

BAIL SLIP

The petitioner/accused 1to5 namely, 1.Settu @ Sekar, aged 35 years, 2.Varadharaj, aged 21 years, 3.Raja, aged 23 years, 4.Karthick, aged 22 years, 5.Shanthi, aged 23 years was directed to be released on bail as per order dt.11.10.07 in Criminal Miscellaneous Petition No.1/07 in CrI.A.No.887/07.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21-10-2016

CORAM:

THE HON'BLE DR. JUSTICE P. DEVADASS

Criminal Appeal No.887 of 2007

1.Settu @ Sekar
2.Varadharaj
3.Raja
4.Karthick
5.Shanthi

... Appellants/Accused

Vs.

The Inspector of Police,
B-3 Kanchi Taluk Police Station,
Kancheepuram,
Kancheepuram District. ... Respondent/Complainant

Prayer : Criminal Appeal filed under Section 374 (2) of the Code of Criminal Procedure against the judgment of conviction and sentence made in S.C.No.104 of 2007 by the learned Additional Sessions Judge, Fast Track Court No.II, Kancheepuram, dated 21.9.2007.

For Appellant : Mr.T.Mohan for
M/s.D.Geetha and S.Anbazhagan

For Respondent : Mr.R.Sekar,
Government Advocate (CrI. Side)

JUDGMENT

A-1 to A-5 in the Sessions Case in S.C.No.104 of 2007 on the file of the learned Additional Sessions Judge, Kancheepuram, are the appellants.

2. In the Trial Court, after trial, they were convicted and sentenced as detailed below:-

Accused	Conviction	Sentence
A-1	Section 147 Section 307 IPC	- 5 years RI and fine of Rs.1,000/-, i/d 3 months RI
A-2	Section 147 Section 307 IPC	- 5 years RI and fine of Rs.1,000/-, i/d 3 months RI
A-3	Section 147 Section 307 IPC	- 5 years RI and fine of Rs.1,000/-, i/d 3 months RI
A-4	Section 147 Section 307 IPC	- 5 years RI and fine of Rs.1,000/-, i/d 3 months RI
A-5	Section 307 r/w Section 149 IPC	5 years RI and fine of Rs.1,000/-, i/d 3 months RI

A-1 to A-5 have paid their fine amounts. No separate sentence has been imposed for the offence under Section 147 IPC.

2. The case of the prosecution in brief runs as under:-

(1) On 17.12.2006, at about 5.30 p.m., in Vasantha Nagar, Orikkai Village, Kancheepuram Taluk, PW-2 gave invitation to A-5 for a function. In this connection, he demanded some donation. A-5 scolded him. A-1 assaulted PW-2 with MO-1 Coconut Shell on his head. With MO-2 Reaper Stick A-2 assaulted PW-2 on his head. A-3 and A-4 have fisted and kicked PW-2. PW-2 fell down. Swooned. PWs-1 and 3 witnessed the occurrence.

(2) PW-1 gave Ex.P-1 complaint to PW-7 S.I of Police, Taluk Police Station, Kancheepuram. He registered this case (Ex.P-9 FIR). PW-9 Inspector took up his investigation. He examined PW-2 at the Government Hospital, Kancheepuram. He visited the scene place. Prepared Ex.P-12 Observation Mahazar in the presence of PWs-4 and 5. He drew Ex.P-11 Rough Sketch of the scene place. He examined the material witnesses and recorded their statement under Section 161 Cr.P.C. On 18.12.2016, at about 5 p.m., near Vasantha Nagar, PW-9 arrested A-1 to A-5. A-1 and A-5 gave confessional statement/Ex.P-13. Based on their confession, he seized MOs-1 and 2 under Ex.P-14 Seizure Mahazar. He sent the case-properties to the Court.

examined the injured PW-2 (Ex.P-8 Accident Register copy). PW-6 noticed the following:-

- 1) Bleeding from right ear fresh;
- 2) Abrasion 4 x 4 cms on the right side ear to eye;
- 3) Contusion 4 x 4 cms right side scalp parietal region.

(4) For further treatment, PW-2 was sent to Government General Hospital, Chennai. PW-8 gave him further treatment. He issued Ex.P-10 wherein it is mentioned as under:-

Scan examination revealed contusion on the left side of the brain and fracture on the right side of the parietal region. Of the above injuries the first injury is grievous in nature. The other injuries are simple in nature.

(5) After PW-9, PW-10 continued the investigation. Concluding his investigation, he filed the Final Report against A-1 to A-5 for offences under Sections 147 and 307 r/w Section 149 IPC before the Committal Magistrate.

3. The Committal Magistrate after furnishing the accused copies of documents, committed the case to the Court of Principal Sessions Judge, Chinglepet under Section 209 Cr.P.C. The case was made over to the Additional Sessions Judge, Kancheepuram for trial.

4. Upon hearing both and on consideration of the case-records, the Trial Court framed charges as against the accused.

5. A-1 to A-5 pleaded not guilty to the charges.

6. To substantiate the charges, prosecution examined PWs.1 to 10, marked Exs.P-1 to P14 and exhibited MOs.1 and 2.

7. When the Trial Court examined the accused under Section 313 Cr.P.C., on the incriminating aspects in the prosecution evidence, they denied their complicity in this case. They did not let in any defence evidence.

8. Appreciating the above evidence, the Trial Court convicted and sentenced them as already stated.

9. The learned counsel for the appellants submitted that during the pendency of this appeal, A-1 has passed away. He further submits that the charges levelled against A-2 to A-5 have not been established by the prosecution beyond all reasonable doubts. There is inconsistency as between the alleged eye witnesses namely, PWs.1 to 3. The medical evidence does not correspond to the injuries stated to have been sustained by PW-2. There is no clear cut medical evidence to establish that PW-2 had sustained fracture on his head. In this respect, the evidence of the Doctor PW-6 alone is not sufficient. There is material variation as to the allegations in the FIR and in the evidence of the eye witnesses.

10. The learned Government Advocate would confirm the

death of A-1. He would also submit that intending to do away with PW-2, A-1 had assaulted PW-2 on his head with MO-1. A-2 also assaulted PW-2 with MO-2 on his head. All the accused have formed an unlawful assembly. They have participated in the commission of crime. In the circumstances, appreciating their evidence, the Trial Court has rightly convicted the appellants and sentenced them accordingly.

11. I have anxiously considered the rival submissions, perused the impugned judgment of the Trial Court and the entire materials on record.

12. Now the question is whether the prosecution has established the charges levelled against A-2 under Sections 147 and 307 IPC, A-3 under Sections 147 and 307 IPC, A-4 under Sections 147 and 307 IPC and A-5 under Section 307 r/w Section 149 IPC beyond all reasonable doubts.

13. PW-2 and A-2 to A-5 belongs to Vasantha Nagar in Orikkai Village in Kancheepuram District. Both sides are known to each other. The occurrence is stated to have taken place on 17.12.2006 at about 5.30 p.m., near the house of A-5.

14. The specific version of the prosecution is that all the accused have formed an unlawful assembly and when A-1 had attempted on the life of PW-2, he was joined by A-2 to A-5. As already stated A-1 is dead and the charges against him have abated, we need not refer to A-1.

15. The FIR has been lodged by PW-1. He is the author of the FIR as well as an eye witness in this case. The other eye-witnesses are PWs-2 and 3. And PW-2 is the victim in this case. A-2 having been present at the scene place, at the time of occurrence, has been mentioned in the FIR. And this has also been spoken to by PWs.1 to 3. It is stated in the FIR that A-2 has assaulted PW-2 with MO-2 Reaper Stick on his head. PW-2 also stated in his evidence that he was assaulted on his head by A-2 with such a stick. In this respect, PW-2 has been corroborated by PWs-1 and 3.

16. PW-6 who initially examined PW-2 at the Government Hospital, Kancheepuram, noticed injuries on his head (Ex.P-8 AR copy). Thereafter, he was sent to Government General Hospital, Chennai for further treatment. The medical records shows that he had suffered fracture on his head.

17. The attempt of the defence that there was no competent and relevant medical witness to speak that PW-2 had sustained fracture on his head, cannot be accepted in view of the overwhelming oral and medical evidence.

18. There is inconsistency as to the alleged overt act attributed as against A-3 and A-4 in the FIR as well as in the

evidence of PWs.1 to 3. Further, the role alleged to have been played by PW-5 has not been clearly substantiated by the evidence adduced. Though A-3 and A-4 were stated to have assaulted, fisted and kicked PW-2, there is absence of the same in the FIR. Further, there is no corresponding injury on the person of PW-2 with reference to the charges levelled as against A-3 and A-4. Absolutely, there is no acceptable, clear cut incriminating material/ evidence as against A-3 to A-5.

19. Now we have to see what offence is made out as against A-2. PW-2 sustained fracture on his head. The weapon of offence used by A-2 is MO-2 Reaper Stick. In such circumstances, an offence under Section 325 IPC is made out as against A-2. In the facts and circumstances, an offence under Section 307 IPC will not arise as against any of the accused. No offence is made out as against A-3 to A-5.

20. In view of the foregoing, it is ordered as under:-

(1) This Criminal Appeal is allowed in part;

(2) The conviction of A-2 under Sections 307 and 147 IPC is set aside. Instead he is convicted under Section 325 IPC. He is sentenced to the period of imprisonment undergone by him, namely, 65 days S.I. Fine amount of Rs.1,000/- is maintained;

(3) The conviction of A-3 under Sections 147 and 307 IPC, A-4 under Sections 147 and 307 IPC and A-5 under Sections 147, 307 read with Section 149 IPC and the sentence of imprisonment and fine imposed upon them are set aside.

(4) The fine amounts paid by A-3 to A-5 shall be refunded to them.

(5) The charges as against A-1 are abated.

Sd/-

Asst.Registrar (J)

/true copy/

सत्यमेव जयते

Sub Asst. Registrar

To

1.The Principal Sessions Judge,
Chinglepet.

2.The Additional Sessions Judge,
(Formerly Fast Track Court No.II,
Kancheepuram.

3.The Government Advocate,
High Court,
Madras.

4.Superintendent,
Central Prison,
Ruzhale, Chennai.

5.The Superintendent,
Women Prison,
Puzhal,
Chennai.

6.The Inspector of Police
B-3 Kanchi Taluk Police Station,
Kancheepuram,
Kancheepuram District.

7.The Public Prosecutor,
High Court, Madras.

8.The Section Office,r
Criminal Section, High Court, Madras.

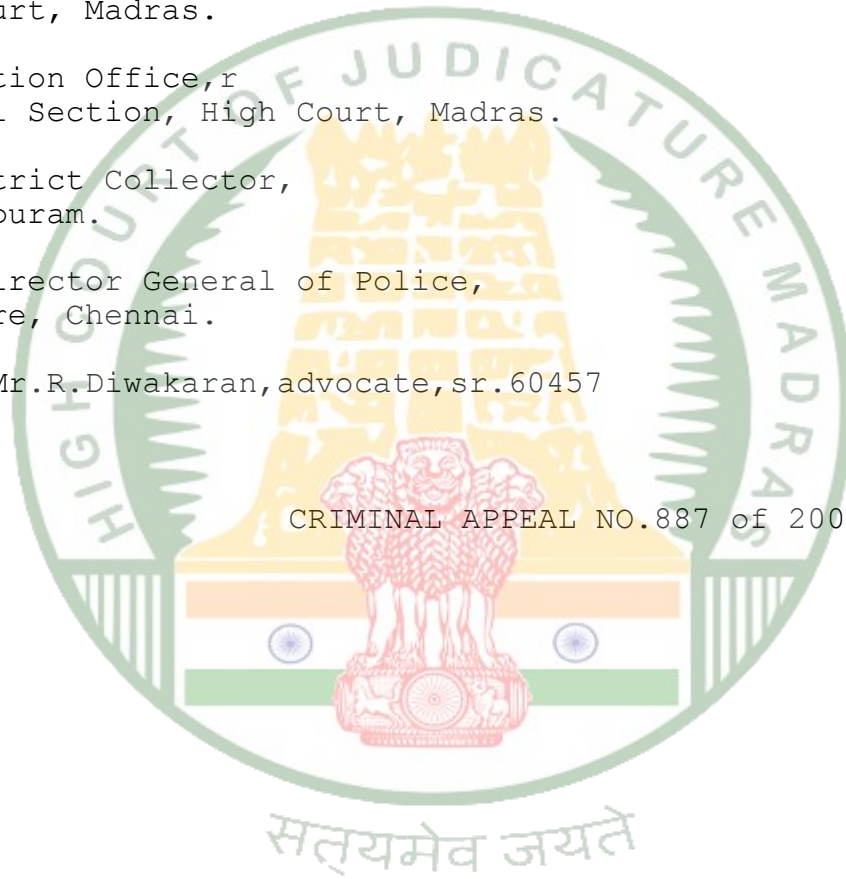
9.The District Collector,
Kanchipuram.

10.The Director General of Police,
Mylapore, Chennai.

+1 cc to Mr.R.Diwakaran,advocate,sr.60457

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CRIMINAL APPEAL NO.887 of 2007



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