

BAIL SLIP

Suri @ Udhaya Suriyan S/o. Murthy aged 29 years accused in S.C.No. 187 of 2012 on the file of XVII Additional Sessions Judge, Chennai was enlarged on bail vide order dated 15/10/2012 in M.P.No. 1/12 in CrI.A. 694 of 2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.03.2019

Coram::

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal No.694 of 2012

Suri @ Udhaya Suriyan,
S/o.Murthy,
No.41, D.Block,
Sathyavani Muthu Nagar,
Punitha Mary's Road,
Mandhaveli, Chennai-28. ... Appellant/Accused

/versus/

State by the Inspector of Police,
E1, Mylapore Police Station,
Chennai-600 004.
(Crime No.2125 of 2011) ... Respondent/Complainant

Prayer:- Criminal Appeal is filed under Section 374 (2) of Cr.P.C, praying against to set aside the judgment of the learned XVII Additional Sessions Judge, Chennai made in S.C.No.187 of 2012 dated 06.09.2012 and acquit the accused/appellant herein from the charge.

For Appellant : Mr.G.Mohanakrishnan

For Respondent : Mrs.P.Kritika Kamal
Government Advocate (CrI.Side)

J U D G M E N T

This appeal is directed against the sentence imposed by the trial Court holding the appellant guilty for offence under Section 307 of I.P.C.

2. The brief facts of the case is that on 24.11.2011 at

about 10.00 p.m while the appellant/accused was talking with one Rani Elizabeth (PW.2) her uncle Kalaiarasan (PW.1) saw them talking ultimately. Infuriated by that PW.1 questioned PW.2 and slapped her. The accused picked quarrel with PW.1 there was fight between them for a while. Thereafter, the accused run into his house took the knife and stabbed PW.1 in his abdomen. Kalaiarasan (PW.1) was taken to the hospital, treated for his injury. After five days of treatment as inpatient, he was discharged. The doctor who has treated PW.1 opined that the injury caused to PW.1 is grievous in nature.

3. Based on the complaint given by PW.1 in the hospital, First Information Report was registered and the case was taken up for investigation. The Investigating Officer has laid the final report, after completion of the investigation. The trial Court framed charges for offences under Sections 341 and 307 of I.P.C.

4. To prove the charges, the prosecution has examined 13 witnesses. 11 Exhibits and 1 material object was marked through PW.1. On the side of the defence, the medical history of PW.1 was marked as Ex.D.1.

5. The trial Court, after appreciating the evidence concluded that the accused had no motive to commit murder. He had no intention to kill Kalaiarasan (PW.1), since, PW.1 has questioned the accused, chatting with Rani Elizabeth (PW.2), he has stabbed PW.1. Therefore, while acquitting the offence under Section 341 of I.P.C., convicted him for offence under Section 307 of I.P.C., sentenced to undergo 3 years R.I and to pay a fine of Rs.1,000/-, in default to undergo 2 months S.I.

6. In the appeal, it is contended by the learned counsel appearing for the appellant that the Court below having held that there was no motive for the accused to cause the death of PW.1. He should not be convicted for the offence under Section 307 of I.P.C. The nature of injury sustained by PW.1 though certified by the doctor is grievous in nature. Admittedly, the attack has not caused any injury to the vital organ of the victim. The doctor who has issued the wound certificate was not able to justify why the injury is grievous in nature. The victim PW.1 was hospitalised only for five days i.e., from 25.11.2011 to 30.11.2011. While so, the injury does not fall within any one of the seven category mentioned under Section 320 of I.P.C. Furthermore, the trial Court has failed to consider the fact that the incident has taken place in the front of the accused house. The victim PW.1 has gone to the accused house and picked quarrel with the accused, in a drunken mood, this has provoked the accused. In such circumstances, the trial Court, at the most should have considered, charging the accused only for offence under Section 335 of I.P.C and not under Section 307

of I.P.C. The learned counsel would also submit that the accused and the victim are hiking in the same locality and now they have buried the hearted and living peacefully. In the light of the above circumstances, if the appellant is convicted and sentenced him to undergo 3 years R.I, he will be put to undue suffering.

7. Per contra, the learned Government Advocate (Crl.Side) appearing for the respondent/state would submit that the weapon used to cause injury and the seat of injury coupled with the wound certificate would clearly prove the fact that the accused has caused the injury with knowledge and intention to cause homicide. The culpable mental state would be seen from the conduct of the accused. PW.2 was witness to the occurrence has deposed against the accused and the manner in which he caused injury to PW.1. Therefore, the evidence of PW.1 which has been corroborated by the evidence of PW.2 suffices to hold that the accused guilty of offence under Section 307 of I.P.C. The doctor who has treated the victim PW.1 has given the details about the injuries sustained by PW.1 and the treatment given to him. The size of injury and the nature of injury undoubtedly is grievous in nature and the doctor having certified it is grievous injury, there shall be no other opinion favouring the accused. The providential escape of the victim from death cannot be taken advantage by the accused and plea for lesser imprisonment.

8. Relying upon the judgment of the Hon'ble Supreme Court rendered in Narinder Singh and other Vs. State of Punjab reported in 2014 6 SCC 466.

9. The learned Government Advocate (Crl.Side) appearing for the respondent/state would submit that it is a case of attempt to murder, the offence cannot be compounded. Even if the parties have settled their dispute and buried their animosity.

10. Heard the learned Counsel for the Appellant and the learned Government Advocate (Crl.Side) for the respondent/state.

11. PW.1 is the witness who sustained injury in the occurrence and PW.2 is the witness who has viewed the occurrence and found along with the accused at the time of occurrence. From the evidence of PW.1 and PW.2, it is clear as crystal that on 24.11.2011 at about 10.00 p.m, PW.1 saw the accused and PW.2 together talking in front of the accused house. PW.1 who was returning home. On seeing the accused and PW.2 who is his uncle's daughter went to the accused house reprimanded PW.2 questioned the accused why he is talking with his uncle's daughter during late night. This has triggered the fight between PW.1 and the accused. PW.2 in her evidence said that while reprimanding her, PW.1 slapped her. On seeing that the accused retaliated, thereafter, the accused has gone into the

house and took the weapon and stabbed. It is a chain of event where the provocation has come from the victim PW.1. No doubt, he may have some good reason to reprimand his uncle's daughter and the accused for chatting during late hours at night. But the subsequent events which has let to causing grievous injury is undoubtedly due to the provocation of PW.1. In such circumstances, while the factum of accused stabbing PW.1 is proved beyond doubt through the evidence of PW.1 and PW.2 and the fact that the injury caused by the accused to PW.1 was grievous in nature as per the medical certificate Ex.P.4 has also spoken by the doctor PW.11. Since, the incident has occurred as a consequence of provocation, the offence committed by the accused shall fall under Section 335 of I.P.C and not under Section 307 of I.P.C.

12. Accordingly, the sentence imposed on the appellant/accused is liable to be modified. Now considering the period of imprisonment undergone by the accused during the trial and the submissions made by the learned counsel for the appellant regarding the reconciliation between the victim and the accused, this Court is of the view that the appellant/accused is guilty of offence under Section 335 of I.P.C and not for under Section 307 of I.P.C. While holding him guilty for offence under Section 335 of I.P.C., instead of imposing the sentence of imprisonment for a term, it suffices to hold that the period of imprisonment already undergone shall be the term of imprisonment. Besides, a fine of Rs.50,000/- is imposed which shall be paid as compensation to PW.1, in default of payment of the fine amount within a period of four weeks from today, the appellant shall undergo simple imprisonment for a term of two months.

13. In the result, the Criminal Appeal is Partly Allowed.

Sd/-

Assistant Registrar (CS-I)

//True Copy//

Sub Assistant Registrar

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To

1. The Learned XVII Additional Sessions Judge,
Chennai.

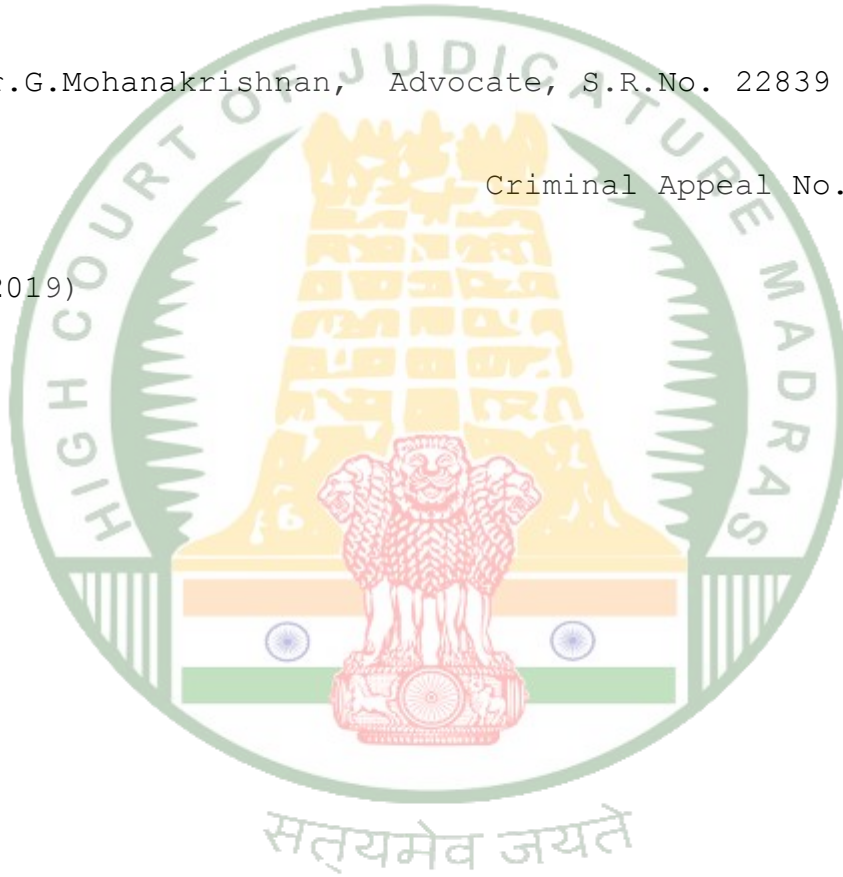
2.The XVIII Metropolitan Magistrate,
Saidapet, Chennai-600 015.

3. The Inspector of Police,
E1, Mylapore Police Station,
Chennai.
- 4.The Director General of Police,
Mylapore, Chennai-4.
5. The Government Advocate,
(Crl.Side), High Court, Madras.
6. The Section Officer,
Criminal Section, High Court, Madras.

+1cc to Mr.G.Mohanakrishnan, Advocate, S.R.No. 22839

Criminal Appeal No.694 of 2012

SS(CO)
GN(10/04/2019)



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