

BAIL SLIP

The Appellant herein/Accused viz Manimaran S/o Raman, was directed to be released on bail as per order of this court dated 28.02.2012 made in CrI.MP.No.1 of 2012 in CrI.A.No.129/2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 18.02.2019

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Criminal Appeal No.129 of 2012

1. Raman
2. Manimaran

Appellants/Accused 1 & 2

Vs

The State
Rep by
Inspector of Police
B-3, Fort Police Station
Chennai -600 009
Cr.No.54 of 2011

Respondent

Prayer: Criminal Appeal is filed under Section 374(ii) of the code of Criminal Procedure, praying to set aside the conviction and sentence imposed upon the appellants/accused in SC No.433 of 2011 on the file of Additional Sessions and District Judge, III Fast Track Court, Chennai dated 27.01.2012.

For Appellants : Mr. P.K. Mohanavel

For Respondent : Mr.T.Shanmuga Rajeshwaran,
Government Advocate

J U D G M E N T

This Criminal appeal is directed against the conviction and sentence imposed upon the appellants/accused by the trial Court holding the appellants guilty for the offence punishable under Section 326 of IPC and convicted the appellants to undergo 3 years rigorous imprisonment each and to pay a fine of Rs.1000/- each in default 6 months simple imprisonment.

2. The brief facts of the case is that on 23.05.2010 at about 8.45 am near Annai Sathya Nagar, B Block, Chennai, 1st accused Raman, 2nd accused Manimaran, 3rd accused Megala and 4th

accused Esthar, due to previous enmity, restrained one Sardhar Basha and assaulted him with knife and caused grievous injuries to him. Charges were framed against the accused persons for the offences under Sections 341, 307, 307 r/w 109 and 326 of IPC. Even before framing of charge, 4th accused Esthar died, the case was tried against the A1 to A3.

3. To prove the case, the prosecution has examined 14 witnesses, 15 exhibits and 4 material objects marked. On the side of the defence, 2 witnesses were examined and 2 exhibits were marked.

4. The trial Court after appreciation of evidence acquitted the 3rd accused from all the charges. Convicted A1 and A2 for the offence under Section 326 IPC and acquitted them for the rest of the charges. For the guilty of the offence under Section 326 IPC, the trial Court imposed sentence of 3 years rigorous imprisonment each and a fine of Rs.1000/- each in default 6 months simple imprisonment.

5. Aggrieved by the said conviction and sentence, the 1st and 2nd accused have preferred this appeal, which is now under consideration.

6. The learned Counsel appearing for the appellant would submit that the prosecution has foisted false case against the accused persons to detain them under Goondas Act. None of the independent witnesses except the father-in-law of the victim supported the case of the prosecution. Since Mahazar, confession statement not been supported by any independent witnesses, the prosecution has miserably failed to prove its case. However, the Court below relying the evidence of Defacto Complainant PW-1 and medical evidences available on record has convicted the appellants.

7. The complaint Ex.P.1, which is alleged to have been given by the victim in the Hospital is highly doubtful, since PW-1 in his deposition admits that he regained consciousness only after 2.30pm on that day. However, the complaint leading to registration of the First Information Report indicates as if it was received from PW-1 on 23.12.2015 at 11.30 hours. The Accident Register Ex.P.5 indicates that the injured witness PW-1 was brought to the Hospital by one Babu. The prosecution has examined the said Babu as PW-6. This witness has not supported the case of the prosecution. He has categorically deposed that he does not know anything regarding the case.

8. The learned Counsel appearing for the appellants would submit that merely based on the evidence of PW-1 to PW-3, the trial Court has held that the 1st and 2nd accused guilty. The

reason given by the trial Court to acquit the 3rd accused squarely applies to other 2 accused also. It has been elicited during the cross examination that PW-3 has every motive to implicate the appellants family. While so, based on the evidence of motivated evidence, the trial Court ought not have convicted the appellants.

9. The contradictory statement of PW-1 to PW-3 regarding the scene of occurrence and the failure of prosecution to establish the identity of the material object used has not been properly appreciated by the Court below. The prosecution has failed to prove the case beyond all reasonable doubts. It has adduced conflicting and contradictory evidence regarding the scene of occurrence, time of complaint, time of preparation of Observation Mahazar, manner in which the material objects were recovered. Cumulatively these infirmities ought to have ended in acquittal of the accused. However, without proper appreciation of the evidence, the trial Court has convicted the accused.

10. The learned Government Advocate representing the State would submit that the evidence of PW-1 clearly shows that he sustained injuries on the hands of the accused persons, which clearly attributes overt act on the part of the accused persons' intention, motivation for causing grievous hurt. The medical evidence namely Ex.P.5 Accident Register Certificate and the evidence of PW-12 Dr. Sasidhar and PW-13 Dr. Sameer who has listed out the injuries found on PW 1 and the nature of injury, will go to show that the prosecution has proved all necessary ingredients required for punishing the accused for offence under Section 326 IPC.

11. The submissions made by the counsels heard. Perused the available records.

12. Ex.P.1 is the statement of the injured person PW-1. It was recorded by the police while PW-1 was taking treatment as inpatient at the Hospital. It was recorded at about 11.30 am, on 23.05.2010. The Accident Register Ex.P.5 reveals that PW-1 was admitted in the Hospital at 9.15 am. He has stated that 4 persons have assaulted him. The injuries found by doctor while external examination of the injured victim find place in Ex.P.5.

13. PW-12 has deposed about the admission of PW-1 in the Hospital and the contents of Accident Register. Based on the said complaint, the respondent had registered First Information Report at 11.30 hours and proceeded with the investigation. The learned Counsel appearing for the appellants would submit that PW-1 in his cross examination has admitted that he regained consciousness only after 2.30pm. So, the possibility of recording the statement at 11.30 am and registering the First

Information Report Ex.P.7 is impossible. The fact that the admission of PW-1 in the Hospital was at 9.15am not in dispute. In his cross examination, PW-1 admits that he regained consciousness only after 2.30pm. But we could not find at what time, he lost his consciousness. Under this circumstances, we can not jump to the conclusion that the complaint and First Information Report registered based on the complaint are false.

14. The other contention raised by the counsel appearing for the appellant is that Babu, attender of the Hospital has turned hostile, therefore the version of the prosecution is suspicion. When the close relative of PW-1 Murugan (PW-3), the father-in-law of PW-1, alleged to have been present at the time of occurrence, why Babu, third person, took the victim to the Hospital. The Accident Register maintained by the Hospital is not an encyclopedia of all the informations. Because, name of Babu entered in the column meant for name of the attender. It does not mean that none else accompanied the victim or none else witnesses the occurrence.

15. Moreover, the residence of PW-1, PW-3, accused and shop of PW-2 are all even the same locality and vicinity. Annai Sathya Nagar is very small locality. The defence witnesses DW-1 and DW-2 also are the residents of the same place and they have deposed to prove that nothing untoward took place on the date of occurrence in their locality. It is very pertinent to note that the accused has tried to prove through DW-1 and DW-2 a fact, which is not relevant to the issue but to establish alibi. Though the accused are entitled under Section 11 of evidence Act to let in evidence to prove alibi, DW-1 and DW-2 are witnesses who failed to withstand in the cross examination as well as failed to inspire the confidence of the Court.

16. DW-1 and DW-2 mounted the witness box with an intention to support the accused persons. But, they have in a way supported the case of the prosecution by deposing that they came to know PW-1 was assaulted by the accused persons. Therefore, the Court below has rightly ignored the evidence of DW-1 and DW-2.

17. As far as this case is concerned, the evidence of the injured witness is very cogent and inspires the confidence of this Court regarding its genuineness. The overt act of the accused persons, the injury sustained by him due to their overt act have spoken by PW-1 and the same has been corroborated by PW-3. Doctors, who examined PW-1 has certified the injuries sustained by PW-1 are grievous in nature.

18. Yet another contention raised by the learned Counsel appearing for the appellant is that PW-1 had lot of enemies and he would have sustained injuries at their hands. There is no

need for PW 1 to hide the real culprit and implead the innocent persons for grievous injuries he sustained.

19. In the light of the above discussions, this court holds that the findings arrived at by the trial Court is reasonable and well considered one. Therefore the appeal is dismissed. The conviction and sentence awarded by the trial Court is hereby confirmed. The trial Court is directed to take steps to secure the accused and make arrangements for sending them to the prison for serving the remaining period of sentence. Further, the trial Court ordered to set off the period already undergone by the accused/appellants under section 428 of Cr.P.C

Sd/-
Assistant Registrar(CS)

//True copy//

Sub Assistant Registrar

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To

1. The Metropolitan Magistrate No.VII, Egorge Town, Chennai
2. The Chief Metropolitan Magistrate , Egmore, Chennai
3. The Superintendent, Central Prision, Puzhal, Chennai.
4. The Additional Sessions and District Judge,
III Fast Track Court, Chennai
5. The Public Prosecutor, High Court, Madras
6. The Inspector of Police, B3 Fort Police Station, Chennai

Copy To

The Section Officer(Record) CrI. Section, High Court, Madras
+1cc to Mr.K.Shanmugam, Advocate SR.No.15431

Criminal Appeal No.129 of 2012

MR(CO)
GMY(25/03/2019)