.Ws. 8 and 10. Ex.P13 is the admissible portion in the confession. On the basis of confession given by the accused P.W.14 recovered the Aruval in the presence of the witnesses, which was used by the accused at the time of occurrence.

11. Though the injuries sustained by P.W.1 is stated to be grievous in nature, the prosecution has not filed any x-ray report to establish the grievous injury. In respect of hurt the accused has to be punished under section 324 of IPC and not under section 325 IPC. Therefore, this Court is of the opinion that the accused is punishable under Section 324 IPC and not under section 325 IPC.

12. The Trial Court has convicted the accused under Section 325 of IPC and sentenced him undergo rigorous imprisonment for 4 years and to pay a fine of Rs.5,000/-, in default, to undergo 6 months rigorous imprisonment. Since

this Court came to the conclusion that the offence committed by the appellant/accused will fall only under Section 324 IPC, the period of sentence requires some modification.

13. In these circumstances, for the offence under Section 324 of IPC, the sentence is reduced to rigorous imprisonment for 2 years and to pay a fine of Rs.5,000/- in default, to undergo 6 months rigorous imprisonment. It is reported that appellant is on bail. Bail bonds, if any, executed by the appellant/accused would remain cancelled forthwith and the Trial Court is directed to secure the presence of appellant and commit him to the prison to serve the rest of the sentence imposed on him. The period of imprisonment already undergone shall be set off.

14. The Criminal appeal is partly allowed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional District and Sessions Judge,
Ariyalur.
2. The Inspector of Police,
Thoothur Police Station,
Ariyalur District.
3. The Judicial Magistrate, Ariyalur.
4. Do Thro The Chief Judicial Magistrate,
Perambalur.
5. The Superintendent,
Central Prison, Trichy.
6. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.K.Gandhikumar, Advocate, S.R.No. 20254

Cr1.A.No.414 of 2012

SV(CO)
GN(22/05/2019)