

Bail Slip

The Appellants/Accused 1&2,namely 1.S.Sathish @ Kumaresan S/o.Suganesan aged about 23 years, 2.J.Sukumar S/o.Jayaraman aged 41years (S.C.NO.178 of 2012) were directed to be released on bail as per the order of this Court made in MP.NO.1/13 IN CRL A.NO.613/2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.A.No.613 of 2013

S.Sathish @ Kumaresan
J.Sukumar

...Appellants/Accused 1 & 2

Vs.

State rep. By
The Inspector of Police,
Law and Order, N-1,
Royapuram Police Station,
Chennai - 600 013.

...Respondent/Complainant

The Criminal Appeal is filed under Section 378 of Code of Criminal Procedure against the judgment of conviction dated 20.08.2013 made in S.C.No.178 of 2012 by the learned XVII Additional Sessions Judge, Chennai.

For Appellants : Mr.L.G.Sahadevan for
Mr.L.Rajasekar

For Respondent : Mr.R.Ravichandran
Government Advocate (Crl.Side)

JUDGMENT

This criminal appeal has been filed against judgment of conviction dated 20.08.2013 made in S.C.No.178 of 2012 by the learned XVII Additional Sessions Judge, Chennai.

2 Case of the prosecution is that on 20.09.2011 at about 10.30 p.m., the injured witness P.W.2, P.W1/defacto complainant, who is wife of P.W.2 and their son P.W.3, after seeing father of P.W.2, were returned to their home. At that time, when they were walking at South Madha Street, accused 1 & 2 had came in Motor Bike and surrounded them. When P.W.2 questioned, the accused 1 & 2 had stated that they were searching for him to kill and 1st accused had attacked P.W.2 with knife at his head, which had

been kept in his back side, 2nd accused had attacked P.W.2 at his right leg, with knife, which had been kept in his hip, due to which P.W.2 had sustained grievous injuries. Accused 3 to 7 had attacked P.W.2 with casurina sticks and wooden reapers. P.W.1, who is wife of P.W.2 had taken him to the Stanley Hospital and lodged a complaint before the respondent Police. The respondent Police, after obtaining statement from P.W.1, had registered case in Crime No.1147 of 2011 and investigated the matter and filed a final report before the learned XVI Metropolitan Magistrate under Sections 148, 341, 324, 307, 506 (2) against the accused. Since the above case was triable by only the Court of Sessions, the same is committed to the XVII Additional Sessions Court, Chennai, which was taken on file in S.C.No.178 of 2012.

3 Before the trial Court, in order to prove the case of the prosecution, P.W.1 to P.W.9 were examined Ex.P1 to Ex.P21 were marked along with Material Objects 1 to 7. On the side of the defence, no one was examined and documents Ex.D1 to Ex.D3 were marked.

4 The learned Sessions Judge, after trial, found the accused 1 & 2 guilty of offences punishable under Sections 324 and 341 of IPC and convicted them and sentenced to undergo rigorous imprisonment for a period of two years with fine of Rs.1,000/-, in default, to undergo simple imprisonment for a further period of one week, for the offence under Section 324 and imposed fine of Rs.500/-, in default, to undergo simple imprisonment for a further period of one week, for the offence under Section 341 of IPC to both the accused, and acquitted the accused 3 to 7, by judgment dated 20.08.2013.

5 Aggrieved against the judgment of conviction dated 20.08.2013, the convicts had preferred this present criminal appeal before this Court.

6 The learned counsel for the accused would submit that there is some material contradictions between the prosecution witnesses. In Ex.P11/Accident Register, P.W.1/defacto complainant, stated to have been eye witness to the alleged occurrence, before the Doctor, had stated that 18 unknown persons had attacked her husband P.W.2. But in the FIR, P.W.1 had named five accused persons, which creates doubt. It is true that Accident Register, is the first available document, and P.W.1, soon after the occurrence, had gone to the hospital and given statement, in which she had stated that 18 unknown persons had attacked, she should have stated names of the accused as she stated in the FIR later, which give room for suspect. P.W.3, who is son of P.W.2 and P.W.1, in his evidence, had mentioned all the names of the accused, whereas, P.W.1 had not mentioned any

of the names, even though she had stated that 15 to 18 persons had attacked. P.W.1 and P.W.3 are not eye witness to the occurrence and even P.W.2, was not conscious and hence, it was not possible for him to identify the accused.

7 Further, the trial Court disbelieved the evidence of prosecution in respect of accused 3 to 7 and extended benefits of doubts in favour of them and acquitted, whereas, the trial Court believed the evidence of prosecution in respect of the appellants/accused 1 & 2 and came to the conclusion that the appellants had committed offence under Sections 324 and 341 of IPC. The learned Sessions Judge ought to have extended the benefits of doubts in favour of all the accused, since prosecution had failed to prove its case beyond reasonable doubt. There is no valid reason stated by the learned Judge to convict the appellants/accused 1 & 2 alone. Hence the conviction made by the learned Sessions Judge, against the appellants/accused 1 & 2, warrants interference and the appellants/accused 1 & 2 are entitled for acquittal.

8 The learned Government Advocate (Crl.Side) appearing for the respondent police would submit that P.W.1 to P.W.3, who are all eye witness to the occurrence, had categorically stated about the incident and they had also identified the accused. They stated that the accused 1 & 2 had caused the stab injuries and ear of P.W.2 had separated from his body. The trial Court had acquitted the other accused 3 to 7, on the ground that the witnesses have stated that the accused 3 to 7 had attacked P.W.2 with stick, but, there was no injuries found on the body of P.W.2 and there was no corroboration of injuries. But, the appellants/accused 1 & 2, had used deadly weapon i.e. knives and caused grievous injuries, which had been corroborated by the injuries sustained by P.W.2. Ex.P2, Medico Legal Opinion given by the Doctor, reveals that the injuries sustained by P.W.2 are grievous in nature.

9 The learned Government Advocate further submitted that when the injuries sustained by P.W.2 proved by producing medical records and the evidences of P.W.1 to P.W.3 had clearly show that the accused 1 & 2 only had caused the injuries, there is no reason to acquit them, even though the other accused were acquitted. Under these circumstances, prosecution had proved its case beyond reasonable doubts. The trial Court had rightly appreciated the evidence of prosecution side witnesses and convicted the appellants. There is no reason to interfere with the judgment of conviction.

10 Heard the rival submissions made by the learned counsel appearing on either side and perused the original records.

11 There is no dispute with respect to the injuries sustained by P.W.2. The Doctor, who treated him, had clearly spoken about the injuries and the medical report given by the Doctor also reveal the same and corroborates the evidences of P.W.1 to P.W.3. Once injuries sustained by P.W.2 was proved by producing relevant medical records, the Court has to see that who caused the injuries. According to prosecution, the appellants/accused 1 & 2 had caused the injuries. The accused 3 to 7 were acquitted, on the ground that there was no injuries found on the body of P.W.2 using stick etc., by the accused 3 to 7 and there is no appeal against the acquittal of accused 3 to 7. On a perusal of materials and the evidence of prosecution side witnesses especially, the evidence of P.W.2, who is injured witness and also Ex.P2 Medical opinion given by P.W.8/Doctor, it reveal that P.W.2 had sustained grievous stab injuries.

12 Further, the injured witness had clearly stated that the appellants/accused 1 & 2 had attacked him with knife and caused grievous injuries, which has been corroborated by the medical opinion Ex.P2 given by the Doctor. Even though, prosecution had stated that the wife and son of P.W.2 had categorically stated that the appellants/accused 1 & 2 had attacked P.W.2, the learned counsel for the appellants/accused pointed out that there are some material contradictions between the evidences of P.W.1 to P.W.3. But on a perusal of the chief examination of P.W.1 to P.W.3, it reveal that there is no material contradictions. Even though P.W.1 to P.W.3 were belong to one family they may not know name of the all the accused. P.W.1 had mentioned names of the some of the accused and P.W.2 and P.W.3 had mentioned names of some of the accused and we cannot expect parrot version from all the witnesses. The contradictions pointed out by the learned counsel for the appellants/accused 1 & 2 cannot be accepted as material contradictions. This Court has to see that at the time of occurrence, who were present and who caused injuries. From the evidence of P.W.1 and son P.W.3 and the evidence of injured witness P.W.2 had spoken about the involvement of the appellants in the occurrence. They had clearly stated that 1st accused had attacked P.W.2 at his head, with knife, which had been kept in his back side, 2nd accused had attacked P.W.2 at his right leg, with knife, which had been kept in his hip.

13 Even though, the other accused 3 to 7 had involved in the occurrence, witnesses have not clearly spoken about the same. But, insofar as the appellants/accused 1 & 2 are concerned, all the witnesses had categorically stated that the appellants/accused 1 & 2 had attacked with knives and caused grievous injuries and therefore, the Court below had convicted the appellants. Prosecution had clearly proved its case with cogent evidence. This Court does not find any acceptable reason

to acquit the appellants/accused 1 & 2.

14 In the result, the criminal appeal stands dismissed insofar as the conviction is concerned and the appeal is partly allowed with regard to sentence imposed on the accused.

15 Accordingly, in order to meet the ends of justice and considering the nature of offence, the sentence of two years rigorous imprisonment alone is modified to one year and the trial Court is directed to secure the accused to undergo remaining period of imprisonment if any.

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Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1. The XVII Additional Sessions Judge,
Chennai.

2.The Public Prosecutor,
High Court of Madras.

3.The Metropolitan Magistrate,
XV, George Town,
Chennai.

4. The Chief Metropolitan Magistrate,
Egmore,
Chennai. (for information)

5.The Inspector of Police,
Law & order N-1,Royapuram Police Station,
Chennai.

+1cc to Mr.L.Rajasekar, Advocate, SR.No.62855

Cr1.A.No.613 of 2013

Kak(28/03/2019)