**Bail Slip**

The Appellant/Accused No.1,5 and 6 namely 1) Boominathan, 2) Moorthy, 3) Raja were released on bail as per order of this Court dated 03.12.2008 made in MP(MD).No.1 of 2008 in Crl.A.(MD).No.534 of 2008 on the file of this Court.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	30.04.2019
Date of Judgment	29.07.2019

CORAM

THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI

Crl.A.(MD)No.534 of 2008

1.Boominathan
2.Moorthy
3.Raja

: Appellants/A1, A5 and A6

Vs.

State rep. by
Inspector of Police,
Kootampatti Police Station,
Madurai District.
(Crime NO.262 of 2001)

: Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code against the judgment made in SC No.217 of 2005, dated 25.11.2008 passed by the Additional District and Sessions Judge (Fast Track Court No.1), Madurai.

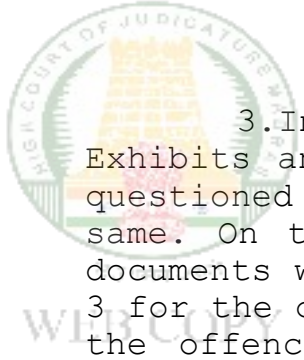
For Appellants : Mr.S.Ravi

For Respondent : Mr.A.Robinson
Government Advocate (Crl.side)

J U D G M E N T

This Criminal Appeal is directed against the judgment made in SC No.217 of 2005, dated 25.11.2008 on the file of the Additional District and Sessions Judge (Fast Track Court No.1), Madurai.

2.The case of the prosecution is that on 17.01.2001, the first accused along with 20 others armed with deadly weapons, attacked PW1 to PW4 and thereby caused injuries. The Inspector of Police attached to Kootampatti Police Station has filed a final report against the accused examining the witnesses.



3. In the trial court, 18 witnesses were examined and 16 Exhibits and 9 material objects were marked. When the accused were questioned about the incriminating circumstances, they denied the same. On the side of the accused, one witness was examined and 6 documents were marked. The trial court convicted the appellants 1 to 3 for the offence under Section 307 IPC and the second appellant for the offence under Section 307 r/w 149 IPC and sentenced them to undergo 3 years RI and to pay a fine of Rs.2,000/-, in default to undergo six months RI each for the above said offences. Aggrieved by the judgment passed by the trial court, the appellants/A1 to A3 are before this court.

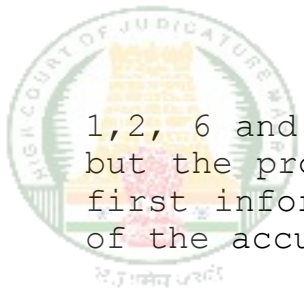
4. The learned counsel appearing for the appellants submitted that the trial court erred in finding the appellants guilty for the offence under Sections 307 and 307 r/w 149 IPC, when the prosecution miserably failed to prove the case beyond all reasonable doubt and there is no clinching and trustworthy evidence adduced by the prosecution to rope the appellants with the alleged crime and the evidence of PW1 and PW2 are not reliable and they are lying in material particulars and the prosecution totally suppressed the injuries sustained by the accused and in this case, the occurrence is said to have taken place in front of the police station and the police people arrived at the spot at the time of occurrence and the delay of 2 hours in lodging the complaint by PW1 is fatal to the prosecution. In view of the above circumstances, the judgment of the trial court has to be set aside and the criminal appeal has to be allowed. In support of his contention, the learned counsel relied upon the judgment reported in (2006)2 MLJ (Cr1) 1948 (Ravichandran and others Vs. Inspector of Police, Thittakudi Police Station).

5. On the other hand, the learned Government Advocate (Criminal side) appearing for the respondent/State submitted that trial court appreciated the evidence in a proper manner and believed the evidence of the eye witnesses and having regard to the nature of the offences, convicted the appellant and passed proper sentence, which do not require any interference by this court and the accused are not entitled for acquittal and prays that the criminal appeal may be dismissed.

6. Heard both sides and perused the materials available on record.

7. It is seen from the records that the prosecution did not offer any explanation to the injuries suffered by the accused during the course of occurrence and the first accused Boominathan and the second accused Mohan and the 6th accused Moorthy, 7th Accused Raja and the 9th accused Pari sustained injuries.

8. It is also seen that on the complaint preferred by the first accused Boominathan, a case in Crime No.264 of 2001 was registered by the respondent police against the prosecution party for the offence punishable under Section 307 IPC and the accused



1,2, 6 and 7 sustained head injuries on the vital part of the body, but the prosecution did not mark the counter case records viz., the first information report, Accident registers and wound certificates of the accused and the closure report.

9. In this case, the Investigating Officers, who were examined as PW17 and PW18 admitted that on the complaint of the first accused, a case in Crime No.264 of 2001 was registered and both PW17 and PW18 admitted that the accused also sustained injuries. The eye witnesses namely PW1 and PW2 ignorance about the injuries suffered by the accused. Therefore, the prosecution ought to have mark the counter case records to find out the truth in this case.

10. In the decision reported in 2006(2) MLJ (Cr1) 1048 (Ravichandran and others Vs. Inspector of Police, Thittakudi Police Station), this court held as follows:-

"This court has been repeatedly holding that when there is a case and counter the investigating officer has to investigate both the complaints in a manner known to law and file the final report in one case and exhibit the materials collected by him during investigation in the connected complaint before the Court, leaving the entire issue namely, which is true or false to be decided by the Court. This is not done in this case namely, the complaint given by A1 is not marked, the statement of witnesses recorded during investigation on that complaint is not marked and on top of it, the final report is also not marked. Therefore, it appears that the police officer namely, PW12 holding back the entire records with him, wants the Court to believe his evidence, that the complaint given by A1 is false and and therefore it deserved to be rejected, as a gospel truth. The police officer is only an investigating officer and he is not the adjudicator. On the other hand it is for the Court to decide which complaint is true and who are aggressors. In this context, there is some useful material on record. PW12 admitted that Saraswathy and Alamelu are eye witnesses to the occurrence and he had examined them. He had also admitted that he had sent their statements to the Court along with the final report. He had admitted that Saraswathy and Alamelu told him during investigation that it was a free for all situation at the occurrence time. This material that came through the mouth of Saraswathy and Alamelu is admitted by PW12. This answer is more than sufficient to hold that there should have been free for all fight at the occurrence time. PW12 had not chosen to examine Saraswathi and Alamelu and the reasons are not far off to be seen. Non-examination of Saraswathi and



Alamelu, in the context of the disclosures made by them during investigation assumes importance. In this context the stand of the first accused taken by him in his written statement filed at the end of questioning appears to be more probable than the prosecution case. The Supreme Court as early as in the year 1976 in Lakshmi Singh v. State of Bihar AIR 1976 SC 2263 held that when the origin of the prosecution case is suppressed, then the prosecution case must fail. In this case for more than one reason, we find that prosecution is definitely guilty of suppressing the origin of the case."

11. For all the reasons stated above, this court is of the considered view that the case is to be remitted back to the trial court for fresh consideration.

12. In the result, this Criminal Appeal is partly allowed. The impugned judgment passed by the Additional District and Sessions Judge (Fast Track Court No.1), Madurai, is set aside. The case is remitted back to the trial court for fresh disposal, after marking relevant documents and adducing evidence. The trial court is directed to dispose of the case, on merits and in accordance with law, as expeditiously as possible.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar (CS)

To

1. The Additional District and Sessions Judge,
(Fast Track Court No.1), Madurai.
2. Do through The Principal District and Sessions Judge,
Madurai District
3. The Judicial Magistrate, Melur
4. Do through The Chief Judicial Magistrate, Madurai
5. The Inspector of Police, Kottampatti Police Station,
Madurai District
6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai

**Copy to:**

The Section Officer (2 Copies)
Criminal Section (Records)
Madurai Bench of Madras High Court,
Madurai.

Judgement made in
Crl.A.(MD)No.534 of 2008
29.07.2019

er

JMN(28.08.2019) 5P : 9C