

BAIL SLIP

The Appellants/accused, Viz 1) Velumani S/o.Kanakasabai, 2) Veeramani 3) kalaivanan 4) Tamilmani 5) Selvamani 6) Arulmozhi 7) Sundarmani were released on bail as per the order of this Court CrI.MP.No.1 of 2009, in CrI.A.No.7/2009, dated 07/01/2009.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

CrI.A.No.7 of 2009

1. Velumani, S/o Kanakasabai
2. Veeramani
3. Kalaivanan
4. Tamilmani
5. Selvamani
6. Arulmozhi
7. Sundarmani .. Appellants

Vs.

State rep. by
The Inspector of Police,
Senthurai Police Station,
Perambalur District.
(Crime No.143 of 2007) .. Respondent

Criminal Appeal filed under Section 374(2) Cr.P.C. against the judgment dated 15.12.2008 in S.C.No.76 of 2008 on the file of the Additional District and Sessions Court/Fast Track Court, Ariyalur.

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

JUDGMENT

This appeal is filed by the appellants/A1 to A7 challenging the judgment dated 15.12.2008 in S.C.No.76 of 2008 on the file of the Additional District and Sessions Court/Fast Track Court, Ariyalur, whereby the appellants were convicted and sentenced as tabulated hereunder:

Sl. No.	Rank of Accused	Conviction under Section	Sentence of imprisonment	Fine
1	A1 to A7	Section 148 IPC	one year rigorous imprisonment	Rs.500/-, in default, to undergo one month simple imprisonment
2	A1 to A7	Section 324 IPC	three years rigorous imprisonment	Rs.1,000/-, in default, to undergo three months simple imprisonment

A1 to A3 were acquitted of the charge under Section 307 IPC and A4 to A7 were acquitted of the charge under Section 307 read with 149 IPC. The trial Court ordered the sentences imposed on the appellants to run concurrently.

2. It is the case of the prosecution that on 07.10.2007, when P.W.1/de-facto complainant along with one Thamizharan, was having their tiffin in the tiffin shop of A1 and while having tiffin, A1 indulged in quarrel with P.W.1, by uttering filthy language, stating that there was an outstanding amount of Rs.1,500/- due from him towards the earlier food consumption charges from his tiffin shop. Unable to tolerate the words uttered by A1, P.W.1 also scolded A1. On the same night at about 10 p.m., A1, A2, A3, A6 and A7 went to the house of P.W.1 and pulled him out. At that time, P.W.1's wife pulled the grill gate and while doing so, the grill gate hit on the forehead of A2, due to which, he sustained injuries. All the accused persons shouted at P.W.1, stating that they would see him on the next day morning. Again on 08.10.2007 at about 12.30 p.m., when P.W.1 was in his cycle shop, A4 to A7, armed with wooden reaper and A1 to A3, armed with iron pipe, came there and assaulted P.W.1 indiscriminately. Unable to tolerate the assault, P.W.1 made a hue and cry and raised an alarm, and at that time, P.Ws.2 and 3 came there and shouted at the accused persons to leave free P.W.1. In the meanwhile, on hearing the news, P.W.1's wife also came there and the accused persons ran away from the spot. P.W.1 was taken to Jayankondam Government Hospital and at that time, P.W.1 was in unconscious state and thereafter, he was taken to Thanjavur Government Medical College Hospital. Early morning at about 2 a.m on 09.10.2007, P.W.12 Sub-Inspector of Police, on receiving the intimation from the hospital, went to Thanjavur Government Medical College Hospital and recorded the statement from P.W.1. Thereafter, he came back to the Police Station and registered the case in Cr.No.143 of 2007 for the offences under Sections 147, 148, 324 and 307 IPC and forwarded the FIR to the jurisdictional Court and also sent the copies of

case papers to higher officials. Thereafter, P.W.13 Inspector of Police who was in-charge of Sendurai Police Station, continued the investigation. He went to the scene of occurrence and prepared Ex.P-2 observation mahazar and drew Ex.P-7 rough sketch. He also recovered broken wooden reaper in the presence of witnesses. The recovery mahazar is Ex.P-8. He also recorded the statement of the other witnesses in the hospital and at about 13.30 hours, he arrested A1 and A3 and recorded their confession statements, based on which, he recovered iron pipes M.O.2 series and Ex.P-10 is the recovery mahazar. The admitted portion of the confession statement of A1 is Ex.P-9. Subsequently, the regular Inspector of Police P.W.14 continued the further investigation and he also examined the witnesses and arrested the remaining accused persons who surrendered before the jurisdictional Court. After completing all formalities and after investigation, charge sheet was filed by P.W.14. against the appellants/accused persons. The case was taken on file by the trial Court in S.C.No.76 of 2008. During the course of trial, the prosecution has examined 14 witnesses, marked 12 documents and produced two series of material objects. When the appellants were questioned under Section 313 Cr.P.C., they denied their complicity in the crime. They neither examined any witness nor marked any document. The trial Court, after hearing both sides and on an analysis of both oral and documentary evidence, convicted and sentenced the appellants as stated supra. Challenging the same, the appellants have filed this appeal.

3. Learned counsel appearing for the appellants/A1 to A7 submitted that except the evidence of P.W.1, all the other material witnesses turned hostile. In this regard, he submitted that in order to speak about the occurrence, five witnesses, namely P.Ws.1 to 5 were examined, out of whom, P.Ws.2 to 5 turned hostile. Similarly, the mahazar and confession witnesses also turned hostile. None of the evidence of P.Ws.2 to 5 or the mahazar and confession witnesses corroborate with the evidence of P.W.1. In fact, P.W.1 in his deposition, admitted that he did not know as to whether the weapon shown before him was used for the occurrence or not. Learned counsel for the appellants further submitted that the trial Court has convicted the appellants solely by placing reliance on the evidence of P.W.1. Hence, he prayed that the appellants/A1 to A7 may be acquitted of the charges levelled against them by allowing the appeal.

4. Per contra, learned Additional Public Prosecutor appearing for the respondent-Police submitted that the evidence of P.W.1/injured witness itself, is sufficient to convict the appellants. In fact, the evidence of P.W.11 Doctor with regard to the injuries sustained by P.W.1, tallies with the weapons used by the accused persons, which would have caused injuries on P.W.1. Therefore, learned Additional Public Prosecutor submitted

that there is no infirmity in the impugned judgment of the trial Court and hence, he prayed for dismissal of the appeal.

5. Keeping in mind the above submissions made on either side, I have anxiously considered the same and perused the materials available on record.

6. The only submission made by learned counsel for the appellants is that except P.W.1, other material witnesses turned hostile. There is no evidence to corroborate the evidence of P.W.1 and hence, the trial Court ought to have acquitted the appellants. On a careful perusal of the evidence of P.W.1, it is seen that he has categorically stated that he was attacked by the accused persons. He also stated in his evidence that A4 to A7 were armed with wooden reaper and assaulted P.W.1 indiscriminately. Even P.W.11 Doctor stated in his evidence that when P.W.1 was admitted in the hospital, he said that he was attacked by more than 25 known persons. He also noted the injuries in his evidence. In his chief examination, P.W.11 Doctor said that there is every possibility for causing those injuries due to attack by iron pipe and wooden reaper. Hence, I am of the opinion that the evidence of P.W.1 injured-victim inspires the confidence of this Court to come to the conclusion that the accused persons only attacked P.W.1.

7. Therefore, I am of the opinion that the evidence of P.W.1, coupled with the evidence of P.W.11 Doctor, themselves are sufficient to come to a conclusion that the appellants were guilty of the offences levelled against them. Hence, I am not inclined to accept the submission of the learned counsel for the appellants that since other material witnesses turned hostile, the trial Court ought to have acquitted the appellants.

8. However, considering the fact that almost seven years have lapsed from the date of occurrence, I am inclined to take a lenient view on the appellants, by reducing the period of sentence imposed on the appellants. Accordingly, while confirming the conviction imposed on the appellants/A1 to A7 in respect of both the offences, namely Sections 148 and 324 IPC, and also while confirming the sentence of imprisonment imposed on the appellants under Section 148 IPC, this Court modifies the sentence of imprisonment imposed on the appellants/A1 to A7 under Section 324 IPC from three years to one year rigorous imprisonment on each of them. The sentences imposed on the appellants/accused shall run concurrently.

9. For the reasons stated above, the appeal is partly allowed with the above modification in the period of sentence of imprisonment in respect of the offence under Section 324 IPC. Since they are on bail, the trial Court is directed to take steps to secure their custody to undergo the remaining period of sentence, if any.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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Copy to

1. The Additional District and Sessions Judge (Fast Track Court), Ariyalur.
2. The Public Prosecutor, High Court, Madras.
3. The Inspector of Police, Senthurai Police Station, Perambalur District.
(Crime No.143 of 2007).
4. The Record Keeper, Criminal Section, High Court, Madras.
5. The Judicial Magistrate Ariyalur
6. The Chief Judicial Magistrate Ariyalur
7. The District Collector Ariyalur District
8. The Director General of Police, Chennai

+1 cc to M/s.P.Tamilavel Advocate sr 47801

Cr1.A.No.7 of 2009

aa27/09/2016