



Bail Slip

The petitioners / Appellant / Accused namely Thanaraj, S/o.Selvaraj was released on bail, vide order made in MP.1/2009 in Cr1.A.(MD)291/2009 dated 01.10.2009.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHICr1.A(MD)No.291 of 2009

Thanaraj

... Appellant/Accused

Vs.

State through,
The Inspector of Police,
Muthiapuram Police Station,
Muthiapuram,
Tuticorin.

... Respondent/Complainant

COMMON PRAYER: Criminal Appeal is filed under Section 374 (2) of Cr.P.C., to set aside the judgment and conviction of the learned Principal Sessions Judge, Tuticorin dated 18.09.2009 in S.C.No.280 of 2008.

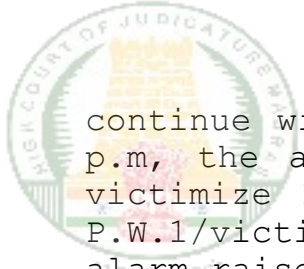
For Appellant	: Mr.Balamurugan for M/S.Jeyapaul Associates
For Respondent	: Mrs.S.Bharathi Government Advocate (Cr1. Side)

JUDGMENT

This appeal has been filed to set aside the conviction and sentence imposed by the learned Principal Sessions Judge, Tuticorin dated 18.09.2009 in S.C.No.280 of 2008, in and by which, the appellant was found guilty for the offence under Section 307 IPC, convicted and sentenced to undergo three years rigorous imprisonment with a fine of Rs.1,000/-, in default three months simple imprisonment was also ordered. As against the conviction and sentence imposed by the trial Court, the appellant / Accused preferred this appeal.

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

P.W.1/Kumar as well as the accused were employed as Securities in the SICOR Container Yard on the Harbour Construction Road. There was a misunderstanding between the accused and P.W.1 as P.W.1 found fault with the style of working of the accused. On 13.08.2008, while P.W.1 was on his duty at the container yard on the Entry gate, the accused came there to relieve one Antony, who was on duty at the exit gate. After having a brief talk with Antony [P.W.9], the accused came to P.W.1 and questioned as to why he complained about the performance of his duty and there was a wordy quarrel between the accused and P.W.1. The Supervisor, namely, Muthaiah [P.W.3] pacified both P.W.1 and the accused, but the accused left the place by saying that he was not interested to



continue with the job. Thereafter, on the same day, at about 6.30 p.m, the accused again came to the yard, approached P.W.1 and to victimize P.W.1, he took out a knife and caused stab injuries on P.W.1/victim's left and right shoulders, ribs etc. On hearing the alarm raised by Antony [P.W.9] and one Kumar, Surveyor [P.W.4], the accused ran away from the place of occurrence. The injured [P.W.1] was taken to the Government Hospital, Tuticorin around 7.30 p.m, and Dr.Saravanan [P.W.2], who was on duty, attended and provided him the first aid. At the time of admission, P.W.1 has informed the Doctor [P.W.2] that he was assaulted by one known person with a knife. The Doctor [P.W.2] has noted down the following injuries on the victim [P.W.1];

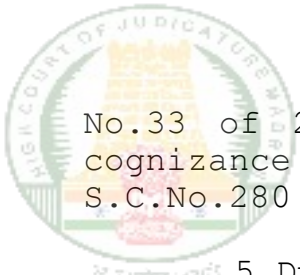
Injuries:

1. Penetrating injury over right (NC) regin (5*2*NC)
2. Penetrating injury over left lower chest (3*2*NC)
3. Penetrating injury over both arms (1*1cm)
4. Penetrating injury over right scalp region (4*2*NC)
5. Penetrating injury over back of left lower (3*2*NC)

The Accident Register issued by the Doctor is marked as Ex.P.2.

3.P.W.7/Sankaralingam, Head Constable, who was on duty at the outpost of the Police Station in Government Hospital, Tuticorin, received an intimation from the Doctor [P.W.2] about the incident, in which, P.W.1 sustained injuries and conveyed the message through telephone to the Inspector of Police, Muthiahpuram. Further he handed over the letter of intimation [Ex.P.3] to the Sub Inspector of Police [P.W.8]. On receipt of intimation, on 13.08.2008 at 20.45 hours, the Sub Inspector of Police, Muthiahpuram, namely, Radhakrishnan [P.W.8] reached the Government Hospital, Tuticorin and enquired the injured and recorded his statement in Ex.P.1. On receipt of the report of P.W.1, the Sub Inspector of Police, Muthiahpuram, [P.W.8] registered a case in Crime No.203 of 2008 for the offence under Section 307 IPC against the accused. The printed First Information Report is marked as Ex.P.8 and it was handed over to the concerned Magistrate Court on 14.08.2008 at about 7.30 p.m.

4.The Inspector of Police, Muthiahpuram Police Station, namely, Magimaiveeran [P.W.11], on 13.08.2008 at about 11.30 p.m, went to the place of occurrence, prepared an Observation Mahazer [Ex.P.4] and a Rough Sketch [Ex.P.9] in the presence of P.W.5/Murugesan, and another, enquired them and also recorded their statements. On 14.08.2008, at about 00.30 hours the Inspector of Police [P.W.11] collected earth with and without blood [M.O.2] and [M.O.3] from the place of occurrence. On the same day, at about 11.00 a.m, P.W.11 arrested the accused and recorded his confession statement in the presence of one T.Muthuraj Banugopan [P.W.6] and the Village Administrative Officer, namely, Avudaiappan. Pursuant to his confession statement, he also recovered a knife [M.O.4] in the presence of the said witnesses under the cover of Mahazer [Ex.P.7]. The Inspector of Police [P.W.11] has also examined the witnesses and the Doctors and thereafter, he filed the final report before the learned Judicial Magistrate No.2, Thoothukudi in P.R.C.



No.33 of 2008 as against the accused. The same has been taken cognizance by the learned Principal Sessions Judge, Tuticorin in S.C.No.280 of 2008.

5. During the trial, 11 witnesses were examined on the side of the prosecution and 9 exhibits were marked and 6 Material Objects were also produced.

6. The available evidence of the prosecution witnesses are as follows:

6.1. P.W.1 is the defacto complainant and he speaks about the complaint [Ex.P.1] and the injury caused to him by the accused.

6.2. P.W.2 is the Doctor, who gave treatment to P.W.1 and issued Accident Register [Ex.P.2].

6.3. P.W.3 is the Supervisor of the SICOR Container Yard on the Harbour Construction Road, who took the victim to the Government Hospital, Thoothukudi and also attested the complaint [Ex.P.1].

6.4. P.W.4 and P.W.9, have not supported the case of the prosecution and they have been treated as hostile witnesses.

6.5. P.W.5 and P.W.6, are examined as witnesses to the Observation Mahazar.

6.6. P.W.7 is the Head Constable, who received the intimation from the Hospital and conveyed the message to the Sub Inspector of Police, Muthiahpuram [P.W.8].

6.7. P.W.8 is the Sub Inspector of Police, Muthiahpuram, who registered the FIR.

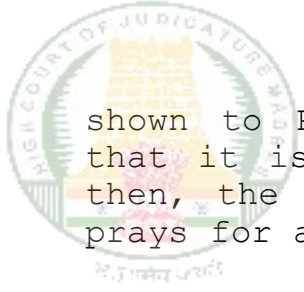
6.8. P.W.10 is the Doctor, who prepared the X-ray report of P.W.1.

6.9. P.W.11 is the Investigation Officer, who filed the final report.

7. After the prosecution evidence was closed, the incriminating materials were put to the accused under Section 313 Cr.P.C and the accused has denied the same. Though he has stated that there are witnesses in support of his case, he has neither examined any witness nor produced any documents. In conclusion, the trial Court has found the appellant guilty and convicted him as stated supra.

8. Heard Mr. Balamurugan, for M/S. Jeyapaul Associates, learned counsel appearing for the appellant and Mrs. S. Bharathi, learned Government Advocate (Crl. Side) appearing for the respondent.

9. The learned counsel appearing for the appellant would contend that the occurrence has taken place on 13.08.2008, at about 06.30 p.m and the FIR was registered in Crime No.203 of 2008, on the same day, at about 10.30 p.m. But, the FIR reached the concerned Court only on the next day, ie., on 14.08.2008, at about 7.30 p.m. Hence, there is an inordinate delay of 25 hours in the FIR reaching the Court and this delay is a material defect on the side of the prosecution. He would further submit that the weapon has not been established in this case. When the knife [M.O.4] was



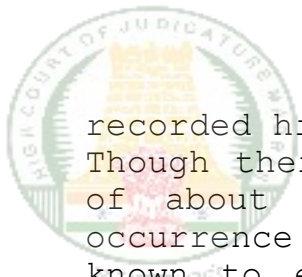
shown to P.W.1 for identification, P.W.1 has specifically denied that it is not the weapon, which was used by the accused. Even then, the trial Court has convicted the accused and therefore, he prays for allowing this appeal.

10. Per contra, the learned Government Advocate (Crl. Side) appearing for the respondent police would submit that the occurrence has taken place on 13.08.2008 at about 06.30 p.m and the victim was taken to the Government Hospital, Thoothukudi by the Supervisor [P.W.3]. The victim was admitted in the Hospital by the Doctor [P.W.2] at about 07.30 p.m and the Doctor, who examined the victim, has categorically stated that the victim sustained five injuries, which were grievous in nature and that the victim informed him that he was assaulted by one known person by knife. During the investigation, the Doctor [P.W.2] has categorically stated that if proper treatment has not been provided to the victim, the victim might have died. Apart from the same, the arrest and recovery were made by the Investigation Officer [P.W.11] in the presence of the witness [P.W.6]. Therefore, there is no reason to interfere with the conviction and sentence imposed by the trial Court and prays for dismissal.

11. This Court paid it's anxious consideration to the rival submissions and also perused the available records.

12. Admittedly, the occurrence has taken place on 13.08.2008 at about 06.30 p.m, P.W.1-Kumar as well as the accused were employed as Securities in the SICOR Container Yard on the Harbour Construction Road and there was a misunderstanding between them, since P.W.1 found fault with the style of working of the accused. On the date of occurrence, while P.W.1 was on duty at the container yard on the Entry gate and one Antony was at the Exit gate, the accused came there to relieve Antony at the exit gate. After having a brief talk with Antony, the accused came to P.W.1, questioned him as to why he complained about the performance of his duty. Subsequently, there was a wordy quarrel between the accused and P.W.1. The Supervisor [P.W.3] pacified both P.W.1 and the accused, but the accused left the place by saying that he was not interested to continue with the job. Thereafter, on the same day, at about 6.30 p.m the accused again came to the SICOR Container Yard, approached P.W.1, took out a knife and caused stab injuries on P.W.1/victim's left and right shoulders, ribs etc. On hearing the alarm raised by P.W.4 and P.W.9, the accused ran away from the place of occurrence. P.W.3 took the victim to the Government Hospital, Thoothukudi.

13. The Doctor [P.W.2] at Government Hospital, Thoothukudi, noted the injuries and categorically stated that if proper treatment has not been provided to the victim, the victim would have died and that the injuries sustained by the victim are serious in nature. On receipt of the intimation, the Sub Inspector of Police [P.W.8] reached the Government Hospital, Tuticorin, enquired the injured



recorded his statement [Ex.P.1] and therefore, registered the case. Though there is no delay in registering the FIR, there is a delay of about 25 hours in FIR reaching the Court. Admittedly, the occurrence took place in the work yard. Both P.W.1 and accused were known to each other and P.W.1 was taken to the Hospital by the Supervisor [P.W.3]. The Sub Inspector of Police [P.W.8] collected the Accident Register [Ex.P.2] from the Doctor [P.W.2] that the injuries were sustained on account of assault caused by a known person.

14. In the facts and circumstances of the case, though there is a lacuna on the part of the investigating agency in sending the FIR to the Court belatedly, this delay cannot be considered as a material defect as against the prosecution case, inasmuch as the victim was immediately taken to the Hospital, where his statement along with the wound were recorded in the Accident Register [Ex.P.2]. In so far as other ground raised by the learned counsel for the appellant/accused that the weapon has not been established in this case is concerned, it is seen that when the knife [M.O.4] was produced before P.W.1 for verification as to whether this weapon was used by the accused to commit the offence, P.W.1 has stated that a weapon like M.O.4 was used. In fact, the weapon [M.O.4] was recovered by the Investigation Officer [P.W.11] in the presence of P.W.6, from a hidden place, which was identified by the accused on 14.08.2008. Pursuant to his confession statement only, the knife [M.O.4] was recovered on 14.08.2008 and the arrest and recovery have also been established by the witness, P.W.6. Apart from the same, the Doctor [P.W.2] has also categorically stated that the injuries sustained by the victim is possible by a Weapon like the knife recovered [M.O.4].

15. The occurrence was taken place around 06.30 p.m, when P.W.1 was on his duty, the accused, who is a co-worker, came near him, suddenly took a knife [M.O.4] and also stabbed him on various parts. The victim [P.W.1] sustained as many as 5 injuries and all the injuries are penetrating injuries and according to the Doctor [P.W.2], the injuries are possible through the weapon [M.O.4]. The weapon [M.O.4] was also recovered pursuant to the confession statement of the accused, which was hidden in a secret place. The occurrence was taken place in the year 2008 and the evidence was recorded in the year 2009. The victim, who suffered a sudden attack from a co-worker when he was on duty and who also sustained five injuries, out of which, some of the injuries are grievous in nature, cannot be expected to have a photogenic memory to remember the weapon-knife [M.O.4], which was used at the time of occurrence and to identify the same during the trial. He was not sure that the weapon-knife [M.O.4] was the knife that was used by the accused on the date of occurrence. But, he has stated that it is a weapon like that of the weapon-knife recovered [M.O.4]. Therefore, P.W.1's doubt over the weapon recovered [M.O.4] during the trial, which was also conducted after a year, cannot be a ground to disbelieve the case of the prosecution.



16. In view of the foregoing discussions, this Court feels that the prosecution has proved the case beyond reasonable doubt and there is no reason to interfere with the findings given by the trial Court and therefore, the conviction and sentence imposed by the learned Principal Sessions Judge, Tuticorin, in S.C.No.280 of 2008, dated 18.09.2009 are confirmed.

17. Accordingly, the Criminal Appeal is dismissed. The trial Court is directed to secure the appellant /accused and convict him in prison to undergo the remaining period of sentence. Bail bonds, if any, executed shall stand terminated.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

vsg

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Principal Sessions Judge,
Tuticorin.

2. The Inspector of Police,
Muthiapuram Police Station,
Muthiapuram,
Tuticorin.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

4. The Section Officer,
Criminal records Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.J.ASHOK, Advocate (SR-97364[F] dated 11/11/2019)

Cr1.A(MD)No.291 of 2009
07.11.2019

SMA/05/08/2020/6P/6C

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