

BAIL SLIP

The Appellants/Accused 1 to 3 namely

- 1.Vincent @ Wilson S/o.Periyanayagam,
- 2.Kicha @ Christian S/o.Periyanayagam and
- 3.Andrews S/o.Periyanayagam,

Were directed to be released on bail as per the Order of this Court dated 01.12.2009 in M.P.No.1 of 2009 in CrI.A.No.716 of 2009 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.09.2017

CORAM

THE HONOURABLE MR. JUSTICE C.T.SELVAM

CrI.A.No.716 of 2009

1.Vincent @ Wilson
S/o.Periyanayagam

2.Kicha @ Christian
S/o.Periyanayagam

3.Andrews
S/o.Periyanayagam

... Appellants/Accused 1 to 3

State represented by
The Inspector of Police,
V1 Villivakkam Police Station,
Chennai - 600 049.

... Respondent/Complainant

Criminal Appeals filed u/s.374(2) of the Code of Criminal Procedure against judgment of learned Additional District and Sessions Judge, Fast Track Court IV, Chennai, passed in S.C.No.107 of 2009 on 28.10.2009.

For Appellants : Mr.B.Ganesa Moorthy

For Respondent : Mr.V.Arul
Additional Public Prosecutor

JUDGMENT

This appeal arises against judgment of learned Additional District and Sessions Judge, Fast Track Court IV, Chennai, passed in S.C.No.107 of 2009 on 28.10.2009.

2. Prosecution case is that on 13.09.2002 at about 07.30 p.m., accused were bursting crackers, which was objected to by complainant, owing to which the accused assaulted the complainant with knives and wooden logs and caused grievous injuries. PW-10, Inspector of Police, upon obtaining information, went to Government Hospital, Kilpauk, examined PW-1, who was taking treatment as an inpatient and registered a case in Crime No.1514 of 2002 on the file respondent for offences u/s.341, 324, 307 and 506(ii) IPC. Printed First Information Report is Ex.P10. PW-10 recovered MO-3, yellow colour t-shirt under Ex.P11, seizure mahazar in the presence of witnesses. PW-10 visited the scene of occurrence and examined PWs.2, 3, 7 and another and recorded their statements. PW-10 prepared Ex.P12 - observation mahazar and Ex.P13 - rough sketch in the presence of PWs.4 and 5. On 14.02.2002 at about 05.30 a.m., PW-10 arrested accused 2 and 3 and recorded the confession statement of third accused in the presence of PWs.6 and 8. The admissible portion of confession statement is Ex.P14. PW-10 seized Mos.1 and 2 under seizure mahazar. On 09.11.2002, PW-10 examined PW-9, Doctor and another and recorded their statements. Upon completion of investigation, on 28.11.2002, PW-10 filed a charge sheet informing commission of offences u/s.147, 148, 307, 326 and 506 r/w 34 IPC before learned X Metropolitan Magistrate, Egmore, Chennai. On committal, the case was tried in S.C.No.107 of 2009 on the file of learned Additional District and Sessions Judge, Fast Track Court IV, Chennai.

3. Before trial Court, prosecution examined 10 witnesses and marked 15 exhibits and 3 material objects. None were examined on behalf of defence nor were any exhibits marked. On appreciation of materials before it, trial Court, under judgment dated 28.10.2009, convicted appellants/accused 1 to 3 for offences u/s.148 and 307 r/w 34 IPC and sentenced them to 2 years R.I. and fine of Rs.1,000/- each i/d 3 months S.I. for offence u/s.148 IPC and 5 years R.I. and fine of Rs.1,000/- i/d 3 months S.I. for offence u/s.307 r/w 34 IPC. Accused 4 and 5 were acquitted. Trial Court directed that sentences run concurrently. Against such finding, the present appeal has been filed.

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

5. It is the submission of learned counsel for appellants

that it was PW-1, who had objected to bursting of crackers in front of their residence and when their mother questioned him stating that it was not only her sons who are bursting crackers in the festival, he beat her and she fell down. First accused had also suffered rib injury owing to being pushed down by PW-1. The mother of appellants had been admitted into hospital and the above position has been informed in her complaint registered in Crime No.1513 of 2002 on the file of respondent for offences u/s.341 and 323 IPC. Appellants have faced prosecution pursuant to registration of case on the complaint of PW-1 in Crime No.1514 of 2002 on the file of respondent for offences u/s.341, 324, 307 and 506(ii) IPC. PW-10, investigation officer, had been specifically cross-examined regards the complaint preferred by mother of appellants/accused and he had informed not having recollection thereof. The case is one of case and counter and a proper investigation would have revealed that PW-1 was the aggressor.

6. Heard learned Additional Public Prosecutor on the above submissions.

7. PW-1 has spoken to appellants/accused setting upon him with knives. He has deposed to suffering a head injury at the hands of A1, that A2 sought to cut his neck and in avoiding the same, he suffered a cut injury to his left hand and A3 with a wooden log caused injuries to his right shoulder. The injuries spoken to by PW-1 find corroboration through PW-9, Orthopedician. Ex.P9 - Wound Certificate, informs the injuries suffered as follows:

(1) lacerated wound 10 cms over the scalp exposing skull by a sharp weapon.

(2) cut injury palm 10 cm - about 0.5 cm deep (sharp weapon).

(3) Swelling and lacerated injury (L) ankle (fracture).

Injuries 1 and 2 were attributed by PW-1 to A1 and A2. Third injury was attributed to A4, who stands acquitted. The accusation against A3 cannot be seen as unfounded merely because Ex.P9, wound certificate, does not reflect the injury caused by him. PW-10, Investigation Officer, is unable to deny the preference of complaint by mother of appellants. Therefore, the possibility of appellants having attacked PW-1 in an instantaneous response to their mother being beaten and pushed to the ground by PW-1 cannot be ruled out. Though reaction of persons in particular circumstances cannot be weighed on a golden scale, resort to use of knives and causing of grave injuries there through would not be justified. However, in the circumstances of the case, appellants/accused cannot be accused of having shared a common intention, given the position that the very occurrence, in all likelihood, was a spur of the moment one. Each of the appellants can be held liable only for the individual injuries caused by them. On such reasoning, accused 1

to 3 would be liable for offence u/s.324 IPC. It is brought to notice that A1 has already undergone sentence of 40 days and A2 and A3, 70 days. In the facts and circumstances of the case, this Court considers it appropriate to alter the findings and conviction of trial Court as follows:

'A1 to A3 are convicted for offence u/s.324 IPC and substantive sentence of imprisonment shall be restricted to the period already undergone. However, fine imposed on them shall be enhanced to Rs.10,000/- each i/d 1 year R.I.'

The Criminal Appeal is disposed of with the above modification.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

gm

To

- 1.The Additional District and Sessions Judge,
Fast Track Court IV,
Chennai- to serve copies of the Judgment on the appellant
and take further action in this matter
- 2.The Metropolitan Magistrate,
No. V, Egmore, Chennai.
- 3.do Thro The chief Metropolitan magistrate,
Egmore, Chennai.
- 4.The Superintendent,
Central Prison, Puzhal, Chennai.
- 5.The Inspector of Police,
V1 Villivakkam Police Station,
Chennai - 600 049.
- 6.The District Collector,
District Magistrate, Chennai.
- 7.The Director of General of Police,
Tamill Nadu, Mylapore, Chennai-4

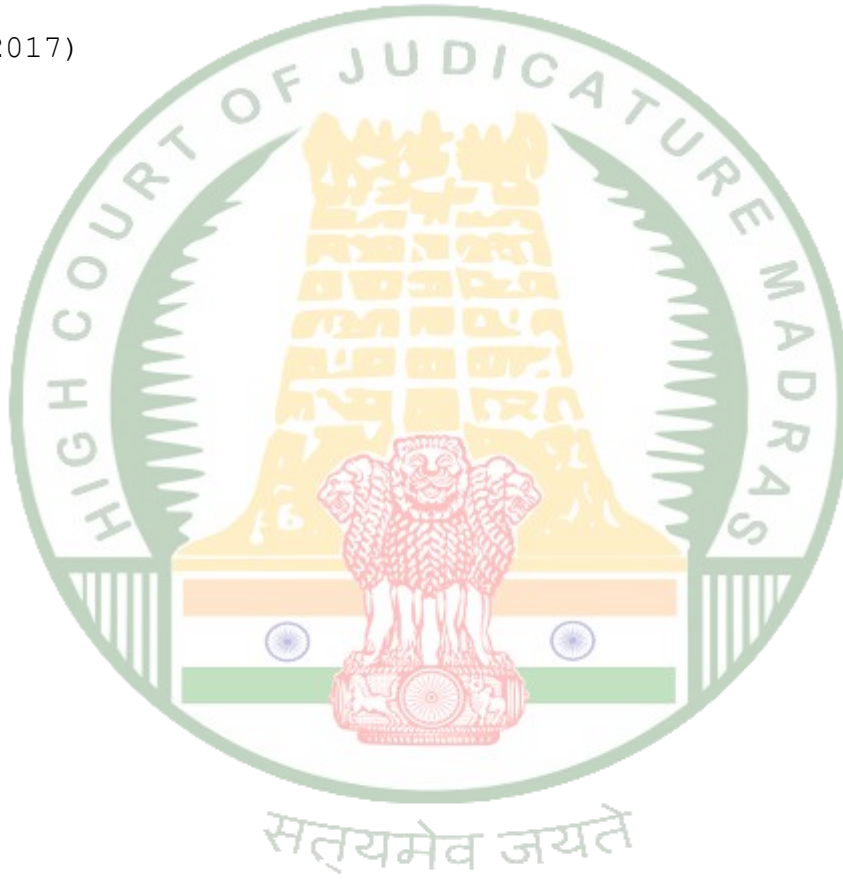
8.The Public Prosecutor,
High Court, Madras.

Copy To

The Section Officer,
Criminal Section, (Records), High Court,
Madras.

Crl.A.No.716 of 2009

BR(CO)
GN(05/12/2017)



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