

BAIL SLIP

The Petitioner/Accused namely Arumugam, aged 30 years, S/o.Selvaraj, to be released on bail as per order dated 30.12.2013 made in Mp.1 of 2013 in Crl.R.C.No.1619 of 2013 on the file of this Honourable Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.02.2020
PRONOUNCED ON : 21.02.2020

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.R.C.No.1619 of 2013

Arumugham .. Petitioner/ A-1

Vs.

Inspector of Police
Thirupapuliyur Police Station
Cuddalore District .. Respondent/Complainant

Criminal Revision preferred under Section 397 and 401 Cr.P.C. to set aside the conviction and sentence passed by the I Additional District and Sessions Judge, Cuddalore in C.A.No.33 of 2011 dated 30.09.2013 confirming the judgment and order of the II Additional Sub Judge, Cuddalore in S.C.No.342 of 2009 dated 29.03.2011.

For Petitioner : Mr.A.Arasu Ganesan

For Respondent : Mr.R.Suryaprakash
Govt. Advocate (Crl. Side)

ORDER

This criminal revision has been preferred to set aside the conviction and sentence passed by the I Additional District and Sessions Judge, Cuddalore in C.A.No.33 of 2011 dated 30.09.2013 confirming the judgment and order of the II Additional Sub Judge, Cuddalore in S.C.No.342 of 2009 dated 29.03.2011.

2.Distilled from proved facts, the prosecution story is as under :

2.1.On 31.03.2009, the deity of Devanathaswamy was carried in a procession to the riverbed as part of the

temple's rituals. One Prabakaran (P.W.6) and Arumugham (A1) along with others were carrying the deity and at that time, Arumugham (A1) is said to have deliberately stamped the foot of Prabakaran (P.W.6), due to which, a quarrel ensued between Prabakaran's (P.W.6's) group and Arumugham's (A1's) group. On the intervention of others, it did not escalate. At the outset, it is necessary to state here that there are two Arumugams in this case viz. Arumugam (P.W.1) and Arumugham (A1).

2.2.Arumugam (P.W.1), Sathyaraj (P.W.2) and Stalin (P.W.3) belonged to Prabakaran's (P.W.6's) group and Ramesh (A2), Chandru @ Chandrasekaran (A3), Raju @ Rajkumar (A4) and Ayyanar (A5) belonged to Arumugham's (A1's) group. After the rituals were over, Arumugam (P.W.1), Sathyaraj (P.W.2) and Stalin (P.W.3) were returning home around 08.00 p.m. on 31.01.2009 and at that time, they saw the Tata Sumo car of Ayyanar (A5). They also saw Ayyanar (A5) handing over weapons like knives and pipes to A1 to A4. They sensed trouble and when they were about to flee, they were surrounded by the accused party and were indiscriminately attacked.

3.1.The injured viz. Arumugam (P.W.1), Sathyaraj (P.W.2), Stalin (P.W.3) were carried to the Government Hospital, Cuddalore, where Dr.Latha (P.W.14) examined Sathyaraj (P.W.2) at 09.25 p.m. on 31.01.2009 and noted the following injuries:

1. A bleeding cut injury measuring 15 X 3 cm on the right neck below the ear;
2. A blood clotted punch injury measuring 10 X 5 cm behind the right chest; and
3. Oozing of blood from the right ear

Sathyaraj (P.W.2) was admitted as in-patient and was referred to JIPMER, Puducherry for treatment, where he was hospitalised for about 20 days. After his discharge, Dr.Latha (P.W.14) studied the medical records and issued Accident Register copy (Ex.P8), opining that injury Nos.1 and 3 are grievous in nature.

3.2.On the same day i.e., on 31.01.2009, at 08.35 p.m., Dr.Latha (P.W.14) examined Stalin (P.W.3) and noted down three injuries on him viz.

1. A bleeding cut injury measuring 10 X 2 cm from frontal head to left head region
2. An abrasion measuring 4 X 1 cm above the right wrist

shoulder

She opined that the injuries are simple in nature and issued copy of the Accident Register (Ex.P9).

3.3.On the same day, at 08.45 p.m., Dr.Latha (P.W.14) examined Arumugam (P.W.1) and noticed two injuries on him viz.

- 1.An injury with swelling measuring 3 X 3 cm at the back head
- 2.An abrasion measuring 3 X 0.5 cm on the left shoulder

She opined that the injuries are simple in nature and issued copy of the Accident Register (Ex.P10).

4.While Arumugam (P.W.1) was in the hospital, he gave a statement (Ex.P1), based on which, the police registered a case in Crime No.65 of 2009 and arrested the accused and based on their confession, recovered two long knives (M.O.s 3 & 4) and two 60 cms long iron rods (M.O.5).

5.After examining witnesses and completing the investigation, the police filed a final report in P.R.C.No.37 of 2009 in the Court of the Judicial Magistrate No.III, Cuddalore against Arumugham (A1), Ramesh (A2), Chandru @ Chandrasekaran (A3), Raju @ Rajkumar (A4) and Ayyanar (A5) for the offences under Sections 120B, 341, 307, 324 and 326 IPC.

6.On appearance of the accused, the case was committed to the Court of Session in S.C.No.342 of 2009 and was made over to the II Additional Sub Judge, Cuddalore, for trial. The trial Court framed charges for the aforesaid offences against the accused and when questioned, they pleaded "not guilty".

7.To prove the case, the prosecution examined 17 witnesses, marked 14 documents and 5 material objects.

8.When the accused were questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against them, they denied the same. No witness was examined from the side of the accused nor any document marked.

9.After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 29.03.2011, acquitted Ayyanar (A5), but, convicted and sentenced A1 to A4 as under :

Rank of the accused	Provision under which convicted	Sentence
Arumugham (A1)	Section 341 IPC	fine of Rs.300/-, in default, to undergo one week simple imprisonment
	Section 307 IPC	two years rigorous imprisonment and fine of Rs.1,000/-, in default, to undergo six months rigorous imprisonment
	Section 324 IPC	three months simple imprisonment and fine of Rs.500/-, in default, to undergo one month simple imprisonment
Ramesh (A2)	Section 324 IPC (2 counts)	three months simple imprisonment and fine of Rs.500/- for each count, in default, to undergo one month simple imprisonment
Chandru @ Chandrasekaran (A3)	Section 324 IPC	three months simple imprisonment and fine of Rs.500/-, in default, to undergo one month simple imprisonment
Raju @ Rajkumar (A4)	Section 324 IPC (2 counts)	three months simple imprisonment and fine of Rs.500/- for each count, in default, to undergo one month simple imprisonment

The aforesaid sentences were ordered to run concurrently qua Arumugham (A1). Aggrieved by the said conviction and sentence, Arumugham (A1), Raju @ Rajkumar (A4) preferred appeal in C.A.No.33 of 2011 and Ramesh (A2), Chandru @ Chandrasekaran (A3) preferred appeal in C.A.No.35 of 2011. They were heard by the I Additional District and Sessions Court, Cuddalore. The appellate Court, by a common judgment and order dated 30.09.2013, acquitted Raju @ Rajkumar (A4), Ramesh (A2) and Chandru @ Chandrasekaran (A3), but confirmed the conviction and sentence imposed on Arumugham (A1). Challenging the concurrent findings of the two Courts below, Arumugham (A1) has filed the present criminal revision under Section 397 read with 401 Cr.P.C.

for the petitioner and Mr.R.Suryaprakash, learned Government Advocate (Crl. Side) appearing for the respondent State.

11.Before adverting to the rival submissions, it may be necessary to state here that, while exercising revisional jurisdiction in a case involving concurrent findings of fact arrived at by two Courts below, the High Court cannot act as a second appellate Court [See State of Maharashtra Vs. Jagmohan Singh Kuldip Singh Anand and Others, etc. (2004) 7 SCC 659]. Very recently, in Bir Singh Vs. Mukesh Kumar [(2019) 4 SCC 197], the Supreme Court has held as under:

"17.As held by this Court in Southern Sales & Services v. Sauermilch Design and Handels GmbH [Southern Sales & Services v. Sauermilch Design and Handels GmbH, (2008) 14 SCC 457], it is a well-established principle of law that the Revisional Court will not interfere even if a wrong order is passed by a court having jurisdiction, in the absence of a jurisdictional error. "
(emphasis supplied)

12.Mr.Arasu Ganesan, learned counsel for the petitioner took this Court through the evidence of Sathyaraj (P.W.2) and Dr.Latha (P.W.14) and submitted that Sathyaraj (P.W.2) has deposed that Arumugham (A1) attacked him with a knife on the backside of his head, whereas, Dr.Latha (P.W.14) had stated that there is no injury on the on the backside head of Sathyaraj (P.W.2). He also contended that all the witnesses have told the Doctor that they were attacked by three persons, as could be seen from the entry in the Accident Register copies, whereas, in the Court, they have stated that they were attacked by five persons.

13.Per contra, learned Government Advocate submitted that an overall reading of the deposition of all the witnesses, it is apparent that the accused attacked the victims with dangerous weapons and fell upon them and carried out their plan, by inflicting injuries on them in vital parts.

14.This Court gave its anxious consideration to the rival submissions.

15.Prabakaran (P.W.6) was examined in-chief on 01.04.2010. In his examination, he has stated that, on 31.01.2009, in the morning hours, he along with Arumugham (A1) and others carried the deity of Thiruvanthipuram Devanathaswamy to the Pennar riverbed; at that time, Arumugham (A1) stamped him on his leg; on account of that, a quarrel ensued; at that time, Arumugam (P.W.1), Sathyaraj (P.W.2) and Stalin (P.W.3) intervened and separated; supporting Arumugham (A1), his friends Ramesh (A2), Chandru @ Chandrasekaran (A3) and Rajkumar (A4) intervened and scuffled; the local people interfered and brought about truce; on the same day, around

08.00 p.m., he was attacked by Arumugham (A1) and his friends Raju @ Rajkumar (A4), Ramesh (A2) and Chandru @ Chandrasekaran (A3). He was not cross-examined on the same day and was cross-examined on 18.09.2010. It was merely suggested to him that, no such incident had taken place in the morning on 31.01.2009 as deposed by him, which suggestion, he denied.

16.Arumugam (P.W.1), Sathyaraj (P.W.2) and Stalin (P.W.3) were examined in-chief on 01.04.2010. But, they were not cross-examined by the accused on the same day. In their chief-examination, they have stated that, on the night of 31.01.2009, after the rituals were over, while they were returning home, they saw the Tata Sumo car of Ayyanar (A5); they also saw Arumugham (A1) and Ramesh (A2) getting down from the car with knife. Arumugam (P.W.1) identified the weapons that were carried by the accused. He has clearly stated that Arumugham (A1) was carrying a short knife and Raju @ Rajkumar (A4) was carrying a long knife. He also stated that Chandru @ Chandrasekaran (A3) and Raju @ Rajkumar (A4) were having an iron rod with them and on seeing them, they tried to flee. He (P.W.1) has further stated that, Arumugham (A1) hacked Sathyaraj (P.W.2) on his neck. All the three witnesses have clearly spoken about the presence of the five accused and the attack mounted on them by A1 to A4.

17.Coming to the contention of Mr.Arasu Ganesan that the victims have told the Doctor that they were attacked by three persons, it may be profitable to state here that the Supreme Court has clearly held in P.Babu and Others Vs. State of Andhra Pradesh [(1994) 1 SCC 388], B.Bhadriah and others Vs. State of Andhra Pradesh [(1995) Supp 1 SCC 262] and P.Venkaiah Vs. State of Andhra Pradesh (AIR 1985 SC 1718) that discrepancies in the statements of the injured witness recorded in the Accident Register will not be fatal to the prosecution case. In fact, B.Bhadriah (supra), the Supreme Court has held thus :

"The casual way of filling up the column in the medical certificate does not in any manner amount to recording a statement of the injured witness."

In P.Venkaiah (supra), it is held as follows :

"It is well settled that Doctors before whom dead bodies are produced or injured persons are brought, either themselves take the dying declaration or hold the post-mortem immediately and if they start examining the informants they are likely to become witnesses of the occurrence which is not permissible."

18.Arumugam (P.W.1), who gave the complaint, while he was admitted in the hospital, has given the overt acts of A1 to A5 and the actual attackers were A1 to A4. Therefore, just

because the Doctor had mentioned in the Accident Register copy that the victims have told her that they were attacked by three persons, that by itself cannot lead to discard the testimony of the injured witness.

19. Coming to the submission of Mr. Arasu Ganesan that, Sathyaraj (P.W.2) has stated that Arumugham (A1) attacked him on the back of his head and there is no corresponding injury on the back of his head, it is seen that injury Nos.1 and 3 were found behind the right ear and colloquially in Tamil, one would also refer to that place as "jiyapd; gpd;g[wk;". "Back of the head" in medical jargon may mean different and that meaning cannot be imported to discredit the injured witness. The attack took place at 08.00 p.m. on 31.01.2009 and the victims were taken to the hospital and they were examined by Dr. Latha (P.W.14) at 08.45 p.m. The fact that Sathyaraj (P.W.2) suffered two grievous injuries and had taken intensive treatment in JIPMER, Puducherry, shows the intensity of the attack.

20. Pursuant to the quarrel that happened in the morning, the accused were wanting to wreck vengeance and that is why, they were armed with deadly weapons to get rid their adversaries. Sathyaraj's (P.W.2's) evidence shows that, on seeing the accused coming out of Tata Sumo car, he got scared and attempted to run, but, he was cornered by Arumugham (A1), who attacked him and Ramesh (A2) stabbed him on the back. The second injury is the stab injury on the back. One cannot expect a person in fear to say exactly, who hit him and where he was hit. Only to obviate this difficulty, Section 34 IPC, which is a rule of evidence has been incorporated. (See Vijendra Singh Vs. State of U.P. [(2017) 11 SCC 129]).

21. This Court is indeed surprised with the reasoning given by the appellate Court to acquit the other accused, in the teeth of such overwhelming materials against them. In this context, it is worth alluding to the sagely observation of the Supreme Court in Gangadhar Behera and others vs. State of Orissa [(2002) 8 SCC 381], wherein, it was held that merely because some of the accused persons have been acquitted, though evidence against all of them, so far as direct testimony went, was the same, does not lead, as a natural corollary that, those who have been convicted must also be acquitted. Likewise, in Nallabothu Venkaiah vs. State of Andhra Pradesh [(2002) 7 SCC 117], the Supreme Court held that wrongful acquittal recorded by the Court of some of the accused, even if it stood, the circumstances would not be impeding the conviction of the other accused.

22. In view of the foregoing discussion, this Court does not find any infirmity in the conviction and sentence imposed on the petitioner by the two Courts below, warranting interference.

As a result, this revision petition is dismissed as being devoid of merits and the judgment of conviction and sentence passed by the appellate Court in Crl.A.No.33 of 2011 dated 30.09.2013 and the trial Court in S.C.No.342 of 2009 dated 29.03.2011 qua the petitioner, are confirmed. The trial Court is directed to take steps to secure the petitioner and commit him to prison for undergoing the remaining period of sentence, if any. Registry is directed to send the original records, if any to the Court concerned forthwith.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

gya

To

1.I Additional District and Sessions Judge,
Cuddalore

2.II Additional Sub Court
Cuddalore

3.The Inspector of Police
Thirupapuliur Police Station
Cuddalore District

4.The Deputy Registrar
Criminal Side
High Court, Madras.

5.The Judicial Magistrate II,
Cuddalore.

6.Chief Judicial Magistrate,
Cuddalore.

7.The Public Prosecutor,
High Court, Madras.

+lcc to Mr.A.Arasu Ganesan, Advocate, S.R.No. 15020

CRL.R.C.No.1619 of 2013

NMI (CO)

GN (26/05/2020)

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