

Bail Slip

Crl.A. Nos. 409, 441 & 572/2018:

The Appellants/Accused namely Keeri@Shanmugam@Shanmugasundaram (A1) S/o. Panchatcharam in (Crl.A. No. 409/2018) Dilip @ Dilip Kumar (A3) S/o. Susairaj in (Crl.A. No. 441/2018) Balaji @ Guru Balaji(A2) S/o. Panchatcharam in (Crl.A.No. 572/2018) were directed to be released on bail as per order of this Court dated 22.11.2018 made in Crl.M.P. No. 15314/2018 in Crl.A. No. 409/2018, Crl.M.P. No. 10051/2018 in Crl.A. No. 441/2018 and dated 29.10.2018 made in Crl.M.P. No. 12466/2018 in Crl.A. No. 572/2018 respectively.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.12.2020

Dated : 11.12.2020

Coram

The Honourable Mr. Justice M.M.SUNDRESH
and
The Honourable Mr. Justice D.KRISHNAKUMAR

Criminal Appeal Nos.409, 441 and 572 of 2018

Keeri @ Shanmugam @ Shanmugasundaram

...Appellant/Accused No.1 in
Crl.A. No.409/2018/A.1

Dilip @ Dilipkumar

...Appellant/Accused No.3 in
Crl.A. No.441/2018/A.3

Balaji @ Guru Balaji

... Appellant/Accused No.2 in
Crl.A. No.572/2018/A.2

Vs.

The State, represented by

The Inspector of Police, (Law & Order)

C3, Sevenwells Police Station,

Chennai-1.Crime No.665/2012

... Respondent/Complainant in
all Criminal Appeals

Criminal Appeals are filed under Section 374(2) of the Code of Criminal Procedure, 1973 as against the judgment made by the learned XVI Additional Sessions Judge, Chennai in S.C.No.283 of 2012 dated 04.01.2017.

For Appellants in : Mr.C.M.Gunaseakaran for
Crl.A.441 & 572/2018 Mr.K.Kannan in
Crl.A.441/2018
and Appellant
in Crl.A.No.572/2018

For Appellant in : Mr.V.Gopinath,S.C., for
Crl.A.No.409/2018 Mr. R.Kishore Kumar

For Respondent : Mr.K.Prabhakar,
in All Crl. Appeals Additional Public Prosecutor

COMMON JUDGMENT

M.M.SUNDRESH, J.

The appellants, who are arrayed as A1 to A3 in S.C.No.283 of 2012 dated 04.01.2017, on the file of XVI Additional Sessions Judge, Chennai, challenging the conviction rendered for the offences punishable under Sections 341 and 302 read with 34 IPC and sentencing them to undergo life imprisonment for the offence under Section 302 r/w 34 IPC with a fine of Rs.10,000/- each, in default to undergo six months simple imprisonment and also sentencing them to pay a fine of Rs.500/- each for the offence under Section 341 IPC and in default to undergo simple imprisonment for one week, have filed the present criminal appeals.

2.As all these appeals arise from a common judgment, they are accordingly disposed of by a common judgment.

3.. BRIEF FACTS:-

3.1.The deceased Johnny was a history sheeted rowdy having been detained under Act 14 of 1982 and came out from the prison on 05.04.2012. He was frequently quarreling with and abusing the mother of A1 and A2 in a drunken mood. On 07.04.2012 at about 9.00p.m., P.W.1, who is the mother of the deceased Johnny, was informed by P.W.7-Stephen Raj(since turned hostile) after coming to the house that she was called by A2-Balaji @ Guru Balaji. P.W.1 saw A2-Balaji @ Guru Balaji and another person were quarreling with the deceased followed by assault. On her intervention, the deceased was let off.

3.2.On the date of occurrence i.e., on 08.04.2012 at 2.00p.m., all the accused joined together while asking A3-Dilip @ Dilip Kumar to bring the deceased to the place of occurrence and thereafter committed the offence. A1-Keeri @ Shanmugam @ Shanmugasundaram and A2-Balaji @ Guru Balaji are the brothers. A3-Dilip @ Dilip Kumar tripped the leg of the deceased and took a stone and throw it on the head while A1-Keeri @ Shanmugam @ Shanmugasundaram and A2-Balaji @ Guru Balaji attacked on the left side of the head with knives viz., M.Os. 2And 3.

3.3.P.W.1-Murugamma, who is the mother of the deceased, was informed about the fight by one Govindhammal(not examined). She along with P.W.2-Krishnan, who is her husband and her elder son-Shankar(not examined) were alleged to be eye witnesses to the occurrence. P.W.1 gave a complaint under Ex.P1, which reached the jurisdictional Court after delay of 7 hours 15 minutes implicating all the accused.

3.4.The investigation was taken over by P.W.16-Mathi, who is working as Q Branch Deputy Superintendent of Police first and thereafter by P.W.17-Sundaram, Inspector of Police. P.W.16 was the one, who prepared the Observation Mahazar under Ex.P16 along with Sketch under Ex.P17. Thereafter, he prepared the seizure Mahazar under Ex.P18 and arrested the accused on 09.04.2012 at about 4.15p.m., and recorded their statements in the presence of P.W.8. Neither the officer, who registered the complaint-Ex.P1 in the form of First Information Report under Ex.P15 nor who produced A1 to A3 along with Special Report was examined. Similarly, the son of P.W.1, who is also an eye witness and the statement obtained under Section 161 of the Criminal Procedure Code was also not examined nor marked. Upon the charges having been filed, the trial court proceeded further. The trial Court substantially placing reliance on the evidence of P.Ws.1 and 2 being the eye witnesses read with that of P.W.15-Balasubramaniam, who is the post mortem Doctor along with Ex.A12-Chemical Analysis Report, rendered the conviction. Challenging the same, the present criminal appeals are before us.

4.On the side of the prosecution, 17 witnesses were examined while marking Exs.P1 to P21. M.Os.1 to 10 were also marked. The defence did neither mark any document nor let in evidence.

5.Under Section 313 of the Criminal Procedure Code, incriminating materials were placed before the appellants, who denied them. The trial Court agreeing with the case of the prosecution, convicted them for both the offences charged. Assailing the same, the present appeals have been filed.

6.WITNESSES, DOCUMENTS AND MATERIAL OBJECTS:-

6.1.As noted, P.W.1-Murugamma was the mother of the deceased and the author of Ex.P1. This witness speaks about the prior occurrence on 07.04.2012. She has stated that one Stephen Raj-PW7, who turned hostile, took the deceased by stating that A2 wanted to see him. Thereafter, the deceased was attacked by A2 and another. On the next day i.e., on 08.04.2012, A3 called the deceased, who went with him. She was informed by one Govindhammal about the fight. She, PW.2-her husband and her elder son-Shankar(not examined) went to the scene of occurrence and saw the occurrence. Thereafter, she went to the police

station and gave a complaint under Ex.P1. She identified M.os.1 to 3, which are the stone and knives respectively. In her cross examination, she has stated that P.W.8-Jagan is her brother-in-law. It is her statement that M.Os.2 and 3 were found at the place of occurrence. She also saw the accused in the police station at about 2.45 p.m., on the date of occurrence. She deposed that at the time of occurrence, the deceased was under the influence of Alcohol and he fell down due to the excessive consumption of Alcohol and injured himself on 07.04.2012 and that there was no other occurrence. A3 took food with the deceased on the date of occurrence. She further deposed that she was doing household work and she came to know that her son was not available after 15 minutes. It was Govindammal, who called her. It is only she who went to the place of occurrence. The police recovered the knives from the place of occurrence. Her statement was obtained from the place of occurrence.

6.2.Thus, the statement given by P.W.1 is self contradictory. She herself stated in her cross examination that on 07.04.2012, the deceased fell down and sustained injuries in a drunken state. She also saw the accused on the date of occurrence when she went to the police station. It is her further statement that she alone went. She reiterated that she was informed by Govindammal alone. Though she has stated that she signed the complaint, her signature was not found under Ex.P1 as against her thumb impression. The Police Officer, who registered the complaint under Ex.P15 was also not examined.

6.3.P.W.2 -Krishnan was the father of the deceased. He had given a contradictory evidence to P.W.1 with respect to the deceased at home on 07.04.2012. It is his evidence that at about 7.00p.m., the deceased was sleeping on 07.04.2012. According to him, he, P.W.1 and his son-Shankar were informed by one Kamatchi Ammal. This witness was not cross examined initially but on a petition filed invoking Section 311 of the Criminal Procedure Code to recall, the defence was permitted to do so. However, he was not produced for nearly a year and later the Court was informed that he died. Be that as it may, the evidence of PW.2 also cannot be accepted for the reasons stated. He also further deposed that P.W.1 has signed.

6.4.P.W.3-Viswanathan was the eye witness, who turned hostile.

6.5.P.W.5-Kamatchi was the available witness, who turned hostile. We may note that P.W.8 is the bother-in-law of P.Ws.1 and 2. He merely admitted the above statement made by the accused followed by recovery. Though he had stated in his cross-examination that he was not a witness in any other case, the said statement is found to be incorrect as P.W.16 has stated in his evidence that P.W.8 is a witness in another case in Crime No. 668 of 2012.

6.6. Like the other witnesses P.W.13-Sankarapandi and P.W.14-Sumathi turned Hostile, while P.W.15-Dr.Balasubramaniam, was the Post-Mortem Doctor, being the author of Ex.P14-Post Mortem Report. In his evidence, he had stated that injury could have been possible when a person falls down. This evidence was given with respect to the usage of M.O.1 stone.

6.7. P.Ws.16-Madhi and P.W.17-Sundaram are the Investigation Officers. P.W.16 has deposed that he did not know who took the First Information Report and it would be back only half an hour to the Court from the Police Station even after they walk. He admitted the fact that the statements given under Section 161 Cr.P.C. Was received by the Court only on 13.07.2012.

6.8. Thus, from the abovesaid statements, it is an admitted fact that only months after the statements and other documents were filed before the Court. There was no explanation for doing so.

7. SUBMISSIONS:-

7.1. The learned counsels appearing for the appellants submit that P.Ws.1 and 2 could not have been the eye witnesses where there are material contradictions between the evidence of P.Ws.1 and 2. This contradiction is with respect to the prior occurrence and the one that happened on the date of occurrence. P.W.1, who had stated in her cross-examination that she alone went which is contradictory to her chief examination. Neither her elder son nor the said Govindammal were examined for the reasons known. There is a material contradiction between Ex.A1 as well. There is no reason for not producing P.W.2 even after filing a petition to recall was allowed. The deceased was on drunken state according to P.W.1 on both days. She further deposed that the deceased fell down. The statement given under 161 Cr.P.C., were sent three months after the occurrence and that too, only along with the Final Report. There is a delay in the First Information Report reaching the Court. Neither the woman Police Officer, who recorded the statement under Section 154 nor the officer, who secured the materials were examined. P.W.1 has given contradictory evidence with respect to the complaint given. If the accused were arrested by the specialised party on 09.12.2012, they would not have been present under the police station on 08.12.2020. P.W.1 also says about the existence of M.Os.2 and 3 at the place of occurrence though the very arrest and recovery cannot be sustained in the eye of law or deliberately suppressed. The constable, who carried the First Information Report, has not been examined. The other witnesses have turned hostile. The trial Court has wrongly placed upon the evidence of P.Ws.1 and 2 and 15. Therefore, these criminal appears are to be allowed.

7.2.The learned Additional Public Prosecutor appearing for the State submitted that the trial Court found that the evidence of P.Ws.1 and 2 to be trustworthy. This evidence coupled with the evidence of P.W.15 and P.W.14 would only lead to the conclusion that all the appellants are guilty of the offences. The evidence also suggested the prior motive. A mere delay cannot by itself make the Court to suspect the entire case of prosecution. The reasoning of the trial court being sound, no interference is required.

8.DISCUSSION:-

8.1.We do find number of contradictions in the evidence of P.W.1 This is with respect to the prior occurrence and also the one leading to the complaint being given. In her cross examination, she has given a different version that the deceased was in a drunken state and came back only with bruise. She also found all the accused on the very same day at the police station, obviously in custody. Similarly, she has given a different version with respect to the complaint being given under Ex.P1. Knowingly she had deposed that M.Os.1 and 2 were found at the place of occurrence. Therefore, the evidence of P.W.1 completely destroys the very basis of the prosecution. At one point of time she says that she saw A3 taking the accused while in her further evidence that she came to know of it. Though she had stated that she signed the complaint -Ex.P1, there is only left thumb impression has been made.

8.2.The other evidence being P.W.2 cannot be the basis. This evidence once again is contradictory to that of P.W.1. P.W.1 stated that she alone went to the scene of occurrence but P.W.2 had stated that P.W1, he and his elder son ran to the place of occurrence. Neither the elder son of P.Ws.1 and 2 was examined nor the said Govindammal. In fact, P.W.2 says it is Kamatchi Ammal, who informed about the fight as against the statement of P.W.1 that Govindammal has informed about the fight. There is no explanation as to why the Officer of the Special Team, who had made the arrest and the officer, who registered Ex.P15-First Information Report had not been examined. Similarly, the prosecution has not given any reason for sending the statements and other records after a period of three months along with the Final Report, though obtained much earlier.

8.3.In view of the abovesaid discussion, no reliance can be made on P.W.8. Not only his statement was wrong with respect to the evidence being given in some other case, but it is contrary to the evidence of P.W.1. When all the accused were found in the Police Station on 08.04.2012 itself, the subsequent recovery made in pursuant to the so called arrest cannot be sustained.

8.4.The trial Court made reliance upon the evidence of P.Ws.1 and 15. P.W.15 merely states about the condition of the body of the deceased in tune with Ex.P14. It was also stated that the head injury might occur when the deceased fell down. Further more, this evidence alone would not be sufficient to implicate all the accused especially when we disbelieve the evidence of P.Ws.1 and 2.

9.CONCLUSION:-

The trial Court, in our considered view, has not considered the evidence in toto and in its perspective. On the contrary , it merely relied upon the evidence of P.Ws.1 and 2 coupled with the evidence of P.W.15. Though it is a trite law that a related witness cannot be termed as interested witnesses per se, a Court of law has to examine the statement made before it while finding out the truth. We find that the prosecution has not proved its case beyond reasonable doubt. Thus, we do not have any hesitation in setting aside the judgment rendered by the trial Court in S.C.No.283 of 2012 dated 04.01.2017 convicting all the accused. Accordingly, these Criminal Appeals stand allowed. The appellants are acquitted of the charges under Sections 302 read with 34 and 341 I.P.C. The fine amounts, if any paid, shall be refunded to them. The appellants are directed to be released forthwith, unless their custody is required in connection with any other case.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The XVI Additional Sessions Judge
Chennai

2.Do Thro The Principal Sessions Judge
Chennai

3.The Metropolitan Magistrate No.VIII
George Town, Chennai

4.Do Thro The Chief Metropolitan Magistrate
Egmore, Chennai

5.The Superintendent
Central Prison
Puzhal, Chennai

6.The Inspector of Police, (Law & Order)
C3, Sevenwells Police Station,
Chennai-1. (Crime No.665/2012)

7.The District Collector
Chennai

8.The Director General of Police
Mylapore, Chennai

9.The Public Prosecutor,
High Court, Madras.

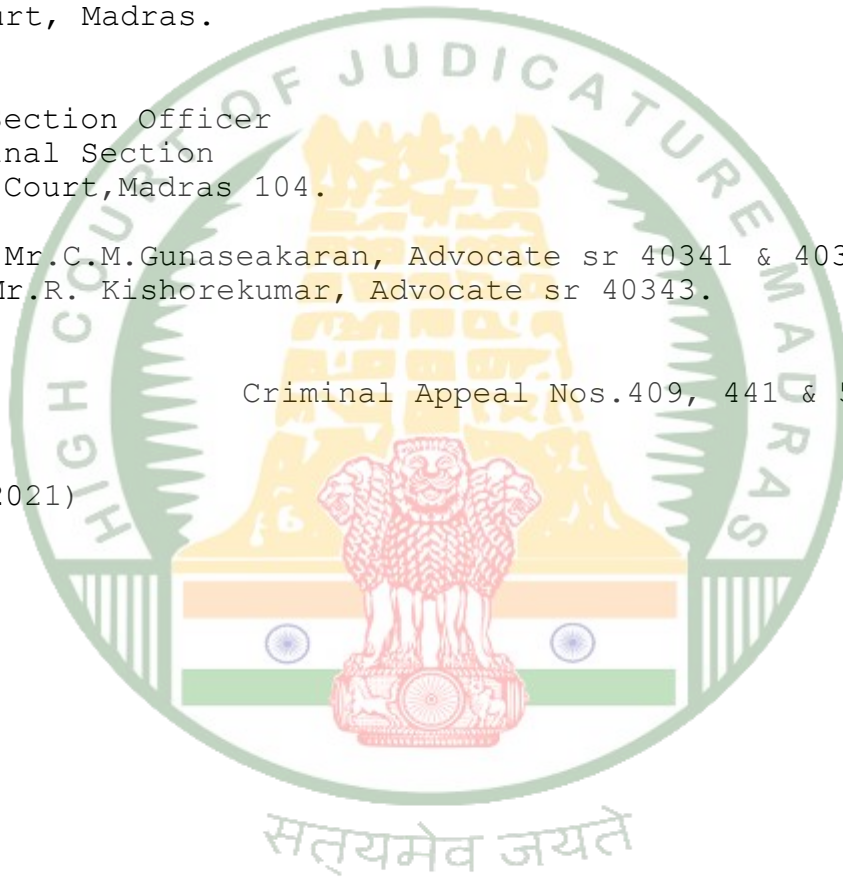
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Criminal Section
High Court, Madras 104.

+2 Ccs to Mr.C.M.Gunaseakaran, Advocate sr 40341 & 40342.

+1 CC to Mr.R. Kishorekumar, Advocate sr 40343.

Criminal Appeal Nos.409, 441 & 572 of 2018

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