

Bail Slip

The Appellant/Accused namely Ahamed Ali, S/O Ansari, was directed to be released on bail as per the order of this Court deated 02/04/2014, in CrI.MP.No.1/2014 in CrI.A.No.180/2014 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.03.2019

PRONOUNCED ON : 02.04.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal No.180 of 2014

Ahamed Ali

..Appellant

Vs

State By
Inspector of Police,
J.1, Saidapet Police Station,
Saidapet,
Chennai - 600 015.

..Respondent

Prayer:- This Criminal Appeal is filed under Section 374 (2) Cr.P.C., against the judgment and sentence passed by the learned I Additional Sessions Judge, (TADA) City Civil Court, Chennai in S.C.No.196 of 2011 date 18.03.2014.

For Appellant : Mr.N.Baskaran

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

JUDGMENT

The appellant herein was charged for offence under Sections 341, 307 and 506(ii) I.P.C., and tried by the learned I Additional Sessions Judge (TADA) Chennai in S.C.No.196 of 2011. The trial Court, found him guilty for offence under Section 326 I.P.C., convicted him to undergo sentence for a period of 24 months and to pay a fine of Rs.1,000/- in default to under

rigorous imprisonment for 100 days.

2.The case of the prosecution is that, on 25.07.2010, at about 18.10 hours, due to quarrel while playing cricket in the Teachers College play ground at Saidapet, Chennai, the accused restrained wrongfully Ranganathan (P.W.2) and assaulted him with cricket bat on his head and he threatened to kill him. Ranganathan was taken to Saidapet Government Hospital, Chennai and later, referred to Government General Hospital, Chennai. He was under treatment for the head injury and the lacerated wound on the upper limb. Based on the complaint given by the father of Ranganathan (P.W.1), a case was registered and investigated. The accused was arrested on 26.07.2010. The cricket bat used by the accused to attack Ranganathan (P.W.2) was recovered.

3.The Doctor who has treated Ranganathan issued wound certificate stating the injury sustained by Ranganathan is a grievous injury. From the statements of the witnesses, there were prima facie material to charge the accused for an offence of attempt to murder of Ranganathan (P.W.2) for using the cricket bat.

4.Before the trial Court, the prosecution examined 12 witnesses; marked 9 exhibits (Exs.P.1 to 9) and one material object (M.O.1). The victim Ranganathan was examined as P.W.2. The father of Ranganathan who gave complaint was examined as P.W.1. P.W.3 - A.Sadham, P.W.4 - P.Chittibabu were friends of Ranganathan (P.W.2). They were in the play ground during incident and after the incident, they took Ranganathan (P.W.2) to the hospital. P.Ws.6 & 8 are witnesses to the mahazar for the recovery for cricket bat - M.O.1.

5.P.W. 9 - Dr.Anoopkumarsingh was the first person who saw the injured in the hospital at Saidapet. He has recorded the Accident register and referred Ranganathan (P.W.2) to Government General hospital, Chennai for further treatment. At Government General Hospital, P.W.10 - Dr.Suresh Babu had treated the injured. Through CT scan, he found that right and left parietal bones fractured. He has opined that the injuries found on P.W.2 are grievous in nature.

6.The trial Court, on cumulative assessment of these evidence and the medical opinion had held the accused guilty not for attempt to murder but for causing hurt with dangerous weapon. It also held that the prosecution has not proved the other charges. Aggrieved by the conviction and sentence, the present Criminal Appeal is filed by the accused.

7.The learned counsel for the accused/appellant would submit that the trial Court ought to have convicted the appellant having found that the case of the prosecution not proved for offences under Sections 341, 307 and 506(ii) I.P.C.

The place of occurrence not been proved by the prosecution through its witnesses. The injured witness - P.W.2 had deposed that the incident took place at the bus stand opposite to Kalainger arch. P.Ws.3, 4, & 7 had deposed that the occurrence took place in the Teachers College play ground. The complaint and the consequent F.I.R., is not the first information received by the respondent police. The first information has been suppressed. The complaint was taken from P.W.1 who was not an eye witness to the occurrence. Though the occurrence took place on 27.05.2010, the F.I.R., was registered with a delay after a day of occurrence. The witnesses were examined only after 14 days from the occurrence. No explanation has been given by the prosecution for inordinate delay in commencing the investigation. The shirt of P.W.2 was not seized by the Investigating Officer. But the prosecution has stated that P.W.2 sustained injury and his shirt got stained. The evidence of P.W.4 that he accompanied the injured - P.W.2 to the hospital is false. The accident register of Saidapet hospital marked as Ex.P.5 through P.W.9, does not disclose that P.W.4 accompanied the patient - P.W.2. Further, the accident register indicates that P.W.2 has informed the Doctor that he was assaulted by an unknown person in the ground at 6.10 pm and attacked by cricket bat over the upper trunk.

8. Pointing out the opinion of the Doctor P.W.9, the learned counsel for the appellant would submit that as per the accident register, the incident has taken place in the play ground. P.W.2 was hit by cricket bat, over the upper trunk and not on the head. Whereas, the injuries found in the wound certificate - Ex.P.6 does not go in conformity with accident register - Ex.P.5. It is the specific case of the prosecution that the accused and the victim - P.W.2 are known to each other. Whereas, in the accident register, it has been informed to the Doctor that P.W.2 was assaulted by an unknown person. The recovery of M.O.1 cricket bat in the play ground after 24 hours of the occurrence, is unbelievable. More so, when P.W.6 and P.W.8 the so called witnesses for the recovery of cricket bat contradict with each other regarding the place of recovery. In fact, P.W.6 has categorically deposed that he saw M.O.1 at the police station and he identified it as the bat used by the accused, the day before.

9. The learned counsel for the appellant would contend that P.W.11 has deposed that on receipt of the assault information from the hospital, he went to the hospital on 26.07.2010 itself and examined the witnesses. He has not recorded the statement of other witnesses nor recorded about the commencement of investigation. Whereas, the first information report has been registered only on the next day viz., on 26.07.2010 at about 14.30 hours. Therefore, contending that the prosecution has

failed to fix the place of occurrence, and the injury sustained by P.W.2 was caused by the appellant and also failed to prove the recovery of M.O.1. Therefore, the learned counsel contended that the benefit of doubt should have to be given to the appellant.

10.Per contra, the learned Government Advocate (crl.side) appearing for the State would submit that the evidence of P.Ws.2, 3, 4 and 7 established the fact that at Teachers College play ground, Saidapet, on 25.07.2010, P.W.2 was playing with other witnesses namely, his friends Sadham - P.W.3, Chittibabu - P.W.4 and others were playing cricket and nearby, the accused along with his team members were also playing cricket. When the ball of P.W.2 team fell in the area where the accused and his team members playing, quarrel has occurred between the accused and P.W.2. As a consequence, in the evening, when they finished playing and returning to home, the accused hit P.W.2 on his head with the cricket bat (M.O.1). This was witnessed by P.Ws.3,4 & 7. They have taken the injured person (P.W.2) to the nearby Government hospital.

11.Dr.Anoopkumarsingh - P.W.9 had examined the injured person and recorded the accident register. He has noted down the injuries found on the body of the victim (P.W.2). He has referred the patient (P.W.2) to Government General Hospital, Chennai in view of the gravity of the injury. The father of the victim boy (P.W.1) had gone to the hospital knowing the news and thereafter, went to the Police Station and lodged the complaint. Even if some other person had informed the Police about the occurrence, it is not necessary to record the vague information without any specific complaint. In this case, it was P.W.1, the father of the victim had come to the Police Station to give a specific information to the Police about a cognizable offence. Therefore, the vague informations received by the Police earlier not been registered and no prejudice is caused to the accused for not taking the earlier vague informations for investigation.

12.The learned Government Advocate (crl.side) would rely upon the judgment of the Hon'ble Supreme Court in Binay Kumar Singh v. Stae of Bihar (1997 (1) SCC 283) wherein, it has been held as follows:-

"9.But we do not find any error on the part of the police in not treating Ext 10/3 as the first information statement. for the purpose of preparing the FIR in this case It is evidently a cryptic information and is hardly sufficient for discerning the commission of any cognizable offence therefrom. Under Section 154 of the Code the

information must unmistakably relate to the commission of a cognizable offence and it shall be reduced to writing (if given orally) and shall be signed by its maker. The next requirement is that the substance thereof shall be entered in a book kept in the police station in such form as the State Government has prescribed. First Information Report (FIR) has to be prepared and it shall be forwarded to the magistrate who is empowered to take cognizance of such offence upon such report. The officer incharge of a police station is not obliged to prepare FIR on any nebulous information received from somebody who does not disclose any authentic knowledge about commission of the cognizable offence. It is open to the officer incharge to collect more information containing details about the occurrence, if available, so that he can consider whether a cognizable offence has been committed warranting investigation thereto."

13.Regarding the entries made in the accident register - Ex.P.5, wherein, the assailant name not mentioned and the injury alleged to have been found over the upper trunk, the learned Government Advocate (crl.side) would submit that Ex.P.5 is a piece of evidence to show the injured witness was taken to the hospital immediately after the occurrence. The person who accompanied P.W.2 is not mentioned in the accident register. In the said accident register Ex.P.5, the Doctor has recorded that the patient was in semi-conscious state and dis-oriented. Therefore, it is sure that this information about the person assaulted has not given by the injured person. Therefore, any inconsistency in the case of the prosecution found in Ex.P.5 is bound to be ignored.

14.The learned Government Advocate (crl.side) would further rely upon the judgment passed by the Hon'ble Supreme Court in Umesh Singh v. State of Bihar (2013 (4) SCC 360) herein, it has been held as follows:-

"39. Thus, the position of law in cases where there is a contradiction between medical evidence and ocular evidence can be crystallised to the effect that though the ocular testimony of a witness has greater evidentiary value vis-à-vis medical evidence, when medical evidence makes the ocular testimony improbable, that becomes a

relevant factor in the process of the evaluation of evidence. However, where the medical evidence goes so far that it completely rules out all possibility of the ocular evidence being true, the ocular evidence may be disbelieved."

15. The learned Government Advocate (crl.side) would further submit that the ocular evidence adduced by the prosecution through the injured witness and the friends who were present and examined as P.Ws. 3, 4 & 7, have greater evidentiary value. Their testimony is without any infirmity. It speaks about the person who caused the injury, the weapon used to cause the injury and the seat of injury. This ocular evidence goes with the medical certificate given by P.W. 10. The discharge summary contains the injury found on P.W. 2. P.W. 2 was admitted in the hospital on 25.07.2012 and discharged after 18 days on 13.08.2010. The fracture on the skull was grievous in nature. Therefore, the learned Government Advocate (crl.side) would submit that the trial Court has properly considered the evidence and it held the accused guilty holding that the accused has not committed the crime with intention to cause death or with knowledge of injury is sufficient to cause death totally exonerated him since, the trial Court has rightly held that the accused got no intention to bodily cause any harm to the victim by attacking on his head with cricket bat which has caused fracture injury.

16. The main contention of the learned counsel for the appellant is regarding the delay in register the F.I.R., as well as recording the statement of the injured person. From the records and the deposition of the witnesses, it is very clear that the incident has taken place on 25.07.2010 at about 6.10 pm. The injured person was taken to the Saidapet hospital which is very near to the scene of occurrence at about 6.30 pm. As pointed out by the learned Government Advocate (crl.side), the accident register Ex.P.5 maintained by Saidapet Government Hospital does not disclose the person who accompanied the patient. Therefore, it is not sure who has given informations found in the accident register when the patient was found in semi conscious state and disoriented stage. In such circumstances, the ocular evidence of the injured person prevail upon the entire found in the accident register.

17. The above legal position is settled by the Hon'ble Supreme Court long back in Umesh Singh case (cited supra) and the same has already been extracted above. The Hon'ble Supreme Court in the said case, has referred its earlier judgment rendered in State of Haryana vs. Bhagirath (1999 (5) SCC 96) and held as follows:-

""The opinion given by a medical witness need not be the last word on the subject. Such an opinion shall be tested by the court. If the opinion is bereft of logic or objectivity, the court is not obliged to go by that opinion. After all opinion is what is formed in the mind of a person regarding a fact situation. If one doctor forms one opinion and another doctor forms a different opinion on the same facts it is open to the Judge to adopt the view which is more objective or probable. Similarly if the opinion given by one doctor is not consistent with probability the court has no liability to go by that opinion merely because it is said by the doctor. Of course, due weight must be given to opinions given by persons who are experts in the particular subject."

34. Drawing on Bhagirath case, this Court has held that where the medical evidence is at variance with ocular evidence, "it has to be noted that it would be erroneous to accord undue primacy to the hypothetical answers of medical witnesses to exclude the eyewitnesses' account which had to be tested independently and not treated as the 'variable' keeping the medical evidence as the 'constant' ". .

35. Where the eyewitnesses' account is found credible and trustworthy, a medical opinion pointing to alternative possibilities cannot be accepted as conclusive. The eyewitnesses' account requires a careful independent assessment and evaluation for its credibility, which should not be adversely prejudged on the basis of any other evidence, including medical evidence, as the sole touchstone for the test of such credibility."

18. In this case, P.W.2 injured witness has mounted the witness box and had narrated the events cogently without an iota of embellishment. When the credibility of his evidence is constant, the medical evidence, wound certificate and the discharge summary Exs.P.5 and 6, are at variants. Among Exs.P.5 and P.6, the certificate issued by the Doctor who had been

treating the patient (P.W.2) between 25.07.2010 and 27.07.2010 lends more credibility than the accident register given by P.W.9 who has just given first aid and referred the patient (P.W.2) to the Government General Hospital, Chennai.

19.As far as the scene of occurrence, the learned counsel for the appellant would harp upon the description of scene of occurrence given by the accused person. A serious doubt raised by the learned counsel for the appellant, that the prosecution case is not consistent about the scene of crime, 'whether the occurrence took place in the playground or opposite to Kalainger Arch. From the evidence of prosecution and the rough sketch Ex.P.8, we find the scene of occurrence is in the playground which is near Thodhunter nagar bus stop. The Thodhunter nagar bus stop is opposite to Kalainger Arch. Therefore, there is no inconsistency in the place of occurrence. It is only the different form of referring the place by the witnesses had given room to raise doubt about the scene of occurrence. In fact, the rough sketch as well as the evidence elicited through the eye witnesses clearly establish that there is no inconsistency or contradiction regarding the place of occurrence.

20.The other serious attack on the prosecution is regarding the recovery of M.O.1. The case of the prosecution is that M.O.1 was recovered on the next day in the presence of independent witnesses. In the mahazar drawn for recovery of M.O.1 - cricket bat, P.Ws.6 & 8 are the witnesses. P.W.6 has turned hostile and he has not supported the case of the prosecution regarding the recovery of M.O.1 cricket bat from the playground. The observation mahazar and the recovery mahazar were witnessed by P.Ws.6 and 8 and they have signed in both the documents. During the trial, the signature of P.W.6 in the observation mahazar was marked as Ex.P.2. Though his signature was found in the recovery mahazar also, since, he has deposed that the cricket bat (M.O.1) was shown to him in the police station which is contradictory to the recovery mahazar, P.W.6 was treated as hostile witness.

21.In the observation mahazar, which is marked as Ex.P.3 through P.W.8 the Investigating Officer, it is mentioned that the scene of crime was inspected by the Sub Inspector of Police on 26.07.2010 at about 15.15 hours, in connection with Crime No.768/2010. After noting the physical feature in the observation mahazar, it is specifically stated that a cricket bat (M.O.1) found near the compound wall. The same has been recovered under the recovery mahazar - Ex.P.4.

22.The prosecution witnesses has consistently deposed that the accused caused injury to P.W.2 using a cricket bat. This ocular evidence is corroborated with the accident register - Ex.P.5 recorded soon after the incident by the Doctor (P.W.9) at

Saidapet hospital as early as at 6.30 pm on 25.07.2010. Therefore, though the independent witness has not spoken in support of the prosecution case, the fact remains that the attack on the head of P.W.2 by the accused using cricket bat is clearly proved by the injured witness. Regarding the delay in recording the statement of the witnesses, in the peculiar facts and circumstances of the case, the injured person has sustained severe head injury and was admitted in the hospital in semi conscious state. He recovered from the injury only on 13.08.2010. This has caused the delay in progress of the investigation.

23. Since the investigation officer has waited for P.W.2 to regain conscious who is the best evidence, there is no prejudice caused to the accused. The incident has taken place as a consequence to the fight in using the space for playing. The young blood bubbling with energy always prone to react unreasonably, some time violently. In this case, the appellant has reacted violently and has caused grievous injury on P.W.2. But due to timely medical intervention P.W.2 has survived.

24. Considering the age and the circumstances under which the offence has been committed by the accused. Though the guilt of the accused is proved, the incarceration for two years has to be reduced, so that, the appellant can reform himself and lead a better life.

25. In the result, the Criminal Appeal is partly allowed. The conviction of the appellant/accused for offence under Section 326 I.P.C., is confirmed. The sentence is modified to one year rigorous imprisonment and fine of Rs.1,000/- in default to undergo 100 days rigorous imprisonment. The bail bond shall stand cancelled. The trial Court is directed to secure the presence of the accused to undergo the remaining period of sentence, if any. The appellant/accused shall be given set off as provided under Section 428 Cr.P.C.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1. The I Additional Sessions Judge,
(TADA), City Civil Court,
Chennai.

2. The Public Prosecutor,
High Court, Chennai.

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

4.The Inspector of Police,
J.1, Saidapet Police station,
Saidapet, Chennai-15.

5.The Metropolitan Magistrate No.V,
Egmore, Chennai.

6.The Chief Metropolitan Magistrate,
Egmore, Chennai.

7.The District collector / District Magistrate,
Chennai.

8.The Director General of Police,
Tamil Nadu Mylapore, Chennai-4

+1cc to Mr.N.Baskaran, Advocate, S.R.No.31546

Crl.A.No.180 of 2014

BR(CO)
SSM(22/05/2019)



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