

Bail Slip

The Appellant/Accused No.1to3 & 3to6 namely 1) Kumaravel, 2) Senthil, 3) Haridoss, 4) Iyyappan, 5) Ethiraj and 6) Ramesh @ Kaka Ramesh were released on bail dt. 20.6.2007 made in M.P.No.1 of 2007 and CrI.A.No.510 of 2007, and the appellant/Accused No.5 namely R. Panchanathan, was released on bail dt. 28.6.2007 made in M.P.No.1 of 2007 in CrI.A.No.536/2007.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal Nos.510 and 536 of 2007

Criminal Appeal No.510 of 2007

1.Kumaravel
2.Senthil
3.Haridoss
4.Iyyappan
5.Ethiraj
6.Ramesh @ Kaka Ramesh ... Appellants/Accused
No.1 to 3 & 6 to 8

Vs

State rep. by
The Inspector of Police,
E-1 Mylapore Police Station,
Mylapore,
Chennai -4.

.. Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., to set aside the judgment made in S.C.No.548 of 2006, dated 24.05.2007 passed by the learned Additional District Sessions Judge (Fast Track Court No.III), Chennai in Crime No.1403 of 2000 on the file of the respondent.

Criminal Appeal No.536 of 2007

R.Panchanathan

.. Appellant/A5

Vs

State rep. by
The Inspector of Police,
E-1 Mylapore Police Station,
Mylapore,
Chennai -4.

..Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., to set aside the judgment, conviction and sentence imposed on the appellant by the learned Additional District and Sessions Judge (Fast Track Court No.3), Chennai made in S.C.No.548 of 2006, dated 24.05.2007 by allowing this appeal and to acquit the appellant.

For Appellants :Mr.R.C.Paul Kanagaraj
in Crl.A.No.510 of 2007
Mr.Vadivel (Legal Aid counsel)
in Crl.A.No.536 of 2007

For Respondent: Ms.M.F.Shabana,
Government Advocate (Crl. Side)
(For both the appeals)

COMMON JUDGMENT

A.1, A.2, A.3, A.6, A.7 and A.8 are the appellants in Crl.A.No.510 of 2007. A.5 is the appellant in Crl.A.No.536 of 2007 Both the appeals have been filed against the judgment of conviction and sentence imposed on the appellants by the learned Additional District and Sessions Judge (Fast Track Court No.3), Chennai in S.C.No.548 of 2006, dated 24.05.2007.

2. Totally, there are eight accused. All the accused stood charged for the offences under Sections 147 and 148 I.P.C. A.2 to A.8 stood charged for the offences under Sections 225, and 332 IPC. A.1 to A.8 stood charged for the offences under Section 307 IPC. By judgment, dated 24.05.2007, the trial Court convicted A.1, A.2, A.3, A.5, A.6 and A.7 for the offences under Sections 148, 225, 332 IPC, and convicted A.8 for the offence under Section 148 IPC, and all the above accused, who were convicted for the offence under Section 148 IPC, were sentenced to undergo Simple Imprisonment for two years each and to pay a fine of Rs.1,000/- each, in default, to undergo Simple Imprisonment for three months; and for the offence under Section 225 IPC, they were sentenced to undergo Simple Imprisonment for two years each and also to pay a fine of Rs.1,000/- each in default, to undergo Simple Imprisonment for three months; they were also convicted for the offence under Section 332 IPC, and sentenced to undergo Simple Imprisonment for three years each and also to pay a fine of Rs.1,000/- each, in default, to undergo three months Simple Imprisonment. For the offence under Section 148 IPC, A.8 was sentenced to undergo Simple Imprisonment for two years and also to pay a fine of Rs.1,000/-, in default, to undergo Simple Imprisonment for three months. The trial Court ordered the above sentences to run concurrently. All the accused were acquitted of the charges under Sections 147 and 307 IPC and A.8 was acquitted from the charges under Sections 147, 225, 332 and 307 IPC. A.4 was acquitted from all the charges. Challenging the said conviction and sentence, the appellants are before this Court with this Criminal Appeal.

3. Pending Appeal, A8 died on 16.06.2016. A memo has been filed to that effect. Hence, the appeal against A.8 is dismissed as abated.

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

P.W.1, is the Sub Inspector of Police working in Royapettah Police Station, Chennai. On 29.09.2000 at about 3.00 p.m. P.W.4 gave a complaint to the respondent police alleging that, while he was parking the Auto near Nochikuppam, A.1 to A.3, went there and harassed him. Based on that complaint, P.W.1 registered a case in Cr.No.1402 of 2000, for the offences under Sections 341, 323, 506(2) IPC against A.1 to A.3 and went in search of them. At that time, P.W.3 and P.W.4 identified A.1 and P.W.1 arrested A.1. P.W.1 and P.W.2 are the Sub Inspectors of Police, were threatened by A.1, thereafter, all the other accused came there and attacked P.W.1 and P.W.2, caused serious injuries and they relieved A.1. P.W.5 is the Driver of the police patrol vehicle. P.W.6, who was the then Inspector of Police, G.5 - Marina Police Station, came there, on patrol. On seeing them, all the accused ran away. P.W.6 took P.W.1 and P.W.2 to Royapettah Government Hospital and given treatment. Then, P.W.1 has given a complaint, based on the said complaint, P.W.11, registered the case in Cr.No.1403 of 2000 for the offences under Sections 225, 333 and 307 IPC, and he prepared F.I.R Ex.P.8. Next day, he proceeded to the scene of occurrence and prepared Observation Magazar Ex.P.9, and Rough Sketch Ex.P.10, and he recovered stones and bricks from the scene of occurrence, M.O.5 and M.O.6 respectively. Then, he recorded the statement of P.W.1 and P.W.2 in the hospital and also recorded the statement of other witnesses. P.W.8 is the Doctor, who admitted P.W.1 in Royapettah Government Hospital and issued Accident Register Ex.P.5. P.W.9 is the another Doctor, who was working in Royapettah Government Hospital, has spoken about the treatment given to P.W.1 and P.W.2. P.W.11 recorded the statement of Doctors, and arrested the accused on various dates. After completing investigation, he filed a charge sheet.

5. Based on the above materials, the trial Court framed the charges as detailed in the second paragraph of this judgment against the accused. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 11 witnesses were examined and 14 documents were exhibited, besides 6 Material Objects.

6. Out of the witnesses examined, P.W.1 is the Sub Inspector of Police. He is an injured eye witness in this case. According to him, based on the complaint given by P.W.4, against A.1 and A.2 herein, he registered a case in Cr.No.1402 of 2002 and conducted investigation, in the above crime. P.W.3 and P.W.4 identified A.1 and he arrested him.

After the arrest, A.1 was trying to escape from their custody and he was trying to hold them, all the accused gathered and attacked P.W.1 and P.W.2 with wooden logs and stones and then they relieved A.1.

7. According to P.W.1, A.2 and A.3 attacked P.W.5 with wooden logs and A.1 also attacked with stones and sticks and other accused have also attacked them and immediately they informed the same to the patrol police. P.W.6, Sub Inspector of Police, G.5 Marina Police Station came to the scene of occurrence and rescued them and admitted them in the Royapettah Government Hospital. P.W.2 is the training Sub Inspector of Police working in E.1 Mylapore Police Station, he along with P.W.1 arrested A.1, at that time all the accused came there. A.2 and A.3 attacked them with wooden logs and relieved A.1. Thereafter, A.1 also attacked them and the other accused, viz., A.5, A.6 and A.7 also attacked them with wooden log.

8. P.W.4 is the complainant in the earlier crime. Based on the complaint, P.W.1 and P.W.2 went to the scene of occurrence, where they identified A.1. While P.W.1 and P.W.2 arrested A.1, a group of persons viz., 10 to 15 persons came there and attacked them. P.W.5, is the Driver of the police patrol vehicle. According to him, P.W.4 and P.W.5 identified A.1. P.W.1 and P.W.2 arrested A.1 and at that time, when he was trying to escape from the police custody, nearly ten persons came there and attacked P.W.1 and P.W.2 indiscriminately. A.1 to A.3 attacked P.W.1 and P.W.2 and some other persons were also trying to throw stones. Then, they went to G.5 Marina Police Station, informed P.W.6 about the occurrence, P.W.6 went there and saw that the accused were attacking P.W.1 and P.W.2.

9. P.W.7 is the Police Constable accompanying P.W.1 and P.W.2 to arrest A.1. He is a witness to the arrest and confession statement of A.1 and also recovery of M.Os.1 to 4.

10. P.W.8 is the Doctor, who admitted P.W.1, in Royapettah Government Hospital and issued Accident Register Ex.P.5. P.W.9 is the another Doctor, who was working in Royapettah Government Hospital, based on the case summary records, he has given evidence regarding the injury sustained by witnesses. P.W.10, the then Inspector of Police, arrested A.1 and on such arrest, he voluntarily gave the confession statement. Based on the said statement, he recovered the Material Objects. P.W.11 registered the complaint and recorded the statement of P.W.1 in the Hospital. Based on the same, he registered FIR, conducted investigation, and recorded the statement of witnesses. After completing the investigation, he has filed a charge sheet.

11. 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 witness or mark any document.

12. Having considered all the above materials, the trial Court convicted the appellants/accused as stated in the second paragraph of this judgment. Challenging the same, the appellants/accused are before this Court with these Criminal Appeals.

13. I have heard Mr.R.C.Paul Kanagaraj, learned counsel appearing for the appellants in Crl.A.No.510 2007 and Mr.Vadivel Murugan, learned counsel appearing for the appellant in Crl.A.No.536 of 2007 and Ms.M.F.Shabana, learned Government Advocate (Criminal side) appearing for the State and I have perused the records carefully.

14. The learned counsel for the appellants in Crl. Appeal No.510 of 2007, submitted that except P.W.1 and P.W.2, the police officials, who are the interested witnesses, there is no other evidence available to corroborate their evidence. Even P.W.1 and P.W.2 have not identified the accused and recovery of material objects. In the absence of any other independent witness to corroborate the evidence of P.W.1 and P.W.2s', the interested testimony of witnesses cannot be believed.

15. Apart from that, the evidence of P.W.5 and P.W.6, who were said to have been present in the scene of occurrence is highly doubtful and in absence of identification of the accused, the trial Court, erroneously, convicted all the accused. He further submitted that the prosecution failed to establish the offences against the appellants beyond any reasonable doubt and hence he sought for acquittal.

16. Per contra, the learned Government Advocate, (Crl.side) appearing for the respondent would submit that P.W.1 and P.W.2 are the injured eye witnesses. While they were discharging their official duty, they were prevented by the accused and the accused attacked them with weapons and caused injuries and the medical evidence also corroborates the evidence of P.W.1 and P.W.2 and there is no reason to disbelieve their evidence. Considering all the materials, the trial Court, convicted the accused and hence, she sought for dismissal of these appeals.

17. I have carefully considered the above submissions and perused the materials available on record.

18. From the testimony of P.W.1 and P.W.2, it could be seen that prior to the present occurrence, there was an earlier occurrence at about 1.00 p.m. on the same day, wherein A.1 to A.3 created problem to P.W.3 and P.W.4 and threatened

them in unison. P.W.3 and P.W.4 preferred complaint before the respondent police and the same was registered in Cr.No.1402 of 2000 for the offences under Sections 341, 323 and 506(ii) IPC. After registering the said complaint, P.W.1 conducted investigation in the case. P.W.2, who is a trainee Sub Inspector, also accompanied P.W.1 and they went in search of the accused. At that time, P.W.3 and P.W.4 identified A.1 and P.W.1 arrested him. According to P.W.1, A.2 and A.3 came there and they attacked them with wooden logs and relieved A.1 from his custody. Thereafter, A.1 also joined A.2 and A.3 and attacked them. Some other accused also attacked P.W.2, by throwing stones and sticks.

19. From the evidence of P.W.1, it could be seen that A.1 to A.3 alone attacked him with wooden logs and in the complaint given by P.W.1, the names of A.1 to A.3 alone were mentioned and the identity of other accused was not disclosed by P.W.1. P.W.2 also stated that A.2 and A.3 attacked P.W.1 and relieved A.1 from the custody and A.1 also joined A.2 and A.3 and attacked him. Even though, he has mentioned the names of A.5, A.6 and A.1, he has not identified the other accused and no other witness identified them. P.W.3 and P.W.4, who are the other two eye-witnesses to the scene occurrence, have also stated that 10 to 15 persons came there and threw stones and attacked P.W.1 and they have also not identified any other accused. P.W.5, who is the Driver of the Police Patrol Vehicle, spoke that A.1 to A.3 attacked P.W.1 and P.W.2 and some other persons also threw stones on them.

20. So far as P.W.6 is concerned, he stated that he came to the occurrence after the information was given by P.W.5, but he has not specified the place of occurrence.

21. From the evidence of P.W.1 to 5, it could be seen that A.1 to A.3 attacked P.W.1 and P.W.2 and caused injuries and the identification of the other accused was not established by the prosecution.

22. So far as A.1 to A.3 are concerned, the evidence of P.W.1, P.W.2 show that they have attacked with wooden logs and the medical evidence also corroborates the evidence of P.W.1, P.W.2 and P.W.5, and hence, I am of the opinion that the prosecution established that A.1 to A.3 only attacked P.W.1 and P.W.2 and caused injuries and in so far as the other accused is concerned, the prosecution has failed to prove the case beyond any reasonable doubt.

23. In the above circumstances, I am of the considered view that the prosecution has proved the charge under Sections 225 and 332 IPC against A.1 to A.3. So far as the charge under Section 148 IPC is concerned, the prosecution has failed to prove the same. Hence, A.1 to A.3 are liable to

be convicted for the offences under Sections 225 and 332 IPC alone and A.5 to A.7 are liable to be acquitted from all the charges.

24. According to the learned counsel for the appellant, the occurrence took place in the year 2000, and A.1 to A.3 are young men and after the occurrence, no other case has been registered against them and they are working in a private company sincerely and living with their families and they have to maintain their big family and sought for lesser sentence.

25. Taking into consideration the above facts and circumstances, while confirming the conviction of A.1 to A.3 for the offence under Section 225 IPC, the sentence imposed on them is modified and each of them shall undergo Simple Imprisonment for 6 months and pay a fine of Rs.1,000/- each, in default, to undergo 4 weeks rigorous imprisonment and while also confirming the conviction imposed on A.1 to A.3 for the offence under Section 332 IPC, the sentence is modified and each of them shall undergo simple imprisonment for 6 months and pay a fine of Rs.1,000/- each, in default, to undergo 4 weeks rigorous imprisonment. A.1 to A.3 are acquitted of the charge under Section 148 IPC and A.5 to A.7 are acquitted of all the charges and fine amount, if any paid by A.5 to A.7 shall be refunded to them and bail bond, if any executed by them shall stand cancelled. The above sentences imposed on the A.1 to A.3 shall run concurrently. The period of sentence already undergone by the A.1 to A.3 shall be set off under Section 428 Cr.P.C. Since A.1 to A.3 are on bail, the trial Court is directed to take steps to secure their custody to undergo the remaining period of sentence, if any.

26. In the result, the Criminal Appeal in Crl.A.No.510 of 2007 is partly allowed as detailed above and the Criminal Appeal in Crl.A.No.536 of 2007 is allowed.

27. While parting with the case, I appreciate the services rendered by Mr. Vadivel Murugan, learned counsel, who appeared on behalf of the appellant as Legal Aid Counsel. The Tamil Nadu State Legal Services Authority is directed to pay necessary remuneration to him.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

To

1. The Additional District and Sessions Judge
(Fast Track No.3),
Chennai.
 2. The Principal Sessions Judge, Chennai.
 3. The XVIII Metropolitan Magistrate, Chennai.
 4. Through the Chief Metropolitan Magistrate, Chennai.
 5. The Inspector of Police
E-1, Mylapore Police Station, Chennai-4.
 6. The Public Prosecutor,
High Court, Madras.
 7. The Secretary, Tamil Nadu State legal
Service Authority Chennai.
- + 1 cc to MR. S. Vadivel Murugan, Advocate Sr.10952

Crl.A.Nos.510 and
536 of 2007

GP (CO)
EU (23/11/2017)



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