

**Bail Slip**

The Appellant/Accused viz., namely Singh @ Bhagavath Singh was released on bail as per Order of this Court dated 21.09.2016 and made in Crl.M.P. (MD) No.3972/2016 in CRL.A. (MD) .No.152 of 2016.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **21.09.2017**

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

AND

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRL.A. (MD) .No.152 of 2016

Singh @ Bhagavathsingh

.. Appellant/A1

Vs.

The Deputy Superintendent of Police,
Paramakudi Sub Division,
Paramakudi,
Emaneswaram Police Station
(Crime No.43 of 2009)

.. Respondent/Complainant

PRAYER: Appeal filed under Section 374 Cr.P.C. to set aside the judgment of conviction, dated 28.04.2016 made in Spl.S.C.No.81 of 2010 on the file of the Principal Sessions Judge, Ramanathapuram and allow this appeal.

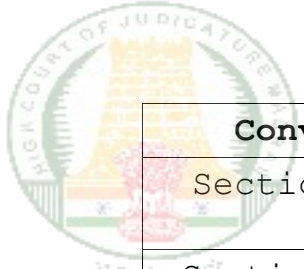
For Appellant : Mr.K.Doraisamy
Senior Counsel for
M/s.Muthumani Doraisamy
For Respondent : Mr.R.Ramachandran
Additional Public Prosecutor

Judgment Reserved on	15.09.2017
Judgment Pronounced on	21.09.2017

JUDGMENT

(Judgment of the Court was delivered by **N.SATHISH KUMAR, J.**)

Aggrieved over the judgment of the learned Principal Sessions Judge, Ramanathapuram, made in Spl.S.C.No.81 of 2010, the present appeal has been filed by the appellant/A1, in and by which the appellant/A1 has been convicted and sentenced as under:



Conviction	Sentence
Section 294(b) IPC	Fine of Rs.500
Section 307 IPC	7 years R.I. + fine Rs.1,000/- , in default 3 months S.I.
3(1)(x) SC and ST(PA) Act	1 year R.I. + fine of Rs.1,000/-, in default 3 months S.I.
3(2)(v) SC and ST (PA) Act	Life imprisonment + Fine of Rs.1,000/- in default 3 months S.I.

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

i) PW1 to PW3 are the resident of Ponniyapuram, Paramakudi. PW1 is a polytechnic student and he belong to Scheduled Caste and the accused belong to backward class. While PW1 was in the polytechnic college, their group beat A1.

ii) When the matter stood thus, on 10.05.2009 PW1 to PW3 planned to the witness the cultural programme during Durga Pooja festival. Accordingly, they went to the cultural programme at about 10.30 p.m. and while they were sitting behind the stage at about 01.00 a.m. in the night, A1 came with the torch and switched on the torch and focussed the light on the face of PW1 and A2 and one Praveen caught hold PW1, besides A1 using vituperative language as against PW1's caste name tried to kill PW1. Though PW1 tried to ward off the same, he received cut injury on the left hand.

iii) Immediately PW1 was taken to the hospital, where he gave a statement Ex.P1 to the Sub Inspector of Police. PW2 and PW3 also witnessed the occurrence. PW7 after receipt of the information, registered a crime in Crime No.43 of 2009 under Sections 294(b), 341 and 307 IPC and Section 3(1)(x) and 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities), Act 1989 (hereinafter referred as the Act). Ex.P6 is the First Information Report and he forwarded the First Information Report to the Court and a copy to the Deputy Superintendent of Police.

iv) PW8, the Deputy Superintendent of Police took up the investigation on 11.05.2009 and went to the place of occurrence and prepared observation mahazar/EX.P7 in the presence of PW4 and PW5 and also drawn rough sketch/Ex.P8 and examined the witnesses. On 16.05.2009, he arrested A1 and one Praveen in the presence of PW6 and one Sathish and recorded the voluntary confession of A1 and pursuant to the same, he seized MO1 under Ex.P5 mahazar. Thereafter, he sent a report to the Judicial Magistrate for adding the accused namely Praveen and Suresh.

<https://hcservices.ecourts.gov.in/hcservices/>

v) In the meanwhile, PW10 Medical Officer attached to Paramakudi, Government Hospital treated PW1 at about 1.15 a.m on



11.05.2009. At that time PW1 stated before him that 6 persons attacked him with knife at about 01.00 a.m. on the same day and he found crush injury extending from left forehead to elbow and issued Ex.P11/ Accident Register and he was referred to Government Rajaji Hospital, Madurai. PW11-Orthopedist, at Madurai Government Rajaji Hospital treated him and found lacerated injury measuring 15 x 10 cm and also tender cut injury. Thereafter, he was discharged from the hospital on 11.06.2009 in respect of which he issued Medical Report/Ex.P12 and opined that the above injury is grievous in nature.

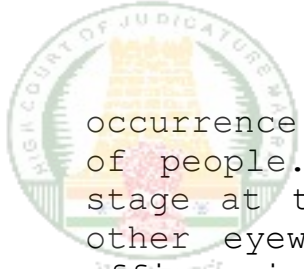
vi) PW12/Deputy Superintendent of Police, continued the investigation and on 18.07.2009 examined PW9 and obtained community certificate of PW1 and accused, which was marked as Ex.P10. After examining the medical officer, sent a report to the Court under Ex.P13 to delete the name of three accused found in the FIR and laid charge sheet as against 2 accused under Sections 294(b), 341, 307 and 307 r/w 34 IPC and Section 3(1)(x) and 3(2)(v) of the Act.

3. When the above incriminating materials were put to the accused under Section 313 Cr.P.C. the accused pleaded innocence. During trial, on the side of prosecution as many as 12 witnesses were examined and 13 documents were exhibited besides 1 material object. On the side of the defence neither any witness was examined nor any document was marked.

4. Having considered the above materials, the trial Court found the appellant/A1 guilty as detailed in the first paragraph of this judgment and accordingly, punished him and that is how the appellant is before this Court with the appeal. However, the Trial Court acquitted A2 from all the charges framed against him.

5. Heard the learned Senior Counsel for the appellant and the learned Additional Public Prosecutor for the State and also carefully perused the records.

6. The learned Senior Counsel appearing for the appellant vehemently contended that the First Information Report is a fabricated one. Originally some of the accused have named in the First Information Report and three of the named accused have been deleted at the time of filing of charge sheet and two other accused who were not found place in the First Information Report have been added in the charge sheet. Though the occurrence allegedly took place in the midnight on 10.05.2009, the First Information Report has reached the Court only on 15.05.2009 with inordinate delay, which has not been explained by the prosecution. Admittedly, PW1 was previously attacked by the PW1's group and in which PW1's friends were made as accused. Therefore, possibility of collusion between PW1 and those PW1 in subsequent case cannot be ruled out. The evidence of PW1 to PW3 so called eyewitness created a serious doubt about the presence of the accused. Admittedly, the



occurrence took place during the festival, where large gathering of people. The evidence of PW1 that he was sitting behind the stage at the time when he was attacked is duly contradictory to other eyewitnesses version. Statement of PW1 before the medical officer is also contradictory to his evidence. Identification of the accused is also not established. Nature of injury found on the left hand of PW1 not even caused by using MO1. Admittedly, the medical officer noted only a crush injury. Further, it is the contention of the learned Senior Counsel for the appellant that the eyewitness evidence is improved in every stage only to implicate the accused, who are victim in previous occurrence, where the witnesses parties were accused. Hence, submitted that possibility of implicating the accused cannot be ruled out in this case. It is the further contention of the learned Senior Counsel that Deputy Superintendent of Police who allegedly conducted investigation for SC and ST Act is not authorised by the Superintendent of Police as mandatory under Rule 7 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. Hence, submitted that the prosecution theory in this case is highly doubtful and prayed for allowing the appeal. In support of his submissions, the learned Senior Counsel relied on the following judgment:-

i) **2012 (3) MWN (Cr.) (Ramachandran v. State)**, wherein this Court has held as follows:-

"The FIR has been lodged by PW1. In the FIR, he had attributed the injuries to each Accused, namely, A1 to A5. He had also mentioned the persons, who have caused injuries to him and to PW2. It includes A5 also. He had also stated the weapons wielded by them at the time of occurrence. He had also specifically stated that A5 was present at the scene place wielding a Bill-hook and had assaulted him. However, during his chief-examination in the Court, he had completely excluded A5. He also confirmed this in his cross-examination. He had also stated in his evidence that he did not mention the name of A5 in the FIR. PW2 also deposed similarly. Thus, in the FIR, PW1 had stated one thing and in his evidence he had stated another thing. Both the eyewitnesses have spoken inconsistently."

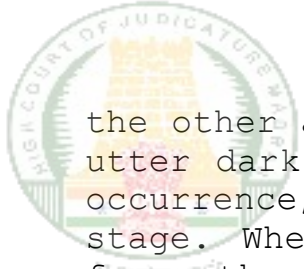
7. On the contrary, the learned Additional Public Prosecutor submitted that PW1 is the injured witness and PW2 and PW3 are the eyewitnesses. The medical officer evidence also clearly proved the nature of injuries. The injured himself has clearly spoken about the specific overt act against the accused and hence submitted that the prosecution has proved the guilt of the accused beyond all reasonable doubt.

<https://hcservices.courts.gov.in/hcservices/> In light of the above submissions, now it has to be analysed in this case as to whether the prosecution has proved the guilt of the accused beyond all reasonable doubt.



9. The motive alleged by the prosecution is that 5 days prior to the occurrence, while A1 was travelling in a bus, PW1's group attacked A1 due to such enmity on 10.05.2009 while PW1 to PW3 and one Madhu went to see cultural festival held in Vaigai river bed, the accused came and attacked PW1 with MO1. According to the prosecution, the occurrence took place on 10.05.2009 at 1 a.m. It is the specific case of the prosecution that A1 and A2 and one Praveen, who was an juvenile at the relevant time, came near the witnesses and A1 lit the torch light on PW1's face and A2 and one Praveen caught hold PW1 and A1 attacked PW1 with MO1/aruval. The Trial Court however acquitted A2 as no evidence against him and case against the juvenile, was spilt up and pending before the Juvenile Justice Board. It is well settled that motive is a double edged weapon. It can be used either for false implication and also for committing the offence.

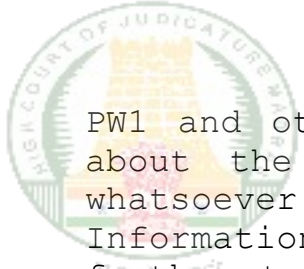
10. In the light of the above background, when the evidence of PW1 the injured carefully seen, it could be seen that on 10.05.2009 he went to witness the cultural programme, which was conducted in the Vaigai river bed in lieu of Dasara Festival, along with PW2, PW3 and one Madhu and they were sitting behind the stage where the cultural programme was conducted. At the time, A1 came with the torch and put the torch light on the face of PW1 and A2 and one Praveen caught hold PW1 and A1 by abusing him in vituperative language with caste name of PW1 and attacked to kill him. When he tried to ward off, the same was fallen on his left hand. Immediately, he was taken to the Government Hospital by PW2 and PW3 and the Sub Inspector of Police obtained statement from PW1 in the hospital. Though Medical Officers evidence PW10 and PW11 and their certificates Ex.P11 and Ex.P12 respectively show that there is grievous injury on the left hand extending from left forehead to the left elbow. Now, it has to be analysed whether the complicity of the accused has been proved beyond any reasonable doubt. Admittedly as per the eyewitness version there was a huge crowd gathered in the festival to witness the Aadal Padal i.e. Dance and Music programme. It is the specific case of PW1 that he was sitting behind the stage at the relevant time along with PW2, PW3 and one Madhu. In this regard the evidence of PW2 one of the witnesses when carefully seen, though he is also stated in the chief examination that they are all sitting together behind the stage at the time, A1 put on the torch light on the face of PW1 and A2 caught hold the deceased. PW2 never whispered anything about the presence of another accused namely Praveen at the relevant point of time. The cross-examination of PW2 also shows that at the time of occurrence he was only in the front side of the stage. According to PW2, the accused have chased PW1, thereafter cut PW1. This evidence is totally contradictory to the evidence of PW1. PW1 in his cross examination categorically stated that they were sitting behind the stage at the time of occurrence and it is also his categorical admission that except in the stage,



the other area i.e. behind the stage there was no light and it was utter dark. It is the further evidence of PW1 that at the time of occurrence, they were sitting on the plastic chair behind the stage. Whereas PW2's evidence show as if the accused chased PW1 from the front side of the stage and cut him. This is contradictory to the evidence of PW1. It is further to be noted that PW2 never stated in his evidence about PW1 and others sitting in the plastic chair at the time of occurrence took place. This fact also creates serious doubt about the version of the eyewitnesses about the manner of occurrence.

11. It is further to be noted that as already discussed, according to PW1, A2 and one Praveen caught hold him and A1 caused cut injury. It is to be noted that if two persons holding up a person, at the relevant time causing injury on hand by other is highly impossible without injuring the person caught holding PW1. It is also to be noted that PW2 never stated about the presence of Praveen. Whereas PW1 and PW3 in their evidence have stated that only A2 and Praveen caught hold PW1 and A1 attacked. PW3 though stated that they were sitting behind the stage at the relevant time, his categorical admission in his evidence is that at the time of occurrence he and one Madhu went for smoking at the time, the occurrence took place. Further, his evidence is as if there was light burning behind the stage. This fact is also not spoken by PW1 and PW2 and rough sketch drawn by the Investigation Officer does not show any light behind the stage. It is further to be noted that according to PW1, in the hospital, statement was recorded by the Sub Inspector of Police namely PW7. Whereas PW7 in the cross examination stated that written complaint was already given to her. The evidence of PW1 to PW3 also shows that the complaint was written by brother of PW1. Therefore, the manner in which the complaint was given to PW7 is also creates serious doubt about the very origin of the offence. This doubt is further fortified by the inordinate delay in sending the First Information and F.I.R. to the Court. In fact, the First Information Report has reached to the Court only on 15.05.2009 as it could be seen from the endorsement made by the learned Judicial Magistrate. The prosecution has no other explanation for the delay in despatching the complaint and the First Information Report to the Court.

12. It is further to be noted that in the first information report, the accused/A1 name is given only as Singh. That apart one Sethupathy, Krishnamoorthy and Senthil were shown as accused in the First Information Report. The presence of A2 and one Praveen is not at all stated in the First Information Report or in the complaint. Only during the filing of charge sheet, A2 and one Praveen were added as accused, but the persons namely Sethupathy, Krishnamoorthy and Senthil were deleted from the charge sheet. The very naming of the different people in the First Information Report and subsequent deletion of the above persons in the charge sheet also creates serious doubt above the version of



PW1 and other eyewitnesses. If really, PW1 to PW3 were definite about the specific role of the accused, there was no reason whatsoever for them to implicate some other persons in the First Information Report and take a contra stand in the evidence. It is further to be noted that MO1/arual is only a sharp edged weapon. We have also summoned MO1/arual to find out whether the injury caused on PW1 could have been inflicted by MO1. If really MO1 was used for inflicting cut there would have been either single laceration or incised cut injury, but whereas the medical officer in the accident register copy has noted out crush injury extending from left fore arm to left elbow. It is further to be noted that even assuming that MO1 was used and injury was possible by horizontal cut that is also improbable, since according to the eye-witnesses A2 and Praveen caught hold the deceased in both sides. Therefore causing of such injury is also highly impossible.

13. Further, at the time of admission in the hospital, before PW10/Medical Officer, it is stated by PW1 that he was attacked by 6 persons at 1 a.m. whereas in the complaint 4 people were named as accused. During the evidence it is stated only three persons involved in the occurrence. In every stage there are improvement and omissions on the part of PW1. Further, as already discussed the manner in which the occurrence took place is also doubtful. It is suggested by the accused that PW1 was near the stage when the dancing group were changing their dress, PW1 peeped inside as a result he was chased by the Dancing Group. In the above melee he fell on the tin sheet erected near the stage and suffered stab injury. The Medical Officer also opined that such injury is also possible by falling on the tin sheet. Therefore, the manner in which PW1 to PW3 spoken about the occurrence creates serious doubt about the role of the accused. Further as already discussed three other persons were named as accused in the First Information Report. At the first instance before the Medical Officer PW1 stated that 6 persons were attacked him. Even in the First Information Report, the full name of A1, namely the present appellant has not been mentioned. If really A1 has attacked PW1, any injured would have mentioned correct name of the accused. That creates some doubt about the version of PW1. Of course injured witness is always be treated as best witness, but when the circumstances suggest that due to the previous altercation possibility of implication is more, such witness cannot be given much importance merely because injury sustained by the witness. It is further to be noted that the Deputy Superintendent of Police/PW8 and PW11 have conducted the investigation, since the First Information Report is registered under the SC and ST Act. It is to be noted that to bring an offence under Section 3(2)(v) of the Act, the prosecution must first establish the fact that the attack itself must have carried out on the ground that victim belongs to Scheduled Caste or Tribe. It must be shown by the prosecution that the attack itself carried out only on the ground that the injured being a Scheduled Caste. Further the entire



occurrence in this case is doubtful and genuineness of the occurrence is also not been established. It is also the evidence of PW1 that only on the next day, he came to know about the real offenders. Therefore he has given a different statement about A2 and one Praveen. It is not as if the names of the accused have to be necessarily mentioned in the First Information Report, but once it is mentioned by witnesses, who never knew anything about the name of such accused, who were not at all involved in the occurrence, then the First Information Report itself suffers from fabrication. This fact cannot be ignored altogether. The unexplained delay in despatching the First Information Report to the Court has only strengthen the inference that the First Information Report is after thought and the accused have been implicated only to non suit the previous case filed against the witness party.

14. Apart from that, the entire investigation under SC and ST Act to be carried out by the Officer not below the rank of Deputy Superintendent of Police as per Rule 7 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995. The said Rule read as follows:-

"7. Investigating Officer.-(1) An offence committed under the Act shall be investigated by a police officer not below the rank of a Deputy Superintendent of Police. The investigating officer shall be appointed by the State Government/Director General of Police/Superintendent of Police after taking into account his past experience, sense of ability and justice to perceive the implications of the case and investigate it alongwith right lines within the shortest possible time.

(2) The investigating officer so appointed under sub-rule(1) shall complete the investigation on top priority, submit the report to the Superintendent of Police, who in turn shall immediately forward the report to the Director General of Police or Commissioner of Police of the State Government, and the officer in-charge of the concerned police station shall file the charge sheet in the Special Court or the Exclusive Special Court within a period of sixty days (the period is inclusive of investigation and filing of charge-sheet).

(2-A) The delay, if any, in investigation or filing of charge-sheet in accordance with sub-rule(2) shall be explained in writing by the investigating officer.)

(3) The Secretary, Home Department and the Secretary, Scheduled Castes and Scheduled Tribes Development Department (the name of the Department may vary from State to State) of the State Government or Union territory or the Director of Prosecution, the officer in-charge of Prosecution and the Director General of Police or the Commissioner of Police in-charge of the concerned



State of Union territory shall review by the end of every quarter the position of all investigations done by the investigating officer."

Absolutely there is no material whatsoever available on record to show that PW8 and PW12 have been specifically appointed or authorised by the Superintendent of Police to conduct the investigation. The Trial Court has not gone into this aspect and simply believed the prosecution version and convicted the appellant with the life sentence. In this regard it is useful to refer the decision reported in **2015(2) MWN (Cr1) 628 (Periyasamy and anr v. State rep. by the Deputy Superintendent of Police, Avinashi Sub Division, Kovilpalayam P.S., Coimbatore District)**, wherein it is stated as follows:-

"27. In view of the nature of the offence, Higher Officials namely an Officer not below the rank of a Deputy Superintendent of Police has been specified in the Rules, to investigate this type of offences. Further Rule 7(1) specifically mentions that the D.S.P. Should have specified past experience etc. Further, as per Rule 7(2), the investigation has to be completed within 30 days.

.....

35. it is also not the case of the prosecution that with reference to PW-15, the mandatory requirements in Rule 7(1) has been complied with. Thus, the very investigation by PW-15 is vitiated. Consequently, the entire criminal proceedings is vitiated."

15. Furthermore, the alleged seizure of MO1 weapon is also doubtful. PW6 in his evidence has stated that MO1 was recovered in front of the house of the accused under the plantain, whereas the Investigation Officer PW8 has stated that MO1 was recovered behind the house of the accused under the plantain. A perusal of the seizure mahazar/Ex.P5 would go to show that the original entries have been erased and new entries have been made. This also creates doubt about arrest and recovery as projected by prosecution.

16. As serious infirmities found out by us, right from the First Information Report and in the evidence of PW1 to PW3 and further the investigation is also not conducted as per the law and the origin of the occurrence is doubtful, possibility of false implication cannot be ruled out. Therefore, we are constrained to hold that the prosecution has not proved the guilt of the accused beyond all reasonable doubt. In view of the same, we have no other option except to extend the benefit of doubt to the appellant.

17. In the result, the appeal is allowed and the conviction and sentence imposed by the learned Principal Sessions Judge, Ramanathapuram are set aside as against the appellant/A1 and the



appellant/A1 is acquitted from all the charges. The Bail bond executed by the appellant shall stand cancelled. Fine amount if any paid by the appellant shall be refunded.

Sd/-

Assistant Registrar(P&A)

WEB COPY

/True Copy/

Sub Assistant Registrar

To

- 1 The Principal Sessions Judge, Ramanathapuram.
- 2.The Judicial Magistrate, Paramakudi.
- 3.-DO- Thro The Chief Judicial Magistrate,
Ramanathapuram District, Ramanathapuram.
- 4.The Superintendent, Central Prison, Madurai.
- 5.The Deputy Superintendent of Police,
Paramakudi Sub Division,Paramakudi,
Emaneswaram Police Station.
- 6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,Madurai.

Jikr

MAS/SKN-RSK/SAR2:21.09.2017:10P-7C

Judgement made in
CRL.A.(MD).No.152 of 2016

Dated: **21.09.2017**