

Bail Slip

The Appellants/Petitioners 1 to 9 viz., 1 S. Chandar @ Chandru, S/o Mr. Sri Ram, aged 31 years 2 G. Saravanan, S/o Govindaraj, aged 25 years 3 G. Mohan, S/o Govindaraj aged 24 years 4 M. Dhakshinamoorthy, S/o. Munusamy, aged 24 years 5 Jothi, S/o Gangadharan, aged 19 years 6 S. Appu @ Ragunathan, S/o Subramani, aged 21 years 7 J. Masthan, S/o Kalia Perumal, aged 24 years 8 D. Shridhar, S/o Dharani, aged 21 years 9 K. Sathi @ Sathiyamoorthy @ S/o Kannan, aged 34 years were directed to be released on bail as per order dated 8.5.2008 made in CrI.MP.1/2008 in CrI.A.No.317/2008.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 21.12.2016

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

CrI.A.No.317 of 2008

1.S.Chandar @ Chandru
2.G.Saravanan
3.G.Mohan
4.M.Dhakshnamoorthy
5.G.Jothi
6.S.Appu @ Ranganathan
7.J.Masthan
8.D.Shridhar
9.Sathis @ Sathiyamoorthy ... Appellants/Petitioners

State, by
The Inspector of Police,
P-2, Otteri Police Station,
Chennai. 600 012 Respondent

Criminal appeal preferred under Section 374(2) Cr.P.C., against the judgement dated 21.04.2008 passed by the learned VI Additional Sessions Judge, City Civil Court, Chennai, in S.C.No.528 of 2006.

For Appellants : Mr.K.Pasupathy
For Respondent : Mrs.M.F.Shabana
Government Advocate (CrI. Side)

JUDGMENT

The appellants in this appeal are the accused in Sessions Case No.528 of 2006, on the file of the learned VI Additional Sessions Judge, City Civil Court, Chennai. There are nine accused in this case. They stood charged as detailed below:-

Serial number of charges	Charge(s) framed against	Charge(s) framed under
1.	A1 to A5	U/s.148, 427, 448, 326, 307 and 506(ii) IPC
2.	A6 to A9	U/s.148, 427, 307 r/w 149 and 506(ii) IPC

2. The trial Court, after trial, by Judgment dated 31.08.2006, convicted all the accused and sentenced them as detailed below:-

Rank of the accused	Penal provision(s) under which convicted	Sentence
A1 to A3	U/s. 148 IPC	Sentenced them to undergo 6 months Simple Imprisonment.
	U/s.427 IPC	Sentenced them to undergo 6 months Simple Imprisonment.
	U/s.448 IPC	Sentenced them to undergo 6 months Simple Imprisonment.
	U/s.307 IPC	Sentenced them to undergo four years Simple Imprisonment and also imposed a fine of Rs.1,000/- , in default to undergo 3 months Simple Imprisonment.

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Rank of the accused	Penal provision(s) under which convicted	Sentence
A4 and A5	U/s.148 IPC U/s.427 IPC U/s.326 IPC	Sentenced them to undergo 6 months Simple Imprisonment. Sentenced them to undergo 6 months Simple Imprisonment. Sentenced them to undergo four years Simple Imprisonment and also imposed a fine of Rs.1,000/- , in default to undergo 3 months Simple Imprisonment.
A6 to A9	U/s.148 IPC U/s.427 IPC U/s.307 r/w 149 IPC	Sentenced them to undergo 6 months Simple Imprisonment. Sentenced them to undergo 6 months Simple Imprisonment. Sentenced them to undergo four years Simple Imprisonment and also imposed a fine of Rs.1,000/- , in default to undergo 3 months Simple Imprisonment.

All the sentences are ordered to be run concurrently. Challenging the above said conviction and sentence, the appellants/accused are before this Court with this Criminal Appeal.

3. The case of the prosecution in brief is as follows:

(i) P.W.8, namely, Girivasan, is the injured witness. He is an Auto driver. One month prior to the occurrence, there was a quarrel between A-1 and P.W.8. Due to the same, on 21.03.2004 at about 4.00 p.m., all the accused came to the house of P.W.8 and trying to attack P.W.8, at that time P.W.2, the brother of P.W.8, prevented them and he was attacked by one of the accused. After seeing the same, P.W.8 went inside the house and locked the door. Then all the accused broke open the Door and A1 and A3 attacked P.W.8 on his head with aruval, A2 and A7 caught hold him and other accused attacked him with wooden log. Then all the accused damaged the auto belongs to P.W.8. After the occurrence, P.W.1, who is a neighbour of P.W.8, brought to P.W.8 to the respondent police and P.W.8 gave complaint[Ex.P9]. Then, P.W.1 took the injured/P.W.8 and admitted him in the Government Hospital.

(ii) P.W.11, the Sub Inspector of Police, working in the

respondent police station, received a complaint from P.W.8, registered a case in Crime No.219 of 2004 for the offence under Sections 147, 148, 427, 448, 341, 323, 324, 307 and 506(ii) of IPC and then he sent P.W.8 to the Hospital. He sent the First Information report to the Judicial Magistrate Court. Subsequently, he proceeded to the scene of occurrence and prepared Observation Mahazar [Ex.P2], Rough Sketch [Ex.P13]. He also collected broken glass pieces from the auto [M.O.1] under Mahazar [Ex.P3] in the presence of witnesses. He examined the witnesses and recorded their statements. Then, he went to the Kilpauk Medical College Hospital, Chennai and examined the Doctor, who admitted P.W.8 in the Hospital. Subsequently, he arrested the accused 4 and 5, on such arrest, they voluntarily gave a confession statement and based on the disclosure statement[Ex.P13], he recovered M.O.3 wooden log under Mahazar. Subsequently, he sent the First Information Report to his higher officials.

(iii) P.W.12, the Inspector of Police, working in the respondent Police Station, on receipt of the first information report, he examined the witnesses and recorded their statements. Subsequently, he arrested the accused 3 and 6 and on such arrest, the accused voluntarily gave a confession and based on the disclosure statement[Ex.P16], P.W.12 recovered M.O.3 wooden log in the presence of witnesses and then he sent them for judicial custody. A-7 surrendered before the Judicial Magistrate Court and he took him in police custody and recorded the confession statement of A7, based on the disclosure statement, he recovered Knife [M.O.4] in the presence of witnesses. P.W.12 arrested A-9, and other accused and sent them for judicial custody. He examined the Doctor and other witnesses and recorded their statements and after completion of investigation, he laid charge sheet before the jurisdictional Judicial Magistrate Court.

4. Based on the above materials, the Trial Court framed charges as detailed above and the accused denied the same as false. In order to prove the case of prosecution, as many as 12 witnesses were examined and 17 documents were exhibited, and 4 material objects were marked.

5. Out of the said witnesses examined, P.W.1 is neighbour of P.W.8/injured. According to him, on the dated of occurrence, P.W.8 sustained injury, he took him to the respondent police station, where P.W.8 gave a complaint before the respondent police and then he took the injured to the Kilpauk Medical College Hospital and admitted him. P.W.2 is the brother of P.W.8. According to him, at the time of occurrence, he was watching T.V. programme, at that time, all the accused came to his house with dangerous weapon, when he was questioned them,

they attacked him and chased P.W.8, he went inside the house and locked the door. At that time, A-1 and A-3 broke open the door and attacked him with Aruval and A2 and A7 caught hold him and other accused attacked him with wooden log, and all the accused damaged the auto belongs to P.W.8, and took away the same. P.W.1 took P.W.8 and admitted in Kilpauk Medical College Hospital, Chennai. P.Ws.3 and 4 turned hostile. P.W.5 is the witness to the observation mahazar and recovery of M.O.3 wooden log. P.W.6 turned hostile. P.W.7, the Doctor, working in the Kilpauk Medical College Hospital, Chennai, admitted P.W.8 and issued Accident Register [Ex.P8]. According to him, at the time of admitting P.W.8, he told him that a known person attacked him with knife. P.W.8 is the injured witness, he spoke about the injury sustained by him and the motive for the occurrence. According to him, prior to the occurrence, there was a quarrel between A-1 and P.W.8, due to the same, on the date of occurrence, eight known persons came to his house, when P.W.2 prevented them, they attacked him with wooden log and he went inside the room and locked the door. Subsequently, all the accused broke open the door, and A1 and A3 were attacked him with aruval, A2 and A7 caught hold him and other accused attacked him with wooden log and all the accused damaged the auto belongs to him and took away the same. Then, P.W.1 took him to the respondent police station and he gave a complaint. Thereafter, he was admitted in Kulpauk Medical College Hospital. But, in his cross examination, he only identified A1 and A3, according to him, A-1 alone attacked him on his head and A-3 cut his shirt with aruval and he could not identified any other accused. P.W.9, the Doctor, working in the Government General Hospital, Chennai, who has given opinion regarding the injuries sustained by the accused. He was of the opinion that the injuries sustained by P.W.8 are grievous in nature. P.W.10, Assistant Surgeon, working in the Government General Hospital, Chennai. According to him, he examined P.W.8 and found two injuries on his head and two cut injuries in his lip and another head injuries found on his left forehead. He also issued Accident Register [Ex.P11]. P.W.11, the Sub Inspector of Police, working in the respondent Police Station, recorded the statement of P.W.8 and based on the statement of P.W.8, he registered a case in Crime No.219 of 2004, for the offence under Sections 147, 148, 427, 448, 341, 323, 324, 307 and 506(ii) of IPC and sent P.W.8 to the Government Hospital. He sent the First Information report to the Judicial Magistrate Court. Then, he proceeded to the scene of occurrence and prepared Observation Mahazar [Ex.P2], Rough Sketch [Ex.P13]. He also collected broken glass pieces from the auto [M.O.1] under Mahazar [Ex.P3] in the presence of witnesses. He examined the witnesses and recorded their statements. Then, he went to the Kilpauk Medical College Hospital, Chennai and examined the Doctor who admitted P.W.8 in the Hospital. Thereafter, he arrested the accused 4 and 5, on

such arrest, they voluntarily gave a confession and based on the disclosure statement[Ex.P13], he recovered M.O.3 wooden log under Mahazar. Subsequently, he sent the First Information Report to his higher officials. P.W.12, the Inspector of Police, working in the respondent Police Station, on receipt of the first information report, he continued the investigation and examined the witnesses and recorded their statements. Then, he arrested the accused 3 and 6 and on such arrest, the accused voluntarily gave a confession, based on the disclosure statement [Ex.P16], P.W.12 recovered M.O.3, wooden log in the presence of witnesses and then he sent them for judicial custody. A-7 surrendered before the Judicial Magistrate Court, P.W.12 took him in police custody, recorded his confession statement and based on the disclosure statement, he recovered Knife [M.O.4] in the presence of witnesses. He arrested A9 and other accused and sent them for judicial custody. He examined the Doctor and other witnesses and recorded their statements and after completion of investigation, he laid charge sheet before the jurisdictional Judicial Magistrate Court.

6. 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. The accused examined one Sathiya as D.W.1 and no document was marked on his side.

7. Having considered all the above, the Trial Court convicted all the accused for the offences as stated in the first paragraph of this judgment. Challenging the above conviction and sentence, the accused are before this Court with this appeal.

8. The learned counsel appearing for the appellants would contend that the evidence of P.W.8/the injured witness has implicated only A-1 and there is no evidence available regarding other accused. P.W.2, the brother of P.W.8, is the injured witness and he has only implicated A-1 and A-4. According to him, all the accused came to his house and A1 and A3 broke open the door, went inside the room, and attacked A-8. Hence, absolutely, there is no evidence regarding the other accused. The medical evidence is also did not corroborate the evidence of eye witnesses. Hence, he sought for acquittal.

9. Per contra, the learned Government Advocate(Crl Side) appearing for the respondent would contend that P.W.2 and P.W.8 are eye witnesses to the occurrence and they have implicated all the accused. The medical evidence also corroborated the evidence of eye witnesses. Hence, there is no reason to disbelieve their evidence. Hence, she sought for dismissal of the appeal.

10. I have considered the rival submissions and perused the materials available on record.

11. P.W.8 is the injured witness in this case. Even though, in his chief examination, he has implicated A-1, A-3 and A7, he has stated that all the accused broke open the door, A1 and A3 attacked him with aruval, A2 and A7 caught hold him. In his cross examination, he stated that only one person, namely, A-1 attacked him with Aruval on his head and the third accused attacked him only in his shirt, and he has not implicated any other accused in his cross examination. In the evidence of P.W.2, it is stated that A1 and A3 only inside the house and attacked P.W.8 and except that he did not identify any other accused. The wound certificate was not marked on the side of prosecution, but the accident register was marked as Ex.P11. In Ex.P11, accident register, the name of A1 and A3 has been mentioned. Even though, P.W.10, the Doctor found four injuries, but there is no evidence to corroborate that such injuries, In the above circumstances, even as per the evidence of P.W.8, A-1 alone attacked him and caused injuries and there is no evidence for other accused. In the above circumstances, I am of the considered view that the prosecution failed to prove the case against the other accused, hence except the first accused, the other accused are entitled for acquittal.

12. So far as the sentence is concerned, the trial Court convicted the first accused and sentenced him to undergo 4 years rigorous imprisonment and also imposed a fine of Rs.1,000/-. Even as per the evidence of P.W.8, A1 caused injuries on the head of P.W.8 and hence there is no material available to convict him under Section 307 IPC. However, A-1 attacked P.W.8 with knife and caused injuries on the head, and he is liable to convict under Section 326 IPC, and A-1 convicted under Section 326 IPC. In the above circumstances, now considering the mitigating and aggravating circumstances, it is sufficient to sentence him to undergo two years rigorous imprisonment and to pay a fine of Rs.1,000/- and in default, to undergo rigorous imprisonment for 8 weeks, which in my considered opinion, would meet the end of justice.

13. In the result, the Criminal Appeal is partly allowed, the conviction and sentence imposed on the first appellant under Sections 148, 427, 448 and 307 IPC are set aside, instead, he is convicted for an offence under Section 326 IPC and sentenced him to undergo rigorous imprisonment for two years and to pay a fine of Rs.1000/- in default, to undergo rigorous imprisonment for eight weeks. The period of imprisonment already undergone shall be given set off under Section 428 Cr.P.C. The conviction and sentence imposed on the Appellants 2 to 9 in S.C.No.528 of 2006 dated 21.04.2008 on the file of the learned VI Additional Judge,

City Civil Court, Chennai is hereby set aside and the appellants 2 to 9 are acquitted of all the charges levelled against them and bail bond, if any, executed by them shall stand cancelled and the fine amounts paid by them are ordered to be refunded forthwith.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

- 1 The Metropolitan Magistrate No.X
Egmore, Chennai
 - 2 The Chief Metropolitan Magistrate, Egmore, Chennai
 - 3 The VI Addl. Sessions Judge, Chennai
 - 3a do Thro The Principal District and Sessions Judge, Chennai
 - 4 The Superintendent, Central Prison, Puzhal, Chennai
 - 5 The Inspector of Police, P2 Ooteri Police Station, Chennai
 - 6 The Public Prosecutor, High Court, Madras
- +lcc to Mr.K. Pasupathy, Advocate, S.R.No.74550

ugi(CO)
md(11/01/2017)

सत्यमेव जयते

Cr1.A.No.317 of 2008

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