

Bail Slip

1.Baskaran
2.Somu
3.Karthi
4.Mottaiyan@Chidambaram
5.Kumar
6.Prabhakaran

The Above said appellants/Accused was directed to be released as bail as per order of this court dated 03.01.2012 made in CrI.M.P. No. 1/2012 in CrI.R.C. No. 6/2012 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2017

CORAM

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Revision No.6 of 2012

1.Baskaran
2.Somu
3.Karthi
4.Mottaiyan@Chidambaram
5.Kumar
6.Prabhakaran

...Petitioners/Appellants/Accused

.Vs.

The Inspector of Police,
Poraiyar Police Station,
Nagapattinam District.
(Crime No.111 of 2003)

...Respondent/complainant

Prayer: The Criminal appeal filed under Section 397 r/w 401 Cr.P.C to set aside the conviction and sentence made in C.A.No.113 of 2006 dated 16.03.2011 on the file of the District and Sessions Judge, Nagapattinam in confirming the Judgment made in S.C.No. 79 of 2006 dated 29.08.2006 on the file of the Principal Assistant Sessions Judge, Mayiladuthurai and thus allow the Criminal revision.

For Petitioner
For Respondent

: Mr.D.Veerasekaran
: Mr. R.Ravichandran
Government Advocate

O R D E R

The accused A1 to A6 in S.C.No.79 of 200 on the file of the Learned Principal Assistant Sessions Judge, Mayiladuthurai are the petitioners herein.

2. The first petitioner/A1 stood charged for the offences under Sections 148 IPC & 307 IPC. The second petitioner/A2 was charged for offences under Sections 147 & 307 I.P.C r/w 149 IPC. The third petitioner/A3 was charged under Sections 147, 323 & 307 I.P.C. r/w 149 IPC. The petitioners A4-A6 were charged for offences under Sections 147 & 307 I.P.C. r/w 149 I.P.C.

3. The trial Court convicted A1 under Sections 148 and 307 IPC and sentenced him to undergo rigorous imprisonment for two years for the offence under Section 148 IPC and A.1 sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.500/- in default to undergo further Rigorous imprisonment for one year for the offence under Section 307 IPC.

4.A2 to A6 were convicted under Sections 147 and 307 I.P.C read with 149 IPC and sentenced to undergo rigorous imprisonment for one year for the offence under Section.147 IPC and to undergo Rigorous imprisonment for three years and to pay a fine of Rs.2,000/- in default to undergo rigorous imprisonment for six months for the offence under Section 307 r/w.149 IPC.

5.Questioning the above said conviction and sentence the petitioners filed a criminal appeal in S.C.No.79 of 2006 on the file of Principal Assistant Sessions Judge, Mayiladuthurai and the learned Additional Judge confirmed the conviction and sentence and dismissed the appeal. Challenging the conviction and sentence the appellants are before this Court.

6.The Case of the prosecution in brief is as follows.

PW1 is the injured witness in this case. The accused belongs to the same village but different community. PW1's brother's daughter and Jesmina fell in love with A1 and married against the wishes of A1's family. Thereafter, PW1's brother's son, the Deva Asirvatham fell in love with A4's daughter one Balasundari, and they also married against the wishes of both the families and left the village. Suspecting PW1 is responsible for the marriage, all the accused came to the house of the PW1 on the midnight on 21.02.2003 and asked PW1 to come out of the house and when he opened the door and A1 attacked him with sickle in the stomach and caused injuries. When PW1 came out and shouted all the accused attacked him with wooden logs and on hearing the distressing cries, PW3 wife of PW1 came out and shouted and then all the accused left the place thus, PW1 was taken to the Karaikkal Government Hospital.

7.PW17, a Head Constable of Karaikkal Police station, after receipt of intimation, proceeded to the hospital and recorded the statement of PW1 and he informed the same to the PW19, the Sub Inspector of Police, P.W19, based on the statement registered a case in Cr.No.111/2003 under Sections 147,148,323,324 & 307 I.P.C. PW19 took up the investigation went to the place of occurrence prepared observation mahazar, Ex.P2 and a rough sketch. After that he recovered the blood stained dresses of PW1 and recorded the statements of witnesses, then he went to the hospital and examined PW1 to PW3. Subsequently, on 23.02.2003, A1 and A4 were arrested and on such arrest they have given a voluntary confession, based on the statement, he recorded the MO. 1 sickle, and recorded the statement of Doctor. After completion of the investigation he sent the material objects to the Forensic Lab. A5 was sent to the hospital with a memo as he was also injured.

8.Considering the above materials, the Trial Court framed charges as stated above and the accused denied the charges and in order to prove its case, the prosecution examined as many as 19 witnesses and marked 22 exhibits and 8 material objects. Out of the witness examined:

9. PW1 is injured witness and he has spoken about the earlier motive between the prosecution side and the accused side. According to him, on 22.03.2002 at about 1 a.m all the accused came to his house and shouted and while coming out of the house, A1 attacked him with sickle in the stomach. A2,3,4 attacked him with wooden logs and caused injuries

PW2, mother of the PW-1. According to her after hearing the alarm she came out of the house and she has also sustained injuries in the nose, she has further stated that while coming out of the house, A1 attacked PW1 with sickle in the stomach. A2,3,4 attacked him with wooden logs and caused injuries.

PW3, wife of PW1 states that A1 attacked him with sickle in the stomach A2,3,4 attacked him with wooden logs and caused injuries.

PW4 and 5, who are the neighbors of PW1, spoken about the motive for the occurrence.

PW6 is a witness who attested the observation mahazar and seizure mahazar and recovery of M.O.7 and M.O.8.

PW 7 is a witness to the seizer of blood stained dresses _ PW1 and PW3 (M.O.1 to M.O.6)

PW 8 & 9 turned Hostile.

PW 10 is the owner of a car who has taken in fact shifted the injured in his car to the Karaikkal, Government Hospital.

PW11 is the Assistant Engineer of Electricity Board states that there was no power cut on the particular area on the date of occurrence.

PW12 is the lineman working in Electricity Board stated that there was no power cut in that area at the time of occurrence.

PW.13 is a Medical Officer who treated PW1 in the Government Hospital ,Karaikal and he has also seen the stab injury on the stomach and he has also found the intestine came out from the stomach. Besides he has also noted several cut injuries on the head and abrasion on the left shoulder and laceration on the left thigh and abrasion on the right chest.

PW14 is a surgeon conducted a surgery on the stomach and he also states that there was a rupture in the intestine about 1 c.m.

PW15 the Head Clerk of the Judicial Magistrate's Court No.II Mayiladuthurai at the relevant time has forwarded the M.O.1 to M.O8 for forensic examination.

PW 16 is a Medical Officer attached to the Sembanarkoil Government Hospital on 23.02.2003 he treated one Kumar with the police memo and found 1x1 c.m abrasion on the right chin and 2x2 c.m contusion on the same right chin and issued Ex.P16.

Pw17 is a Head Constable of Karaikkal Police Station after receipt of the intimation from the hospital went to the hospital and confirmed the admission of P.W.1 and P.W.2 he informed the same to the Poraiyar Police Station .

PW18 is the Head Constable of Poraiyar Police Station after receiving the intimation from P.W.17 informed the same to the Sub-Inspector of Police.

PW19 is the Investigation officer and he conducted the enquiry and recorded the statements and arrested the accused and recorded the material objects and based on the statements he filed a final report.

10.Considering all the above materials the Trial Court convicted the accused as stated above and challenging the above said conviction and sentenced the appellants filed an appeal in C.A. 113 of 2006 on the file of District and Sessions Judge, Nagapattinam. The lower appellate Court dismissed the appeal and

confirmed the conviction and sentence. Now challenging the same this CrI. revisions has been filed.

11. I have considered the rival submission by the learned Counsel for the petitioners Mr.D.Veerasekaran and learned Government Advocate Mr. R.Ravichandran and perused the materials carefully.

12.Mr.D.Veerasekaran, learned counsel for the petitioners would contend that in the instant case the prosecution suppressed the facts. According to the learned counsel immediately after the occurrence PW1 and 2 was taken to the Government Hospital, Karaikal and on the way they gave the information to the respondent police in Poraiyar police station stating that PW1 & 2 was injured. Even then the occurrence said to have taken place at about 01.00 A.M and the respondent police also said to have known about the occurrence immediately, the complainant has been registered long after the occurrence creates a doubt in the prosecution case.

13.Apart from that in the above occurrence A5 also sustained injuries and PW16 a Doctor was examined by the prosecution to that effect. PW.13 is a Medical Officer who observed PW1 in the Government Hospital ,Karaikal also seen the stab injury on the stomach and the intestine came out from the stomach. Besides he has also noted several cut injuries on the head and abrasion on the left shoulder and laceration on the left thigh and abrasion on the right chest, but the other prosecution witness did not corroborate the medical witness. Apart from that PW1,2 and 3 are injured witness and there is no independent witness examined by the prosecution to establish the guilt of the accused.

13. Per contra the learned Counsel appearing on behalf of the respondent, submitted that PW1 and 2 are injured witness in the case and PW3 is the wife of PW1. The occurrence took place in the house of PW1, all the accused went to the house of PW1, in the midnight at 1.00 a.m, and attacked him with wooden logs and caused injuries. PW2 his mother came out of the house and she has also sustained injuries in the nose. The medical witness also corroborates the evidence of PW1. Considering the evidences the Courts below rightly convicted the accused and there is no reason to interfere with the Judgment of the Courts below.

14. I have considered rival submissions

15.I have considered rival submissions, PW1 is the injured witness in this case according to him PW1's brother one Gnanadhikam's son, Deva Asirvatham, fell in love with A4's daughter one Balasundari and they got married against the wishes

of both the families and left the village. Agitated over the same all the accused came to the house of PW1 and attacked him and caused injuries. According to PW1 all the accused came to the house of PW1 and shouting outside his house at about 01.00 a.m. When he came out of the house A1 attacked him with sickle in the stomach. A2.3.4 attacked him with wooden logs and caused injuries, immediately after the occurrences PW1 and 2 were taken to the Government Hospital, Karaikal, and on the way they gave information to the poraiyar police station, stating that PW1 & 2 were injured. Thereafter, he was admitted in the hospital then on 22.03.2003 at 8.00 a.m. The respondent police came to the hospital at the time he was not in the position to give any statements hence he answered the questions put up by the police and they recorded the statements.

17. But, it is the case of prosecution that after PW1 and 2 was admitted in the hospital, PW17, Head Constable of Karaikkal Police station went to the hospital, and after seeing the PW1 and PW2 he informed the same to PW18, the Head Constable of the respondent Poraiyar Police station in turn PW18 informed the same to the Sub Inspector of Police.

18. According to PW19, after receiving all the information from PW18, one Joseph, who was working as Sub Inspector of Police at that time recorded the statement of PW1 and based on his statements he registered the FIR at about 11. a.m on 22.01.2003. But the earlier information given by PW1 to respondent police earlier has been suppressed by the prosecution

19. Apart from that according to PW-13, the Doctor treated PW1's found five injuries, and out of the five injuries, first injury is a cut injury in the stomach. Apart from that he has also found may cut injuries in the head of PW1. But it is the case of prosecution that A1 attacked PW1 only in the stomach and there is no evidence available for other cut injuries in the head. Thus, the prosecution witness are not corroborating the medical evidence.

20. PW 16 is the Medical Officer working in Government Hospital Mayavaram he examined A5, and he found injuries on him and he issued Accident Register Ex.P16. When the accused person sustained injuries in the same occurrence it is the duty of the prosecution to explain the injuries, but absolutely there is no evidence on the side of the prosecution to explain how A5 has sustained injuries in the occurrence.

22. PW's 1 and 3 are injured eyewitness, PW2 is the mother of PW1 and PW3 is the wife of PW1 all are interested witnesses and no independent witness was examined by the prosecution to corroborate their evidence. Considering all these circumstances, I am of the considered opinion that it is

unsafe to rely upon the interested testimonies PW's 1 to 3 to convict the accused. Especially there are multiple accused involved in this occurrence. The Courts below without considering the above circumstances erroneously convicted the accused and hence the Judgments of the Courts below is liable to be set aside.

25. In the result, the Criminal Revision petition is allowed and the conviction and sentence passed by the Court below are set aside and the petitioners are acquitted from all the charges. The bail bond executed by the petitioners are discharged.

s/d-
Assistant Registrar (CS VII)

True Copy

Sub-Assistant Registrar

To.

1. The District and Sessions Judge, Nagapattinam.
 2. The Principal Assistant Sessions Judge, Mayiladuthurai
 3. The Judicial Magistrate No.II
Mayiladuthurai.
 4. The Superintendent Central Prison
Trichy.
 5. The Inspector of Police
Poraiyur Police Station
Nagapattinam District.
 6. The Public Prosecutor, High Court, Madras.
- +1 CC to Mr.D. Veerasekaran, Advocate sr 86225

Criminal Revision No.6 of 2012

KS (CO)
SP(08/06/2018)

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