

Bail Slip

The Accused namely suresh, S/o Chinnadurai, was released on bail as per order of this court dated 09/07/09 in CrI.Mp.1/09 in CrI.A.No.360/09

The Accused namely Bull @ Kumar(Accused No.1), S/o Sekar was released on bail as per order of this court dated 09/10/09 in CrI.Mp.1/09 in CrI.A.No.562/09

The Accused namely Sekar(Accused No.4) S/o Muthulingam was released on bail as per order of this court dated 06/04/10 in CrI.Mp.1/10 in CrI.A.No.142/10

The Accused namely Sugan(Accused No.3), S/o.Kanniappan was released on bail as per order of this court dated 09/04/10 in CrI.Mp.1/10 in CrI.A.No.218/10

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2017

CORAM

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal Nos.360 & 562 of 2009
and
Criminal Appeal Nos.142 & 218 of 2010

Suresh ... Appellant in
CrI.A.No.360/2009

Bull @ Kumar .. Appellant in/Accused-1
CrI.A.No.562/2009

Sekar .. Appellant in/Accused-4
CrI.A.No.142/2010

Sugan .. Appellant in/Accused-3
CrI.A.No.218/2010

vs

State represented by
Inspector of Police,
K7, ICF Police Station,
Chennai.
Cr.No.195/2007

.. Respondent/Complainant in all CrI.As

Common Prayer in all Criminal Appeals:- These Criminal Appeals have been filed under Section 374(2) Cr.P.C., to set aside the conviction and sentence passed by the learned Additional District and Sessions Judge, Fast Track Court NO.V, Chennai in S.C.No.316 of 2008 dated 31.03.2009.

In Crl.A.No.360 & 562 of 2009:-

For Appellant :Mr.K.Selvakumaraswami

For Respondent :Mrs.M.F.Shabana,
Government Advocate (Crl. side)

In Crl.A.No.142 of 2010:-

For Appellant :Mr.T.R.Ravi

For Respondent :Mrs.M.F.Shabana,
Government Advocate (Crl. side)

In Crl.A.No.218 of 2010:-

For Appellant :Mr.R.Ganesh Kumar

For Respondent :Mrs.M.F.Shabana,
Government Advocate (Crl. side)

COMMON JUDGMENT

The appellant in Crl.A.No.360 of 2009 is A-2; the appellant in Crl.A.No.562 of 2009 is A1; the appellant in Crl.A.No.142 of 2010 is A4; and the appellant in Crl.A.No.218 of 2010 is A3 in S.C.No.316 of 2008 on the file of the Additional District and Sessions Court, Fast Track Court-V, Chennai and they stood charged for the offences under Sections 148, 448, 427, 307 r/w.149, 506(ii) IPC and Section 3(1) of TNPPDL Act. r/w.149 IPC. By judgment dated 31.03.2009, the trial Court convicted and sentenced the appellant/accused as detailed below:-

Accused	Section of law	Sentence
A.1 to A.4	148 I.P.C.	Rigorous imprisonment for one year and to pay a fine of Rs.1000/-,in default, to undergo rigorous imprisonment for 3 months.
A.1 to A.4	448 I.P.C.	Rigorous imprisonment for six months and to pay a fine of Rs.500/-,in default, to undergo rigorous imprisonment for one month.

Accused	Section of law	Sentence
A.1 to A.4	307 r/w.149 IPC	Rigorous imprisonment for 5 years and to pay a fine of Rs.3000/-, in default, to undergo rigorous imprisonment for 6 months.
A.1 to A.4	506(ii) IPC	Rigorous imprisonment for one year and to pay a fine of rs.500/-, in default to undergo rigorous imprisonment for one month
A.1 to A.4	427 IPC	Rigorous imprisonment for 6 months and to pay a fine of Rs.500, in default, to undergo rigorous imprisonment for one month.
A.1 to A.4	3(1) of TNPPDL Act	Rigorous imprisonment for 2 years and to pay a fine of Rs.3000/-, in default, to undergo rigorous imprisonment for 6 months.

The trial Court has ordered the above sentences to run concurrently. Challenging the said conviction and sentence, the appellants/accused are before this Court with these Criminal Appeals.

2. Now, pending appeal, the learned Government Advocate (Crl. side) would submit that the appellant/A1, in Crl.A.No.562 of 2009 died and she has also filed a memo along with death certificate of A1 to that effect. Recording the same, the appeal filed by the A1 in Crl.A.No.562 of 2009 is dismissed as abated.

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

P.W.1, in this case is uncle of one Antony, and the accused had some previous enmity with the said Antony, on 13.04.2007, all the accused formed unlawful assembly with dangerous weapons trespassed into the house of P.W.1, in search of the said Antony and also threatened him that if Antony is available they would finish him. Since they did not found the said Antony inside the house of P.W.1, they came out and at that time, P.W.2, injured eye-witness was sitting in his fish cart out side the house of P.W.1. When P.W.1 questioned them why they are creating problem in that area, A1 in this case attacked

him with a knife on his head, they have also damaged the fish cart and a two wheeler parked in front of the house. Then, P.W.1 took P.W.2 to the K7, police station. Then, the police personals took P.W.2, to the hospital, and the police recorded the statement of P.W.1.

4. P.W.7, sub-Inspector of Police, attached to the respondent police, based on the complaint given by P.W.1, registered a case in Crime No.195 of 2007, for the offences under Sections 147, 148, 448, 427, 506(ii) IPC and prepared the First Information Report(Ex.P.12) and handed over the case to P.W.8.

5. P.W.8, Inspector of Police, attached to the respondent police station, on receipt of the First Information report, commenced investigation and proceeded to the scene of occurrence and prepared an Observation mahazar(Ex.P.13) and drew a Rough Sketch(Ex.P.14) in the presence of the witnesses. He also seized the broken glass pieces and broken tiles of P.W.1's house under the cover of Mahazar. On 14.04.2007, near Perambur Railway Station, at about 9.30 a.m., P.W.8, arrested A1, A2 and A3, and on such arrest, they have voluntarily given confession, and based on their disclosure statement, he recovered the wooden logs(M.Os.2 to 5) and knife(M.O.1) under the cover of Mahazar and remanded them to judicial custody. In the meantime, P.W.2 was admitted in the Kilpauk Government Medical College Hospital, Chennai, by P.W.6 Doctor, and he found a injury on his head and he issued an Accident Register (Ex.P.11). Then, P.W.8 handed over the investigation to P.W.9. P.W.9 Inspector of Police, arrested A4 and recorded the statements of the witnesses and after completion of investigation, he laid charge sheet against the accused.

6. 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 9 witnesses were examined and 18 documents were exhibited, besides 7 Material Objects were marked.

7. Out of the said witnesses, P.W.1 is an eyewitness to the occurrence. He is the uncle of one Antony, against whom the accused had previous enmity. On the date of occurrence, in search of Antony, all the accused went into the house of P.W.1 with dangerous weapons and threatened him and they attacked P.W.2 on his head and also damaged a two wheeler. P.W.2 is the injured in this case. According to him, on the date of occurrence, at about 3.00 a.m., when he was sleeping in his fish cart, all the accused came to the house of P.W.1 and created problem, while he questioned them, A1 attacked him with a knife and then all the accused ran away, and he was taken to the police station and then to the hospital. P.W.3 is the wife of

P.W.1. According to her, on 13.04.2007, early morning at about 4'o clock, all the accused went inside the house and threatened them and while they were coming out of the house, they attacked P.W.2. P.W.4 is the owner of the two wheeler, which was damaged by the accused, he turned hostile. P.W.5 also turned hostile. P.W.6 is the doctor, who admitted P.W.2 in the hospital and issued an Accident Register. P.W.7 is the Sub-Inspector of Police has spoken about the registration of the case. P.W.8, Inspector of Police, commenced investigation and arrested the accused and recorded the statement of the Doctor, who had given treatment to P.W.2. P.W.9, Inspector of Police, continued investigation and arrested A4 and on completion of investigation, he laid charge sheet against the accused.

8. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. However, they did not choose to examine any of the witnesses or mark any documents on their side.

9. Having considered all the above, the trial Court found the accused guilty under the charges framed against them and accordingly, sentenced them as detailed in the first paragraph of this judgment. Aggrieved by the same, the appellants/accused are before this Court with these appeals.

10. I have heard Mr.K.Selvakumaraswami, learned counsel for the appellant in CrI.A.No.360 & 562 of 2009 and Mr.T.R.Ravi, learned counsel appearing for the appellant in CrI.A.No.142 of 2010 and Mr.R.Ganesh Kumar, learned counsel for the appellant in CrI.A.218 of 2010 and the learned Additional Public Prosecutor appearing for the State and I have also perused the records carefully.

11. P.Ws.1, 2 and 3 are the eye-witnesses to the occurrence and P.W.2 is the injured witness. It is the consistent evidence of all the witnesses that on 13.04.2007, at about 4.00 a.m., all the accused came with dangerous weapons and trespassed into their house in search of one Antony, who is closely related to P.Ws.1 and 3, and when they did not find Antony inside the house, they went out, at that time, P.W.2 was sleeping in a fish cart, and when he questioned them why they are creating trouble, A1 attacked him with a knife and caused injury. Thereafter, he was taken to the hospital, where P.W.6 admitted him and issued an Accident Register, wherein he has stated that P.W.2 sustained cut injury on his head.

12. From their evidence, it could be seen that all the accused unlawfully assembled with dangerous weapons and trespassed into the house of P.W.1, and further it is seen that A1 alone attacked P.W.2 with knife on his head. The evidence of

P.Ws.1, 2, and 3 are consistent to that effect and there is no reason to disbelieve their evidence. Since the occurrence took place near the house of P.W.1 and P.W.3, their presence in the scene of occurrence is also natural and the prosecution has proved that all the accused had unlawfully assembled and trespassed into the house of D.W.1. In the above circumstances, I am of the view that the prosecution has proved the charge under Section 148 and 448 IPC against all the accused.

13. So far as the charge under Sections 427 and 506(ii) IPC are concerned even though P.W.3 deposed that the accused had damaged the tiles of the house. But P.W.1 did not say anything about the damage of tiles. In the said circumstances, the charge under section 427 IPC is not proved by the prosecution. Apart from that for the offence under Section 506(ii) IPC, it has only been stated all the accused went inside and they were searching for Antony and questioned P.Ws.1 and 2 regarding the whereabouts of the said Antony, that apart there is no evidence to prove that they have criminally intimidated P.Ws.1 and 2. Hence, the charge under Section 506(ii) IPC is also not proved by the prosecution.

14. So far as the charge under Section 3(1) of TNPPDL Act is concerned, even though witnesses have stated that they have damaged the fish cart and a two wheeler, the prosecution had recovered the broken glass pieces of meter box and the vehicle was not seized and the owner of the vehicle, P.W.4 has also turned hostile. Hence, in the absence of any proof that the accused have damaged the vehicle, the charge under Section 3(1) of TNPPDL Act also not proved by the prosecution.

15. So far as the charge under Section 307 IPC is concerned, it is the evidence of P.W.1 that all the accused came out of the house and when P.W.2 questioned them, at that time A1 attacked him with knife. P.W.2 in his evidence has stated that at that time of occurrence, he was sleeping in his fish cart outside the house of P.W.1 and after hearing the noise he woke up and at that time all the accused came and A1 attacked him with a knife and he also knew the accused for quite long time and there is no enmity between them. But while he was admitted in the hospital he had stated before the Doctor, P.W.6 that at about 4.00 a.m., one unknown person attacked him with sharp weapon near Perambur Rajiv Gandhi Nagar and to that effect he was also issued an Accident Register(Ex.P.11). It is the first ever statement given by P.W.1 before the Doctor that one unknown person attacked him with a sharp weapon. But, admittedly all the accused were known to him. P.W.2 in his evidence has stated that all the persons attacked him and all of them were known to him. P.W.3 is the wife of P.W.1 has deposed

that all the accused attacked him and one person attacked him with a knife and she has not specifically stated that A1 attacked him, even though A1 is known to her very well. In the above circumstances, the prosecution failed to prove which accused attacked P.W.2. Hence, I am of the considered view that the charge under Section 307 r/w.149 IPC is not proved by the prosecution and hence they are entitled for acquittal.

16. The learned counsel for the appellants would submit that all the accused were in jail for more than one year pending trial and after conviction.

17. Taking into consideration of the fact that the occurrence took place in the year 2007 and they have also confined in jail for a considerable period, and the sentence is modified to that of the period already undergone.

19. In the result, the Criminal Appeals in C.A.No.360 of 2009, 142 & 218 of 2010, are partly allowed and the conviction imposed on the appellants/A2 to A4 for the offence under Section 148 and 448 IPC are confirmed and the sentence is modified to that of the period already undergone and the conviction under Sections 427, 307, 506(ii) IPC and Section 3(1) TNPPDL Act are set aside and A2 to A4 are acquitted from the above charges. Fine amount, if any, paid by the accused, shall be refunded to them. The Criminal Appeal in C.A.No.562 of 2009 is dismissed as abated.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

mrp

To

1.The Additional District and Sessions Judge,
Fast Track Court No.V,
Chennai.

2.The Metropolitan Magistrate No.V,
Egmore, Chennai.

3.The Chief Metropolitan Magistrate,
Egmore, Chennai.

4.The Inspector of Police,
K7, I.C.F Police Station,
Chennai.

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

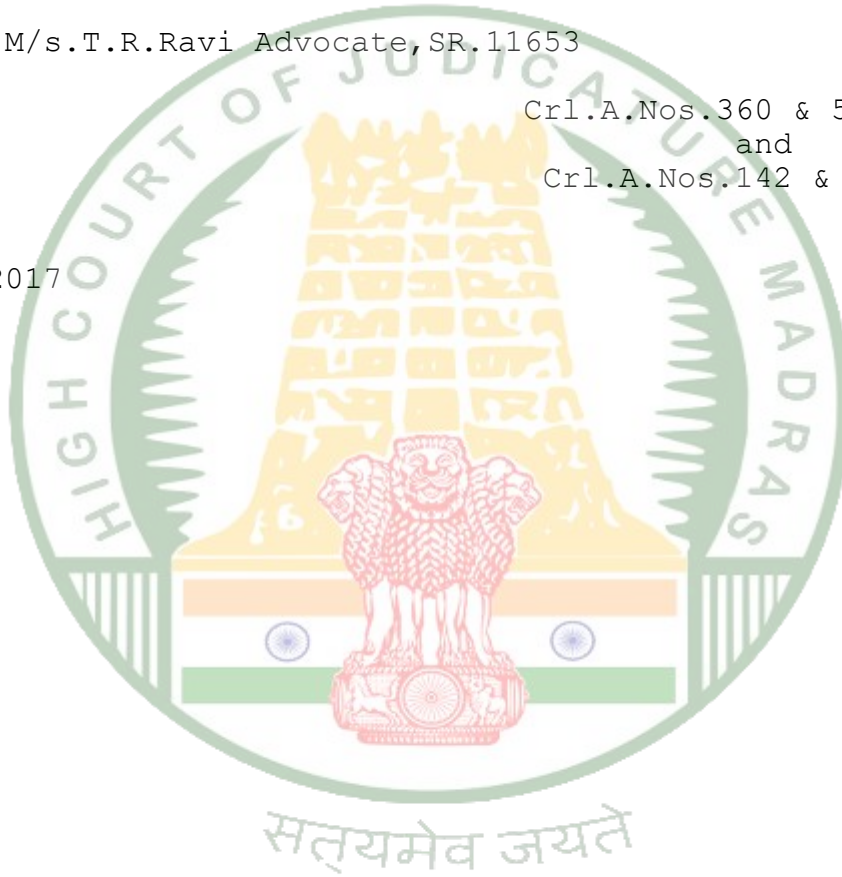
6.The Public Prosecutor,
High Court, Madras.

+ 1 cc to M/s.R.Ganesh Kumar, Advocate,SR.12420

+ 1 cc to M/s.T.R.Ravi Advocate,SR.11653

Crl.A.Nos.360 & 562 of 2009
and
Crl.A.Nos.142 & 218 of 2010

RV(CO)
NR 07/12/2017



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