

BAIL SLIP

The Appellants/Accused Nos.1,2 & 4 namely 1) Boorasamy(Died) 2) Ramu S/o.Boorasamy 3) Kumar S/o.Boorasamy were directed to be released on bail as per the order of this Court dated 05/11/2007 made in CrI.MP.NO.1 of 2007 in CrI.A.993 of 2007 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 28.03.2016

CORAM

THE HONOURABLE DR.JUSTICE P.DEVADASS

Criminal Appeal No.993 of 2007

1. Boorasamy (died)
2. Ramu
3. Kumar ... Appellants

vs.

State represented by
Inspector of Police
Kurunchipadi Police Station
(Crime No.208/2005) ... Respondent

Criminal Appeal preferred under Section 374 of Cr.P.C., against the judgment dated 15.10.2007 in S.C.No.321 of 2006 passed by the learned Additional District Sessions Judge (Fast Track Court No.II), Cuddalore.

For Appellants : Mr.S.Pushpakaran

(First Appellant : Died)

For Respondent : Mr.R.Govindaraj,
Additional Public Prosecutor.

J U D G M E N T

A-2 and A-4 in the Sessions Case in S.C.No.321 of 2006 are the appellants. Totally there are 4 accused, namely, A-1 to A-4. Ultimately, A-3 was acquitted, however, A-1, A-2 and A-4 were convicted and sentenced as under:-

Accused	Conviction	Sentenc
Boorasamy (A-1)	Section 323 IPC	Rs.500/-, i/d 2 months S.I.
Ramu (A-2)	Section 324 IPC (2 counts)	1 year R.I and fine Rs.500/-, i/d 3 months R.I for each count
Kumar (A-4)	-do-	-do-

2. The convicted persons have preferred this appeal. Pending appeal, A-1 had passed away. The remaining accused are A-2 and A-4.

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

(i) PWs-3 and 4 are spouses. PWs-1 and 9 are their son and daughter. They and A-2 and A-4 belongs to Melapudhupettai village in Cuddalore District. Between both side, there is a pathway dispute. In this backdrop of the matter, on 10.7.2005, at about 8.30 p.m., near A-1's land, the occurrence took place. A-2 (Ramu) assaulted PW-1 on his head. A-4 (Kumar) also assaulted PW-1 with MO-2 knife on his left hand. When PW-3 came there, A-2 assaulted him on his right ear while A-4 (Kumar) assaulted him on his chest. PWs-4 and 9 stated to have sustained injury and PWs-5 and 6 have witnessed the occurrence.

(ii) On the same day, at about 9 a.m., at the Kurunchipadi Police Station, PW-1 lodged a complaint (Ex.P-1) with PW-10 S.I of Police. He registered this case (Ex.P-8 FIR).

(iii) PW-13 Inspector took up his investigation. He went to the scene place, prepared Ex.P-6 Observation Mahazar in the presence of PW-7 and another person. He drew Ex.P-10 rough sketch. He examined the witnesses and recorded their statement. After him, PW-11 Inspector continued the investigation. On 11.7.2005 at the Bus Stand, he has arrested A-1 in the presence of PW-8 and another person and recorded his confessional statement (Ex.P-9). Based on that he had seized MOs-1 and 2 knives and MOs-3 and 4 woodenlogs under Ex.P-7 Mahazar.

(iv) In the meanwhile, at the Government Hospital, Kurunchipadi PW-2 treated PW-1 and found laceration on his head and left hand (see Ex.P-2 Wound Certificate). PW-2 also treated PW-3 and found laceration injury on his forehead, head and right ear (Ex.P-3 Wound Certificate). Finally, PW-12 investigated this case. Concluding his investigation he filed the Final Report in this case.

4. When the charges were read over to the A-2 and A-4 they have pleaded not guilty to the charges. Ultimately, they

were convicted and sentenced as already stated.

5. To substantiate the charges prosecution examined PWs-1 to 13, marked Exs.P-1 to P-11 and exhibited MOs-1 to 4.

6. When A-2 and A-3 were examined under Section 313 Cr.P.C, as to the incriminating information in the prosecution evidence, they have denied the offences and they did not let in defence evidence.

7. Considering the above evidence and the submissions of both sides, the Trial Court found A-2 and A-4 guilty and sentenced them as already stated.

8. The learned counsel for the appellants would contend that there is material contradiction as to the weapons alleged to have been used in the commission of offences. There is material variations in the Final Report of the Investigating Officer and the prosecution evidences. The prosecution has thoroughly failed to establish the charges levelled against A-2 and A-4. In any event, the sentence imposed upon them is disproportionate to the offences alleged to have been committed by them.

9. On the other hand, the learned Additional Public Prosecutor would submit that it is an assault case. A-2 and A-4 have assaulted the witnesses with lethal weapons. The injuries having been found on their persons have been corroborated by the medical evidence. PWs-5 and 6 are also ocular witnesses in this case. In such circumstances, the conviction recorded and the sentence awarded cannot be faulted.

10. I have anxiously considered the rival submissions, perused the trial Court's judgment and the materials on record.

11. Question is whether prosecution had established beyond all reasonable doubts that A-2 and A-4 have committed offences under Section 324 IPC (2 counts).

12. A-2 and A-4 PWs-1, 3, 4 and 9 are known persons. They were having some long standing feud with regard to a pathway dispute. In the circumstances, on the occurrence day, A-2 and A-4 each wielding a knife, viz., MO-1 and MO-2 have assaulted PWs-1, 3, 4 and 9. They are injured witnesses. Their evidence has been substantiated by the medical evidence of PW-2.

13. There may be some variations in the Final Report filed by the Investigating Officer. That is not the test. This is a case based on the evidence of eye witnesses, injured witnesses and they were consistent and cogent in their evidence as regards the manner of assault and participation of A-2 and A-

4 in the occurrence. There is no lodging the FIR also.

14. In such circumstances, this Court is of the view that the prosecution has established the charges under Section 324 IPC (2 counts) as against A-2 and A-4 beyond all reasonable doubts.

15. Now on the aspect of quantum of sentence, we are of the view that the sentence awarded to them is on the higher side.

16. A-2 and A-4 are first offenders. They have no bad antecedents. Both sides are known persons. They belongs to the same village. Some pathway dispute between them is the root cause for the occurrence. In such circumstances, the rigour of the sentence can be diluted.

17. In view of the foregoing, the conviction of A-2 and A-4 under Section 324 IPC (2 counts) are maintained. Their sentence of fine is also maintained. Their sentence of imprisonment of one year is set aside. Instead they are directed to pay a compensation of Rs.1,500/- each to PWs-1 and 3, in default they will undergo one month S.I. Further, the entire fine amount shall also be paid as compensation to PWs-1 and 3. Thus, total compensation amount to PW-1 is Rs.2,500/- (Rs.1,000 + Rs.1,500) and to PW-3 it is Rs.2,500/- (Rs.1,000 + Rs.1,500).

18. Accordingly, this Criminal Appeal is partly allowed.

-s/d-

Assistant Registrar

true Copy

सत्यमेव जयते

Sub-Assistant Registrar

To

1.The Judicial Magistrate
No.III Cuddalore

2. The Chief Judicial Magistrate
Cuddalore (for information)

3.The Additional Sessions Judge
(Fast Track Court No.II)
Cuddalore.

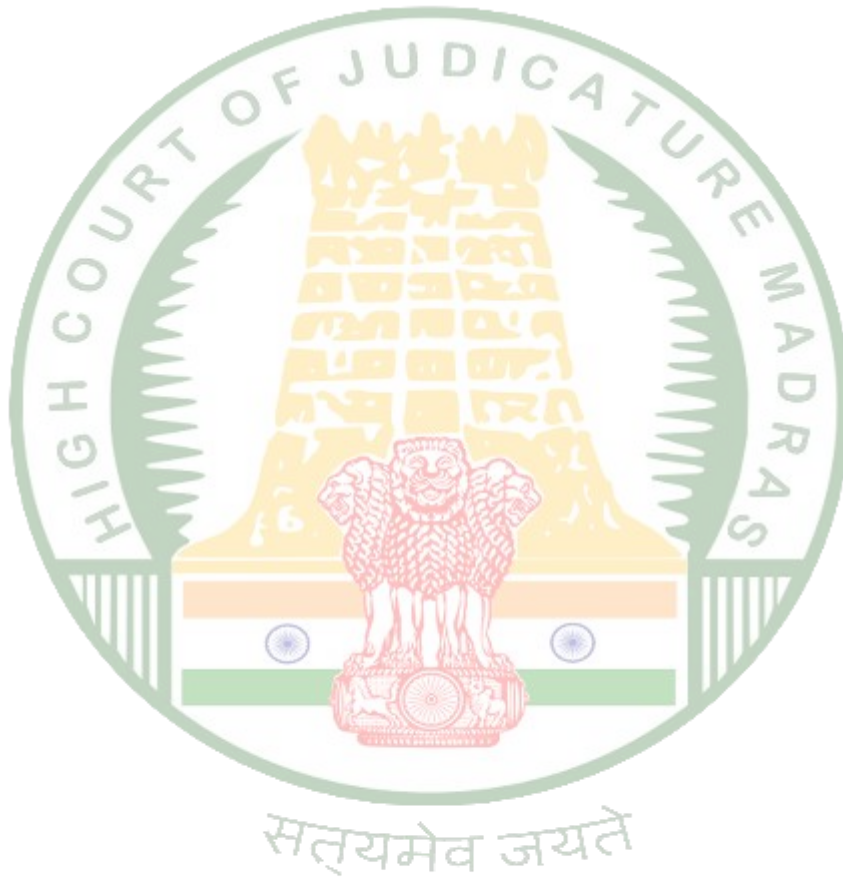
WEB COPY

4.The Inspector of Police,
Kurunchipadi Police Station,
Cuddalore District.

5.The Public Prosecutor,
High Court, Madras.

Criminal Appeal No.993 of 2007

aa27/04/2016



WEB COPY