

BAIL SLIP

The Appellants/Accused 1 and 2 namely Krishnalingam S/o.Suyambulingam and Lingaperumal S/o.Suyambulingam were directed to be released on bail as per order of this Court dated 19/05/2010 made in M.P.No.1/2010 in CrI.A.No.293 of 2010 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CrI.A.No.293 of 2010

1.Krishnalingam
2.Lingaperumal

..Appellants / Accused 1 and 2

Vs

State rep by
The Inspector of Police,
J-7, Velachery Police Station,
Chennai.
(Crime No.918 of 2009)

..Respondent / Complainant

Prayer:- This Criminal Appeal is filed, under Section 374 (2) Cr.P.C., against the judgement of conviction and sentence, dated 26.04.2010, made in SC.No.64 of 2010, by the learned Additional District and Sessions Judge, Fast Track Court-I, City Civil Court, Chennai.

For Appellants : Mr.P.Raghu,
For Mr.Soundar Vijay Arul Ram

For Respondent : Mrs.S.Thankira, G.A.(CrI.Side)

JUDGMENT

This Criminal Appeal has been filed against the judgement of conviction and sentence, dated 26.04.2010, made in SC.No.64 of 2010, by the learned Additional District and Sessions Judge, Fast Track Court-I, City Civil Court, Chennai, finding the appellants guilty for the offence under Section 333 r/w 34 IPC and sentencing each of them to undergo 5 years Rigorous Imprisonment and to pay a fine of Rs.2,500/- each, in default to undergo Simple Imprisonment for a period of 6 months each.

2. The Inspector of Police J-7, Velachery Police Station had registered a case in Crime No.918/2009 against the appellants stating that on 29.07.2009 at about 14.30 hours, when the complainant/Sekar who is the employee of the Tamil Nadu Electricity Board while discharging his official work of rectifying the underground cable at the junction of Velacherry Main Road and Gandhi Road, the accused persons have abused him by using filthy language and prevented him from discharging his official duty and assaulted the complainant's hand, neck, nose, forehead with helmet and iron rod and caused grievous injuries.

3. Thus, the respondent police after completing investigation, filed the final report against the accused persons for offences under Sections 294(b), 333 r/w 34 IPC, before the learned IX Metropolitan Magistrate, Saidapet, Chennai-15 which was taken as PRC No.7 of 2010 and the learned Magistrate, after furnishing free copies of the documents relied on the prosecution to the accused under Section 207 Cr.P.C., ; and finding that the offence under Section 333 IPC was exclusively triable by the Sessions Court, committed the same to the learned Principal District and Sessions Judge, Chennai, who in turn made over the same to the Trial Court for disposal. The Trial Court, on hearing the learned counsel on both sides and after considering the materials on record framed the charges against the appellant/accused persons for offence under Sections 294(b) and 333 r/w 34 IPC. The said charges have been read over and explained in Tamil to the accused persons and the accused persons denied the offences and pleaded not guilty and sought to be tried.

4. On the side of the prosecution, P.Ws.1 to 7 were examined and Exs.P1 to 4 were marked and no material objects were marked and Ex.D1 was marked through P.W.4/Assistant Engineer.

5. After completion of evidence on the side of the prosecution, the accused persons were questioned under Section 313 (1) (b) Cr.P.C., as to the incriminating circumstances found in the evidence of prosecution witnesses and the accused persons have denied the charges stating that neither P.W.1 nor the employees came to the scene of occurrence to attend any official duty and that the victim suffered injuries elsewhere and that they have been falsely implicated in this case.

6. The Trial Court, after hearing the arguments of the learned counsel on either side and also looking into the materials available on record, acquitted the accused persons for the offence under Section 294(b) IPC and however, convicted them for the offence under Section 333IPC r/w 34 IPC and awarded punishment, as stated above, which is challenged in this Criminal Appeal.

7. Mr.Raghu, learned counsel appearing for the appellant/accused while assailing the order of the Trial Court would submit that the Trial Court failed to take into consideration, the various defects in the prosecution case and would submit that though the alleged offence is stated to have been committed while P.W.1 was discharging his official duty, no document has been produced by the prosecution to prove that P.W.1 and his colleagues were deputed to work at the particular place and that the incident occurred at the time, when the injured and his colleagues were discharging their official duty and there is a discrepancy with regard to the timing. As per P.W.1, the occurrence is stated to have happened at 12.30 p.m., whereas as per Ex.P4/Accident Register, the occurrence is stated to have taken place at 1.30 p.m., near Gandhi Salai Junction, and Velacherry Main Road and further though the alleged occurrence is stated to have taken place on 29.07.2009, the complaint is stated to have been preferred to the respondent/Police on the next day i.e., 30.07.2009 at about 6.00 a.m. The learned counsel would further submit that there are two complaints in this case, one preferred by P.W.1, the injured witness under Ex.P.1 and the other is the Letter by P.W.4-Sengottaiyan marked as Ex.D1. As per Ex.D1 a reference has been made as to causing of injuries on P.W.1 by the owner of one Kani Store and his relatives using helmet, without any reason. Further, in the complaint, it had been stated that on the advice of the Inspector of Police, Velachery Police Station, the injured was taken to the Government Hospital, Royapettah and that the letter should have been treated as a complaint and the case should have been registered on the basis of the same.

8. He would further submit that the said letter under Ex.D1 had been suppressed by the prosecution ; whereas, FIR stated to have been registered only on the next day at 6.00 a.m. On the complaint given by P.W.1, which was marked as Ex.P1. He would submit that the printed FIR had not been marked by the prosecution and the delay in giving complaint has also not been properly explained by the prosecution. Further, taking into consideration, the evidence of P.W.6/Dr.M.R.Anand, he had stated that he had intimated to the Police Station about the injuries sustained by P.W.1, whereas, it is the evidence of P.W.7/Investigating Officer, he did not receive any intimation from the hospital. He would submit that the accused persons are stated to have assaulted P.W.1 with helmet and Iron rod, whereas, the said material objects have neither been seized nor produced before the Court. Further, as per Ex.P.4/Accident Register, P.W.1 is stated to have informed P.W.6, that he was assaulted only with the helmet and strangely in Ex.P4, it has been stated that he was assaulted by three known persons and there was no mention about the helmet. Further, he would submit that entire case of the prosecution is full of infirmities and

embellishments, which shakes the entire foundation laid down by the prosecution. The learned counsel for the appellant/accused would further submit that as per the Accident Register (Ex.P4), P.W.1 was stated to be brought to the hospital by one Baskar, who is a co-worker, however, the said Baskar was not examined by the prosecution creating a doubt in the prosecution case.

9. Mrs.S.Thankira, learned Government Advocate [Criminal Side] vehemently would submit that P.W.1 is the injured witness and he had categorically stated that the appellant/accused assaulted him using helmet and Iron rod. Further, as per P.W.6/Dr.M.R.Anand, had found a fracture on his head and as per the opinion of P.W.6, it is a minor hairline fracture on the left parental region, which is grievous in nature and thereby, P.W.6 had opined that it is a grievous injury and the Trial Court taking into consideration, the evidence of P.Ws.2 and 3, the colleagues of P.W.1, that they were prevented from discharging the official duty, had rightly convicted the appellant/accused persons for offence under Section 333 r/w 34 IPC.

10. Per Contra, the learned counsel for the appellant would submit that P.Ws.2 and 3 are none other than the colleagues and Union Leaders of P.W.1 and they have also had not supported the case of the prosecution. No other independent witnesses have been examined and no documents have been marked during the investigation to prove that P.W.1 and the other accused were prevented from discharging official duty on the particular place and that there is no clarity with regard to place where they were discharging their duty. Further as per evidence of P.W.6, he is stated to have relied on the opinion given by the Duty Assistant Surgeon, who has given an opinion that there was a hairline fracture. Non examination of the Duty Assistant Surgeon, who has given an opinion is fatal to the prosecution. In view of the submission, that the prosecution has not proved the case beyond all reasonable doubt.

11. I have given my careful and anxious consideration to the rival contentions put forward by either side and thoroughly scanned through the entire evidence available on record and also perused the impugned judgment of conviction .

12. While, analysing the evidence of the prosecution:

A) P.W.1/Sekar, had stated that he was working as Mazdoor at TNEB, Velachery and that on 29.07.2009, he was deputed to attend complaint with regard to the non-supply of electricity in the house at Door No.187/7 C and thereby, at about 2.30 p.m., he along with P.W.2/Selvam and P.W.3/Selvaraj went to the place at the Junction of

Velachery Main Road, Gandhi Road and attended routine work in the electricity cable box and when P.W.1 had enquired the accused persons with regard to three phase connection in their premises, the accused persons have abused him with filthy language in the midst of his co-employees and when P.W.1 had called his co-employees, the accused persons by uttering "'what would you do if you bring your colleagues'", have assaulted on his head using helmet and iron rod. Later, he fell unconscious and that he was not aware of what had happened and thereafter, his co-employees viz., P.W.2/Selvam and P.W.3/Selvaraj and one training officer Moorthy, took him to Royapettah Hospital by Auto for taking treatment and thereafter, in the evening went to the Velachery Police Station and lodged complaint under Ex.P1.

- B) However, during his cross examination P.W.1 had stated that the complaint was given by him on the same day between 5.00 and 5.30 p.m., and he was enquired around 6.30 to 7.00 p.m. At the time of enquiry, he had not given any details with regard to his duty and deputation to attend duty and that the movement register and duty register were also not given to the police for enquiry. He had also admitted that the order of deputation made by the Assistant Engineer was also not given to the Police and he had also admitted that he was not deputed to work at Door No.187/7 C and that his work was over by 2.00 p.m. Further, in his cross examination, he had stated that he was not taken to the hospital by the Assistant Engineer Gunasekaran, and he had further stated that P.W.5 is the Office bearer of his Union. Further, he had also stated that he was not aware of the weapon held by the accused persons. During his cross examination, he has given a false statement and he has specifically stated that he had been assaulted by three known persons with helmet and iron pipe and that the complaint was written by the Union Leader Kumarasamy (P.W.5). He had denied that the complaint was given on 30.07.2009, at 6.00 a.m and had further denied having taken treatment in Royapettah Hospital for 12 days.
- C) P.W.2/Selvam is a colleague of P.W.1 and his evidence is not specific as to who had assaulted P.W.1.
- D) P.W.3/Selvaraj, had stated that he had seen the accused persons abusing P.W.1 using filthy language and that when he had enquired the persons in that area, they have told that the accused persons have assaulted P.W.1 and he had, during his cross examination, admitted that he had gone to Velachery Junction to attend official duty in the

morning and that he has not personally seen the accused assaulting P.W.1.

- E) P.W.4/Sengotaiyan, is the Assistant Engineer and he had stated that he is not a witness and he had deputed workers to attend the work and that he was informed that two persons had assaulted P.W.1 and that on the complaint given by the employees, he forwarded the complaint to the police to take action. He had further stated that P.W.1, after taking treatment from the hospital, had given a complaint under Ex.P1. P.W.4 during cross examination, had admitted that there is no reference to the owner of the house premises bearing Door No.189/7-C and that he had not given details with regard to the place where the the employees were deputed to work and he had also stated that he had mentioned about the Kani Stores only on the information given by his employees.
- F) P.W.5/Kumarasamy, is a former employee of the Tamil Nadu Electricity Board and he had stated that he is a member of the Trade Union and that he had on the next day i.e., 30.07.2009, along with one Anbu, the leader of CITU had enquired as to what action the police had taken for the affected labourers since the Sub Inspector of Police was not available and then, they went to Guindy Labour Union Office and on the way, they saw a crowd near Door No.187/7C and on enquiry, P.W.5 came to know that investigation pertaining to the assault on employee of TNEB is being conducted and that he and another person were requested to be the witness to the said investigation. Thereafter, the police had drawn the rough sketch under Ex.P2 and also prepared the observation mahazar under Ex.P3, in which P.W.5 and Anbu had attested the same.
- G) P.W.6/M.R.Anand, is the Doctor in the Royapettah Hospital. He had stated that on 29.07.2009, P.W.1 was brought to the hospital by one Baskar and when he had enquired P.W.1, informed that he was assaulted by three known persons at 1.30 p.m., using helmet and that there was a contusion on the back side of the head, swelling in the nose and that he had referred him to the General Surgery Department and that he had certified that the injury sustained by P.W.1 was grievous. However, in the cross examination, he had stated that he had not given any treatment to P.W.1 and that he was also not aware of at what type of treatment was given by the Duty Assistant Surgeon. He had further stated that he had given the injury certificate/Accident Register on 11.09.2009 based on the report of the Duty Assistant

Surgeon.

- H) P.W.7/Kowsalya, is the Sub Inspector of Police. She had stated that on the instructions of the Inspector, Crimes, [I/C], she had registered the case in Cr.No.918/2009, based on the complaint given by P.W.1 at 6.00 p.m., on 30.07.2009. Thereafter, she had gone to the place of occurrence and prepared the observation mahazar in the presence of P.W.5 and two others and also prepare the rough sketch under Ex.P2 and thereafter, arrested A1 on the same day and produced him before the Court for remand and later she came to know that A2 had surrendered in Court on 07.09.2009. Thereafter, she enquired P.W.6, obtained injury certificate and finding that P.W.1 had sustained grievous injury, had altered the case to one u/s.294(b) and 333 IPC and filed the final report. However, in her cross examination, she had stated that she had started investigation on 30.07.2009 at 6.00 a.m., and that complaint had been given to the Inspector on 29.07.2009 at 8.00 a.m., she had further admitted that an intimation was given by P.W.4 on 29.07.2009 but she did not receive any intimation from the Government Royapettah Hospital. She had further stated that she has mentioned the time and date when P.Ws.1 to 6 were examined and further she had stated that she has not recovered any blood stained shirt and no documents were produced to show that P.W.1 took treatment during 30.09.2009 as out patient and also further stated that no particulars were obtained to show that P.W.1 was discharging his official duty in the particular day. She had also admitted that she had not examined the Duty Assistant Surgeon.

13. Admittedly, there are two complaints in this case. One complaint was given by P.W.4 on the same day of occurrence which had been admittedly given based on the information given by his employees and another complaint by P.W.1 on the next day. The printed FIR in this case has not been marked, the delay in registering the case has also not been properly explained by the prosecution. As per Ex.P4, P.W.1 was stated to have been admitted in the hospital by one Baskar, the said Baskar has not been examined by the prosecution. Further as per Ex.P4, P.W.1 has stated that he was assaulted by three known persons and that he had stated he was assaulted only by helmet and not by iron rod. It is the evidence of the doctor that he intimated the police whereas P.W.7/S.I of Police had stated that she did not receive any information from the hospital. In this case, the respondents have not produced any material to show that the incident happened while P.W.1 was discharging his official duty and no concrete documents have been marked to show that the

accident had happened at particular place as mentioned by P.W.1. Further non recovery of helmet and Iron rod is also fatal to the case of the prosecution. The non examination of the Duty Assistant Surgeon and non production of X-ray and scan report based on which, the Duty Assistant Surgeon is stated to have given information, also creates a doubt in the prosecution.

14. In the opinion of this Court, the infirmities pointed out and non production of documents to prove that P.W.1 was discharging on the duty on the particular day and non fixing the spot/place of occurrence, non seizure of material objects viz., helmet and Iron rod and non seizure of blood stained clothes and sending them to chemical analysis, the non examination of doctor, who is stated to have given opinion, coupled with non marking of printed FIR and non explaining the delay in the documents being sent to the Court shakes the foundation of the prosecution case. In the opinion of this Court the investigation has been done in a shabby manner and that in the opinion of this Court, the prosecution has failed to prove the case beyond all reasonable doubts.

15. In the result, this criminal appeal is allowed. The impugned judgement of conviction and sentence passed by the learned Additional District and Sessions Judge, Fast Track Court-I, Chennai in SC.No.64 of 2010, dated 26.04.2010, is set aside. The Appellant is acquitted of the charges levelled against him. The bail bond if any executed by the Appellant shall stand cancelled and the fine amount if any paid by the Appellant shall be refunded to him.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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To:

- 1) The IX Metropolitan Magistrate, Saidapet, Chennai.
- 2) - do - through The Chief Metropolitan Magistrate,
Egmore, Chennai - 8.

- 3) The Additional District and Sessions Judge,
Fast Track Court-I, Chennai.
- 4) - do - through The Principal Sessions Judge, Chennai.
- 5) The Inspector of Police, J-7,
Velachery Police Station, Chennai.
- 6) The Public Prosecutor, High Court, Madras.
- 7) The Superintendent, Central Prison,
Puzhal, Chennai (Crime No.918 of 2009)

+1 cc to Mr.R.C.Paul Kanagaraj, Advocate, S.R.No.67654

CrI.A.No.293 of 2010

SKV(CO)
SSM(13/09/2019)