

Bail Slip

That the Appellant/Accused Anandan M/A 32 year S/O Krishnaswamy (A1) and Malaiyathan @ Palaniswamy, M/A 29years S/O Rengaswamy (A2) Was released on bail as per order of Court dated:14/11/2002. CRL.MP.11593/02 in CRL.A.1589/02.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2019

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.A.No.1589 of 2002

1.Anandan

2.Malaiyathan @ Palaniswamy

... Appellants/A1&A2

Vs.

State by:

Sub Inspector of Police,

Annur Police Station,

Coimbatore (Dist)

Cr.No.162/2000

... Respondent/Complainant

Prayer:

Appeal filed under Section 374 of Cr.P.C., against the judgment conviction made in S.C.No.33/02 on the file of the Additional District Judge cum Fast Track Court No.5, Coimbatore at Tiruppur dated 18.10.2002 and respectfully prays that this Hon'ble Court may be pleased to set aside the conviction and sentence imposed on the appellants in S.C.No.33/02 dated 18.10.2002 and acquit the appellants.

For Appellants : Mr.M.N.Balakrishnan

For Respondent : Mr.R.Ravichandran

Government Advocate (Crl. Side)

J U D G M E N T

The appellants have filed this appeal seeking to set aside the judgment dated 18.10.2002 made in S.C.No.33 of 2002 by the learned Additional District Judge cum Fast Track Court No.5, Coimbatore at Tiruppur.

2.The appellants are the accused in the case in S.C.No.33 of 2002. The brief case of the prosecution is as follows: While P.W.1 was on duty as the Inspector of the Prohibition Enforcement Wing, on 14.05.2000 at about 15.30 hours, on

information, he along with his Team were proceeding for raid at Murugagounderpuhur. When they were came near the Chellampalayam Road, the accused who pelted stone on the Police personnel during the raid conducted on 28.04.2000, came in the opposite direction. On seeing P.W.1 and his Team, the accused tried to run away from the place. On seeing the accused, P.W.1 and his Team chased the accused.

3. At that time, the accused pelted stones on P.W.1 and his Team. The accused also took soda bottles from the nearby petty shop and thrown the soda bottles on P.W.1 and his Team. The soda bottles fell on the road and broken into pieces. The second accused also tried to cut P.W.1 on his neck with aruval, however, P.W.1 managed to escape from the blow without any injury. Thus, the accused created panic among the general public. Thereafter, the second accused was secured by the Enforcement Wing, however, the first accused escaped from the scene of occurrence.

4. Thereafter, P.W.1 lodged the complaint before the Annur Police Station. The Annur Police Station registered the case in Crime No.165 of 2000 under Sections 294 (b), 336, 332, 424, 506 (II) and 307 r/w.34 of IPC. The First Information Report is Ex.P8. Thereafter, the Inspector of Police, Annur, took up the case for investigation, went to the scene of occurrence, prepared observation mahazer and seizure mahazer. He also obtained confession statement from the accused.

5. After completing investigation, the Inspector of Police, Annur, laid final report as against the accused before the learned Judicial Magistrate, Mettupalayam, Avinashi (i/c). The case was committed to the Court of Sessions by the learned Judicial Magistrate, Mettupalayam, Avinashi (i/c) and made over to the Trial Court. Based on the materials produced before the Trial Court, the Trial Court framed charges as against the accused for the offence under Sections 336, 332, 427, 307 and 506 (II) r/w.34 of IPC. सत्यमेव जयते

6. When the Trial Court examined the accused under Section 313 of Cr.P.C., in respect of the incriminating evidences available against them, they denied their complicity in the crime and pleaded innocence. Hence, trial was proceeded against the accused. WEB COPY

7. On the side of the prosecution, 14 witnesses were examined as P.W.1 to P.W.14, 13 documents were marked as exhibits Ex.P.1 to Ex.P.13 and one material object M.O.1 was marked. The accused neither choose to examine any witness nor to mark any document.

8.P.W.1 was on duty as the Inspector of the Prohibition Enforcement Wing on the date of occurrence, P.W.2 to P.W.7 are the Police personnel attached to the Prohibition Enforcement Wing, P.W.8 to P.W.10 are the mahazer and independent witnesses, P.W.11 is the Sub Inspector of Police (L & O), P.W.12 and P.W.13 are the Inspector of Police and P.W.14 is the Doctor.

9.After trial, the Trial Court concluded that the charges as against the accused have been proved beyond reasonable doubt and convicted and sentenced the appellants/ accused to undergo 3 years rigorous imprisonment each for the offence under Section 332 of IPC;

to undergo 1 month imprisonment each for the offence under Section 336 of IPC; to undergo 1 year imprisonment each for the offence under Section 427 of IPC; to undergo 4 years rigorous imprisonment each and to pay a fine of Rs.2,000/- each in default to undergo 1 year imprisonment for the offence under Section 307 of IPC and to undergo 3 years rigorous imprisonment each for the offence under Section 506 (II) of IPC. The sentences were ordered to run concurrently. Aggrieved by the said conviction and sentence, the appellants / accused have filed this appeal before this Court.

10.The learned counsel appearing for the appellants would submit that there is no material whatsoever available on record to prove the major offence under Section 307 of IPC as against the accused. Ex.P1 is contrary to the evidence of P.W.1 to P.W.7 who are the official witnesses. He would further submit that the accused are already known to the Police personnel and inorder to foist case against the accused under Act 14 of 1982, the case was foisted against the accused.

11.The learned counsel appearing for the appellants would further submit that though the prosecution examined independent witnesses, namely, P.W.9 and P.W.10, they neither supported the prosecution nor their evidences corroborated with the evidence let in by P.W.1 to P.W.7/ Police personnel attached to Prohibition Enforcement Wing. Accordingly, he prayed for acquittal of the appellants/ accused.

12.Per contra, the learned Government Advocate (Crl. Side) would submit that while P.W.1 was on duty as the Inspector of the Prohibition Enforcement Wing, on 14.05.2000 at about 15.30 hours, P.W.1 along with his Team were proceeding for raid. At that time they saw the accused coming in the opposite direction. They called the accused only to interact with them. However, the accused pelted stones on P.W.1 and his Team. The accused also took soda bottles from the nearby petty shop and thrown the soda bottles on P.W.1 and his Team. The soda bottles fell on

road and broken into pieces. The second accused also tried to cut P.W.1 on his neck with aruval, however, P.W.1 managed to escape from the blow without any injury. Thus, the accused created panic among the general public.

13.The learned Government Advocate (Crl. Side) would further submit that the prosecution has proved the case beyond all reasonable doubt. After examining the entire evidence and documents, the Trial Court has rightly passed the conviction and sentence as against the accused/ appellants. Hence, the well considered judgment of the Trial Court need not be interfered with. Accordingly, he prayed for dismissal of the appeal.

14.Heard the arguments advanced on either side and perused the materials placed on record.

15.In the light of the above submissions, now it has to be analyzed whether the prosecution has proved the guilt on the accused beyond all reasonable doubt.

16.Admittedly, P.W.1 was the head of the Prohibition Enforcement Wing and on the particular day, he along with his Team were proceeding for conducting raid in the area under his jurisdiction. It is also the admitted case of the Police personnel that that they know the accused and they tried to interact with the accused, however, due to the alleged previous enmity, the accused attacked P.W.1 and his Team by pelting stone on them and by throwing soda bottles on them. It is also alleged that the second accused tried to cut P.W.1 on his neck with aruval, however, P.W.1 managed to escape from the blow.

17.P.W.1 in his evidence had indicated that the entire occurrence happened in public view and the public ran away from the scene of occurrence. However, for the reasons best known to the Police personnel, the prosecution has examined only P.W.9 and P.W.10 who are independent and mahazer witnesses. Even on perusal of the evidence let in by P.W.9 and P.W.10, they have not supported the evidence of P.W.1 and there are lot of discrepancy in their evidences. Further, they do not know which accused attacked P.W.1 with aruval. They also do not know as to who threw soda bottles. Admittedly, there are only two accused available in the scene of occurrence. There are glaring discrepancies in the evidence let in by P.W.9 and P.W.10.

18.The evidence let in by P.W.4 indicate that there were several persons available in the scene of occurrence. However, except P.W.8 to P.W.10, who are the mahazer and independent witnesses, the other prosecution witnesses are witnesses who have done their official duty and no other person have been

examined as witnesses which creates doubt in the prosecution case.

19.Further, P.W.9 in his cross examination has stated that the accused were arrested on the same day, however, P.W.1 in his evidence has stated that only the second accused was arrested in the scene of occurrence and the first accused was not arrested. There are contradictions inbetween the evidences of P.W.1, P.W.4 and P.W.9.

20.Furthermore, the basic ingredient required for implicating the accused under Section 307 of IPC is that there must be an intention to commit murder. In order to justify conviction under Section 307 of IPC, there must be an intention coupled with some overtact execution thereof and it is not essential that bodily injury capable of causing death should have been inflicted and the nature of injury is also not relevant and the act requires the intention of the accused to commit the same. However, the case of the prosecution is that the accused were already known to the Police personnel and the said occurrence happened in the public view. Except P.W.9 and P.W.10 no other public witness was examined and even the evidence let in by P.W.9 and P.W.10 did not corroborate with the evidence let in by P.W.1 to P.W.7.

21.In view of the above discussions, this Court is of the view that the prosecution has failed to establish the guilt on the accused beyond all reasonable doubt. In the absence of any material, this Court has to necessarily interfere with the conviction and sentence imposed by the Trial Court and the same is liable to be set aside.

22.In the result, the criminal appeal is allowed. The conviction and sentence as against the appellants/ accused in the judgment dated 18.10.2002 in S.C.No.33 of 2002 passed by the learned Additional District Judge cum Fast Track Court No.5, Coimbatore at Tiruppur, are set aside. The appellants/ accused are acquitted of all the charges. The fine amount, if any, paid by them is ordered to be refunded to them. The bail bonds, if any, executed by them, shall stand terminated/ discharged.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

- 1.The Judicial Magistrate, Mettupalayam.
- 2.The Chief Judicial Magistrate, Coimbatore (for inform her)
- 3.The Superintendent, Central Prison (Coimbatore)
- 4.The Public Prosecutor High Court,
Madras.
- 5.The Additional District Judge cum Fast Track Court No.5,
Coimbatore at Tiruppur.
- 6.The Sub Inspector of Police,
Annur Police Station,
Coimbatore (Dist).

+1cc to Mr.M.N.Balakrishnan, Advocate, S.R.No.2643

+1cc to Mr.P.Venkatasubramaniam, Advocate, S.R.No.1602

Cr1.A.No.1589 of 2002

AD(CO)
GSP(04/02/2019)



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