



BAIL SLIP

Murugesan, Male, S/o. Alex, aged about 32 years in CRL A.No.561 of 2007 and Kamaleswaran @ Maharajan, Male S/o.Ramalingam, aged about 22 years in CRL A(MD).No.394 of 2009 were released on bail vide order of this Court made on 20.11.2007 (in CRL A(MD)561 of 2007) and 23.12.2009 (in CRL A(MD).No.394 of 2009) respectively.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.10.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.A.(MD)Nos.561 of 2007 and 394 of 2009

Murugesan ... Appellant/Accused No.1 in
Crl.A.(MD)No.561 of 2007

Kamaleswaran @ Maharajan ... Appellant/Accused No.2 in
Crl.A.(MD)No.394 of 2009

Vs.

The State rep.by
The Inspector of Police,
Thoothukudi Central Police Station,
Thoothukudi District.
Crime No.119 of 2007

..Respondent/Complainant
in both appeals

COMMON PRAYER: These Criminal Appeals are filed under Section 374 of Criminal Procedure Code against the judgment and conviction rendered by the Additional Sessions Judge, (Fast Track Court No.I), Thoothukudi in S.C.No.182 of 2007 vide his judgment dated 17.10.2007 by convicting the appellant under Section 307 IPC and sentenced him to undergo 5 years RI and to pay a fine of Rs.1,000/- in default to undergo 2 months RI.

For Appellant : Mr.Dhilipan
for R.Anand
(in Crl.A.(MD)No.561 of 2007)

For Appellant : No Appearance
(in Crl.A.(MD)No.394 of 2009)



For Respondent

: Mr.K.K.Ramakrishnan,
Additional Public Prosecutor
(in both appeals)

WEB COPY

COMMON JUDGMENT

The accused are the appellants herein. These appeals are directed against the judgment dated 17.10.2007 made in S.C.No.182 of 2007 on the file of the learned Additional Sessions Judge, (Fast Track Court No.I), Thoothukudi.

2. The brief facts of the case are as follows:-

The first accused is residing in the house of P.W.1 as tenant. Since the first accused was asked to vacate the house by P.W.1 and P.W.3 / mother of P.W.1 because of their intolerable act, in order to wreck vengeance against P.W.1, on 18.03.2007 at about 05.30 p.m., when P.W.1 was proceeding to his house in his bicycle in Duvipuram first street, on receiving information from the third accused about the coming of P.W.1, the first and second accused said to have waylaid P.W.1 at the knife point, attacked him and abused him in filthy language. He managed to escape from the scene of occurrence and he was admitted in a Government Hospital for taking treatment.

3. On receiving information about the occurrence from the Hospital, where the victim was admitted, the respondent police went there and obtained complaint and registered a case in Crime No.119 of 2007, thereafter, forwarded the complaint and the FIR to the Court, which were received by the learned jurisdictional Magistrate. In the mean time, he handed over the case diary to the investigating Officer. The case was taken up for investigation by P.W.12, Inspector of Police. He had proceeded to the place of occurrence on the same day, prepared an observation mahazar and rough sketch and submitted a final report before the learned Judicial Magistrate No.II, Thoothukudi for the offences under Sections 341, 294(b), 307 and 506(ii) IPC.

4. The learned Magistrate No.II, Thoothukudi has taken up the case on file and after completing the formalities, the learned Magistrate found that the case is triable exclusively by the Court of Sessions and therefore, committed the case to the learned Principal Sessions Judge, Thoothukudi, who in turn, had taken up the case in S.C.No.182 of 2007 and made over to the learned Additional Sessions Judge (Fast Track Court No.I), Thoothukudi.

5. The learned Additional Sessions Judge, after completing the formalities, has framed charges against the first and second accused under Sections 341, 294(b) and 307 IPC



and against the third accused under Sections 341 and 307 r/w 34 IPC.

6. In order to prove the case of the prosecution, during trial, on the side of the prosecution as many as 12 witnesses were examined as P.Ws.1 to 12 and 11 documents were marked as Exs.P1 to P11 and five material objects were marked. On the side of defendants, no oral and documentary evidence have been adduced. At the time of questioning the accused under Section 313 Cr.P.C., they have denied the same.

7. After hearing the arguments advanced by the learned counsel on either side and considering the material evidence, the trial Court has found the first and second accused / appellants herein, guilty under Section 307 IPC and sentenced them to undergo five years R.I., under Section 307 IPC and to pay a fine of Rs.1,000/- in default to undergo 2 months R.I., and the third accused was found not guilty for the charges against him.

8. There is no representation for the second accused. The learned counsel appearing for the first accused has agreed to appear on behalf of the second accused as they have jointly committed offence.

9. The learned counsel appearing for the appellants would submit that the complainant has falsely foisted the case against the appellants. There is no enmity or motive against the de-facto complainant established by the prosecution as projected by the prosecution. He would further submit that there is a quarrel between the group of fans in the theatre, wherein the accused and the defacto complainant were watching movie. Due to the same, the defacto complainant sustained injuries, for which the accused are complained of. He would further submit that the respondent police did not investigate the case properly and foisted a false case against the appellants. Though the defacto complainant has stated that the accused attacked the defacto complainant, when he was on his cycle, no cycle was recovered by the respondent Police. The copy of the Accident Register has not been marked in this case. The defacto complainant has stated before the Doctor how he sustained injuries and how many persons attacked him. The Wound Certificate marked by the prosecution has not revealed the said facts. He would further submit that the knife, which was said to have been used to attack the defacto complainant has not been sent for forensic test. Except P.W.1, no other witnesses have been cited. Even that witness has not supported the case of the prosecution. P.W.3 mother of P.W.1 has not spoken that since the first accused used to quarrel with his wife, he was asked to vacate the house of P.W.1. P.W.7, has also not spoken about the



P.W.1, no other witnesses have spoken about the involvement of the appellants in this case. Hence, the prosecution has failed to establish the actual motive between the appellants and the defacto complainant. He would further submit that the trial Court has failed to consider all the legal and factual matter and only on sympathy ground, the appellants were accused of and pray for dismissal of these appeals.

10. The learned Additional Government Pleader appearing for the State would submit that there is a clear motive as suggested in this case. Even in the chief examination, P.W.7 clearly says that admittedly, the first accused along with his wife were residing in the house of P.W.1 and his son P.W.3. Since the first accused was used to quarrel with his wife, P.W.1 asked the first accused to vacate the house. Even from the evidence of P.W.3, it is seen that the first accused used to suspect the fidelity of the wife and also quarrelled with her and sometimes attacked her. Further the evidence of P.W.3 and P.W.7 spoken about the motive and therefore, the prosecution has proved the case beyond reasonable doubt and the finding of the trial Court does not require any interference.

11. Heard the learned counsel appearing on either side and perused the materials placed on record.

12. It is the case of the prosecution that the first accused is residing in the house of P.W.1 as tenant. Since the first accused was asked to vacate the house by P.W.1 and P.W.3 / mother of P.W.1 because of their intolerable act, in order to wreck vengeance against P.W.1, on 18.03.2007 at about 05.30 p.m., when P.W.1 was proceeding to his house in his bicycle in Duvipuram first street, on receiving information from the third accused about the coming of P.W.1, the first and second accused said to have waylaid P.W.1 at the knife point, attacked him and abused him in filthy language. He managed to escape from the scene of occurrence and he was admitted in a Government Hospital for taking treatment.

13. A careful reading of the evidence of P.W.1 clearly shows that the first accused was residing in the house of P.W.1 and the first accused used to suspect the fidelity of his wife and used to quarrel with her and some time he used to attack her. Hence, P.W.1 asked the first accused to vacate the house of P.W.1. Due to wreck vengeance for the above reason, the first accused along with the second and third accused waylaid P.W.1 at 05.30 p.m., on 18.03.2007, when he was returning to his home after watching a movie. The first and second accused pushed the cycle of the defacto complainant and scolded him with filthy language. The first accused has stabbed the defacto complainant in his left



chin. P.W.1 managed to escape from the scene of occurrence and admitted in a hospital with the help of a third person. The Doctor P.W.2, has also spoken about the injuries sustained by P.W.1.

14. Though no other witnesses have supported the case of the prosecution, P.W.1, who is the injured witness, has clearly narrated about the incident. P.W.3, mother of P.W.1 has also clearly spoken about the conduct of the first accused, while he was residing in her house and why he was asked to vacate.

15. Though FIR was registered against the first and second accused, during trial the third accused was charged and since prosecution has not proved its case beyond reasonable doubt against the third accused, the trial Court has acquitted the third accused.

16. The trial Court has believed the evidence of P.W.1 coupled with the evidence of P.W.2, Doctor.

17. The learned counsel appearing for the appellants would submit that there is no previous motive and no cycle was recovered as per the case projected by the prosecution.

18. It is seen from the records that there is a previous motive against the defacto complainant. Therefore, this Court finds that the prosecution has proved the case beyond reasonable doubt against the appellants.

19. It is the submission of the learned counsel appearing for the appellants that the defacto complainant is a body builder, hence, he cannot be attacked by anyone. When a person is going in a place without anticipating anything and he was attacked by some persons, he would not be able to protect him, even though he is a body builder. Further, mere non-recovery of the cycle and other material objects and not sending the objects recovered by the respondent police to the Court would not vitiate the case of the prosecution. The evidence of P.W.1 and P.W.3 and the wife of the accused, clearly shows that the accused has previous motive against the defacto complainant.

20. Therefore, this Court finds that the prosecution has proved its case beyond reasonable doubt and there is no reason to interfere with the judgment of the trial Court. Hence, this Court is of the view that the trial Court has rightly convicted the appellants and since prosecution has not proved its case beyond reasonable doubt against the third accused, the trial Court has acquitted the third accused.



21. In this view of the matter, these Criminal Appeals are dismissed. The conviction passed by the learned Additional Sessions Judge, (Fast Track Court No.I), Thoothukudi in S.C.No.182 of 2007 vide his judgment dated 17.10.2007, is hereby confirmed. As far as the period of sentence is concerned, this Court is inclined to reduce the sentence of five years rigorous imprisonment to three years rigorous imprisonment. The trial Court shall take steps to secure the accused / appellants to commit them in prison to serve out the remaining period of sentence. Bail bond, if any, executed by the appellants and the sureties shall stand cancelled.

Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar (CS)

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To

- 1.The Additional Sessions Judge,
(Fast Track Court No.I), Thoothukudi.
- 2.The Judicial Magistrate No.II, Thoothukudi.
- 3.The Chief Judicial Magistrate, Thoothukudi.
- 4.The Inspector of Police, Thoothukudi Central Police Station,
Thoothukudi.
- 5.The Public Prosecutor, Madurai Bench of Madras High Court,
Madurai.
- 6.The Superintendent, Central Prison, Palayamkottai.
- 7.The Section Officer, Criminal Section,
Madurai Bench of Madras High Court, Madurai. (2 copies)

Cr1.A.(MD)Nos.561 of 2007 and 394 of 2009

19.10.2019

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