



Bail Slip

Crl.A.No.490 of 2010:

The 1st Appellant/1st Accused viz., Jilla @ Sathishkumar S/o.Chakkaravarthy and 2nd Appellant/3rd Accused viz., Senthil S/o.Deivasigamani, who were released bail as per order of this and made in M.P.No.1 of 2011 dated 17/12/2011 and M.P.No.4 of 2010 in Crl.A.No.490 of 2010 and 26/11/2010 respectively.

Crl.A.No.492 of 2010:

The Appellant/ 2nd Accused viz., Velu, S/o.Ezhumalai, who was released in bail as per order of this and made in M.P.No.2 of 2010 in Crl.A.No.492 of 2010 dated 20/10/2010.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2019

CORAM

THE HONOURABLE Mr. JUSTICE A.D.JAGADISH CHANDIRA

Crl .A. Nos.490 & 492 of 2010

1.Jilla @ Sathishkumar
2.Senthil
3.Deepak (a) Rajee,
(Crl.A.No.490 of 2010 is dismissed as abated as against the third appellant as per order dated 18.09.2018 in Crl.A.Nos.490 and 492 of 2010).

... Appellants in Crl. A. No.490 of 2010

-Vs-

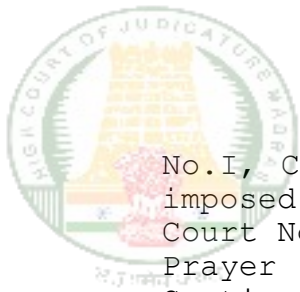
Velu

... Appellant in Crl. A. No.492 of 2010

State by the Inspector of Police,
K3, Aminjikarai Police Station,
Chennai in
Crime No.323/2008

... Respondents in both appeals

Prayer in Crl. A.No.490 of 2010: Criminal Appeal is filed under Section 374(2) of Criminal Procedure Code to call for the entire record in connection with the S.C.No.199/2010 on the file of the learned Additional District and Sessions Judge, Fast Track Court



No.I, Chennai 600 001 and set aside the conviction and sentence imposed by the Addl. District and Sessions Judge, Fast Track Court No.I, Chennai dated 12.08.2010 in S.C.No.199/2010.

Prayer in CrI. A.No.492 of 2010: Criminal Appeal is filed under Section 374(2) of Criminal Procedure Code to set aside the conviction and sentence passed in S.C.No.199 of 2010 by the Additional District and Sessions Judge & Fast Track Court No.I Chennai dated 12.08.2010 and acquit the appellant.

For Appellants in CrI.A.No.490 of 2010:Mr.N.Selvarajan

For Appellant in CrI.A.No.492 of 2010 :Mr.K.Balaji

For Respondents in both appeals :Mr.K.Prabakar
Addl. Public Prosecutor

C O M M O N J U D G M E N T

These appeals have been filed against the judgment in S.C.No.199 of 2010 dated 12.08.2010 whereby the Additional District and Sessions Judge, Fast Track Court - 1, Chennai found the appellants/accused guilty and convicted them and sentenced them as hereunder:-

S.No.	Conviction	Sentence
1.	Under Section 341 of IPC	One month Simple Imprisonment each of the accused.
2.	Under Section 326 of IPC	5 years R.I. and fine of Rs.2,000/- in default to undergo S.I for 3 months each of the accused.
3.	Under Section 307 r/w 34 of IPC	5 years R.I. and fine of Rs.3,000/- in default to undergo S.I for 6 months each of the accused.
4.	Under Section 506(ii) of IPC	1 year R.I. and fine of Rs.500/- in default to undergo S.I for 1 month each of the accused.

The above sentences were ordered to run concurrently.

2. Since it was stated that the appellant/A-4 (3rd appellant in CrI.A.No.492 of 2010) has died, the appeal was dismissed as abated as against the 3rd appellant (A-4) by order dated 18.09.2018.

- The case of the prosecution in brief, is as follows:-

3. The Inspector of Police, K-3, Aminjikarai Police Station, Chennai had filed the final report against the accused



alleging that due to previous political enmity with regard to tearing of banner of former Chief Minister, Kalaignar M.Karunanidhi, on 01.03.2008 at about 9.10 hours at the junction of "C" block main Street, M.M.Colony, 3rd Street, P.P.Thottam, Aminjikarai, the appellants/accused waylaid the witness Mr.Mohan and by uttering "ஏன் என் மேல் கேஸ் கொடுத்து அலைய வச்ச நீ உயிரோடு இருந்ததானே இப்படி செய்வே" the 1st accused attacked PW1 with Aruval and cut his left ear and also caused grievous injuries on his shoulder and the 2nd accused by uttering "இதோடு சாவுடா" attacked PW.1 on his back side with knife, causing grievous injury, the 4th accused took a wooden log and attacked on PW.1's body caused grievous injuries and the 3rd accused took an empty beer bottle and attacked on the head of PW1 and caused grievous injuries. Thereafter all the appellants/accused with a common intention to murder PW1 threatened him saying that "உன்னை கொல்லாமல் விடமாட்டோம்". The final report was filed for the offences under Sections 341, 326, 506 (ii) & 307 r/w 341 of IPC, before the learned V Metropolitan Magistrate, Egmore, Chennai. The case was taken on file as PRC.No.39/2010 and after compliance of procedure under Section 207 of Cr.P.C., finding that the offence under Section 307 of IPC being exclusively triable by the Court of Sessions, the learned Magistrate committed the same to the Principal District and Sessions Judge, Chennai and the Principal District and Sessions Judge made over the same to the trial Court for disposal, according to law.

4.On appearance of the accused persons and on questioning them and after considering the materials on record, the trial Court framed charges against the accused persons for offences under Sections 341, 326, 506 (ii) & 307 r/w 34 IPC and the charges were read over and explained to the appellants/accused in Tamil and the appellants/accused denied the offences and pleaded not guilty and claimed to be tried.

5.On the side of the prosecution PW1 to PW9 were examined and Exs.P.1 to P.11 were marked and material objects M.Os.1 to 5 were also marked. No oral evidence was adduced on the side of the appellants, whereas Exs.D.1 to D.4 were marked on the side of the appellants.

6.PW1 is the victim. He had deposed that he is a full time politician and that he is the President of 64th ward of DMK party and he knows the accused persons and that he had installed a banner at Poonamallee High Road and N.M.Road junction for the birthday function of Chief Minister Kalaignar. His further evidence is that the accused Jilla @ Sathishkumar belongs to P.P.Thottam, 5th Cross Street, Aminjikarai and he tore the above said banner and enraged over the same he had given a police complaint against him and his associates and that enquiry was conducted for four days. Further that on 01.06.2008 at about



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9.10 a.m., while he was walking along the P.P.Thottam, 3rd Street, the accused Jilla, Velu, Rajee and Senthil joined together and abused him with filthy language stating that he has given complaint against them and made them go to the police station and that the 1st accused Jilla @ Sathishkumar took out knife/M.O.1 hidden from his waist and attacked him and when he attempted to thwart the attack the said Jilla @ Sathishkumar cut his left ear and his left pinna got mutilated and fell down. Thereafter, the accused Velu took a knife/M.O.2 and attacked on his back causing grievous bleeding injuries, then the accused Rajee took the wooden log/M.O.4 and attacked him and causing injuries on the body and the other accused Senthil took the beer bottle/M.O.3 and attacked on his head causing bleeding injuries and when he raised alarm one Murugesan and Rahman came there and raised their voices and on seeing them the above said accused persons escaped from the scene of occurrence. Thereafter, the said Rahman had taken him to K.M.C.Hospital for treatment, first aid was given to him and thereafter, he was referred to Government General Hospital for further treatment. He had further deposed that when he was admitted in K.M.C. Hospital, the police went there and took an oral complaint from him and which was reduced into writing, which was marked as Ex.P1. After discharge from the Government General Hospital, PW1 was admitted in a private hospital for a further period of four days as inpatient and since he did not have sufficient means to undergo plastic surgery in the private hospital, he once again got himself admitted in Government General Hospital and underwent plastic surgery. The shirt worn by PW1 at the time of occurrence was marked as M.O.5.

7.PW2/Mr.J.Asan deposed that he is residing at P.P.Thottam, 3rd Street, Aminjikarai and running a chicken stall and that on 01.06.2008, while he was returning home, he saw the crowd assembled near his house. The police came there and prepared an observation mahazar, Ex.P2 in which he and one Murugesan had affixed their signatures.

8.PW3/Mr.Murugesan deposed that he is residing at Muthumariamman Colony, Aminjikarai and doing carpenter work and on 01.06.2008 at about 9.15 a.m., when he was walking along 3rd cross street of Muthumariamman Colony, the accused persons assaulted PW1. He deposed that the 2nd accused Velu, assaulted PW1 on his back with a sickle and the 1st accused assaulted PW1 on his neck and PW1 thwarted the said attack resulting in his left pinna being mutilated. He had further stated that the 3rd accused assaulted PW1 with beer bottle on his head and the 4th accused took the wooden log and attacked on the back side of PW1 and the 2nd accused inflicted a cut injury on the back side of PW1 and that when he and other persons raised alarm, the accused persons ran away after throwing the weapons in a bush nearby Coovam river and escaped from the scene of occurrence and



thereafter, he along with one Rahman took PW1 to the hospital for treatment and that he was present when the police have seized the weapon at 5.00 pm and he has affixed his signatures in the seizure Mahazar/Ex.P.3.

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9.PW5/Dr.Rajasekaran has deposed that on 01.06.2008 when he was on duty at K.M.C.Hospital at about 9.45 am, PW1 was brought by one M.S.A.Rahman and Thirunavukkarasu and when he had enquired PW1, he was informed that he was assaulted by five known persons @ 9.10 am at Muthumariamman Colony with aruval and wooden logs, due to which he has sustained injuries. On examination the victim was conscious and he had found the following injuries on PW.1.

- 1.Laceration on the neck size about 5 cm size.
- 2.Laceration on the back side about 4 cm size.
- 3.Lacerated bleeding injury on left ear pinna.
- 4.Laceration on the back side of the left ear.

After examination of PW1, PW5 had given first aid treatment to him and had referred him to the Surgeon for better treatment. The accident register copy issued by PW5 is marked as Ex.P.5. He had opined that the above injuries have been sustained by the victim in the above incident.

10.PW6/Dr.Balakrishnan, Plastic Surgeon had deposed that on 05.06.2008 he admitted the victim Mohan, aged about 42 years, who had sustained injuries in the left ear in the plastic surgery ward No.48 and provided treatment and discharged him on 05.06.2008 at about 1.00 pm and he had issued Ex.P.6/Wound Certificate. He had opined that the above said injuries were grievous and that they could have occurred with the use of knife or a sharp edged aruval.

11.PW7/Mr.Paul Stephen, Sub Inspector of Police, had deposed that while he was on duty on 01.06.2008 at K3, Aminjikarai Police Station, he received intimation/phone message from K.M.C. Hospital and he rushed to K.M.C. Hospital and examined PW1, who was taking treatment and recorded his statement and recovered the blood stained white shirt/M.O.5 and return to the police station and registered a case in crime No.323/2008 under Sections 341, 324, 506 (2) of IPC and prepared a printed FIR/Ex.P.7. Thereafter, he rushed to the scene of occurrence on 01.06.2008 and prepared observation mahazar/Ex.P.2 and rough sketch/Ex.P.8 in the presence of Murugesan and Asan and recorded their statements. He had deposed that he sent M.O.5/blood stained white shirt under form 95 to the Magistrate Court. Thereafter, he placed the case records to the Inspector of Police for further investigation.

12.PW8/Mr.K.Ramachandran, Assistant Commissioner of police has deposed that on 01.06.2008, when he was on duty at K3, Aminijikarai police station as Inspector of Police, he had



received the case records relating to crime No.323/2008 registered by PW7/Mr.Paul Stephen, Sub Inspector of Police for further investigation and thereafter, he had rushed to the Government General hospital and examined the victim/PW1, who was taking treatment at Ward No.201 as inpatient and recorded the statement. Thereafter, he visited the scene of occurrence in the presence of witnesses Raja and Mani and had verified the observation mahazar and rough sketch. Thereafter, on the same day at 16.15 hours he had seized the broken beer bottle from the place of occurrence in the presence of Raja and Mani under Mahazar and later he had seized the weapons from under the bush nearby Coovam river which were identified by witness Murugesan viz., knife, patta knife and wooden log under Mahazar and thereafter, sent the property to the concerned Court under Form 95. He had thereafter examined witnesses Murugesan, Asan, S.S.Murugesan, Perumal, Rahman, Raja and Mani and recorded their statements. Thereafter, he perused the injuries sustained by PW1 and altered the case from under sections 341, 324, 506 (ii) of IPC to 341, 326, 506 (ii) and 307 r/w 34 of IPC and sent the altered report to the concerned court. Thereafter, on 02.06.2008 he has examined Dr.Rajasekaran, who was given first aid treatment to PW1, when he was admitted to the K.M.C. Hospital. He further deposed that he was transferred on promotion and handed over the case to his successor.

13.PW9/Mr.Mohandass, Inspector of Police had deposed that during the year 2008, when he was on duty at K3, Aminjikarai Police station as Inspector of Police. He took up the crime No.323/2008 for further investigation and re-examined the listed witnesses and thereafter examined PW9/Dr.Balakrishnan, who had given treatment to PW1 and obtained his medical certificate and after completion of investigation filed final report against the accused person on 30.12.2009 under Sections 341, 326, 307, 506 (ii) r/w 34 of CPC.

14.On completion of prosecution witnesses, the accused were questioned under Section 313 of Cr.P.C. Regarding the incriminating circumstances found against him and the accused denied the same. No oral evidence was adduced on the side of the defence. However, Ex.D1 to D4 were marked on their side.

15.After hearing both the sides and perusing the evidence adduced by the witnesses, the learned trial Judge by judgment dated 12.08.2010 found the accused guilty for the offences under Sections 341, 326, 506 (ii) 307 r/w 34 of IPC and convicted the appellants as stated above.

16. The learned counsel for the appellants/accused would assail judgement of the trial Court on the following grounds:-



(i) The entire case is foisted due to political and personal animosity between the appellants and PW.1.

(ii) A fabricated and exaggerated complaint has been given and that the oral evidence is not supported by the medical evidence, which would go to show that the case has been fabricated and foisted on the appellants/accused as a counter blast to the earlier case preferred by one Mr.Kather Basha against PW.1 and his associates, which was registered in Crime No.320 of 2008 for the offences under Sections 147, 341, 294(b), 326 r/w 34 of IPC, in which the 1st appellant/accused was cited as LW.4.

(iii) The manner and the way in which the case in Cr.No.323 of 2008 was registered and investigated after the case in Cr.No 320/2008 was registered and the manner in which the final report was filed would go to show that the case in Cr.No 323/2008 was fabricated on the appellants due to political pressure on the strength of injury suffered by PW.1 elsewhere. It is the evidence of PW.5 that when PW1 was admitted initially the injuries were only lacerations which could have been sustained due to PW.1 falling down, whereas it the exaggerated evidence of PW1 that the left pinna was entirely mutilated and when such being so, though ocular evidence has to be given primacy over the medical evidence, when the medical evidence totally improbabilizes the ocular version, the credibility of the prosecution case is shaken and doubtful coupled with the fact of existing previous enmity and political animosity between PW.1 and the appellants/accused, and that too when the details about the subsequent treatment being taken at a private hospital being suppressed thereby probabalising and suggesting the fact that taking advantage of accidental injuries sustained elsewhere due to a fall, a false case has been foisted against the appellants/accused as a counter to the earlier case.

(iv) Non examination of the Doctors who have given treatment to the victim/PW.1 in the private hospital creates a doubt and suspicion with regard to the version of PW.1 and creates a suspicion with regard to the prosecution case, thereby entitling the appellants/accused for benefit of doubt.

17. The learned Additional Public Prosecutor would submit that the prosecution has proved its case beyond all reasonable doubts by letting in cogent evidence and thereby, the trial Court has rightly convicted the appellants/accused.

18. Now, what is to be seen is as to whether the prosecution has proved its case beyond all reasonable doubts and whether the trial Court is right in convicting the appellants/accused for the offences alleged based on the available evidence and other attended circumstances and whether the appellants are entitled to acquittal giving benefit of doubt.



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19. Now while analysing the evidence on record, as per the initial document viz., Ex.P.5, issued by PW.5 at K.M.C Hospital, which came into existence on 01.06.2005 soon after the alleged occurrence, the injuries on PW1 are only lacerations and PW.5 had deposed that 4 lacerated injuries were found on the body of PW1 viz., one measuring 5 cm over the neck, one measuring 4 cm over back, one over the left ear and one behind the ear and PW.5 had deposed that there is a possibility of the victim sustaining the above injuries due to a fall from an elevated place and also by a small stone. He had further deposed that PW1 had not told him that he was assaulted by a knife and beer bottle. He had further deposed that when he examined PW1 there were no injuries on the shoulder and the head. Thereafter, PW.1 was referred to Government General Hospital for further treatment, where as per the evidence of PW1, he had taken treatment for three days and thereafter, on his own volition he had discharged himself from Government General Hospital and gone to private hospital for treatment and further being unable to bear the expenses at the private hospital he had once again come to Government General Hospital on 05.06.2008 and has taken further treatment. PW6/Dr.Balakrishnan, who has issued Wound Certificate/Ex.P.6, after five days had stated that the injuries are grievous in nature. There is no evidence with regard to what was the nature of treatment given to the victim/PW1 during the initial days of admission at the Government General Hospital and thereafter at the private hospital and the reason for discharge. In Ex.P5, the initial document immediately of the occurrence, the injuries were stated to be only lacerations, whereas strangely in Ex.P6, the injuries were stated to be grievous. Other than Ex.P6 being an opinion nothing had been stated when and under what circumstances PW1 got discharged from Government General Hospital and where and what was the nature of treatment PW1 took at the private hospital he took treatment in between and the reason for discharge and the subsequent treatment at Government General Hospital after four days of occurrence suggesting that Ex.P6 is a fabricated document for the purpose of this case.

20. Further, PW.1 has given specific overt act to all the accused, whereas PW.5 has not stated about any such corresponding injuries on his body. Further PW.5 had deposed that the victim/PW1 did not tell him that he was assaulted by a knife and beer bottle. As per the evidence of PW.1, the left pinna was stated to be mutilated, whereas PW.5 has not stated anything about left pinna being mutilated, thus suggesting the evidence of PW.1 was highly exaggerated. Further, there was no corresponding injuries found on PW.1 in respect of attacked stated to have been made by the accused on his head by a beer bottle and a sickle on the back. It is a settled principles of law that medical evidence renders a good lead in the



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administration of justice both criminal and civil cases and the manner and the type of medical evidence provided by the Court of law is of utmost importance in rendering a justifiable conclusion and avoid miscarriage of justice and when the medical evidence does not support the prosecution case, it becomes doubtful as to whether injuries sustained by the victim/PW1 have been caused by the appellants as projected by the prosecution. More so, when it has been stated by the Doctor/PW5 that the victim has stated that he was attacked by sickle and wooden log and not with knife and empty bottles. Admittedly, as per PW5, PW1's pinna was found intact, whereas PW1 had deposed that when he attempted to thwart, the cut fell on his left ear and his left pinna got mutilated. Though ocular evidence has to be given primacy over the medical evidence, when the medical evidence totally improbabilises the ocular version it can be taken to be a relevant and important factor to affect the credibility of the prosecution witnesses specially when taking into consideration the attended circumstances in this case. Admittedly, PW1 on his own volition got discharged from the Government General Hospital and took treatment in a private hospital and thereafter unable to bear the expenses in the private hospital had once again come back to Government General Hospital for plastic surgery and further treatment. No witnesses have been examined in relation to the nature of treatment given to PW.1 at the private hospital and what was the injury suffered in his ear, thereby creating inferences and suspicion that a false complaint has been given against the appellants to capitalise the injury he had suffered elsewhere as a counter to the earlier case. Further so it is a case of victim/PW1 that he was cut on his back side with the patta knife causing grievous injuries, whereas it is neither supported by medical evidence nor supported by the material objects M.O.5, which was the shirt worn by victim PW1 at the time of occurrence. Admittedly, there was neither a puncture/tear in the shirt nor blood stains in the shirt, thereby creating doubt with regard to the version of PW.1.

21. In the case of State of Rajasthan Vs. Bhanwar Singh reported in (2004) 13 Supreme Court Cases 147, the Hon'ble Apex Court has held that when there is an inconsistency between the ocular evidence and medical evidence, the ocular evidence has to be given primacy over medical evidence, however, when the medical evidence totally improbabilises the ocular version, the credibility of the witness is shaken and thereby benefit of doubt has to be rendered in favour of the accused. Admittedly, in this case, medical evidence was in total variance with the ocular evidence, thereby creating a grave doubt in the prosecution case.

22. PW1 had admitted that there was previous enmity between the victim/PW1 and the accused persons due to tearing of



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political banner. Further it is the admitted case by documents marked on the side of the defence viz., Ex.D3 that victim/PW1 was accused in Cr. No.320/2008 registered by the respondent police on 30.05.2008 for the offences under Sections 147, 341 and 324 of IPC. Ex.D3 is the final report in CC.No.3997 of 09 (pertaining to Cr.No 320/2008) in which PW1 was shown as first accused. The final report has been filed for offences under Sections 147, 341, 294 (b), 326 r/w 34 of IPC. PW1 on the date of occurrence belonged to the ruling party. In the list of witnesses, the first appellant/accused has been cited as LW.4 and in the case, which was registered on 30.05.2018 the other accused were stated to have been arrested on 11.06.2018 and the victim/PW1 was shown as absconding accused, though he had been examined by the respondent in between in Crime No.323 of 2008 and the respondent have not effected his arrest, thus suggesting that PW.1 belonging to the ruling party at relevant time was an influential person and thereby there was a probability of the case being foisted against the appellants.

23. Law requires that the prosecution has to establish the guilt and secure the conviction of the accused by proving the charge beyond reasonable doubt. In the case of Ramakant Rai Vs.Madan Rai and others reported in (2013) 12 SCC 395 while referring to the expression 'reasonable doubt' it has been held hereunder.

"24. Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than the truth. To constitute reasonable doubt, it must be free from an overemotional response. Doubts must be actual and substantial doubts as to the guilt of the accused persons arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case."

24. In the case on hand not alone the exaggeration regarding the injuries, the existing enmity between the parties, the pendency of the earlier case against PW1, the suppression of details with regard to the treatment taken at a private hospital coupled with the admitted fact that PW1 belonged to the ruling party at the relevant time suggests and probabalises foisting of a false case and thereby creating a grave doubt in the prosecution case entitling benefit of doubt in favour of the accused.

25. In view of the same, insofar as the appellants/accused 1 to 3 are concerned, the appeals are allowed, the conviction and sentence passed in S.C.No.199 of



2010 by the Additional District and Sessions Judge & Fast Track Court No.I Chennai dated 12.08.2010 is set aside. The appellants/accused 1 to 3 are acquitted from all the charges and the fine amount paid by them is directed to be returned. The bail bond, if any, executed by the Appellants/accused 1 to 3, shall stand cancelled.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

sai/kv

To

1. The Additional District and Sessions Judge,
Fast Track Court No.I, Chennai.
- 2.The Metropolitan Magistrate No.V.
Egmore, Chennai-8.
- 3.The Chief Metropolitan Magistrate,
Egmore, Chennai.
- 4.The Inspector of Police,
K3, Aminjikarai Police Station,
Chennai.
- 5.The Superintendent,
Central Prison,
Puzhal, Chennai.
- 6.The Public Prosecutor,
High Court, Chennai 104.

+1cc to Mr.K.Balaji, Advocate, S.R.No.27825

Crl .A. Nos.490 & 492 of 2010

SSP(CO)

RRS(24/07/2019)