

Bail Slip

The Petitioner/Accused viz Mr.Siva, S/o, Manickam, was directed to be released on bail as per order of this Court dated 20.09.2012 made in MP 1/2011 in CRL A 535/11 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Criminal Appeal No.535 of 2011

Siva ... Appellant/A1

Vs

State of Tamil Nadu,
Represented by
The Inspector of Police,
Thudiyalur Police Station,
Coimbatore District.
(Crime No.1709 of 2008). .. Respondent

Prayer:- Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, against the judgment of conviction and sentence dated 30.06.2011 passed in S.C.No.14 of 2011 by the learned Additional District and Sessions Judge/Fast Track Court No.I, Coimbatore.

For Appellant : Mr.Ramesh Kumar

For Respondent : Mr.G.Ramar
Govt. Advocate (Crl.side)

J U D G M E N T

The present appeal has been filed against the judgment of conviction and sentence dated 30.06.2011 passed in S.C.No.14 of 2011 by the learned Additional District and Sessions Judge/Fast Track Court No.I, Coimbatore.

2. The appellant is arrayed as 1st accused in S.C.No.14 of 2011 on the file of the learned Additional District and Sessions Judge/Fast Track Court No.I, Coimbatore. The present appellant along with three other accused stood charged for the

offence under Section 307, 307 r/w 34 and 323 IPC. All the accused denied charges and opted for trial. Therefore, they were put on trial on the charges. After full fledged trial, the learned Additional District and Sessions Judge found the appellant alone guilty for the offence under Section 307 IPC. Accordingly, the accused was convicted and sentenced to undergo Rigorous Imprisonment for 5 years and to pay a fine of Rs.2,000/-, in default, to undergo Rigorous imprisonment for six months. The other accused A2 to A4 acquitted for the charges. Challenging the said conviction and sentence, the accused is before this Court by way of filing the present Criminal Appeal.

3. The case of the prosecution in brief is as follows:

(i) P.W.1 is residing at Saibaba Colony, K.K.Pudhur, Coimbatore. Previous to the occurrence, on the day of Krishna Jeyanthi, the appellant quarrelled with one Shajahan, for which, a case has been registered against the appellant in Thudiyalur Police Station, due to which, the appellant developed enmity with P.W.1. After 15 days, from the day of above said occurrence, when P.W.1 was inside the house, his father informed to him that the appellant/A.1 Siva called him. So, P.W.1 came out from his house and on seeing him, the appellant in this case, told to him that he wants to speak with him in a place far away from the house of P.W.1. Hence, P.W.1 went along with A.1, near the lamp post, P.W.1 saw Sekar/A.3, Rafiq/A.4 and Gopal/A.2. Suddenly, Rafiq caught hold the P.W.1's hands at his back side in order to facilitate to attack him, thereafter A.1 by using the knife stabbed P.W.1 on his abdominal area, Sekar/A.3 stabbed in the left thigh of P.W.1, and Gopal/A.2 threw a stone on the forehead of P.W.1. After the occurrence, P.W.1 was admitted in C.M.C hospital, Coimbatore.

4. P.W.8, Jeya Pandian, the then Sub Inspector of Police on 02.12.2008, at about 10.30 hours received an intimation from C.M.C. Hospital with regard to the said incident. Immediately, he went over to the hospital and recorded the statement of P.W.1. Thereafter, he registered a case in Crime No.1709 of 2008 under Sections 342, 294(b) and 307 IPC. The statement of P.W.1 recorded by him was marked as Ex.P.1. Ex.P.8 is the First Information Report. After registering the case, he handed over the case records to P.W.9 for further investigation.

5. On 02.12.2008, at about 5.00 p.m, P.W.9, the then Inspector of Police, Thudiyalur Police Station, received a copy of the First Information Report and visited the scene of occurrence. In the presence of P.W.3, Shanmuganathan and P.W.4 Madhavan, he prepared an observation mahazar under Ex.P.3. Further, he drew rough sketch under Ex.P.9 and thereafter, he recorded the statements of witnesses. On 04.12.2008, at about 6.30 a.m, near Idayar Palayam Bus stand, he arrested all the accused and on enquiry, the appellant admitted the offence as

alleged in this case and gave confession before P.W.9. The said confession statement was recorded in the presence of P.W.5 Sivakumar and P.W.6 Biju. In the confession statement, after admitting the offence, he disclosed that the knife, which was used for the commission of offence, was hidden in the bush. Subsequently, pursuant to the confession statement, the investigation officer, recovered the knife through mahazar. Further, the confession statement and the recovery mahazar were prepared by P.W.9 in the presence of P.W.5 and P.W.6. After recovering the knife M.O.1, he handed over the case records to P.W.10 for further investigation.

6. Meanwhile, on 01.12.2008, P.W.7 working as Assistant Professor in C.M.C Hospital, Coimbatore, examined the P.W.1 and found the following injuries:

"1. Intestine came out due to the stab injury caused by the knife.

2. There is a stab injury on the left side of the stomach.

3. The size of intestine cannot be seen, as it came out."

According to him, the injury sustained by P.W.1 is grievous in nature, for which, he issued A.R copy under Ex.P.7.

7. P.W.10 the then Inspector of Police, Thudiyalur Police Station, after receiving the case records from P.W.9, examined P.W.1 and recorded his statement. Finally, on completion of investigation, he laid a final report under Sections 324, 326 and 307 r/w 34 IPC against the all accused.

8. Based on the above materials, the trial Court framed charges as stated in the second paragraph of this judgment, for which, all the accused denied the same. Thereby, in the trial Court, in order to prove the case, on the side of prosecution, as many as 10 witnesses were examined as P.W.1 to P.W.10 and 10 documents were marked as Exs.P.1 to P.10, besides 2 material objects.

9. Out of the said witnesses, P.W.1 is the injured witness. He has stated that previous to the occurrence, the appellant developed enmity with him. P.W.1 further stated that due to said enmity, on the date of occurrence, when he was inside his house along with his father, the appellant called him and invited for going to outside. In obeying the request of A.1, he went along with A.1 and after reaching the scene of occurrence, he stabbed P.W.1 on his stomach by using knife, due to which,

the intestine of P.W.1 came out. He further stated in his evidence about the assault made by the other accused.

10.P.W.2 is the neighbour residing near the house of P.W.1 has stated that on the day of occurrence, when P.W.1 going with A.1, by using knife he stabbed the P.W.1. Further, he has stated that after sustaining injury by P.W.1, he has made arrangement for admitting him in the hospital.

11.P.W.3 and P.W.4 are the independent witnesses have stated that P.W.9 prepared the observation mahazar in their presence. In the same way. P.W.5 and P.W.6 have stated that the confession statement given by P.W.1 was recorded by P.W.9 in their presence. Moreover, they stated about the recovery of M.O.1. P.Ws.8 to 10 are the Police Officers have stated about the registration of the case, the manner of investigation and filing of final report before the Magistrate Court.

12.When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he did not choose to examine any witness on his side nor marked any documents.

13.The learned Additional District and Sessions Judge, after perusing all the above materials found the accused guilty of attempting to commit murder, convicted and sentenced the appellant as stated supra. Aggrieved by the above conviction and sentence, the appellant is before this Court with the present appeal.

14. I have heard Mr.Ramesh Kumar, learned counsel for the appellant and Mr.G.Ramar, learned Government Advocate (Criminal side). I have also perused the records carefully.

15.The learned counsel for the appellant would contend that according to the evidence given by P.W.1, the scene of occurrence was not properly explained, he further contended as per the evidence given on the side of prosecution, the occurrence had happened in two places. The said contradiction alone is sufficient to hold that the appellant is falsely implicated in this case due to previous enmity.

16.Now considering the said submission with the evidence given by P.W.1, he has stated that near to the lamp post the appellant and the other accused had assaulted him. But, at the same time, he stated before the Doctor that the occurrence had happened at Door No.159-A, Manian Velappa Gounder Street, K.Pudur, Coimbatore. In this regard, P.W.9 the investigation officer admitted in his cross examination that in AR copy, it was mentioned that the occurrence had happened in the above said

address. At the same time, the learned counsel for the appellant further contend that according to First Information Report, the occurrence had happened at Door No.22, Moovar Nagar, Goundampalayam. In this regard, P.W.9, in his cross examination, has stated as per the investigation the occurrence had happened near the Ration Shop. In the said circumstances, in the rough sketch prepared by the investigation officer, the occurrence place was shown as near to the Ration shop. Accordingly, the evidence given by the prosecution witness is not clear with regard to the scene of occurrence.

17. Accordingly, on culminating the entire evidence given by the prosecution, it appears that the occurrence had happened at three places. The said contradiction is nothing but fatal to prosecution.

18. The second submission made by the learned counsel for the appellant that as per the evidence given by P.W.1 and P.W.2, after the occurrence, the police has not recovered the blood stained clothes. Without any reason, the said objects were not recovered by the investigating officer. So, it creates a doubt as to whether the alleged occurrence had happened as stated by the prosecution or not.

19. In this regard, reliance has been placed on the judgment of our Hon'ble Supreme Court in CrI.A.No.1884 of 2001 in the case of Ganesh Datt vs. State of Uttarkhand, wherein paragraph No.19 reads as follows:

"The situs of attack is also alleged to be not established by the prosecution. In the First Information Report the complainant PW3 Ram Lakhan has stated that he and his sons were sitting in their flour mill and were chatting at about 6.00 a.m. when the assailants came and attacked them. In the testimony, PW1 Bali Raj has stated that they were sitting in front of their house when the assault took place. PW2 Moti Lal has testified that the attack did not occur on flour mill but occurred in the verandah of house of Prabhunath. PW3 Ram Lakhan has testified that the place of occurrence is about 50 steps away from the flour mill. Thus there is inconsistency about the place of occurrence in their testimonies and a doubt creeps in. Though blood stained earth was claimed to have been seized from the occurrence place by the Investigating Officer PW7 Surrender

Singh, it was not sent for chemical examination which could have fixed the situs of the assault. In almost all criminal cases the blood stained earth found from the place of occurrence is invariably sent to the chemical examination and the report along with the earth is produced in the Court and yet this is one exceptional case where this procedure was departed from for reasons best known to the prosecution. "

20. Applying the said principle with the case in our hand, the above said observation of the Hon'ble Apex Court is squarely applicable to the facts of this case.

21. In this case also without any reasons, the blood stained articles were not recovered by the investigating officer, which shows, P.W.10 and P.W.11 conducted shabby investigation in this case.

22. Further, with regard to the First Information Report, the learned counsel for the appellant submitted that in the First Information Report it was mentioned that the written complaint was received from the P.W.1 for the registration of the case, per contra, this case has been registered only after recording the statement from P.W.1.

23. Now, on going through the evidence given by P.W.1, P.W.8 recorded the oral statement of P.W.1 in the presence of his father and thereafter he registered a case. Accordingly, the prosecution put forth two set of evidence with regard to the receiving of complaint.

24. Accordingly on culling out the entire evidence, the discrepancy available in respect to the place of occurrence and the non recovery of material objects would create a doubt whether the alleged occurrence has happened as stated by the prosecution or not.

25. The said aspects have not been decided by the trial Court in a perspective manner, thereby, applying the principles of our Hon'ble Apex Court in the judgment already stated, I am of the opinion that the prosecution has not proved his case beyond reasonable doubt.

In the result, the appeal is allowed. The conviction and sentence imposed upon the appellant in S.C.No.14 of 2011 is set aside. Appellant/accused is acquitted of all charges. Fine

amount, if any, paid shall be refunded to the appellant. Bail bonds, if any, executed shall stand cancelled.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional District and
Sessions Judge
(Fast Track Court No. I),
Coimbatore.

2. The Public Prosecutor,
High Court, Madras.

3. The Judicial Magistrate-I,
Coimbatore.

4. The Chief Judicial Magistrate,
Coimbatore.

5. The Inspector of Police,
Thudiyalur Police Station,
Coimbatore.

+1 cc Mr. Ramesh Kumar Chopra, Advocate, SR.No. 49822

सत्यमेव जयते

Cr1.A.No.535 of 2011

NRL (CO)
CSL/22.10.2018

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