

BAIL SLIP

That the Appellant herein/Accused namely Harikumar S/o.Sathasivam was released on bail on the file of this Court made in MP.No. 1 of 2013 in CrI.A.194 of 2013, dated 11/03/2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.11.2017

PRONOUNCED ON : 29.11.2017

CORAM :

THE HONOURABLE MR.JUSTICE P.N. PRAKASH

CrI.A.No.194 of 2013

Hari Kumar

... Appellant/Accused

Vs.

State by
Inspector of Police
H-3 Tondairpet Police Station
Chennai
(Cr.No.772 of 2010)

... Respondent/Complainant

Criminal Appeal filed under Section 374 of Cr.P.C. against the sentence and order passed in S.C.No.244 of 2011 dated 12.02.2013 by the learned XV Additional Sessions Judge, Court of Sessions, Chennai.

For Appellant : Mr.R.Thamaraiselvan

For Respondent : Mr.K.Madhan
Government Advocate (CrI.Side)

J U D G M E N T

This appeal has been filed against the judgment dated 12.02.2013 in S.C.No.244 of 2011 passed by the learned XV Additional Sessions Judge, Court of Sessions, Chennai.

2. It is the case of the prosecution that Balaraman [P.W.1] was an Ex-Congress MLA and that he belongs to Vanniya Kula Kshatriyar Community. It is alleged that by his efforts, one Seenu Gounder and his son Chandrasekaran belonging to Pattali

Makkal Katchi [for short "PMK"] defected and joined the Congress party in the presence of P.Chidambaram, former Union Minister and other Senior Office bearers of the Congress party, on account of which, the members of PMK were enraged. This being the motive, it is alleged that, on 09.11.2010, around 11.00 a.m., when Balaraman [P.W.1] was sitting in Vanniya Kula Kshatriyar Educational Trust Office that was located in the ground floor of his house, PMK activists, viz., Vannai Sathya [A1], Harikumar [A2], Sasikumar [A3], Gaja @ Gajendran [A4], Baskar [A5], Madhan [A6] and Vaigai Saravanan [A7] barged into his room, threatened him and abused him for engineering the defection of Seenu Gounder and Chandrasekaran from PMK to Congress. In the quarrel, Vannai Sathya [A1] exhorted others to attack Balaraman [P.W.1], on account of which, Harikumar [A2] took out a billhook and attacked Balaraman [P.W.1] on the left side of his head, due to which, his left ear got severed. Balaraman [P.W.1] fell down and when Chellappan [P.W.2] came to his rescue, he was also attacked by the group and they ran away. Hearing the alarm raised by Balaraman [P.W.1], public gathered and he was carried to Apollo Hospital, where he was admitted as an inpatient.

[a] On receiving intimation, Ramesh Babu [P.W.9], Inspector of Police, went to the Apollo Hospital and recorded the statement [Ex.P.1] of Balaraman [P.W.1], which was treated as a complaint, based on which, a case in H3 Tondiarpet Police Station Cr.No.772 of 2010 was registered on 09.11.2011 at 12.30 hours under Sections 147, 148, 149, 341, 452, 307, 336, 427 and 506(ii) IPC against all the 7 accused, who were named in the complaint of Balaraman [P.W.1] and the same was received by the jurisdictional Magistrate on 09.11.2010 at 7.50 p.m. as could be seen from the endorsement thereon. He seized the blood-stained dhoti [M.O.2], shirt [M.O.3], banian [M.O.4] that were worn by Balaraman [P.W.1] under Form 95.

[b] On 09.11.2010, around 12.45 p.m. the police arrested Vannai Sathya [A1], Harikumar [A2] and Sasikumar [A3] and their confession statement was recorded. From the possession of Vannai Sathya [A1], a knife [M.O.1] was recovered under the cover of Mahazar [Ex.P.7], which was kept hidden in his bag. The Investigating Officer went to the place of occurrence and in the presence of Dilli Babu [P.W.5], prepared an Observation Mahazar [Ex.P.10] and Rough Sketch [Ex.P.3]. The arrested accused were produced before the jurisdictional Magistrate for judicial custody. The Investigating Officer arrested Gaja @ Gajendran [A4], Baskar [A5], Madhan [A6] and Vaigai Saravanan [A7] on 11.11.2010 at 5.00 a.m. On the disclosure statement of Gaja @ Gajendran [A4], the red colour Pulsar motorbike that was used by the accused for the commission of the offence was seized. He recorded the statement of the other witnesses,

including the Doctor who treated Balaraman [P.W.1] and after completing the investigation, filed the Final Report in PRC No.151 of 2010 before the XV Metropolitan Magistrate, George Town, for offences under Sections 147, 452, 294(b), 323, 427, 336, 307 read with 149 and 506(ii) IPC.

3. On the appearance of the accused, they were furnished with the copies of the relied upon documents u/s 207 Cr.P.C. and the case was committed to the Court of Sessions in S.C.No.244 of 2011 and was made over to the X Additional District and Sessions Judge, Chennai, for trial. The trial Court framed charges under Sections 147, 452, 294(b), 323, 427, 336, 307 read with 149 and 506(ii) IPC against A1 and A3 to A7 and framed charges under Sections 148, 452, 294(b), 307, 323, 427, 336 and 506(ii) IPC against A2. When questioned, the accused pleaded not guilty.

4. To prove the case, the prosecution examined 9 witnesses, marked 12 exhibits and 4 material objects. When the accused were questioned under Section 313 Cr.P.C. about the incriminating circumstances appearing against them, they denied the same. On behalf of the accused, one Suresh Kumar [D.W.1] was examined and bail order copies [Ex.D.1] were marked.

5. After considering the evidence on record and hearing either side, the trial Court acquitted Vannai Sathya [A1], Gaja @ Gajendran [A4], Baskar [A5], Madhan [A6] and Vaigai Saravanan [A7]. Sasikumar [A3], had died in the mean time and therefore, the charges against him abated. Harikumar [A2], was acquitted for the charges under Sections 148, 452, 294(b), 307, 323, 427, 336 and 506(ii) IPC and was convicted under Section 324 IPC and sentenced to undergo 3 years Simple Imprisonment and to pay a fine of Rs.10,000/-, in default to undergo three months Simple Imprisonment, challenging which, this appeal has been filed.

6. Heard Mr.Thamarai Selvan, learned counsel for the appellant/accused and Mr.K.Madhan, learned Government Advocate [Crl.Side] appearing for the State.

7. Learned counsel for the appellant submitted:

[a] that the prosecution have not proved the motive properly, inasmuch as, Balaraman [P.W.1] has stated in his cross-examination that Seenu Gounder was already a Congress man and that his son did not belong to any party.

[b] that at the time of admission in the Apollo Hospital, it is stated in the Accident Register copy [Ex.P.8], "assault by unknown persons with knife" and therefore, Balaraman [P.W.1]

has falsely implicated the accused.

[c] that in the complaint [Ex.P.1], Balaraman [P.W.1] has stated that Harikumar [A2] took out a knife and attacked, but the police have recovered only a billhook [M.O.1] and that too from Vannai Sathya [A1].

[d] that Muthuvel, the friend who admitted Balaraman [P.W.1] in the Apollo Hospital was not examined.

[e] that the Investigating Officer had registered the FIR [Ex.P.9] at 12.30 p.m. and by 12.45 p.m. he has arrested the accused, which is improbable. There are contradictions in the evidence of Balaraman [P.W.1], Chellappan [P.W.2] and Gopi [P.W.3] with regard to the incident.

8. Per contra, learned Government Advocate [Crl.Side] refuted the contentions.

9. This Court gave its anxious consideration to the rival submissions.

10. At the outset, it should be seen as to whether an incident of this nature had occurred at all. The fact that there was an attack on Balaraman [P.W.1] on 09.11.2010 around 11 O'clock has been established beyond cavil by the prosecution, through the evidence of Balaraman [P.W.1], Chellappan [P.W.2] and Gopi [P.W.3]. That apart, immediately, he was rushed to the Apollo Hospital, where he was admitted. Even in the cross-examination, the accused have not denied the incident, but they have only stated that they have been falsely implicated.

11. The next line of enquiry is, whether the accused in this case were involved in the attack. It is true that in the Accident Register copy [Ex.P.8], it is mentioned "alleged assault by unknown persons with knife". When this was put to Balaraman [P.W.1], he denied and said that he had not stated so at the time of admission. Balaraman's [P.W.1] ear got severed and he was bleeding profusely. He was taken to the Apollo Hospital by one Muthuvel, who was not examined. The said information to the duty Doctor was not provided by Balaraman [P.W.1], because he has specifically denied that in the cross-examination. Such information recorded by the Doctor in the Accident Register [Ex.P.8] has no great significance in the light of the categorical pronouncement of the Supreme Court in the following cases:

(1) Pattipati Venkaiah vs. State of Andhra Pradesh [(1985) 4 SCC 80]

"A doctor is not at all concerned as to who committed the offence or whether the person

brought to him is a criminal or an ordinary person, his primary effort is to save the life of the person brought to him and inform the police in medico-legal cases. In this state of confusion, PWs 1 and 2 may not have chosen to give details of the murder to the doctor. It is well settled that doctors before whom dead bodies are produced or injured persons are brought, either themselves take the dying declaration or hold the post-mortem immediately and if they start examining the informants they are likely to become witnesses of the occurrence which is not permissible."

(2) P.Babu and others vs. State of Andhra Pradesh [(1994) SCC (Crl.) 424]

"It is a matter of common knowledge that such entry in the injury certificate does not necessarily amount to a statement. At that stage the doctor was required to fill up that column in a normal manner and it was not the duty of the doctor to enquire from the injured patient about the actual assailants and that the inquiry would be confined as to how he received the injuries namely the weapons used etc."

(3) B.Bhadriah and others vs. State of Andhra Pradesh [(1995) SCC (Crl.) 370]

12. The accused did not suggest to Balaraman [P.W.1] that he is not known to them. In fact, Suresh Kumar [D.W.1], who was examined by the accused as defence witness, has stated in his evidence that the accused belong to the PMK. Therefore, it is natural for Balaraman [P.W.1] who is a local politician to know, the prominent members of a rival political party.

13. As regards the alleged delay in sending the FIR [Ex.P.9] it is seen that it was registered at 12.30 p.m. and had reached the jurisdictional Magistrate on the same day at 7.50 p.m. itself, which cannot be said to be a delay in the facts and circumstances of the case.

14. The contention that the motive alleged by the prosecution has been demolished appears to be ill founded. Balaraman [P.W.1], in his chief-examination, has clearly stated that Seenu Gounder and his son Chandrasekaran joined the Congress party in the presence of Senior Congress leaders two days prior to the incident, viz., on 07.11.2010. In the cross-examination, Balaraman [P.W.1] has clearly denied the first

suggestion that Seenu Gounder and his son Chandrasekaran were already members of the Congress party, but, in the subsequent line it is recorded that Seenu Gounder is already a Congress man, but Chandrasekaran was not belonging to any party. This does not in any way enhance the case of the defence, because motive will be significant only in a case based on circumstantial evidence. This case is not based on circumstantial evidence. This case is simply based on direct evidence where Balaraman [P.W.1] was attacked in his Office in broad daylight by the activists of PMK. He has given their names in the complaint [Ex.P.1] at the earliest point of time. The evidence of Balaraman [P.W.1], has been substantially corroborated by Chellappan [P.W.2] and Gopi [P.W.3], who were present in the place of occurrence.

15. The further contention that the police could not have arrested the accused at 12.45 p.m. when the FIR itself was registered at 12.30 p.m., cannot be countenanced, because even in the cross-examination of Balaraman [P.W.1] by the accused, he has stated that after the incident, there was hue and cry in the media and that the Assembly was informed about the assault of its ex-member. In such view of the matter, the police would have swung into action to arrest the accused, especially when their names were disclosed by Balaraman [P.W.1] at the earliest. That apart, Chellappan [P.W.2] who was also in the place of occurrence, knew the accused and had seen the assault himself. Though he sustained injuries, he was not admitted to the hospital, because the injuries sustained by him were not very serious.

16. As regards the recovery of billhook [M.O.1] from Vannai Sathya [A1], it only means that he was having a weapon, but did not use it, because, Balaraman [P.W.1] has very clearly stated that he was attacked by Harikumar [A2] with a knife. Just because the police were not able to recover any weapon from Harikumar [A2], it does not mean that Harikumar [A2] did not use any weapon. The attack of Harikumar [A2] has been spoken to by Balaraman [P.W.1], Chellappan [P.W.2] and Gopi [P.W.3], who were all in the Office of Balaraman [P.W.1] at the time of occurrence. When a person is attacked, he will not be concentrating on the nature of weapon. His inner survival instinct will implore him to ward off the attack than noticing the nature of the weapon. In the teeth of such over whelming evidence, surprisingly, the trial Court has acquitted the co-accused on flimsy grounds, one of which is:

"If really he was assaulted by more than one person with deadly weapons he could have sustained more injuries. Similarly, the P.W.2 also could have sustained injuries at the hands of the

accused"

In other words, it is the finding of the trial Judge that, if more persons had attacked, there would have been more injuries, but since there was only one injury, the others would not have attacked. Of course, the inference of the trial Court cannot be faulted. However, it is the specific case of Balaraman [P.W.1] that all the 7 accused were there and on the exhortation of Vannai Sathya [A1], it was Harikumar [A2] alone who attacked him. Therefore, the accused shared a common intention under Section 34 IPC and are also vicariously liable with the aid of Section 149 IPC, which the trial Court had failed to consider. It may be apposite to quote the following passage from the judgment of the Supreme Court in *State of Rajasthan v. N.K. THE ACCUSED* [(2000) 5 SCC 30]

"It is true that the golden thread which runs throughout the cobweb of criminal jurisprudence as administered in India is that nine guilty may escape but one innocent should not suffer. But at the same time no guilty should escape unpunished once the guilt has been proved to the hilt. An unmerited acquittal does no good to the society. If the prosecution has succeeded in making out a convincing case for recording a finding as to the accused being guilty, the court should not lean in favour of acquittal by giving weight to irrelevant or insignificant circumstances or by resorting to technicalities or by assuming doubts and giving benefit thereof where none exists. A doubt, as understood in criminal jurisprudence, has to be a reasonable doubt and not an excuse for a finding in favour of acquittal. An unmerited acquittal encourages wolves in the society being on the prowl for easy prey, more so when the victims of crime are helpless females."

17. Be that as it may, since the State had not chosen to file any appeal against acquittal, this Court can do nothing more. Democracy will survive only if political parties agree to peacefully settle their disputes through the ballot and not by engaging in such murderous assault on members of rivalry parties. If the Court condones such acts, it will only further encourage lawlessness. The trial Court has awarded Simple Imprisonment to the accused, which shows misplaced sympathy.

In the result, the appeal is dismissed as being devoid of merits. The judgment passed by the trial Court on 12.02.2013 in S.C.No.244 of 2011 stands confirmed. However, the type of

sentence is altered to Rigorous Imprisonment instead of Simple Imprisonment.

Sd/-
Assistant Registrar (CS VII)

//True copy//

Sub Assistant Registrar

TO

- 1.The Metropolitan Magistrate,
No.XV, George Town,
Chennai.
- 2.The Chief Metropolitan Magistrate,
Egmore, Chennai.
- 3.XV Additional Sessions Judge,
Court of Sessions, Chennai.
- 4.The Inspector of Police
H-3 Tondairpet Police Station
Chennai.
- 5.The Public Prosecutor,
High Court, Madras.

Copy To

The Section Officer (2 Copies)
Criminal Records Section,
High Court, Madras.

+2cc to Mr.R.Thamaraiselvan, Advocate SR.No.84858

NM(CO)
GN(18/12/2017)

Cr1.A.No.194 of 2013

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