

BAIL SLIP

The Appellants/Accused 1 to 3 namely A1 Shankar, S/o. Rajakannu, A2 Rajasekar, S/o. Nagappan, A3 Chakrapani, S/o. Munusamy, were released on bail vide order dated 18/06/2003 made in CrI.Mp.No. 4885/03 in CrI.A.No. 809/2003.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2017

C O R A M

THE HONOURABLE MR. JUSTICE C.T.SELVAM

Criminal Appeal No. 809 of 2003

1. Shankar
S/o Rajakannu

2. Rajasekar
S/o Nagappan

3. Chakrapani
S/o Munusamy

.... Appellants/Accused 1 to 3

Versus

State represented by
Inspector of Police,
P-3, Vyasarpadi Police Station,
Chennai - 600 039.

.... Respondent/Complainant

Criminal Appeal filed under Section 374 of the Code of Criminal Procedure praying to set aside the judgment dated 22.05.2003 passed in S.C.No.89 of 2003 on the file of Additional Sessions Court (Fast Track Court III), Chennai and acquit the appellants of the charges for offences under Section 109 & 341 of I.P.C.

For Appellants : Mr.S.Sadasharam

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 Sessions Judge, Fast Track Court III, Chennai, passed in S.C.No.89 of 2003 on 22.05.2003.

2. Prosecution case is that accused 2 and 3 are relatives of first accused. P.W.2, Abraham, went to jail due to a tussle which took place between first accused and him. Thereafter, P.W.2 was released. P.W.2 is the cousin of P.W.1. On 13.01.2002, at around 08:00 a.m, when P.W.2 was in front of Door No.124, A-Block, Nehru Nagar, under the Jurisdiction of P.3 Vyasarpadi Police Station, accused, owing to previous enmity, joined together with the intention of murdering P.W.2 and waylaid him. Accused 1 and 2 attacked P.W.2 and caused him head injuries with iron pipes. When P.Ws 1, 3, Mohan and others gathered, accused ran away.

3.1. PW-1 spoke to his being a coolie, not knowing the accused and about the occurrence and that only he affixed his thumb impression in Ex.P1, complaint and the signature found therein was not his signature.

3.2. PW-2, injured in the case, spoke to his having been assaulted by accused using iron pipes, of PW-1 admitting him in the hospital and that on enquiry by PW-6, Sub-Inspector of Police, he narrated the incident.

3.3. PWs.3 and 4, informed to be a witness to the occurrence, had turned hostile. PW-5 has also turned hostile.

3.4. On 13.01.2002, P.W.6, Sub-Inspector, Vyasarpadi Police Station, was on duty, when, at around 09:30 p.m, he received a telephone call from Government General Hospital, Chennai. P.W.6 went to the Emergency Unit in the Government General Hospital and enquired. He learnt that P.W.1 had admitted P.W.2 at the Government General Hospital for treatment. P.W.2 was admitted as inpatient in Ward No.1. P.W.6 received the copy of Accident Register No.20806 and went to the Neurology Ward, where Doctors were treating P.W.2. P.W.6 questioned P.W.1. Ex.P.1 is the record of the oral complaint given by P.W.1. P.W.6 registered a case in Crime No. 19 of 2002 on the file of respondent for offences under Sections 341, 109, 307 r/w 34 I.P.C and sent Ex.P2, printed First Information Report, to higher officials. P.W.6 handed over investigation to P.W.8, Inspector of Police.

3.5. PW-7, Doctor, who treated PW-2, spoke to surgery of PW-2 and discharging him on 26.01.2002. Ex.P3 is the medical certificate issued by him.

3.6. On 13.01.2002, P.W.8 went to Nehru Nagar and visited the place of occurrence between 12:30 a.m and 01:00 a.m in the presence of P.W.4 and another and prepared Ex.P4 - observation mahazar and Ex.P5 - rough sketch. P.W.8 seized blood stained earth and sample earth under Ex.P6 - Seizure Mahazar. P.W.8 went to Government General Hospital, examined P.Ws.1 and 2 and

recorded their statements. P.W.8 examined P.W.3 and two others and recorded their statements. On 14.01.2002, P.W.8 arrested all the accused in the presence of P.W.5 and others. Between 07:00 a.m and 10:00 a.m, P.W.8 examined all the accused and recorded their confession statements in the presence of P.W.5 and others. The admissible portion of confession statements of accused 1 and 2 are Exs.P7 and P8. P.W.8 seized iron pipes under Exs.P9 and P10, seizure mahazars. P.W.8 produced the accused as also the seized articles before learned V Metropolitan Magistrate. P.W.8 examined P.Ws.4, 5, Dr. Fernandez and others and recorded their statements. P.W.8 obtained Ex.P11 - Copy of Accident Register from Dr. Fernandez. On 26.01.2002, P.W.8 examined P.W.7 - Doctor and obtained wound certificate. On 11.02.2002, P.W.8 completed investigation and filed charge sheet informing commission of offences under Sections 341, 326, 307, 109 r/w 34 I.P.C. before learned X Metropolitan Magistrate, Egmore, Chennai. The case, upon committal, was tried in S.C.No.89 of 2003 on the file of Additional Sessions Court, Fast Track Court III, Chennai.

4. Before trial Court, prosecution examined P.Ws.1 to 8 and marked 11 exhibits. None were examined on the side of defence nor were any exhibits marked. On questioning u/s.313 Cr.P.C., accused denied charges. On appreciation of materials before it, trial Court, under judgment dated 22.05.2003, convicted accused 1 and 2 for offences u/s.341, 326 and 307 IPC and third accused for offences u/s.341, 307 r/w 34 and 109 IPC and sentenced them as follows:

Accused	Sections of law	Sentence
A1 and A2	307 IPC	9 years R.I. and fine of Rs.10,000/- i/d 3 months R.I.
	326 IPC	6 years R.I. and fine of Rs.10,000/- i/d 3 months R.I.
	341 IPC	fine of Rs.500/- i/d 1 month R.I.
A3	307 r/w 34 and 109 IPC	6 years R.I. and fine of Rs.10,000/- i/d 3 months R.I.
	341 IPC	fine of Rs.500/- i/d 1 month R.I.

There against, the present appeal has been filed.

5. Heard learned counsel for appellants and learned Additional Public Prosecutor for respondent.

6. The prosecution case suffers the following infirmities:

Ex.P11, Accident Register, relating to PW-2, the injured in the case informs that PW-2 was conscious and oriented. PW-6, Sub-Inspector of Police, claims to have been at the police

station when he received information over telephone at 09.30 p.m. from the hospital and that he had made necessary noting, gone over to hospital and recorded the oral statement of PW-1 in his own hand. PW-2 has spoken to the presence of PW-6 at the hospital and that he was examined by PW-6 at about 09.00 p.m. Ex.P1, complaint, bears the signature allegedly of PW-1. PW-1, brother of PW-2, has deposed that he could not sign and would only affix his thumb impression. PWs.1 and 3 informed to be witnesses to the occurrence have turned hostile. PW-8, investigation officer, has admitted to pendency of criminal cases both against PW-2 as also his younger brother and that the name of PW-2 figured in the rowdy list. The material objects seized in the case have not been produced before Court and PWs.4 and 5, persons who allegedly attested the mahazar prepared in connection with the seizure of the same, have turned hostile.

7. In the above circumstances, this Court is bound to enter a finding of acquittal though the evidence of PW-7, Doctor, informs that PW-2 had been admitted into hospital on 26.01.2002 having suffered fracture of skull bone, which necessitated immediate operation as the possibility of false implication looms large in respect of a night occurrence and involving injury to one with several cases against his name.

The Criminal Appeal shall stand allowed. The judgment of learned Additional Sessions Judge, Fast Track Court III, Chennai, passed in S.C.No.89 of 2003 on 22.05.2003, shall stand set aside. Appellants are acquitted of all charges. Fine, if any, paid shall be refunded. Bail bonds, if any executed, shall stand cancelled.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

mrr/gm

To

- 1.The X Metropolitan Magistrate,
Egmore, Chennai.
2. The Judicial Magistrate No.I,
Chengalpet.
3. The Superintendent, central Prison,
Vellore.

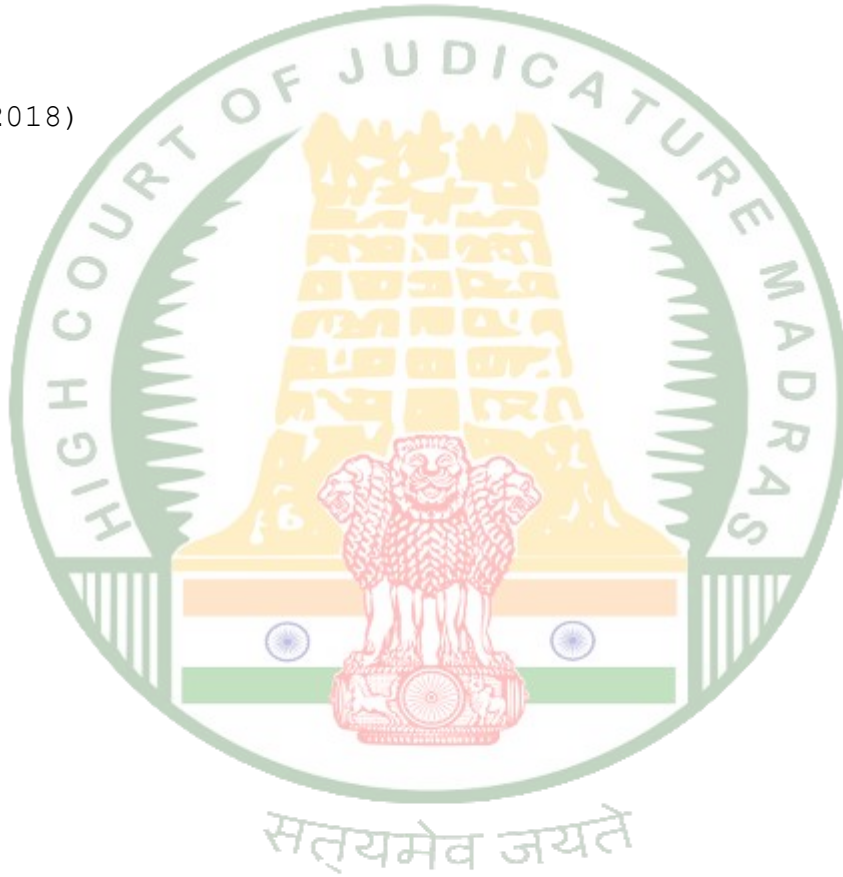
4.The III Additional Sessions Judge,
Fast Track Court III,
Chennai.

5.The Inspector of Police,
P-3, Vyasarpadi Police Station,
Chennai - 600 039.

6.The Public Prosecutor,
High Court, Madras.

Criminal Appeal No. 809 of 2003

RSI (CO)
GN(25/09/2018)



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