

Bail Slip

Crl.A.No.248/2010

The Petitioner/Appellant/Accused namely N.K.Sunilkumar @ Kodi Male age 28years S/O.Surendran in Accused No.1, And namely K.Shibin Male 29 years S/O.Surendran Accused No.2, was directed to be released on bail by the Court of this Court dated 20/04/2010 and made in Crl,MP.1/2010 in Crl.A.No.248/2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11.07.2018

CORAM :

THE HON'BLE MR. JUSTICE R.PONGIAPPAN

Crl.A.No. 248 of 2010

1.N.K.Sunil Kumar @ Kodi Suni
2.K.Shibin

..

Appellants /
Accused 1 & 2

Versus

The Sub- Inspector of Police,
Palloor Police Station,
Mahe.

Respondent /
Complainant

Prayer: Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, against the order of conviction and sentence dated 08.04.2010 in S.C.No.27 of 2004 by the learned II Additional Sessions Judge, Puducherry.

For Appellants

: Mr.A.M.Rahamath Ali
for Mr.K.Balasubramanian

For Respondent

: Mr.D.Bharathachakravarthy
Public Prosecutor (Puducherry)

J U D G M E N T

The accused are arrayed as A-1 and A-2 in S.C.No.27 of 2004 on the file of the learned II Additional Sessions Judge, Puducherry. They stood charged for offences under Sections 341,

324, 326 and 307 r/w 34 of IPC. The accused denied the charges and opted for trial. Therefore, they were put on trial on the charges. After full-fledged trial, the learned II Additional Sessions Judge, found them guilty of offences under Sections 341 r/w 34 of IPC and 326 r/w 34 of IPC. The accused were accordingly convicted and sentenced to pay a fine of Rs.500/- each, in default to undergo three months simple imprisonment for the offence under Section 341 r/w 34 IPC and to undergo rigorous imprisonment for seven years with a fine of Rs.1,000/- each, in default to undergo six months simple imprisonment for the offence under Section 326 r/w 34 of IPC., however, they were acquitted of the other charges under Sections 324 and 307 r/w 34 of IPC. Challenging the conviction and sentence, the accused are before this court with the present criminal appeal.

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

[i]. P.W.1 [Ajithan] is a resident of Palloor. On 12.11.2003 at about 4.00p.m., when he was going to Chembra, the first appellant [A-1] assaulted him with koduval on his both legs below knees and the second appellant [A-2] assaulted him with iron rod on his head and they also threatened him not to mingle with other political party workers. After the incident, he was taken to the Government Hospital, Mahe, by one Jijulal, Shinoj and Jijeesh. After receiving the intimation from the Hospital, the Police Officers, Palloor, went to the Hospital and recorded the statement [Ex.P.1] from P.W.1.

[ii]. On the same day, at about 4.50p.m., P.W.5 [Dr.Rajeevan] attached with the Government Hospital, Mahe examined P.W.1 and found the following injuries:

- "1. crack fracture left lateral malleolus.
2. lacerated injury 5 x 1 cm on the scalp.
3. small cut injury below left knee 1.5 x 0.5 cm.
4. multiple abrasion in front of left chin.
5. contusion on left chin 3 x 2 cm.
6. multiple injuries in front of right chin."

He opined that injury no.1 is grievous, while the other injuries sustained by P.W.1 are simple in nature. The wound certificate issued by him was exhibited as P.4.

[iii]. On 12.11.2003 at about 7.15 hours, P.W.10 [Parasuraman], the then Sub-Inspector of Police, Palloor Police Station received the intimation from the Government Hospital, Mahe and proceeded to the Hospital. After recording the statement from the injured [P.W.1], he registered a case in Crime No.115 of 2003 for the offences under Sections 341, 324 and 307 r/w 34 of IPC. Ex.P.8 is the printed First Information Report.

[iv]. After the registration of the case, P.W.10 proceeded to the scene of occurrence and in the presence of

P.W.3 and one Muralidharan, he prepared an Observation Mahazar under Ex.P.2 and Crime Details Form under Ex.P.3. Further, in the presence of same witnesses, he recovered blood stained chappals [M.O.3]. After preparation of those documents, he made an arrangement for taking photographs. Further, he examined the witnesses and recorded their statements. On 16.11.2003, he arrested the appellants and made arrangements for their remand. After examination of the witnesses, he altered the Section of law as 341, 326, 307 and 324 r/w 34 of IPC and on completion of investigation, he filed a final report before the learned Judicial Magistrate, Mahe.

[v]. After receiving the final report, the learned Judicial Magistrate assigned the case number as P.R.C.No.1 of 2004. On appearance, the documents, which are all relied on by the prosecution were furnished to the appellants. Thereafter, the case has been committed to the Court of Session, Puducherry for disposal.

[vi]. In the Court of Session, Puducherry, the case number was assigned as S.C.No.27 of 2004. In the trial Court, charges have been framed for the offences under Sections 341, 326, 307 and 324 r/w 34 of IPC, the appellants denied the charges and pleaded not guilty.

[vii]. Thereafter, on the side of prosecution, as many as 10 witnesses were examined as P.W.1 to P.W.10 and 8 documents were marked as Exs.P.1 to P.8, besides, two material objects were marked as M.O.1 and M.O.2.

[viii]. Out of the above witnesses, P.W.1 is the de facto complainant as well as the injured, he has stated in his evidence as when at the time he was going to Chembra, the appellants 1 and 2 attacked him by using iron rod and koduval, on his head and on both legs (i.e). below knees and after the assault, he was taken to the Government Hospital, Mahe, by one Jijulal, Shinoj and Jijeesh.

[ix]. P.W.2 is the resident of Challakara, he was working as an Auto driver. He is the family friend of P.W.1 from his childhood. He deposed that on 12.11.2003, when he was driving the auto rickshaw at Chembra with his friends viz., Jijulal and Shinoj, he saw the incident, in which, both the accused assaulted the P.W.1 with iron rod and koduval. Further, he stated that P.W.1 sustained injuries on his forehead and on his legs and thereafter, they took the P.W.1 to the Government Hospital, Mahe.

[x]. P.W.3 is the resident of same area, on 12.11.2003, when he was going there by an auto rickshaw, he found the Sub-

Inspector of Police and two constables inspecting the scene of occurrence and at their request, he stood as witness for the preparation of Observation Mahazar.

[xi]. P.W.4 is the resident of Palloor, he was working as auto driver. He deposed in his evidence as on 12.11.2003, the first appellant engaged his auto from Palloor and alighting near his house, paid a fare of Rs.8/-. Police officials enquired him and he did not supported the case of prosecution in any manner.

[xii]. P.W.5 is the Doctor attached with the General Hospital, Mahe, has spoken about the treatment given to the injured and about the opinion given by him.

[xiii]. P.W.6, P.W.7 and P.W.8 have turned hostile and did not support the prosecution case in any manner.

[xiv]. P.W.9 is a Photographer. He deposed that he has taken photographs in the scene of crime as per the directions of the Inspector of Police and it was marked along with the negatives as Ex.P.7.

[xv]. P.W.10, the then Sub-Inspector of Police, Puducherry has spoken about the receipt of information, recording the statement of P.W.1 and the registration of the case in Crime No.115 of 2003 under Sections 341, 326, 307 and 324 r/w 34 of IPC. He further stated about the investigation done by him and filing of charge sheet against the accused.

[xvi]. When the above incriminating materials were put to the accused under Section 313 of Cr.P.C., for which, they denied the same as false. Having considered all the above, the trial court convict them as detailed in the first paragraph of this judgment. Challenging the above said conviction and sentence, both the accused are now before this Court with the present Criminal Appeal.

3. Today, when the appeal is taken up for consideration, I have heard the arguments of Mr.A.M.Rahamath Ali, learned counsel appearing for the appellants, Mr.D.Bharathachakravathy, learned Public Prosecutor (Puducherry) appearing for the respondent and also perused the records carefully.

4. The learned counsel appearing for the appellants would submit that in order to accept the case of prosecution, the evidence given by P.W.1 alleged to be the victim in this case, P.W.2, who is an eye-witness to the occurrence and the evidence given by the Doctor, who treated the P.W.1 alone are available. He has further submitted according to the evidence of P.W.2, 2nd accused is not present at the time of occurrence.

Further, his evidence shows that the weapon used by the first appellant is varied with the weapon actually mentioned in the complaint. Further, he submits that the evidence in regard to the registering the case itself creating a doubt whether the alleged occurrence had happened as stated by P.W.1 or not. Accordingly, he prayed to allow this appeal.

5. On the other hand, the learned Public Prosecutor [Puducherry] submitted that the minor contradiction available in the evidences alone not sufficient to hold that the entire prosecution case is false one.

6. On considering the either side submission, it appears that the case has been registered based on the statement given by P.W.1. But on going through the First Information Report, it was mentioned as the complaint has been received from P.W.1, at the same time it is not clear about that P.W.1 had lodged the written complaint or the oral complaint. In this regard, P.W.1 has stated in his chief examination in the Hospital, the statement given by him is recorded by the Police officers. Now, on going through the complaint [Ex.P.1], there is no endorsement to show that the statement of P.W.1 obtained orally. So, no doubt in respect of receiving the complaint, the evidence put forth by the prosecution before the trial Court is having the ambiguity. However, in this aspect, the trial Court considered the decision of the Division Bench of the Honourable Gujarat High Court in STATE OF GUJARAT vs. BHARWAD JAKSHIBHAI NAGRIBHAI reported in 1990 CrL. Lj 2531 and hold that the contradiction arisen in the registration of the case is not sufficient for disbelieving the entire prosecution case. I am also agree with the view taken by the trial Court.

7. With regard to the second submission, as per the evidence of P.W.1, he has been immediately admitted in the hospital on the date of occurrence itself. But in regard to the admission and in regard to the injury sustained by the P.W.1, the Accident Register copy issued by the Doctor is a crucial document. In fact, it is the earliest document created immediately after the occurrence but the same has not been exhibited in the trial Court. In the trial Court for the reason best known to the Investigating Officer, in order to prove the nature of injury sustained by the P.W.1, the Wound Certificate issued by the Doctor [P.W.5] was marked as Ex.P.4. Now, on going through Ex.P.4, it was prepared on 20.12.2003, the said date is after one month from the date of occurrence. Further, for non-marking of Accident Register copy, no explanation is offered on the side of prosecution. In this aspect, the Investigating Officer had not properly conducted the investigation and obtained the Accident Register copy. The said lapse is nothing but fatal to the prosecution.

8. Coming to the next aspect, the learned trial Judge based on the judgment of CHACKO vs. STATE OF KERALA reported in (2004) 12 SCC 269 came to the conclusion that for convicting the appellants, the solitary testimony of P.W.1 is sufficient and accordingly, he convicted the appellants. It is true in the judgment referred by the Trial Court, it was observed that the solitary testimony of single witness is sufficient to accept the case of prosecution entirely. However, the said evidence shall be in a form of wholly reliable one. But in this case in our hand, the evidence given by P.W.1 reflects that the second appellant was not present at the time of occurrence. The said evidence is against the averment made in the complaint given by P.W.1. Moreover, he has stated in his cross examination that he knows the differences between the iron rod and iron pipe. In this area, he has stated in the complaint that the appellants by using the iron pipe assaulted him, but in the evidence, he has stated that the accused assaulted by using the iron rod. So, the evidence given by P.W.1 with regard to the weapons also creates a doubt whether the alleged occurrence had happened as stated by P.W.1 or not. In order to accept the evidence of P.W.1, the contradictions arisen from the said evidence necessarily should be clarified through the evidence of other eye witnesses or through the documents, but in this case the other eye-witnesses, who were all examined on the side of prosecution had not supported the case of prosecution.

9. Accordingly, the testimony of P.W.1 is not in the form of wholly reliable. In the trial Court, the said aspect is not considered in perspective manner. So, the findings arrived at by the trial Court needs interference. The evidence given by P.W.1 is not a cogent and convincing one. Moreover, non-marking of Accident Register copy is also diluted the case of prosecution.

10. In the light of the above discussions, this Criminal Appeal is allowed. The conviction and sentence imposed upon the appellants by the learned II Additional Sessions Judge, Puducherry, in S.C.No.27 of 2004, dated 08.04.2010 are hereby set aside and the appellants/accused are acquitted. Bail bonds executed, if any, shall stand terminated. Fine amount paid, if any, is directed to be refunded to the appellants/accused.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

msv/sri

To

1.The Judicial Magistrate,
Mahe.

2.The II Additional Sessions Judge,
Puducherry.

3.The Superintendent,
Central Prison, Puducherry

4.The Sub- Inspector of Police,
Palloor Police Station,
Mahe.

5.The Public Prosecutor,
High Court, Madras

+2cc to Mr.K.Balasubramaniam, Advocate, S.R.No.45425

+1cc to the Government Pleader -cum Public Prosecutor,,
S.R.No.45808

Crl.A.No.248 of 2010

VGII (CO)
GSP (14/09/2018)



WEB COPY