

Bail slip

The Petitioners/Appellants/Accused namely 1 Ashok @ Tamilendhi 2 Mani @ Manikandan 3 K. Saravanan and 4 Shankar were released on bail as per order of this court dated 14.10.2009 made in MP.1 & 1/2009 in C.A.No.534 and 551/2009 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2017

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THE HONOURABLE MR. JUSTICE C.T.SELVAM

Crl.A.Nos.534 and 551 of 2009

1.Ashok @ Tamilendhi
S/o.Arasu

2.Mani @ Manikandan
S/o.Sekar

... Appellants in Crl.A.No.534 of 2009/
Accused 1 and 4

1.K.Saravanan
S/o.Kandhavel

2.Shankar ... Appellants in Crl.A.No.551 of 2009/
Accused 2,3

vs

State represented by
The Inspector of Police,
E2, Royapettah Police Station,
Chennai.

Crime No.807 of 2005 ... Respondent in both appeals

Criminal Appeal filed u/s.374 (2) of the Code of Criminal Procedure against judgment of learned Additional District and Sessions Judge, Fast Track Court V, Chennai, passed in S.C.No.3 of 2009 on 28.07.2009.

For Appellants : Mr.N.R.Elango, senior counsel
for Mr.M.Rajavelu

For Respondent : Mr.V.Arul
Additional Public Prosecutor

COMMON JUDGMENT

These appeals arise against judgment of learned Additional District and Sessions Judge, Fast Track Court V, Chennai, passed in S.C.No.3 of 2009 on 28.07.2009.

2. Prosecution case is that on 10.10.2005 at about 11.00 a.m., accused, due to previous enmity, formed an unlawful assembly, waylaid de facto complainant, assaulted him with knives and caused cut injuries. On information received from hospital, PW-8, Sub-Inspector of Police, Royapettah Police Station, went to Government Royapettah Hospital, enquired PW-1, who was taking treatment as an in-patient and obtained Ex.P1, complaint. PW-8 registered a case in Crime No.807 of 2005 on the file of respondent for offences u/s.341, 307 and 506(ii) IPC. Printed First Information Report is Ex.P8. PW-8 forwarded Ex.P8 to XVIII Metropolitan Magistrate, Saidapet and to higher officials. PW-10, Inspector of Police, Royapettah Police Station, took up investigation in the case, visited the scene of occurrence, prepared Ex.P9 - observation mahazar and Ex.P10 - rough sketch in the presence of PW-9 and another. PW-10 examined PWs.1 to 5, 7, 9 and others and recorded their statements. On 11.10.2005, PW-10 arrested the accused in the presence of PW-7 and another and recorded their confession statements. The admissible portion of confession statements are Ex.P11 to Ex.P13. PW-10 seized MOs.1 to 3 - knives, under seizure mahazar Ex.P14. PW-10 examined PW-6, Doctor, and obtained Ex.P3, Accident Register. PW-10 examined PW-8 and recorded his statement. PW-10 took the accused to police station and sent them to judicial custody. Form-95 is Ex.P15. On his transfer, PW-11, Inspector of Police, Royapettah Police Station, took up further investigation. On completion of investigation and filing of charge sheet informing commission of offences u/s.341, 307 and 506(ii) IPC before learned XVIII Metropolitan Magistrate, Saidapet, Chennai, and on committal, the case was tried in S.C.No.3 of 2009 on the file of learned Additional District and Sessions Judge, Fast Track Court V, Chennai.

3. Before trial Court, prosecution examined 11 witnesses and marked 15 exhibits and 3 material objects. None were examined on the side of defence nor were any exhibits marked. On appreciation of materials before it, trial Court, under judgment dated 28.07.2009, while acquitting fifth accused, convicted accused 1 to 4/appellants for offences u/s.307 r/w 34 IPC and sentenced each of them to 7 years R.I. and fine of Rs.2,000/- i/d 6 months R.I. There against, present appeals have been filed.

4. Heard learned senior counsel for appellants and learned Additional Public Prosecutor.

5. The occurrence took place on 10.10.2005 and the case allegedly was registered on 10.10.2005 at 12.30 p.m. Ex.P8,

First Information Report, reached the Magistrate only on 11.10.2005 at 17.00 hours. It is the suggestion of defence that PW-1 had two murder cases apart from 29 other cases against his name and PW-1 has informed that the number of cases against him would not be so many but that there may be one or two cases against him. Though PW-1 has denied his name find a place in the rowdy list maintained by the police, it is the evidence of PW-11, investigation officer, that PW-1 indeed was a rowdy of the area. That PWs.2 and 3, wife and minor daughter of PW-1 uniformly speak to having witnessed the occurrence wherein PW-1 was attacked would by itself not lead to an inference of their speaking the truth. In the circumstances of the present case, where the First Information Report reaches the Court after one day, where the Accident Register relating to PW-1 bears interpolation informing injury suffered as grievous when PW-6, Doctor, who issued the same has spoken to such interpolation not being in his hand, where it is seen that PW-1 was a notorious person in the area, there is every likelihood of the defence version of PW-1 having suffered injuries at the hands of others and of he and his wife and minor daughter deposing falsely against accused. PW-6, Doctor, in cross, deposed that as a general practice police make a requisition for opinion on the nature of injuries and it is thereupon that the opinion on whether the injuries were grievous or simple in nature is informed. It is not normal practice to state the nature of injury as 'grievous' in the Accident Register. The Accident Register informs the following injuries :

'Nature of injury : grievous. Said to have sustained injuries over left side of face, left side of forehead, occipital, left hand WJ & let EJ at about 11.00 a.m. on 10.10.05 assaulted by six known male persons with knife.

External injuries:

1. Deep cut injury on the face 10 x 0.5 cm
2. Incised wound on the left fore arm (4 x 4.5 x 0.5 cm)
3. laceration over the occipital region on the scalp (3 x 1 cms)
4. An incised wound over left elbow joint (5 x 0.5 x 0.5)
5. An incised wound over the left hand (8 x 1 x 1 cm)
6. An incised wound over left WJ (2 x 0.5 x 0.5 cm)'

Section 161(3) Cr.P.C. statements have reached the Court only on 03.01.2007. Though it is in a rare case that this Court would disbelieve an injured witness, this Court would do so in the instant case also taking into consideration the position that in Ex.P2, Accident Register, the number of assailants have been informed to be 6, in the final report the same is informed to be 5 and in the course of evidence, PWs.1 to 3 inform the assailants to be 4, none of the witnesses are specific as to what injury was caused by which of the accused. The injuries

suffered by PW-1 are not grave in nature and, on the facts in the case, the possibility of PW-1 having otherwise suffered the same and falsely implicating the appellants cannot be ruled out.

These Criminal Appeals are allowed. The judgment of learned Additional District and Sessions Judge, Fast Track Court V, Chennai, passed in S.C.No.3 of 2009 on 28.07.2009, is set aside. Appellants are acquitted of all charges. Fine, if any paid, shall be refunded. Bail bonds, if any, executed shall stand cancelled.

/sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

gm

To

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

2.The Inspector of Police,
E2, Royapettah Police Station,
Chennai.

3 The Pubic Prosecutor, High Court, Madras

4 The Section Officer,
Criminal Section, High Court, Madras

5 The Superintendent,
Central Prison, Puzhal, Chennai

+1 CC to Mr. J.B. Solomon Peter Karal Doss , Advocate Sr.No. 62181

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MD: 24/11/2017