

Bail Slip

The Petitioner/Accused viz P. Elumalai S/o. Ponnusamy was released on bail as per the order of this Court dated 10.01.2013 in Crl.M.P. No. 1/2012 in Crl.A.No.767 of 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.767 of 2012

P.Elumalai

...Appellant

-Vs

The State rep. by
Inspector of Police,
Valathi Police Station,
Villupuram District.

....Respondent

Criminal Appeal filed under Sections 374(2) of Cr.P.C., to set aside the conviction of the appellant in S.C.No.45 of 2012 dated 10.10.2012 passed by the learned Assistant Sessions Judge, Gingee, Villupuram District.

For Petitioner : Mr.B.Gopalakrishnan
For Respondent : Mr.T.Shanmugarajeswaran
Government Advocate (Crl.Side)

JUDGMENT

This Criminal Appeal has been filed to set aside the judgment in S.C.No.45 of 2012, dated 10.10.2012, passed by the learned Assistant Sessions Judge, Gingee, Villupuram District.

2. Based on the complaint lodged by P.W.1, the respondent police registered a case against the appellant in Crime No.319 of 2011, for the offence under Sections 341, 294(b), 324, 325, 506(ii) and 307 IPC and investigated the case. After investigation, charge sheet was filed before the learned Judicial Magistrate, Gingee, the same was taken on file in P.R.C.No.38 of 2011. Since the offences are triable by the Court of Sessions, the case was committed to the learned Principal District and Sessions Court, Villupuram. The learned Sessions

Judge, taken the case on file in S.C.No.45 of 2012 and the same was made over to the learned Assistant Sessions Judge, Gingee. Before the trial Court, during trial, in order to prove the case, on the side of the prosecution, the respondent police examined as many as 12 witnesses viz., P.W.1 to P.W.12, marked as many as 11 documents viz., Ex.P1 to Ex.P11 and produced 1 material object viz., M.O.1.

3. After completion of prosecution evidences, the incriminating materials were put before the appellant. The appellant denied all the evidences as false. On the side of the defense, no oral evidence was let in and no document was marked.

4. The learned Assistant Sessions Judge, Gingee, after hearing the arguments of both sides, found that the appellant was found guilty of the offence under Sections 307 and 341 IPC and convicted him and sentenced to pay a fine of Rs.500/-, in default, to undergo one month imprisonment for the offence under Section 341 IPC; and to undergo rigorous imprisonment for ten years and to pay a fine of Rs.5,000/- in default, to undergo three months for the offence under Section 307 IPC; and the appellant was found not guilty for the offences under Section 294(b) and 506(ii) IPC.

5. Challenging the said conviction and sentence passed by the learned Additional Sessions Judge in S.C.No.45 of 2012, dated 10.10.2012, the appellant has filed the present criminal appeal.

6. The learned counsel for the appellant would submit that the police have failed to seize any blood stained objects either in the dress worn by the victim or the blood stained earth. The learned counsel vehemently contended that the very occurrence itself is doubtful. The learned counsel would further submit that P.W.11 Doctor, who examined the victim, at the first instance, gave first aid and stated that there were only three injuries. But, he has not mentioned in the wound certificate as to whether cutting of finger is due to the alleged violent attack made by the appellant. The learned counsel would further submit that the victim and the appellant are hailing from the same village and there was also previous enmity between them and therefore, a false case has been foisted against the appellant. The learned Counsel would therefore pray that conviction and sentence imposed on the appellant has to be set-aside.

7. The learned Government Advocate (Crl. Side) would further submit that P.W.1 complainant, P.W.2 injured witness and Eyewitnesses P.Ws.3,4 and 7 have clearly stated that the accused had attacked the victim with Aruval and caused injuries. During cross examination, P.W.2, clearly narrated the injury sustained

by the accused. P.W.11 Doctor, stated that the injury sustained, was grievous in nature. The learned Additional Sessions Judge, Ginjee, has rightly convicted the accused, and it does not warrant any interference.

8. Heard the learned counsel for the appellant as well as the respondent. Perused the materials available on record.

9. The case of the prosecution is as follows:- On 07.10.2011, at about 2.30 p.m., when P.W.1 and P.W.2 were walking towards P.W.1's agricultural land, the accused waylaid P.W.2, demanded loan amount back and scolded him in filthy language. P.W.1 Settu told the accused that he would repay the amount very soon. However, the appellant turned violent and attacked P.W.2 with aruval. P.W.1 tried to ward off the attack. In the attack, P.W.2 lost his two fingers in the left hand apart from other injuries. P.W.1, who came with P.W.2, screamed for help. On hearing the sound, P.W.3, P.W.4 and P.W.7 came to the place of occurrence. With the assistance of P.Ws.3,4 and 7, took P.W.2 to Ginjee Government Hospital for treatment. A complaint was also lodged before the police station. P.W.2 informed P.W.11, Doctor, Government Hospital, Ginjee, that he was attacked by unknown persons. Since two fingers were chopped off, P.W.11 referred P.W.2 to Jipmer Pondicherry Government Hospital.

10. Based on the complaint preferred by P.W.1, the police filed charge sheet. On appreciation of evidence, the learned Sessions Judge has convicted and sentenced the appellant. This Court is not in agreement with the argument advanced by the learned counsel for the appellant. The occurrence had taken place at about 2.30 p.m. Viz., afternoon. Moreover it has taken place in open field. Therefore, the identification of the appellant by the victim cannot be doubted. Moreover, the victim has lost two of his fingers due to the attack. Both the victim and the appellant are living in the same village and therefore, victim would not have any difficulty to identify the assailant. The non-recovery of the blood stained cloth or earth will not affect the case of the prosecution.

11. The learned counsel has also contended that P.W.11 Doctor, who treated P.W.2 has not mentioned in the wound certificate that the chopping of fingers was due to attack made by the appellant. This argument is also baseless. P.W.2 has very specifically stated that he was assaulted by known persons. Therefore, identity of the appellant is not doubtful and the victim has spoken to the said fact who is also from the same village. Therefore, non mentioning of the reason for cutting of the fingers in the wound certificate will not affect the

prosecution case. P.W.2 is the injured witness, having suffered severe injury and lost two of his fingers. P.W.2 would not leave out the real assailant and framed some one else. P.W.1 has also clearly deposed that it was the appellant who attacked P.W.2 with aruval. Therefore, this Court has no hesitation to hold that the appellant is found guilty for offence under Sections 307 and 341 IPC. Conviction imposed on the appellant is sustainable.

12. As regards sentence, the learned counsel prays that the appellant and P.W.2 are from the same village. At the same time, peace prevails between them. If the appellant is given harsh sentence, it will only destroy the situation. Therefore, the learned counsel prayed that the Court may consider and reduce the quantum of punishment. The learned counsel has also submitted that the appellant is having health issues and therefore, prays that lesser sentence may be imposed.

13. Considering the fact that at present peace prevails in the village and the fact that they are only neighbors, this Court is of the view that the period of sentence would be reduced. However, considering the gravity of the offence, this Court is of the view that interest of justice would be sub-served by reducing the punishment of 10 years to seven years.

14. In the result, this Appeal is dismissed. While confirming the conviction imposed by the learned Additional Sessions Judge, Gingee, quantum of sentence imposed is reduced from ten (10) years to seven(7) years rigorous imprisonment.

15. The trial Court is directed to secure the custody of the appellant/accused and make him to undergo remaining part of the sentence.

s/d-

Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

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To

1. The Assistant Sessions Judge,
Ginjee, Villupuram District.
2. The Inspector of Police,
Valathi Police Station,
Villupuram District.

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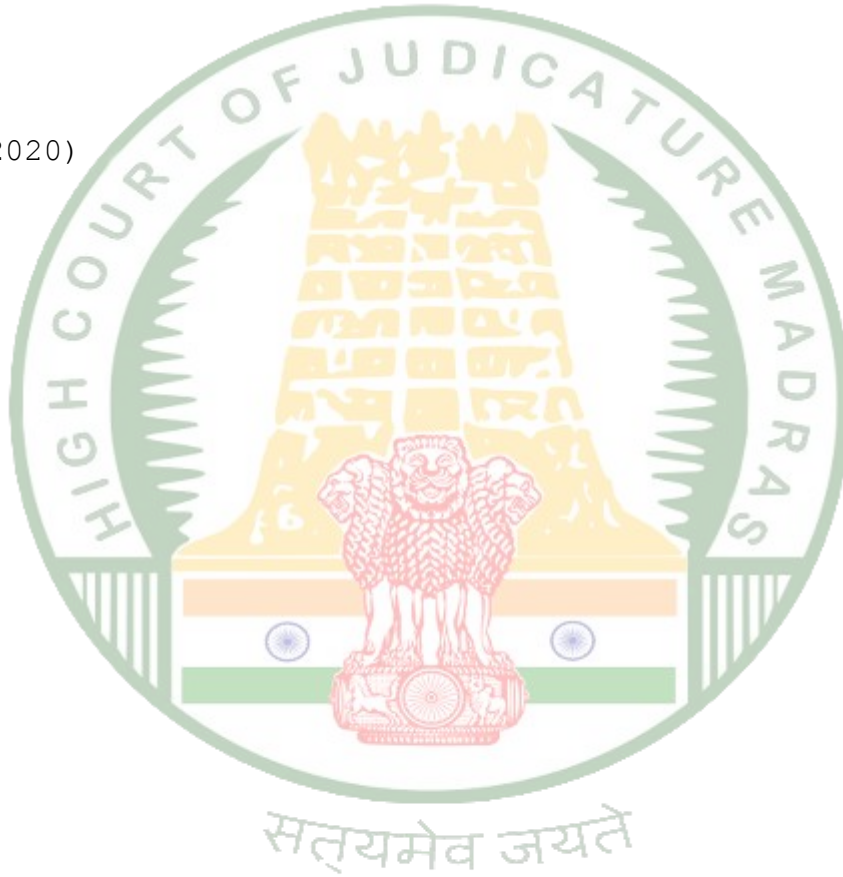
3. The Public Prosecutor,
High Court, Madras.

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

+1 CC to Mr.B.Gopalakrishnan, Advocate sr 54425.

Crl.A.No.767 of 2012

RSK(CO)
SP(22/05/2020)



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