

Bail Slip.

The Petitioner/Accused 1 to 4 viz., 1.Madan @ Madankumar @ Mannandai 2.Deva @ Devakumar 3.Sasi @ Sasikumar @ Snake 4.Eboy @ Chinna Eboy @ Lakshnaman are released on bail in Crl.M.P. No. 1/2010 in Crl.A. No. 557/2010 dated 08.10.2010.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 06.06.2018

JUDGMENT PRONOUNCED ON : 22.06.2018

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Crl.A.No.557 of 2010

1.Madan @ Madankumar @ Mannandai  
2.Deva @ Devakumar  
3.Sasi @ Sasikumar @ Snake  
4.Eboy @ Chinna Eboy @ Lakshnaman .. Appellant /  
Accused 1 to 4

versus

State Represented by  
Inspector of Police,  
H-3, Tondiarpet Police Station,  
Chennai - 600 081. .. Respondent /  
Complainant

Prayer: Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, against the judgment of the learned Additional District and Sessions Judge [Fast Track Court No.1], Chennai in S.C.No.193 of 2010 dated 04.09.2010.

For Appellants : Dr.G.Krishnamurthy  
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 Additional District and Sessions Judge [Fast Track Court No.1], Chennai in S.C.No.193 of 2010 dated 04.09.2010, as erroneous one.

2. In the Trial Court, the appellants are arrayed as A.1 to A.4, after concluding trial the learned Additional District and Sessions Judge convicted them for the offences

under Sections 341, 294[b], 342, 324, 326, 352, 307, 506[ii] r/w 34 I.P.C. and sentenced to undergo imprisonment and pay a fine as below:-

| Accused | Section of law | Sentence                                                                                                                         |
|---------|----------------|----------------------------------------------------------------------------------------------------------------------------------|
| A.1     | 341 I.P.C.,    | Simple imprisonment for one month and to pay a fine of Rs.100/- in default to undergo simple imprisonment for one week.          |
|         | 294(b) I.P.C., | Simple imprisonment for one month and to pay a fine of Rs.200/- in default to undergo simple imprisonment for two weeks.         |
|         | 326 I.P.C.,    | Rigorous imprisonment for four years and to pay a fine of Rs.2,000/- in default to undergo simple imprisonment for three months. |
|         | 307 I.P.C.,    | Rigorous imprisonment for six years and to pay a fine of Rs.3,000/- in default to undergo simple imprisonment for six months.    |
| A.2     | 341 I.P.C.,    | Simple imprisonment for one month and to pay a fine of Rs.100/- in default to undergo simple imprisonment for one week.          |
|         | 342 I.P.C.,    | Simple imprisonment for six months and to pay a fine of Rs.300/- in default to undergo simple imprisonment for one month.        |
|         | 294(b) I.P.C., | Simple imprisonment for one month and to pay a fine of Rs.200/- in default to undergo simple imprisonment for two weeks.         |
|         | 326 I.P.C.,    | Rigorous imprisonment for four years and to pay a fine of Rs.2,000/- in default to undergo simple imprisonment for three months. |
|         | 307 I.P.C.,    | Rigorous imprisonment for six years and to pay a fine of Rs.3,000/- in default to undergo simple imprisonment for six months.    |

| Accused | Section of law | Sentence                                                                                                                      |
|---------|----------------|-------------------------------------------------------------------------------------------------------------------------------|
| A.3     | 341 I.P.C.,    | Simple imprisonment for one month and to pay a fine of Rs.100/- in default to undergo simple imprisonment for one week.       |
|         | 294(b) I.P.C., | Simple imprisonment for one month and to pay a fine of Rs.200/- in default to undergo simple imprisonment for two weeks.      |
|         | 324 I.P.C.,    | Rigorous imprisonment for one year and to pay a fine of Rs.500/- in default to undergo simple imprisonment for one month.     |
|         | 307 I.P.C.,    | Rigorous imprisonment for six years and to pay a fine of Rs.3,000/- in default to undergo simple imprisonment for six months. |
| A.4     | 341 I.P.C.,    | Simple imprisonment for one month and to pay a fine of Rs.100/- in default to undergo simple imprisonment for one week.       |
|         | 294(b) I.P.C., | Simple imprisonment for one month and to pay a fine of Rs.200/- in default to undergo simple imprisonment for two weeks.      |
|         | 324 I.P.C.,    | Rigorous imprisonment for one year and to pay a fine of Rs.500/- in default to undergo simple imprisonment for one month.     |
|         | 307 I.P.C.,    | Rigorous imprisonment for six years and to pay a fine of Rs.3,000/- in default to undergo simple imprisonment for six months. |

3. The gist of the prosecution case, is as follows:

[i]. P.W.1 [Shankar] is the son of P.W.2 [Kasthuri]. On 02.08.2009, in the morning P.W.2 quarrelled with one Ponni, who is the mother of the appellants 1 to 3 and sister of the fourth appellant. On the same day, in the evening hours, P.W.1 returned to his house at about 4.30p.m. at that time while P.W.1 stepped into the staircase, the appellants [A-1 to A-4] are waylaid and questioned about the quarrel happened in the morning. In the course of same transaction, the second accused by his leg dislodged the legs of P.W.1 and caught hold the hands of P.W.1. The first accused took the knife [M.O.1] and stabbed on the left side of the stomach. Further, the second accused took the Iron

Rod [M.O.3] and assaulted P.W.1 over the thigh. In the same way, the accused 3 and 4 by using the Wooden Log [M.O.4] and knife [M.O.2] respectively assaulted P.W.1 and caused injuries on the right leg below knee and in the right eyebrow. Further, the first accused made a life threat. The said occurrence was witnessed by P.W.2 [Kasthuri], P.W.3 [Mahalakshmi] and P.W.4 [Balaji]. After the completion of occurrence, Balaji [P.W.4] took P.W.1 to the Government Stanley Hospital, in which, P.W.9 [Dr.Deenadayalan], who given treatment to P.W.1, found the following injuries:

"1.Thigh-Laceration 7 x 4 x 3 cm.

2.Side of abdomen - 4 x 3 x 2 cm."

Further, he issued a copy of the Accident Register under Ex.P.3.

[ii]. Thereafter, when P.W.1 was in the Hospital, P.W.11 [Damodaran], the then Sub-Inspector of Police received the information and went to the Government Stanley Hospital. After recording the statement from P.W.1, he registered a case in Crime No.414 of 2009 for the offences punishable under Sections 341, 342, 324, 307 and 506 [ii] I.P.C. under Ex.P.5. After registration of the case, the same was handed over to P.W.12 [S.Rameshbabu], the then Inspector of Police, Tondiarpet Police Station for investigation. After receiving the case records, P.W.12 went to the scene of occurrence and prepared a Observation Mahazar [Ex.P.2] and Rough Sketch [Ex.P.6] in the presence of witnesses, Vimalkumar [P.W.6] and one Lingesan and thereafter, he examined the witnesses and recorded their statements. In the course of investigation, he recorded the statement from the Doctor [P.W.9], who treated P.W.1 and received the copy of the Accident Register [Ex.P.3] issued in support of the injury sustained by P.W.1. Thereafter, on 03.08.2009 at about 11.00a.m. in the presence of witnesses, Raja [P.W.7] and Haridoss [P.W.8], all the accused are secured and confession statements were recorded by P.W.12. In the confession statement, all the accused admitted the guilt and they are willing to hand over the weapons [M.O.1 to M.O.4], which are all used for the commission of offence. After recording the confession, the Investigating Officer recovered M.O.1 to M.O.4 under Seizure Mahazar [Ex.P.8]. After concluding the investigation, he filed a Charge Sheet for the offences as stated above.

[iii]. In the Trial Court, on the side of the prosecution after examining 12 witnesses as P.W.1 to P.W.12, 8 documents and 4 Material Objects were marked as Ex.P.1 to Ex.P.8 and M.O.1 to M.O.4. On the side of the defence, one Meenatchi was examined as D.W.1. After concluding the trial, the learned Additional District and Sessions Judge, came to the conclusion that the appellants are found guilty for the offences as stated above and awarded the punishment.

[iv]. Now, challenging the said conviction and sentence, the present appeal has been preferred by the appellants praying to set aside the same.

4. Today, when the appeal is taken up for hearing, I heard the arguments of Dr.G.Krishnamurthy, learned counsel appearing for the appellants and M/s.T.P.Savitha, learned Government Advocate [Criminal Side] appearing for the State.

5. The contention raised by the learned counsel appearing for the appellants is that P.W.1 and P.W.2 are the son and mother respectively. Except these two witnesses, the other witnesses examined on the side of the prosecution for telling the manner of offence committed by the appellants are not supported the case of the prosecution. In the said situation, the evidence given by P.W.1 and P.W.2 is not in accordance with the averments made in the complaint, thereby, believing the evidence of P.W.1 and P.W.2 by the Trial Court is nothing but erroneous. Accordingly, he prayed for setting aside the conviction and sentence.

6. It is an admitted fact that P.W.1 and P.W.2 are the same family members. Further, on going through the evidence put forth by the prosecution is on the date of occurrence P.W.2 and the mother of A-1 to A-3 made quarrel with each other. The above said evidence is not disputed by the accused. In the said situation in the Chief Examination of P.W.1 he clearly and categorically mentioned the overt act of the each accused. The said overt act attributed against the appellants are corroborated through the evidence of P.W.2, who is the witness to the alleged occurrence.

7. It is true except P.W.1 and P.W.2, other witness examined on the side of the prosecution as a eye-witness not supported the case of the prosecution. But the Doctor [P.W.9], who treated P.W.1 stated in his evidence as P.W.1 sustained injury on his left thigh and left abdomen. Now, considering the area in which P.W.1 sustained injury, it is natural if the appellants 1 and 2 assaulted as stated by P.W.1 and P.W.2, the injuries mentioned by the Doctor [P.W.9] could have been caused. So, the evidence given by the P.W.1 and P.W.2 was corroborated by medical evidence.

8. In the said situation, the learned counsel appearing for the appellants contended that as per the evidence of P.W.3, 50 persons were witnessed the occurrence. But nobody was giving evidence in favour of the prosecution it create a doubt whether the alleged occurrence had happened or not. It is true the witnesses examined on the side of the prosecution for telling

the incident are not supported the case of the prosecution. Now-a-days, it is a general trend even people residing in the same locality is not willing to depose evidence against one another person residing in the same area. Moreover, it is already settled that Solitary Testimony of single evidence is sufficient to believe the case of the prosecution as a true one.

9. Finally, the learned counsel appearing for the appellants made a submission before this Court that during the time of occurrence P.W.1 and the appellants are fighting with each other. At that time, one Siva took the knife and tried to assault the appellants, when the said act was intercepted by the appellants, due to which P.W.1 sustained injuries. In this regard, on total consideration of the entire evidence given by D.W.1 if really the alleged occurrence had happened as stated by the defence version nobody prevented the appellants for lodging a complaint before the police officials. But in this case, no such complaint was lodged before the police it would show that the theory put forth by the defence witness is in order to save the accused from the clutches of law.

10. However, for the offence under Section 307 I.P.C., the trial Court is necessarily analyze if the accused are having any intention or knowledge for committing murder. But, in this case the appellants had no such intention and knowledge. Actually, the alleged offence had happened in consequence of wordy quarrel in respect of morning incident. But the Trial Court has sentenced the accused to undergo rigorous imprisonment for six years and to pay a fine of Rs.3,000/- in default to undergo simple imprisonment for six months for the offence under Section 307 I.P.C. Thus, the trial Court without considering the evidence in proper perspective, convicted the appellants for the offence under Section 307 I.P.C., which is erroneous one. Further, for the offence under Section 326 I.P.C., the trial Court had awarded four years rigorous imprisonment and to pay a fine of Rs.2,000/- in default to undergo simple imprisonment for three months. Considering the nature of offence committed by the appellants, this Court feels that the said punishment is excessive one. Accordingly, the sentence imposed on the appellants in the above section is reduced to two years.

11. In the result, this Criminal Appeal is partly allowed and the conviction and sentence imposed on the appellants 3 and 4 by the learned Additional District and Sessions Judge [Fast Track Court No.1], Chennai in S.C.No.193 of 2010, dated 04.09.2010 are hereby set aside and the appellants 3 and 4 are acquitted. Bail bonds executed, if any, shall stand terminated. Fine amount paid, if any, is directed to be refunded to the appellants 3 and 4.

12. In respect of the appellants 1 and 2, the Trial Court convicted them for the offences under Sections 341, 342, 294[b], 326 and 307 I.P.C. As already discussed as per the evidence given by P.W.1 and P.W.2 during the time of occurrence, they voluntarily causing hurt to P.W.1 by using the deadly weapons, thereby, they are found guilty for the offence 326 I.P.C. alone. In this occasion, the learned counsel appearing for the appellants would submit that the appellants are facing this case for the past 9 years and prays to show some leniency in awarding the sentence. It is true that the alleged occurrence had happened in the year of 2009. Thereafter, still now the appellants are attending the Court. Hence, considering the above situation, this Court modified the conviction and sentence as 2 years instead of 4 years and to pay a fine of Rs.5,300/-. In respect of offences under Sections 341, 294[b] and 307 I.P.C. the conviction and sentence awarded by the Trial Court are set aside. Fine amount paid by them already is to be adjusted for the fine now imposed.

s/d-

Assistant Registrar (CS VI)

True Copy

Sub-Assistant Registrar

sri  
To

1.The Additional District and Sessions Judge  
[Fast Track Court No.1],  
Chennai.

2.The Inspector of Police,  
Government of Tamil Nadu,  
H-3, Tondiarpet Police Station,  
Chennai - 600 081.

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

4. The XV Metropolitan Magistrate  
George Town, Chennai.

5. The Public Prosecutor  
High court, Madras 104.

6. The District Collector, Chennai.

7. The Director General of Police  
Mylapore, Chennai.

8. The Officer incharge  
The Bostal Sub Jail  
Pudukottai.

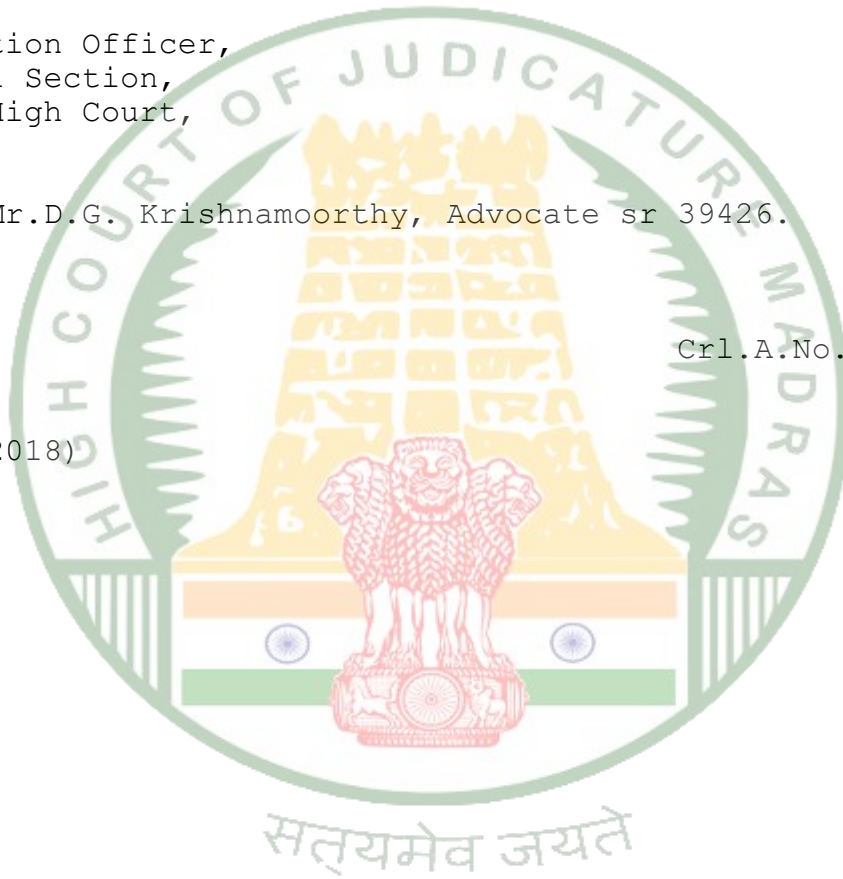
Copy to

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

+1 CC to Mr.D.G. Krishnamoorthy, Advocate sr 39426.

Crl.A.No.557 of 2010

PPA (CO)  
SP (06/07/2018)



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