

BAIL SLIP

That the appellant/Ist Accused/namely Annadurai S/O Jone was released on bail as per the order of this Court dated 15/07/2009 in CrI.MP.No.1/2009 in CrI.A.No.373/2009.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 07.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

CrI.A.No.373 of 2009

Annadurai ... Appellant/Ist Accused

vs.

State rep. by
The Inspector of Police,
Jolarpet Police Station,
Vellore District.
(Crime No.1049 of 2007)

... Respondent /Complainant

Criminal Appeal preferred under Section 374(2) Cr.P.C., against the judgement dated 19.06.2009 passed by the learned Additional District and Sessions Judge, (Fast Track Court), Tirupattur in S.C.No.317 of 2008.

For Appellant : Mr.D.Balachandran

For Respondent : Mrs.M.F.Shabana
Government Advocate (CrI. Side)

JUDGMENT

The first accused in Sessions Case No.317 of 2008 on the file of the learned Additional District and Sessions Judge, (Fast Track Court), Tirupattur is appellant herein. Totally, there are two accused in this case. The first accused stood charged for the offence under Section 4(1-A) r/w 4(1)(i) of Tamil Nadu Prohibition Act and Sections 353 and 307 IPC. The second accused stood charged for the offence under Sections 353, 109 r/w 34 and 307 r/w 109 r/w 34 IPC. The Trial Court, after trial, by Judgment dated 19.06.2009 convicted the first accused under Section 4(1-A) r/w 4(1)(i) of Tamil Nadu Prohibition Act and sentenced him to undergo five years rigorous imprisonment and convicted him under Section 353 IPC and sentenced him to undergo one year rigorous imprisonment and no fine amount was

imposed. The second accused was acquitted from all the charges levelled against him. The sentences were ordered to run concurrently. Challenging the above said conviction and sentence, the appellant/first accused is before this Court with this Criminal Appeal.

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

(i) P.W.1 is a Head Constable. P.W.5 is another Head Constable and P.W.7 is a Sub Inspector of Police, working in the respondent police station. On 12.10.2007, at about 6.00 p.m., P.Ws.1, 5 and 7 and some other constables went for a prohibition raid in Thamalarimuthoor village. At that time, P.W.1, the Head Constable, found that the first accused carrying five litters of illicit arrack in a plastic can. While, P.W.1, trying to catch the first accused, the first accused catch hold of P.W.1, and threatened him and throttled his throat and pushed him. At that time, the second accused also catch hold of P.W.1's leg and attacked him. While, P.W.1 raised alarm, P.Ws.5 and 7 came there and after seeing them, A-2 ran away from the scene of occurrence, and P.Ws.5 and 7 catch hold of A1. Then P.W.7, the Inspector of Police seized the illicit arrack, and taken the sample, and destroy the remaining quantity in the scene of occurrence, they took the first accused to the police station, where, P.W.1 has given complaint[Ex.P1].

(ii) P.W.7, the Sub Inspector of Police, working in the respondent police station, on receipt of complaint from P.W.1, registered a case in Crime No.1049 of 2007 for the offence under Section 341, 353, 307 of IPC and Section 4(1-A) r/w 4(1)(i) of Tamil Nadu Prohibition Act and prepared first information report [Ex.P9] and sent the first information report to the Judicial Magistrate Court and copies of the same to the higher officials.

(iii) P.W.8, the Inspector of Police, working in the respondent police station, on receipt of the first information report, commenced investigation, proceeded to the scene of occurrence, prepared observation mahazar [Ex.P8] rough sketch [Ex.P9]. He examined the witnesses and recorded their statements and he sent the material objects to the Judicial Magistrate Court under Form-95. In the meantime, P.W.1 was admitted in the Government Hospital, Tirupattur, for treatment. P.W.2, the Doctor, examined P.W.1 and issued Accident Register[Ex.P3]. Then, P.W.8 examine the Doctor and other witnesses, after completion of investigation, he laid charge sheet.

3. 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 its case, the prosecution examined as many as 8 witnesses, exhibited 10 documents and three material

objects were marked.

4. Out of the witnesses examined, P.W.1 is the Head Constable working in the respondent police station. According to him, on the date of occurrence at about 6.00 p.m., he along with P.Ws.5 and 7 and some other constables were on a prohibition raid in Thamalarimuthoor village. At that time, he found the first accused shifting five litters of illicit arrack in a plastic can. While, P.W.1, trying to catch the first accused, the first accused catch hold of P.W.1, threatened him, throttled his throat and pushed him down. At that time, the second accused also catch hold of P.W.1's leg and attacked him. While, P.W.1 raised alarm, P.Ws.5 and 7 came there and after seeing them, A-2 ran away from the scene of occurrence. Then, P.Ws.5 and 7 catch hold of A1. Then, they went back to the police station, where, P.W.1 has given complaint. P.W.2, the Doctor working in the Government Hospital, Tirupattur. According to him, P.W.1 stated that he has pain in his neck and throat, and he did not found any injuries and he was treated as out patient. P.W.3 is the Head Clerk working in the Judicial Magistrate Court, Vellore, he received the materials object from the respondent police and sent the same to the Forensic Lab Department for chemical examination. P.W.4 is the Scientific Officer, working in the Forensic Lab Department. According to him, he examined the illicit arrack and given report[Ex.P7]. P.W.5 is another Head Constable working in the respondent police station. According to him, he along with P.W.1 and P.W.7 were on a prohibition raid, after hearing the alarm of P.W.1, he along with P.W.7 went to the scene of occurrence, where, the first accused catch hold of P.W.1 and throttled him and the second also catch hold of P.W.1's leg and attacked him, they catch hold the first accused and took him to the police station. P.W.6 is witness to the observation mahazar. P.W.7, the Sub Inspector of Police, working in the respondent police station. He has stated that on receipt of the complaint from P.W.1, registered a case, prepared first information report, and sent the same to the Judicial Magistrate Court and copies of the same to the higher officials. P.W.8, the Inspector of Police, working in the respondent police station. He deposed that on receipt of the first information report, he commenced investigation, prepared observation mahazar, rough sketch, examined the Doctor and other witnesses, recorded their statements and after completion of investigation, he laid charge sheet.

5. 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.

6. Having considered all the above, the Trial Court convicted and sentenced the first accused, and acquitted the second accused as stated in the first paragraph of this judgment. Challenging the above conviction and sentence, the first accused is before this Court.

7. I have heard Mr.D.Balachandran, learned counsel appearing for the appellant and Mr.M.F.Shabana, learned Government Advocate(Crl. Side) appearing for the State and I have perused the materials available on record.

8. The learned counsel appearing for the appellant would submit that all the witnesses in the instant case are police personals, they are all interested witnesses, and no independent witness was examined by the prosecution. At the time occurrence, number of persons were available in the scene of occurrence, but no independent witness was examined to corroborate the evidence of interested prosecution witnesses. Even for the illicit arrack seized by the police officials, P.Ws.1 and 5 are above attested the seizure mahazar, and there is no independent witness attested the seizure mahazar. Further, the seized illicit arrack was not sent to the Court immediately and the same was sent to the Court after 5 days and it also created doubt about the seizure of illicit arrack, the court below partly disbelieved the prosecution witness, acquitted the second accused on the ground also he sought for acquittal.

9. The learned Government Advocate(Crl. Side) appearing for the State would submit that, P.Ws.1 and 5 are police officials, while they were on a prohibition raid, the appellant/accused who is a habitual offender, attacked P.W.1, then P.Ws.5 and 7, the other police officials, catch hold of the accused, P.Ws.5 and 7 are eye witness to the occurrence and their evidence is consistent and there is no reason to disbelieve their evidence, as their evidence corroborating the evidence of P.W.1, and hence she sought for dismissal of this appeal.

10. I have considered the rival submissions carefully and perused the materials.

11. P.Ws.1,5 and 7 are eye witnesses to the occurrence. All of them are police officials. P.Ws.1 and 5 are the Head Constables. P.W.7 is the Sub Inspector of Police. According to them, on the date of occurrence, they along with some other constables went on a prohibition raid. To establish that all the above witnesses went on a prohibition raid, on the date of occurrence, the prosecution did not produce CD file. The occurrence said to have taken place near the house of the first accused, where number of persons were present, but no other

witnesses present in the scene of occurrence were examined to corroborated the evidence of P.Ws.1,5 and 7. P.Ws.1,5 and 7 are police persons and they are all interested witness. P.Ws.1, 5 and 7 consistently stated that at the time of occurrence A-1, catch hold of P.W.1, and threatened him and throttled his throat and pushed him down and at that time the second accused catch hold P.W.1s leg and attacked him. The trial Court disbelieved the evidence of eye witnesses acquitted the second accused from all the charges. In the above circumstances, in the absence of any independent witnesses to corroborate the evidence of interested eye witnesses, especially when the trial Court disbelieved the evidence of eye witnesses, acquitted the second accused, it is unsafe to convict the appellant/first accused based on the testimony of P.Ws.1, 5 and 7.

12. So far as the offence under Section (1-A) r/w 4(1) (i) of Tamil Nadu Prohibition Act is concerned, it is the evidence of P.W.1 that while he along with P.Ws.5 and 7 were in the prohibition raid, he found the accused shifting illicit arrack in 5 litters plastic can, and they have seized entire quantity, but they have taken only a sample, and destroyed the remaining arrack in the scene of occurrence. For the seizure of illicit arrack, P.Ws.1 and 5 were only attested the seizure mahazar who are all police officials, even though some other public were present at the time of seizure. Apart from that there is no explanation as to why the remaining illicit arrack was destroyed in the scene of occurrence itself. That apart, the seized illicit arrack samples were sent to the Court only on 17.10.2007, with a delay of 5 days and there is no explanation by the prosecution, which also create a doubt about the seizure of illicit arrack. In the above circumstances, in my considered view that the prosecution has failed to prove the case beyond any reasonable doubt. Hence, the appellant is entitled for acquittal.

13. In the result, the Criminal Appeal is allowed. The conviction and sentence imposed on the appellant in S.C.No.317 of 2008 dated 19.06.2009 on the file of the learned Additional District and Session Judge, (Fast Track Court) Tirupattur, is set aside and the appellant/first accused is acquitted of all the charges levelled against him and bail bond, if any, executed by him shall stand cancelled and the fine amounts paid by him is ordered to be refunded forthwith.

rrg

Sd/-
Assistant Registrar

/True Copy/

Sub-Assistant Registrar

To

1.The Additional District and Sessions Judge,
Fast Track Court,
Tirupattur.

2.The Inspector of Police,
Jolarpet Police Station,
Vellore District.

3.The Public Prosecutor,
High Court, Madras.

4.The Judicial Magistrate No.I,
Thirupathur.

5.The Superintendent of Police,
Central Prison, Vellore.

Crl.A.No.373 of 2009

MG (CO)
rvr
14/12/2017



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