



Bail Slip

Petitioner / Appellant / Accused namely S.Subbiah was released on Bail, as per order of this Court dated 19/11/2013 made in MP(MD) No.1/2013 in CrI.A.(MD)No.315/2013.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CrI. A.(MD)No.315 of 2013

S.Subbiah

.. Appellant/Sole Accused

Vs.

The State rep. by,
The Inspector of Police,
Pudukottai Police Station,
Thoothukudi District.
(Crime No.166 of 2011)

.. Respondent/Complainant

Prayer : This Criminal Appeal is filed under Section 374(2) of Cr.P.C., to call for the records pertaining to the Judgment passed by the II Additional District and Sessions Judge, Thoothukudi, dated 11.10.2013 in S.C.No.146 of 2013 and thereby convicting and sentencing the appellant to suffer five years Rigorous Imprisonment and to pay a fine of Rs.2,000/- in default to undergo the sentence of two months Rigorous Imprisonment for the offence under Section 307 of I.P.C., set aside the same, acquit the appellant.

For Appellants : Mr.K.Sundaravel, for Mr.B.Vinoth Balan.

For Respondent : Mr.A.Robinson,

Government Advocate(CrI. Side).

JUDGMENT

The appellant was convicted for the offence under Section 307 of I.P.C. and sentenced to undergo five years Rigorous Imprisonment and levied with a fine of Rs.2,000/- vide Judgment dated 11.10.2013 in S.C.No.146 of 2013 on the file of the II Additional Sessions Judge, Thoothukudi.

2. The case of the prosecution is that on 18.03.2011 at about 08.30 p.m., the appellant went to the house of his father-in-law Ramasamy/P.W.1 and demanded that P.W.1's daughter, that is the wife of the appellant should rejoin him. Since P.W.1 refused, the appellant is said to have used abusive expressions and also picked up a stone and hit him on his face causing injuries. In this regard Ex.P.1 complaint was lodged by P.W.1 Ramasamy. Ex.P.4 First Information Report in Crime No.166 of 2011 was registered on the file of Puthukkottai police station, Thoothukudi District, for the offences under Section 294(b) and 307 of I.P.C. Investigation was taken up and after completion of all the usual formalities, final report was laid against the appellant before the Judicial Magistrate No.1, Thoothukudi, for the aforesaid offences. The case was committed to the Sessions Court in P.R.C.No.23 of 2013. Charges were framed against the appellant for the offences under Sections 294(b) and 307 of I.P.C. The appellant denied the charges and claimed to be tried.



3. The prosecution examined as many as six witnesses and marked Ex.P.1 to Ex.P.6. The learned trial Magistrate after a detailed consideration of the evidence on record, came to the conclusion that the prosecution established its case beyond reasonable doubt. The appellant was therefore found guilty for the offence under Section 307 of I.P.C., and sentenced to five years Rigorous Imprisonment. Challenging the same, this criminal appeal came to be filed.

4. Heard the learned counsel on either side.

5. The learned counsel appearing for the appellant pointed out that the relationship between the appellant and his wife P.W.2 came under strain for various reasons. On 18.03.2011, P.W.1 and P.W.2 Amala Gnanavadiivu came to the house of the appellant and picked up quarrel. During the said occurrence, the chain worn by the appellant was said to have been snatched away. In this regard, the appellant herein lodged a complaint before Pudukkottai police station, Thoothukudi District. That the appellant lodged such a complaint is admitted by P.W.1. Even in the cross examination, P.W.1 fairly stated that he was examined in that regard by the police. But then, the prosecution appears to have completely suppressed the said complaint. The learned counsel appearing for the appellant would point out that after the occurrence, P.W.1 while running away, appears to have fallen down and in that process, sustained the injuries in question.

6. I went through Ex.P.5, copy of the Accident Register which was marked through P.W.5. He had clearly stated that P.W.1 was smelling of Alcohol at the time of examination. He further stated that the injuries suffered by him are simple in nature.

7. The specific case of P.W.1 is that the accused came to the house, picked up quarrel and hit him hard with a stone. But it is not the case of P.W.1 that after hitting him, the accused took away the stone with him. Therefore, the said stone ought to have been recovered by the investigation officer. Only then, he could have verified as to whether the said stone was capable of causing the injuries suffered by P.W.1. The defence of the accused is that while running away in alcoholic condition P.W.1 fell on the road and sustained the injuries in question. The allegation of P.W.1 is that the appellant hit him with a stone and he suffered injuries on the face. Therefore, the stone in question is playing a vital role. Unless it had been recovered, one cannot come to the conclusion as to whether the injuries suffered by the victim are possible of being caused by the stone in question. Non-recovery seriously affects the prosecution case. From the Rough Sketch, one can see that the house of the victim is located proximately to the houses of Dhiraviyam, K.T.C. driver, Maalaiyammal and Muthusamy. None of them were examined as witnesses. Likewise in the complaint, P.W.1 would refer to Esakki and Palanisamy. His claim is that when they came to the



rescue, the appellant ran away. It is not known as to whether the said Esakki and Palanisamy are the residents of the locality. In any event, in the Rough Sketch, their names are not mentioned. They were also not examined by the prosecution.

8. The occurrence is said to have taken place in the year 2011. Subsequently, the marital tie between the appellant and P.W.2 got snapped on account of passing of a divorce decree by the competent Court. The appellant got remarried. P.W.2 Amala Gnanavadiyu also got remarried. The parties have gone their respective ways. In this case, P.W.1 claims that after he fell down, the appellant hit him with a stone on his head. But no such head injury is found in the Accident Register. Thus the appellant's counsel submits that the theory of head injury was invented for the purpose of attracting the offence under Section 307 of I.P.C. The injuries found on P.W.1 are rather simple in nature. But then, the Court below chose to hand out a stiff sentence of 5 years Rigorous Imprisonment. The sentence imposed by the Court below shocks my conscience. Be that as it may, for the reasons set out above, the impugned Judgment is set aside. The appellant is acquitted. The bail bond, if any executed by him shall stand cancelled. The fine amount, if any, paid by him shall be refunded forthwith.

9. The Criminal appeal stands allowed, accordingly. No costs.

Sd/-

Assistant Registrar (Crl.side)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

pmu

To

1. The II Additional District and Sessions Judge,
Thoothukudi.
2. The Inspector of Police,
Pudukottai Police Station,
Thoothukudi District.
3. The Section Officer,
Criminal Section,/Crl.Record
Madurai Bench of Madras High Court, Madurai.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
5. The Superintendent, Central Prison,
Palayamkottai.

+1 CC to M/s.B. VINOTH BALAN, Advocate (SR-83606[F]

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26.08.2019