

Bail Slip

The Appellants / Accused namely,

1.Vijayan, S/O Masilamani

2.Veera @ Veeramani, S/O Nagappan

3.Sundar, S/O Sambamoorthy in Sc.No.447/2008 on the file of the 4th Additional Sessions Judge, Chennai were directed to be released on bail as per order dated 03/09/10, 01/12/2010 and 24/08/2010 made in CrI.MP.No.2/10, 3/2010 and 1/2010 in CrI.A.No.453/2010 respectively on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 12.06.2018

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

CrI.A.No.453 of 2010

1.Vijayan

2.Veera @ Veeramani

3.Sundar

... Appellants / Accused 1, 3 & 5

versus

State rep. by

The Inspector of Police,

B-1 North Beach Police Station,

Chennai - 600 001.

.. Respondent / Complainant

Prayer: Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, against the order of conviction and sentence dated 15.07.2010 in S.C.No.447 of 2008 by the learned IV Additional Sessions Judge, Chennai.

For Appellant : Mr.V.Paarthiban

For Respondent : M/s.T.P.Savitha

Government Advocate [Criminal Side]

J U D G M E N T

The present appeal has been directed against the conviction and sentence awarded by the learned IV Additional Sessions Judge, Chennai in S.C.No.447 of 2008 dated 15.07.2010.

2. Today when the appeal is taken up for consideration, it is brought to the notice of this Court by the learned counsel appearing for the appellants as well as by the learned Government Advocate [Criminal Side] appearing for the State, as of now the second and third appellants are no more.

3. Recording the submission made by both parties, the appeal filed by the second and third appellants are closed as abated. Now, this Criminal Appeal confines only in respect to the first appellant alone.

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

4.1. The appellant and the other accused in this case are friends. The de facto complainant, namely, Ramesh [P.W.1] and Vijayan [P.W.2] are the resident of Chennai. Further, they belong to one Govindarajan Group whereas, the appellant and the other accused are belong to Kuttiappan Group. On 13.07.1996 at about 1.45p.m., due to the previous enmity with an intention to kill the de facto complainant, the appellant and the other accused came near to the Hotel Nataraj. After assembling, the appellant directed the other accused to kill P.W.1 and P.W.2. In obeying the command made by the appellant, all the accused in this case formed themselves as an unlawful assembly and by using the knives attacked the P.W.1 and P.W.2 and caused injuries on various parts of the body. Due to the said attack, P.W.1 and P.W.2 sustained multiple grievous injuries.

4.2. During the time of occurrence, the appellant attempted to attack the P.W.1 but the same was restrained by P.W.1 through his hands. So, P.W.1 had sustained injuries in his hands and also on his head. Since all the accused in this case, surrounded the P.W.1, the others persons, who are all present near to the scene of occurrence are not ready to take rescue. After the incident, the police officers attached with the traffic wing admitted the P.W.1 and P.W.2 in the Government Stanley Hospital. In the said Hospital, they were treated by Dr.K.Nagappan [P.W.8] and one Dr.R.Govinda babu [P.W.9]. According to them P.W.1 and P.W.2 sustained multiple grievous injuries. For which, P.W.9 issued the Wound Certificates under Ex.P.2 and Ex.P.3.

4.3. Thereafter, P.W.10 [Gopinath], the then Inspector of Police, B-1 North Beach Police Station, received the intimation from the Hospital and went to the Government Stanley Hospital. He recorded the statement [Ex.P.1] from P.W.1. Further, he recovered the blood stained shirt [M.O.2]. After receiving the statement from P.W.1, he registered a case in Crime No.972 of 1996 for the offences under Sections 147, 148,

341, 324, 307, 506[ii] r/w 304 I.P.C. Ex.P.6 is the printed First Information Report.

4.4. After the registration of the case, P.W.10 proceeded to the scene of occurrence and in the presence of one Balan and Rajan, he prepared an Observation Mahazar [Ex.P.7]. Further, he draw the rough sketch [Ex.P.8]. He recovered the blood stained soil, sample soil, blood stained tar, sample tar under the cover of mahazar [Ex.P.9]. The said material objects have been marked as M.O.4 to M.O.7 in the trial Court.

4.5. In continuation of the investigation, P.W.10 examined the witnesses and recorded their statements. After securing all the accused, he submitted an application before the learned Magistrate for the police custody of the accused. Based on the order passed by the learned Magistrate, the accused Murugan was taken over to the police custody and thereafter, as per the confession given by him, 5 knives [M.O.2], which were used for the commission of offence were recovered. Subsequently, he sent a requisition to the Court for sending the material objects for chemical examination. After receiving the chemical examination report, P.W.10 examined the chemical examiner and recorded the statement. After concluding the investigation, he filed a final report against the appellant and the other accused for the offences as stated in the First Information Report.

4.6. After receiving the final report, the learned VII Metropolitan Magistrate, George Town, Chennai, took the same on file as P.R.C.No.2274 of 2007 and after the appearance of all the accused, he furnished the copy of the documents relied on by the prosecution. Thereafter, he committed the case to the Court of Session, Chennai Division.

4.7. In the Court of Session, a case has been numbered as S.C.No.447 of 2008 and made it over to the learned IV Additional Sessions Judge, Chennai, for disposal. In the said Court, after giving sufficient time, the appellant and the other accused were questioned with regard to the allegation levelled against them, for which, all of them have pleaded not guilty. Further, the charges have been framed for the offences under Sections 147, 148, 341, 307 r/w 149 of IPC. Subsequent to the framing of charges, in order to prove the case of prosecution, 10 witnesses were examined as P.W.1 to P.W.10 on the side of the prosecution, besides 16 documents and 7 material objects were marked as Ex.P.1 to Ex.P.16 and M.O.1 to M.O.7 respectively.

4.8. Out of the said witnesses, P.W.1 and P.W.2 gave evidences with regard to the previous enmity as well as about the weapons used, the place of occurrence, the manner of assault committed by the appellant and about the treatment given to them

in the Hospital. Further, they stated about the lodging of complaint before the police officers. P.W.3 to P.W.6 alleged to be the eye-witnesses for the occurrence had not stated anything about the occurrence and they are all treated as hostile witnesses.

4.9. With regard to the preparation of Observation Mahazar, P.W.10 deposed that on 31.07.1996 at about 3.45p.m., the Inspector of Police prepared those documents. P.W.8 is the Doctor attached with the Stanley Hospital stated in his evidence about the treatment given to the P.W.1 and P.W.2. P.W.9 in his evidence stated about the nature of injuries sustained by the P.W.1 and P.W.2 and issued the would certificates under Ex.P.2 and Ex.P.3. According to him, P.W.1 sustained the following injuries:

- "1. centre of the forehead 3 x 1 x 1 cm;
2. right shoulder 7 x 4 x 3 cm;
3. right fore arm 3 x 2 x 2;
4. right palm 15 x 4 x 1;
5. left palm 14 x 4 cm left ankle;
6. 14 x 5 cm and right leg 17 x 5 cm."

According to P.W.9, P.W.2 sustained the following injuries;

- "1. stab wound at the left elbow;
2. stab injury at the left foot joint 6 x 8 cm;
3. 8 x 3 cut injury in the head;
4. 3 x 1 cm stab injury in the left elbow;
5. 5 x 2 cm long stab wound in the right leg;
6. 3 x 1 cm long long stab wound in the left leg;
7. 5 x 1 cm injury on the right buttock."

4.10. The learned trial Judge with reference to the incriminating materials adduced by the prosecution questioned all the accused under Section 313 of Cr.P.C., for which, they pleaded not guilty, however, they did not choose to examine any witnesses nor did they mark any documents on their side.

4.11. After concluding the trial, the learned IV Additional Sessions Judge, Chennai, came to the conclusion that the appellant is found guilty for the offences under Sections 147, 148, 341, 307 r/w 149 of IPC. The accused was accordingly convicted and sentenced to undergo rigorous imprisonment for two years for the offences under Sections 147 and 148 of IPC and to undergo simple imprisonment for one month for the offence under

Section 341 of IPC. Further, he awarded 7 years rigorous imprisonment with a fine of Rs.5,000/-, in default to undergo three months simple imprisonment for the offence under Section 307 of IPC. Challenging the conviction and sentence, the appellant is before this Court with the present criminal appeal.

5. I have heard the arguments of Mr.V.Paarthiban, learned counsel appearing for the appellant, Ms.T.P.Savitha, learned Government Advocate [Criminal Side] appearing for the State and also perused the records carefully.

6. The first and foremost contention raised by the learned counsel appearing for the appellant is that when at the time of admitting P.W.1 and P.W.2 in the Hospital they told to the Doctor that they were assaulted by 20-15 persons respectively but a case has been foisted only against 6 persons. Moreover, the evidences of P.W.1 and P.W.2 discloses only 6 persons were attacked them and committed the offence. So, the contradictions with regard to the number of persons participated in the occurrence shows that the case of the prosecution is entirely false one. Accordingly, the learned counsel prayed for setting aside the order of conviction passed by the trial court.

7. On going through the submission made by the learned counsel appearing for the appellant, it is true P.W.1 and P.W.2 stated before the Doctor that they were assaulted by numerous persons. In this regard, reliance is placed on the judgment of our Honourable Apex Court in BHARGAVAN vs. STATE OF KERALA reported in (2004) 12 SCC 414 wherein, it has observed as follows:

"So far as non-disclosure of the names if the names of the assailants to the Doctor is concerned, the same is really of no consequences. The primary duty of the doctor is to treat the patient and not to find out by whom the injury was caused. The plea in this regard is clearly unacceptable."

8. According to the observation of our Honourable Apex Court, disclosing the manner of offence, committed by the accused and number of persons participated in the occurrence before the Doctor is not having any consequence. Now applying the said principle with the case in our hand, the contradiction with regard to the number of persons assaulted the P.W.1 and P.W.2 is not having any value and accordingly, the contention raised by the learned counsel appearing for the appellant is rejected.

9. The second submission made by the learned counsel appearing for the appellant is that the evidence recorded on the side of the prosecution are all having lot of contradictions. In the said circumstances, the evidences given by the P.W.1 and P.W.2 are not tangible and convincing one. The injuries sustained by the P.W.1 and P.W.2 may be occurred due to the attack made by the other accused in this case. Hence, convicting the appellant alone is not justifiable. Further, he submitted that without considering the said circumstances, the trial Court convicted the appellant is nothing but erroneous one. Accordingly, he prayed for allowing the appeal.

10. On considering the said submission with the evidence recorded in the trial court, 6 eye-witnesses have been examined on the side of prosecution to prove the occurrence, in which, P.W.1 and P.W.2 are the victims, they alone sustained injuries in the occurrence, the other witnesses, namely, P.W.3 to P.W.6 have not supported the case of the prosecution, thereby, they are all treated as hostile witnesses. Even a person, who attested in the observation mahazar also has not prepared to give evidence against the appellant and the other accused.

11. Since the occurrence had happened in a gruesome manner, it is common that the public are not supposed for giving evidence against the appellant. In the case of CHACKO vs. STATE OF KERALA reported in (2004) 12 SCC 269 in which, our Honourable Apex Court has clearly held that the sole testimony of a single witness is sufficient to accept the entire prosecution case, thereby, this Court hold that the non-support of the other witnesses is not a ground for allowing this appeal.

12. In the trial court, the complaint given by the P.W.1 was marked as Ex.P.1. In the said statement, he clearly stated the name of the accused and the manner of attack committed by the appellant and the other accused. In order to support the said averments, P.W.1 clearly stated in the chief examination that during the time of occurrence, the appellant [Vijayan] and the deceased Veeramani attacked him. The said evidence was clearly corroborated through the evidence of P.W.2 without any omission and contradiction.

13. Complementary to the said evidence, the Doctor, who treated the P.W.1 and P.W.2 gave evidence in support to the injuries sustained by them. So, the expert evidence has also corroborated the evidence given by the P.W.1 and P.W.2. Accordingly, the second submission also did not have any merits for disbelieving the case of prosecution. So, the entire evidence given by the prosecution witnesses clearly proves that

at the time of occurrence, the appellant and the other accused with an intention to murder the P.W.1 and P.W.2 attacked them by using the deadly weapons. The trial court has considered the prosecution evidences in a perspective manner and came to the conclusion that the appellant is found guilty and sentenced him as stated above. Hence, there is no need to interfere with the findings arrived at by the trial judge.

14. In the light of the above discussion, this Criminal Appeal is dismissed and the sentence awarded by the learned IV Additional Sessions Judge, Chennai in S.C.No.447 of 2008 dated 15.07.2010 is confirmed. The respondent is directed to secure the appellant and make arrangements for sentencing him to undergo the remaining period of conviction. It is also directed that the period of sentence already undergone by the appellant shall be given set off, as required under Section 428 Cr.P.C.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1.The IV Additional Sessions Judge,
Chennai.

2.The Inspector of Police,
Government of Tamil Nadu,
B-1 North Beach Police Station,
Chennai - 600 001.

3.The Section Officer,
V.R. Section,
Madras High Court,
Chennai.

4.The Metropolitan Magistrate,
No.XV George Town,
Chennai

5.-do- Through the Chief Metropolitan,
Magistrate, Egmore,
Chennai.

6.The Superintendent,
Central Prison,
Puzhal Chennai

7.The Metropolitan Magistrate,
No.VII, George Town, Chennai

8.The Public Prosecutor,
High Court Madras.

+lcc to Mr.V.Parthiban, Advocate, S.R.No.36411

Cr1.A.No.453 of 2010

SPD(CO)
GSP(28/08/2018)



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