

BAIL SLIP

The Petitioners/Accused namely 1. Prakash 2. Appai@Kanniappan and 3. Rathinam in S.C. No 277/06 on the file of Assistant Sessions Judge, Cum Chief Judicial Magistrate, Chengalpet were directed to be released as bail as per the orders of this Court dated 16.11.2007 made in MP/ of 2007 in CRL.A.No.966 of 2007 and the Petitioners/Accused namely 1. Pradeep @ Pradeepkumar 2. Irusan 3. Baskar 4. Kannan @ Karnan 5. Venkatesan in S.C.No.277 of 2006 on the file of Assistant Sessions Judge, Cum Chief Judicial Magistrate, Chengalpet were directed to be released on bail as per the orders of this Court dated 30.01.2008 made in MP 1/2008 in CRL.A.No.966 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2016

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.966 of 2007

1. Prakash
2. Pradeep @ Pradeepkumar
3. Irusan
4. Appai @ Kannaiappan
5. Baskar
6. Kannan @ Karnan
7. Rathinam
8. Venkatesan

Appellants

Vs

State rep. By
Inspector of Police,
Padalam Police Station,
Chengalpet District,
Crime No.418 of 2005

Respondent

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., to set aside the conviction and sentence imposed on the appellants by the learned Assistant Sessions Judge cum Chief Judicial Magistrate, Chengalpet in S.C.No.277 of 2006 dated 01.10.2007.

For Appellants : Mr. R.John Sathyan
For Respondent : Mrs.M.F.Shobana,
Gov. Adv. (Crl. Side)

JUDGEMENT

The appellants are A1 to A8 in S.C.No.277 of 2006 on the file of the learned assistant Sessions Judge & Chief Judicial Magistrate, Chenglepet. A1 & A8 stood charged for the offences under Sections 147, 341 and 307 IPC, A2, A5 & A7 stood charged for the offences under Sections 148, 341, 307 IPC and A3, A3 & A6 stood charged for the offences under Sections 147, 341, 307 r/w.109 IPC. By Judgment dated 01.10.2007, the trial Court convicted the appellants and sentenced as under :

Accused	Conviction	Sentence
A3 & A5	148 IPC	Rigorous Imprisonment for 3 years.
A3 & A5	341 IPC	Simple Imprisonment for one month
A3 & A5	307 IPC	Rigorous imprisonment for 10 years with a fine of Rs.5000/- each, in default to undergo rigorous imprisonment for one year.
A1, A2, A4, A6, A7 & A8	147 IPC	Simple Imprisonment for two years
A1, A2, A4, A6, A7 & A8	341 IPC	Simple Imprisonment for one month
A1, A2, A4, A6, A7 & A8	307 r/w. 149 IPC	Rigorous Imprisonment for 10 years with a fine of Rs.5000/- each, in default to undergo Rigorous imprisonment for one year.

Challenging the said conviction and sentence, the appellants are before this Court with this Criminal Appeal.

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

P.W.1, injured witness, is a resident of Mamandoor vilage. On 01.11.2005, at about 5.00 p.m., when he was going in his motorcycle near the house of A3, A1, A2 and A5 to A8 way laid him and A5 attacked P.W.1 on his left hand with knife. A2 by using knife attacked P.W.1, on his hands and A7 also attacked him on his neck. A6 and A8 caught hold of him. A3 attacked P.W.1 on his back. At that time, P.W.2 and P.W.3 came there. After seeking P.W.2 and 3, accused ran away. Then, P.Ws.2 and 3 took P.W1 to the Chengalpet Government Hospital and admitted

there. Thereafter, P.W.9, Sub-Inspector of Police, came to the hospital and recorded his statement. On receipt of the statement, he registered a case in Crime No.418 of 2005 for the offences under Sections 147, 148, 341, 324 and 307 IPC and prepared First Information Report, Ex.P.7 and sent the same to the Judicial Magistrate and to the higher officials.

3. P.W.12, on receipt of the First Information Report, commenced investigation, proceeded to the scene of occurrence and prepared Observation Mahazar, Ex.P.2 and drew Rough Sketch, Ex.P.9, in the presence of witnesses. Then, he went to the Government Hospital, Chengalpet and recorded the statement of P.Ws.1 and 2 and other witnesses. On 05.11.2005, at about 12.15 p.m., he arrested A3 and on such arrest, A3 has voluntarily given a confession. On the same day, he also arrested A4 at Aathimanam bus stand and he has also voluntarily given a confession. On 10.11.2005, A1, A2 and A5 to A8 surrendered before the Metropolitan Magistrate, Chennai. P.W.12 took A5 under police custody and he has given a voluntary confession. Based on the disclosure statement of A5, he recovered 3 knives and a wooden log. On completing investigation, P.W.12 laid charge sheet against the accused on 22.03.2006.

4. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment against the accused. The accused denied the same. In order to prove its case, on the side of the prosecution, as many as 12 witnesses were examined and 11 documents were exhibited, besides 4 Material Objects.

5. Out of the said witnesses examined, P.W.1 is the injured witness. According to P.W.1, on the date of occurrence, while he was going in a two wheeler, near the house of A3, A1, A2 & A5 to A8 waylaid him and A5 attacked him with a knife and A2 attacked him with a knife on both the hands of P.W.1. A7 attacked him with a knife on his neck. At that time, P.W.2 father, P.W.3, uncle and P.W.11 sister and one Manoharan came there and after seeing them, all the accused ran away from the place of occurrence. Thereafter, P.W.1 was taken to the Government Hospital, Chengalpet, where P.W.9, Sub -Inspector of Police recorded his statement.

6. P.W.2 is the father of P.W.1. According to him, on the date of occurrence, A1, A3 and A4 waylaid P.W.1 and A5 attacked him on the left hand and A7 attacked him on the head and A2 attacked him on the neck. A8 attacked him on the back of P.W.1. Thereafter, he along with others took P.W.1 to the Government Hospital, Chengalpet, then, they went to the Padalam Police Station and gave a complaint.

7. P.W.3 is the uncle of P.W.1. According to him, on the date of occurrence A2, A5 and A7 and another person, having knife in their hands and A8 was having wooden log in his hand and attacked P.W.1 indiscriminately. After seeing them, the accused persons ran away. Then, they admitted P.W.1 in the Government Hospital, Chengalpet. P.W.4 is a witness to the observation mahazar. P.W.5 and P.W.6 have turned hostile.

8. P.W.7, Doctor, working in the Government Medical College Hospital, Chengalpet, admitted P.W.1 in the hospital. At that time, P.W.1 told him that four known persons attacked him and he treated P.W.1 for the injuries sustained by him and has given Accident Register, Ex.P.5. P.W.8, is a doctor, working in the Government Hospital, Chengalpet, who admitted P.W.1 in the hospital on 01.11.2005, at about 11.55 p.m., and issued accident register, Ex.P.6.

9. P.W.9 is the Inspector of Police, working in the respondent police. According to him on 01.11.2005, at about 7.00 p.m., P.W.1 came to the police station and gave a complaint. Based on the complaint given by P.W.1, P.W.9 registered a case in crime No.418 of 2005 and then sent the First Information Report, Ex.P.7 to the higher officials. P.W.10, Doctor, working in the Government Hospital, Chennai, has given treatment to P.W.1 and he also issued certificate and opinion that the injuries are serious in nature. P.W.11 is a sister of P.W.1. According to her, at the time of occurrence, A1 to A8 were present in the scene of occurrence and A5 was trying to attack P.W.1 on the neck and when he avoided the attack, he has sustained injury on his hand and A8 attacked P.W.1 on his back. A2 attacked him on the left side of his ear. A7 pushed P.W.1 in a narrow lane. On seeing P.W.11 and others, the accused ran away.

10. P.W.12 is the Inspector of Police. According to him, on receipt of First Information Report, he went to the scene of occurrence and prepared Observation mahazar and drew rough sketch. Thereafter, he recorded the statement of P.W.1 and others. Then, he arrested A3 and A4. The other accused have surrendered before the Judicial Magistrate. P.W.12 took A5 under police custody and based on the admissible portion of the confession statement, he recovered the weapons used in the said occurrence. After completing investigation, he laid charge sheet.

11. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. They did not choose to examine any witness or mark any documents.

12. Having considered all the above materials, the trial Court convicted the appellants/A1 to A8 as stated in the first paragraph of this judgment. Challenging the same, the appellants/accused are before this Court with this Criminal Appeal.

13. We have heard Mr. John Sathyan, learned counsel for the appellants and Mrs. M. F. Shobana, learned Government Advocate (Crl. Side), appearing for the State and we have also perused the records, carefully.

14. There are four eye-witnesses to the occurrence. P.W.1 is the injured witness. P.W.2 is the father of P.W.1. P.W.3 is the uncle of P.W.1 and P.W.11 is the sister of P.W.1. According to P.W.1., on the date of occurrence, at about 5.00 p.m., A1, A2 & A5 to A8 have waylaid P.W.1 and A5 attacked him on the left hand and A2 attacked him on both the hands, A7 attacked him on his neck. A6, A8 caught hold of him and A3 attacked him with wooden log on the back of P.W.1. At that time, P.Ws. 2, 3 and 11 and one Manoharan came there and on seeing them, the accused ran away. Thereafter, P.W.1 was admitted in the Government Hospital, Chengalpet. The Sub-Inspector of Police, Padalam Police Station, came there and recorded the statement of P.W.1.

15. But, P.W.2 in his evidence has only stated that A5 attacked P.W.1 on the left hand, A7 attacked him on his head and A2 attacked him on his neck and A8 attacked him with wooden log on his back. Then, they took P.W.1 to the Government Hospital and given a complaint with the Padalam Police Station. Thereafter, police came to the hospital and commenced investigation.

16. P.W.3 in his evidence has simply stated that all the accused attacked P.W.1 and admitted him in the government Hospital, Chengalpet. P.W.11, who is yet another eyewitness who has stated that A8 attacked P.W.1 on his back side and A2 attacked him on the left side of the ear and A7 pushed him into the lane.

17. Hence, from the evidence of the above, there is lot of contradiction regarding overtact of the accused. Even P.W.1 injured witness has not spoken about any head injury. But, in the Accident Register Ex.P.5, there is a head injury on the forehead and also there are 8 more injuries, but none of the witnesses have spoken about the injuries. Hence, the medical evidence did not corroborate the evidence of the eye-witnesses.

18. Apart from that, according to P.W.2, the father of the deceased, he along with P.Ws.3, 11 and one Manoharan took the injured P.W.1 to the Hospital and thereafter, they went to the police station and had given a complaint and the police commenced investigation based on the said complaint. P.W.3 also says that all of them took P.W.1 to the hospital, whereas P.W.7 Doctor, who admitted P.W.1 has stated that one Manoharan took P.W.1 to the hospital, wherein, P.W.1 had stated that only 4 persons have attacked him. But, the above said Manoharan was not examined by the prosecution.

19. P.W.9, the Inspector of Police, in his evidence has stated that P.W.1 himself came to the police station and had given a complaint and after recording his statement, he registered the complaint. Apart from that there is a considerable delay in filing the First Information Report. Even though the occurrence took place at about 5.00 p.m., the First Information Report was registered only at about 8.15 p.m. and the First Information Report reached the Court only on the next day at 8.00 a.m. considering the large number of accused implicated in this case, the delay in filing the First Information Report and also the delay in sending the same to the Court has created doubt in the prosecution case.

20. Apart from that even though P.Ws.3, 4 and 11 says that all of them went to the hospital, whereas P.W.7 Doctor had stated that only Manoharan brought P.W.1 to the hospital. But, the said Manoharan has not been examined by the prosecution. Another important fact in this case is that all the witnesses, namely, P.Ws.2, 3 and 11 are closely related to P.W.1 and they are interested witnesses. No independent witness has been examined to corroborate the evidence of the prosecution case. Even though there is no bar in considering the interested witnesses provided their evidence is trustworthy.

21. In view of the contradiction found in the evidences, the presence of the above said eyewitnesses itself is doubtful and there is also a chance for false implication of the accused in this case. In the above circumstances, I am of the considered view that the prosecution has failed to prove the case beyond reasonable doubt and the appellants are entitled for acquittal. Hence, the judgment of the court below is set aside and the appellant is acquitted.

22. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellants/A1 to A8 by the learned Assistant Sessions Judge & Chief Judicial Magistrate, Chengelpet, in S.C.No.277 of 2006, by the judgment dated 01.10.2007, is hereby set aside. The appellants/A1 to A8 are acquitted from all the charges levelled against them. Fine amount, if any paid by the appellants, shall be refunded to them. Bail bonds, if any, executed by the appellants shall stand discharged.

s/d-
Assistant Registrar (CS-II)

//True Copy//

Sub-Assistant Registrar

To

1. The Assistant Sessions Judge & Chief Judicial Magistrate, Chengelpet
 2. The Public Prosecutor, High Court, Madras.
 3. The District and Sessions Judge, Chengelpet.
 4. The Chief Judicial Magistrate, Chengelpet
 5. The Judicial Magistrate, No I, Chengelpet
 6. The Director General of Police
 7. The District Collector, Chengelpet
 8. The Superintendent, Central Prison, Puzhal
 9. The Inspector Of Police, Padapam Police Station Chengelpet (Crime No 418/05)
- +1 CC to The Public Prosecutor, High Court, Madras sr 76321

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