

BAIL SLIP

The Appellants / Accused No.1,3 & 4 Viz., Thirugnana Sambantham, S/o.K.A.Ramasamy, aged 34 years, Ganeshan S/o.Subramaniam, aged 35 years, M.S.Palanisamy S/o.Pullar Chettiar, aged 36 years was directed to be released on bail on 14.12.2011 in CrI.M.P.No.1 of 2011 in CrI.A.No.799 of 2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.02.2019

Coram::

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal No.799 of 2011

1. Thirugnana Sambantham,
S/o.K.A.Ramasamy,
Marutham Complex,
Maruthamalai Adivaram,
Coimbatore.
 2. Ganeshan,
S/o.Subramaniam,
Kumarankudi,
Maruthamalai Adivaram,
Coimbatore.
 3. M.S.Palanisamy,
S/o.Pullar Chettiar,
No.8/1, Maruthamalai Adivaram,
Coimbatore.
- ... Appellants/Accused 1, 3 & 4
- /versus/

State represented by
The Inspector of Police,
Vadavalli Police Station,
Coimbatore.

... Respondent

Prayer:- Criminal Appeal is filed under Section 374(2) of Criminal Procedure Code, against the appeal and to set aside the conviction and sentence imposed by the Judgment dated 15.11.2011 in S.C.No.199 of 2011 passed by the Additional District and Sessions Judge, Fast Track Court No.1, Coimbatore.

For Appellant : Mr.B.Kumarasamy
for Mr.B.Vijayakumar
For Respondent : Ms.Kritika Kamal
Government Advocate (Crl.Side)

J U D G M E N T

The Appeal is directed against the conviction and sentence imposed by the Learned Additional and Sessions Judge in S.C.No.199 of 2011 holding the appellants guilt for offences under Sections 148 and 307 of I.P.C

2. The brief facts of the prosecution case is that on 05.06.2010 about 8.05 p.m a mob of 50 to 60 persons attacked Law College students staying in Saraswathi Illam (men's hostel) located near the foothill of Maruthamalai Temple. A complaint Ex.P.1 given by Prithivai Raj [PW.1] reveals that on 05.06.2010 at about 8.05 p.m, when he along with his friends visited Maruthamalai Temple foothill Shop, a mob of Thirugnana Sambantham (A1), Chinnamani, Chandrasekar, Jagadesan and others came with deadly weapon and starting attacking them. The house owner told them to escape, on seeing the mob. When they tried to escape, the mob surrounded them and attacked them indiscriminately in which PW.1 sustained injury on his right leg, right forehead, right elbow. His friend Balaji sustained injury on his right hand and right leg. Manikandan sustained injury on his right cheek and right wrist. After hearing their scream, public came and rescued them and admitted in C.M.C, Hospital.

3. Based on the complaint, the respondent police has registered First Information Report (Ex.P.8) against 10 persons for offences under Sections 147, 148, 294-B, 324, 506(ii) of I.P.C later altered to under Sections 147, 148, 294 (b), 324 and 307 of I.P.C.

4. The trial Court, on considering the material placed before it, has framed charges against A1 to A5 for offences under Sections 148 of I.P.C and 307 r/w 149 (4 counts).

5. To prove the charges, the prosecution has examined 10 witnesses, 12 Exhibits and 1 material object were marked to the witnesses. PW.1 to PW.4 are injured witnesses. PW.5 and PW.6 are the doctors, who have treated the injured persons and registered the accident report. PW.7 and PW.8 are witnesses to the seizure mahazar but they have been turned hostile by the prosecution. PW.9, Sub-Inspector of Police who has recorded the statement of injured the defacto complainant and registered First Information report. PW.10 Investigating Officer who has taken upon the investigation and filed final report.

6. The trial Court based on the ocular evidence of the injured witnesses PW.1 to PW.4, the nature of injury sustained by them as per the evidence of doctor and Accident Register has held the accused A1, A3 and A4 are guilty of offences under Sections 148 and 307 of I.P.C. Sentenced to undergo 3 year R.I and to pay a fine of Rs.1000/- in default 6 months S.I for offence under Section 307 of I.P.C and to undergo 3 months R.I and pay a fine of Rs.1000/- for the offence under Section 148 of I.P.C

7. The present appeal is preferred against the judgment of the trial Court convicting and sentencing the accused A1, A3 and A4 as stated above.

8. The learned counsel appearing for the appellants would submit that the earliest document in this case is the Accident Register marked as Ex.P.2 to Ex.P.6. Wherein, the injured persons have informed the causality doctor that 50 to 60 unknown persons attacked them with wooden logs. Whereas, in the complaint registered, after few hours of their admission, the victims were able to name several persons. PW.1 (Prithivi Raj) strangely would say about the injury not only sustained by him but also the injury sustained by the other victims.

9. Pointing out that the independent witness to the recovery has turned hostile and the Material Object (M.O.1) is wooden log. The nature of injury found by the doctor ought not to have been caused due to the M.O.1 or by the accused persons. Pointing out the suggestion made to the injured witnesses that they sustained injury from their fall from the first floor of the building.

10. The learned Counsel appearing for the appellant would submit that neither the place of occurrence nor the identity of the assailants or the injury found in the body of the victims are correlated to each other and corroborated by acceptable evidence.

11. Per contra, the Learned Government Advocate (Crl.Side) representing the state would submit that PW.1 to PW.3 who are injured witnesses have deposed in their evidence regarding the assailants and the injury caused by them. PW.1 in his testimony identified Thirugnana Sambantham (A1) and the injury caused by him. The doctor who has deposed regarding the injury sustained by PW.1. He has opined that the injury is grievous in nature. Similarly, the evidence of PW.2 and the Accident Register Ex.P.3 implicates M.S.Palanisamy (A4) for the injuries found. PW.3 in his evidence has implicated Ganeshan (A3) for the injury which he has sustained. Through Ex.P.6 Accident Register certificate, the prosecution has proved that PW.3 has sustained injury.

Therefore, though the name of A3 and A4 were not mentioned in the first information report given by PW.1, since, PW.2 and PW.3 who are the injured witnesses have identified their respective assailants, the trial Court has convicted those accused against whom the witnesses have attributed overt act and corroborated by medical evidence. While extending the benefit of doubt to other accused persons and acquitting them from all charges, the trial Court has specifically held A1, A3 and A4 guilty. Since, the prosecution available to place before the trial Court overwhelming evidence against these accused.

12. The Learned Government Advocate (Crl.Side) would contend that the Investigating Officer has inspected the scene of crime immediately after registering the complaint. He has prepared the observation mahazar and sketch based on the information. He seized wooden log M.O series in the presence of independent witnesses. PW.7 and PW.8 are signatory to the mahazar (Ex.P.5) though has turned hostile, the medical certificate Ex.P.2 to Ex.P.4 and the ocular evidence of the victims proves beyond doubt that PW.1 to PW.4 have sustained injury and M.O.1 series were used as weapon.

13. Heard the respective Counsels. Perused the records and deposition.

14. In the first information report and the complaint given by PW.1, this Court could find that there was a mob fury on 05.06.2010 following ransack caused by the Law College Students in the shops of Maruthamalai Temple foothill. As a follow out the students who were staying in the Saraswathi Illam were attacked indiscriminately by a mob of 50 to 60 persons. The victims who were examined as PW.1 to PW.4 were inmates of the said hostel. They have sustained injury which are noted in the Accident Registers marked as Ex.P.2 to Ex.P.4 and Ex.P.6. Though mahazar witnesses have turned hostile, during the course of investigation, the prosecution were available to collect the wooden log which are marked as M.O.1 series and same has been identified by the victims as the weapon used to cause injuries on them.

15. The doubt which has raised by the learned Counsel for the appellants regarding the place of occurrence and whether the Appellants herein were members of the unlawful assembly who have caused the injury on the victims.

16. The Accident Registers are marked as Ex.P.2, Ex.P.3, Ex.P.4 and Ex.P.6. The place of occurrence has been mentioned as Maruthamalai Temple foothill. In the First Information Report, the scene of crime is shown as open space behind the House of Saraswathi. The rough sketch prepared by the I.O is marked as Ex.P.10. The scene of crime is not at Maruthamalai Temple foothill. It is the house of Saraswathiammal situated in the Leprosy Colony road. During the cross examination of PW.1, PW.2 and PW.3 it has been suggested that group of Law College students picked quarrel with the shop owners at Maruthamalai Temple foothill and damaged their shops. As a consequence, a complaint was given against them. To counter blast the complaint, the present complaint was lodged by PW.1. Though the said suggestion has been denied and it is not a possible explanation by the accused, the fact remains that, prior to the incident which is subject matter of this appeal. There was some ruckus caused by the Law College students in the Bazaar of Maruthamalai Temple foothill which is proved from the admission of the Investigation Officer (PW.10). He who admits that when he went to the scene of crime for investigation, he came to know that there was some quarrel between the Law College Students and the shops owners. The group of Law College students came to the shop in support of one Murugeshwari, a student of Law and ransacks three shops in the Maruthamalai Temple foothills. But when we look at the testimony of the injured witness, they totally deny about this incident. They are not permanent resident of this locality who could know about the identity of the assailants. Admittedly, they are alien to that area. But strangely PW.1 was able to name few of the assailants, when he lodged the complaint. Similarly, even without conducting identification parade the witnesses were able to identify the accused persons for the first time in the Court. When a mob of 50 to 60 persons have surrounded and attacked, identifying few persons and attributing overt act to them can be possible, only if the victims and assailants had prior acquaintance. If we look at Accident Registers Ex.P.2 to Ex.P.4 and Ex.P.6, the victims PW.1 to PW.4 has invariably informed to the doctor that they were assaulted by 50 to 60 unknown persons. Therefore, when they informed to the doctor at 9.40 p.m that they were assaulted by unknown persons within four hours, PW.1 was able to name four persons among the assailants. In the deposition, PW.1 has further improvised his version by attributing overt act to each of the accused persons. The embellishment of the prosecution case, improvising at each stage renders their case highly doubtful.

17. In the said circumstances, this Court finds that the benefit of doubt has to be extended to the appellants. Accordingly, the Criminal Appeal is Allowed. The conviction and sentence passed by the Lower Court is set aside. Fine amount if any paid, shall be refunded to the appellants.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

bsm

To,

1. The Learned Additional District and Sessions Judge,
Fast Track Court No.1,
Coimbatore.
2. The Judicial Magistrate No.6,
Coimbatore
3. - do - through The Chief Judicial Magistrate,
Coimbatore.
4. The Government Advocate (Crl.Side),
High Court, Madras.
5. The Inspector of Police,
Vadavalli Police Station,
Coimbatore.
6. The Section Officer,
V.R.Section, High Court, Madras.

+1 cc to Mr.B.Vijayakumar, Advocate, S.R.No.15063

Crl.A.No.799 of 2011

PPA (CO)
SSM(04/04/2019)

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