

BAIL SLIP

The Appellant/Accused namely Pandiyan S/o.Subbaiya, Accused in SC.No. 110/12 dated 04/12/2012 on the file of the Principal Sessions Judge, Cuddalore was directed to be released on bail as per order of this Court dated 17/12/2012 made in MP.No. 1/2012 in Crl.A.No. 870/2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :04.03.2019

Coram:

The Honourable Dr.Justice G.Jayachandran

Criminal Appeal No.870 of 2012  
and M.P.No.1 of 2012

Pandiyan

.. Appellant

/versus/

The State of Tamilnadu  
represented by Inspector of Police,  
Mandharakuppam Police Station,  
Neyvely-2, Cuddalore District.  
Crime No.71 of 2012

.. Respondent

Criminal Appeal has been filed under Section 374(2) of Criminal Procedure Code praying to set aside the order of conviction imposed as against the appellant in S.C.No.110 of 2012 dated 04.12.2012 passed by the learned Principal Sessions Judge, Cuddalore and acquit the petitioner from all charges.

For Appellant : Mr.S.Sathish Rajan

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

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J U D G M E N T

The appellant/accused in S.C.No.110 of 2012 found guilty and he was charged for the offence under Sections 341, 294(b), 307 and 3(1)(x) of SC/ST Act.

2. The trial Court found him guilty for the offences under Section 341 and Section 307 IPC. Sentenced him to undergo 1 month Simple Imprisonment and 6 months Simple Imprisonment

respectively and ordered the period of sentences to run concurrently.

3. The brief facts of the case: On 26.02.2012 at about 7.30 hours when PW.1-Veerasamy, Ward Member of the locality was passing through the house of the accused, he was restrained by the accused and questioned why he has not taken care properly to lay the road and also not taking care of the maintenance of the street light. After abusing him using filthy language, the accused took out a knife and attacked Veerasamy on his head. Veerasamy was taken to the hospital by his wife Pushpavalli-PW.9. The occurrence was seen by PW.3 to PW.7. PW.2 Doctor at the Government hospital, Kurinjipadi treated the injured Veerasamy and given the wound certificate Ex.P.2. The victim Veerasamy belongs to Scheduled caste and the accused belongs to non scheduled community. Revenue Officials were examined to prove their respective caste. The trial Court on appreciating the evidence had found that there is no adequate evidence to attract the offences under Section SC/ST Act and for the offence under Section 394(b). Whereas, the weapon seized from the accused based on his confession statement, the nature of injury caused to the victim and the eyewitness who have seen the occurrence are sufficient to holding him guilty for the offence under Sections 341 and 307 IPC.

4. The learned counsel appearing for the appellant would submit that from the evidence of PW.1 to PW.7, the intention or knowledge to cause death has not been made out. There is contradiction between the prosecution witnesses regarding the seat of attack and also from where the weapon was taken by the accused to assault the victim. The learned counsel would also pointed out that the evidence PW.2-Doctor, who treated the victim and the evidence of so called eyewitnesses PW.2 to PW.7 does not tally. In the said circumstances, the trial Court ought not to have believed the prosecution witnesses for convicting the accused.

5. Per contra, the learned Government Advocate would submit that PW.1 the injured victim has deposed against the accused. He has identified the accused and the injury caused by him. PW.9 Pushpavalli has taken the injured person to the hospital and the evidence of PW.2-doctor who treated PW.1 proves the factum of attack by the accused and pursuant to the attack the victim Veerasamy had sustained the injury found in the Accident Report EX.P.2. The other witnesses who have seen the occurrence had corroborated the evidence of PW.1 and PW.2. Minor contradictions between the version of PW.2 and PW.6 regarding the place from the accused took the knife and the part of the body where he attacked whether the fore head or on the head may not be reason to disbelieve the deposition of these witnesses.

Since the said variations are not contradiction but only minor variations.

6. On hearing rival submission and on perusing the records, this Court finds that the incident has taken place on 26.02.2012 at about 7.30 hours near the residence of the accused. The victim was local Ward Member, at that time M.O.1 knife had been recovered by the Investigating Officer based on the confession given by the accused. PW.2 is the Doctor who treated the injured victim, he has noted a lacerated wound in the fore head about 5 cm length and vascular injury on his scalp. In the cross-examination with PW.1, it is suggested that the victim Veerasamy and his man have picked quarrel with the accused and damaged his house. He sustained head injury when tried to climb the transformer and attend the fault, which was denied by PW.1. It is also suggested to the witness that the victim is very old man and he could not even walk alone for causing injury PW.1, this suggestion has not been denied.

7. The learned counsel for the appellant would submit that presently the accused is around 72 years old and he is laid in bed. In any event the evidence for prosecution does not disclose the knowledge or intention to cause death therefore, holding the accused guilty of offence under Sections 307 and 341 IPC is unsustainable.

8. The injured victim and the injury found on him proves the fact that the accused assaulted PW.1 with weapon. The said injury is simple in nature, 5 cm lacerated wound on the fore head. As pointed out by the learned counsel for the appellant the intention to cause death or knowledge to know that the injury is sufficient to cause death is not made out by the prosecution. Though the weapon used is identified as knife marked as M.O.1, cumulative assessment of evidence on the whole the offence under Section 341 IPC is not made out. The circumstances under which the accused has caused the injury and the manner in which the nature of injury falls only under Section 324 IPC and not under Section 307 IPC, where the element of mens rea to cause death is essential. From the evidence before this Court we find that the said element is conspicuously absent. Hence, the sentence and conviction imposed by the trial Court for offences under Section 341 and 307 IPC is set aside. The sentence is modified accordingly.

9. Considering the age of the appellant and the period of his imprisonment as under trial. The sentence of fine Rs.5000/-; in default 2 weeks Simple Imprisonment is imposed for offence under Section 324 IPC. The accused is acquitted from charge under Section 341 IPC.

10. In the result, the appeal is partly allowed. Consequently, the connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

Rpl

To

- 1.The Principal Sessions Judge, Cuddalore
- 2.The Public Prosecutor, High Court, Madras.
- 3.The District Munsif cum  
Judicial Magistrate, Neyveli.
- 4.The Chief Judicial Magistrate,  
Cuddalore.
5. The Inspector of Police,  
Mandharakuppam Police Station,  
Neyveli 2,  
Cuddalore District.

Copy TO

The Section Officer,  
Criminal Section,  
High Court, Madras.

+1cc to Mr.S.Sathish Rajan, Advocate, S.R.No.19751

Criminal Appeal No.870 of 2012

SSI (CO)  
GN(03/04/2019)

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