

BAIL SLIP

The Appellants/Accused 1 & 2 viz., Veerappan & Muthu @ Pachamuthu was directed to released on bail as per order dated 13.02.2004 in Crl.M.P.No.1484 of 2004 in Crl.A.No.1641 of 2003.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.09.2015

CORAM :

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.1641 of 2003

1.Veerappan

2.Muthu @ Pachamuthu

... Appellants/Accused 1 and 2

Vs.

State represented by
The Inspector of Police
Komarapalayam Police Station
Namakkal District
Crime No.228 of 2000

... Respondent

Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, 1973 against the judgment dated 29.09.2003 made in S.C.No.25 of 2003 on the file of Additional District Sessions Court/Fast Track Court No.III, Namakkal.

For appellants : Mr.N.Manokaran

For respondent : Mr.P.Govindarajan,
Additional Public Prosecutor

JUDGMENT

The conviction and sentence dated 29.09.2003 passed in Sessions Case No.25 of 2003 by the Additional District and Sessions Court, Fast Track Court No.III, Namakkal are being challenged in the present criminal appeal.

2. The crux of the case of the prosecution is that on 10.04.2000, at about 8.30 p.m., in Komarapalayam-Alandur Road, in front of Tharani T.V.Shop, the accused 1 and 2, armed with deadly weapons have attacked the defacto complainant and thereby, caused grievous injuries. After occurrence, the defacto complainant has given the complaint in question and the same has been registered in Crime No.228/2000. The complaint alleged to have been given by the defacto complainant has been marked as Ex.P.1.

3. On receipt of Ex.P.1, the Investigating Officer viz., P.W.9 has taken up investigation, examined connected witnesses and after completing investigation, has laid a final report on the file of Judicial Magistrate No.1, Sangagiri and the same has been taken on file in P.R.C.No.7/2001.

4. The Judicial Magistrate No.1, Sangagiri, after considering the facts that the offences alleged to have been committed by both accused are triable by sessions court has committed the case to the court of sessions, Namakkal Division and taken on file in Sessions Case No.25 of 2003 and subsequently, made over to the trial court.

5. The trial court, after hearing the arguments of both sides and upon perusing the relevant records has framed a charge against the appellants/accused under Section 148 and 307 of the Indian Penal Code (hereinafter called as "IPC") and the same has been read over and explained to them. The accused have denied the charges and claimed to be tried.

6. On the side of the prosecution, P.Ws.1 to 9 have been examined and Exhibits P.1 to P.12 and M.Os.1 to 3 have been marked.

7. When the accused have been questioned under Section 313 of the Code of Criminal Procedure, 1973 as respects the incriminating materials available in evidence against them, they denied their complicity in the crime. On the side of the accused, Exhibit D.1 has been marked.

8. The trial court, after hearing both sides and upon perusing the relevant evidence available on record has found both the accused guilty under Section 148 of the IPC and sentenced them to undergo 3 years rigorous imprisonment; further, both of them are found guilty under Section 307 of the IPC and sentenced to undergo 7 years rigorous imprisonment and also imposed fine of Rs.500/- upon each of them. The convictions and sentences passed by the trial court are being challenged in the present criminal appeal.

9. The learned counsel appearing for the appellants/accused has contended that in the instant case, both the accused are found guilty under Section 148 of the IPC and for invoking the said section, necessary materials are not found in the charge and therefore, the trial court has committed a serious error in framing charge and in the said circumstances, the convictions and sentences passed by the trial court are liable to be set aside.

10. The learned Additional Public Prosecutor has fairly conceded that the trial court has committed a stupendous mistake in framing a charge under Section 148 of the IPC and in fact, necessary materials have not been mentioned in the charge, so as to invoke the said section.

11. In the charge framed by the trial court, it is simply mentioned that both the accused has committed offences punishable under Section 148 and 307 of the IPC. As rightly pointed out by both sides, no materials are available in the charge, so as to invoke Section 148 of the IPC. To put it in short, the charge is completely lacking sufficient materials so as to attract the penal provisions of Section 148 of the IPC.

12. Under the said circumstances, this court is of the view that the entire convictions and sentences passed by the trial court are liable to be set aside and the matter is liable to be remitted to the file of the trial court.

In fine, this Criminal Appeal is allowed. The convictions and sentences passed against the appellants/accused under Section 148 and 307 of the IPC are set aside and Sessions Case No.25/2003 is remitted to the file of the trial court. The trial court is strictly directed to frame necessary charge under Section 148 of the IPC, by way of mentioning all materials and likewise, frame a separate charge under Section 307 of the IPC. The trial court is directed to conduct a de novo trial. Further, it is directed to dispose of Sessions Case No.25/2003 before the end of December 2015. The Registry is directed to send all records forthwith. The appellants/accused are directed to make their appearance by 07.10.2015.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

nvsri

To

- 1.The Inspector of Police
Komarapalayam Police Station
Namakkal District
Crime No.228 of 2000
- 2.The Additional District Sessions Court
/Fast Track Court No.III,
Namakkal.
- 3.-do- Through The Principal Sessions Judge,
Namakkal.
- 4.The Judicial Magistrate,
Tiruchengode.
- 5.-do- Through The Chief Judicial Magistrate,
Namakkal.
- 6.The Superintendent,
Central Prison,
Coimbatore.
- 7.The Public Prosecutor,
High Court, Madras.

Copy To

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

सत्यमेव जयते

+lcc to Mr.N.Manokaran, Advocate, S.R.No.48526

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CrI.A.No.1641 of 2003

PA(CO)
CA(21/09/2015)