

Bail Slip

The Appellant/Accused Alagar @ Maialagar, S/o.Krishnan was enlarged on bail by the order of this Court in MP(MD).No.1/2014 in Crl.A. (MD) .No.184/2014 dated 24.06.2014 on the file of this Court.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 17.07.2019

Judgment Dated: 26.07.2019

CORAM

THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI

Crl.A. (MD) No.184 of 2014

Alagar @ Maialagar : Appellant/A1

Vs.

State through
The Inspector of Police,
B-6, Jaihindpuram Police Station,
Madurai.

In Crime No.1105 of 2009 : Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374 of the Criminal Procedure Code against the judgment made in S.C.No.110 of 2011, dated 29.04.2014 on the file of the V Additional District and Sessions Judge, Madurai.

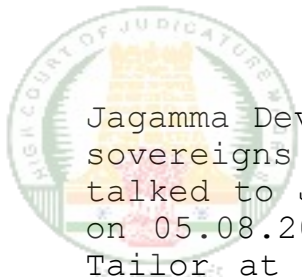
For Appellant : Mr.V.P.Rajan

For Respondent : Mr.R.Anandharaj,
Addl. Public Prosecutor

J U D G M E N T

This Criminal Appeal is directed against the judgment passed in SC No.110 of 2011, dated 29.04.2014 by the 5th Additional District and Sessions Judge, Madurai.

2. According to the prosecution, the victim Jayapandi was working as 'Tailor' in a Tailor shop and the 1st accused Alagar @ Maialagar's wife Jagamma Devi and Jayapandi were in love prior to 3 years from the date of occurrence and Jagamma Devi and the 1st accused got married and after marriage, Jagamma Devi and the victim Jayapandi were frequently talking through cell phone, for that, the 1st accused questioned and warned his wife and further more, in spite of demands to return half sovereign of gold ring, which was given by



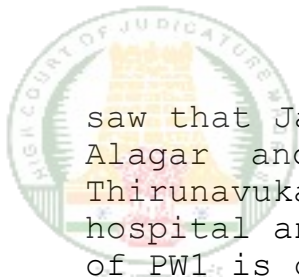
Jagamma Devi to Jayapandi before marriage and he did not return half sovereigns of gold ring and with regard this, Jayapandi has again talked to Jagamma Devi over phone and due to this, A1 got angry and on 05.08.2009 at 3.00 pm, he along with A2 and A3 went to Breeze Tailor at Melamasi Street, Madurai and called Jayapandi and asked him to come to Jagamma's house in order to talk about Jagamma Devi and during conversation, dispute arose and A1 took mason plastering tool and hit Jayapandi on the back side of his head and subsequently, all the accused by using their hands repeatedly hit him near his right eye and face and as a result of which, Jayapandi fell unconscious and the accused thought that Jayapandi died and took him to near vacant land and left him there and ran away. The Inspector of Police attached to B6-Jaihindpuram Police Station has filed a final report against the accused by examining the witnesses.

3. In the trial court, 13 witnesses were examined and 14 Exhibits and 1 material object were marked. When the accused were questioned about the incriminating circumstances, they denied the same. On the side of the accused, no witness was examined and no documents were marked. The trial court convicted the 1st accused alone for the offence under Section 324 IPC and sentenced him to undergo three months Rigorous Imprisonment and to pay a fine of Rs.3,000/-, in default to undergo simple imprisonment for one month and acquitted the accused persons from the charges under Section 307 IPC. Aggrieved by the judgment passed by the trial court, the appellant/A1 is before this court.

4. Heard both sides and perused the materials available on record.

5. The contention raised on the side of the appellant/A1 is that there is no direct eye witness against A1 and the other accused and the conviction on the basis of hearsay witness is against law and the motive against the accused is not established and the motive behind the occurrence is a trivial in nature and the dispute also involved half sovereign of gold and PW5 has no moral character and it is alleged in the complaint that he continued his love affairs with PW9, who is none other than the wife of A1 and PW1 is the blood relative of PW5 and hence, PW1 is an interested witness and the independent witness was examined and hence, it is fatal to the prosecution and prays that the criminal appeal has to be allowed.

6. In this case, PW1 is the brother of PW5 and he gave Ex.P1 complaint. PW1 in his complaint and evidence stated that on 05.08.2009 at 2.00 pm, Alagar/A1 telephoned him informing that he has kidnapped his brother Jayapandi and demanded to bring half sovereign of gold ring, which belongs to his wife Jegamma Devi and one year prior to the occurrence, Jayapandi and Jagamma Devi were in love and Jagamma Devi got married to Aalar and at 11.45 pm, PW1 went to Alagar's house and asked about PW5 Jayapandi, he informed that



saw that Jayapandi in blood and he told them that he was attacked by Alagar and others hit him on his right eye and he and PW2 Thirunavukarasu called 108 Ambulance and took Jayapandi to the hospital and gave Ex.P1 complaint to the police. Hence, the evidence of PW1 is corroborated with the contents found in Ex.P1 complaint.

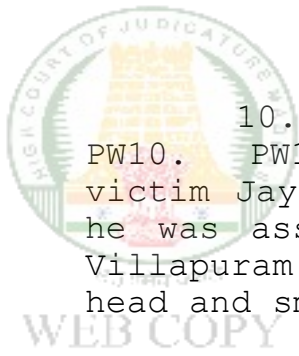
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7.PW5 is the victim. PW5 deposed that on 05.08.2009 after 2.00 pm, when he was at his shop Balakrishnan and two others came and took him in a two wheeler and he loved the 1st accused wife PW8/Jagamma Devi and thereafter, PW8 got married to the 1st accused Alagar and the three accused called PW5 and informed him that within 10 minute, he can go, hence, PW5 informed this to the Manager that PW5 is going to have lunch and he went along with these accused in two wheelers and the accused took her to the Villapuram Water Tank and there 4, 5 persons were consuming alcohol and at 4.00 pm, at the said place, he was beaten by the accused and some one informed his brother PW1 Nagendran and the accused demanded ¼ sovereign of gold ring, which was given by his wife and demanded to his elder brother PW1 to bring the same or otherwise pay for the gold ring. When PW1 did not turned up in time, the 1st accused informed PW5 that PW1 Nagendran is not caring for PW5 wife and thereafter, at 5.00 pm, he was taken to the 1st accused house and gave a punch on his face and thereafter, the 1st accused took him to his house and PW8 also demanded the ring and the 1st accused took masonry scale, a wooden heavy scale used for construction and gave one blow on his body and the 1st accused took masonry plastering tool and said do way him and the 1st accused came to hit on the face of PW5, he turned, as a result, he sustained injury on his back side of his head and fell down and thereafter, the accused kicked him and the accused caught hold of PW5, he fell unconscious.

8.PW2 deposed that he known PW1 and his brother Jayapandi and there was love affairs between Jayapandi and Jegamma Devi, now who is the wife of A1 and on 05.08.2009, PW1 told that Jayapandi was kidnapped by A1 and demanding half sovereigns of gold ring, which belongs to Jagamma Devi and subsequently went to the house of A1 and searching PW1, he went to the A1's house and asked about Jayapandi and he informed that Jeyapandi was at Avaniapuram Water Tank, when PW1 went there and saw Jayapandi in blood and told that he was assaulted by Alagar and others hit him on right eye and then, he called 108 Ambulance and Jayapandi admitted into the hospital and PW1 gave Ex.P1 complaint to the police.

9.PW3 deposed that on 05.08.2009 Jeyapandi was working with him till 2.00 am and A1 along with 20 persons came to his shop and they took Jayapandi in an auto and he enquired it to PW1 and for that, PW1 replied that Jayapandi is having half sovereigns of gold ring of Jagamma Devi and then heard that Jeyapandi was assaulted by the accused persons and then, he went to the Government Hospital and saw the victim Jayapandi. Hence, the evidence of PW5 is corroborated with the evidence of PW1 to PW3.

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10.The Doctor, who gave treatment to PW5 was examined as PW10. PW10 deposed that when he was on duty on 06.08.2009, the victim Jayapandi was brought in 108 Ambulance and he told him that he was assaulted by some unknown persons at 1.45 pm opposite to Villapuram and he found 2 x 1 x 2 cm injury on the back side of the head and small injury on the right eye.

11.It is to be noted that PW5 during his evidence stated that A1 took masonry plastering tool and assaulted on his face and when he turned, he sustained injury on his back side of his head.

12.PW10 the Doctor, who gave treatment to PW5 found injuries on the back side of the head and small injury on the right eye of PW5. Hence, the evidence of PW5 is corroborated with the evidence of PW10.

13.PW4 is the arrest and recovery witness. PW4 deposed that on 07.08.2009 at 10.00 am, when he and one Siva Pandi were going to do work in Jaihindpuram, the police arrested A1 and A1 gave confession statement and on the basis of the confession, the weapon used for the commission of the offence was recovered.

14.The learned counsel appearing for the appellant/A1 argued that there are 2 FIRs, first FIR registered by the Avaniyapuram Police Station in Crime No.493 of 2009 on 06.08.2009 at 18.00 hours under Section 307 IPC and the date of occurrence was mentioned in the first FIR was on 05.08.2009 from 14.00 to 0.45 hours and the place of occurrence was shown as Villapuram Opposite to EB Office and the second FIR was registered by B-6 Jaihindpuram Police Station, in Crime No.1105 of 2009 on 05.11.2009 at 12.30 hours against these accused persons under Section 307 IPC and the date of occurrence was 05.08.2009 from 14.00 to 00.45 hours and the place of occurrence was shown as M.K.Puram in the 1st accused house.

15.PW1 has given the complaint (Ex.P1) and on that basis, the First Information Report was registered by the Avaniyapuram Police and further, it is argued that PW1 is not the eye witness and he is hearsay witness that is why, he was not able to give the correct place of occurrence and PW1 has given report and on the basis of the report, Ex.P9 FIR was first registered by Avaniyapuram Police Station, after examination of the witnesses, since the occurrence took place at Jaihindpuram Police Station limit on 05.11.2009 and the Investigating Officer of Avaniapuram Police Station gave report to Jaihindpuram Police Station and they registered the second FIR and on investigation, the 2nd FIR was registered and the 2nd FIR is the continuous part of the investigation of the 1st FIR and there is no separate investigation for the 2nd FIR and due to change in territorial jurisdiction of police station, 2nd FIR was registered only as continuous part of the investigation and due to the above said reasons, two FIRs for the same occurrence does not vitiate the 1st FIR investigation is continued, since there the

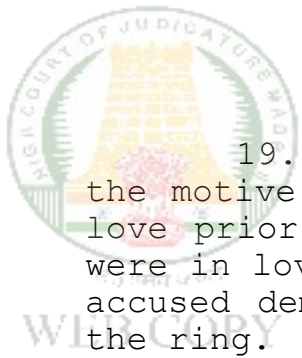


original place of occurrence was at Jaihindpuram Police and the 2nd FIR was a part of the continuous investigation of the 1st FIR. Hence, it is not fatal to the prosecution.

16.The next contention raised on the side of the appellant/A1 is that there is a delay in registering FIR and the time of occurrence was on 05.08.2009 from 14.00 to 00.45 hours and the FIR registered by the Avaniyapuram Police Station in Crime No.493 of 2009, dated 06.08.2009 at 18.00 hours under Section 307 IPC as against the accused persons and PW1 has given complaint wherein he has stated that on 05.06.2009 at 2.00 pm, the 1st accused called PW1 through a cell phone and informed him that to bring half sovereign of gold ring otherwise he would kill his brother PW5 and on that night, PW5 did not turn up to the house and thereafter, he heard that these accused have attacked PW5 and he was in unconscious state of mind and hence, he has given the complaint on 06.08.2009 at 18.00 hours and in this case, the eye witness is PW5/ Jayapandi/the victim and all other witnesses are hearsay to the occurrence and Ex.P13 Accident Register, dated 06.08.2009 goes to show that PW5 was admitted on 06.08.2009 at 3.00 am and he was taken by one Ashik Rahman, who was not examined the prosecution and since PW1 has heard about the news, he has given Ex.P1 complaint and thereon, FIR was registered and hence, the delay was explained on the side of the prosecution and explanation is satisfactory.

17.The next argument advanced on the side of the appellant/A1 is that PW13 Seemaraj is the relative of PW1 and PW5, hence, due to the advise and due deliberation PW13, FIR was registered against these accused and admittedly, the FIR was registered against the accused by PW13 and in the FIR, there is no details of the occurrence, only on suspicion PW1 gives complaint against these three accused and he has also wrongly mentioned the place of occurrence as Villapuram opposite to EB office, where PW5 was first seen and only after investigation by PW9, the correct place was unearthed through investigation since the place of occurrence was at 1st accused house, which falls with the jurisdiction of Jaihindpuram Police Station, the case was transferred to Jaihindpuram Police Station and on 05.11.2009 at 12.30 pm, PW11 Murugan was in Jaihindpuram Police Station as per the letter in Cr.No.C1/43833/2009 CPO, the bundle received and he registered the 2nd FIR against these accused and thereafter, PW12 investigated the case and filed final report against these accused and hence, it is clear that there is no advice or due deliberation before registering the FIR.

18.The learned counsel appearing for the appellant/A1 submitted that the motive for the commission of the offence is that PW5/Jayapandi and the 1st accused wife were in love prior to the marriage with the 1st accused and while PW5 and PW8 were in love, PW8 gave ½ sovereign of gold ring to PW5 and the 1st accused has demanded to return the ring to him, but PW5 did not return the ring and this



19. In this case, PW1 to PW3 and PW5 categorically stated that the motive for the offence is that PW5 and the wife of PW1 were in love prior to the marriage with the 1st accused, while PW5 and PW8 were in love, PW8 gave half sovereign of gold ring to PW5 and the 1st accused demanded to return the ring to him and PW5 did not return the ring. Hence, the motive is proved in this case.

20. The trial court on careful perusal of the entire materials available on record, both oral and documentary, had given a correct finding, which does not require any interference by this court. However, considering the fact that the appellant/A1 is the sole breadwinner of the family, the punishment imposed on the appellant/A1 requires modification.

21. In the result, this Criminal Appeal is partly allowed. The punishment imposed on the appellant/A1 for the offence under Section 324 IPC is reduced to one month RI. The fine amount imposed by the trial court is confirmed. The period of sentence, if any already undergone by the appellant/A1 shall be given set off under Section 428 of Cr.P.C. The appellant/A1, after adjusting the period of imprisonment already undergone shall undergo imprisonment for the remaining period.

Sd/-

Assistant Registrar (Writs)

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Sub Assistant Registrar (CS)

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To,

1. The V Additional District and Sessions Judge,
Madurai.
2. The Judicial Magistrate No.IV, Madurai.
3. Do through the Chief Judicial Magistrate, Madurai.
4. The Inspector of Police, B-6,
Jaihindpuram Police Station, Madurai.
5. The Superintendent,
Central Prison, Madurai.



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

+1 CC to M/s.V.P.RAJAN, Advocate (SR-78323[F] dated 29/07/2019)

Judgment made in
Crl.A. (MD) No.184 of 2014
26.07.2019

JMN(30.10.2019) 7P : 8C