

BAIL SLIP

The Appellant/Accused namely Anand, S/o.Balu aged about 29 years was released on bail by This Hon'ble court in CrI.M.P.No.10933 of 2018 in CrI.A.No.491 of 2018 order dated 21.08.2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.06.2022

CORAM::

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

CrI.A.No.491 of 2018
& CrI.M.P.No.9726 of 2019

Anand, M/A-29 years,
S/o.Balu,
No.127, Muthaiah Garden Street,
Chellammal Thottam,
Chennai - 600 014.

...Appellant/Accused

/versus/

State by,
The Inspector of Police,
D-3, Ice House P.S.,
Chennai - 600 005.
(Crime No.1772/2015)

...Respondent/Complainant

Prayer:Criminal Appeal is filed under Section 374 (2) of Criminal Procedure Code, to set aside the conviction and sentence imposed against the appellant by the Learned XVII Additional Sessions Judge, Chennai on 30.07.2018 in S.C.No.35 of 2017 and acquit the appellant.

For Appellant : Mr.T.S.N.Prabhakaran

For Respondent : Mr.S.Udaya Kumar,
Government Advocate (CrI.Side)

J U D G M E N T

Heard the Learned Counsel for the appellant and the Learned Government Advocate (CrI.Side) for the respondent.

2. The case of the prosecution is that, on 23.05.2015, at about 3.30 p.m., the appellant herein who is the resident opposite to the shop of the P.W.1 (Tr.Ismail) was sitting in the

motor cycle owned by P.W.1's son. P.W.1 asked the accused to get down from the two wheeler. The accused got down but after two hours came to the shop of P.W.1 picked quarrel and poured the hot boiling milk on him. P.W.1 sustained 18% burn injury over his chest and abdomen. He got admitted in the hospital. Pursuant to his complaint, case was registered against the petitioner/appellant herein for offences under Sections 307 & 324 of I.P.C.

3.The trial Court, on analysing the evidence of P.W.1 and other prosecution witnesses, had convicted the accused for offence under Section 324 of I.P.C and sentenced to undergo one year S.I and to pay fine of Rs.1000/- in default, 3 months S.I.

4.Aggrieved by the said conviction and sentence, the present appeal is filed.

5.The Learned Counsel for the appellant submitted that though charge sheet was filed for offences under Sections 307 & 324 of I.P.C., the trial Court framed charge only for offence under Section 307 of I.P.C since there was no intention to cause death or likelihood of causing death.

6.The Trial Court found no ground to convict the accused for offence under Section 307 of I.P.C. However, altered the charges to Section 324 of I.P.C and sentenced him, which is not based on any reliable evidence. While both the eye witnesses turned hostile, solely based on evidence of P.W.1 and the injury mentioned in wound certificate marked as Ex.P.6, the accused was convicted. The trial Court failed to note that the accused also sustained burn injury on his thigh, and was admitted in the jail hospital by Investigating Officer has in the cross examination admits, he came to know the accused was treated in jail hospital for the burn injury. Therefore, when the accused has also sustained injury in the same transaction no proper investigation conducted in the regard to his injury. Due to the lopsided investigation, case has been registered against the accused without ascertaining the real aggressor, hence the judgment of the trial Court to be set aside.

7.The Learned Government Advocate (Crl.Side) appearing for the respondent submitted that the evidence of P.W.1 (Ismail) and P.W.9 (Dr.Senthil) read along with Ex.P.6 wound certificate clearly prove the guilt of the accused for causing burn injury mentioned in wound certificate Ex.P.6 and Accident Register Ex.P.7. The injury sustained by the victim P.W.1 is 18% burn over his chest and abdomen. The burn injury alleged to have been sustained by the accused on his thigh is not borne by record. Except an admission by the Investigating Officer in the cross examination and even assuming the injury sustained by the accused is true, it should have been a self inflicted injury while throwing hot boiling milk pot over the victim P.W.1 (Ismail). Therefore, there is no ground to interfere the well

considered judgment of the trial Court.

8.To prove the charge, the prosecution has examined 10 witnesses [P.W.1 to P.W.10] and marked 12 Exhibits (Ex.P.1 to Ex.P.12). From the evidence available, the trial Court has found that offence under Section 324 of I.P.C alone is made out and altered the conviction to lesser offence viz., from Section 307 of I.P.C to Section 324 of I.P.C

9.P.W.1 (Ismail), who is the injured witness has spoken about the overt act of the accused. He was treated as in-patient in Kilpauk Medical College, Chennai for three days and thereafter, got discharged to be treated at Kerala. Though, document is produced for his treatment at Kerala. Ex.P.6 wound certificate indicates the intensity of the burn injury sustained by him is 18%. This has been spoken by Dr.Senthil (P.W.9), who has treated the defacto complainant (P.W.1). It is suggested by Dr.Senthil that the injury might have been caused accidentally if anybody loss his balance. It is only a probability, but when clear evidence by P.W.1 implicating the accused for the cause for the injury, in view of suggestion to P.W.1 that one of the staff of P.W.1 by name Krishnan poured hot water on P.W.1 as well as on the accused, when there was some quarrel over drain water is denied by the witnesses, the defence suggestion get improbablise.

10.P.W.2 [Nirmal] is an independent witness, who has taken P.W.1 to the hospital for treatment. He is treated as hostile since he has not spoken anything about the occurrence. Similarly, P.W.3 [Selvakumar] who is running printing press near the complainant's shop also turned hostile. Krishnan is the employee under P.W.1 against whom some suggestion is made as the assailant. When he was in the witness box and examined as P.W.4 no suggestion put to him attributing any overt act for the injury. Contrarily, it is suggested that accidentally the hot milk pot fall down causing injury to both P.W.1 and the accused. In this connection, P.W.7 [Mani] one of the eye witness had deposed that, on the date of occurrence, there was fight between P.W.1 [Ismail] and the accused. When the accused pulled the milk pot, it got capsized and caused injury to P.W.1. The accused has not cross examined this witness and his evidence in chief remains uncontroverted. Why the accused pulled hot milk pot remains unexplained.

11. On analysing the uncontroverted evidence and the injury sustained by P.W.1, this Court find that the conviction of the accused for offence under Section 324 of I.P.C is based on proved facts and there is no ground to interfere the said finding. Insofar as the sentence is concerned, the Learned Counsel for the appellant submitted that, at the time of occurrence, the appellant was 29 years old and in a fit of anger, incident took place and there is every reason to believe

that the injury caused to P.W.1 was accidental and not intentional. Therefore, prayed lesser sentence may be imposed if the Court is not convinced, that the appellant is not entitle for the benefit of doubt.

12. In fine, for the reason stated above, this Court holds that the appellant is guilty for offence under Section 324 of I.P.C. However, sentence of imprisonment is modified as period already undergone and fine of Rs.1000/- in default 3 months R.I.

13. Accordingly, this Criminal Appeal is Partly Allowed. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

bsm

To

1. The XVII Additional Sessions Judge,
Chennai.
2. The Inspector of Police,
D-3, Ice House Police Station,
Chennai - 600 005.
3. The Public Prosecutor,
High Court, Madras.
4. The Superintendent,
Central Prison,
Puzhal, Chennai.

+1cc to Mr.T.S.N.Prabhakaran, Advocate, S.R.No.41778

Crl.A.No.491 of 2018
& Crl.M.P.No.9726 of 2019

SJ(CO)
RGA(18/07/2022)