

Bail Slip

CRL.A.No.763 of 2010:

The Appellant/Accused No.2, namely Sakthivel S/o.Virudhachalam was directed to be released on bail, vide order dated 21.12.2010, made in MP.No.1 of 2010 in Crl.A.No.763 of 2010.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2017

CORAM:

THE HON'BLE MR.JUSTICE C.T. SELVAM

Crl.A.No.763 of 2010 and M.P.Nos.1 & 2 of 2010
and
Crl.R.C.No.1240 of 2010

Crl.A.No.763 of 2010

Sakthivel
S/o.Virudhachalam

.. Appellant/Accused 2

vs.

The Inspector of Police,
Thirumanur Police Station,
Ariyalur.
Crime No.80 of 2007

.. Respondent/Complainant

Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure against the judgment of learned Additional District and Sessions Judge, Fast Track Court, Ariyalur, passed in S.C.No.6 of 2010 on 25.10.2010.

Crl.R.C.No.1240 of 2010

Nallathambi
S/o.Pichaipillai

.. Petitioner/De facto Complainant

vs.

1.Virudhachalam
S/o.Kailasa Mooppanar

2.Sakthivel
S/o.Virudhachalam

3.Ilayaraja
S/o.Virudhachalam

4.Ashokraj
S/o.Ayyaru

5.Anandraj
S/o.Ayyaru

6.Saminathan
S/o.Manicka .. Respondents 1 to 6/Accused

7.The State represented by
The Inspector of Police,
Thirumanur Police Station,
Ariyalur.
Crime No.80 of 2007 .. 7th Respondent/Complainant

Criminal Revision Case filed under Section 397 and 401
Cr.P.C. against the judgment of learned Additional District and
Sessions Judge, Fast Track Court, Ariyalur, passed in S.C.No.6
of 2010 on 25.10.2010.

Appearance:

For appellant in Crl.A.No.763/2010 and
respondents 1 to 6 in Crl.R.C.No.1240/2010 : Mr.V.Illanchezian

For petitioner in Crl.R.C.No.1240/2010 : Mr.C.Prabakaran

For respondent in Crl.A.No.763/2010 and
seventh respondent in Crl.R.C.No.1240/2010 : Mr.V.Arul
Additional Public Prosecutor

COMMON JUDGMENT / ORDER

Criminal Appeal No.763 of 2010 arises against the judgment
of learned Additional District and Sessions Judge, Fast Track
Court, Ariyalur, passed in S.C.No.6 of 2010 on 25.10.2010
convicting appellant/A2 for offences u/s.324 (2 counts), 307 and
326 IPC and sentencing him to 1 year R.I. for each count and
fine of Rs.5,000/- for each count i/d 6 months R.I. for each
count for offence u/s.324(2 counts) IPC, 3 years R.I. and fine
of Rs.10,000/- i/d 2 year R.I. for offence u/s.326 IPC and 5

years R.I. and fine of Rs.20,000/- i/d 2 years R.I. for offence u/s.307 IPC. Criminal Revision Case No.1240 of 2010 has been preferred by petitioner/de facto complainant against such judgment.

2. Appellant/A2 along with five others faced trial in S.C.No.6 of 2010 on the file of learned Additional District and Sessions Judge, Fast Track Court, Ariyalur. Prosecution case is that on 05.06.2007 at about 12.00 p.m., A1 cut grass on his field and threw the same on the field of de facto complainant as a result of which there was an argument ensued and accused 1 to 6 assaulted the de facto complainant and his father and caused injuries. On 05.06.2007, PW-1 preferred a complaint Ex.P1 to PW-19, Sub-Inspector of Police, who registered a case in Crime No.80 of 2007 on the file of respondent police for offences u/s.147, 148, 323, 324 and 307 IPC. The First Information Report is Ex.P22. PW-19 forwarded the First Information Report to learned Judicial Magistrate, Ariyalur. PW-20, Inspector of Police, took up investigation in the case on 05.06.2007. PW-20 visited the place of occurrence at about 06.45 p.m. and prepared Ex.P23 - Observation Mahazar and Ex.P24 - Rough Sketch, in the presence of PWs.8 and 17. PW-20 examined PWs.1 to 8, 17 and others and recorded their statements. On information, PW-20 arrested first accused on 09.06.2007 at about 10.00 a.m. in the presence of PW-17 and another and recorded his confession. The admissible portion of confession statement is Ex.P25. PW-20 seized a wooden log MO-1, used by first accused under seizure mahazar Ex.P26. PW-20 arrested second accused on 10.06.2007 at about 14.00 hours in the presence of PW-17 and another and recorded his confession. The admissible portion of confession statement is Ex.P27. PW-20 seized an aruval, MO-1 and spade - MO-2 under Ex.P28 - seizure mahazar. PW-20 sent the accused 1 and 2 to judicial custody. PW-20 examined PW-17 and another and recorded their statements. Thereafter, PW-20 handed over investigation to PW-21, Inspector of Police. On 24.06.2007, PW-21 took up further investigation. PW-21 examined Doctors and obtained wound certificates of victims. On completion of investigation, PW-21 filed a charge sheet informing commission of offences u/s.147, 148, 324, 326 and 307 IPC before learned Judicial Magistrate, Ariyalur. Upon committal, the case was taken on file in S.C.No.6 of 2010 on the file of learned Additional District and Sessions Judge, Fast Track Court, Ariyalur.

3. Before trial Court, prosecution examined 21 witnesses and marked 28 exhibits and 7 material objects. One witness was examined on the side of defence and two exhibits were marked.

4. On appreciation of materials before it, trial Court, under judgment dated 25.10.2010, while acquitting other accused,

convicted appellant/A2 for offences u/s.324 (2 counts), 307 and 326 IPC and sentenced him to 1 year R.I. and fine of Rs.5,000/- for each count i/d 6 months R.I. for offence u/s.324 IPC, 3 years R.I. and fine of Rs.10,000/- i/d 2 years R.I. for offence u/s.326 IPC and 5 years R.I. and fine of Rs.20,000/- i/d 2 years R.I. for offence u/s.307 IPC. There against, the present appeal and revision.

5. Heard learned counsel for appellant in Crl.A.No.763 of 2010 and respondents 1 to 6 in Crl.R.C.No.1240 of 2010, learned counsel for petitioner in Crl.R.C.No.1240 of 2010 and learned Additional Public Prosecutor for State.

6. Crl.A.No.763 of 2010 succeeds for the reason that A1, since deceased and A2 both had suffered injuries in the course of same occurrence as exhibited through Exs.D1 and D2. Ex.D1 informs of the following injuries suffered by A1: (1)lacerated injuries of size 2x0.1x0.5 cm over right occipital region of scalp (2)contusion of size 4x3 cm over back of right shoulder (3)lacerated injuries of size 1x0.5x0.5 cm over left eyebrow and (4)contusion of size 3x3 cm over right thigh. Ex.D2 informs the following injuries suffered by A2: (1)cut injury of size 0.5x0.5x0.5 cm over medial aspect of let hand (2)2 cut injuries of size 3x1x1 cm each over right parietal and occipital region of scalp and (3)2 cut injuries of size 3x0.5x0.5 cm each over forehead and right shoulder. Where the accused party have also suffered serious injuries in the course of the same occurrence then the question of which of rival parties is the assailant/aggressor arises for determination. Crime No.79 of 2007 on the file of respondent police has been registered for offences u/s.323 and 324 IPC at the instance of the accused party. Case giving rise to this appeal is pursuant to investigation in Crime No.80 of 2007 on the file of respondent police, wherein a final report was filed informing commission of offences u/s.147, 148, 324, 326 and 307 IPC. Trial Court has convicted appellant/ A2. It is the admission of PW-20, Inspector of Police, that case in Crime No.79 of 2007 was registered by the Sub-Inspector of Police but that he had not conducted any investigation in respect thereof. Much would turn on which party was the aggressor as it is only then the question of whether injuries to the accused came to be suffered as a result of the prosecution party availing its right for private defence. The next question that would then arise would be if in doing so, the prosecution party has exceeded such right.

7. Tamil Nadu Police Standing Order 566 reads as follows:

'566. Investigation to be impartial.- (1) Investigation officers are warned against prematurely committing themselves to any view of the facts for, or

against a person. The aim of an Investigating Officer should be to find out the truth, and, to achieve this purpose, it is necessary to preserve an open mind throughout the Inquiry.

(2) Charge-sheets in cases and counter cases - In a complaint and counter complaint obviously arising out of the same transaction, the Investigating Officer should enquire into both of them and adopt one or the other of the two courses, viz., (1) to charge the case where the accused were the aggressors, or (2) to refer both the cases if he should find them untrue. He should place before the Court a definite case which he asks it to accept. The Investigating Officer in such cases should not accept into one complaint and examine only witnesses who support it and gave no explanation at all for the injuries caused to the other side. It is his duty to exhibit the counter - complaint in the Court and also to prove medical certificates of persons wounded on the opposite side. The truth in these cases is invariably not in strict conformity with either complaint and it is quite necessary that all the facts are placed before the Court to enable it to arrive at the truth and a just decision.

(3) If the investigating officer finds that the choice of either course is difficult, viz., to charge one of the two cases or to throw out both, he should seek the opinion of the Public Prosecutor of the district and act accordingly. A final report should be sent in respect of the case referred as mistake of law and the complainant or the counter - complainant as the case may be, should seek remedy before the disposal by a notice in Form No.90 and to the disposal of the case by the Police.

(G.O.Ms.No.182, Home, dated the 23rd January 1958) ' In the absence of following the above procedure, a finding of conviction against one of the rival parties cannot be arrived at free from doubt. The benefit of doubt will flow to the accused.

8. Learned counsel for revision petitioner submitted that as a result of the injuries suffered in the course of occurrence, PW-3 has suffered mental retardation to the extent of 65% as evidenced by medical records. This Court may sympathize but is bound to follow the law.

In the result,

(i) CrI.A.No.763 of 2010 is allowed. The judgment of learned

Additional District and Sessions Judge, Fast Track Court, Ariyalur, passed in S.C.No.6 of 2010 on 25.10.2010, is set aside. Appellant is acquitted of all charges. Fine amount, if any, paid shall be refunded to him. Bail bonds, if any, executed shall stand cancelled. Connected miscellaneous petitions are closed.

(ii)Cr1.R.C.No.1240 of 2010 is dismissed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

gm

To

- 1.The Additional District and Sessions Judge,
Fast Track Court,
Ariyalur.
- 2.The Inspector of Police,
Thirumanur Police Station,
Ariyalur.
- 3.The Judicial Magistrate,
Ariyalur.
- 4.-Do- Thro'The Chief Judicial Magistrate,
Ariyalur.
- 5.The Superintendent,
Central Prison, Trichy.
- 6.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.C.Prabakaran, Advocate SR.No.54525
+1cc to Mr.V.Ilanchezhian, Advocate SR.No.54116
+1cc to Mr.S.Sairaman, Advocate SR.No.54117

Cr1.A.No.763 of 2010
and
Cr1.R.C.No.1240 of 2010

GJII(CO)
GN(13/12/2017)