

BAIL SLIP

1. K.Viman and 2. K.Velu appellants herein(Accused Nos.2 & 3 in S.C.No.71 of 2008 on the file of the Additional Sessions Judge, FTC I at Chidambaram) were released on bail by the Order of this Court dated 01.02.2012 and made in M.P.No.1 of 2011 in Crl.A.No.316 of 2011 on the file of this Court.

K.Sunderajan - Accused No.1, in S.C.No.71 of 2008 on the file of the Additional Sessions Judge, FTC I at Chidambaram was released on bail by the Order of this Court dated 30.10.2013 and made in M.P.No.1 of 2011 in Crl.A.No.316 of 2011 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2016

CORAM

THE HONOURABLE MR. JUSTICE M.JAICHANDREN
AND

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

CRL.A.No.316 of 2011

1.K.Sunderajan
2.K.Viman
3.K.Velu

... Appellants/A1 to A3

Vs

State by the Inspector of Police
Puduchatiram Police Station
Cuddalore District.

... Respondent

Appeal filed u/s.374 [2] Cr.P.C., to set aside the conviction and sentence imposed in the judgment dated 23.03.2011 against the appellants in SC.No.71/2008 on the file of the learned Additional Sessions Judge, Fast Track Court-I, Chidambaram and to acquit the appellants.

For Appellant : Mr.C.Vijayakumar

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

JUDGMENT

[Judgment of the court was delivered by S.NAGAMUTHU, J.]

The appellants were A1 to A3 in SC.No.71/2008 on the file of the learned Additional Sessions Judge, Fast Track Court No.1, Chidambaram. Including the appellants, there were eight accused. By Judgment dated 23.03.2011, the Trial Court convicted all the eight accused for the following offences:-

Accused No.	Charged u/s.	Convicted u/s.	Sentenced
A1 to A8	148 IPC	Convicted	Each of the accused were sentenced to pay a fine of Rs.1000/-, i/d to undergo 6 months simple imprisonment
A2 to A8	324 IPC	Convicted	Each of the accused were directed to pay a fine of Rs.1000/-, i/d to undergo 6 months simple imprisonment
A1 to A3	302 IPC	Convicted	Each of the accused were sentenced to undergo imprisonment for life and to pay a fine of Rs.5000/-, i/d to undergo one year rigorous imprisonment.
A4 to A8	302 r/w 149 IPC	Acquitted	-

Accused 4 to 8 have not preferred any appeal. Accused 1 to 3 have come up with this appeal challenging their conviction and sentence.

2. The case of the prosecution, in brief, is as follows:-

[a] The deceased in this case is one Devadass. He was the resident of Pethankuppam village, in Chidambaram Taluk. P.W.3

is one Kudiyarasumani. The deceased and P.W.3 were working as watchmen under a railway contractor, who was engaged in the construction of a railway bridge near Chidambaram. Twenty days prior to the occurrence, these 8 accused had come to the said bridge and attempted to steal the steel rods kept there. The deceased and P.W.3 resisted them and attacked A1. This is stated to be the motive for the occurrence.

[b] On 09.11.2007 at about 10.30 p.m., the deceased, P.Ws.1, 3, 5 and 6 were all sitting near the bridge. At that time, all these 8 accused came there in an unlawful assembly. All the accused were armed with dangerous weapons like iron rod, cricket stump and aruval. On reaching the place of occurrence, they started mounting attack on the deceased, P.Ws.1 and 3. They

sustained grievous injuries. The accused fled away from the scene of occurrence. Immediately, the wife of the deceased took him to the hospital. But, on his way, he breathed his last. P.Ws.1 to 4 who sustained injuries straightaway went to the police station.

[c] At 3.00 a.m., on 10.11.2007, P.W.1 made a complaint to the police in respect of the above occurrence. P.W.20, the then Inspector of Police received the said complaint and registered a case in Cr.No.249/2007 u/s.147, 148, 324, 323 and 302 IPC. Ex.P.1 is the complaint and Ex.P.26 is the FIR. He forwarded both the documents to the Court and took up the case for investigation.

[d] At 6.00 a.m., on 10.11.2007, he went to the scene of occurrence and prepared the Observation Mahazar [Ex.P.2] in the presence of P.Ws.8 and 9 and also prepared a Rough Sketch [Ex.P.27]. He recovered blood stained gravels [M.O.13] and sample gravels [M.O.14] from the place of occurrence in the presence of the same witnesses. Between, 7.30 a.m. and 10.00 a.m. he held inquest on the dead body of the deceased in the hospital and prepared Ex.P.28-Inquest Report. He sent the dead body of the deceased for postmortem.

[e] P.W.19, Dr.Sundarajan, conducted autopsy on the body of the deceased on 10.11.2007 at 12.30 p.m. He found the following injuries:-

"External Injuries:-

[1] Lacerated injury left frontal region
4x2x1 cm.

[2] Lacerated injury centre of forehead 3x2x1
cm.

[3] Lacerated injury over right parietal 5x2x1 cm.

[4] Lacerated injury right temporal region 4x2x1 cm.

[5] Crushed injury over face-maxilla, mandible, orbit, nasal bones crushed.

Internal Injuries:-

Abdomen mildly distended. Ribs intact. Heart pale, Chambers empty. Lungs pale. Hyoid bone intact. Stomach contains 300 gms undigested food particles. Liver, spleen, kidneys pale. Intestine distended with gas. Bladder empty. Right temporal bone fractured. Punctured wound prop up over right temporal region meninges. Cerebral Hemorrhage present over right temporal region. Spinal cord intact."

Ex.P.25 is the Postmortem Certificate. He gave his final opinion that the injuries on the deceased would have been caused by weapons like aruval, iron pipe and cricket stump.

[f] P.Ws.1 to 4 who sustained injuries, went to the hospital for treatment. P.W.18-Dr.Kesavan examined them. At 4.15 a.m. on 10.11.2007, he examined P.W.1 and found the following injuries:-

"Injuries:-

- [1] Swelling and pain right finger
- [2] Swelling and pain right thigh
- [3] Swelling and pain left side neck"

P.W.1 told him that he was attacked by fifteen known persons at 11.30 p.m. On 09.11.2007 near Iravalur bridge with iron rod. According to him, the injuries were simple in nature.

[g] At 4.30 a.m. he examined P.W.2, he told the doctor that he was attacked by 15 known persons. He found the following injuries:-

"Injuries:-

- [1] Cut in left ring finger
- [2] Swelling and pain in left hand"

The doctor opined that the injuries were simple in nature.

[h] At 4.35 a.m., he examined P.W.4, who had informed the doctor that he was attacked by 15 known persons. He found the following injuries:-

"Injuries:-

[1]Swelling and pain on left thigh"
He opined that the injuries were simple in nature.

[i] At 4.40 a.m. he examined P.W.3, who had also stated to the doctor that he was attacked by 15 known persons with iron rod. He found the following injuries:-

"Injuries:-

[1]Swelling and pain backside of left thigh
[2]Swelling and pain on the neck"

He opined that the injuries were simple in nature. Exs.P.19 to 22 are the Accident Registers of these witnesses respectively.

[j] According to P.W.18, at 1.30 a.m. on 10.11.2007, the deceased was brought to the hospital. On examining him, he found him dead. Ex.P.23 is the Accident Register of the deceased. Then, he kept the body in the Mortuary. He gave intimation to the police in respect of the occurrence.

[k] During the course of investigation, P.W.20 arrested A1 and A2 in the presence of P.W.10 and A7 and A8 in the presence of P.Ws.1 and 3 and he recovered the weapons based on their respective disclosure statements. On completion of the investigation, he laid the charge-sheet against the accused.

[l] Based on the above materials, the Trial Court framed charges as detailed in the first paragraph of the Judgment. The accused denied the same as false. In order to prove the case on the side of the prosecution, as many as 20 witnesses were examined, 34 documents and 14 material objects were also marked.

[m] Out of the said witnesses, P.Ws.1 to 4 are the injured witnesses who have spoken about the participation of these 8 accused and the injuries

sustained by them respectively and also the injuries sustained by the deceased. P.Ws.5 and 6, though not injured witnesses, have stated that they witnessed the occurrence, they have also stated about the participation of these 8 accused. P.W.7 has spoken about the motive in a vivid fashion. P.Ws.8 and 9 has spoken about the Observation Mahazar prepared and recovery of material objects found at the place of occurrence. P.Ws.10 to 13 have spoken about the arrest of A1, A2, A7 and A8 and they have also spoken about the recovery of the material objects, namely, weapons from their possession. P.Ws.11 and 12 have turned hostile and not supported the case of the prosecution in any manner. P.W.14 has spoken about the statements recorded by her under section 164 Cr.P.C., from the witnesses. P.W.15, Head

Clerk of the Court has spoken about the factum of forwarding material objects for chemical examination. According to the report received, there were blood stains on the weapons. P.W.18-doctor has spoken about the treatment given to P.Ws.1 to 4 and the injuries found on them. P.W.19 has spoken about the postmortem conducted and his final opinion regarding the cause for death. P.W.20 has spoken about the registration of the case and the investigation done.

3. When the above incriminating materials were put to the accused under section 313 Cr.P.C., they denied the same as false. Their defence was a total denial. However, they did not chose to examine any witness nor marked any documents.

4. Having considered all the above, the Trial Court convicted the appellants herein. Challenging the said conviction and sentence, the appellant are before this Court with this appeal.

5. We have heard the learned counsel for the appellants and the learned Additional Public Prosecutor appearing for the State and we also perused the materials placed on record.

6. It is the positive case of the prosecution that the occurrence was on 09.11.2007 at about 10.30 p.m. near the railway bridge. It is also admitted by the eyewitnesses that there is no light anywhere near the place of occurrence. It is in the evidence of P.W.2 that since it was pitch dark, he was not able to identify the assailants. Similarly, P.W.3 has also stated so. P.W.4, during cross-examination has stated that at the scene of occurrence, it was pitch dark and therefore, he was not able to identify the assailants and he was also not able to notice the overt acts. P.W.5 has admitted during cross-examination that it was so dark and with the use of torch light, he was able to identify the assailants. But, it is only an improvement as the use of torch light was never brought to light during investigation. P.W.6 during his cross-examination has also stated so. Thus, from these admission made by the eyewitnesses, who are also the injured witnesses, it has been established very clearly that at the place of occurrence it was so dark and the assailants could not be identified. Though the occurrence was at 10.30 p.m., P.W.1 and other witnesses had gone to Puduchatram Police Station only at 3.00 a.m. on 10.11.2007. In the FIR, P.W.1 has mentioned only about three assailants whereas now there are 8 people as accused. After preferring Ex.P.1-complaint at the police station, all the injured witnesses had gone to the hospital. P.W.18 examined them between 4.30 a.m. and 4.55 a.m. During that time, all the witnesses have told P.W.18 that they were attacked by 15 known

persons with weapons like iron rod. Thus, they have contradicted their own earlier statements. Absolutely, there is no explanation to offer as to why they mentioned about number of assailants as fifteen and that too, "known persons".

7. In the light of the fact that at the earliest point of time, P.W.1 had mentioned the number of assailants as six and after that, all the injured witnesses have told that the assailants were 15, who were all known persons. It is highly doubtful whether these 8 accused were really in the crowd who were the assailants. It is the categorical admission of all the injured witnesses that the assailants could not be noticed due to darkness. It is not known as to how the Investigating Officer could fix these eight persons as assailants. Thus, in our considered view, there are enormous doubts in the prosecution case, which have not been obviated at all. The benefit arising out of such doubt should go in favour of the accused. Thus, we hold that the prosecution has failed to prove the case against all the 8 accused and therefore, all the eight accused are entitled for acquittal.

8. Though accused 4 to 8 have not preferred any appeal, they stand in the same footing like that of the appellants herein, who are before this Court. When this Court finds that the evidences of P.Ws.1 to 6 are not believable, thus giving the same benefit, A4 to A8 are also entitled for acquittal.

9. At this juncture, we may refer to the Judgment of the Hon'ble Supreme Court in Dandu Lakshmi Reddy V. State of A.P. Reported in 1999 [7] SCC 69. In paragraph 25, the Hon'ble Supreme Court has held as follows:-

"25.The mother of the appellant Narayanamma is languishing in jail at present pursuant to the conviction and sentence awarded to her in this case. Of course her conviction is not before us as she did not file any special leave petition. But this Court has set up a judicious precedent for the purpose of averting miscarriage of justice in similar situations. On the evaluation of a case, if this Court reaches the conclusion that no conviction of any accused is possible the benefit of that decision must be extended to his co-accused also though he has not challenged the order by means of an appeal petition to this Court. [vide Rajaram V. State of M.P.]"

[b] Similar view has been taken by the Hon'ble Supreme Court in Rajaram V. State of M.P. Reported in 1994 [2] SCC 568,

wherein in paragraph No.10, the Hon'ble Supreme Court has held as under:-

"10.Ram Sahai [accused 4] has not filed any appeal against his conviction and sentence. However, we find that his case is identical to the case of the appellants and there is no distinguishing feature. In our opinion, it is therefore appropriate that the benefit of our Judgment should also be made available to Ram Sahai. His conviction is also altered from the one u/s.302/149 IPC to one under section 304 Part II read with section 149 IPC. He is also sentenced to five years' rigorous imprisonment and to pay a fine of Rs.1000. In default to payment of fine, he shall suffer further rigorous imprisonment for one year. The fine when realised from Ram Sahai shall be paid to PW 7 Sahodara Bai."

[c] Similarly in Akhil Ali Jehangir Ali Sayyed V. State of Maharashtra reported in JT 2002 [2] SC 158, the Hon'ble Supreme Court, after having referred to the Harbans Singh case, has held in paragraph No.8 as follows:-

"8.After bestowing our anxious consideration on the fact situation in this case and also the spirit of Article 21 of the Constitution, we hereby order that the conviction passed on the second accused Jabbar shall also stand altered to section 304 part I and a sentence of rigorous imprisonment for ten years be awarded to him. This is done on a parity of reasoning and justice, otherwise glaring injustice would result as for him in a case where his role was by no means more serious than that of the present appellant who was A1 in this case."

10. In view of the said settled position of law, though, in the instant case, accused 4 to 8 have not made any appeal, the conviction and sentence imposed on them are also liable to be set aside.

11. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellants herein are set aside and they are acquitted of all charges levelled against them. Fine amount, if any paid, shall be refunded to them.

12. Though, A4 to A8 in SC.No.71/2008 have not preferred any appeal against their conviction and sentence imposed on them by the judgment dated 23.03.2011, their conviction and sentence are also set aside and they are also acquitted. Fine amount, if any paid, shall be refunded to them.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

AP

To

1. The Additional Sessions Judge,
Fast Track Court-I, Chidambaram.
2. Through the Chief Judicial Magistrate,
Cuddalore District.
3. The Inspector of Police
Puduchatiram Police Station
Cuddalore District.
4. The Public Prosecutor,
High Court, Chennai.
5. The Superintendent,
Central Prison, Cuddalore.

+1cc to Mr.C.Vijayakumar, Advocate, S.R.No.6702

Crl.A.No.316 of 2011

KSJ(CO)
CA(17/02/2016)

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