

Bail Slip

The Appellants/Accused named Selvam(A1),Kathiravan(A2), Kaliyaperumal(A3),Vinoth(A4), Ganga @ Gangadharan(A5) were directed to be released on bail as per order of this court dated 20/05/2009 made in Cr1.Mp.No.1/2009 in CRL.A.NO.243/2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 03.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Cr1.A.No.243 of 2009

1.Selvam
2.Kathiravan
3.Kaliyaperumal
4.Vinoth
5.Ganga @ Gangadharan

... Appellants

vs.

State,by
The Station House Officer,
Thirunallar Police Station,
Pondicherry.

.... Respondent

Criminal appeal preferred under Section 374(2) Cr.P.C., against the judgement dated 30.04.2009 passed by the learned Additional Sessions Judge, Puducherry AT Karaikkal in S.C.No.30 of 2007.

For Appellants : Mr.R.C.Paul Kanagaraj and
Mr.A.Ramkumar
Legal Aid Counsel

For Respondent : Mr.M.R.Thangavel
Public Prosecutor, Pondicherry

JUDGMENT

The Accused 1,2,3,4 and 6, in S.C.No.30 of 2007, on the file of the learned Additional Sessions Judge, Puducherry at Karaikal, are the appellants herein. Totally, there are six accused in this case. Since the 5th accused in this case is absconding, the trial was spilt up and Accused 1,2,3,4 and 6 faced the trial. They stood charged as detailed below:-

Serial number of charges	Charge(s) framed against	Charge(s) framed under
1.	A1 to A6	U/s.147, 148, 452, 307, 324 and 326 r/w 149 IPC

2. The trial Court, after trial, by Judgment dated 30.04.2009, convicted the accused 1 to 4 and 6 and sentenced them as detailed below:-

Rank of the accused	Penal provision(s) under which convicted	Sentence
A1 to A4 & A6	U/s.147 r/w 149 IPC	Sentenced them to undergo two years rigorous imprisonment(two counts) and to pay a fine of Rs.1000/- in default to undergo rigorous imprisonment for three months.
A1 & A2	U/s.148 r/w 149 IPC	Sentenced them to undergo three years rigorous imprisonment(two counts) and to pay a fine of Rs.1000/- in default to undergo rigorous imprisonment for three months.
A4 & A6	U/s.148 r/w 149 IPC	Sentenced them to undergo one year rigorous imprisonment(two counts) and to pay a fine of Rs.1000/- in default to undergo rigorous imprisonment for three months.
A-3	U/s.148 r/w 149 IPC	Acquitted
A-1	U/s.452 r/w 149 IPC	Sentenced him to undergo five years rigorous imprisonment and to pay a fine of Rs.5,000/- in default to undergo rigorous imprisonment for six months.
A4 & A5	U/s.452 r/w 149 IPC	Sentenced them to undergo two years(two counts) rigorous imprisonment and to pay a fine of Rs.3,000/- in default to undergo rigorous imprisonment for three months.
A2 & A6	U/s.452 r/w 149 IPC	Sentenced them to undergo three years rigorous imprisonment and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for three months.
A-3	U/s.452 r/w 149 IPC	Acquitted

Rank of the accused	Penal provision(s) under which convicted	Sentence
A1	U/s.307 r/w 149 IPC	Sentenced him to undergo five years rigorous imprisonment and to pay a fine of Rs.5,000/- in default to undergo rigorous imprisonment for six months.
A4	U/s.307 r/w 149 IPC	Sentenced him to undergo five years rigorous imprisonment and to pay a fine of Rs.3,000/- in default to undergo rigorous imprisonment for three months.
A2, A3 and A6	U/s.307 r/w 149 IPC	Sentenced them to undergo three years rigorous imprisonment and to pay a fine of Rs.2,000/- in default to undergo rigorous imprisonment for three months.
A1 & A4	U/s.324 r/w 149 IPC	Sentenced them to undergo three years rigorous imprisonment and to pay a fine of Rs.2,000/- in default to undergo rigorous imprisonment for three months.
A2, A3 and A6	U/s.324 r/w 149 IPC	Acquitted
A1 & A4	U/s.326 r/w 149 IPC	Sentenced them to undergo three years rigorous imprisonment and to pay a fine of Rs.2,000/- in default to undergo rigorous imprisonment for three months.
A2, A3 & A6	U/s.326 r/w 149 IPC	Acquitted

All the sentences are ordered to be run concurrently. Challenging the above said conviction and sentence, the appellants/accused 1,2,3,4 and 6 are before this Court with this Criminal Appeal.

3. When the matter was called on 12.01.2017, there was no representation for the appellants and hence the matter was posted on 24.01.2017 under the caption "for dismissal". On that day also, no representation for the appellants. Hence, Mr.A.Ramkumar, the learned counsel is appointed as Legal Aid Counsel appearing for the appellants. Thereafter, Mr.C.Paulkanagaraj, advocate entered appearance for the appellants.

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

(i) P.W.1 is injured witness in this case. He was working as Foreman in Public Works Department. Earlier on 11.02.2005, there was a quarrel between two groups in Aranga Nagar, Thirunallar. On the next day, i.e., 12.02.2005, at about 5.00 p.m., after finishing his work, P.W.1 returned back to his house. At that time, the first accused entered into the house of P.W.1 and attacked him with Aruval, while evading the same, he sustained injuries on both hands in the thumb, index finger, middle finger in the right hand and cut injuries on his left hand index finger. While he came out of the house, A-3 was standing there and shouted at him and told all the other accused to attack him. Then, A-4 attacked him with aruval on his left buttocks, A-2 and A-6 attacked P.W.1 with wooden logs. Thereafter, P.W.1 was taken to the community hospital, Thirunallar, where he was given first aid and then he was referred to Government Hospital, Karaikal.

(ii) On receipt of the memo from the Hospital, P.W.7, the Sub Inspector of Police, working in the respondent police station, went to the Government Hospital, Karaikal, and obtained statement from P.W.1 and based on the said statement, he registered a case in Crime No.16 of 2005 for the offence under Sections 147, 148, 452, 307, 324 r/w 149 IPC and prepared first information report [Ex.P6] and sent the same to the Judicial Magistrate Court and copies of the same to the higher officials. Then, he proceeded to the scene of occurrence, prepared observation mahazar and rough sketch in the presence of witnesses. He examined the witnesses and recorded their statements. On the next day morning he seized the weapon used in the crime. On 13.02.2005, he arrested the 5th accused and remanded him to judicial custody and after recording the statement of Doctor and other witnesses, he handed over the investigation to P.W.8.

(iii) P.W.8, the Inspector of Police, working in the respondent police station, continued the investigation, examined the Doctor, who has given treatment to P.W.1 and recorded his statement and based on the statement of Doctor, he altered the case under Sections 147, 148, 452, 307, 324, 326 r/w 149 IPC and prepared alteration report[Ex.P8] and after completion of investigation, he laid charge sheet.

5. 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 8 witnesses were examined and 7 documents were exhibited, and 4 material objects were marked.

6. Out of the said witnesses examined, P.W.1 is the injured eye witness. In his evidence, he has stated that all the accused entered into his house, and the first accused attacked him with

aruval, while evading the same, he sustained injuries on his both hands and when he came out of the house, the 4th accused attacked him with aruval on his left buttocks and the accused 2 and 6 attacked him with wooden log and the third accused standing there and shouted at him and told the other accused to attack him. Then he was taken to the hospital. P.W.2 is the wife of P.W.1. She corroborated the evidence of P.W.1. P.Ws.3 and 4 turned hostile. P.W.5 is a farm servant working under P.W.1. He has also corroborated the evidence of P.W.1. P.W.6, the Doctor, working in the Community Hospital, Karaikal. He has given evidence based on the records, since the Doctor given treatment to P.W.1 was transferred. P.W.7 is the Sub Inspector of Police working in the respondent police station. On receipt of the complaint, he registered a case and prepared first information, arrested the accused and remanded them to judicial custody, examined the Doctor and other witnesses and recorded their statements and then he handed over the investigation to P.W.8, the Inspector of Police. P.W.8, the Inspector of Police working in the respondent police station, on receipt of the first information report, continued the investigation, examined the Doctor and recorded his statement and after completion of investigation, he laid charge sheet.

7. 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 did not examine any witness and no document was marked on their side.

8. 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.

9. I have heard Mr.C.Paul Kanagaraj and Mr.A.Ramkumar, the learned Legal Aid Counsel appearing for the appellants and Mr.M.R.Thangavel, the learned Public Prosecutor for Ponducherry, appearing for the respondent and perused the materials available on record.

10. The learned counsel appearing for the appellants would submit that there are lot of contradictions in the evidence between P.Ws.1, 2 and 5 and the weapon used in the crime is also not recovered by the police. Apart from that the occurrence took place in the house of P.W.1, there are number of persons were also present, but no independent witness was examined and it is highly unsafe to convict the accused based on the

interested testimony of P.Ws.1, 2 and 5. Hence, he prays for allowing the appeal.

11. The learned Public Prosecutor, Puducherry appearing for the respondent would submit that all the eye witnesses consistently deposed that all the accused came to the house of P.W.1 and attacked him with aruval and other weapons. The medical evidence also corroborates the evidence of eye witnesses and the presence of the eye witnesses in the scene of occurrence is natural and there is no reason to disbelieve their evidence and hence he sought for dismissal of this appeal.

12. I have carefully considered the rival submissions.

13. The occurrence said to have taken place in the house of P.W.1, and it is the evidence of P.Ws.1 and 2, that the first accused went inside the house of P.W.1 and attacked him with aruval, and while P.W.1 evading the same, he suffered injuries on his hands. While he came out of the house, the 4th accused attacked him with aruval in his buttocks. P.W.5, who is a farm servant under P.W.1 has also corroborate the evidence of P.Ws.1 and 2. The medical evidence also corroborating the evidence of eye witnesses. The wound certificate has marked as Ex.P5, it shows that P.W.1 suffered cut injuries in the upper back of buttocks and also in both the hands. The occurrence took place in the house of P.W.1, and the evidence of P.W.2, the wife of P.W.1 and P.W.5, his farm servant is consistent regarding the overt act of A1 and A4. Hence, in my considered view that the prosecution has established that the accused 1 and 4 cut the P.W.1 with aruval on his hands and also the buttocks caused injuries.

14. So far as the contention of the learned counsel appearing for the appellants that the weapon used in the crime was not recovered by the police. P.W.7, the Sub Inspector of Police only recovered a aruval, Karuvai log, Bamboo stick and Casurina log in the scene of occurrence. Even though the prosecution has stated that the accused 1 and 4 cut P.W.1 with two aruvals, only one aruval was recovered in the scene of occurrence. According to the learned Public Prosecutor, the 4th accused was not arrested and he was released on anticipatory bail. According to the eye witnesses, the 4th accused took the sickle after the occurrence, and submitted that the respondent police was not in a position to seize the weapon used by the 4th accused. Since all the eye witnesses consistently said that the 4th accused cut P.W.1's Buttocks with aruval, the non recovery of the sickle no way affect the prosecution case.

15. So far as the other accused, namely, A-2, A-3 and A-6, even though P.Ws.1 and 2 says that A2, A3 and A6 were present and A2 and A6 attacked P.W.1 with wooden log. But, there is no corresponding injury found on P.W.1. Even as per the accident register [Ex.P4], it shows that P.W.1 only suffered cut injuries on his right hand and also his buttocks. So far as the offence under Section 147, 148 and with the aid of Section 149 IPC are concerned, there are lot of contradictions in the evidence of P.Ws.1,2 and 5 regarding the presence of the accused in the scene of occurrence. Apart from that the medical evidence also not corroborated their evidence. In the said circumstances, it is unsafe to hold that all the accused have common object and they formed unlawful assembly and committed the offence. Hence, the conviction and sentence imposed on them is liable to be set aside and they are entitled for acquittal.

16. Since the injuries suffered by P.W.1 on his non vital parts, namely, hands and buttocks, the accused A1 and A4 are liable to be convicted under Section 324 IPC, there is no evidence available to convict them under Section 307 and 326 IPC and they are entitled to get acquittal on the other charges.

17. The learned counsel appearing for the appellants would contend that A1 and A4 have no bad antecedents and only due to some previous enmity they have been falsely implicated in this case and they are poor persons and one of the accused is a Government employee, and sought for releasing them under the provisions of Probation and Offenders Act. Taking into consideration all the mitigating as well as aggravating circumstances, this Court feel that the ends of justice would be met by releasing the appellants 1 and 4 under Section 4(1) of the Probation of Offenders Act.

18. In the result, the Criminal Appeal is partly allowed, the accused 1 and 4 are convicted under Section 324 IPC and they are acquitted from all other charges , with a direction to release of the appellants 1 and 4 under Section 4(1) of the Probation of Offenders Act. The appellants 1 and 4 shall execute a bond for a sum of Rs.1000/- (Rupees One Thousand only) each, with two sureties each for a like sum to the satisfaction of the lower court and to appear and receive the sentence when called upon during the period of one year and in the meantime to keep peace and be of good behaviour. The conviction and sentence imposed on the Appellants 2, 3 and 6 is set aside and the appellants 2, 3 and 6 are acquitted of all the charges levelled against them and bail bond, if any, executed by the appellants 1 to 4 and 6 shall stand cancelled and the fine amounts paid by

them are ordered to be refunded forthwith. The Chairman, Legal Aid Services Authority, Chennai is directed to pay the fee as per Rules.

Sd/-
Asst.Registrar (CS IX)

/true copy/

Sub Asst. Registrar

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To

1.The Additional Sessions Judge,
Puducherry at Karaikkal.

2.The Station House Officer,
Thirunallar Police Station,
Pondicherry.

3.The Officer Incharge,
Sub Jail,
Karaikkal

4.The Chairman,
Legal Aid Service Authority, Chennai.

5.The Public Prosecutor,
High Court,
Puducherry.

+1cc to Government Pleader in sr.no.7313

Cr1.A.No.243 of 2009

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