



BAIL SLIP

Ganesan, S/O.Chandrasahsan, Appellant/Sole Accused, is released on Bail vide Court order dated 13.11.2008 made in MP(MD) No.1 of 2008 in CRL A(MD) No.498 of 2008.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 27.07.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.VELMURUGAN

Crl.A.(MD)No. 498 of 2008
and Crl. R.C(MD) No.183 of 2009

Crl.A.(MD) No. 498 of 2008

Ganesan ... Appellant/Accused

- Vs-

The State Represented by
The Inspector of Police
Pattukkottai Police Station,
Thanjavur District.
Crime No.214 of 2007

... Respondent/Complainant

Prayer: Criminal Appeal is filed under Section 374 (2) of Criminal Procedure Code, to set aside the judgment and conviction, dated 04.11.2008 passed by the learned Additional Sessions Judge (FTC-I) Thanjavur in S.C.No.327 of 2008, by which, the appellant is convicted for an offence under Section 323 of I.P.C., and sentenced to undergo 1-Year imprisonment and fine of Rs.1000/-in default, to undergo 2-months Simple Imprisonment.

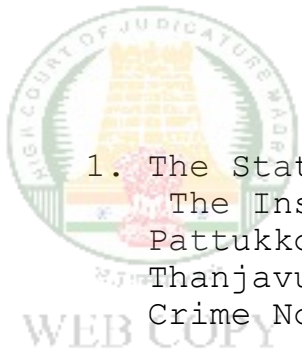
For Appellant : Mr.M. Mohamed Sharbudeen
Legal Aid Counsel

For Respondent : Mr.R.Anandharaj
Additional Public Prosecutor

Crl. R.C(MD) No.183 of 2009

Veerakumar ... P.W.1/Petitioner

- Vs-



1. The State Represented by
The Inspector of Police
Pattukkottai Police Station,
Thanjavur District.
Crime No.214 of 2007.

...Complainant/Respondent

2. Ganesan

...Accused No.2/Respondent

Prayer: Criminal Revision case is filed under Section 397 read with 401 of Criminal Procedure Code, against the order passed by the learned Additional Sessions Judge (FTC-I) Thanjavur in S.C.No.327 of 2008, acquitting the second respondent/accused under Sections 341, 347, 302 read with 341 of I.P.C. and also to enhance the sentence.

For Petitioner : No Appearance

For Respondent-1 : Mr.R.Anandharaj
Additional Public Prosecutor

For Respondent-2 : No Appearance

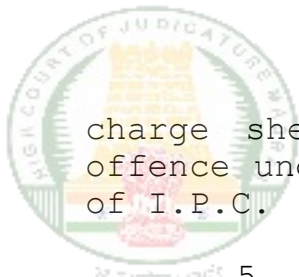
JUDGMENT

This Criminal appeal has been filed to set aside the Judgment, dated 04.11.2008 passed in S.C.No. 327 of 2008 by the learned Additional Sessions Judge (FTC-I) Thanjavur.

2. The Criminal Revision has been filed by the defacto complainant/P.W.1 to set aside the Judgment passed by the learned Additional Sessions Judge (FTC-I), Thanjavur in S.C. No.327 of 2008, dated 04.11.2008 and to enhance the sentence.

3. The Criminal appeal and Criminal Revision case are arising out of one Judgment.

4. The case of the prosecution is that, due to civil dispute pending between the P.W.2/Selvaraj and another one accused Dhanapal, on 09.04.2007, at 10.30 a.m., near Soorappallam Bus stand, the appellant and another one accused Dhanapal were interrupted the witnesses P.W.1/Veerakumar, P.W.2/Selvaraj and Saminathan. At that time, the appellant was having wooden log and another accused Dhanapal was having knife and both the accused were caused injuries to the witnesses. The appellant attacked with wooden log on the head of P.W.2/Selvaraj and caused small injuries and also attacked on the left backside of P.W.1/Veerakumar and caused small injuries and another accused Dhanapal stabbed with knife on left side stomach of P.W.2/Selvaraj and also stabbed on the right and left side back side of P.W.1/Veerakumar and the appellant stabbed with knife with intention to murder him on the right and left side chest and murdered one Saminathan and therefore, after investigation laid



charge sheet against the appellant and another one accused for offence under Sections 341, 323, 324 (2 counts), 307 and 302 r/w 34 of I.P.C.

5. Since, non-bailable warrant was pending against the accused Dhanapal, the case was split up as P.R.C. No.24 of 2008 on the file of the learned Judicial Magistrate, Pattukkottai, the same is pending.

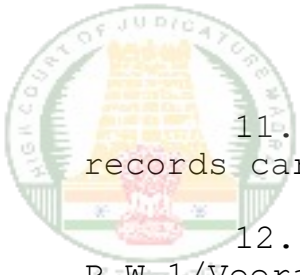
6. After framing necessary charges in order to prove the case of the prosecution, on the side of the prosecution as many as 11 witnesses were examined as PW.1 to PW.11 and 11 documents were marked as Ex.P.1 to Ex.P.11 and 5 material objects were exhibited.

7. After completion of the prosecution evidence, when the incriminating materials culled out from the prosecution witnesses were put before the appellant / accused, the appellant denied the same as false. On the side of the defence one Palanivel was examined as D.W.1 and no documentary evidence was produced.

8. After completing the trial and hearing the arguments advanced by the learned counsel on either side, the learned trial Judge acquitted the appellant under Sections 341, 307, 302 r/w 34 and convicted the appellant and sentenced him to undergo One year rigorous imprisonment and to pay a fine of Rs.1000/-in default to undergo Two months simple imprisonment. Aggrieved by the same, the convict has preferred the present appeal and the P.W.1/Veerakumar has preferred the present Criminal Revision Case.

9. The learned counsel for the appellant would submit that in this case there are totally two accused and the main accused Dhanapal was absconding accused who only used knife and also caused grievous injuries, as far as the appellant is concerned said to have used only wooden log and caused only simple injuries. D.W.1/Palanivel was one of the person who took the injured into the hospital was cross examined by P.W.1, stated that the appellant was not present in the place of occurrence. He would further submit that and hence, the prosecution has failed to prove its case beyond reasonable doubt and the Trial Court has also failed to consider the evidence of D.W.1 and also not considered that the Dhanapal is a main accused who was absconded and declared as proclaimed offender. The trial Court has failed to consider all the factual and legal aspects and wrongly convicted the appellant and therefore, the appellant/accused is entitled for acquittal, which warrants interference of this Court.

10. The learned Additional Public Prosecutor would submit that this case was proved through the accident register/Ex.P.3, P.4 & P .5 and the evidence of P.W.8/Dr.Manimaran. The prosecution has proved its case beyond reasonable doubt and hence there is no reason to interfere with the same.



11. Heard the learned counsel on either side and perused the records carefully.

12. In this case, the injured person was examined P.W.1/Veerakumar. He has stated in his evidence that the appellant came to the scene of occurrence with wooden log and beaten on the head of P.W.2/Selvaraj and also beaten on the backside of P.W.1/Veerakumar. On perusal of accident register issued by P.W.8/Dr.Manimaran, it shows as, அசா,2 செல்வராஜுக்கு தலை பகுதியில் 10 x 1 செ.மீ அளவுள்ள ஒரு சிதைந்த காயம் இருந்தது,

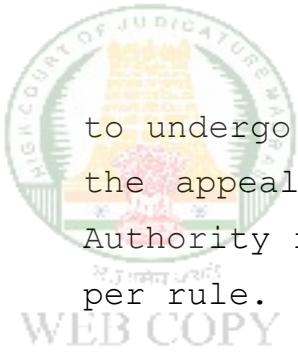
13. Hence, from the evidence of the injured witnesses and a perusal of accident register issued by the Doctor, this Court finds that the appellant has committed an offence under Section 323 of I.P.C. and the Trial Court has rightly convicted the appellant. The trial Court has rightly appreciated the prosecution witnesses, the prosecution has proved its case beyond reasonable doubts and the contention raised by the learned counsel for the appellant is not a reason for disbelieving the case of the prosecution and this Court found that the prosecution has proved the case beyond reasonable doubts.

14. In view of the discussion held above, this Court does not find any merits in the appeal and the same is liable to be dismissed. Since, after obtaining the suspension of sentence, the appellant has not taken any steps to proceed the appeal. After granting sufficient opportunity and the suspension of sentence was also revoked and warrant has also been issued, the respondent police has not taken effective steps to secure the appellant.

15. On a perusal of the records and the Judgment passed by the trial Court, this Court finds no sound reason ground to set aside the Judgment of conviction and sentence dated 11.11.2008 made in S.C. No.327 of 2008 on the file of the learned Additional Sessions Judge (FTC-I), Thanjavur and the same does not warrant any interference.

16. On a perusal of evidence of injured persons, the appellant caused simple injuries only by using wooden log. Therefore, under these circumstances, there is no ground made out to enhance the sentence and accordingly, the Civil Revision Case is dismissed.

17. In the result, the Criminal Appeal stands dismissed, confirming the judgment of conviction and sentence, dated 04.11.2008 made in S.C. No.327 of 2008 on the file of the learned Additional Sessions Judge (FTC-I), Thanjavur. The trial Court is directed to take effective steps to secure the custody of the appellant/accused



to undergo the remaining period of sentence. The counsel who argued the appeal for the appellant was appointed by the Legal Services Authority from the legal aid panel, hence he is entitled for fees as per rule.

Sd/-
Assistant Registrar (CS-III)

/TRUE COPY/

Sub Assistant Registrar

To

1. The Additional Sessions Judge (FTC-I), Thanjavur.
2. The Legal Services Authority, Madurai.
3. The Inspector of Police
Pattukkottai Police Station.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

COPY TO:

The Record Keeper, V.R. Section
Madurai Bench of Madras High Court, Madurai.
(2 Copies)

Crl.A.(MD) No. 498 of 2008
and Crl. R.C (MD) No.183 of 2009

ksa

JM/29.08.2019/5P/7C