

Bail Slip

Crl.A No.411 of 2010

The Appellants/Accused No.273 namely Venkatesh (A2), Alex (A3) were directed to be released on bail as per order of this Court dated 19/07/2010 made in Crl MP No.1/2010 in Crl A No.411/2010,

and the appellant herein/Accused namely Jeeva @ Jeevanandham (A1) was directed to be released on bail as per order of this Court dated 25/11/2010 made in Crl.M.P.No.2/2010 in Crl A No.411 of 2010.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 20.07.2018

JUDGMENT PRONOUNCED ON : 28.08.2018

CORAM:

THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

Criminal Appeal No.411 of 2010

1. Jeeva @ Jeevanandam (Age 23/2010)
S/o T. Vedagiri
 2. Venkattesh (Age 28/2010)
S/o Abbiya
 3. Alex (Age 25/2010)
S/o Nagalingam
- Appellants / Accused No.1 to 3

Vs

State by the Inspector of Police
C-2 Elephant Gate Police Station
Chennai
(Crime No. 4/2008)

.... Respondent / Complainant

Prayer: Criminal Appeal is filed under Section 374(2) of Criminal Procedure code, to set aside the Judgment and conviction dated 30/06/2010 by the learned Additional District and Sessions Judge, (Fast Track Court No.II) Chennai in SC No.158 of 2010 and acquit the appellants.

For Appellant :Mr.V. Gopinath, Senior Counsel for
Mr. S.N. Arunkumar

For Respondent :Mr. T.P. Savitha
Government Advocate (Criminal Side)

J U D G M E N T

The appellants are arrayed as accused No.1 to 3 in SC No.158 of 2010 on the file of the learned Additional Sessions Judge, Fast Track Court No.II, Chennai. They stood charge for the offence under section 341, 307, 506(ii) of IPC. By a Judgment dated 30.06.2010, the trial Court convicted them under section 341 IPC and sentenced to undergo one month Rigorous imprisonment and to pay a fine of Rs.500/- in default to undergo 1 week simple imprisonment. Further, they were convicted under section 307 of IPC and sentenced to undergo 7 years rigorous imprisonment and to pay a fine of Rs.5000/- in default he has to undergo 6 months simple imprisonment. Challenging the said conviction and sentence, the appellants are before this Court with this appeal.

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

The first accused Jeevanandam is running Electrical sound service shop in Door No.42/85 Adiappannaicker Street, Chennai. Near to his shop, PW 1 Govindan running a cycle shop. Prior to the occurrence, the sister's son of the PW 1 is fall in love with one Bhavani. The first accused in this case also fall in love on the said Bhavani. Due to the prior enmity between the first accused and PW 1 on 03.01.2006, at about 9.10 am, when PW 1 is near to Kamala Store, all the accused intercepted him and by saying

“ஓத்தா தேவடியா பையா பவானியை திருமணம் செய்ய நீ தடையா இருக்க, நீ உயிரோட இருந்தால்தானே எனக்கு தடையா இருப்ப இத்தோடு செத்து தொலை”

and assaulted by using the knife, the first accused assaulted the PW 1 on the head. In the same way, the other accused also by using the knife assaulted PW 1 on his right leg. Due to the intervention of the public, all the accused threatened the PW 1 by showing the knife. PW 2 is the wife of PW 1 took the injured and admitted in the Hospital.

3) In the Hospital, PW 1 was treated by one Dr. Seethalakshmi. During the time of giving treatment, she found the following injuries on PW 1

- 1st Lacerated wound measuring 8 x 1 x 2 cm in the vertex region
- 2nd Lacerated wound measuring 10 x 1 x 2 cm in left parietal

- region
- 3rd Lacerated wound measuring 3 x 1 x 1 cm in right parietal region
- 4th Lacerated wound measuring 4 x 3 x 3 cm in right forearm

According to her, in the above said injuries, injury No.1 is grievous in nature and others are simple in nature. In this regard, Wound Certificate issued by the said Doctor is marked as Ex.P.4. On the same day, PW 11 Sivasubramaniam, the then Sub Inspector of Police, Muthaiyalpettai Police Station received an intimation from Appollo Hospital in respect to the occurrence. Immediately he rushed to the Hospital and recorded the statement given by the PW 1 under Ex.P.1. Thereafter, a case has been registered in Cr.No.4 of 2008 under sections 341,324,307 and 506 (ii). Ex.P.5 is the First Information Report. After registration of the case, PW 11 handed over the First Information Report to PW 12 for investigation.

4) On receipt of the First Information Report, PW 12, the then Inspector of Police took up the case for investigation, rushed to the place of occurrence and in presence of Kali and Siva, he prepared Observation Mahazar under Ex.P.6. Further he drawn the Rough Sketch under Ex.P.7. He recorded the statement from PW 1. Further, in the presence of PW 8 Padmavathy and Revathy, he recovered blood stained clothes from PW 1 under the cover of Mahazar. Ex.P.9. On 04.01.2008, at about 10.30 am, he secured 1st and 2nd accused and recorded the confession statements in the presence of one Selvaraj and Dhanavel. In pursuance to the confession statement given by the accused No.1, he went to Basin Bridge and recovered the 3 knives as identified by the 1st accused from the place where it was concealed. Admitted portion of the confession statement given by the 1st accused is marked as Ex.P.8. After recovering the knives, he made arrangements for sending the accused to the Judicial custody. After completing investigation, he filed final Report against the accused under section 341,324,307 and 506(ii) of IPC.

5) Based on the above materials, trial Court framed the charges against the accused and they denied the same. In order to prove the case on the side of the prosecution, as many as 12 witnesses were examined, as PW 1 to PW 12 and 9 documents were marked as P1 to P.9. Besides 6 Material objects.

6) Out of the said witnesses, PW 1 is the Defacto complainant, as well as the injured in this case. He has stated in his evidence that prior to the occurrence, there was a frequent quarrel with the 1st accused due to the love affair of his sister son with the girl Bhavani. He has further stated, at the time of occurrence, all the accused intercepted him and by using the knife assaulted on his head and on his right hand.

Further he had stated about the statement given to the Investigating Officer.

7) PW 2 is the wife of PW 1 has stated that at the time of seeing her husband, he was lying in the road. Thereafter, with the help of one Shanmugam, he made arrangement for admitting the PW 1 in a Hospital. PW 3 to PW 5, who are all the eye witnesses to the occurrence has not stated anything in support of the case of prosecution and they are all treated as hostile witnesses.

8) PW 6 Shanmugam has stated that, he made arrangements to admit PW 1 in a Hospital. PW 7 Balaji has stated about the previous enmity of PW 1 with the 1st accused except that he has not stated anything about the occurrence. PW 8 Padmavathy deposed that on the date of occurrence through Ex.P.2 Mahazar, the Police Officer recovered the blood stained clothes from PW 1. PW 9 is a witness to the confession statement given by the accused.

9) PW 10 is a Doctor attached with Appollo Hospital. He has stated that during the time of giving treatment to PW 1, one Seethalakshmi was worked as Doctor in the said Hospital, and as of now, she is not working in the Appollo Hospital, he knows the handwriting of the said Seethalakshmi. He has stated about the particulars of injuries mentioned in the Wound Certificate. PW 11 and and PW 12 are the Police Officers, have spoken about the receiving of complaint, details of investigation and about the filing of Final Report.

10) The learned trial Judge, with reference to the incriminating evidence adduced by the prosecution, questioned the accused under section 313 Cr.P.C. and for which, they pleaded not guilty. However they did not chose to examine any witness, nor to mark any documents on their side.

11) 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 and challenging the same, the present appeal has been filed.

12) I have heard. Mr.V. Gopinath and Mr. S.N. Arunkumar, learned Counsels for the appellant, Ms. T. Savitha, learned Government Advocate (Criminal Side) for the respondent and perused the records carefully.

13) The learned Counsel for the appellant would contend that there are lot of contradictions in the evidence of PW 1. The witnesses examined on the side of the prosecution in order to prove the recovery of Material objects, and to prove the

occurrence are not supported the case of the prosecution. Further, the blood stained materials recovered from the PW 1 have not been sent to the chemical examination. He would further contend that there is a delay in submission of records. He further contend that the above contradictions create a serious doubt on the prosecution case.

14) Per contra, the learned Additional Public Prosecutor would submit that the evidence given by PW 1 is duly corroborated through the medical evidence and through the evidence given by the Investigating Officers. He further contend that this is a settled position that a solitary testimony of single evidence is sufficient to hold that the prosecution case as genuine one. Accordingly, there is no need to interfere in the conviction and sentence passed by the trial Court.

15) I have considered the rival submissions made on either side. Admittedly, except the PW 1, other eye witnesses examined on the side of the prosecution are not supported the case of the prosecution. Further, the witnesses examined on the side of the prosecution to prove the confession statement as well as the recovery of material objects has also not supported the case of the prosecution. Thereby, in order to corroborate the evidence of PW 1, the evidence of Doctor, who gave treatment to PW 1 and evidence given by the police officers alone available to find out the guilt of the accused.

16) In this regard, on go through the evidence given by PW 1, during the time of chief examination he depose that the first accused by using the knife attacked on his head. Further, he has stated that the other accused assaulted and causing injury on his right hand. In the said situation, on going through the evidence given by the medical Officer, PW 1 sustained injuries on his head. If really, the first accused assaulted PW 1 as stated by him, it is not possible for sustaining 4 lacerated injuries on his head. Further, as per Wound Certificate PW 1 is having the injury in the chest and in the left hand. Now on considering the said two versions, no doubt the medical evidence is not supported the evidence given by PW 1. So in the absence of other evidences to show the occurrence, we can not come to the conclusion and presume that the accused herein are alone assaulted PW 1, since the offences have been completed at 9.30 pm in a busy area. It is very easy to the Investigating Officer for finding out the correct picture in respect to the tracking and about the assault made by the accused. But in this case, the evidence given by PW 1 is not in accordance with the evidence given by the medical Officer. Since the 1st accused is having previous enmity, we can not come to the conclusion that the accused alone committed the offence.

Moreover, in the evidence given by PW 1, he has not stated anything about the particulars of 2nd accused. So without any reason, there is no necessity for the 2nd and 3rd accused for assaulting PW 1 in order to kill him. Even though, there is no necessity for sending the blood stained clothes and Aruval for chemical examination. It is necessary that the sole testimony of PW 1 is cogent and convincing one and it should be corroborated through the medical evidence. Further, it must in the form of wholly reliable one. But in this case, the evidence given by PW 1, is not corroborated through the evidence given by the medical Officer with regard to the injury sustained by PW 1.

17) The learned trial Judge without considering the said aspect in a perspective manner convicted the accused, which needs interference. 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 appellants by the learned Additional District and Sessions Judge, Chennai in SC No.158 of 2010 dated 06.12.2012 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(CS IX)

//True Copy//

Sub Assistant Registrar

vrn

- 1.The VIII Metropolitan Magistrate,
Egmore Town, Chennai.
- 2.The Chief Metropolitan Magistrate,
Egmore Chennai.
- 3.The Additional District and Sessions Judge,
(Fast Track Court No.II),
Chennai.
- 4.The Inspector of Police,
C2 Elephant Gate Police Station,
Chennai.

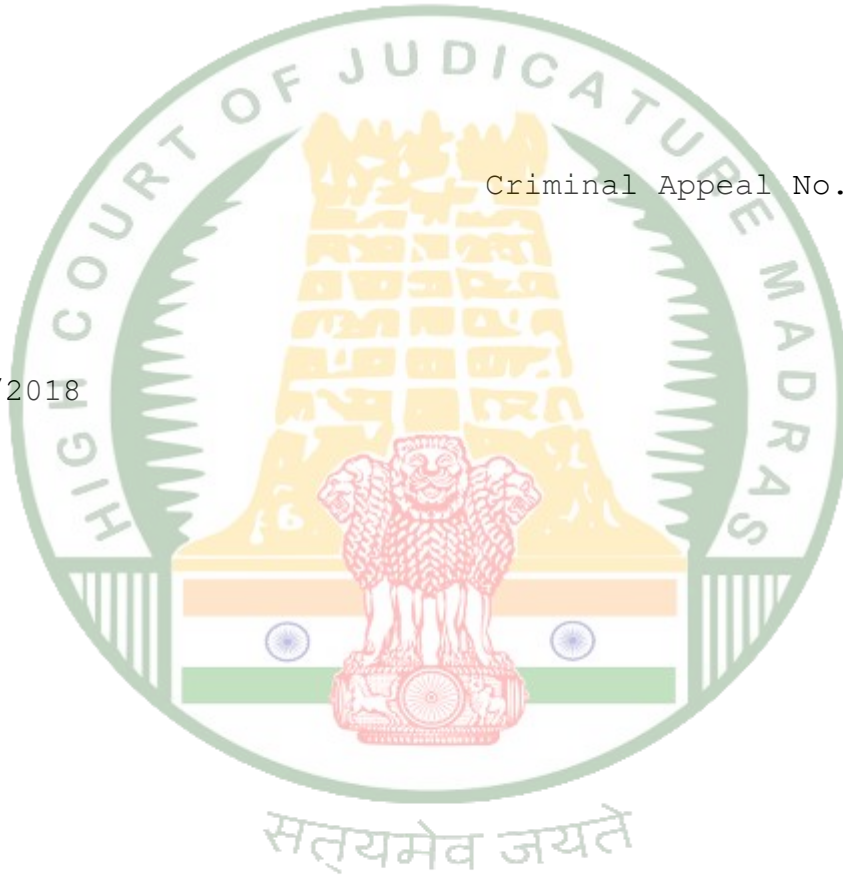
5.The Superintendent,
Central Prison,
Puzhal, Chennai.

6.The Public Prosecutor,
High Court, Madras. 600 104.

+lcc to Mr.S.N.Arunkumar, Advocate Sr.59251

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