

BAIL SLIP

The Appellants/Accused 1 to 4 by namely, Madan @ Jayabal (A1) S/o.Jayaraman, Mahendran (A2) S/o.Radhakrishnan, Bosekumar @ Bose (A3) S/o.Krishnan, and Rajesh (A4) S/o.Govindaraj be and hereby are directed to be released on bail on 12.09.2012 made in M.P.No.1/2012 in CrI.A.No.546 of 2012 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.04.2019

PRONOUNCED ON : 16.04.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal No.546 of 2012

1.Madan @ Jayabal
2.Mahendran
3.Bosekumar @ Bose
4.Rajesh

...Appellants / A1 to A4

Vs

State rep. By Inspector of Police,
Karaikal Town Police Station,
Karaikal
(Crime No.266/2007)

...Respondent / Complainant

Prayer:- This Criminal Appeal is filed under Section 374(2) of Cr.P.C., against the judgment of conviction and sentence dated 22.08.2012 by the learned Additional Sessions Judge, Karaikal in S.C.No.48 of 2012.

For Appellants : Mr.C.Prabakaran

For Respondent : Mr.V.Balamurugan,
Additional Public Prosecutor

JUDGMENT

The appellants herein have filed the present Criminal Appeal against the judgment of conviction and sentence passed in S.C.No.48 of 2012 on the file of the learned Additional Sessions Judge, Karaikal. The appellants were sentenced to undergo 3

years rigorous imprisonment and fine of Rs.2,500/- in default 2 months simple imprisonment for offence under section 307 r/w 34 of IPC.

2.The case of the prosecution is that, on 04/09/2007 at about 22.15 hours, when Rajasegaran - the Sub-Inspector of Police, Town Police Station, Karaikal, was on bandobust duty, received intimation from the Head Constable, Town Police Station, Karaikal that, one Karthikeyan has been admitted in the Karaikal General Hospital with history of assaulted by four persons with iron rods and wooden logs. He after making entry in the General dairy of the Station, proceeded to the hospital. Recorded the complaint from the injured person and registered FIR against Madan (A-1), Mahendiran (A-2) and two others for offences under sections 324, 307 r/w 34 IPC.

3.In his complaint, Karthikeyan (PW-1) alleged that, he as the Councillor of ward 5, Karaikal Town, arranged to construct a public lavatory near bus stand and completed it. When he proposed to inaugurate it on 03/09/2007, the members of the auto Drivers Association, without his knowledge, opened it in advance on 01/09/2007. Karthikeyan (P.W.1) protested about it to the Chairman and the Commissioner. Knowing that on 02/09/2007 Madan (A-1), Raja (A-6) and Mahendiran (A-2) attempted to assault him. On 04/09/2007 at about 10.00 pm when he was taking tiffin at India Coffee House opposite to Thanthai Periyar School on the Karaikal Bharathiyar Road, Madan (A-1) and Mahendiran (A-2) armed with iron rods and two other persons accompanying them armed with wooden logs started beating him saying, "he can talk only if alive, so get lost."

4.During the course of investigation, the Investigating Officer arrested Madan (A.1) and through the information given by him, he discovered that Madan (A.1) along with five others in furtherance of common intention decided to kill Karthikeyan (P.W.1) who has threatened Madan (A.1) to do away due to the feud arose in connection with the inauguration of the public lavatory. So, Madan (A.1) along with the other accused, all armed with dangerous weapons followed Karthikeyan (P.W.1) on 03/09/2007 in an Auto and when he went inside the India Coffee house, Madan (A.1) and Mahendiran (A.2) with iron rods along with Bosekumar @ Bose (A-3) and Rajesh (A-4) with wooden logs followed Karthikeyan (P.W.1) and attacked him on his head and hands. Two others viz., Boopathy (A-5) and Raja (A-6) armed with weapons were standing outside the India Coffee House keeping watch to prevent others to come to the rescue of P.W.1.

5.Before the trial Court, all the six accused persons were charged for offences under sections 147 r/w 149 IPC, 148 r/w 149

IPC, 324 r/w 149 IPC and 307 r/w 149 IPC and tried. To prove the charges, the prosecution examined 6 witnesses, marked 13 documents and 9 material objects.

6. Karthikeyan, the injured and defacto complainant (PW-1) has identified A-1 to A-4 as the assailants. He has identified M.Os. 1 to 3 which are the iron rod and wooden logs used by A-1, A-3 and A-4. He has deposed that, he is unable to identify the iron rod used by A-2. Kumaravel (PW-3) and Tamilarasan (PW-4) are the eye witnesses, who were present at India Coffee House, at the time of occurrence. They saw A-1 to A-4 entering the India Coffee House with iron rods and wooden logs, assaulting PW-1. The Doctor at Government Hospital, Karaikal Mr. Sriram, who treated PW-1 has given the wound certificate - Ex P-3 and opined that the injuries sustained by PW-1 are grievous in nature. Based on the information given by A-1 and A-4, the weapons used in the crime and the blood stained clothes were recovered in the presence of independent witness, Gunasegaran (PW-5). The Investigation Officer who filed the final report on completion of investigation U. Rajasegaran was examined as PW-6.

7. The trial Court having satisfied that the injured person (P.W.1) has identified A-1 to A-4 and the weapons used by them. His evidence is corroborated by the eyewitnesses PWs-3 and 4. The injuries sustained by P.W.1 on that day, is proved through wound certificate and the testimony of PW-2. The recovery of weapon being established through mahazar admissible portion of confession of the independent witness - PW-5. Whereas, the other two accused, A-5 and A-6 not identified by the witnesses properly. So, the trial Court extended the benefit of doubt to them. Since, the case of the prosecution found to be proved only against 4 persons, the charges related to unlawful assembly against the accused was held to be not proved. In fine, A-1 to A-4 were held guilty of offence under section 307 r/w 34 IPC.

8. The learned counsel for the appellants contented that, the complaint and the accident report Ex P-1 and Ex P-3 respectively, itself contradictory to each other. In the complaint, the defacto complainant has stated that four persons attacked him. Two known and two un-known. Whereas, to the Doctor PW-1 has stated he was attacked by a group of persons without mentioning the number of persons attacked him. The Investigating Officer has laid final report against 6 persons which is contrary to the complaint.

9. The Investigating Officer did not conduct test identification parade of the accused to ascertain their identity. It is admitted by the injured (P.W.1) and other witnesses that most of the assailants are not unknown to them. In such circumstances, the test identification parade is

essential. It is unsafe to convict the persons who were identified for the first time in the Court, during the trial.

10.The recovery of material objects and the confession statements are highly doubtful. When PW-1 has stated before the Doctor that the assailants were carrying knife, iron rods and wooden logs. No knife recovered. No incised or cut injuries found on PW-1.

11.The Public Prosecutor appearing for the Government of Pondicherry in response would submit that, the accused 1,2 and 4 were known to the defacto complainant (P.W.1) and the prosecution through PW-1 has proved that there was previous enmity between them regarding the inauguration of the lavatory. The omission to conduct the identification is not at all fatal to the prosecution case when the assailants are known persons. The causal noting of remarks by the Doctor in the casualty ward of the Government Hospital carry lesser probative value when it is contrary to the evidence of the injured person. The intention of the assailants and premeditation to cause death is proved through the seat of attack, weapon used and the words uttered during the attack. Therefore, the finding of the trial Court has to be upheld.

12.The learned counsel for the appellants, basis his submission to attack the finding of the trial Court on the ground that the witnesses have not identified the accused persons during the investigation. This submission is to be pointed out that a fallacious argument. Conducting of test identification parade is not a mandatory requirement, in all investigation. It all depends upon the facts of each case, when the assailants are known to the witnesses, the exercise of conducting test identification parade will only be a superfluous act. The purpose of conducting test identification parade is to ascertain 'whether the investigation going on the right direction and proceeding against the proper accused persons'. As far as the facts of this case is concerned, A.1 and A.2 are known persons to the defacto complainant. By name, he has given the complaint against them. The identification of the rest of the unknown accused were disclosed by A.1 in his confession statement. When there is doubt about the identity of the accused persons for the investigating agency, it is for the Court to satisfy from the testimony of the witnesses 'whether the persons before the Court are the real accused'.

13.In this case, the injured witness P.W.1 has identified all the four appellants. He is not able to identify the other two accused persons who were standing outside the India Coffee House, keeping vigil over the public. P.Ws.3 and 4 who are witnesses to the occurrence has identified all the assailants.

The trial Court, after appreciating the evidence of these three witnesses, has extended the 'benefit of doubt' for the accused 5 and 6. Therefore, there is no merit in the point canvassed by the learned counsel for the appellants regarding the test identification parade.

14. When P.W.2 - Dr. Sriram, Chief Medical Officer, Karaikal, who has admitted the victim (P.W.1) and given his opinion after perusing the medical records of MIOT Hospital, being an expert, an independent witness, his evidence is suffice to hold that the injury sustained by P.W.1 is a grievous injury and the seat of attack being the head and the intention of the accused persons to cause the death is easily infer.

15. P.W.1 has rightly informed the Doctor (P.W.2) that he was assaulted by four persons. Since, the other two persons were outside the India Coffee House, so that, the discrepancy pointed out by the learned counsel for the appellants also does not go to the root of the case of the prosecution to disbelieve it. The learned counsel has relied upon the following four judgments:-

"(i) In Secretary @ Mara Naicker & 7 others v. State by Sub Inspector of Police (2005 (2) L.W (Crl.) 779);
(ii) In Senthil Kumar v. State (2007 (2) MLJ (Crl.) 153) ;
(iii) In Eswaran v. State (2009 (2) MLJ (Crl.) 769) and
(iv) In Karthick @ Karthigeyan v. State (2010 (1) MWN (cr.) 114)"

16. Looking at the facts of this case, there is no contradiction at all regarding the place of occurrence or, number of accused found in the accident register. It is only during the investigation, the other persons who shared the common knowledge to attack P.W.1, has come to light. It is to be noted that, in the course of the investigation, having collected material that A.5 and A.6 were waiting outside the India Coffee House, keeping watch of the event, they were arrayed as accused and charges were altered including Sections 147, 148 and 149 I.P.C. The trial Court after considering the evidence found, the guilt of A.5 and A.6 not proved 'beyond reasonable doubt' and therefore, acquitted them.

17. When the trial Court has properly appreciated the evidence before it and has acquitted the other two accused for want of evidence, the contention of the learned counsel for the appellants that there is a doubt regarding the number of persons involved in the crime cannot entitle them acquittal. The prosecution case is that, four persons actively participated in the crime and two persons were passively waiting outside. In which circumstances, the injured person (P.W.1) has informed the Doctor as well in his complaint, that four persons attacked him.

It is the true reflection of the fact. On this score also, the contention of the learned counsel for the appellants is unsustainable.

18. Taking into consideration the weapons used and the injury sustained by P.W.1, this Court finds that the trial Court has rightly arrived at the conclusion holding the appellants guilty. Hence, the Criminal Appeal is dismissed. The trial Court conviction and sentence is confirmed. The trial Court is further directed to secure the presence of the accused/appellants to undergo the remaining period of sentence, if any.

sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

jbm

To

1. The Additional Sessions Judge,
Karaikal.
 2. The Judicial Magistrate No. II,
Karaikal.
 3. The Chief Judicial Magistrate,
Puducherry.
 4. The Inspector of Police,
Karaikal Town Police Station,
Karaikal.
 5. The Public Prosecutor,
High Court, Chennai.
 6. The Section Officer,
Criminal Section, High Court, Madras.
- +1 cc to Mr. C. Prabakaran, Advocate, S.R.No.38056

CrI.A.No.546 of 2012

KJ(CO)
SSM(04/06/2019).