



Bail Slip

The Appellants/Accused 1 & 2 namely 1) Ramalingam S/o.Subramani, 2)Vethantham S/o.Natesa Kounder, were directed to be released on bail as per the order of this court dated 04.02.2013 in Crl.MP.No.1/2013 in Crl.A.No.94 of 2013 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.04.2017

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Criminal Appeal No.94 of 2013

1.Ramalingam

S/o.Subramani

2.Vethantham

S/o.Natesa Kounder

... Appellants/Accused 1 & 2

-Vs-

State rep.by

The Inspector of Police,
Brammadesam Police Station,
Villupuram District.

Crime No.342/2007

... Respondent/Complainant

Criminal Appeal filed u/s.374(2) Cr.P.C. against the judgment of learned II Additional District and Sessions Judge, Tindivanam, passed in S.C.No.292 of 2012 on 18.01.2013.

For Appellants : Mr.K.Selvakumaraswami

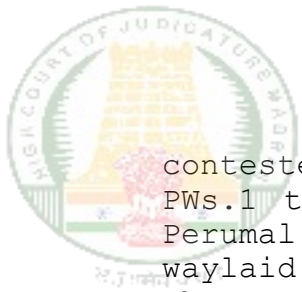
For Respondent : Mr.M.Mohammed Riyaz,
Government Advocate (Crl side)

JUDGMENT

Appellants were A1 and A2 in case tried in S.C.No.294 of 2012 on the file of learned II Additional District & Sessions Judge, Tindivanam. A1 stood charged of offences u/s.294(b), 324 (ii) and 307 r/w 34 IPC and A2 of offences u/s.294(b) and 307 IPC. Trial Court, under judgment dated 18.01.2013, convicted appellants for offence u/s.324 IPC and sentenced each of them to 6 months R.I. Challenging the said conviction and sentence, appellants are before this Court by way of this Criminal Appeal.

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

2.1. P.W-1, Arjuna Kounder, is a resident of Nazer Village, Tindivanam Taluk and an agriculturist. PW-1 and one Ramu Gounder contested the 2006 Panchayat Election and the latter won. Ramu Gounder died and hence, election once again was conducted for the post of Panchayat President. PW-1 contested. One Prakash, son of deceased Ramu Gounder,



contested against PW-1. On 05.09.2007 at about 6.00 p.m. when PWs.1 to 3 were on their way home and were behind Nagavarna Perumal Temple, when appellants/A1 & A2 armed with knives waylaid them. A1 stabbed PW-1 on the right side of the chest. When PW-2 intervened, A1 stabbed him on the left side of the chest. A2 stabbed PW-3 injuring his upper left ear. PWs.1 to 3 went to PIMS Hospital, Pondicherry at about 10.00 p.m. PW-8, Sub Inspector of Police, Brahmadesam Police Station, came to the hospital and PW-1 gave written complaint under Ex.P1 implicating eight known persons.

2.2. PW-7, Doctor, Pondicherry Institute of Medical Sciences, admitted PW-3, the injured, on 06.09.2007 at about 08.30 a.m. PW-3 informed PW-7 that he was attacked by known persons on the previous day at about 6.00 p.m. PW-7 found the following injuries on PW-3:

'20cm incised wound left temporal region, ear and parietal region transecting the left ear, parietal gland and a branch of the facial nerve.'

Ex.P-5 is the Wound Certificate issued for PW-3. PW-7, Doctor, was of the opinion that the injuries suffered by PW-3 were grievous in nature. PW-1 was also admitted in the said hospital on 05.09.2007 at 07.05 p.m. Ex.P8 is Wound Certificate issued wherein the following injuries have been noted:

*'Laceration (incised wound) in right hypoi hondrium
10x4x4 cms, muscle-deep, peritoneum not breached.'*

PW-2 was also treated in the said hospital at about 07.05 p.m. and Ex.P9 is the Wound Certificate issued to him wherein the following injuries have been noted:

'Laceration (incised wound) - left side of chest - 12 x 3 x 3 cm, muscle-deep, pleura not breached; no bony irregularity.'

Doctor was of the opinion that the injuries sustained by PW's 1 and 2 were simple in nature.

2.3. PW-8, Sub Inspector of Police, on receipt of the complaint from PW-1 in the hospital, went to the Police Station and registered a case in Crime No.342/2007 for offences u/s.347, 348, 148, 294, 323, 307 IPC. Ex.P7 is the printed FIR. PW-10, Inspector of Police, took up investigation.

2.4. PW-10, Inspector of Police, went to the place of occurrence on 06.09.2007 at about 6.00 a.m. and prepared Ex.P2, Observation Mahazar and Ex.P10, Rough Sketch, in the presence of PW-5 and another. On information, he went to Murukery bus stop and arrested appellants in the presence of one Iyyanar and Murugesan. A-1 gave a confessional statement and the admissible portion is marked as Ex.P3. On such



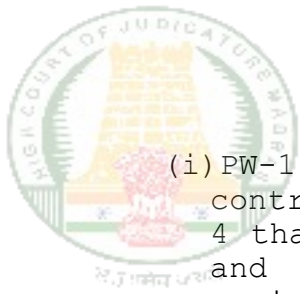
confession, PW-10 recovered two pen knives, MOs.1 and 2 under Ex.P4, seizure mahazar. Accused were sent for Judicial remand. PW-10 also recorded the statements of PWs-1 to 3, PW-5 and one another. He examined PW-7, Dr.Sharad Ramadoss and recorded his statement. He sent the material objects to the Court under Form 95. He forwarded Ex.P11, Alteration Report, informing commission of offences u/s.294, 324, 326 & 307 IPC against appellants/A1 and A2. A3 to A8 were deleted from the array of accused.

3. Before trial Court, prosecution examined 10 witnesses, marked 11 exhibits and 2 material objects. None were examined on the side of defence nor were any exhibits marked. On appreciation of materials before it, trial Court, under judgment dated 18.01.2013, convicted appellants for offence u/s.324 IPC and sentenced each of them to 6 months R.I.

4. Heard learned counsel for appellants and learned Government Advocate [Crl.side]. Perused the materials on record.

5. P.Ws 1 to 3 are injured eye witnesses. PW-1 has spoken about the election that had taken place during 2006 for the post of Vice President in which one Ramu Gounder had won and that in the by election three months after his demise, PW-1 and the son of Ramu Gounder contested. PW-1 has spoken to the occurrence that had taken place on 05.09.2007, in which A-1 and A-2 attacked P.Ws 1 to 3 with knives. He has also spoken to lodging of complaint with PW-8, Sub-Inspector of Police. PW-2 has spoken to the occurrence and had further stated that on such date i.e., 05.09.2007 at about 6.00 p.m., he saw a mob consisting of 100 persons quarreling and when he witnessed the said occurrence he was stabbed by an unknown person with a knife on the left side of the chest. He has also spoken about the injuries sustained by PW-3. He further stated that the assailants were unknown to him. PW-3 also spoke to the said occurrence in which he had implicated A1 and A2. PW-4 is an eye witness to the said occurrence. He has spoken to appellants/A1 & A2 stabbing PWs.1 to 3. PW-5 has spoken to the preparation of Observation Mahazar. PW-6 is the attesting witness to confession statement of A1 pursuant to which MOs.1 and 2, knives, were recovered. PW-7, Doctor, has deposed to the treatment given to PW-3 on 06.09.2007 at about 8.30 a.m. PW-8, Sub Inspector of Police, has spoken to registration of the case in Crime No.342/2007. PW-9, Doctor, attached to PIMS Hospital, Pondicherry, has spoken to the treatment given to PWs.1 & 2 on 05.09.2007 at about 7.00 p.m. PW-10, Investigation Officer, has spoken to the investigation done by him and filing of the Final Report. When questioned u/s.313 Cr.P.C., accused denied the charges.

6. Learned counsel for appellants would submit that the prosecution has failed to prove its case beyond reasonable doubt and appellants had been falsely implicated. Learned counsel for appellants put forth the following contentions:



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- (i) PW-1 to 4 are said to be witnesses to the occurrence. They contradicted each other. It is in evidence of PWs.1, 3 and 4 that appellants/A1 and A2 attacked PWs.1 to 3 with knives and all the three have attributed specific overt-acts against each of the accused. PW-2 had stated that a group of hundred persons were fighting and in such occurrence, he sustained stab injuries.
- (ii) Though PWs.1, 3 and 4 have spoken to the presence of appellants/A1 and A2, PW-2 has not informed the presence or participation of the appellants/A1 and A2 in the said occurrence.
- (iii) It is the evidence of PW-1, in cross, that complaint was lodged against him by one Prakash and others and that he has been enlarged on bail in that case. There is no whisper about the investigation done in the said counter case by the Investigation Officer and no documentary evidence has been produced before Court to that effect.
- (iv) Though PW-1 had implicated eight accused persons in the present case, PW-10, Investigation Officer, has filed the final report only against appellants/A1 and A2 deleting the other accused persons viz., A3 to A8.
- (v) PWs.1 to 3 are relatives and hence, they were interested witnesses.
- (vi) PW-10, Investigation Officer, in cross, deposed that he has not recovered any sample earth from the scene of occurrence since there was no blood stains at the scene of occurrence. Further, he has not made any arrangements to cause photographs of the place of occurrence. In short, PW-10 has not followed the procedure contemplated in law while conducting investigation.

7. Per contra, learned Government Advocate (Crl.Side), would submit that the prosecution has adduced sufficient material and evidence against appellants/A1 and A2 and there is no infirmity or illegality in the judgment passed by trial Court and prayed for dismissal of the appeal.

8. This Court has considered the rival submissions.

9. As rightly contended by learned counsel for appellants though a counter case has been registered for the same occurrence, as stated by P.W-1 in his cross examination, and in which case he has been enlarged on bail, no material regarding the said counter case has been produced by the Investigation Officer. While PWs.1, 3 and 4 have deposed about the presence of appellants/A1 and A2, the evidence of PW-2 informs otherwise. The evidence of PW-1 would clearly show that a group clash has taken place in which he sustained stab injuries and hence, he could not identify assailants. A perusal of cross examination of PW-10, Investigation Officer, would reveal that he has not recovered any sample or blood stained earth from the scene of occurrence nor taken any photographs. Both place and manner of occurrence are rendered doubtful and the benefit thereof would flow to the accused.



The Criminal Appeal shall stand allowed. The judgment of learned II Additional District and Sessions Judge, Tindivanam, passed in S.C.No.292 of 2012 on 18.01.2013, shall stand set aside. Appellants/accused 1 and 2 are acquitted of all charges. Fine, if any, paid shall be refunded. Bail bonds, if any, executed shall stand cancelled.

Sd/-
Assistant Registrar(Cs IX)

//True Copy//

Sub Assistant Registrar

To

1.The Judicial Magistrate, II,
Tindivanam

2.The Chief Judicial Magistrate,
Villupuram

3.The II Additional District and Sessions Judge,
Tindivanam.

4.The Inspector of Police,
Brammadesam Police Station,
Villupuram District.

5.The Public Prosecutor,
High Court, Madras.

6.The Section Officer,
Criminal section, Record
High Court, Madras.(2 copies)

BR(CO)
sm:7.8.2018

Criminal Appeal No.94 of 2013