

Bail Slip

The Appellant/ Accused viz Sankar Damodharan directed to be and Baskar were released on bail as per order of this Court dated:13/11/2010 and made in CRL.MP.1/2010 in CRL.A.652/2010.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.02.2018
DELIVERED ON : 19.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Criminal Appeal No.652 of 2010

1.Sankar
2.Damodharan
3.Baskar

...Appellants/Accused 1 to 3

Vs

State rep. by Inspector of Police,
T10 Tirumullaivoyal Police Station,
(Crime No.317 of 2009)

... Respondent/Complainant

Appeal filed under Section 374(2) of the Code of Criminal Procedure against the conviction and sentence imposed upon them by the learned Additional Sessions Judge (Fast Track Court No.2), Poonamallee in S.C.No.79 of 2010 dated 20.10.2010 for the offence in respect of A1 under Section 326 I.P.C. and sentence to seven years and fine of Rs.2000/- i/d two years R.I. and for the offence under section 506(II) sentenced to three years R.I.; in respect of A2 and A3 convicted under Section 326 I.P.C. and sentenced to seven years R.I. and Rs.2,000/- i/d two years R.I. and sentence to run concurrently.

For Appellants : Mr.L.Mahendran

For Respondent : Mrs.T.P.Savitha
Government Advocate (Crl.Side)

JUDGMENT

This appeal filed by the Appellants against the conviction and sentence imposed by the Learned Additional Sessions Judge (Fast Track Court No.IV) Poonamallee in S.C.No.70 of 2010 dated 20.10.2010. The 1st Appellant (A1) was convicted for the offences under Sections 326 and 506(ii) of IPC with Seven years

rigorous imprisonment and to pay a fine of Rs.2,000/- and three years rigorous imprisonment respectively. Similarly, Appellant No. 2 and 3 (A2 and A3) were convicted for an offence under Section 326 of IPC alone and sentenced to undergo rigorous imprisonment for Seven years and to pay a fine of Rs.2,000/- All the sentences are ordered to run concurrently.

2.The case of the prosecution is that the Appellants along with two other persons (A4 and A5) formed an unlawful assembly, committed rioting armed with the deadly weapons and made attempt to the life of the injured Chinnadurai. Though five persons were prosecuted for committing the offence of rioting armed with deadly weapons A4 and A5 have been acquitted for all the offences by the trial Court.

3.The facts as they emerge from the judgment rendered by the Learned Trial Court reveal that on 20.07.2009 at about 5.30 p.m., PW 3 Muthukumar who is working under PW 1 Chinnadurai was assaulted by the Accused No.1 Shankar. PW1 and PW5Antony enquired the Accused No.1 for which the Accused No.1 and 4 others assaulted PW1 and PW 5 indiscriminately. A1 assaulted PW 1 in his head with wooden stick. A4 assaulted PW1 in his stomach and knee. A1 again threatened to kill PW 1 and instigated other Accused to do away PW 1. A2 attacked PW 5 Antony in his left hand and back shoulder with wooden stick and ran away. PW1 fell in the spot and taken in the Auto to the Chennai Government Hospital by PW2. PW9 Sub-Inspector of Police enquired PW1 in the Hospital and recorded the complaint. The Complaint is Exhibit P1. PW9 registered the First Information Report at about 1.00 PM midnight in Cr.No.317 of 2009 on the file of the Thirumullaivayil Police Station under Sections 294(b), 324, 306 (ii) of IPC. The printed First Information Report is Exhibit-P4. The Investigating Officer PW9 examined the witnesses PW2-Yesudoss, PW3-Muthukumar, PW4-Thavamani and PW5-Antony and recorded their statements separately. Before examined by the Police PW1 informed that 10 unknown persons attacked him with their hands and iron rods in the DMHP area situated at Iyyappakkam. When PW 10 examined PW1, he was conscious and noted three grievous injuries in his head. The Accident Register issued by the Doctor is Exhibit P8. On further investigation PW 9 amended the FIR under Section 307 of IPC on the basis of the report issued by the Doctor PW 10 noting the injuries as grievous. The amended FIR report is Exhibit P5.

4.Then PW9 conducted the investigation in the occurrence spot and drawn Rough Sketch and Exhibit-P7 Observation Mahazar. On 21.07.2009 at about 15.00 hrs, arrested the Accused and remanded them to the Judicial Custody. Then the further Investigation was conducted by PW-11 and he filed the final report under Sections 147, 148, 294(b), 506(ii), 307 r/w 149 of IPC on 15.11.2009.

5. In order to bring home the charges the prosecution examined PWs-1 to 11 and marked Exhibits-P1 to P8 with M.Os.1 and 2. The learned Additional Sessions Judge, Fast Track Court No.IV, Poonamallee, convicted the Appellants for their offences under Sections 326 and 506(ii) of IPC with 7 years Rigorous Imprisonment. The 1st Appellant (A1) was convicted for the offences under sections 326 and 506(ii) of IPC with Seven years rigorous imprisonment and to pay a fine of Rs.2,000/- and three years rigorous imprisonment respectively. Similarly, Appellants 2 and 3 (A2 and A3) were convicted for an offence under Section 326 of IPC alone and sentenced to undergo Rigorous Imprisonment for Seven years and to pay a fine of Rs.2,000/-.

6. I heard Mr.L.Mahendran, learned counsel for the appellants and Mrs.T.P.Savitha, Learned Government Advocate (Criminal Side) for the respondent and perused the entire materials available on record.

7. The Learned Counsel for the Appellants after taking all the relevant evidence and materials has raised the following contentions.

a) The statements of eye witnesses are contradictory to each other on all material particulars.

b) Evidence of PW 10 Doctor who examined PW 1 Chinnadurai on 20.7.2009 at about 7.55 PM, recorded in Accident Register that some ten unidentifiable persons attacked him. Whereas, the present prosecution case is that PW1 was attacked by the known persons and their names were also mentioned in the First Information Report. The prosecution failed to adduce proper explanation as to how their names found place in the FIR and the Learned trial Court failed to appreciate the genesis of the FIR. The prosecution case is that MO.1 and MO.2 was recovered after the arrest of the Accused. Whereas the evidence of PW3 discloses that he only handed over MO-1 and MO-2 at the Police Station. Further PW3 who is an eye witnesses to the occurrence deposed that on 20.7.2009 at about 6.00 PM, the Police visited the scene of occurrence and enquired him. This earliest information to the Police has been purposely screened and well-tutored complaint made by PW1 about 1.00AM on 21.7.2009 has taken on file.

c) The prosecution case is that the occurrence said to have take place in backside of PW1 house as per rough sketch. Whereas in the Observation Mahazar it is shown that the occurrence took place in the opposite house of PW1 near a bush. The mismatch of the scene of occurrence affects root of the case.

d) The statements of all the eye witnesses reach the Court

only on 17.11.2009 whereas the occurrence has taken place on 20.7.2009. No explanation was offered by the Investigation Officer regarding the delay of sending statements to the Court.

e) The reasons assigned for the acquittal of A4 and A5 by the Trial Court is also applicable to the Appellants.

f) The Learned Counsel for the Appellants also vehemently urged that the material statements recorded u/s 161 Cr.PC were not sent to the Magistrate at earliest and clear violation of Tamilnadu Police Standing Order 577.

8. On the contrary the Learned Counsel for the Respondent opposed the contentions raised on behalf of the Appellants and contended that the evidences of eye witnesses was not shaken and supported the findings of the Learned trial Court.

9. The counsel appearing for the parties in support of the respective cases had drawn to the attention of this Court to the statements made by the various witnesses including the eye witnesses and also the contents of the statement of PW10 Doctor who examined PW1.

10. The injured cum eye-witness PW1 deposed that he was threatened and assaulted indiscriminately with wooden stick by A1 to A5. Further the motive attributed by PW1 that PW2 Muthukumar, who was working under him, was assaulted by the accused and for that he questioned the Accused No.1 But PW1 in his cross examination specifically deposed that Muthukumar have not stated about the names and identifications the Accused who assaulted him. PW2 Muthukumar in his Cross Examination deposed that A1 alone slapped in his cheek and specifically denied about the existence of 4 persons assaulted him and he was enquired by the Police on the very same day in the scene of occurrence at about 6.00 PM immediately after the occurrence. In his evidence, he specifically averred that A1 attacked PW1 with wooden stick and could not remember anything. He identified MOs1 and 2 and deposed that he took the wooden sticks from the scene of occurrence and handed over them to the Police Station. PW1 was taken in the Auto by PW2 Yesudoss to the Hospital. PW4 is a hearsay witness. PW5 deposed that on 20.7.2009 at about 5.30 p.m., PW3 was attacked by 4 persons. Both PW1 and PW5 enquired A1 for assaulting PW3. At that time, A1 and 4 others attacked him and PW1 with wooden stick and both were taken to the Hospital by PW2. PW5 in his cross examination deposed that he was treated by the Doctors attached to the Sundaram Foundation Hospital and not taken treatment in the Chennai Government Hospital.

11. PW9, the Sub-Inspector of Police in his cross examination, deposed that he has not recorded the exact time of report received from the Government Hospital Chennai in the FIR and he enquired PW1 after verifying the Accident Register.

Further he admitted that he has not obtained the signature of the Doctor in the complaint recorded by him from PW1 and admitted that in the accident register it was alleged that 10 unidentified persons attacked PW1 with their hands and iron rods.

12.PW-10 Doctor who examined PW1 deposed that PW2 Yesudoss admitted PW1 in the Hospital with injuries and stated that 10 unidentifiable persons attacked PW1 with their hands and iron rods. PW1 was conscious and he was given treatment. In his cross examination the Doctor confirmed the version of PW2 that the injured PW1 told him that he was attacked by 10 unidentifiable persons with their hands and iron rods.

13. It is very strange how PW1 that to after interacting with the Accused and receiving injuries on his head made different statements to PW10 Doctor and PW9 Sub Inspector regarding the manner of incident happened on 20.07.2009 at about 5.30 p.m. PW1 in his earliest statement made before the doctor alleged that 10 unidentifiable persons attacked him with their hands and iron rods and the same was exhibited in P5, Accident Register. But in the complaint he alleged that accused 1 to 5 threatened and attacked him with wooden stick. To my part, no reliance could be placed on the evidence of PW1, which, in my opinion, could have come in to existence after liberation and consultation. At the worst PW 1 could have never been the author of the complaint Exhibit P4.

14.Now, I shall discuss the other eye witnesses namely PWs 3 and 5 which is also contradictory to each other on the participation of the Accused 1 to 5. Unfortunately none of the witnesses to the occurrence has spoken the incident as projected by the prosecution. PW3 Muthukumar specifically deposed that he was examined by the Police at about 6.00 p.m. on 20.07.2009. If it is true, it could be the earliest statement relating to the occurrence happened against PW1. But the same was screened by the prosecution and there is no explanation from PW9 except a simple denial, PW5 Antony deposed that he was attacked by A1 and 4 others and Accused No.2 specifically attacked him with wooden stick. But he has not taken treatment along with PW1 in the Rajaji Government Hospital raises serious suspicion. The trial Judge in her judgment had completely gone wrong in saying that the injured and witnesses spoken the over acts attributed against them by Accused Nos.1 to 3. But the Learned trial Judge failed to appreciate the earliest statement given to the Doctor PW10 which vitiates the version of PW1. Thus the Learned trial Judge has completely ignored the afore discussed material contradictions from the evidences of PWs 1, 3 and 5 and also the statement made in the Accident Register Exhibit P8.

15.To sum up, receipt of first Information Report by PW9 after an inordinate delay by screening the earliest statement received from PW 5, contradictory version made by PW 1 before

the Doctor and in the complaint to PW9 Sub Inspector of Police and delay in sending the material documents including the statements of the eye witnesses recorded under Section 161 of Cr.P.C., were highly unbelievable and untrustworthy. In these circumstances, I am of the view that the injuries found on PW1 were not satisfactorily explained by tangible and cogent evidence.

16. In the result, the Criminal Appeal stands allowed and the Appellants /A1 to A3 are concerned, the conviction and sentence imposed upon them by the trial Court are set aside and they are acquitted from all the charges. The Bail Bonds executed by them shall stand discharged and fine amount, if any, paid by them shall be refunded to them.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

1. The Additional Sessions Judge
(Fast Track Court No.2),
Poonamallee.
2. The Judicial Magistrate,
No.II, Poonamallee.
3. The Chief Judicial Magistrate,
Thiruvallur
4. The Inspector of Police,
T10 Tirumullaivoyal Police Station,
5. The Superintendent,
Central Prison, Puzhal, Chennai.
6. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.L.Mahendran, Advocate, S.R.No.75580

Criminal Appeal No.652 of 2010

MP (CO)
GSP (05/12/2018)