

BAIL SLIP

The Appellants/Accused Nos 1 & 2 namely 1. Babu, S/o. Thulasi Gounder, 2. Elumalai, S/o.Thulasi Gounder (Accused 1 & 2 in S.C.No. 249/2006 dated 07/10/2010 on the file of the Assistant Sessions Judge cum Chief Judicial Magistrate, Vellore) were directed to be released on bail as per order of this Court dated 21.12.2010 in Crl.M.P.No.1 and 2/2010 in Crl.A.No. 690/2010 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 21.06.2018

JUDGMENT PRONOUNCED ON : 28.08.2018

CORAM:

THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

Criminal Appeal No.690 of 2010

1. Babu (Age 30/2010)
S/o Thulasi Gounder

2. Elumalai (Age 27/2010)
S/o Thulasi Gounder

Appellants /Accused No.1 & 2

Vs

State by the Inspector of Police
Virinchipuram Police Station
Vellore District
(Crime No. 34/2006)

Respondent / Complainant

Prayer: Criminal Appeal is filed under Section 374(2) of Criminal Procedure code, to set aside the Judgment and conviction dated 07.10.2010 in SC No.249 of 2006 by the learned Assistant Sessions Judge cum Chief Judicial Magistrate, Vellore.

For Appellant : Mr. R. John Sathyan

For Respondent : Ms. T.P. Savitha

Government Advocate (Criminal Side)

J U D G M E N T

The Appellant Nos.1 and 2 are arrayed as 1st and 2nd accused respectively in SC No.249 of 2006 on the file of Assistant Sessions cum Chief Judicial Magistrate, Vellore. They stood charge for the offence under section 342, 307 and 307 r/w

34 IPC. By a Judgment dated 07.10.2010, the trial Court convicted the 1st accused under Section 342 IPC and sentenced to undergo rigorous imprisonment for 1 year. Further he was convicted under Section 307 r/w 34 IPC and sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.10,000/-, in default to undergo rigorous imprisonment for 1 year. In regard to the 2nd accused, the trial Court convicted him under section 307 of IPC and sentenced to undergo Rigorous imprisonment for 10 years and to pay a fine of Rs.10,000/-, in default to undergo Rigorous imprisonment for one year. Challenging the said conviction and sentence, the appellants are before this Court with this Criminal Appeal.

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

PW 1 Amsa is the wife of PW2. PW 3 Venkatesa is their son. One year prior to the occurrence, both the accused have damaged the motor belt which belongs to PW 2. Due to which, both the accused and the PW 1's family had enmity with each other. On 30.01.2006, at about 6.30 pm, after finishing the regular agricultural work, PW 1 to PW 3 returned to their home. In a way, when they reaching the Govindaraj Petty shop, the first accused Babu intercepted and in order to facilitate to kill the PW 2, he caughthold the PW 2 and directed the 2nd accused by saying

"டேய் ஏழுமலை வாடா, இந்த தேவியா பையனை வெட்டுடா, இ
ன்னிக்கோட ஒழிந்து போடா"

obeyed the direction given by the 1st accused immediately, 2nd accused in this case took the knife from his shirt color and attacked on the abdominal area of PW 2. Further he attacked on the both legs. During the time of said assault, PW 1 and PW 2 shouted for help. After hearing the cues and cries from PW 1 and PW 2, PW 4 Perumal, Sarathi and one Govindaraj rushed to the scene of occurrence. After seeing them, both the accused ran away from the occurrence place. Subsequently on the same day at about 8.00 pm, PW 2 has admitted in the Medical College Hospital, Vellore.

3) On the same day, on receipt of information from CMC Hospital, PW 14 Haridoss, the then Sub Inspector of Police, Villupuram Police Station went to the Hospital, for receiving complaint from PW 2, since the injured was in unconscious stage, he examined PW 1 and recorded the statement under Ex.P.1. Subsequently, he returned to the Police station and registered a case in Cr.No.34 of 2006 under section 307, 342 and 294(b) of IPC. Ex.P.8 is the printed First Information Report. After registration of the case, he despatched the First Information Report to the Court and handed over the copy of the First Information Report to the Inspector of police for investigation.

4) On receipt of the copy of the First Information Report, PW 15 Balakrishnan, the then Inspector of Police started the investigation and on the same day at about 11 p.m, he went over to the scene of occurrence and in the presence of PW 7 Ranganathan and PW 8 Subramani, he prepared an Observation Mahazar under Ex.P.9. He examined the witnesses and recorded the statement. On 30.01.2006 at about 6.00 am, near Abdullapuram Aerodrome, in the presence of PW 9 Munusamy and PW 10 Janakiram, PW 15 arrested the 2nd accused and recorded the confession statement given by him. Pursuant to the confession statement, alongwith the witnesses and accused, PW 15 went to the Elavampadi and on identification by the 2nd accused, he recovered the M.O.1 Knife, M.O.2 Lungi and M.O.3 Shirt. Admissible portion of the confession statement given by the 2nd accused is marked as Ex.P.11, the Recovery Mahazar for seizing M.O.1 to M.O.3 is Ex.P.12.

5) In continuance of investigation, he examined PW 2 in CMC Hospital and recorded the statement. Meanwhile, PW 13 Dr. G. Sundar Ganesh attached with CMC Hospital, Vellore on 30.01.2006 issued Wound Certificate of PW 2 stating that PW 2 had the following injuries.

- 8cm lacerated muscle deep over the right side of lower chest exposing the rib
- 8cm bone deep lacerated wound exposing the cut patella tendon left leg
- 5cm bone deep wound exposing the split tibia and cut tibialis anterior muscle left leg.
- 5cm bone deep lacerated wound exposing the partially cut tibialis anterior tendon with oblique fracture lower tibia.

He gave opinion that all the above said injuries are grievous in nature. After receiving the Wound Certificate, PW 15 examined the Doctor and recorded the statement. Thereafter on completion of investigation, PW 15 filed the Final Report against the accused under Sections 342, 307 and 307 r/w 34.

6) Based on the above materials, trial Court framed charges and both the accused denied the same. In order to prove the case on the side of the prosecution, as many as 15 witnesses were examined and 13 documents were marked as Ex.P.1 to Ex.P.13. Besides 3 material Objects.

7) Out of the said witnesses, PW 1 is the wife of PW 2 injured, who is the eyewitness to the alleged occurrence has stated in her evidence that prior to the occurrence, due to the land dispute, both the accused are having the enmity with the injured. He has further stated that on the date of occurrence, while she was returning from their field, along with PW 2 and PW3 both the accused intercepted and in order to facilitate to

kill the PW 2, the 1st accused caught hold the PW 2 and thereafter, the 2nd accused in this case, by using the knife attacked the PW 2 in the abdominal area and in both legs. According to her, on the same day, in CMC Hospital, Vellore she gave complaint before the Sub Inspector of Police.

8) PW 2, is the injured in the alleged occurrence depose that prior to the occurrence, due to the land dispute, 1st and 2nd accused had developed enmity with him. Further he has stated that on the day of occurrence, as per the instructions given by the 1st accused, the 2nd accused in this case by using the knife stabbed in the abdominal area, left and right leg. Further, he has stated that he was treated by PW 13 in CMC Hospital.

9) PW 3 is the son of PW 1 and alleged to be an eyewitness to the occurrence has stated in his evidence that on the day of occurrence, when he was returning from his field alongwith PW 1 and PW 2, both the accused way laided and as per the instructions given by the 1st accused, the 2nd accused in this case assaulted the PW 2. Further, he has stated after the occurrence PW 2 was admitted in the CMC Hospital, Vellore.

10) PW 4 to PW 6 are the eyewitnesses to the alleged occurrence have not supported the case of the prosecution. Further, they are all turned up as hostile witnesses. PW 7 and PW 8 are the residents of the Elavampadi, wherein the occurrence had happened, they deposed that in their evidence about the preparation of Observation Mahazar and Rough Sketch, by the Investigating Officer.

11) PW 9 and PW 10, who are the witnesses to the confession statement given by the 2nd accused has not stated anything about the recording of confession and recovery. Hence, both of them treated as hostile witnesses. PW 12 is the daughter of PW 1 came to the CMC Hospital, after knowing the occurrence. PW 13 is the Doctor attached with CMC Hospital has stated about the nature of injuries sustained by PW 2 and in regard to the issuance of Wound Certificate. PW 14 and PW 15 are the Police Officers have given evidences regarding the investigation.

12) The trial Judge, with reference to the incriminating materials adduced by the prosecution, examined the accused under Section 313 of Cr.P.c, for which they pleaded not guilty. However, they did not choose to exam any witnesses, nor marked any documents on their side. The learned trial Judge on perusal of the materials placed and on considering the arguments advanced on both sides, convicted and sentenced the appellants /

accused as stated supra. Challenging the same, the present appeal has been filed.

13) I have heard. Mr. R. John Sathyan learned Counsel for the appellant, Ms. T.P. Savitha, learned Government Advocate (Criminal Side) for the respondent and perused the records carefully.

14) The learned counsel for the appellants would contend that in the trial Court, PW 1 and PW3 alone supported the evidence given by the injured (PW 2). He further contended that since PW 1 and PW 3 are the wife and son of the injured, their evidence cannot be looked into. Further, he submits that since the witnesses attested in the confession statement given by PW 2 are not supported the case of the prosecution, it would difficult to believe the case of the prosecution as genuine one. Further he made submission that the evidence given by the PW 1 to PW 3 are having lot of contradictions. He would further contended that the above circumstances created a serious doubt on the prosecution case.

15) Per contra, the learned Additional Public Prosecutor would contend that even though PW 1 and PW 3 are the relatives of the injured, they are the natural witnesses. Further he submits, nowadays in order to avoid the future enmity from the third party like accused, people who are present at the time of occurrence, have not supported the case of the prosecution. So in the said circumstances, the non supporting of independent eyewitnesses is not fatal to the prosecution. Accordingly, there is no need for interference with the conviction and sentence passed by the trial Court.

16) I have considered the rival submissions made on either side.

17) Admittedly, in the trial Court, in order to prove the case of the prosecution, apart from the injured PW 1, PW 3 to PW 5 are examined as eyewitnesses to the occurrence. In which, PW 4 and PW 5 are the residents of the same village, they did not testify in favour of the prosecution case. PW 1 and PW 3, who are the family members of the injured alone gave evidence in favour of the prosecution. In the said circumstances, we have to decide, whether the evidence given by PW 1 and PW 3 is reliable or not. In this regard, reliance is placed in the Judgment reported in 2002 (4) SCC 76 In which, our Honourable Apex Court has held that

It is well settled that evidence of a witness cannot be discarded merely on the ground that he is either partisan or interested or both, if otherwise the same is found to be credible.

18) Now, considering the principle laid down by our

Honourable Apex Court, in this case also, we can not easily discarded the evidence given by PW 1 and PW 3. Factually, the occurrence had happened in a remote area. Further more, the occurrence is happened at about 8.30 pm. As per the evidence given by PW 1 to PW 3, when at the time that they are all returning to their home, after finishing the regular work in the field, both the accused intercepted and committed this offence. Moreover, the evidence given by the said witnesses with regard to the previous enmity is not disputed by the accused during the time of cross examination of PW 1 to PW 3 in the trial Court. Accordingly, on thorough scrutiny of the evidences, given by them, it came into light that, PW 1 and PW 3 are the natural witnesses and their evidences are clearly in support of the evidences given by PW 2 in respect to the attack made by both the accused.

19) According to the evidence of injured at the time of occurrence, the 1st accused caught hold the PW 2 and thereafter as per the direction given by A1, the 2nd accused took knife and assaulted on the abdominal area and in both legs of PW 2. In this regard, now on go through the cross examination of Investigation Officer, he has stated that during the time of recording the statement from PW 1 to PW3 and other witnesses, they have not stated anything about the caught holding of PW 2 by A1. So the said evidence given by the investigating Officer is nothing but amounts to contradiction. However during the time of cross examination, all the eyewitnesses are clearly stated that at the time of occurrence, the 1st accused in the case came behind PW 2 and caught hold the hands of PW 2. It is general rule that isolation of specific evidence does not diluted the whole evidence. Accordingly in this case except the said contradiction, no other contradiction is available from the prosecution evidences, thereby the said contradiction alone not sufficient to disbelieve the entire case of prosecution.

20) Apart from that, according to the evidence of PW 1 to PW 3, the 2nd accused assaulted the PW 2 on his abdominal area, both the right and left legs. Now, on go through the evidence of Medical Officer, who gave treatment to PW 2 has stated that PW 2 sustained injury in the right ribs, left knee, left leg and right leg. By considering the evidence given by the injured with the evidence of Medical Officer, it would possible if both the accused assaulted the PW 2 as stated by the injured, the injuries found by the Medical Officer will be happened. In this way, the evidence given by the Medical Officer has corroborated the evidence of injured witnesses. In the said circumstances, to bring home the offence under section 307 (i) of IPC, the prosecution must establish that the accused are having the intention or knowledge to cause the death. In this

case, as rightly pointed out by the Additional Public Prosecutor, as prior to the occurrence, both the accused had developed the enmity with the PW 2 due to the land dispute. Further at the time of occurrence, the 2nd accused used the knife and committed this offence. If suppose the accused are not having any intention or knowledge to kill the PW 2, there is no necessity to bring the knife to the place of occurrence. Further, the alleged occurrence has happened at about 8.30 hours in the evening. The said circumstances shows that both the accused are having intention to kill the PW 2. So, in the said circumstances, the submissions made by the learned Counsel for the appellant is not at all create a platform for allowing the appeal. Therefore, this Court affirms the decision rendered by the trial Court.

21) However, both the accused have been convicted for a period of 10 years rigorous imprisonment for the offence under section 307, 307 r/w 34 IPC. Now considering the mitigating and aggravating circumstances, both the accused are having the lands near to the field of PW 2. Further both of them are from the remote village and doing an agricultural work. Further both the accused faces this case for the past 8 years.

22) Therefore, in view of the above circumstances, this Court took a view that punishment awarded by the trial Court is excessive one and I am of the opinion that 5 years of Rigorous imprisonment is sufficient for the offence committed by both the accused. Accordingly, the appeal is partly allowed and the conviction and sentence imposed upon the appellants by the learned Assistant Sessions Judge cum Chief Judicial Magistrate, Vellore in SC No.249 of 2006 dated 07.10.2010 is hereby reduced to 5 years and both the accused are ordered to undergo rigorous imprisonment for 5 years, instead of 10 years. Further ordered to set off the period already undergone by the accused/appellants under section 428 of Cr.P.C. The trial Court is directed to secure the accused and send them to Jail for serving the remaining period of sentence.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

vrn

To

1. The Judicial Magistrate,
No.IV, Vellore.
2. The Chief Judicial Magistrate,
Vellore.
3. The Assistant Sessions Judge cum Chief Judicial Magistrate,
Vellore
4. The Superintendent,
Central Prison, Vellore.
5. The Inspector of Police
Government of Tamil Nadu
Virinchipuram Police Station
Vellore District
6. The District Collector,
District Magistrate, Vellore.
7. The Director General of Police,
Tamil Nadu, Mylapore, Chennai-4.
8. The Public Prosecutor
High Court
Madras
9. The Section Officer
V.R. Section
Madras High Court
Chennai. (2 Copies)

+1cc to Mr.R.John Sathyan, Advocate, S.R.No. 59596

Criminal Appeal No.690 of 2010

BR(CO)
GN(28/09/2018)

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