



BAIL SLIP

Madasamy, (aged 50 years), s/o Muthu Velandy, Petitioner / Appellant / Sole Accused, was released on bail of this Court order dated 20.03.2014 made in MP(MD)No.1 of 2014 in Crl A(MD)No.105 of 2014.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :18.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.A(MD)No.105 of 2014

Madasamy ... Appellant / Sole Accused

Vs.

State represented by
the Inspector of pOlice,
Andipatty Police Station,
Theni District.

[Crime No.36 of 2005] ... Respondent/ Complainant

PRAYER: Appeal filed under Section 374(2) of the Code of Criminal Procedure, to call for the records and set aside the conviction and sentence passed in S.C.No.17 of 2008, dated 24.02.2014, on the file of the learned Mahila Court (Additional Sessions Judge), Theni and allow this appeal and acquit the appellant/accused from the charges levelled against him.

For Appellant : Mr.N.Sasikumar,
Legal Aid Counsel

For Respondent : Mr.K.K.Ramakrishnan,
Additional Public Prosecutor

JUDGMENT

This appeal is filed by the appellant/ accused in S.C.No.17 of 2008, against the judgment dated 24.02.2014 passed by the learned Additional Sessions Judge, Mahila Court, Madurai.



2.The appellant stood charged for the offence punishable under Sections 498(A) and 307 IPC before the Mahila Court, Madurai in S.C.No.17 of 2008 and by judgment dated 24.02.2014, the learned Additional Sessions Judge, Mahila Court, acquitted the appellant from the charges under Sections 498(A) and 307 IPC. However, the learned Judge, found the appellant guilty for the offence under Section 324 IPC, convicted and sentenced him to undergo three months rigorous imprisonment.

3.As against the conviction and the sentence imposed by the trial Court, the present Criminal Appeal has been filed.

4.1.The brief facts of the prosecution case are that Sundarammal [PW3] is the second wife of the appellant. Muthammal [PW1]/defacto complainant is the mother of PW3. Karuppaiyah [PW2] is the brother of PW3 and the appellant was known to PW1 and he had already married one Annamalai and later on divorced her as per their customs. Subsequently, the appellant married PW3, the daughter of PW1. Thereafter, the appellant again started living with her first wife and the appellant started harassing PW3. On knowing this, on 18.01.2005 at about 1.30pm, PW1 and PW2 went to the house of the appellant and the appellant and PW3 were present there. At that time PW2 questioned the appellant about the harassment caused by the appellant to his sister [PW3]. Infuriated over the same, the appellant stated that only if you die, he can live peacefully and took a knife from his waist and stabbed on the left chest of PW2 and pushed him down and he sustained grievous injury. Immediately, PW1 took the PW2 to the Government Hospital at Andipatti. Wherein the Doctor PW4 admitted the PW2 and issued wound certificate [Exp2]

4.2.PW7, on information from the Government Hospital, Andipatti on 18.01.2005 at 2.15pm, went to the Government Hospital, Andipatti at 2.30pm. As the PW2 was in treatment and he was unable to speak, he recorded the statement[Exp1] of PW1 the mother of PW2 and then he registered a case in Crime No.36 of 2005 for the offence under Section 307 IPC and the FIR is marked as Exp6.

4.3.The Inspector of Police [PW8] took the investigation and around 4.30pm he went to the place of occurrence and prepared an observation Mahazar [Exp7] and a rough sketch [Exp8] in the presence of the Village Administrative Officer, Thimmarasannayakkanpatti [PW5]. Around 7.00pm on the same day, PW8 arrested the appellant and recorded his voluntary confession statement [Exp4] in the presence of Village Administrative Officer, Andipatti Puthur [PW6] and his Village Assistant [PW10]. At the instance of the appellant, PW8 recovered a knife [MO1] under Athaksi [Exp5]and recorded the statement of the witnesses.

4.4.As PW8 was transferred, PW9 the Inspector of Police
<https://hccourtmd.gov.in/services/> conducted investigation and filed a final report as against



the appellant/accused for the offence under Section 498 (A) and 307 IPC.

5. During the trial on the side of the prosecution 11 witnesses have been examined and 10 documents have been marked as exhibits and 1 material object was produced.

6. The available prosecution evidence are as follows:

6.1. PW1 the mother of the PW2 and PW3, is the defacto complainant. She is an eye witness to the occurrence.

6.2. PW2 is the victim/ son of PW1 and brother of PW3. He has narrated the occurrence and the injury sustained by him in that occurrence.

6.3. PW3 the second wife of the appellant. she is also an eye witness. She speaks about the occurrence. She speaks about the harassment caused to her by the appellant.

6.4. PW4 is the Doctor at Andipatti Government Hospital, who had given treatment to the victim and issued wound certificate [ExP2] that the injuries sustained by the victim are simple in nature.

6.5. PW5 is the then Village Administrative Officer of Thimmarasanayakkanpatti and he the witness for the observation mahazar [ExP3].

6.6. PW6 is the then Village Administrative Officer of Andipatti Puthur and also a witness to arrest of the appellant and to the confession statement of the appellant [ExP4] and recovery of knife [M01].

6.7. PW7 is the then Special Sub Inspector of Police, Andipatti Police Station and he speaks about the registration of the case in Crime No.36 of 2005.

6.8. PW8 is the then Inspector of Police at Andipatti Police Station, who conducted preliminary investigation in this case.

6.9. PW9 is then Inspector of Police at Andipatti, who completed the investigation and filed the final report.

6.10. PW10 is the Village Assistant and he is a witness to the confession statement [ExP4] and Athakshi [ExP5]

7. The incriminating materials were put before the accused under Section 313 CrPC and he denied the same as false and on the side of the accused, no witness has been examined and no document



8. In conclusion of the trial, the trial Court found the appellant/accused guilty for the offence under Section 324 IPC and convicted and sentenced him as stated supra. As against the conviction, the present appeal is filed.

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9. When the matter was taken up for hearing in the month of June 2019, there was no representation on two hearings and therefore, the case was posted under the caption for dismissal. There was no representation, even on the subsequent hearing on 26.09.2019 and therefore, this Court appointed Mr. Sasi Kumar, who is having twenty years experience in criminal side, as Legal Aid Counsel to proceed with the appeal.

10. Heard Mr. N. Sasi Kumar, learned Legal Aid Counsel for the appellant and Mr. K. K. Ramakrishnan, learned Additional Public Prosecutor for the State.

11. Mr. N. Sasi Kumar, Legal Aid Counsel would submit that admittedly the occurrence has taken place in the house of the appellant / accused. PW2 is the aggressor in this case. The injuries sustained by PW2 are also on account of rash and negligent act on the part of PW2 himself. But, however, on previous enmity, PW1, PW2 and PW3 have foisted this false complaint against the appellant to wreck vengeance. He also pleaded that there is an inordinate delay in registering the FIR and also the FIR reaching the Court. Therefore, the benefit of doubt has to be extended to the appellant and the appeal be allowed by setting aside the conviction and sentence imposed by the trial Court.

12. Per contra, Mr. K. K. Ramakrishnan, learned Additional Public Prosecutor would submit that though PW1, PW2 and PW3 are close relatives, they are also relatives to the appellant/accused. PW3 is none other than the wife of the appellant, PW2 is the brother-in-law and PW3 is the mother-in-law. There is no delay in reporting the incident. The occurrence has taken place on 18.01.2005 at about 1.45pm and immediately the injured [PW2] was taken to the Government Hospital, Andipatti within half an hour. The Doctor [PW4] at Government Hospital, Andipatti treated PW2 and noted down the injuries in the wound certificate [Exp2]. Injury No.1 is a stab injury. The accused was also arrested on the same day at about 4.30pm and a knife [MO1] was recovered pursuant to his confession statement and the prosecution has laid the final report for the offence under Section 307 IPC. However, the trial Court convicted the accused only for the offence under Section 324 IPC and therefore, there is no reason to interfere with the order of the trial and the appeal be dismissed.

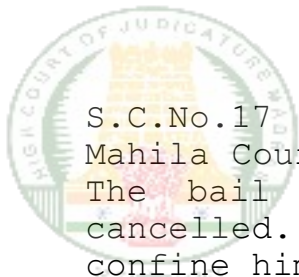
13. This Court paid its best attention and anxious consideration to the rival submissions and perused the materials



14.This appellant married PW3 Sundarammal as second wife fifteen years prior to the occurrence and they are having children out of their marriage. After sometime, the appellant resumed his relationship with his first wife. Therefore, there was a misunderstanding between the husband and wife, the appellant and PW3. PW1 - the mother of PW3 and PW2 - brother of PW3 went to the appellant's house on 18.01.2005, in support of PW3, to condemn the activities of the appellant. At that time, there was a wordy quarrel between them and consequent to that this appellant caused injury to PW2 on her chest. The occurrence has taken place at about 1.45pm and the injured PW2 was taken to the Government Hospital, Andipatti immediately and he was treated at the Government Hospital, Andipatti by Dr.Saraswati [PW4] on 18.01.2005 at 2.15pm and she has also issued wound certificate Ex.P.2

15.In the earliest information to the Doctor [PW4], it was informed that the victim [PW2] was stabbed by a known person with soori knife in his sister's house at T.Bomminayakkanpatti on 18.01.2005 at about 1.45pm. The victim [PW2] was taken to the hospital by his mother Muthammal, wife of Kalimuthu and therefore, the presence of PW1, PW2 and PW3 in the place of occurrence is not in dispute. No doubt they are relatives to each other. Similarly, they are also close relatives to the appellant/accused. All the three eye witnesses have categorically stated about the manner of occurrence and have also identified the weapon MO1 soori knife. This appellant was also arrested on the same day at about 5.00pm and pursuant to his confession statement, the weapon [MO1] was recovered in the presence of Alagarsamy, Village Administrative Officer [PW6] and Rajendran, Village Assistant [PW10]. There is no delay in reporting the incident and the FIR reaching the Court. The occurrence has taken place on 18.01.2005 at about 1.45pm and the victim was taken to the hospital and admitted in the Government Hospital at Andipatti at about 2.25 pm and on the intimation from the Government Hospital, Andipatti, Special Sub Inspector of Police, Muthusamy[PW7] went to the Government Hospital at Andipatti, recorded the statement of PW1 at about 2.30pm, returned to the Police Station and registered a case in Crime No.36 of 2005 at about 3.15pm on the same day. The investigation was commenced at about 4.30pm, the observation mahazar and rough sketch were prepared from the place of occurrence and the accused was also arrested at about 5.00pm and the weapon MO.1 was recovered pursuant to the confession statement of the accused. A futile attempt was made on the side of the accused to explain before the Doctor [PW4] the injury is possible by rash and negligent act of PW2 himself. The evidence of the Doctor corroborates the evidence of PW1, PW2 and PW3. The evidence of PW1, PW2, PW3 are cogent and there is no reason to discredit their evidence.

16.In fine, there is no reason to interfere with the orders of the trial Court. Accordingly the appeal is liable to be dismissed. The conviction and sentence imposed by the trial Court in



S.C.No.17 of 2008, dated 24.02.2014, on the file of the learned Mahila Court (Additional Sessions Judge), Theni is hereby confirmed. The bail bonds if any executed by the appellant shall stand cancelled. The trial Court is directed to secure the appellant and confine him to prison, to undergo the remaining period of sentence.

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Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

- 1.Mahila Court (The Additional Sessions Judge),
Theni.
- 2.The Inspector of Police,
Andipatty Police Station,
Theni District.
- 3.The Judicial Magistrate, Adipatti, Theni District.
- 4.The Chief Judicial Magistrate, Theni District.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to:

The Section Officer, (2 copies)
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.V.SASI KUMAR, Advocate (SR-93259[F] dated 21/10/2019)

Cr1.A(MD)No.105 of 2014
18.10.2019

dsk

SDS (05.08.2020) 6P-9C