

BAIL SLIP

Appellants in Crl.A.No.591 of 2008 (Accused 1 to 3 in SC.No.392 of 2007 dated 30.7.2008 by the Additional District and Sessions Judge cum Fast Track Court, Thirupathur) were released on Bail as per order of this Court dated 13.8.2008 in MP.No.1 of 2008 in Crl.A.No.591 of 2008.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 08-10-2015

CORAM:

THE HONOURABLE MR. JUSTICE A. SELVAM

Criminal Appeal No.591 of 2008

1. Sivan
2. Subramani
3. Muthusamy ... Appellants/Accused 1 to 3

Vs.

State rep. by
Inspector of Police
Jamuna Marathur Police Station
Vaniyambadi Taluk
Vellore District ... Respondent/Complainant

Criminal Appeal under Section 374(2), Cr.P.C., against the judgment passed by the Additional District and Sessions Judge cum Fast Track Court, Thirupathur, Vellore District in S.C.No.392 of 2007 dated 30-07-2008 by convicting the appellants herein for the alleged offence under Sections 294 (b), 307, 324, 323 (2 counts), IPC and sentence to undergo imprisonment for the offences under Sections 294(b)-6 months Simple Imprisonment against all the appellants and under Section 307 - 5 years R.I. against all the appellants and A2 sentence to undergo 2 years under Section 324, IPC and A3 convicted and sentenced to undergo one year R.I. under Section 323 (2 counts) and all the sentences were directed to run concurrently.

For appellant :: Mr. C.D. Johnson

For respondent :: Mr. P. Govindarajan, Addl.P.P.

JUDGMENT

The convictions and sentences, dated 30-07-2008 passed in Sessions Case No.392 of 2007 by the Additional District and Sessions Court cum Fast Track Court, Thirupathur, Vellore District are being challenged in the present criminal appeal.

2. The case of the prosecution is that all the accused are brothers and sons of one Kulandhai. On 07-12-2006, all the accused have hurled invectives against the defacto complainant and on the very same day, all of them have attacked defacto complainant, his father, mother and sister-in-law and thereby, attempted to murder them; the third accused has attacked the defacto complainant and her mother by using deadly weapon and thereby, caused injuries; the fourth accused has attacked the father of the defacto complainant by using deadly weapon and thereby, caused injuries. After occurrence, the defacto complainant has given the complaint, in question and the same has been registered in Crime No.106 of 2006. The complaint alleged to have been given by the defacto complainant has been marked as Ex-P1.

3. On receipt of Ex-P1, the Investigation Officer viz., P.W.11 has taken up investigation, examined connected witnesses, prepared observation mahazar and after completing investigation, laid a final report on the file of the Judicial Magistrate, Vaniyambadi and the same has been taken on file in P.R.C.No.12 of 2007.

4. The Judicial Magistrate, Vaniyambadi after considering the facts that the offences alleged to have been committed by the accused are triable by Sessions Court, has committed the case to the Trial Court and the same has been taken on file in Sessions Case No.392 of 2007.

5. The Trial Court after hearing arguments of both sides and upon perusing the relevant records has framed the first charge under Section 294(b), second charge against all the accused under Section 307 and third charge against the third accused under Section 323 and fourth charge against the second accused under Section 324, IPC and the same have been read over and explained to him. The accused have denied the charges and claimed to be tried.

6. On the side of the prosecution, P.Ws.1 to 11 have been examined and Exs-P1 to P22 and M.Os.1 to 3 have been marked.

7. When the accused have been questioned under Section 313, Cr.P.C., as respects the incriminating materials available in evidence against them, they denied their complicity in the crime. No oral and documentary evidence have been let in on the side of the accused.

8. The Trial Court after hearing the arguments on both sides and after contemplating the evidence available on record has found all the accused guilty under Sections 294(b), IPC and sentenced to undergo three months SI, under Section 307. IPC and sentenced to undergo five years RI. The second accused has been found guilty under Section 324, IPC and sentenced to undergo two years RI. The third accused has been found guilty

under Section 323,IPC (two counts) and sentenced to undergo one year RI. Against the convictions and sentences passed by the Trial Court, the present criminal appeal has been preferred at the instance of the accused, as appellants.

9. The learned counsel appearing for the appellants/accused has contended with great vehemence to the effect that the observation mahazar has been marked as Ex-P7, wherein it has been simply mentioned that one Kulandhai is an accused and nowhere, the names of the accused are found place. Further, the Doctor P.W.4 has examined all the injured persons and they reported that in the place of occurrence, they have been attacked by 15 persons and the Trial Court without considering the vital infirmities found on the side of the prosecution has erroneously invited convictions and sentences against all the accused and therefore, the convictions and sentences passed by the Trial Court are liable to be interfered with.

10. The learned Additional Public Prosecutor has contended that in the instant case, injured witnesses have been examined as P.Ws.1, 2, 3 and 7 and their specific evidence is that in the place of occurrence all the accused have attacked them by using deadly weapons and their evidence are clearly corroborated by medical evidence and the Trial Court after considering the evidence available on record has rightly found the accused guilty under Sections mentioned earlier and sentenced them to undergo imprisonments and therefore, the convictions and sentences passed by the Trial Court are not liable to be interfered with.

11. The first and foremost aspect mentioned on the side of the appellants/accused is that, in Ex-P7, Observation Mahazar, one Kulandhai, father of the accused has been shown as an accused, no proper explanation has been given on the side of the prosecution.

12. The second point raised on the side of the appellants/accused is that all the injured persons have been examined by P.W.4, Dr. Maharaja David and his specific evidence is that two injured persons have reported that they have been attacked by 15 persons. In the instant case, three persons have been arrayed as accused and no explanation has been given on the side of the prosecution.

13. At this juncture, the learned Additional Public Prosecutor has contended that in Ex-P1, complaint only names of three accused have been mentioned and therefore, the Court need not give much adherence to Ex-P7 as well as evidence given by P.W.4, Dr. Maharaja David. As pointed out earlier, Ex-P7 is an observation mahazar wherein it has been clearly stated that one Kulandhai is an accused. Even assuming without conceding that in Ex-P7, only father's name of the accused has been mentioned as accused, the Court-below has to analyse the

evidence given by P.W.4. It is an admitted fact that P.W.4 has examined all the injured witnesses and two of them have reported that they have been attacked by 15 persons and since no explanation has been given on the side of the prosecution, the Court cannot belittle the evidence given by P.W.14. Since the prosecution is not certain enough as to how many accused/persons have involved in the occurrence, the Court cannot come to a conclusion that the accused have committed the offences under the Sections, mentioned in the charges. The Trial Court without considering the vital infirmities found on the side of the prosecution, has erroneously invited convictions and sentences against the accused.

14. In view of the discussion made earlier, the prosecution has not clearly established the guilt of the accused punishable under Sections 294(b), 307, 324, 323(two counts), IPC and altogether, the criminal appeal is liable to be allowed.

In fine, the criminal appeal is allowed. The convictions and sentences passed by the Trial Court are set aside. The appellants/accused are acquitted. Bail bonds, if any, executed by them shall stand cancelled.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

glp

To

1. The Judicial Magistrate, Vaniyambadi.
2. -do-Thro The Chief Judicial Magistrate Vellore.
3. The Additional District and Sessions Judge cum
Fast Track Court,
Thirupathur, Vellore District
4. -do-The Principal Sessions Judge, Vellore.
5. The Inspector of Police
Jamuna Marathur Police Station
Vaniyambadi Taluk
Vellore District
6. The Superintendent Central Prison Vellore.
7. The Public Prosecutor, High Court, Madras.

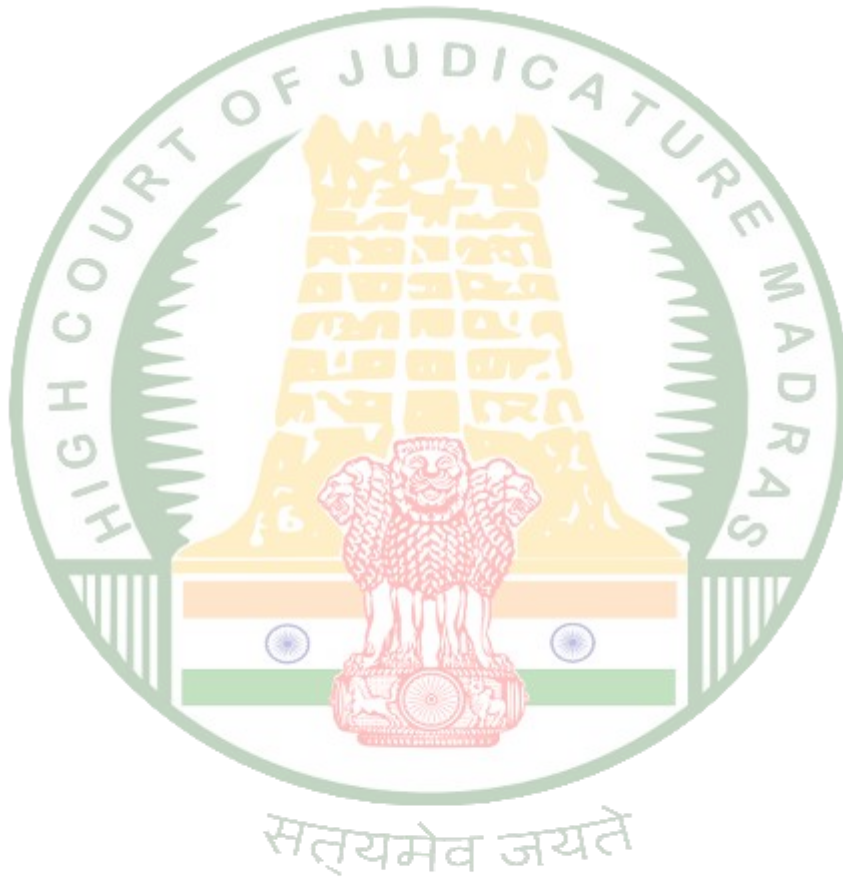
8. The District Collector, Vellore.

9. The Director General of Police, Mylapure, Chennai 4.

+1 cc to Mr.C.D.Johnson, Advocate, sr.54984

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tej co, kra 15/10



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