

Bail Slip

The Appellants namely 1.Mahalingam S/O Naryanasami, 2.Purushothaman S/O Mahalingam and 3.Thulasiraman S/O Narayanasami are Accused A1,A2,A3 in S.C.No.101/10 dated 20/9/2011 on the file of the Additional District and Sessions Judge, Fast Track -III Tiruvallur, were directed to be released on bail as per order of this Court dated 18.10.2011 made in M.P.No.1/11 in CrI.A No.588/11.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.03.2019

PRONOUNCED ON : 29.03.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal No.588 of 2011

1.Mahalingam

2.Purushothaman

3.Thulasiraman

.... Appellants/Accused 1 to 3

Vs

State rep. By

Inspector of Police,

Vengal Police Station,

Tiruvallur District.

(Crime No.19/2008)

.... Respondent/Complainant

Prayer:- This Criminal Appeal is filed under Section 374(2) Cr.P.C., to set aside the judgment of conviction in S.C.No.101/10 dated 20.09.2011 on the file of the learned Additional District & Sessions Judge, Fast Track Court - III, Tiruvallur, and direct the acquittal of the accused from all the charges.

For Appellants : Mr.S.Kingston Jerold

For Respondent : Mrs.Kritika Kamal.P,
Government Advocate (crl.side)

JUDGMENT

The appellants in this criminal appeal are the first three accused in S.C.No.101/2010 on the file of Additional District and Session Judge, Fast Track Court - III, Tiruvallur. They were tried along with two others for offences under sections

148, 324 I.P.C., (against A-1) 307 r/w 149 I.P.C., and 324 r/w 149 IPC (against A-2 to A-5). The trial Court held them guilty of all the charges and convicted them to undergo sentence of 7 years Rigorous imprisonment for offence under section 307 r/w 149 IPC, 2 years Rigorous imprisonment for offence under section 148 IPC. The first appellant (A-1) was sentenced to undergo 2 years rigorous imprisonment for offence under section 324 IPC. The rest of the accused (A-2 to A-5) were sentenced to undergo 2 years rigorous imprisonment for offence under section 324 r/w 149 IPC along with fine and default sentences for the respective offences.

2. Aggrieved by the conviction and sentence, the appellants/A-1 to A-3 have preferred the present criminal appeal in Crl.A.No.588/2011 and the other two accused A-4 and A-5 have preferred another appeal in Crl.A.No.590/2011. When the appeals were taken up for final disposal, it was reported by the learned counsel for the appellants and the learned Government Advocate (crl.side) appearing for the respondent that both the appellants in Crl.A.No.590/2011 expired. The Learned Government Advocate (criminal side) furnished the death certificates of Janathanam and Gunasekaran, the appellants in Crl.A.No.590/2011. Recording the death of Janathanam and Gunasekaran, the appeal in Crl.A.No.590/2011 was dismissed as abated on 25.03.2019. The present criminal appeal is filed by A-1 to A-3 and the same is taken up for consideration.

3. The case of the prosecution, in nutshell, is as follows:

The accused persons Mahalingam (A-1), Tulasiraman (A-3), Janardhanam (A-4) are the sons of Narayanasami. Purushotaman (A-2) is son of A-1 and Gunasekaran (A-5) is son of A-4. The defacto complainant Venkatesan (PW-1), Ramadas (PW-2) and Narashiman (PW-3) are the sons of Devaraj. The accused family and the defacto family live in Sembudu Village at Tiruvallur District. Both the family were not in good terms due to property dispute. On 05/01/2008 at about 7.00 am, when Venkatesan (PW-1) was taking his cattle along the ridge of the Mahalingam (A-1) land, it was objected by Mahalingam for passing through his land and also abused PW-1 in filthy words. PW-1 retorted back and went to his land. At about 8.30 am while PW-1 was ploughing his land, A-1 to A-5 came with deadly weapons attacked PW-1 indiscriminately over his head and body. When PW-2 came to the rescue of PW-1, he was also attacked on the right leg. Hearing the incident, PW-3 came to the spot, took his injured brothers PW-1 and PW-2 to the hospital.

4. The complaint was received by the Head Constable Dayanithi and FIR was registered. Investigation was taken up by PW-8. Observation mahazar was prepared. Accused were arrested. Knives,

M.Os. 1 to 3 used for the crime were recovered based on the information given by the accused in their confession statements.

5. Based on the evidence relied by the prosecution, the trial Court found the charges against the accused are proved. Aggrieved by the finding of the trial Court, the appellants have preferred the above appeal.

6. The learned counsel appearing for the appellants would submit that the prosecution has failed to prove their case beyond doubt. The trial Court erred in relying upon the testimony of PWs-1 to 3 who are brothers. They are interested witnesses and their testimony is unreliable in view of the animosity prevailing between the two families in respect of the property mortgaged. The alleged confession leading to recovery of knives (material objects) is not supported by the independent witnesses. The independent witnesses for confession and recovery of material objects have turned hostile. The victims have not properly identified the material objects viz., M.Os.1 to 3 as the weapons used in the crime. The wooden logs alleged to have been used by the accused were not seized. The injury sustained by the third accused in the same occurrence was suppressed by the prosecution. The alleged incident had taken place at about 7.00 am on 05.01.2008. The injured persons have gone to the hospital only at 10.00 am and the complaint was given thereafter at 11.00 am. The delay in getting admitted P.Ws.1 and 2 in the hospital and lodging the complaint, though the hospital and the police station were very near to the scene of occurrence causes grave doubt in the prosecution version.

7. The learned counsel for the appellants submitted that due to previous enmity, there was some exchange of filthy words followed by blows. In the fit of anger, both parties sustained injuries. However, the prosecution has suppressed the injury sustained by the third accused. The trial Court ought to have acquitted the accused for suppression of material facts by the prosecution. Contrary, the trial Court totally ignored the failure on the part of the prosecution to place the facts related to the injury sustained by third accused and failure of the Investigating Officer to collect the blood stained clothes of the victims and blood stained soil from the Scene of crime.

8. Per contra, the Learned Government Advocate (criminal side) contend that the enmity between the accused family and the de facto complainant family is spoken by the witnesses and also admitted by the accused. On the day of occurrence, the first accused picked quarrel with PW-1 while he was taking his cattle through his land. Thereafter A-1 to A5 gathered with dangerous weapons and had caused multiple injuries to PW-1 who sustained six cut injuries on the head and one on his left thumb. A swollen wound on the back was also noticed by the Doctor and

recorded in the Accident register. PW-2 sustained one cut injury on his left leg and swelling on the right shoulder and left side of his face. The accident registers Exhibit P6 and Ex P7 issued by the PW-6 Doctor proves the injuries sustained by the witnesses. PW- 3, the brother of the victims have come to the spot. Taken them to the hospital. His evidence is quite natural and cogent corroborating the evidence of PW-1 and PW-2. For the injuries sustained by the witnesses PW-1 and PW-2 they were hospitalised for more than 10 days. But for the treatment, PW-1 would have succumbed to the injuries. Therefore, the Government Advocate (crl.side) would submit that the trial Court has rightly convicted the accused for the offence they committed. Hence, the criminal appeal is to be dismissed.

9.The first contention raised by the counsel for the appellants is that A-3 also sustained injury on that day. It was free for all fight. The police had suppressed the injury sustained by A-3 and the complaint made by him.

10.As pointed out by the trial Court, except suggesting that A.3 also sustained injury during the occurrence, during the examination of witnesses, they have not placed any record before the Court to show that A.3 sustained injury and that injury was in the course of the same transaction. No evidence to show A.3 gave any complaint to the police about the injury alleged sustained during the occurrence. Therefore, the defence of counter case is merely an afterthought without any substance.

11.The second contention of the Counsel for the appellants is that there is a delay in getting admitted P.Ws.1 and 2 in the hospital and in lodging the complaint.

12.The sequence of events as spoken by the prosecution witnesses is that on 05/01/2008 at about 7.00 am, while PW-1 was passing through the ridges of the first accused land, A-1 picked a quarrel with PW-1. Thereafter, PW-1 has gone to his land to plough the land. The first accused along with the other accused had come to the field, armed with weapons and assaulted the defecto complainant at about 8:30 am. The injured persons were taken to hospital by PW-3. They were admitted at 10.00 am. The Doctor has seen them at about 11:10 am and recorded the accident register. On receiving the intimation from the hospital, Head constable - Dayanithi of the respondent police station had gone to the hospital and recorded the statement of PW-1. The complaint was registered after recording the statement of PW-1 in the hospital. Thus, this Court finds that there is no delay in the complaint which may give raise to doubt of embellishment and external advice.

13.The third point raised by the counsel for the appellant is that the weapons used to cause injuries on P.Ws.1 and 2 not been recovered and not been properly identified.

14.It is the specific case of the prosecution that, A-1 to A-3 were armed with 'kadai kathi' (knife with long wooden handle). A-4 and A-5 were carrying wooden logs. In the course of investigation, the prosecution was able to recover three knives concealed in the field of A-1. Though the witnesses for confession and recovery material objects have turned hostile and PW-1 admits that the knives used by the accused persons had a long wooden handle whereas, the material objects M.Os.1 to 3 does not have the long wooden handles. PW-8 the Investigation Officer has explained that the knives and the handles are detachable and what he recovered based on the confession of the accused is Mos.1 to 3 without the wooden handles.

15.Even otherwise, the lack of proof for seizure of weapons used in the crime may not throw away the case of the prosecution when the injured witnesses have spoken about the incident cogently and corroborating each other. The injuries found on PW-1 and PW-2 is proved to have been caused by the accused/appellants who gathered with deadly weapons and caused the injuries on PW-1 by attacking him over his head. When he tried to defend with his hand, his left thumb got injured. They have also attacked PW-2 who came to rescue his brother PW-1.

16. In the given facts and cumstances, the facts proved through the evidence of prosecution, this Court finds that the trial Court has rightly appreciated the evidence placed before it and held the accused/appellants guilty. Since, the grounds raised by the appellants are unsustainable in law and facts, the finding of the trial Court is confirmed.

17.In the result, the Criminal Appeal is dismissed. The judgment of the trial Court is confirmed. The appellants are directed to surrender before the trial Court within the period of 30 days to undergo the remaining period of sentence. The bail bond stands cancelled.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Judicial Magistrate No.1,
Tiruvallur.

2.The Chief Judicial Magistrate,
Tiruvallur.

3.The Inspector of Police,
Vengal Police Station,
Tiruvallur District.

4.The Additional District and
Sessions Judge (Fast Track Court No.III),
Tiruvallur.

5.The Superintendent,
Central Prison, Puzhal, Chennai.

6.The Public Prosecutor,
High Court, Chennai.

7.Mr.Mahalingam,
S/O Narayanasami,
Sembedu Village,
Vengal Post.
Tiruvallur Taluk,

8.Purushothaman-M/20,
S/O Mahalingam.
Sembedu Village,
Vengal Post,
Tiruvallur Taluk,

9.Thulasiraman-M/55,
S/o Narayanasami,
Sembedu Village,
Vengal Post,
Tiruvallur Taluk.

Copy to

The Section Officer,
The Criminal Section (Records),
High Court, Madras

Cr1.A.No.588 of 2011

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srg 9/5/2019