



WEB COPY

Bail Slip

The Petitioner/Accused - I namely Rajee, S/o.Elumalai, was directed to release on bail vide order dated 31/10/2014 made in CrI.MP.No.1/2014 in CrI.A.No.557/2014.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE P. VELMURUGAN

CrI.A.No.557 of 2014
and M.P.No.1 of 2014

Rajee, S/o.Elumalai

..Appellant/Accused -I

Vs.

The Inspector of Police
Bramadesam Police Station,
Villupuram District.
(Crime No.661 of 2012)

..Respondent/Complainant

The Criminal Appeal has been filed under Section 374(2) Cr.P.C., to call for the records and to set aside the order passed by the learned II Additional Sessions Judge, Tindivanam, in SC. No.603/2013 dated 19.09.2014, and allow this appeal.

For Appellant

: Mr.A.N.Rajan

For Respondent

: Mr.R.Ravichandran

Govt. Advocate (CrI. Side)

JUDGMENT

The Criminal Appeal has been filed to call for the records and to set aside the judgment passed by the learned II Additional Sessions Judge, Tindivanam, in SC. No.603/2013 dated 19.09.2014, and allow this appeal.

2. The case of the prosecution is that on 17.12.2012 at about 7.00 P.M., P.W.2 was returning to his house in his tractor, accused 1 to 4 waylaid him, due to previous enmity and attacked him. According to the prosecution, A1 stabbed P.W.2 with knife and accused 2 to 4 attacked him with wooden logs. Based on the complaint preferred by P.W.2, the respondent police conduct the investigation and filed charge sheet for offence under Section 341, 324 and 307 as against A.1 and under Section 341, 324 and 307 read with Section 34 as against A.2 to A.4. Before the learned II Additional District and Sessions Judge, Tindivanam in S.C.No.603 of 2013, during the trial, the prosecution examined P.W.1 to P.W.10, marked Ex.P.1 to Ex.P.13 and produced the material object M.O.No.1 to 3. After full



fledged trial, the learned II Additional Sessions Judge acquitted the Accused 2 to 4 held that the prosecution has failed to prove the case against them beyond all reasonable doubts. However, the learned Sessions Judge, convicted A1 and sentenced him to undergo one month simple imprisonment and to pay a fine of Rs.500/-, in default, to undergo one week simple imprisonment for offence under Section 341 IPC and convicted him for offence under Section 326 IPC and to undergo rigorous imprisonment for two years and to pay a fine of Rs.5000/- (totally Rs.5500/-), in default, sentenced to undergo rigorous imprisonment for three weeks. Challenging the said conviction and sentence, the present criminal appeal has been filed by the Appellant.

3. The learned counsel for the appellant/accused would submit that assailed the judgment of the Court below on the ground that there is no independent eyewitness to the occurrence and though the entire case is put up case. The learned counsel pointed out that the P.W.2 and the accused are close relatives and their existed previous enmity between them, with regard to division of ancestral property. It is only due to the previous enmity, the accused were falsely implicated in this case. The learned counsel also pointed out that in the Accident Register, it has been stated by five unknown person had attacked P.W.2. It is five known persons have attacked P.W.2. Whereas all of them are close relatives. This major contradiction shows that this is put up case. Though P.W.2 has stated that A.1 attacked him with knife on his neck. It is admitted case of the prosecution that street light posts were present at the place of occurrence, but, street lights were not burning and there was no light at that time of occurrence. It is only because of this reason, P.W.2 himself has stated in the Accident Register, which is the earlier document that he was attacked by five unknown persons which shows P.W.2 could not have seen the accused in the place of occurrence. The learned counsel would further submit that the benefit of doubt given to the other accused should be extended to the appellant also.

4. The learned Government Advocate (Crl.Side) appearing for the respondent police would submit that P.W.2 is injured witness. Admittedly there is previous enmity between the two sides with regard to division of ancestral property. Though, there was no independent eye witness. The learned Government Advocate would submit that P.W.2 himself being injured witness, solitary witness is enough to prove prosecution case. Therefore, prosecution has proved its case beyond reasonable doubt and there is no merit in the appeal and the appeal is liable to be dismissed.



5. Heard the learned counsel appearing for the appellant and the learned Government Advocate (Crl.Side) appearing for the respondent police and perused the materials available on record.

6. Admittedly, the parties are all close relatives and they are existed previous enmity with regard to the division of ancestral properties. This enmity clearly spoken to by the P.W.1 and P.W.2. As rightly pointed out by the learned counsel for the appellant in the Accident Register, P.W.2 has stated that he was attacked by five unknown persons. Admittedly, there was no other eyewitness to the occurrence. There is no independent eyewitness to corroborate the evidence of P.W.2. The occurrence alleged to have taken place at about 7 p.m. When two views are possible in a case, the view that favourable to the accused should be taken. In this case, there is a doubt with regard to identification of the accused especially when entry in A.R.Copy shows that attacked by five unknown persons. Therefore, this Court is extending the benefit of doubts to the first accused as extended by the trial Court in favour of the other accused.

7. In the result, the judgment of conviction and sentence passed by the trial Court is set aside and this appeal is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The II Additional Sessions Judge, Tindivanam.
2. -Do-Thro' The Principal Sessions Judge, Tindivanam.
3. The Judicial Magistrate No.2, Tindivanam.
4. -Do- Thro' The Chief Judicial Magistrate, Tindivanam.
5. The Public Prosecutor, High Court, Madras.
6. The Inspector of Police, Bramadesam Police Station, Villupuram District.

Copy to : The Section Officer, Criminal Section,
High Court of Madras

+1 cc to M/s.A.N.Rajan, Advocate Sr.No. 61186

Crl.A.No.557 of 2014
and M.P.No.1 of 2014

RS-I
AKM/ 16.08.19/ 3P- 9C /