

Bail Slip

That the Appellants 1 to 3 viz

- 1) Paneer @ Panner Selvam aged 26 years S/o.Kannan,
- 2) Rajkumar, aged 39 years S/o.Babu
- 3) Karthikeyan, aged 24 years S/o.Ayyasamy

(Accused 1, 2 & 4 in SC.No. 16/2011 on the file of the Additional District and Sessions Judge Fast Track Court III, Coimbatore)

were released on bail as per order of this Court dated 31/10/2011 and made in MP.1/2011 in Crl.A. 681/2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 14.06.2018

JUDGMENT PRONOUNCED ON : 28.08.2018

CORAM:

THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

Criminal Appeal No.681 of 2011

1. Panneer @ Panneer Selvam (Age 26 yrs)
S/o Kannan
 2. Rajkumar (Age 39 yrs)
S/o Babu
 3. Kanniappan (Age 24 yrs)
S/o Ayyasamy
- Appellants / Accused 1, 2 & 4

Vs

State by the Inspector of Police
Mettupalayam Police Station
Mettupalayam
Crime No.638/2008

Respondent / Complainant

Prayer: Criminal Appeal is filed under Section 374 of Criminal Procedure code, challenging the Judgment of conviction and sentences dated 04.10.2011 in SC No.16 of 2011 by the learned Additional District and Sessions Judge (Fast Track Court No.III), Coimbatore.

For Appellants : Mr. G. Karthikeyan

For Respondent : Ms. T.P. Savitha

Government Advocate (Criminal Side)

J U D G M E N T

The appellants are the accused No.1, 2 and 4 in SC No.16 of 2010 on the file of the learned Additional District and Sessions Judge (Fast Track Court No.III), Coimbatore. In the trial Court, along with the appellants, three other accused were facing the trial. There where as many as 3 charges framed against them. The first charge was under section 148 of IPC against the accused No.1 to 6. The second charge was under section 324 (2 Counts) against the accused No.4 to 6 and the third charge was under section 307 (2 Counts) against the accused No.1 to 3. After full trial, the accused No. 1 and 2 were convicted for the offence under section 324 (2 Counts). A4 was convicted under section 324 (Single Count) and sentenced him to undergo Rigorous imprisonment for 6 months and to pay a fine of Rs.1,500/-, in default to undergo one month Rigorous imprisonment for each count. The appellants and other accused were acquitted of by the trial Court from the other charges. Aggrieved by the conviction and sentences, the accused No.1, 2 and 4 are before this Court with this Criminal Appeal.

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

PW 1 Muthuramalingam, PW 2 Vellingiri, PW 3 Rajendran, PW 4 Selvaraj and PW 8 Sadiq Batcha are the residents of Mettupalayam. They are all doing Khalasa work. On 20.08.2018 at about 7.00pm, after finishing their regular work, they were walking near to Nellithurai Railway Gate, Mettupalayam. At that time, all the accused in this case, by using Iron Rod, broken beer bottle and small black sword started to attack the PW 1 to PW 4 and PW 8. Fear of it the same, PW 1 Muthuramalingam and PW 2 Vellingiri are ran away from that spot. The other accused were remaining in the same place. Thereafter, by using the iron rod, A1 attacked the PW 3 and causing injury on the back side of the head, Accused No.5 and 6 assaulted the PW 3 by using the broken beer bottle. Accused No.3 by using the knife stabbed on the right backside of the PW 3. Further, Accused No.4 and the other accused by using the iron rod, assaulted the PW 4 Selvaraj and established the injury all over the body. Subsequently they have referred to the Government Hospital, Mettupalayam.

3) After assaulting the PW 3 and PW 4, all the accused followed the PW 1 and PW 2 and near to Mahadevan Mariamman Temple they intercepted the PW 1 and PW 2 and by using the Iron rod, A2 attacked PW1. Further, A2 attacked the PW 2 by using the iron rod and the other accused are attacked the PW 1 and PW 2. Due to the assault made by the accused, PW 1 sustained fracture. Subsequently they were admitted in Government Hospital, Mettupalayam. After giving necessary treatment, PW 1 discharged from the Hospital. On the other hand, PW 2 referred to Coimbatore Medical College Hospital, for further treatment.

4) In Government Hospital, Mettupalayam Dr. Ilancheliyan gave treatment to PW 1 to PW 4 and PW 8 and the details of the injuries are as follows

PW 2 Vellingiri:

1. Contusion measuring 6cm x 4 cm over left arm and found tenderness
2. Contusion measuring 6cm x 4 cm over left forearm and severe tenderness
3. Contusion measuring 5cm x 4 cm over right elbow
4. Contusion measuring 4cm x 3 cm right mandible

According to him, the Injury No.3 is greivous in nature. Other injuries are simple in nature.

PW 3 Rajendran:

1. Laceration measuring 2 cm x 0.5 cm x 0.5 cm over right parietal region
2. Laceration measuring 1.5 cm x 1 cm x 1 cm over right buttock

PW 4 Selvaraj:

1. Contusion measuring 3cm x 2cm over left parietal region
2. Abrasion measuring 1cm x 0.2cm over let ear
3. Severe tenderness over left shoulder

PW 8 Sadiq Batcha:

1. Unable to move left shoulder due to severe pain and swelling
2. Tenderness over left elbow , small abrasion measuring 0.5 x 0.2 cm over it
3. Severe tenderness over right knee

According to him, the injuries found on the PW 3, PW 4 and PW 8 are simple in nature. He issued Accident Register under Ex.P.4 to Ex.P.8.

5) On 20.08.2018, at about 10.30 pm, on receipt of intimation from Government Hospital, Mettupalayam PW 12, the then Inspector of Police went over to the Hospital and recorded the statement from PW 1. Thereafter on the same day, at about 22.30 hours, he registered a case in Cr.No.632/2008 under section 147, 148, 394, 323, 307, 341 and 506(ii) of IPC. The statement given by PW 1 and the printed First Information Report was marked as Ex.P.1 and Ex.P.9 respectively. After registration of the case, he despatched the First Information Report to the Court. Further, the copy of the First Information Report was sent to the Inspector of Police along with the copy of the statement given by PW 1 for investigation.

6) PW 13, the then Inspector of Police, Mettupalayam, taking the case for investigation and on the same day, at about 23.15 hours, rushed to the scene of occurrence and in the presence of the one Mr. Muthukumaran and Mujeena Rahman prepared Observation Mahazar under Ex.P.10. Further, he drawn the Rough Sketch under Ex.P.11. He recovered 2 small black stones and iron

pipe from the scene of occurrence, for that he prepared the Recovery Mahazar under Ex.P.12. Further in the presence of the same witnesses, he went to the Nellithurai Railway Gate and after seeing the second occurrence place, he prepared Observation Mahazar under Ex.P.13 and drawn the Rough Sketch under Ex.P.14. Further he recovered black stones and iron rods under Ex.P.15 under the cover of Mahazar. He examined the witnesses and recorded the statements. At about 4.30 am, near to Karamadai Railway gate, he arrested the accused No.1, 3, 4 and 5. After the arrest, he recorded the confession statement given by the 1st and the 3rd accused. The said confession statements are recorded in the presence of the same witnesses, who stands as the witnesses to the preparation of Observation Mahazar. In pursuance of the confession statement given by accused No.1 and 2, PW 13 recovered the iron rod and the broken beer bottle. Admitted portion of the confession statement of the accused No.1 and 2 and recovery Mahazar prepared by PW 13 are exhibited as Ex.P.16 to Ex.P.19 respectively. Thereafter, he made arrangements for sending the accused to the judicial custody. Subsequently, since PW 13 transferred from the said post, PW 14 Ilamurugan took up the case for investigation. He examined the Radiologist and recorded the statement. Subsequently PW 15 Mani filed the Final Report after verifying the records.

7) Based on the above materials, the trial Court framed as many as 3 charges as detailed in the first Paragraph of this Judgment. The accused denied the same and in order to prove the case, on the side of the prosecution, as many as 15 witnesses were examined, 20 documents and 5 material objects were marked.

8) Out of the above witnesses, PW 1, who is the injured in this case has stated in his evidence that due to the previous enmity on 20.08.2008 at about 7.00 pm, while all the injured came from the work spot, near Nellithurai Railway gate, all the accused came there with deadly weapons, and attacked the PW 3, PW 4 and PW 8. Further he has stated that the accused No.1 and 2 by using the iron rod, broken glass bottles assaulted PW 3 on his back side and causing the injury. Further he has stated that due to the assault made by the accused No.2, PW 2 sustained a fracture. Further says that the 3rd accused stabbed the PW 3 and the other accused have assaulted all the injured.

9) PW 2 who is also an injured in this case has stated in his evidence as on date of occurrence, when he was returned from the work spot along with other injured near Nellithurai Railway Gate, all the accused intercepted them and by using iron rod and broken glass assaulted the PW 3, PW 4 and PW 8. Fear of it, he and PW 1 ran away from the Railway Gate. He further stated that all the accused chased and near to the temple, attacked him and causing the injury to him by using the iron rod

and broken glass. Further he stated that due to the assault made by the 2nd accused, he sustained an open fracture near to the left hand wrist. When he fell down, the 3rd accused by using the iron rod assaulted him along with the other accused and ran away from the scene of occurrence.

10) PW 3 has stated during the time of occurrence, A1 by using the iron rod assaulted on the back side of his head and causing the injury. Further the accused No.1 and 6 also attacked on his head by using the beer bottle. Another injured PW 4 has spoken about the assault made by the accused No.4 and about the assault made by other accused.

11) PW 5 is the resident of Mettupalayam has stated in his evidence on 20.08.2018 at about 7.30 pm, near Mahadevan Mariamman temple, he saw PW 1 and PW 2 with injuries. Immediately, he made arrangements for admitting them in a Hospital. PW 6, alleged to be an eye witness to the alleged occurrence, turned hostile and he did not support the prosecution case in any manner. PW 7 has stated about the preparation of Observation Mahazar by PW 13. According to him, he stands as witnesses for the preparation of the said documents. PW 9 and PW 10 are the witnesses to the confession statement given by the 1st and 2nd accused and for recovery, they turned hostile and did not support the case of the prosecution in any manner. Further, their evidences were not in a way to connect the accused with the alleged crime.

12) PW 11 Dr. Ilanchelian has spoken about the treatment given to PW 1 to PW 4 and PW 8. He has also spoken about the nature of injuries found on the injured. PW 12, the then Sub-Inspector of Police has spoken about the receipt of information from the Hospital, recording the statement of PW 1 and about the registration of the case. PW 13 to PW 15 have spoken about the details of investigation and filing of charge Sheet against the accused.

13) With the above incriminating materials, the accused were questioned under section 313 Cr.P.C. and for which, they denied the same as false. However they did not chose to examine any witnesses. Their defence was total denial.

14) Having considered all the above, the trial Court convicted the accused No.1,2 and 4 as detailed in the 1st paragraph of this Judgment. Challenging the above said conviction and sentences, the accused No.1,2,4 are now before this Court with the present appeal.

15) I have heard Mr. G. Karthikeyan, learned Counsel for the appellant, Ms. T.P. Savitha, Government Advocate (Criminal Side) learned Government Advocate for the respondent

and perused the records carefully.

16) The learned counsel for the appellant would submit that there was a enmity between the injured and the accused. Due to the political rivalry, PW 1, who belongs to the rival party lodged the false complaint against the accused, who are all the members of the Hindu Munnani. He further submits that the evidence given by PW 1 to PW 4, scene of occurrence, time of occurrence are having lot of contracdictions. The learned Counsel for the appellants would further submit that the occurrence had not completed in the manner as it is projected by the prosecution. According to him and as per the evidence of the injured, the weapons used by the accused are not tallied. Further, their evidences are having contradictions with regard to the scene of occurrence. So genesis and origin of occurrence was suppressed by the prosecution. Accordingly, the evidence of the prosecution witnesses has not proved their case beyond all reasonable doubts.

17) Per Contra, the learned Additional Public Prosecutor would oppose this Criminal Appeal. According to him, there is no reason to reject the evidence of PW 1 to PW 4, the injured witnesses. The very fact that the evidence given by the injured witnesses will clearly prove the presence of the accused in the occurrence place. The evidence given by PW 5 would go to fortify that PW 1 and PW 2 were present at the scene of occurrence. Further, he submits the evidence given by PW 1 to PW 2 are duly corroborated by the Medical evidence. Thus according to the learned Public Prosecutor, the prosecution has proved the case, proved the appellants are warrantly caused simple hurt to PW 1 and PW 2 and thereby committed the offence under section 324 IPC.

18) I have considered the rival submissions and perused the available records carefully.

19) In the trial Court, the statement given by PW 1 was marked as Ex.P.1. In the said document, PW 1 has stated that prior to the occurrence, he was the member in Hindu Munnani party. Further he has stated that some time before the occurrence, he joined in ADMK party along with PW 2 to PW 4 and PW 8. On the other hand, all the accused in this case are the members in Hindu Munnani, and they are developing the enmity with all the injured due to the reason that they are joining in ADMK Party. Further he has stated in the complaint that all the accused by using the iron rod and broken beer bottle assaulted them in the Railway Gate, Nellithurai. Fear of it, PW 1 and PW 2 ran away from the said place. But the accused No.1 and 2 chasing them and near to Mariamman Kovil by using the iron rod attacked on his head by saying "eP ,j;njhL Koe;J nghlh". The remaining accused also attacked them. Now on going through the evidence given by PW 1 to PW 4, it is true with regard to using of weapon

by the accused, it appears some minor contradictions are available in their evidence. However, the injured witnesses gave evidence in the trial Court after 3 years from the date of occurrence. So we cannot expect the evidence with accuracy, as per the averment made in the document and as per the statement given before the Investigating Officer. In this regard, reliance is placed in the Judgment of our Honourable Apex Court reported in 2010 (4) MLJ CrL. Page No. 495, it reads as follows

"As the mental abilities of a human being cannot be expected to attuned to absorb all the details of the incident minor discrepancies are bound to occur in the statement of witness."

So, on considering the principle of our Honourable Apex Court, in this case also, the present occurrence has staged by 5 persons, so we cannot expect the evidence with accuracy in respect to the weapons used by the accused as well as about the mode of attack committed by the accused.

20) Secondly, with regard to the place of occurrence, in the charge sheet, it was mentioned that A3, A4 and A8 were assaulted near to Nellithurai Railway Gate. On the other hand, PW1 and PW 2 were assaulted by the accused near to the Mariamman temple. In this regard, the evidence given by PW 1 disclosed that the accused attacked him near to Railway Gate, Nellithurai. He did not say that the occurrence was happened near to Mariamman Temple. On the other hand, PW2 says that they were attacked by the accused near to Mariamman Temple. Further he has stated in his cross examination as the alleged occurrence has happened near to the Railway Gate. So on culminating the entire evidence of PW 1 and PW 2, it indicates that their evidence is entirely different in respect to the occurrence from the place indicated in the charge. In this regard, both PW 1 and PW 2 deposed that one Zamaludeen was admitted them in the Hospital. But the said Zamaludeen has not been examined in the trial Court as a witness to the occurrence. Accordingly, in order to prove the place of occurrence, PW 1 and PW 2 gave a contradictory evidence, which resulted, whether the occurrence had happened as stated by the prosecution or not. Moreover, during the time of cross examination, PW 2 has stated that the occurrence happened in a dark area. On the other hand PW 1 stated in his evidence that in the occurrence place, light is available. It also creates a doubt, whether the occurrence had happened in the night hours or in the day time. If really the occurrence happened in a darkness, it is not possible for seeing the accused at the time of assault. Accordingly, the genesis and origin of the occurrence having been not properly explained before the trial Court. In this regard reliance is placed on (2016) 13 Supreme Court Cases 171, Bhagwan Sahai and another Vs State of Rajasthan, in which it is held that

"The aforesaid view of the High Court is

devoid of legal merits. Once the Court came to a finding that the prosecution has suppressed the genesis and origin of the occurrence and also failed to explain the injuries on the person of the accused including death of father of the appellants, the only possible and probable course left open was to grant benefit of doubt to the appellants."

21) So in view of the principle laid by our Honourable Apex court, in this case also the genesis and origin have been suppressed by the prosecution. But in the trial Court, without considering this aspect in a perspective manner, the appellants are convicted as already stated above. So findings arrived by the Trial Court needs interference.

22) Therefore, in view of the above discussions, this Court comes to the conclusion that the prosecution is not proved the case beyond all reasonable doubt. Accordingly, the appeal is allowed and the conviction and sentence imposed upon the appellant by the learned Additional District and Sessions Judge (Fast Track Court No.III), Coimbatore in SC No.16 of 2010 dated 04.10.2011 is hereby set aside and the appellants are acquitted. Bail bonds executed, if any, shall stand terminated. Fine amount paid, if any, is directed to be refunded to the appellants.

Sd/-
Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

vrn

To

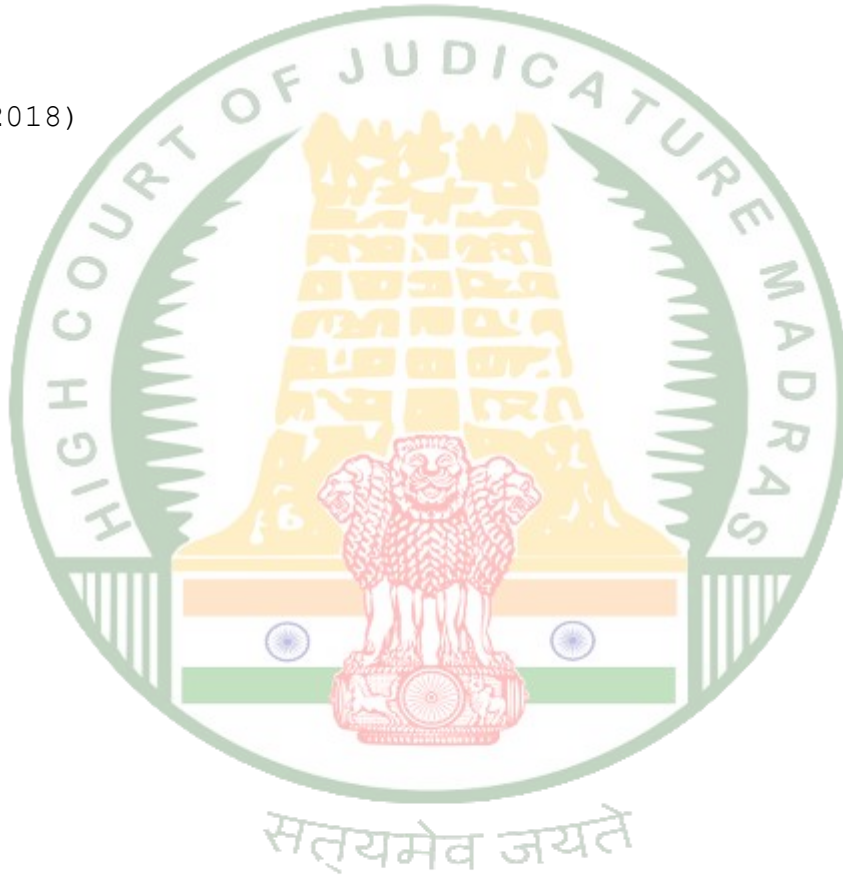
1. The Additional District and Sessions Judge,
(Fast Track Court No.III)
Coimbatore
2. Do Thro Principle District and Sessions Judge,
Coimbatore.
3. The Inspector of Police
Government of Tamil Nadu
Mettupalayam Police Station
Coimbatore District

4. The Public Prosecutor
High Court
Madras

5. The Section Officer
Criminal Section
High Court, Chennai.

Criminal Appeal No.681 of 2011

VD(CO)
GN(20/09/2018)



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