



Bail Slip

The Appellant / Accused namely Ravikumar S/o.Ramaiya accused in S.C.No.72 of 2016 on the file of Sessions Judge of Magalir Neethimandram (FTMC), Udhagamandalam at Nilgiris, was directed to be released on bail as per order of this Court dated 16.07.2019 made in Crl.MP.No.9584 of 2019 in CRL.A.No.441 of 2019 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2021

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

CRL.A.No.441 of 2019

Ravikumar
S/o, Ramaiya

... Appellant / Accused

Versus

State represented by
The Inspector of Police,
Nelakottai Police Station,
Nelakottai,
The Nilgiris.

... Respondent

PRAYER:

Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure 1973, to set aside the judgment and order passed on the appellant/accused dated 21.06.2019 in S.C.No.72 of 2016 on the file of the Sessions Judge of Magalir Neethimandram, (FTMC), Udhagamandalam at Nilgiris and to acquit the appellant.

For Appellant : Mr.C.Prabakaran
For M/s.Seenivasan.T

For Respondent : Mr.S.Sugendran
Government Advocate, (Criminal Side)

JUDGMENT

This Criminal Appeal has been filed to set aside the judgment dated 21.06.2019 passed in S.C.No.72 of 2016 on the file of the Sessions Judge of Magalir Neethimandram, (FTMC), Udhagamandalam at Nilgiris.



2. The respondent police registered a case against the appellant in Crime No.45 of 2015 for the offence under Section 307 and 336 of I.P.C. After investigation, laid a charge sheet before the Judicial Magistrate, Pandalur. The learned Magistrate taken the charge sheet on file in P.R.C.No.2 of 2016 and after completing the formalities, committed the case to the Principal District and Sessions Judge, Udhagamandalam, since the case is exclusively triable by the Court of Session. The learned Principal District and Sessions Judge taken the case on file in S.C.No.72 of 2016 and made over the same to the Mahila Court (Fast Track Court), Udhagamandalam. The Sessions Judge, framed the charge against the appellant for the offence under Sections 323(2 counts), 307 and 324 of I.P.C. After completing the formalities, in order to substantiate the charges framed against the appellant, during the trial, on the side of the prosecution, as many as 12 witnesses were examined as P.Ws.1 to 12 and 17 documents were marked as Exs.P1 to P17. Besides that, two material objects were also exhibited.

3. After completing the examination of the prosecution witnesses, incriminating circumstances culled out from the evidence of the prosecution witnesses put before the accused by questioning under Section 313 Cr.P.C. He denied the same as untrue and pleaded not guilty.

4. On completion of trial, hearing the arguments advanced on either side, the trial court found the appellant guilty for the offence under Section 323(two counts), 324 and 308 I.P.C instead of 307 I.P.C, and sentenced him to undergo six months rigorous imprisonment and to pay fine of Rs.500/- for each count, in default to undergo further period of one month simple imprisonment for the offence under Section 323 I.P.C and also sentenced him to undergo one year rigorous imprisonment and to pay fine of Rs.1000/- in default to undergo two months simple imprisonment for the offence under Section 324 I.P.C, and sentenced him to undergo three years rigorous imprisonment and to pay fine of Rs.3000/- in default to undergo further period of three months simple imprisonment for the offence under Section 308 I.P.C. Challenging the said judgment of conviction and sentence, the accused has filed the present appeal before this Court.

5. The learned counsel for the appellant would submit that there is a delay in filing the complaint, registering F.I.R. and also there is a delay in sending the F.I.R to the court, which creates doubt in believing the case of the prosecution. All the witnesses P.W.1 to 4 are relatives and also interested witnesses and only after deliberation, they foisted a false case against the appellant. There are material contradictions



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between the injured witnesses P.Ws.1 to 4 and one of the injured witness categorically stated that the appellant attacked P.W.2 by using knife, whereas, before the doctor, in the history of the case, it is mentioned that he was assaulted by one known person by throwing a knife over head of P.W.2. Before registering the case, they have stated that the appellant throwing the knife whereas, in the complaint, after deliberation, they have stated that the appellant stabbed P.W.2 with knife, which clearly creates doubt on the genuineness of the complaint. P.W.1 is the one who has given the complaint. There are two incidents occurred between half-an-hour gap. The first incident is alleging that the accused attacked P.W.3 first, then P.W.4. Thereafter, hearing the same, half-an-hour later, P.W.2 came to the spot, at that time, the appellant attacked P.W.2 also. For two incidents, they registered one case. They have given a false complaint by suppressing all the actual facts, which also creates doubts. In the cross examination of P.W.1, she herself admitted that the appellant also sustained injury and I.O also admitted same. The prosecution has not properly explained the injury sustained by the victim/injured. It is fatal to the case of the prosecution. Further, he would submit that the injury sustained by P.W.1 is simple in nature and the appellant would have convicted only for the offence under Section 323 I.P.C and no ingredients of Section 307 I.P.C would attract. Conviction under Section 308 I.P.C is also perverse. In this case, no independent witnesses were examined. P.W.2 is none other than the brother of the appellant. P.W.3 is wife of P.W.2. P.W.4 and P.W.1 are the son and daughter of P.Ws.2 and 3. Parents of the appellant also residing with the appellant and he only taking care of his parents and one of his brother also died. P.W.2 taken his brother's property and also there is a dispute regarding the sharing of the properties. Already, a case was registered against P.W.2. Due to previous enmity, the family members foisted a false case against the appellant. Improvements are made stage by stage, to exaggerate the incident. All the witnesses are belonging to the same family and no independent witness was examined. None of the family members had come forward to support the case of the prosecution. The prosecution has not conducted fair investigation and filed a charge sheet. Therefore, the trial court failed to appreciate the evidence.

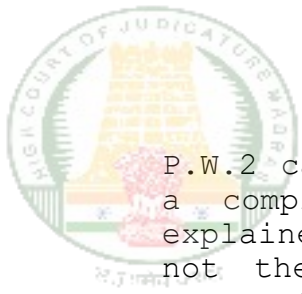
6. Further, the learned counsel for the appellant would submit that they are only relatives and there is a day-to-day quarrel would occur regarding passing of cattle and chicks. For which, the appellant may not have the intention to take away the life of his own brother. They gave a complaint in order to control the appellant and subsequently, they realised it and also they convinced. They are living together now and there is no dispute between both the families. The trial court failed to



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appreciate all these facts especially when there is no independent witness and all the witnesses are belonging to the same family. Therefore, under these circumstances, the judgment of the trial court is liable to be set aside and the appeal may be allowed and the sentence may be reduced.

7. The learned Government Advocate (Criminal Side) appearing for the respondent would submit that both the appellant and P.W.2 are brothers and the other witnesses P.Ws.1, 3 and 4 are family members of P.W.2. On 30.01.2015, when the cattle of P.W.1 to P.W.4 passed in the front side of the appellant's house and P.W.4 went to the house of appellant. At that time, the appellant entered into a wordy quarrel due to previous enmity and tried to assault him. P.W.3, mother of P.W.4 intervened, the appellant scolded with filthy language and torn and removed her sari, P.W.4 questioned the abovesaid act of the appellant, the appellant attacked him also. P.W.2, husband of P.W.3 came subsequently to that spot, he also questioned, for that the appellant stabbed him with knife on the head of P.W.2 and also throwing a stone on P.W.2, but the stone hit the head of P.W.1. So she also sustained injury. After that, P.W.2 was admitted in the hospital. Ex.P6 is the copy of the accident register of P.W.2, in order to substantiate the same, the doctor was examined as P.W.8, who gave the wound certificate Ex.P.7. Subsequently, P.W.1 also went for treatment, for her, entry was made in the Accident Register, which has been marked as Ex.P8. The wound certificate for P.W.1 is Ex.P9. As per Ex.P7, injury sustained by P.W.2 is grievous in nature. As per Ex.P9, the injury sustained by P.W.1 is simple in nature. The weapon used by the appellant is the deadly weapon and he caused injuries to P.W.2 in the vital part of the body i.e., head. Therefore, he committed the offence under section 307 I.P.C and also since the injury sustained by P.W.2, is grievous in nature, he committed the offence under section 324 I.P.C also. Since P.Ws.1 and 2 sustained injuries, the appellant committed the offence under section 323 I.P.C (two counts). In order to substantiate the charges, P.Ws.1 to 4, who are the eye witnesses and they are occurrence witnesses, have clearly spoken about the incident. Since P.W.2 and the appellants are brothers and also they are neighbours, no other independent witnesses were present at that time of occurrence. Therefore, mere non-examination of independent witness may not be fatal to the case of the prosecution. Therefore, the trial court rightly considered the evidence of P.Ws.1 to 4 and P.W.8. Doctor, Ex.P1, complaint, Exs.P6,7,8,9 and M.Os.1 and 2, rightly convicted the appellant. Since P.W.2 is the head of the family sustained grievous injury and P.W.1 is his daughter also sustained injury, immediately they were taken to the hospital and therefore P.W.3 is the only lady and P.W.4 is a small boy when the head of the family sustained injury and was admitted in the hospital, wife of



P.W.2 cannot be expected to rush to the police station and file a complaint immediately. Therefore, the delay is properly explained. Therefore, the mere delay in filing the complaint is not the sole ground to discard the entire evidence of the prosecution. Therefore, the prosecution proved its case beyond reasonable doubt. The trial court rightly appreciated the evidence and found the appellant guilty for the offence under Section 323(two counts), 324 and 308 I.P.C, and sentenced him to undergo six months rigorous imprisonment and to pay fine of Rs.500/- for each count, in default to undergo further period of one month simple imprisonment for the offence under Section 323 I.P.C and also sentenced him to undergo one year rigorous imprisonment and to pay fine of Rs.1000/- in default to undergo two months simple imprisonment for the offence under Section 324 I.P.C, and sentenced him to undergo three years rigorous imprisonment and to pay fine of Rs.3000/- in default to undergo further period of three months simple imprisonment for the offence under Section 308 I.P.C. There is no merit in the appeal and the same is liable to be dismissed.

8. Heard the learned counsel for the appellant and the learned Government Advocate (Criminal Side) appearing for the respondent.

9. In this case, the appellate Court is the final Court of fact finding, it has to re-appreciate and revisit the entire evidence and give the independent finding. The trial court framed the charge against the appellant for the offence under Section 323(two counts), 324 and 308 I.P.C. In order to substantiate the same, on the side of the prosecution totally, 12 witnesses were examined and 17 documents were marked. Besides, two material objects were also exhibited. Out of 12 witnesses, P.Ws.1 to 4 are occurrence witnesses. P.Ws.1 to 4 belongs to the same family. P.W.3 is the wife of P.W.2, P.W.4 is the son, P.W.1 is the daguther and further P.W.2 sustained injury which is grievous in nature. P.W.1 sustained simple injury. On the date of occurrence, P.W.2 was taken to the hospital. P.W.8 is the doctor, who made the entry in the Accident Register. The copy of the Accident Register marked as Ex.P6, in which, he has clearly stated that known person assaulted with knife by throwing on his head. Subsequently, P.W.1 also admitted in the hospital. The copy of the Accident Register marked as Ex.P8. P.W.8 is the wound certificate of P.W.2. Ex.P9 is the wound certificate of P.W.1. Though, as stated by the learned counsel for the appellant, there are contradictions regarding the manner of using the weapon, but there is no contradiction regarding the place of occurrence and the person who caused injury and with which weapon the injury was caused. Though, he has pointed out that before the doctor, P.W.2 it is stated that the accused threw the knife on his head,



therefore he sustained injury, whereas in the doctor's evidence, he has deposed that the accused attacked /stabbed with knife. However, Ex.P7 wound certificate clearly shows that P.W.2 sustained injury on his head which is grievous in nature. Therefore, mere contradiction regarding either stab with knife or throwing of the knife is immaterial to decide the case. Therefore, the contradictions pointed out by the learned counsel for the appellant are not material contradictions which will go into the root of the case of the prosecution. Even P.W.1 clearly stated that when the appellant threw the stone on her, she sustained injury. Therefore, Ex.P9 also clearly shows that P.W.1 sustained injury. Though the mahazar witness, confession statement/ witness turned hostile, however, they have admitted the signature found in the document. In this case, both the appellant and the injured witnesses are the brothers and also they are belong to the same family. Though the mahazar witness, confession witness turned hostile, the case of the prosecution cannot be thrown away at the threshold. However, on a reading of evidence of P.Ws.1 to 4 and Ex.P1 and P6 to P9, this Court is also a fact finding court and can re-appreciate the entire evidence and finds the appellant guilty and however, regarding using of knife, causing injury concerned, there are contradictions. P.W.2 and the appellant are brothers and in the evidence also they submitted that they have settled the disputes between them and they are maintaining good relationship among themselves. Therefore, the conviction for the offence under Section 308 I.P.C is liable to be set aside. It is not the specific allegation that in order to take away the life of P.W.2, the appellant stabbed him with knife and also P.W.2 suffered with Hemiparesis and he was not in a position to walk normally. Further it is not the intention of the appellant and he never tried to take away the life of the person.

10. Under these circumstances, this Court has come to the conclusion that conviction and sentence for the offence under Section 308 I.P.C is set aside, and accordingly the same is set aside, however, the conviction and sentence for the offence under Section 323 and 324 I.P.C are liable to be confirmed and accordingly the same is confirmed. In view of the abovesaid observations and reasons, the Criminal Appeal is partly allowed with abovesaid modifications.

Sd/-

Assistant Registrar(CS IX)

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Sub Assistant Registrar



1. The Sessions Judge of Magalir Neethimandram,
(FTMC),
Udhagamandalam at Nilgiris.
2. The Inspector of Police,
Nelakottai Police Station,
Nelakottai,
The Nilgiris.
3. The Judicial Magistrate,
Pandhalur, Nilgiris.
4. The Chief Judicial Magistrate,
Nilgiris.
5. The Public Prosecutor,
High Court,
Madras.

Copy to

The Section Officer,
Criminal Section,
High Court, Madras - 104.

+lcc to Mr.C.Prabakaran, Advocate, S.R.No.47270

CRL.A.No.441 of 2019

SSI[co]
NSK 29/12/2021