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Bail Slip

The appellant/accused, 1 & 2 namely
1) Sasi kumar S/o Mani was released on bail vide order
dt.21/12/2010 in MP.NO.2/10 IN CRL A.NO.568/2010
2) Poovazhagan S/o Kaliamoorthy was released on bail
vide order dt.18/10/2010 in MP.1/10 in CRL A.568/10.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 25.07.2018

JUDGMENT PRONOUNCED ON : 28.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE R. PONGIAPPAN
Criminal Appeal No.568 of 2010

1. Sasikumar (Age 29/2010)
S/o Mani
 2. Poovazhagan (Age 50/2010)
S/o Kaliamoorthy
- Appellants/Accused 1 & 2
Vs

State by
The Inspector of Police
Orathur Police Station
Cuddalore District
(Crime No.98/2006)

Respondent / Complainant

Prayer: Criminal Appeal is filed under Section 374(2) of Criminal Procedure code, to set aside the Judgment and conviction dated 16.09.2010 by the learned Additional District Judge, FTC I, Chidambaram, Cuddalore District in SC No. 20 of 2007 and acquit in the appellants.

For Appellant : Mr. S. Ananthanarayanan (SC)
Mr. K. Balu

For Respondent : Ms. T.P. Savitha
Government Advocate (Criminal Side)

J U D G M E N T

The appellants are the 1st and 2nd accused in SC No.20 of 2007 on the file of the learned Additional District Judge, FTC I, Chidambaram. They stood charged for the offences under Sections 294 (b), 324, 307 and 307 r/w 34



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IPC. The trial Court by a Judgment dated 16.09.2010 convicted the appellants under Section 307 r/w 34 IPC and sentenced to undergo 7 years rigorous imprisonment and to pay a fine of Rs.5,000/- each in default to undergo 6 months imprisonment. For the charges under Sections 294(b), 324 IPC, both the accused are acquitted. Challenging the above said conviction and sentence, the appellants / accused 1 & 2 are before this Court with this appeal.

2) The Case of the prosecution in brief is as follows:-

PW 1 Ramesh is the resident of Narthangudi Village, Chidambaram Taluk. PW 1 and the 1st accused are having previous enmity with respect to the ancestral property. Two days before the date of occurrence, the 1st accused damaged the banana trees of PW 1 by using the paddy harvesting machine. Consequentially, on 16.08.2006, at about 11.00 am, when PW 1 was standing near to the water tank in Narthangudi Village along with his brother PW 2, both the accused came in a Bike, after seeing them, PW 2 questioned with A1 about damage of banana trees, for which 1st accused abused the PW 1 by using the filthy language as "ஓக்கால ஒழி தேவடியா பயலே நீ ஒழிந்தால் தான் பிரச்சனை தரும் இத்தோடு ஒழிந்து போடா" Further, he attacked PW 1 on his abdominal area by using the knife, in the same transaction, 2nd accused has also attempted to attack the PW 1, by using the knife on his chest, due to the said attack, PW 1 sustained injury on his hand. Consequently, on seeing the blood oozing from the wound, PW 1 went to the stage of unconscious. The said occurrence was witnessed by PW 3 Thangamani, PW 4 Murugan and PW 7 Velmurugan. After the occurrence, PW 2 admitted PW 1 in Raja Muthiah Hospital for taking treatment. After the occurrence, both the accused ran away from the scene of occurrence by using the Motor Cycle. Subsequent to that, on receipt of intimation from the Hospital, PW 11, the then Head Constable, Orathur Police Station went over to the Hospital and recorded the statement from PW 1. Thereafter, he returned to the Police station and registered a case in Cr.No.98 of 2006 under Sections 294 (b) and 307 IPC. Ex.P.12 is the First Information Report. The statement given by PW 1 is Ex.P.1.

3) In the meanwhile, on the same day at about 11.55 am, PW 10 Dr. Ansar Ali working in Raja Muthiah Hospital examined the PW 1 and found the following injuries.

- Stab Injury in left upper abdomen
- Stab Injuries two in numbers in left arm

1) 2 x 1 cm 2) 2 x 1 cm

After giving first aid, he admitted the PW 1 in the hospital as a inpatient. According to PW 10, the injury



4) After the registration of the case, PW 11 despatched the First Information Report to the Court, having jurisdiction. Further, he handed over the copy of the First Information Report to the Inspector of police, Shetiarthoppu for investigation. On 17.08.2006, after receiving the copy of the First Information Report, PW 12 Usman Alikhan, the then Inspector of police, Shetiarthoppu, visited the scene of occurrence and prepared the Observation Mahazar in the presence of PW 5 Babu and one Ilavazhan. Further he drew the Rough Sketch under Ex.P.13. Thereafter, he examined the witnesses and recorded the statements. On 31.08.2006, at about 6.00 pm, in the presence of PW 6 Manimaran and one Ganesan, he arrested the 1st accused. On examination, the accused voluntarily gave disclosure statement and the same was recorded in the presence of the same witnesses. Pursuant to the confession statement, 1st accused took PW 12 and the witnesses to the bush situated near the Pillayar Temple and identified the knife hidden in the bush, on identification, the said knife was recovered by PW 12 under Ex.P.15 Recovery Mahazar. The admitted portion of the confession Statement given by the 1st accused is Ex.P.14. The blood stained knife recovered by the Investigating Officer is marked as M.O.1. After recovering the knife, he made arrangements for sending the 1st accused to the judicial custody. In the mean time, the 2nd accused in the appeal was granted anticipatory bail by this Court. On 21.09.2006, when the 2nd accused came to the police station for complying the condition imposed by this Court, PW 12 examined him and recorded his confession statement. Pursuant to the confession statement given by the 2nd accused, the Investigating Officer recovered the TVS Suzuki bearing Reg.No.TN 31 U 6887 through the Recovery Mahazar under Ex.P.7. The admitted portion of the confession statement given by the 2nd accused is marked as Ex.P.16. M.O.2 is the Motor cycle.

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6) Based on the above materials, the trial Court framed the charges as detailed above and both the accused denied the same as false. In order to prove the case of the prosecution, as many as 13 witnesses were examined as PW 1 to PW 13 and 21 documents were marked as Ex.P.1 to Ex.P21, besides 2 material objects.

7) Out of the said witnesses, PW 1 is the Defacto complainant. According to him, the grandfather of the 1st accused and his grandfather are the brothers, 20 days prior to the occurrence, he made arrangements for partitioning the ancestral property, with the help of surveyor, but due to the non-cooperation of A1, the surveyor returned to his office, without making any partition. Thereafter, before 2 days from the date of occurrence, by using the harvest machine, 1st accused in this case cut the banana trees belonging to him and damaged the same. He has further stated that on the date of occurrence, when he was standing near the water tank along with his brother Kumar, both the accused came in a Motor cycle. After seeing the 1st accused, PW 2 questioned about the damage of Banana trees. Consequentially, a wordy altercation happened between them, resultantly, the 1st accused attacked PW 1 on the abdominal area by using the knife. Due to the said attack, his intestine came out from the abdomen. In the same transaction, 2nd accused Kumar took the knife from the 1st accused and attempted to attack PW 1 on his chest. Since the same was resisted, PW 1 sustained injury on his left hand. He has further stated after seeing the blood came from the abdomen, he went to the stage of unconscious. The said occurrence was witnessed by one Sankar, Lingam and one Srinivasan. He has further stated, after the occurrence, he was admitted in the Raja Muthaiah Hospital and on the same day at about 9.00 pm, the police officer came and recorded the statement from him.

8) PW 2 Kumar is the brother of PW 1, he is the witness to the occurrence. He has stated in the trial Court that before the occurrence, PW 1 made arrangements for partitioning the ancestral property belonging to PW 1 and to the accused. On that day, when the surveyor came to the field, 1st accused went away from the village, so the work related to the partition was not completed. He has further stated, 2 days prior to the occurrence, 1st accused damaged the banana trees belonging to PW1. According to him, on 16.08.2006 at about 11.00 am, when he was standing near the water tank along with PW 1, both the accused came there in a bike, on seeing them he has questioned about the damaging of banana trees, for that the 1st accused scolded PW 1 by using the filthy language and by using the knife stabbed on his abdominal area. Further the 2nd accused has also



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attacked PW 1 and caused the injury on his left hand. He has further stated, after sustaining the injuries, PW 1 went to the stage of unconscious and thereafter he made arrangements for admitting PW 1 in the Raja Muthaiah Hospital.

9) PW 3 Thangamani, is also one of the brother to PW 1 and PW 2. He has narrated the occurrence as stated by PW 1 and PW 2. PW 4 Murugan is the resident of the very same village. He has stated that during the time of occurrence, when he was working near to the water tank, both the accused came and made a wordy altercation with the PW 1 and PW 2, resultantly, the 1st accused by using the knife stabbed the PW 1 on his abdominal area. Further, he has stated about the assault made by the 2nd accused. According to him, after assaulting the PW 1, both the accused ran away from the scene of occurrence in a two wheeler.

10) PW 5 Babu is the witness to the preparation of Observation Mahazar, but he has not supported the prosecution case in any manner.

11) PW 6 Manimaran is the resident of Sathangudi. He has stated that on 31.08.2006, when he was in Narthangudi at about 3.00pm, the Inspector of Police arrested the 1st accused and recorded the confession statement given by him. Further, he stated based on the said disclosure statement, the 1st accused took them to the bush situated near to the lake and identified the blue knife which was used for the commission of offence and the same was recovered by the Investigating Officer. According to him, he stands as a witness to the confession statement given by PW 1 as well as to the recovery of blood stained knife.

12) PW 7, who is the eyewitness to the occurrence has not supported the case of the prosecution in any way. PW 8 is the resident of Narthankudi who has stated that on 21.09.2007, at about 5.00pm, near Nangudi Road, the Investigating Officer in this case recovered the two wheeler through the Seizure Mahazar. PW 9 Dr. Premraj, who was working in Raja Muthiah Hospital has stated about the treatment given to PW 1 and about the details of injury sustained by PW 1. According to him, he issued the Accident Register Copy and Wound Certificate to PW 1.

13) PW 10 Dr. Ansar Ali is also a Doctor working in the very same Hospital. He has stated about the treatment given to PW 1 and about the details of the injury. PW 11, PW 12 and PW 13 are the police officers. They have stated in their evidence about the registration of the case, details of investigation, recovering the material objects and about the filing of Final Report.



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19) Per contra, the learned Government Advocate appearing for the respondent would contend that the occurrence had happened in a day light, the delay in sending the First Information Report to the Magistrate is properly explained. He further contended that the minor contradictions which are all indicated by the appellants is not sufficient to disbelieve the case of the prosecution entirely. According to him, the evidence given by the prosecution witnesses proved the charges beyond all reasonable doubts. Accordingly, he prayed for dismissal of the appeal.

20) I have carefully considered the rival submissions made by either side.

21) On going through the averments made in the First Information Report, it appears that the occurrence had happened on 16.08.2007 at about 11.00 hours. Subsequently, the information was received by the police on the same day at about 23.00 hours. Further, the said First Information Report was received by the Magistrate on 17.08.2006 at 11.00 pm. With regard to the date of First Information Report, the date i.e 17.08.2006 was altered to 16.08.2006. In this regard, on going through the evidence given by PW 1, he has stated that on the date of occurrence itself at about 9.00 pm, the Police officer came to Raja Muthaiah Hospital and recorded the statement under Ex.P.1. On the other hand, the author of the document who is PW 11, the then Head constable of the Orathur Police Station has stated the same version as stated by PW 1. Further, he has stated that after receiving the complaint, a case has been registered on the same day at about 23.00 hours. Now on going through the initials of Magistrate, it appears that he received the First Information Report on 17.08.2006 at 11.00 PM. So the First Information Report has been received by the court after 24.00 hours from the time of registration. Even though the said intervening period is a considerable delay, considering the other circumstances, we cannot hold that the said delay would affect the case of the prosecution. Further, in this case, the Doctor who gave initial treatment to PW 1 was examined as PW 9. He has stated in his evidence that on 16.08.2006 at about 11.55 am, the brother of PW 1, who is the PW 2 brought the injured to the Hospital and admitted him as inpatient. Now according to the case of the prosecution, the occurrence had happened on the same day at about 11.00 am. Therefore, within 55 minutes from the time of occurrence, the accused was admitted in the Hospital for taking treatment. Thereafter, recording the complaint from PW 1 and the registration of the case are all done by the Police Officers. In the said circumstances only the Police Officer registered the case belatedly. So we cannot blame the



hurried mood. So based on the information given by the persons stated above, the Doctor who treated the injured entered the particulars of occurrence in the Accident Register copy.

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25) Furthermore, in general, the Doctor is having the duty to treat the patient and not found out by whom the injury was caused. In the Judgment reported in 2004 (12) SCC Page 414, our Honourable Apex court has held that

So far as non-disclosure of names to the doctor, same is really of no consequence. As rightly noted by the courts below, his primary duty is to treat the patient and not to find out by whom the injury was caused. The plea in this regard is clearly acceptable. The question was examined by this Court in Pattiapati Venkaiah Vs. State of A.P. and similar view was taken.

26) Thereby, in my opinion, the particulars with regard to the number of persons participated in the occurrence told by the Doctor amounts to hear say and it is not having any evidentiary value. So the submission made by the appellant is not sufficient for disbelieving the case of the prosecution.

27) The learned Counsel appearing for the appellant would contend that the 2nd appellant Poovalagan is the friend of the 1st appellant. He is not having any enmity with PW 1. However, according to the evidence of PW 1 to PW 4, both the accused came to the occurrence place through the bike (M.O.2), and after the wordy quarrel with the PW 2, 1st appellant stabbed the PW 1 and subsequent to the said attack, the 2nd appellant received the same knife and attempted to stab PW 1. Thus, as far as the 2nd appellant is concerned, he is not having any motive to kill PW 1. Only for the reason that he is the friend of the 1st appellant, he was falsely implicated in this case, thereby convicting him under section 307 r/w 34 IPC is against the ingredients of 307 and 34 IPC. Accordingly, he prayed to acquit the 2nd accused.

28) It is true that PW 1 and PW 2 did not say anything about the previous enmity of the 2nd appellant towards them. Further, as per the evidence of PW 1 and PW 4, due to the assault made by the 2nd appellant, PW 1 sustained injuries in the left hand, moreover the said injury is simple in nature and not likely to cause the death. Now, on going through the Judgment rendered by the trial court, it is seen that he was convicted under section



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307 r/w 34 IPC. Now, as per the evidence of Doctor, it was established that the 2nd accused causing simple injury on the left hand of the PW 1. In the said circumstances, for attracting the Section 307 r/w 34 IPC, the prosecution must prove the common intention of A1 and A2, or the accused is having the knowledge that the injury caused is likely to cause death. In this case, even though the 2nd appellant is not having any intention to kill the PW 1, during the time of occurrence, he made attempt to attack the PW 1 on his chest. Further, as per the evidence of PW 1 and PW 2 he attempted to attack the PW 1 by using the same knife used by the A1, which shows he is having the knowledge as if any injury sustained in the chest is likely to cause death. In the said circumstances, reliance is placed in the judgment of our Honourable Apex Court reported in AIR 1960 Supreme Court 289, in which our Honourable Apex Court has held that

"Once it is found that a criminal act was done in furtherance of the common intention of all, each of such persons is liable for the criminal act if it were done by him alone. The section is intended to meet a case in which it may be difficult to distinguish between the acts of individual members of a party who act in furtherance of the common intention of all or to prove exactly what part was taken by each of them. The principle which the section embodies is participation in some action with the common intention of all or to prove exactly what part was taken by each of them. The principle which the section embodies is participation in some action with the common intention of committing a crime; once such participation is established, S.34 is at once attracted.

29) Therefore, as per the observation of our Honourable Apex Court, participation in some action with common intention establishes the Section 34 IPC. In this case, the evidence given by PW 1 to PW 4 has clearly established the participation of the 2nd appellant in the occurrence and about the common intention. Thereby, convicting the 2nd appellant under section 307 r/w 34 is found correct.

30) The learned counsel for the appellant would further contend, in the trial Court, the evidence given by PW 1 to PW 4 establishes that at the time of occurrence, the 1st accused in this case stabbed the PW 1 by using the penknife. (M.O.1) Further he would contend that the said penknife is not a deadly weapon and it would not cause any



injury as stated by the Doctor on the body of the PW 1. Further, he contended that the injury causing through the said weapon would not cause the death of a person. Accordingly, he prayed to allow the appeal.

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31) On considering the said submission, it is true as per the evidence of PW 9 and PW 10, PW 1 sustained 2 injuries, the Accident Register issued by PW 9 proves the same. Now on go through the size of weapon used in the occurrence, it was mentioned in the Recovery Mahazar as the length of knife is 23.5 cm. Further, it was mentioned that the said knife is having handle to the length of 13 cms. So the remaining 10 cms alone is the length of knife. In the said circumstances, A1 stabbed the PW 1 on his abdomen, all are aware the knife having 10cms length is sufficient for entering into the abdomen area and causing the stab injury. Moreover, PW 9 and PW 10 has clearly stated that the injury No.1 is grievous in nature. Further, in the trial Court, PW 10 Dr. Ansar Ali, who performed the surgery to the injured has stated that he found the blood to the tune of 1.5 litres in the abdomen area of the injured. Further, he stated because of the stab injury, the intestine of PW 1 came out from the abdomen. Therefore, no doubt the said details given by the Doctor clearly proves that the said injury is likely to cause the death to the person who suffered. Thereby the contradictions indicated by the learned Counsel appearing for the appellant would not create any doubt over the case of the prosecution and in my opinion the said contradictions are very minor in nature.

32) In fact, in this case the Accident Register Copy is the earliest document, which was written by the Doctor at the time of admitting the accused in the Hospital. Now, without seeing the particulars of injury mentioned in the AR copy, the learned Counsel appearing for the appellant would contend in his written submissions that PW 1 sustained only lacerated injury. In this regard, before the Doctor, who gave evidence about the treatment given to the injured, it was not suggested that the injury sustained by the PW 1 is of laceration, even assuming that the second injury is a laceration, the injury No.1 is sufficient to cause the death of a person.

33) The next submission made by the Counsel appearing for the appellant is in the alleged occurrence, the appellants are the real victim. With regard to reaching of occurrence place by the appellants, PW 1 and PW 2 gave different evidence. It would create and leads to the conclusion that both PW 1 and PW 2 came to the occurrence



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place only with an intention to assault the appellant.

34) On considering the said submission, it is an admitted fact that the occurrence had happened near to the water tank situated in the village. Even though PW 1 to PW 3 are related with each other, the evidence given by PW 4 establishes that he come to the occurrence place occasionally in order to perform the repairing work of cablewire. All the eyewitnesses have stated that prior to the occurrence, PW 1 and PW 2 standing near to the water tank, then only both the accused came to the occurrence place in a bike. Further they have stated that after seeing the accused, PW 2 in this case questioned about the damaging of banana tree. Only thereafter, both the accused committed the offence. So with regard to the attack made by the 1st and 2nd accused, the evidence given by PW 1 and PW 4 is cogent and convincing one. Further, the said evidence is corroborated through the medical evidence. PW 9 has stated about the details of injury corresponding to the evidence given by PW 1 to PW 4. In the said circumstances, in the chief examination of PW 1, he has stated that expecting the agricultural labourers, they are waiting in the occurrence place. However, he has stated in usual, at about 8.00 am, the labourers would go to attend the day to day work. At the same time, PW 2 has also stated both were waiting near the water tank expecting the labourers for weighing the paddy. So both the evidence discloses the same fact that they were waiting for the agricultural labourers alone. Now on going through the sketch exhibited as Ex.P.13, it would disclose that near to the occurrence place, a grocery shop and some other houses are situated and not any agricultural field. So, on culling out the entire evidence given by PW 1 and PW 2, it would establish that before the occurrence, they harvested the paddy in their field and came to the occurrence place for searching the labourers for transporting the paddy from his field to some other place and not for attacking the appellants. Therefore, the submission made by the Counsel that PW 1 and PW 2 came to the occurrence place with an intention to attack the accused is not supported through the relevant evidence.

35) Yet another submission made by the Counsel for the appellant is that the evidence let in by the prosecution with regard to the arrest and recovery of M.O.2 is not cogent and convincing one. So the said aspect is one of the reason for allowing the appeal. In this regard, before the trial Court, in order to prove the confession statement given by the 1st accused and about the recovery of M.O.1, one Manimaran and one Babu were examined as PW 6 and PW 8 respectively.



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36) PW 8 has stated that based upon the request made by the police officer, he signed in the Recovery Mahazar. On the other hand, PW 6 Manimaran has supported the case of the prosecution, he specifically stated that when he was entering into the place alleged to be the place of arrest, 1st accused and the Investigating officer were present. Further, he stated after recording the confession statement of the 1st accused, they all went to the lake and recovered the knife. Even assuming the evidence given by the PW 6 is not in order for establishing the arrest of 1st accused, in this case, the recovered materials were not sent for chemical examination. In the said circumstances, even though the evidence let in by the prosecution in respect to the recovery is doubtful, that alone is not sufficient to hold that the case of the prosecution is false one.

37) On the side of the defence, in order to show the enmity between PW 1 and the accused, copy of the First Information Report registered in Cr.No.60 of 2007, Remand Report, order passed by the Judicial Magistrate dated 03.10.2007 are marked as Ex.D.1 to Ex.D.3. In fact, those documents are dated 30.09.2007 and 1.10.2007, so the said documents are prepared subsequent to this occurrence. Therefore, Ex.D.1 to Ex.D.3 are all not related to the occurrence mentioned in this case. So, the subsequent conduct of the accused as well as the victim are not useful for considering the case of appellant in their favour.

38) Therefore, as per the discussions made earlier, I am of the opinion that at the time of occurrence, both the accused came to the occurrence place with the common intention to kill PW 1 and attacked the PW 1 on his abdominal area by using M.O.1 knife and caused grievous injury, which is likely to cause death of a person. Thereby, the offence committed by the 1st accused is within the ambit of Section 307 IPC. Further the 2nd accused came to the occurrence place with the common intention along with the 1st accused for killing PW 1, thereby both the accused committed the offences. So the submissions made by the learned Counsel appearing for the appellants would not create any platform for allowing the appeal.

39) Accordingly, in the light of the above discussion, this court holds that the findings arrived at by the trial Court is reasonable and well considered one and thereby the appeal is dismissed. The conviction and sentence awarded by the trial Court is hereby confirmed. The trial Court is directed to take steps to secure the accused and make arrangements for sending them to the prison for serving the remaining period of sentence.



Further, the trial Court ordered to set off the period already undergone by the accused/appellants under section 428 of Cr.P.C

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Sd/-

Assistant Registrar(CS)

Sub Assistant Registrar

To

1. The Additional District Judge, FTC I
Chidambaram, Cuddalore District.
2. The Inspector of Police
Orathur Police Station, Cuddalore District
3. The Judicial Magistrate No.II,
Chidambaram, Cuddalore District.
4. The Chief Judicial Magistrate
Cuddalore.
5. The Superintendent
Central Prison
Cuddalore
6. The Additional Public Prosecutor
High Court
Madras

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The Section Officer
Criminal Section
High Court
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+1cc to Mr.K.BALU , Advocate SR.No. 67672

Criminal Appeal No.568 of 2010

ASK(08/11/2018)