

Bail Slip.

The Appellant/Accused namely Rajendran S/o Krishna aged 44 years (A1) was released on bail vide order dated 01.04.2010 in M.P.Nos.1 of 2010 in CrI.A.No.215/2010.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10.07.2018

CORAM :

THE HON'BLE MR. JUSTICE R.PONGIAPPAN

CrI.A.No. 215 of 2010

Rajendran

.. Appellant/Accused No.1

Vs.

State: Rep by
The Inspector of Police,
E 3 Teynampet Police Station
Chennai.

..Respondent/complainant

Prayer: Appeal filed under Section 374 (2) Cr.P.C., challenging the judgment of conviction and sentence dated 08.03.2010 in S.C.No.233 of 2009 on the file of the learned Additional District and Sessions Judge (Fast Track Court IV), Chennai.

For Appellant : Mr.M.Rajavelu

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

JUDGMENT

The appellant is the first accused in S.C.No.233 of 2009 on the file of the learned Additional District and Sessions Judge (Fast Tract Court No.IV), Chennai. He stood charged for the offences under Sections 324, 326, 307 and 506(ii) r/w 34 of IPC. Along with the appellant, 3 other accused were arrayed as A-2 to A-4 and they are facing the trial for the above charges. By a judgment dated 08.03.2010, the trial court acquitted the other accused and convicted the appellant alone for the offences under Sections 341 and 326 of IPC and sentenced him to pay a fine of Rs.500/-, in default to undergo 2 months Simple Imprisonment for the offence under section 341 of IPC. He has further convicted

and sentenced to undergo 2 years Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default to undergo 3 months Simple Imprisonment for the offence under Section 326 of IPC. Challenging the said conviction and sentence, the appellant is before this Court with the present appeal.

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

(i). P.W.1 (Naresh @ Minnal Babu), was residing in Dr.Thomas Road, T.Nagar, P.W.2 (Latha) and P.W.3 (Mano Ranjitham) are his wife and mother-in-law respectively. On 04.06.2018, in the night hours while P.W.1 was returning to his home after finishing the regular work, near 26th Block, all accused in this case intercepted and attacked the P.W.1 by saying "you are the informer to the police", in the said transaction by using the aruval, the appellant attacked the P.W.1, when P.W.1 attempted to escape from the place, the aruval used by the accused hit his palm and thereby, P.W.1 sustained injury in the size of 5x2x0.5cm in his left hand palm. In the meanwhile, the other accused (now acquitted) by using the iron rod and wooden log assaulted the P.W.1. After hearing the hue and cry of P.W.1, P.W.2 and P.W.3 came to the occurrence place and after seeing them all the accused ran away from the scene of occurrence. The said occurrence was witnessed by the P.W.4 and P.W.7. Immediately, after the occurrence, P.W.2 took the P.W.1 to E-3 Teynampet Police Station and subsequently, he made arrangements for admitting the P.W.1 in Royapettah Government Hospital.

(ii). In the Royapettah Government Hospital, P.W.12 (Dr.Krishnan) gave treatment to P.W.1 and found the following injuries:

"A deep incised wound over the palmar aspect on left hand 5X2X0.5cm exposing the deeper sutures."

(iii). After giving the necessary first aid, he referred the P.W.1 to the Government Stanley Hospital, Chennai for further treatment. In the Government Stanley Hospital, P.W.10 (Dr.Muthukrishnan) gave treatment and found that the P.W.1 sustained head injury. In this regard, he issued accident register under Ex.P.5. Subsequently, P.W.11 (Dr.Jagan), examined the P.W.1 and issued a wound certificate under Ex.P.6 stating that the injury sustained by the P.W.1 is grievous in nature.

(iv). While so, on 05.06.2008, at about 10.00a.m., P.W.13 (Rajendran), the then Sub-Inspector of Police, Teynampet, on receipt of intimation from the hospital, went to the Government Stanley Hospital, in which, P.W.1 was admitted as an inpatient. After reaching the Hospital, he recorded the statement from P.W.1 and on the same day, he returned to the police station and

registered a case in Crime No.1106 of 2008 for the offences under Sections 147, 148, 341, 323 and 324 of IPC. Ex.P.8 is the printed First Information Report. Ex.P.1 is the statement given by the P.W.1.

3. After registration of the case, he went to the scene of occurrence and in the presence of P.W.5 (Raja) and P.W.8 (Ezhumalai), he prepared an Observation Mahazar under Ex.P.9. Further, he drawn the rough sketch under Ex.P.10. He examined the witnesses and recorded their statements. Further, on the same day, he examined the Doctor and received the copy of the accident report.

4. On 07.06.2008, at about 10.30 a.m., near to Thomas Road, on intimation, P.W.13 arrested all the accused, in the presence of P.W.9 (Rangan) and one Murugan, he examined the present accused and recorded the confession statement. In the disclosure statement, the appellant admitted the guilt and made a statement that he is willing to handover the aruval, iron rod, wooden log, which are used for the commission of offence now kept in the top side of the hut situated near to Park. Pursuant to the said statement, P.W.13, the witnesses and the accused went to the Park and recovered M.O.1 to M.O.3 under the cover of Mahazar.

5. Thereafter, P.W.13 made arrangements for sending the accused to judicial custody. Finally, he recorded the statements from the Dr.Muthunarayanan working in the Government Stanley Hospital. On completion of investigation, he filed a final report against all the accused under Sections 341, 326, 324, 323, 307 r/w 34 of IPC.

6. Based on the above materials, the trial court framed the charges, all the accused denied. In order to prove the case, on the side of the prosecution, as many as 14 witnesses were examined as P.W.1 to P.W.14 and 11 documents were marked as Ex.P.1 to Ex.P.11, besides 3 materials objects.

7. Out of the said witnesses, P.W.1 (Naresh @ Minnal Babu) who is the victim in this case, has stated in his evidence that on 04.06.2008 when he was returning to his home, the present accused and the other 3 accused waylaid him and by using the aruval, iron rod and wooden log attacked on his left hand palm, shoulder and on his face. He had further stated after hearing the hue and cry, P.W.2 and P.W.3 came to the scene of occurrence and after seeing them, all the accused ran away from the said occurrence place. Immediately, he has been admitted in the

Royapettah Government Hospital and thereafter, he was referred to Government Stanley Hospital. In the Government Stanley Hospital, the police officers came and recorded the statements.

8. P.W.2 (Latha) is the wife of the P.W.1, she is the eye-witness to the occurrence. She has stated that on the date of occurrence after hearing the noise from the street, she went to the occurrence place and saw the accused, using the M.O1 and M.O.3 and attacking P.W.1. Further, she has stated that after seeing the public, all the accused ran away from the occurrence place.

9. P.W.3 (Mano Ranjitham) is the mother-in-law of P.W.1 has stated that at the time of occurrence, all the accused in this case by using M.O.1 to M.O.3 attacked P.W.1 and causing injuries.

10. P.W.4 (Murugan) has given evidence in support of the evidence given by P.W.2 and P.W.3.

11. P.W.5 (Raja) is the witness to the Observation Mahazar. He has not stated anything in support of prosecution.

12. P.W.6 (Balaraman) has also not supported the case of prosecution.

13. P.W.7 (Khan) who is the witness to the occurrence has stated that at the time of occurrence, all the accused by using the aruval, iron rod and wooden log assaulted P.W.1.

14. P.W.8 (Ezhumalai) has not stated anything in support of the prosecution.

15. P.W.9 (Rangan) is the resident of Thomas Road has stated as on 07.06.2008 when he was standing near to 26th Block, P.W.13 arrested all the accused and recorded their confession statements. Pursuant to the confession statement given by him, M.O.1 to M.O.3 were recovered by the Investigating Officer. According to him, he is the witness to the confession statement as well as to the mahazar prepared for the recovery of M.O.1 to M.O.3.

16. P.W.10 to P.W.12 are the Doctors, who gave evidence in respect to the injury sustained by P.W.1 and in regard to the

issuing of accident register copy and wound certificate.

17. P.W.13 and P.W.14 are the Police Officers who speaks about the receiving of complaint, registration of the case, investigation and about the filing of final report.

18. The trial Judge, with reference to the incriminating materials adduced by the prosecution questioned the accused under Section 313 Cr.P.C. and for which, they pleaded not guilty. However, on the side of the accused, the appellant herein examined himself as D.W.1, he has stated as on 04.06.2008 at about 8.30a.m. after finishing the regular work when he was returning to his home situated near to the 26th Block, P.W.1 by using the aruval attacked on his left eyebrow. Further, he stated after the occurrence, the neighbours admitted him in the hospital. The discharge summary issued in regard to the treatment given to him is Ex.P.1. Further, he stated about lodging of complaint before the Teynampet Police Station.

19. The learned trial Judge on perusal of the materials placed and considering the arguments advanced on both sides convicted and sentenced the appellant/accused as stated supra. Challenging the same, the present appeal has been filed.

20. Today, when the appeal is taken up for consideration, I have heard the arguments of Mr.M.Rajavelu, learned counsel appearing for the appellant, Mrs.T.P.Savitha, learned Government Advocate (Crl.Side) appearing for the respondent and also perused the records carefully.

21. The first and foremost contention raised by the learned counsel for the appellant is that, during the time of occurrence, P.W.1 had assaulted D.W.1 and causing injury on his left eyebrow, the contents of Ex.D.1 proves the same. But P.W.1 being the politically influenced person lodged a false complaint before the police and falsely implicated the present appellant and the other accused in this case. He would contend that the contradictions available, in the evidence given by the eye-witnesses, falsifies the case of prosecution. Further, he has submitted that the eye-witnesses examined on the side of the prosecution are all related with each other. So, the non-examination of independent witness on the side of prosecution create a doubt whether the alleged occurrence had happened as stated by the prosecution or not. He would further contend that the above circumstances and contradictions create a serious doubt over the prosecution case.

22. Per contra, the learned Government Advocate (crl.side) would contend that P.W.1 to P.W.3 are the eye-witnesses to the occurrence, who are all none other than the wife and mother-in-law of P.W.1. The occurrence took place in a public place and

near the house of P.W.1. It is possible for them to see the occurrence. Further, he would submit that the evidence given by the eye witnesses is corroborated through the medical evidence. According to him, interference is not necessary with conviction and sentence passed by the trial Court.

23. I have considered the rival submissions made on either side.

24. In this case in order to establish the occurrence, P.W.2, P.W.3 and P.W.7 are examined as eye witnesses to the occurrence, they all have stated during the time of occurrence, four accused including the present appellant and other unknown three accused assaulted P.W.1 on his forehead. But, on going through the evidence given by P.W.1, he has stated that he sustained injury in the left hand palm, on his backside, on his face, both in legs and hands. But the Doctor, who gave treatment to the P.W.1 has stated that P.W.1 sustained only one lacerated injury in the left hand palm. So, on comparing the evidence given by the Medical Officer with the evidence of P.W.1 it creates a doubt as to whether the accused assaulted P.W.1 as stated by P.W.1 or not. Accordingly, the evidence given by the medical officer is not in accordance with the evidence given by P.W.1. If really, the accused assaulted P.W.1 as stated by P.W.1, there may be a chance for receiving the injuries all over the body. So the evidence given by P.W.1 in respect to the occurrence is not convincing one and found in exaggerated manner.

25. That apart, P.W.2 who is the wife of P.W.1 has stated in the chief-examination that the appellant, second and third accused (now acquitted) by using the knife, iron rod assaulted the P.W.1. The said evidence is supported through the evidence of P.W.3., P.W.4 and P.W.7. In this occasion, it is to be noted as per the evidence of Doctors, P.W.1 sustained only one lacerated injury on the left hand palm.

26. Further, the learned counsel appearing for the appellant would contend that before the alleged occurrence, P.W.1 assaulted the appellant, thereby, the appellant sustained injury. For which, DW1 lodged the complaint before Sub Inspector of Police, Teynampet, but he has not registered the case, which shows the partial investigation of the Investigation Officer.

27. In this regard, on considering the submission made by the appellant's counsel, in the Trial Court, on the side of the defence, the appellant herein was examined as D.W.1. In his chief-examination, he clearly stated that on 04.06.2008 at about 8.30 a.m., while he went to the Thomas Road, P.W.1 abused him in a filthy language. Further, he stated that due to the abuse, a quarrel have been started between them, consequently, P.W.1 assaulted him on the forehead just above his left eyebrow.

Thereafter, he lodged a complaint in E3, Teynampet Police Station. He has further stated after receiving the complaint, the Police Officials sent him to the Government Hospital for treatment. In order to corroborate the said evidence, the discharge summary pertaining to the treatment given to the appellant was exhibited as Ex.D1. The said document was issued in Government Hospital, Royapettah. In the said circumstances, since the document was issued by the reputed institution, we cannot suspect the genuineness of the document. In the said document, it was mentioned that the appellant was admitted as in-patient in the hospital on 04.06.2008 and discharged on 05.06.2008. Further, he sustained head injury and injuries in some other parts of the body. In this regard, P.W.13, Investigation Officer has stated in his cross-examination that the appellant had sent to the hospital after issuing a memo by him in Police Station. It shows the Investigation Officer having the knowledge with regard to the injury sustained by the appellant.

28. In the said circumstances, reliance is placed in the case of Vethamuthu Anthony Raj vs. The State, rep. by The Inspector of Police made in CrI.A.(MD)No.26 of 2011 dated 22.12.2011 wherein, this Court has observed as follows:

"14. In our considered opinion, there is a very serious flaw in the case of the prosecution. It is needless to point out that under 588(A) of the Police Standing Orders, it is the duty cast upon the investigating officer to investigate into the complaint in the counter case as well, to gather materials including the wound certificates of the accused and to produce them all in the Court. It is a well settled legal position that as and when there is a counter complaint preferred by an accused in respect of the very

same occurrence, to be fair and impartial on his part, the investigating officer should register the said complaint, investigate into the allegations made therein and then to submit a report either accepting or rejecting the allegations made by the accused party."

29. So, the observation made by this Court is squarely applicable to this appeal also. In this case also, both P.W.1 and D.W.1 lodged the complaint before P.W.13. After receiving those complaints, P.W.13 did not take any action on the complaint made by D.W.1 (appellant). So, the inaction on the part of the Investigating Officer is nothing but against the provisions of the police standing order as stated above.

30. Accordingly, in the light of the above discussion, this Court comes to the conclusion that the defective investigation conducted by the Investigation Officer, is nothing but fatal to prosecution. The said aspect is not considered by the Trial Court in perspective manner. Hence the conviction and sentence awarded by the learned Additional Sessions Judge needs interference.

31. In the result, this Criminal Appeal is Allowed and the conviction and sentence imposed upon the appellant/first accused in S.C.No.233 of 2009 dated 08.03.2010 by the learned Additional District and Sessions Judge (Fast Track Court IV), Chennai is set aside and the appellant/accused are acquitted of the charges. The bail bond, if any, executed by the appellant/accused shall stand cancelled. The fine amount, if any, paid by appellant/accused shall be refunded to him.

s/d-

Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

msv

To

1. The Metropolitan Magistrate
No.XVIII, Saidapet, Chennai.
2. The Chief Metropolitan Magistrate,
Egmore, Chennai-8.
3. The learned Additional District and
Sessions Judge (Fast Track Court IV),
Chennai.
4. The Inspector of Police,
E 3 Teynampet Police Station
Chennai.
- 5.The Superintendent,
Central Prison, Puzhal,
Chennai.
6. The Public Prosecutor,
High Court, Madras.

Crl.A.No. 215 of 2010

SP(30/10/2018)