



BAIL SLIP

The Appellant/Accused namely Saravanan, S/o.Mathu was directed to be released on Bail by Order of this Court dated 08/05/2019 made in Crl.M.P.No.6350 of 2019 in Crl.A.No.252 of 2019 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.09.2021

PRONOUNCED ON : 31.01.2022

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

CRL.A.NO.252 OF 2019

Saravanan ... Appellant/Single Accused

.Vs.

The State Represented by
The Inspector of Police,
Kaveripattinam Police Station.
Crime No.392 of 2012.

... Respondent/Complainant

PRAYER:- Criminal Appeal filed under Section 374 (2) of the Code of Criminal Procedure, to set aside the judgment of conviction and sentence, dated 22.04.2019, made in S.C.No.36 of 2017 by the Sessions Judge, Fast Track Mahila Court, Krishnagiri.

For Appellant : Mr.V.Paarthiban
For M/s.Rajamohan

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

JUDGMENT

This Criminal Appeal has been filed to set aside the judgment of conviction and sentence imposed on the appellant/accused in S.C.No.36 of 2017, dated 22.04.2019, by the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri.



2. The respondent Police registered a case against the appellant/accused in Crime No.392 of 2012 for the offences under Section 307 I.P.C. r/w Section 25(1)(a) of Indian Arms Act. After completing the investigation, the respondent Police filed a charge sheet before the learned Judicial Magistrate No.1, Krishnagiri. The learned Magistrate taken the charge sheet on file in P.R.C.No.20 of 2016 and after completing the formalities under Section 207 Cr.P.C., since the offense is exclusively triable by the Court of Session, the case was committed to the Court of Session. After completing the formalities, the learned Principal Sessions Judge, Krishnagiri has taken the case on file in S.C.No.36 of 2017 and the case was made over to the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri, since the offence is against the woman. The learned Special Judge, after completing the formalities, framed the charges as against the appellant/accused for the offences under Sections 294(b), 506(ii), 307, 324 I.P.C. and Section 25(1B)(a) of Indian Arms Act, 1959.

3. After framing the charges and completing the formalities, during trial, in order to prove the case on the side of the prosecution, totally 13 witnesses were examined as P.Ws.1 to 13 and 19 documents were marked as Exs.P.1 to 19 and 9 material objects were marked as M.Os.1 to 9. After examining all the prosecution witnesses, when the incriminating circumstances culled out from the evidence of prosecution witnesses were put before the appellant/accused, by questioning under section 313 Cr.P.C, he denied the same as false and pleaded not guilty. On the side of the defence, no oral or documentary evidence was produced.

4. On completion of trial, hearing the arguments advanced on either side and considering the materials, the trial Court found the appellant/accused guilty for the offences punishable under Sections 324, 307 I.P.C. and Section 25(1B)(a) of Arms Act, 1959 and found the appellant not guilty for the offences under Section 294(b) and 506(ii) I.P.C. and sentenced him to undergo Rigorous Imprisonment for a period of 6 months and to pay a fine of Rs.1,000/-(Rupees One Thousand only) in default, to undergo Rigorous Imprisonment for a further period of one month for the offence under Section 324 I.P.C.; sentenced him to undergo Rigorous Imprisonment for a period of 7 years and to pay a fine of Rs.1,000/-(Rupees One Thousand only) in default, to undergo Rigorous Imprisonment for a further period of 6 months for the offence under Section 307 I.P.C.; and sentenced him to undergo Rigorous Imprisonment for a period of 3 years and to pay a fine of Rs.1,000/-(Rupees One Thousand only) in default, to undergo Rigorous Imprisonment for a further period of three months for the offence under Section 25(1B)(a) of Arms Act, 1959



5. Challenging the said judgment of conviction and sentence made by the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri, the appellant/accused has filed the present Criminal Appeal before this Court.

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6. The learned counsel appearing for the appellant/accused would submit that, according to the prosecution, the F.I.R. was registered on 06.08.2012 at 11.00 p.m., but the F.I.R. reached the Court only on 07.08.2012 at 9.30 p.m. and there was an enormous delay in dispatching the F.I.R. to the Court. The evidence of P.W.6, Village Administrative Officer, would show that even before the registration of the F.I.R., the Inspector of Police came to the scene of occurrence. The Village Assistant, one Selvam, to whom the accused alleged to have confessed the crime, has not been examined. There is a delay in sending the gun to the ballistic expert. Due to the previous enmity, the appellant has been falsely implicated in this case. Therefore, under these circumstances, the trial Court has wrongly come to the conclusion that the prosecution has proved its case beyond all reasonable doubt and simply convicted the appellant based on the evidence of interested witnesses. Therefore, the judgment of the trial Court is liable to be set aside and the appeal may be allowed.

7. The learned Government Advocate (Crl.side) appearing for the State would submit that P.W.2 is the wife of the accused and after marriage, since there was misunderstanding between the appellant and his wife P.W.2, she left the matrimonial home and residing with her mother, P.W.3, in the house of P.W.1, grand-father of P.W.2. Even prior to the occurrence, the appellant went to the house of P.W.3 and scolded them and threatened P.W.2 with dire consequences. On the date of occurrence, P.W.2 was cooking in the house of P.W.1 and P.W.1 was sitting in the house. At that time, the appellant came there and shot with the country gun. Though he aimed at P.W.2, he could not succeed and the bullet dashed against the window and its glass has broken down and caused injury to P.W.1. Subsequently, P.W.1 filed a complaint against the appellant before the respondent police and the respondent police registered the case and investigated the matter.

8. He would further submit that P.W.1, who is the defacto complainant and injured witness, has clearly deposed about the occurrence, which was corroborated by P.W.2. P.W.3 deposed about the previous enmity between P.W.2 and the appellant. Though P.Ws.4, 5, 7 and 10 have turned hostile, P.W.1 has clearly deposed that the appellant came to the occurrence place and shot with a country gun and since he could not achieve the point and missed it, the window glass was broken down and due to that P.W.1, grand-father of P.W.2, sustained injury. Subsequently,



after giving the complaint, he has taken treatment in Government Community Health Centre, Kaveripattinam. P.W.8, the doctor, has also given his opinion that the injury sustained by P.W.1 is simple injury. Therefore, the charge framed under Section 324 I.P.C. is proved. Even as per the evidence of P.W.3, she came to know that the accused came with a country gun and aimed at P.W.2 and missed the point. Therefore, the appellant has made an attempt to kill P.W.2. P.W.9, expert also opined that the gun used by the appellant is a country gun and the ballistic report also says that there is possibility of death if the aim is succeeded and therefore, he committed the offence under Section 307 I.P.C. and without any valid licence the appellant was possessing a country gun and he also used it to shoot P.W.2. Therefore, he committed the offence under Section 25(1B)(a) of Arms Act. Therefore, the trial Court convicted the appellant for the above three charges. However, the appellant was acquitted for the offences under Sections 294(b) and 506(ii) I.P.C. The trial Court rightly appreciated the evidence of P.Ws.1 to 3 and also the expert opinion and convicted the appellant/accused and sentenced him. Therefore, the judgment of the trial Court does not warrant any interference by this Court.

9. Heard Mr.V.Paarthiban, learned counsel appearing for the appellant/accused and M.S.Sugendran, learned Government Advocate (Crl.side) appearing for the respondent and perused the records.

10. The case of the prosecution is that P.W.2, who is the daughter of P.W.3 and grand-daughter of P.W.1, married the appellant/accused on 08.08.2008 against the wishes of her parent. Thereafter, they were living in the house of the appellant as husband and wife and they were blessed with two male children. After the birth of first child, there was frequent quarrel between the husband and wife, since the appellant suspected the fidelity of P.W.2. Unable to bear the torture of the appellant, P.W.2 went to her mother's house. The appellant used to go to the house of P.W.3 and threatened them with dire consequences. One day prior to the occurrence, the appellant went to the house of P.W.3 and threatened that one day he will kill P.W.2. On 06.08.2012, at about 8.30 p.m., when P.W.1 was seeing television and P.W.2 was cooking, the appellant came there with an unlicensed country gun and shot towards P.W.2. His aim failed and the bullet dashed against the window glass and the window glass fell down and caused injury to P.W.1. Hence, P.W.1, lodged a complaint before the respondent Police against the appellant/ accused.

11. The appellate Court is the final Court of fact finding and it has to re-appreciate the entire evidence and give an independent finding.



12. The trial Court totally framed five charges and out of the five charges, the trial Court found the appellant guilty for three charges and did not find him guilty for two charges. Neither the prosecution nor the victim have filed appeal against the acquittal of the appellant for the two charges. Now, this appeal is filed by the appellant against the conviction and sentence for the three charges as stated above.

13. In order to substantiate the charges framed before the trial court against the appellant/accused, on the side of the prosecution, totally 13 witnesses were examined and 19 documents were marked and 9 material objects were produced. P.W.1 is the complainant, who is the grand-father of P.W.2 and P.W.2 is the wife of the appellant. P.W.3 is the mother of P.W.2 and mother-in-law of the appellant. From the evidence of P.Ws.1 to 3, it is clear that the appellant is the husband of P.W.2 and they have begotten two children. After the birth of the first child, there was frequent quarrel between the appellant and P.W.2. The appellant suspected the fidelity of P.W.2 by suspecting her character. He has gone to the extent of saying that the second child was not born to him and he harassed her. Whenever P.W.2 talked to any other person, the appellant used to suspect her and scold her. Therefore, P.W.2, left the matrimonial home and came to her grand-father's house, in which P.W.3 was residing.

14. P.W.1 is the father of P.W.3 and P.W.2 is the daughter of P.W.3 and when they were residing there, one day prior to the occurrence, the appellant came there and threatened P.W.2 that if she did not come, he will kill her. On the occurrence date, when the appellant came there, P.W.3 was not in the house and P.Ws.1 and 2 were in the house. P.W.2 was cooking in the kitchen and P.W.1 was watching T.V. At that time, the appellant came with a country gun and shot aiming P.W.2. Since his aim missed, it caused damage to the window glass and the same fallen down. Resultantly, P.W.1 sustained injury on his leg. Subsequently, P.W.1 lodged a complaint and went for treatment.

15. The evidence of P.Ws.1 to 3 and 8 clearly shows that P.W.1 sustained injury. The evidence of P.Ws.1 and 2 is very clear that the appellant shot with a country gun aiming at P.W.2. Since the bullet got missed, it caused damage to the window glass. Resultantly, P.W.1 sustained injury. The evidence of P.Ws.1 to 3 have corroborated each other. Even though P.Ws.4 and 5, neighbours of P.W.1, turned hostile they stated that soon after hearing the noise they went and see there. P.W.6, Village Administrative Officer, after hearing the noise went to the occurrence place. P.W.8, the doctor, who attended P.W.1, has clearly stated that P.W.1 informed him that he sustained injury due to broken glasses due to the shot made by known person using rifle on his window.



16. The forensic expert, P.W.9 has categorically stated that after examination he submitted Ballistic Report to the Court and from the expert opinion it is clearly proved that the gun used by the appellant is country made, smooth bore, Single Barrel Muzzle Loading (SBML) gun and even the powder was also sent for the expert opinion, which also clearly shows that the appellant used country gun and bullet. P.W.1 was also examined by Judicial Magistrate for recording statement under Section 164(5) Cr.P.C. and the said statement is marked as Ex.P.16 and it was marked through P.W.12. Ex.P.18, the proceedings of the District Collector, Krishnagiri, dated 24.11.2016, clearly shows that the appellant has not obtained any licence and without any licence the appellant had possessed the country gun. Therefore, from the evidence of P.Ws.1 to 3 and 6 and Exs.P.7, 9 and 18, it is clear that the appellant has committed an offence under Section 25(1B) (a) of Arms Act, 1959. Since the appellant caused injury to P.W.1 by using the country gun for shooting, he has committed an offence under Section 324 I.P.C. From the evidence of P.Ws.2 and 3, it is clear that the appellant came to the house of P.W.1 one day prior to the occurrence and threatened P.W.2 with dire consequences. Subsequently, on the date of occurrence, he shot P.W.2 with a country gun. Since the aim missed, he could not succeed. However, the evidence of P.Ws.8 and 9 clearly shows that if P.W.2 received the gun shot, the appellant would have caused her death. Therefore, he has committed an offence under Section 307 I.P.C. From the evidence of P.Ws.1 to 3, P.W.6, Village Administrative Officer, P.W.8, the doctor, who treated P.W.1 and P.W.9, the forensic science expert, the prosecution has proved its case beyond all reasonable doubt.

17. Though P.Ws.1 to 3 are relatives and interested witnesses, that may not be a sole ground to discard their evidence and if the evidence of interested witnesses/relative witnesses is cogent, consistent and trust worthy and inspires the confidence of the Court, conviction can be recorded, unless there is a reason to discord or disbelieve the evidence of the interested witnesses. P.W.1 is the injured witness and he has clearly narrated the events and P.W.2 corroborated the evidence of P.W.1. P.W.2 is none other than the daughter of P.W.3 and P.W.3 has spoken about the enmity between her daughter and the appellant and corroborated the evidence of P.W.2 regarding the incident that took place prior to the occurrence. Their evidence have clearly proved that the appellant came with a country gun and the appellant has not produced any valid document or order for possessing such a gun. In these circumstances, the trial Court rightly appreciated the entire evidence and convicted the appellant as stated above and this Court does not find any perversity in the findings of the trial Court to interfere with the same. This Court has also re-appreciated the entire evidence and come to the conclusion that the appellant has committed



offence of the aforesaid three charges.

18. Therefore, this Court does not find any merit in the appeal and the same is liable to be dismissed. Accordingly, the Criminal Appeal stands dismissed. The bail bonds executed by the appellant stand cancelled. The learned Sessions Judge, Fast Track Mahila Court, Krishnagiri, is directed to issue warrant to secure the Accused, to forward him to Prison to undergo the remaining period of sentence. The period of detention already undergone by the Accused is set off under Section 428 of Code of Criminal Procedure.

Sd/-

Assistant Registrar(CS IX)

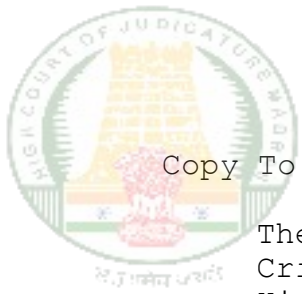
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Sub Assistant Registrar

sj

To

1. The Sessions Judge,
Fast Track Mahila Court,
Krishnagiri.
2. The Judicial Magistrate No.1,
Krishnagiri.
3. The Chief Judicial Magistrate,
Krishnagiri. (For Information)
4. The Inspector of Police,
Kaveripattinam Police Station,
Krishnagiri District.
5. The Superintendent,
Central Prison,
Vellore.
6. The Public Prosecutor,
Madras High Court,
Madras.



Copy To:-

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

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+1cc to Mr.V.Raja, Advocate, S.R.No.5762

CRL.A.NO.252 OF 2019

GPL (CO)
PBS/21/02/2022