

BAIL SLIP

The Appellants herein / accused Nos.1,2,5,7 namely
1) Paramasivam, S/o.Rathinam Padaiyatchi, aged about 39 years
2) Karunanidhi, S/o.Natesa Padaiyatchi, aged about 46 years
3) Muthusamy, S/o.Periyasamy, aged about 42 years
4) Narayanan, S/o.Duraisamy, aged 72 years were directed to be released on bail as per order of this court dated 09/08/2011 made in CrI.M.P.No.1 of 2011 in CrI.A.No.491/2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.02.2019

Pronounced on : 26.02.2019

Coram:

The Honourable Dr.Justice G.Jayachandran

Criminal Appeal No.491 of 2011

1.Paramasivam

2.Karunanidhi

3.Muthusamy

4.Narayanan

.. Appellants /
Accused(A1,A2,A5 & A7)

/versus/

State by

The Inspector of Police,
Sendurai Police Station,
Ariyalur District.

(Crime No.56 of 2005)

.. Respondent /
Complainant

Criminal Appeal has been filed under Section 374 (2) of Criminal Procedure Code praying to set aside the conviction and sentence passed by the learned Additional Sessions Judge for Fast Track Court, Ariyalur District in S.C.No.71 of 2008 by judgment dated 12.07.2011 and acquit the appellants herein from the charges.

For Appellants :Mr.K.Balu

For Respondent :Ms.P.Kritika Kamal, GA

J U D G M E N T

This Criminal Appeal is directed against the judgment of the Additional District and Sessions Judge, Ariyalur convicting A1, A2, A5 and A7 in S.C.No.71 of 2008 for the offence under Section 324 of IPC. They are to undergo sentenced 2 years Rigorous Imprisonment and to pay a fine of R.3,000/- in default to undergo 6 months Rigorous Imprisonment each.

2.The case of the prosecution is that at Niniyur Village, Chendurai Taluk, Ariyalur District, Elavarasan constructed a toilet next to his house. This was objected by the family members of Narayanan and Manoharan. They petitioned to the Panchayat President and Revenue authorities alleging that the toilet is constructed in the Government porambocku land. Through surveyor, the land was measured. They found that the toilet is within the Elavarasan patta property. While so, on 30.03.2005 at about 11.15 p.m., 14 persons armed with weapons started to demolish the toilet. When it was objected by Selvam, brother of Elavarasan, Paramasivam cut the hand and head of Selvam with aruval. When Kannan another brother of Elavarasan tried to stop Paramasivam, he assaulted Kannan on his head. Karunanithi, Manokaran, Prakash and Muthusami hit him with wooden log. Pandian, Narayanan, Pazamalai, Ramesh, Mohan and Sekar also joined and attacked Elavarasan. With these assailants, Velu S/o Palanisami, Katiravan S/o Anbumozhi and Kasi S/o Murugan joined and demolished the toilets. Based on the above information given by Elavarasan, the police registered the case on 31.03.2005 at 06.00 in Crime No.56 of 2005 under Sections 147, 148, 427, 294(b), 323, 324, 506(ii) of IPC and Sections 3 and 4 of TNPPDL Act against 14 named persons. The injured persons were admitted in the hospital and were treated for the injuries they sustained. The injuries sustained by them were opined to be simple in nature by the Doctor, who treated them.

3. Before the trial Court, 10 charges were framed against 14 accused. Prosecution examined 13 witnesses, marked 9 documents and 5 material objects. In defence, the accused persons relied on three documents marked as Exs.D1 to D3.

4. A1, A2, A5 and A7, who are the appellants herein convicted for offence under Section 324 of IPC. They were acquitted from other charges. Rest of the accused were acquitted from all charges. Aggrieved by the judgment of the trial Court, the present appeal is filed. The grounds of the appeal in brief are as below:-

(1)The testimony of the prosecution witnesses bristles with contradictions and infirmities. The prosecution witnesses are interested witnesses. It is unsafe to rely on their testimony to convict.

(2)The belated complaint and delay in registration of the First Information Report is due to the time taken by the prosecution to concoct story implicating the accused. After deep consultation and deliberation, the complaint was prepared. PW-1 and PW-3 have given contradictory testimony which was not properly appreciated by the trial Court.

(3)The accused gave a complaint about Elavarasan and his family members on 30.03.2005. To counter it, false complaint was given to the police by Elavarasan. The variation in the wound certificates and the evidence of the injured witnesses PW-2 and PW-3 will prove that the witnesses are not speaking truth.

5. Per contra, the learned Government Advocate for the respondent police would contend the defence document Ex.D.3 Namuna itself an admitted proof for the enmity between the appellants and Elavarasan's family. The appellants and the others were against the defacto complainant family putting up toilet. Since they were not able to remove it legally, on 31.03.2005 forcibly tried to demolish it. M.O.1 to M.O.5 the broken sink, wall and PVC pipes are tell tale evidence for their attempt to destroy the property. The accused are known to each other. So, naming them in the First Information Report is not unusual to disbelieve the testimony of the witnesses. The First Information Report was registered immediately on receipt of the written complaint. There is no unexplained or undue delay to doubt its veracity. The injuries sustained by PW.2 and PW.3 is proved through the evidence of Doctor Ramesh examined as PW.9. The Accident Registers are marked as Ex.P.4 and Ex.P.5. The testimony of the injured witnesses Selvam and Kannan supported by the accident registers. The testimony of the Doctor [PW.9] squarely proves the guilty of the accused for their offence under Section 324 of IPC. So, the learned Government Advocate contended that the trial Court judgment has to be confirmed.

Point

6. The points highlighted in the course of the argument by the learned counsel for the appellants are under:-

PW.1[T.Elavarasan] is the defacto complainant. He in his complaint Ex.P.1 has stated 4 persons came to demolish his toilet and caused cut injuries to his brothers Selvam (PW.2) and Kannan (PW.3). PW.2 and PW.3 were accompanied by one Mahadevan to the hospital. At the time of admission in the hospital, they have informed the Doctor PW.9[Dr.N.Ramesh] that they were

attacked by 4 known persons. The attender mentioned in Accident Register Mahadevan was not examined by the prosecution. While the earliest document says only 4 persons attacked PW.2 and PW.3, the subsequent documents viz., the complaint and First Information Report says 14 persons attacked PW.2 and PW.3. In their testimony, PW.1, PW.2 and PW.3 all brothers have named more than 4 persons and have attributed overt acts to each of the accused persons specifically. As per their evidence, lethal weapons like aruval, crow bar, knife, wooden logs were used. None of these materials objects were recovered by the police.

7. The trial Court has not ignored to take note of these points. It has rightly appreciated the evidence. Applied the sheaf and grain theory. Removed the embellishment and improvisation in the testimony of the witnesses. Co-relating the injuries observed by the Doctor PW.9 on the victims and the overt acts of the respective accused, the trial Court has held A1, A2, A5 and A7 alone are guilty for voluntarily causing hurt to PW-2 and PW-3.

8. The failure of the prosecution to recover the weapon cannot be a reason to doubt in its entirety the prosecution case. The cut injuries found on PW.2 and PW.3 and the part of the body on which the injuries caused would clearly prove that it should have been caused only by some hard weapon. The toilet constructed by PW.1's family has been demolished, which could be inferred from the remnants marked as M.O.1 to M.O.5.

9. The prosecution witnesses were not able to identify the accused, who specifically caused the damage to the property. The lack of corroboration and contradictions between the witnesses has ended in acquittal of charge relating to damage caused to the property.

10. The same benefit cannot be extended to the offence under Section 324 IPC against these appellants because, PW.2 is one of the injured witnesses who has deposed that A1 attacked him with aruval on his head. PW.9[Doctor] who has given wound certificate for PW.2 Selvam has noted this injury and it is found in Ex.P.4-wound certificate.

11. PW.3 the other injured witness has deposed that A2 attacked him with Aruval on his head. This injury is noted by PW.9 and recorded in Ex.P.5 wound certificate. While A1 and A2 had used Aruval, to cause the hurt, A5 rod had caused aberration over the shoulders of PW.2 with iron rod.

12. The overt act by A7 is proved through the testimony of the injured witness PW.2 who has sustained lacerated injuries on his left palm. This injury is noted by PW.9 in the wound

certificate Ex.P.4. The evidence of the injured witness being corroborated by other eye witnesses and the wound certificate, the trial Court judgment holding A1, A2, A5 and A7 guilty for offence under Section 324 IPC is unassailable.

13. Section 324 Indian Penal Code prescribes punishment with imprisonment of either description for a term which may extend to 3 years, or with fine or with both.

14. The occurrence has taken place due to the conflict of interest between PW.1 family and the public over construction of the toilet. The conflict has been brewing for some time. Under Ex.D.1 the Tahsildar has informed the police on 30.03.2005 that though in the peace meeting held on 25.03.2005 Thangavel promised to stop construction, he has engaged workers from outside and completed the construction on 29.03.2005 midnight. So for violation of the undertaking and for creating law and order disturbance, Tahsildar has requested the police to take action. On the same day one Pandian has also lodged similar complainant on behalf of the Villagers. The receipt for the complaint is Ex.D.2. Under the said circumstances, the toilet has been demolished. For the said act of violence rightly the appellants were found guilty of causing hurt to PW.2 and PW.3 who opposed the demolition.

15. Taking into consideration, the circumstances under which the offence occurred, the age of the appellants and the reason for their provocation in its necessary to modify the sentence. Hence, conviction of A1, A2, A5 and A7 for the offence under Section 324 IPC is confirmed. The sentence of imprisonment of 2 years Rigorous Imprisonment and fine of Rs.3,000/- each is substituted with fine of Rs.15,000/- each. Each one of the appellants are to pay the difference of fine amount Rs.12,000/-. If not paid within 30 days from the date of this order, the accused shall undergo 3 months Simple Imprisonment each for the default.

Appeal partly allowed on the terms above.

Sd/-
Assistant Registrar(CS-I)

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Sub Assistant Registrar

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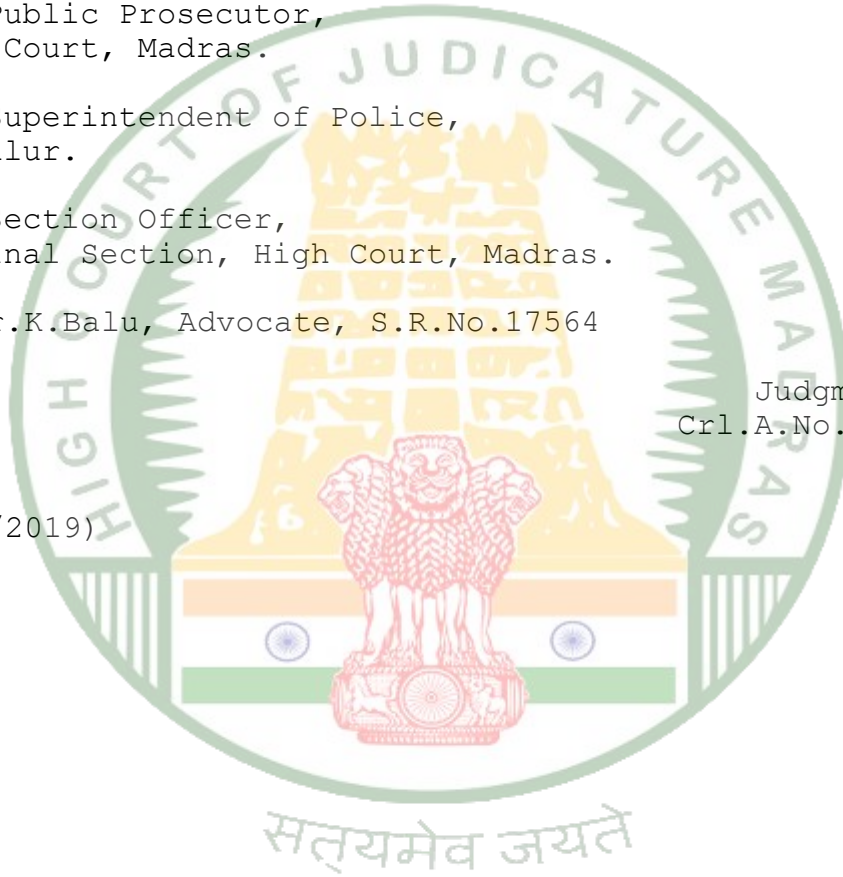
To

1. The Additional District and Sessions Judge
for Fast Track Court, Ariyalur District.
2. The Inspector of Police,
Sendurai Police Station,
Ariyalur District.
3. The Judicial Magistrate,
Ariyalur.
4. The Public Prosecutor,
High Court, Madras.
5. The Superintendent of Police,
Ariyalur.
6. The Section Officer,
Criminal Section, High Court, Madras.

+1cc to Mr.K.Balu, Advocate, S.R.No.17564

Judgment made in
Crl.A.No.491 of 2011

SAI (CO)
SSM(02/04/2019)



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