



Bail Slip

The Petitioner/Accused No:2 viz, Balamurugan S/o.Ilavalagan be and hereby was directed to be released on bail as per order of this court, dated 18.04.2007 and made in CRL MP No:1 of 2007 in CRL A 354 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 26.02.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL. A. NO. 354 OF 2007

Balamurugan

.. Appellant/Accused No:2

- Vs -

State, rep. By
Inspector of Police
Vridhachalam Police Station
Cuddalore District,.
(Crime No.143/2005)

..Respondent/Complainant

Criminal Appeal filed u/s 374 of the Code of Criminal Procedure against the judgment dated 03.04.2007 passed by the Addl.District and Sessions Judge (FTC-3), Vridhachalam, in S.C. No.346/05.

For Appellant : Mr. L.Baskaran,
Amicus Curiae

For Respondent : Mr. C.Iyyapparaj,
APP

JUDGMENT

The appellant herein, along with one other accused, who was arrayed as A-1 were charged and tried before the learned Addl. Sessions Judge, (FTC-3), Vridhachalam, in S.C. No.346/05 for the offence u/s 332, 324 and 307 IPC. The trial court vide the impugned judgment dated 13.04.2007, convicted and sentenced the appellant and A-1 as under :-



Ex.P-9 and drawing the rough sketch, Ex.P-10. The accused were apprehended and on examination they came forward and gave voluntary confession statements, which were reduced into writing countersigned by P.W.5 and the signature of P.W.5 in the said statements is marked as Exs.P-3 and P-4. The accused were placed under arrest and the case properties along with the accused were produced before the Judicial Magistrate No.I, Vridhachalam. On completion of investigation final report was filed against the accused for the offence u/s 332,324,307 and 506 (2) IPC.

4. The accused were furnished with the relied upon documents u/s 207 Cr.P.C. and the case was committed to the Addl. Sessions Court (FTC-3), Vridhachalam for trial after framing charges u/s 332, 324 and 307 IPC. When questioned, the accused pleaded not guilty.

5. To prove the case, the prosecution examined P.W.s 1 to 12, marked Exs.P-1 to P-10 and M.O.s 1 and 2. When the accused were questioned u/s 313 Cr.P.C. about the incriminating circumstances appearing against them, they denied the same as false. Neither any oral nor any documentary evidence was marked on the side of the defence. The trial court, after hearing either side and after considering the materials, both oral and documentary, on record, convicted and sentenced the accused as above, aggrieved by which the present appeal has been filed by the appellant/A-2.

6. The case pertains to the year 2007 and since there was no representation on behalf of the appellant for quite a long time, this Court, vide order dated 20.4.16, appointed one Mrs.Henrietha Chinnathambi, as legal aid counsel to defend the appellant. However, inspite of the said appointment, even after a lapse of four years, there was no representation for the appellant when the matter was taken up on 19.2.2020 and, thereafter, on 25.2.2020. Therefore, in the interest of justice, this Court, vide order dated 25.2.2020, thought it fit to appoint Mr.L.Baskaran, advocate, as Amicus Curiae to assist the Court and defend the appellant.

7. Mr.Baskaran, learned Amicus, submitted that the case of the prosecution bristles with infirmities and inconsistencies, which have not been appreciated by the trial court and, therefore, the conviction recorded by the trial court deserves a reversal. It is submitted by the learned Amicus that though the incident had taken place in an open place in a busy locality and three persons, viz., P.W.s 5, 7 and 10 have been examined as eye witnesses to the occurrence, however, the said witnesses have turned hostile. Therefore, except for the evidence of the official witness, viz., P.W.s 1 to 3, there is no other witness,



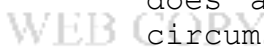
who support the prosecution version and, therefore, in the absence of corroboration from an independent source, it would be wholly unsafe to rely upon the testimonies of P.W.s 1 to 3 to convict the appellant, more so, when the accused have raised a plea as defence that due to previous enmity between the accused and the Deputy Superintendent of Police of the range, the case has been foisted on them.

8. It is the further submission of the learned amicus that though a charge has been framed u/s 307 IPC, however, the injury suffered by P.W.3 is only a lacerated wound, which could in no way be said to be grievous injury and the said fact has been spoken to by the doctor P.W.6. Therefore, the theory of the prosecution that the injury was caused by the accused cutting the left front forearm of P.W.3 is doubtful. In such circumstances, placing reliance upon the testimonies of P.W.s 1 to 3 to convict the appellant would be totally unsafe and, therefore, sought for interference with the conviction recorded by the court below.

9. Per contra, Mr.Iyyapparaj, learned Addl. Public Prosecutor appearing for the respondent submitted that the independent witnesses examined by the prosecution turning hostile cannot be a ground to doubt the prosecution version. The prosecution, bona fide, has examined independent witnesses, but true to the scenario projected by the prosecution, frightened by the act of the accused, the independent witnesses have not supported the prosecution version. Therefore, looked in such an angle, this Court can very well rely on the testimonies of P.W.s 1 to 3, though they being official witnesses, which corroborate each other. Further, coupled with the evidence of the doctor, P.W.6, who had issued Ex.P-5, clearly reveal that the injuries have been sustained by P.W.3 in the manner as projected by the prosecution, which has been appreciated by the trial court to arrive at a just and reasonable finding and, therefore, no interference is warranted with the well considered judgment recorded by the trial court.

10. This Court paid its undivided attention to the submissions advanced by the learned counsel for the parties and also perused the materials available on record to which this Court's attention was drawn.

11. It is evident from the materials available on record that the alleged occurrence had taken place in stark daylight in a busy locality. True it is that three independent persons have been examined as witnesses, viz., P.W.s 5, 7 and 10. However, they have turned hostile. Therefore, the evidence left before the Court is only that of P.W.s 1 to 3 with regard to the



15. Insofar as the conviction recorded u/s 332 and 324 IPC are concerned, the main thrust of the prosecution is on Ex.P-5, the wound certificate and the testimony of P.W.6, the doctor, who treated P.W.3 and gave Ex.P-5. A bare perusal of Ex.P-5 reveals that record has been made in the wound certificate that



a lacerated injury is found on the left front forearm of P.W.3. It is the case of the prosecution that the accused, armed with aruval, had cut on the left front forearm of P.W.3. If that be the case, the doctor would have found deep cut injuries on the left front forearm of P.W.3. Neither the wound certificate reveals such an injury nor the testimony of P.W.6 reveals that cut injuries, were noticed on the person of P.W.3. An attack of the sort, as spoken to by P.W.s 1 to 3 would definitely leave cut injuries on the person of P.W.3. There being no such injury noticed on the person of P.W.3, and in the absence of any independent testimony corroborating the testimonies of P.W.s 1 to 3, who are official witnesses, it would be wholly unsafe to rely on such testimony to confirm the conviction recorded by the court below. Further, the defence having probabilsed a motive and a theory for the prosecution to foist a case upon the accused, the prosecution was duty bound to prove beyond reasonable doubt the involvement of the accused in the occurrence proper. However, the prosecution, neither through oral evidence, nor through documentary evidence has proved its case beyond reasonable doubt and as a necessary corollary thereof, in the absence of proof beyond reasonable doubt, this Court is ordained with the task of acquitting the appellant by setting aside the conviction and sentence recorded by the court below.

16. For the reasons aforesaid, this appeal is allowed acquitting the appellant by setting aside the conviction and sentence recorded by the learned Addl. Sessions Judge (FTC-3), Vridhachalam, in S.C. No.346/05. Fine amounts, if any, paid by the appellant shall stand refunded to him. Bail bonds executed shall stand cancelled.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

GLN

To

1. The Addl. District Sessions Judge (FTC-3),
Vridhachalam.
2. The Judicial Magistrate - I
Vridhachalam.
3. The Chief Judicial Magistrate,
Cuddalore.



4. The Superintendent,
Central Prison,
Cuddalore.

5. The Inspector of Police,
Vridhachalam Police Station,
Cuddalore District.

6. The Section Officer,
Criminal Section,
High Court,
Madras.

7. The Public Prosecutor
High Court,
Madras.

+1 cc to Mr.L.Baskaran, Advocate, S.R.No.16641

CRL. A. NO. 354 OF 2007

PA(CO)
RN(19/05/2020)