

BAIL SLIP

That the accused Namely Soorya, S/o.Duraisamy (A1), Sekar, S/o.Ramachandran (A2), Muniraj, S/o.Ponnugan (A3) were released on bail in CRL MP 1/2010 in CRL A No.798/10 dated 23.12.2010 on the file of this Honourable Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20.07.2018

CORAM :

THE HON'BLE MR. JUSTICE R.PONGIAPPAN

Crl.A.No. 798 of 2010

1. Soorya
2. Sekar
3. Muniraj

.. Appellants

Vs.

State
represented by the Deputy
Superintendent of Police,
Pennagaram Sub Division,
Dharmapuri,
(Crime No:218 of 2007)

.. Respondent

Prayer: Appeal filed under Section 374 (2) Cr.P.C., to set aside the conviction and order dated 11.12.2009 made in S.C.No.51 of 2009 on the file of the learned Principal Sessions Judge, Dharmapuri.

For Appellants : Mr.T.R.Ravi, Advocate for
M/s.R.Anbukarasu

For Respondent : Mrs.T.P.Savitha
Government Advocate(Crl.Side)

JUDGMENT

The appellants are arrayed as A1 to A3 in S.C.No.51 of 2009 on the file of the Principal Sessions Judge, Dharmapuri. The appellants herein stood charged for the offence under Sections 324, 341, 294B, 307, 506(Part-I) of IPC. In the Trial Court, the accused denied the charges and opted for Trial. Therefore, they

were put on trial for the charges. After concluding the trial, the learned Principal Sessions Judge, Dharmapuri convicted the accused as follows:

S.No.	Accused	Section	Sentence
1	A1 and A2	Section 341 r/w. Section 34 of IPC	fine of Rs.1000/, in default to under Simple Imprisonment for 3 months each;
2	A1	Section 324 (two counts) of IPC	Rigorous Imprisonment for two years and to pay a fine of Rs.1,000/- in default, to undergo Simple Imprisonment for 4 months.
3	A2	Section 324 (two counts) of IPC	Rigorous Imprisonment for two years and to pay a fine of Rs.1,000/- in default to undergo Simple Imprisonment for 4 months
4	A3	Section 324 (two counts) of IPC	Rigorous Imprisonment for two years and to pay a fine of Rs.1,000/- in default to undergo Simple Imprisonment for 4 months

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). Prior to the occurrence, PW1 Chinnaasamy is having the enmity with the accused, before two years from the date of occurrence, when PW1 was sitting along with Madhaiyan in front of Maligai shop, the third accused (Muniraj) in this case was

proceeded to his village. When he was passing through the P.W.1 and P.W.2, he abused the P.W.1 [Chinnasamy] by using the filthy words, further he assaulted the P.W.2 [Madhaiyan]. Thereafter on 03.08.2007, when PW1 and PW2 was returned to their house from their work place in a TVS 50 motorcycle at about 1'o' clock, when they were about to cross the brick chamber, the first and second accused came from the brick chamber and intercepted the P.W.1 and P.W.2. In the mean while, A3 came to the scene of occurrence with wooden log and thereafter, by using the malu, knife, A1 attacked the PW2 on his back side of Head. Further, in the same transaction, A2 and A3 had also attacked the PW2 on the back side of the head and all over body by using the wooden log. Further, A1 slapped the PW1 on his front side of the head by using the malu knife. Further, A2 and A3 attacked the P.W.1 all over the body. Thereby, PW1 sustained injury on his head and all over the body. After hearing the hues and cries of PW1, PW3 (Madesh) and PW4 (Mahendran) came to the scene of occurrence, after seeing them, all the accused are ran away from the scene of occurrence. Thereafter, PW3 and PW4 made arrangements for admitting the PW1 and PW2 in Palacode Hospital.

(ii). On the same day, at about 3.30 hours, Dr.Geetha (P.W.6) attached with the Palacode Government Hospital examined the P.W.1 and found the following injuries:

- "1. Lacerated injury of about 5 x 10 x 3 c.m., over the left forearm just above left wrist joint.
2. Lacerated injury of about 5 x 4 x 3 c.m., over the left forearm 5 c.m., above left wrist joint.
3. Lacerated injury of about 5 x 2 x 1 c.m., over the left parietal area over the head.
4. Lacerated injury of about 4 x 2 x 1 c.m., over the right parietal area over the head.
5. Swelling of about 3 x 5 c.m., over right forearm just above right wrist joint."

Suspected over the injury, she referred the PW1 to the Government Hospital, Dharmapuri for further treatement. In the said Hospital, X-Ray was taken and identified that injury No.5 is grievous in nature.

(iii). In the same way, on the same day, in the early morning she examined the PW2 and found the following injuries:

- "1. Lacerated wound of about 4 x 2 x 1 c.m., over the left side of head just above left ear.
2. Swelling of about 3 x 2 c.m., over the left arm just below left shoulder joint.
3. Abrasion of about 1 x 1 c.m., over the left

arm just above left elbow joint.

4. Lacerated wound of about 2 x 1 c.m., over left leg just below left knee joint.

5. Lacerated wound of about 3 x 2 c.m., over left knee joint.

6. Abrasion of about 1 x 1 c.m., over right knee joint."

She opined that injury No.5 found on the PW1 is grievous in nature and other injuries found by PW1 and PW2 are simple in nature. After giving necessary treatment, she issued a wound certificate to P.W.1 and P.W.2 under Ex.P2 and Ex.P4 respectively. Ex.P.3 and Ex.P.5 are the opinion given by the Doctor.

(iv). After receiving the intimation from the hospital, PW8, the then Head Constable, Magendramangalam Police Station came to Hospital and recorded the statement of PW1 under Ex.P1. After recording the statement, he handed over the same to PW9, Mrs.Vijaya for the registration of case.

(v). On 04.08.2007, PW9, the then Sub Inspector of Police, on receipt of the statement given by PW1, at about 23 hours, registered a case in Cr.No.218 of 2007 under Sections 341, 294B; 324 and 307 IPC. Ex.P8 is the printed FIR. After registering the case, he handed over the case records to PW10 for investigation.

(vi). PW10 (Mr.Krishnan), the then Deputy Superintendent of Police, Pennagaram Division took the case for investigation, on 05.08.2007 at about 10 a.m., he visited the scene of occurrence and in the presence of PW7, Kannan and Chellapan he prepared an Observation Mahazar under Ex.P7. Further, he drawn the rough sketch under Ex.P9, he examined the witnesses and recorded their statements, he went to the Government Hospital, Dharmapuri and examined PW1 and PW2. Subsequently, on 19.04.2007, he received the wound certificates pertaining to PW1 and PW2 and completed the investigation. In the said circumstances, since, he was transferred from the post, his successor PW11 Panjavarnam has filed a final report after perusing the case records.

3. After receiving the final report, the learned Judicial Magistrate, Palacode assigned the case as P.R.C.No.5/2009. On appearance of the accused, the documents, which are all relied on by the prosecution were furnished to the accused. Thereafter, the case has been committed to the Court of Session, Dharmapuri for disposal.

4. In the Court of Principal Sessions Judge, Dharmapuri, the case number was assigned as S.C.No.51/2009. In the Trial Court,

after giving sufficient time, charges have been framed for the offences under Sections 341, 294(B), 307 and 324 IPC. For which, all the accused denied the same and opted for trial.

5. Thereafter, on the side of prosecution, as many as 11 witnesses were examined as P.W.1 to P.W.11 and 9 documents were marked as Ex.P.1 to Ex.P.10.

6. Out of the above said witnesses, PW1 and PW2 are the injured persons. PW1 is the defacto complainant. In the trial court, they have stated about the previous enmity with the accused, further, PW1 and PW2 has stated about the manner of assault committed by all the accused and with regard to the injury sustained by them.

7. PW3, PW4, PW5 are spoken about the occurrence in support to the evidence given by PW1 and PW2 particularly about the assault made by the accused. PW.6 Dr.Geetha attached with the Palacode Government Hospital has stated about the injury sustained by PW1 and PW2. According to her, on 03.08.2007 at about 3.30 a.m., PW1 came to the Hospital, and informed that he was assaulted by known 3 persons in the early morning. For which, after giving necessary treatment, she advised PW1 and PW2 to go to Dharmapuri Government Hospital for further treatment. Thereafter, she received the particulars with regard to the treatment given to PW1 and PW2 from Dharmapuri Hospital and gave opinion that injury No.5 found on the P.W.1 is grievous in nature and other injuries found on PW1 and PW2 are all simple in nature.

8. PW7 has stated with regard to the preparation of Observation Mahazar by the Investigation Officer. PW8 to PW11 are the Police Officers depose with regard to the registering the statement from PW1, registration of the case, preparation of the Observation Mahazar, rough sketch and recording of statement from the witnesses. Further, they stated about the investigation conducted and about the filing of charge sheet.

9. 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. However, they did not choose to examine any witnesses nor did they mark any documents.

10. Having considered all the above, the learned Principal District Judge found the accused guilty of causing simple injury by using deadly weapons and sentenced to a term as indicated in the first paragraph of this judgment. Aggrieved by the conviction and sentence, the accused has came up with the present appeal.

11. Today, when the appeal is taken up for consideration, I have heard the arguments advanced by Mr.T.R.Ravi, learned counsel for the appellants and Mrs.T.P.Savitha, learned Government Advocate (Crl.Side) for the respondent and also perused the records carefully.

12. Admittedly, the victim and the accused are knowing to each other prior to the occurrence. Further, they are having previous enmity for the flimsy reasons.

13. In the trial Court, the evidence given by PW1 was corroborated through the evidence of PW2 to PW5. According to them, at the time of occurrence, A1 to A3 in this appeal by using malu and by using wooden log assaulted the PW1 and PW2 all over their body and causing injury. For which, the evidence given by PW1 and PW2 is corroborated through the evidence given by the Medical Officer.

14. Now, the learned counsel appearing for the appellant would submit that after registration of the case, the FIR should reach the Magistrate without any delay. Further, it is the duty of the Investigation Officer to send the F.I.R. as early as possible to the Magistrate. But in this case, the Investigation Officer not followed the said Rule.

15. Now considering the said submission in this case, it true, since the case has been registered under Section 307 IPC, it should necessarily reach the Magistrate immediately. But in this case, the case has been registered on 04.08.2007 at about 23 hours, the evidence given by PW9 who is the author of the F.I.R. confirms the same. But, after registering the case, the said F.I.R has been received by the Magistrate on 07.08.2007, at about 10.30 a.m. (i.e) after two days from the date of registration. For which, PW9 has not offered any specific explanation. So, the evidence of PW9, clearly established that without any reason, F.I.R copy was kept in the Police Station for the period of two days such act of the Police Officer is nothing but fatal to the prosecution.

16. Secondly, according to the accused, a counter case has been registered based on the complaint given by A1. Even though the documents related to the said case, have not been exhibited in this case. During the time of giving evidence, PW9 had admitted about the registration of the counter case in Cr.No.217/2007. Further, on going through the evidence given by PW10, the counter case has been registered under the provisions of SC/ST Act. In the said circumstances, both case have been investigated by PW10 simultaneously, if two cases has been registered for the same occurrence, it is the duty of the

Investigation Officer to investigate both the case and to file a final report simultaneously in order to find out the aggressor.

17. At this juncture, it is relevant to refer to a Judgment recorded in Sudhir and others vs. State of M.P. reported in (2001) 2 Supreme Court Cases 688, wherein, Hon'ble Apex Court has observed the manner of counter or cross-cases is held as follows:

".....It is a salutary practice, when two criminal cases relate to the same incident, they are tried and disposed of by the same court by pronouncing judgments on the same day. Such two different versions of the same incident resulting in two criminal cases are compendiously called "case and counter-case" by some High Courts and "cross-cases" by some other High Courts."

But in this case, the said procedure was not followed at any point of time by the Investigation Officer.

18. Further, in the case of Vethamuthu Anthony Raj vs. The State, rep. by The Inspector of Police made in CrI.A.(MD)No.26 of 2011 dated 22.12.2011 wherein, this Court has held as follows:

"14. In our considered opinion, there is a very serious flaw in the case of the prosecution. It is needless to point out that under 588(A) of the Police Standing Orders, it is the duty cast upon the investigating officer to investigate into the complaint in the counter case as well, to gather materials including the wound certificates of the accused and to produce them all in the Court. It is a well settled legal position that as and when there is a counter complaint preferred by an accused in respect of the very same occurrence, to be fair and impartial on his part, the investigating officer should register the said complaint, investigate into the allegations made therein and then to submit a report either accepting or rejecting the allegations made by the accused party."

19. Accordingly, observing the dictum laid already both the cases have been disposed on the same day by the same Judge, wherever the parties are prescribed for attacking each other, the particulars of the same occurrence held in case and counter should be heard separately or one after another by the same Judge. Further, the Judge should not pronounce the judgment till finalizing the both cases. So, in this case in our hand, the principle to be followed by the police officers have not been followed.

20. In the result, this Criminal Appeal is allowed and the conviction and sentence imposed on the appellant in S.C.No.51 of 2009 dated 11.12.2009 by the learned Principal Sessions Judge, Dharmapuri is set aside and the appellants/accused are acquitted of the charges. The bail bond, if any, executed by the appellants/accused shall stand cancelled. The fine amount, if any, paid by appellants/accused shall be refunded to him.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To,

1.The Deputy Superintendent of Police,
Pennagaram Sub Division,
Dharmapuri,

2.The Principal Sessions Judge,
Dharmapuri.

3.The Public Prosecutor,
Madras High court,
Madras.

+1 cc to Mr.R.Anbukarasu, Advocate Sr.No.48654

Cr1.A.No. 798 of 2010

RK(CO)
CSL/13.11.2018

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