

Bail Slip

The Appellants/Accused 1 to 8 namely Gandhi, S/o Duraisamy, Balakrishnan, S/o Munusamy Ravi, S/o Munusamy, Baskaran S/o Jayaraman, Prabakaran, S/o Jayaraman, Murali S/o Raja, Boopathi, S/o Munusami, Karthick, S/o Munusamy were released on bail in CrI.M.P.No.1 & 2/2008 in CrI.A. No 836/2008 dated 12.12.2008 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2017

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Criminal Appeal No.836 of 2008

- 1.Gandhi
S/o.Duraisami
- 2.Balakrishnan
S/o.Munusamy
- 3.Ravi
S/o.Munusamy
- 4.Baskaran
S/o.Jayaraman
- 5.Prabhakaran
S/o.Jayaraman
- 6.Murali
S/o.Raja
- 7.Boopathi
S/o.Munusami
- 8.Karthik
S/o.Munusami

.. Appellants/Accused 1 to 8

Vs.

State represented by
Inspector of Police,
Arakonam Town Police Station,
Vellore District.
Crime No.1 of 2007

.. Respondent/Complainant

Criminal Appeal preferred under Section 374 of Code of Criminal Procedure against the judgment of learned Additional District and Sessions Judge, Fast Track Court II, Ranipet, Vellore District, passed in S.C.No.101 of 2008 on 03.12.2008.

For Appellants : Mr.V.Gopinath, senior counsel
for Mr.L.Mahendran

For Respondent : Mr.V.Arul,
Additional Public Prosecutor

J U D G M E N T

This appeal arises against the judgment of learned Additional District and Sessions Judge, Fast Track Court II, Ranipet, Vellore District, passed in S.C.No.101 of 2008 on 03.12.2008.

2. Prosecution case is that on 01.01.2007 at about 03.00 p.m., when the deceased and his family members were celebrating New Year and preparing food, accused 1 to 8 caused disturbance to them and when questioned by deceased, accused 1 to 8 shouted 'who are you to question us ?' assaulted him with deadly weapons and caused his death. A1 dealt a blow to the deceased on his head and A2 on his left hip, both using wooden logs. A3 to A8 assaulted and caused injuries to PWs.1 to 4. PW-1 preferred Ex.P1, complaint, before PW-17, Sub-Inspector of Police, on 01.01.2007 at about 20.00 hours. PW-17 registered a case in Crime No.1 of 2007 on the file of respondent for offences u/s.147, 148, 324, 323, 307 and 302 IPC. On completion of investigation, a charge sheet was filed informing commission of offences u/s.147, 148, 324, 323, 302 r/w 149 IPC before learned Judicial Magistrate, Arakkonam. On committal, the case was tried in S.C.No.101 of 2008 on the file of learned Additional District and Sessions Judge, Fast Track Court II, Ranipet, Vellore District.

3. Before trial Court, prosecution examined 18 witnesses and marked 17 exhibits and 2 material objects. None were examined on behalf of defence, however, 9 exhibits were marked. Complainant has examined 2 witnesses.

4.1. PW-1, wife of deceased, an eye witness to the occurrence, has spoken to the assault on her husband by accused resulting in his death, assault of the other injured witnesses and preference of complaint.

4.2. PWs-2, 3 and 4, nephews of deceased and eye witnesses to the occurrence, deposed to sufferance of injuries at the hands of accused and the death of deceased owing to injuries

suffered by him. They have deposed to which accused caused what injury on the deceased and of treatment undergone by them at the hospital. PWs. 2 and 3 have also spoken of previous enmity between accused and prosecution party.

4.3. On obtaining information regards the occurrence, PW-5, Village Administrative Officer, visited the scene and informed Thasildhar and police. PW-5 deposed that PW-18, Inspector of Police, visited the scene, prepared observation mahazar and rough sketch and he and another signed mahazars. PW-5 also deposed to seizure of MOs.1 and 2 - Iron Pipes and Wooden logs by PW-18 under mahazars attested by him.

4.4. PW-6, brother of deceased, PW-7, son of deceased, PW-8, sister-in-law of deceased, PW-9, sister of deceased and PW-10, daughter of deceased, all eye witnesses to the occurrence, deposed to the assault by the accused on the deceased and other injured witnesses. They have also deposed to the death of deceased and treatment undergone by other injured witnesses at hospital.

4.5. PW-11, who was in the business of hiring cycles and gas lights, deposed to police personnel taking two 'petromax' lights from his shop and of returning the same the next day.

4.6. PW-12, a Homoeopathy Doctor, deposed that while he was at his clinic on 01.01.2007, the deceased was brought there at about 04.12 p.m. and on seeing him bleeding, he bandaged his head and referred him to Government Hospital.

4.7. PW-13, Doctor, deposed to treatment given by him to PWs.1 to 4 and the injuries suffered by them. PW-13 deposed that the deceased was brought to hospital by his brother and he was declared dead.

4.8. PW-14, Doctor, who conducted post-mortem on the body of deceased, has opined that the deceased would appear to have died of shock and hemmorage due to head injury.

4.9. PW-15, Head Constable, spoke to handing over the body of deceased towards conduct of postmortem and on conclusion thereof, handing over the body of deceased to his relatives.

4.10. PW-16, Head Constable, spoke to submitting Ex.P14, Printed First Information to Court and forwarding copies of the same to higher officials.

4.11. PW-17, Sub-Inspector of Police, spoke to registration of case in Crime No.1 of 2007 on file of respondent for offences u/s.147, 148, 324, 323, 307 and 302 IPC and of submitting

Ex.P14, FIR to Court through PW-16. PW-17 also deposed to assisting PW-18, Inspector of Police, in the investigation.

4.12. PW-18, Inspector of Police, who conducted investigation in the case, spoke to visiting the place of occurrence, preparation of mahazars, examination of witnesses and of obtaining various reports. PW-18 also deposed that on completion of investigation, he filed a charge sheet informing commission of offences u/s.147, 148, 324, 323, 302 r/w 149 IPC before learned Judicial Magistrate, Arakkonam.

5. On appreciation of materials before it, trial Court, under judgment dated 03.12.2008, rendered a finding of conviction and sentenced the accused thus:

Accused	Offence u/s.	Sentence
A1	148 IPC	3 months R.I.
	304(ii) IPC	7 years R.I. and fine of Rs.1,000/- i/d 1 year R.I.
A2	148 IPC	3 months R.I.
	304(ii) IPC	7 years R.I. and fine of Rs.1,000/- i/d 1 year R.I.
A3	148 IPC	3 months R.I.
	324 IPC (2 counts)	3 months R.I. and fine of Rs.1,000/- i/d 3 months R.I. for each count
A4	148 IPC	3 months R.I.
	324 IPC	3 months R.I. and fine of Rs.1,000/- i/d 3 weeks R.I.
A5	148 IPC	3 months R.I.
	324 IPC (2 counts)	3 months R.I. and fine of Rs.1,000/- i/d 3 weeks R.I. for each count
A6	148 IPC	3 months R.I.
	324 IPC	3 months R.I. and fine of Rs.1,000/- i/d 3 weeks R.I.
A7	148 IPC	3 months R.I.
	324 IPC	3 months R.I. and fine of Rs.1,000/- i/d 3 weeks R.I.
A8	148 IPC	3 months R.I.
	324 IPC	3 months R.I. and fine of Rs.1,000/- i/d 3 weeks R.I.

Trial Court directed that sentences run concurrently. Against such finding, the present appeal has been preferred.

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

7. Accused 3, 6 and 3 others in the case suffered simple injuries. The defence has marked wound certificates of accused 3 and 6 as Exs.D1 and D2. PW-17, Sub-Inspector of Police, has admitted to accused 3 and 6 having been at hospital on the date of occurrence and that on the complaint of third accused, case in Crime No.2 of 2007 was registered for offences u/s.323 and 324 IPC. PW-18, investigation officer, has claimed that his investigation revealed the same to be a 'mistake of fact' and that he has filed a final report to such effect. He was unable to confirm whether the same had been accepted by Court or whether the complainant had been put on notice thereof. Not even the First Information Report in such case has been produced. The prosecution witnesses have admitted to the arrest of the accused only on the next day. PW-17 has admitted that none of the witnesses informed of any conspiracy or intent on the part of accused to commit murder, that in Ex.P1, complaint, PW-1 had not informed of accused 3 and 5 having dealt blows to the deceased with a wooden log, third accused to the chest and fifth accused to the back. Similarly, act of accused 7 and 8 dealing blows to the deceased with wooden logs had not been informed. Ditto regards the injury to PW-2 by fifth accused with the use of an iron pipe. PW-1 had also not informed of seventh accused having dealt a blow to the head or of sixth accused having dealt a blow to PW-3. The fact of the accused obstructing the prosecution party going to hospital had not been informed. PW-1 has admitted that even as the occurrence was on, two police men from the respondent police station had come to the scene and dispersed the crowd and it was on their instructions that the prosecution party proceeded to hospital. However, PW-17, Sub-Inspector of Police, has claimed that he had proceeded to hospital upon intimation therefrom. PW-13, Doctor, has spoken to one Kuppusamy S/o.Venkataiah having been brought to hospital at 4.35 p.m. on the same day. Ex.D3 reveals that he had suffered a laceration of the left ear and contusion to the left side of the head. He is neither an accused in the case nor a witness for the prosecution. Prosecution witnesses have denied knowledge of injuries to the accused. First accused was employed at the engineering workshop of the Southern Railway at Arakkonam. His plea of alibi finds support in the evidence of DWs.1 and 2, Southern Railway officials and the attendance register - Ex.D7. Such plea further is fortified by the admission of PW-6 that first accused came to the scene at 06.00 p.m. The occurrence allegedly had taken place at 3.30 p.m. PW-13, Doctor, who examined PWs.2, 3 and 4 at hospital has spoken to their having been drunk.

8. The above points to a free for all incident when several persons including accused as also others have suffered injuries

as a result of which one person unfortunately died. From the evidence of witnesses as also the inability of the prosecution to explain the findings in the counter case registered at the instance of the accused, it is seen that the genesis of the occurrence is unclear. Adding further to the woes of prosecution, is the fact that first accused stands falsely implicated.

The Criminal Appeal is allowed. The judgment of learned Additional District and Sessions Judge, Fast Track Court II, Ranipet, Vellore District, passed in S.C.No.101 of 2008 on 03.12.2008, is set aside. Appellants are acquitted of all charges in the case. Fine, if any, paid shall be refunded. Bail bonds, if any, executed shall stand cancelled.

s/d-
Assistant Registrar(CS IX)

True Copy

Sub-Assistant Registrar

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To

1. The Additional District and Sessions Judge,
Fast Track Court II,
Ranipet,
Vellore District.
2. The Inspector of Police,
Arakonam Town Police Station,
Vellore District.
3. The Judicial Magistrate
Arakonam.
4. The Chief Judicial Magistrate
Vellore.
5. The Superintendent, Central Prison
Vellore.
6. The Public Prosecutor,
High Court, Madras.

+4 Ccs to Mr.L. Mahendran, Advocate sr 49213

Criminal Appeal No.836 of 2008

SP(05/02/2018)