

Bail Slip

The Appellants 1 & 3 herein/Accused 1 & 3 namely Murugan S/o. Rayer and Rayer S/o. Thangavel were ordered to be released on bail by order of this Court dated 3.11.2008 and made in M.P.No.1 of 2008 in CrI.A.No.723 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:13.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.723 of 2008

1.Murugan
2.Shankar
3.Rayar

.. Appellants (Accused 1 to 3)

Vs

State rep. By
Inspector of Police,
Sri Mushnam Police Station,
Virudhachalam
Cr.No.25 of 2006

.. Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., against the judgment made in S.C.No.189 of 2007 passed by the learned Additional District Sessions Judge (Fast Track Court No.3) Virudhachalam by its judgment dated 02.09.2008 convicted and sentenced the appellants for the following offences. The appellants convicted u/s.294 of IPC sentenced each to pay a fine of Rs.2,000/- in default to undergo one month Simple Imprisonment, u/s.307 of IPC A1 sentenced to undergo 8 years Rigorous Imprisonment and pay a fine of Rs.10,000/- in default to undergo 6 months Rigorous Imprisonment and u/s.307 r/w.34 of IPC A3 sentenced to undergo 8 years Rigorous Imprisonment and pay a fine of Rs.10,000/- in default to undergo 6 months Rigorous Imprisonment.

For Appellants: Mr.M.Babu
for Mr.A.Saravanan
For Respondent: Mr.R.Sekar,
Government Advocate

JUDGEMENT

The accused/ A1 to A3 in S.C.No.189 of 2007 on the file of the Additional District Sessions Judge (Fast Track Court No.3) Virudhachalam, are the appellants herein. All the accused stood charged for the offences u/s.294 (b) IPC. A1

stood charged for the offence u/s.307 IPC. A2 stood charged for the offences u/s.307 r/w. 34 IPC and A3 stood charged for the offences u/s.307 r/w. 34, 341 & 323 IPC. The trial court convicted A1 to A3 u/s.294(b) IPC and imposed a fine of Rs.2000/- each, in default to undergo one month Rigorous Imprisonment. A1 was sentenced to undergo 8 years Rigorous Imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo six months Rigorous Imprisonment for the offence u/s.307 IPC. A3 was sentenced to undergo 8 years Rigorous Imprisonment and also to pay a fine of Rs.10,000/- and in default to undergo 6 months Rigorous Imprisonment for the offence u/s.307 r/w. 34 IPC and A2 was convicted for the offence u/s.307 r/w.34 IPC. A2 was acquitted from the charge u/s.307 r/w. 34 IPC. A3 was acquitted from the charge u/s.341 and 323 IPC. Challenging the above said conviction and sentence, the appellants are before this Court with this Appeal.

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

PW1 is the injured person in this case. On 04.03.2006 at about 8.00 p.m., there was a quarrel between PW4, the grandfather of PW1, and the accused, on the ground that A2 in this case has done to death a hen belongs to PW4. On receipt of the news, PW4 went to the house of the accused and questioned him. At that time, all the accused have scolded him with filthy language and quarreled with him. On hearing the incident, PW1 went to the house of the accused and questioned the accused. At that time, A3 instigated other accused and scolded him with filthy language along with other accused, A1 and A2, the sons of A3, attacked him, A1 attacked PW1 with knife. In the said incident, A2 along with other juvenile accused caught hold of him, then, A2 also attacked him with a wooden log and with knife. Thereafter, all of them ran away.

3. PW1 filed a complaint before the respondent police. PW6/a Head Constable, registered the case in Crime No.25 of 2006 under Sections u/s.307 r/w. 34 ,323 and 294(b) IPC and he prepared the First Information Report(Ex.P.3). PW8, The Inspector of Police took up the case for investigation and proceeded to the scene of occurrence and prepared Observation Mahazar(Ex.P.3) and Rough Sketch (Ex.P.5). On 05.03.2006, he prepared the observation mahazar, recorded the statements of the witnesses and sent the accused for judicial custody. PW7/doctor, in Virudachalam Government Hospital admitted PW1 in the hospital, and found as many as 7 incised wounds on the body of PW1, and he has given Accident Register/Ex.P.6. He was of the opinion that injuries 1 and 2 are grievous in nature and other injuries are simple in nature. PW8, the Inspector of Police continued the investigation and examined the Doctor and other witnesses and after completion of investigation, he filed a final report against the accused.

4. Considering the above materials, the trial court framed charges as mentioned in the first paragraph of the judgment and the accused denied the same. In order to prove the case, on the side of the prosecution, as many as 8 witnesses were examined and 7 documents were exhibited and one material object was marked.

5. Out of the witnesses examined, PW1 is an injured eye-witness to the incident. According to him, on the date of occurrence, there was a quarrel between PW4, grandfather of PW1 and the accused in respect of the death of a hen, belongs to the defacto complainant which was caused by A2. On hearing the quarrel, PW1 rushed to the house of the accused, and questioned them. In the quarrel, A3 instigated his sons A1 and A2 to attack PW1. Immediately A1 attacked him with knife and caused injuries. At that time, the other accused caught hold of him, and A2 attacked him with wooden log. Immediately, he rushed to the police station and filed a complaint. PW2 is the neighbour of PW1. He is also an eye witness to the occurrence. According to him, PW1 questioned the accused regarding the quarrel with PW4. At that time, A1 scolded him with filthy language and he caught hold of him with the help of one Ratnasabapathy and another son of A3, and A1 attacked him with knife, and A2 attacked him with wooden log. PW3 is another neighbour of PW1, he is also an eye witness. He has stated that A3 scolded PW1 and A2 attacked him with a wooden log. PW4 is the grandfather of PW1. He deposed that on 04.03.2006, while a hen belongs to PW1 was wandering near the accused house, A2 had beaten it and killed. When PW1 questioned him about the same, at the instigation of A1, A3 attacked him with knife and A2 attacked with wooden log and sharp weapons. PW5 is the witness to the observation mahazar. PW6 is the Head Constable, who registered the complaint and commenced the investigation and arrested the accused. PW7 is the doctor who treated PW1 and given Accident register/Ex.P6 where he found 7 injuries on PW1, and he has given his opinion that injuries 1 to 3 are grievous in nature and other injuries are simple in nature. PW8/Inspector of Police, registered a complaint, conducted the investigation and recorded the statements and after completion of investigation, he laid a final report.

6. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. They did not examine any witnesses nor marked any documents. Considering all the materials, the trial court convicted them as mentioned in the first paragraph. Challenging the aforesaid conviction and sentence, the appellants are before this court by way of the present Criminal Appeal.

7. Today, when the matter was taken up for hearing, it is submitted that pending appeal, A2 viz., Shankar died on 01.08.2015 and the counsel for the appellants

also filed a memo to that effect. The learned Government Advocate also verified and confirmed the same. In view of the abovesaid circumstances, Criminal Appeal is dismissed as abated as against A2/Shankar.

8. Heard the learned counsel for the appellants and the learned Government Advocate appearing for the respondents and perused the records carefully.

9. Learned counsel for the appellants submitted that all the prosecution witnesses are interested witnesses and closely related to PW1. Eventhough all the witnesses have stated that A1 attacked PW1 with knife, medical evidence does not corroborate with eye witness, PW1 sustained incised injuries, which cannot be inflicted by a knife.

10. The respondent police did not take any steps to send the weapon to the chemical analysis to prove that the blood stain contained in the knife is of PW1. From the evidence of the prosecution, no material is available to bring home an offence u/s.307 IPC. The learned counsel further submitted that so far as A3 is concerned, even though witnesses have stated that A3 and the other accused, Ratnasabapathy had caught hold of PW1, in the final report, his name was omitted. In the above said circumstances, prosecution witness cannot be believed and hence, the accused cannot be convicted with the aid of Section 34 IPC.

11. Per contra, learned counsel for the respondents would submit that there are four eye witnesses to the occurrence. Apart from PW1 and PW4, PW2 and PW3 are independent witnesses, and they have consistently stating that only this A1 and A2 attacked him with wooden log and A3 scolded him with filthy language and also instigated him to attack PW1. Evidences of all the witnesses are consistent and reliable, which is also corroborated by medical evidence and there is no reason to disbelieve the prosecution witnesses. Apart from that, both the weapons to the scene of occurrence have been produced before the police station.

12. Considering all the materials, the trial court convicted the appellants and there is no reason to interfere with the judgment of the trial court.

13. I have considered the rival submission.

14. There are four eye witnesses to the occurrence. PW1 is the injured eye witness and PW4 is the grandfather of the PW1. According to PW1, prior to the scene of occurrence, there was a quarrel between PW4 and the accused. The above occurrence had taken place in front of the house of the accused. After hearing the quarrel, PW1 went there and questioned the accused. At that time, A3 scolded them with

filthy language and A1 attacked him with wooden log and caused injuries and A2 attacked him with weapon. PW2 and PW3, who are neighbours to PW1 have stated that it is only A1 who had scolded and attacked PW1 and PW4 with filthy language and caused injuries. PW4 is the grandfather of PW1, and only in his support, PW1 went and quarrelled with the accused. He has also corroborated the evidence of the other witnesses.

15. Considering the fact that the occurrence took place in front of the house of the accused and PW2 and PW3 being neighbours of PW1, it is the consistent evidence of all the witnesses that A3 has scolded and abused PW1 with filthy language and A1 attacked him and caused injuries, the evidence of PW1 to PW4 are consistent and reliable and I find no reason to disbelieve their evidence.

16. In the above said circumstances, I am of the considered view that the prosecution has clearly established that A1 to A3 abused PW1 in filthy language and attacked him and thereby caused injuries.

17. The next question to be considered is as to what was the offence that was committed by A1. Even though all the witnesses have stated that A1 attacked PW1 with knife, the medical evidence did not corroborate with the evidence of PW1. The PW7/Doctor stated that there are 7 incised injuries on the face and neck of the PW1. In his cross examination, PW7 has admitted that the injuries are likely to be caused by a blade. Apart from that, the knife was not recovered from the accused. But according to PW1, after the said occurrence, A1 left weapon in the scene of occurrence and produced the same before the police station, and no bloodstain was found in the knife, which also creates a doubt as to whether MO1 is the weapon used by the accused to attack PW1.

18. It is an admitted case of the prosecution that at the time of occurrence, there was a quarrel between the accused, PW1 and PW4. When the accused have scolded PW4, PW1 went there and quarrelled with the Accused. At that time, A1 lost his mental balance and out of sudden provocation, he attacked PW1 and caused injuries, and there is no material available to establish the offence u/s.307 IPC.

19. In the above said circumstances, A1 is liable to be convicted for the offence under Sections 335 IPC nor under Section 307 IPC. So far as A3 is concerned, there is no evidence to show that A3 had a common intention with A1 and committed the offence, hence the conviction u/s.307 r/w 34 IPC is liable to be set aside and A3 is liable to be convicted only under Section 294(b) IPC.

20. The learned counsel for the appellants submitted that already A1 was behind the bar for 75 days. Considering the fact that he has no bad antecedents and the occurrence had taken place on sudden provocation, considering the mitigating as well as aggravating circumstances, and in order to meet the ends of justice, A1 shall be sentenced to the period already undergone.

21. In the result, the conviction of A1 under Section 307 IPC is set aside instead he is convicted under Section 335 IPC and sentenced to undergo the period already undergone and also to pay a fine of Rs.10,000/- in default to undergo Rigorous Imprisonment for four months. A3 is convicted under Section 335 r/w. 34 IPC and sentenced to undergo the period already undergone by him and pay a fine of Rs.10,000/- in default to undergo Rigorous Imprisonment for four weeks. The conviction and sentence imposed on the accused 1 and 3 under Section 294(b) are confirmed. Since pending appeal A2 died, the Criminal appeal as against A2 is dismissed as abated. With the above modification in the conviction and sentence the Criminal Appeal is disposed of.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

gv
To

- 1.The Inspector of Police,
Sri Mushnam Police Station,
Virudhachalam
Cr.No.25 of 2006
 - 2.The Public Prosecutor,
High Court, Madras.
 3. The Additional District Sessions Judge,
(Fast Track Court No.3),
Virudhachalam.
 4. The Superintendent, Central Prison, Cuddalre.
- + 1 cc to Mr. A. Saravanan, Advocate Sr.572

Cr1.A. No.723 of 2008

SV(CO)
EU(27/06/2018)