



BAIL SLIP

The Appellant/Accused namely Kumar @ Sudalaipazham aged about 43 years, S/o. Ayyapazham, was directed to be released on bail as per order of this court dated 08.02.2016 and made in CRL MP(MD). No.1136 OF 2016 in CRL A(MD).38 of 2016.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	16.04.2019
Date of Judgment	12.07.2019

CORAM

THE HONOURABLE MRS. JUSTICE **T.KRISHNAVALLI**

Crl.A. (MD)No.38 of 2016

Kumar @ Sudalaipazham : Appellant/Sole Accused

Vs.

State represented by
The Inspector of Police,
Thiruverumbur Police Station,
Tiruchirappalli.
(Crime No.173 of 2012)

: Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374 of the Criminal Procedure Code against the judgement, dated 22.10.2013 passed in S.C.No.108 of 2013 by the II Additional District and Sessions Judge, Tiruchirappalli.

For Appellant : Mr.R.Alagumani

For Respondent : Mr.A.Robinson
Government Advocate
(Criminal side)

J U D G M E N T

This Criminal Appeal is directed against the judgement, dated 22.10.2013 passed in S.C.No.108 of 2013 by the II Additional District and Sessions Judge, Tiruchirappalli.

2.The case of the prosecution is that on 31.03.2012 at about 4.00 am, the accused entered into the house of the de-facto complainant and broke open the latch of the house and attempted to commit robbery and when the de-facto complainant attempted to prevent him, at the time the accused attacked him with an iron rod and caused simple injury. The Inspector of Police attached to Thiruvarambur Police Station has filed a final report against the the accused examining the witnesses.



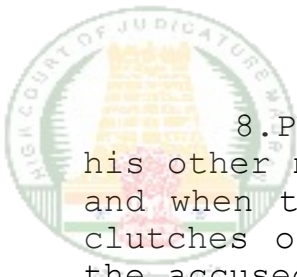
3. In the trial court, 9 witnesses were examined and 7 Exhibits and 1 material object were marked. When the accused was questioned about the incriminating circumstances, he denied the same. On the side of the accused, no witness was examined and no document was produced. The trial court convicted the appellant/accused under Sections 394 and 398 IPC and sentenced him to undergo each 10 years of Rigorous Imprisonment and to pay a fine of Rs.1,000/- each, in default to undergo six months simple imprisonment for each offence. Aggrieved by the judgement passed by the trial court, the appellant/accused 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/ accused is that there are contradictions in the evidence of prosecution witnesses and there was no identification of the accused before the trial Court by the witnesses and further, the accused sustained injuries and there was no explanation for the injuries sustained by the complainant on the prosecution side and there was a delay in giving complaint and prays that the appellant/accused is entitled to acquittal.

6. PW1 is the complainant and he gave Ex.P1 complaint. PW1 in his complaint and evidence stated that on 31.03.2012 at 4.00 am, when he was sleeping at his home, he heard the sound of opening bureau and then he went inside the room and switched on the light, he found that the accused is attempting to open the bureau and when he attempted to catch hold of the accused, he assaulted him with the iron rod, which was in his hand on his forehead left chest and hands and then, he attempted to escape and after his wife and children screamed, the accused attempted to escape by jumping over the compound wall, but the accused was caught hold by the neighbours and when the neighbours attempted to catch hold of the accused, he attempted to assault them with iron rod possessed by him and hence, his neighbours caught hold of the accused and detained him and then he went to the hospital along with the accused and then, he lodged a complaint and then the police recovered one iron rod and another one iron rod was missing during the occurrence.

7. PW2 is the wife of PW1. PW2 deposed that on 31.03.2012 at 4.00 am, she and her children were sleeping in the hall and at that time, she heard the sound of opening bureau and when she went inside the room, she saw that the accused assaulted her husband with iron rod and caused injury on his right shoulder and when the accused attempted to break open the bureau, her husband caught hold of him and after hearing the sound of her and her husband, neighbours came and caught hold of the accused and detained him and then her husband went to Trichy Government Hospital and afterwards her husband gave the complaint. Hence, the evidence of PW1 is corroborated with the evidence of PW2.



8. PW3 is the neighbourhood of PW1. PW3 deposed that he and his other neighbours heard the screaming sound from the house of PW1 and when they came out, they saw that the accused escaped from the clutches of the family members of PW1. Hence, they caught hold of the accused and detained him and thereafter PW1 went to the hospital and afterwards he gave complaint. Hence, the evidence of PW1 is corroborated with the evidence of PW3.

9. PW4 is the arrest and recovery witnesses. PW4 deposed that he went to the Government Hospital to see his relative, at that time the Inspector of Police, Tiruverumbur enquired the accused and the accused gave confession and he signed in the confession statement.

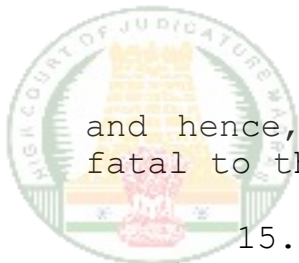
10. The learned counsel for the appellant/accused argued that in the alleged occurrence, the appellant/accused sustained injury, but no documents were produced for the injuries sustained by the accused and the neighbours of PW1 sustained injuries for some other offence by the accused and since PW1 is the Additional Public Prosecutor, a complaint was falsely given as against the accused and there was no occurrence occurred as alleged by the prosecution and prays that the accused is entitled to acquittal.

11. In this case, on the side of the appellant/accused, it is stated that in the alleged occurrence, the accused sustained injuries. But the accused has not chosen to give complaint for the injuries sustained by him. It is to be noted that without giving complaint by the accused against the aggressors, it is not possible to this court to come to the conclusion that in the occurrence, the accused sustained injuries. Hence, the argument put forth on the side of the appellant/accused stating that during the occurrence, the accused sustained injuries and the suppression of the above fact is fatal to prosecution is not at all acceptable.

12. The learned counsel appearing for the appellant/accused further submitted that the date of occurrence is 31.03.2012 at 4.30 am, but the complaint was given on the same day at 5.30 pm and there is a delay in giving complaint to the police and hence, it is fatal to the prosecution.

13. In this case, the date of occurrence is 31.03.2012 at 4.30 am. PW1 categorically stated that after the occurrence, he went to the Government Hospital, Trichy and after taking treatment, he gave the complaint.

14. In this case, PW7 is the Sub Inspector of Police, who received the complaint statement from PW1. PW7 deposed that on 31.03.2012 at 5.30 pm, when he was on duty, he received intimation from the Government Hospital, Trichy and then he went to the Government Hospital, Trichy and recorded the statement of PW1 and came to the police station and registered the case. Hence on careful perusal of the evidence of PW1 to PW7, it reveals that the reason for the delay in registering the case is properly explained



and hence, it is held that the delay in giving complaint is not fatal to the prosecution.

15. For all the reasons stated above, this court is of the considered view that the trial court, after proper appreciation of the entire materials available on record, has given a correct finding, which does not require any interference by this court. However, considering the facts and circumstances of the case and also considering the age of the appellant/accused, the punishment imposed on the appellant/accused requires modification.

16. In the result, the criminal appeal is partly allowed. The punishment imposed on the appellant for the offences under Sections 394 and 398 IPC is reduced **to 7 years RI** for each offence. In other aspects, the findings of the trial court is confirmed. The sentences are directed to run concurrently. The period of sentence, if any already undergone by the appellant/accused shall be given set off under Section 428 of Cr.P.C. The appellant/accused, after adjusting the period of imprisonment already undergone shall undergo imprisonment for the remaining period.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar (CS)

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To,

1. THE II ADDITIONAL DISTRICT AND
SESSIONS JUDGE,
TIRUCHIRAPPALLI.

2. THE JUDICIAL MAGISTRATE
NO.IV, TIRUCHIRAPPALLI.

3. DO THROUG THE CHIEF JUDICIAL
MAGISTRATE,
TIRUCHIRAPPALLI.

4. THE SUPERINTENDENT,
CENTRAL PRISON,
TRICHY.

5. THE DISTRICT COLLECTOR,
TRICHY.



6. THE INSPECTOR OF POLICE
THIRUVERUMBUR POLICE STATION,
TIRUCHIRAPPALLI.

COPY TO

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

+1CC TO MR.R.ALAGUMANI, Advocate Sr. No. 75326

Cr1.A(MD)No.38 of 2016
12.07.2019

AVS (CO)

TR(07.11.2019) 5P 10C