



Crl.A(MD).Nos.1 and 60 of 2016,
Crl.A(MD).No.118 of 217
and Crl.A(MD).No.253 of 2019

Bail Slip

Appellant/Accused No.4, viz., Poonai @ Ramesh,
Appellant/Accused No.2, viz., Uthayakumar, Appellant/Accused No.3,
viz., Karthihasan and Appellant/Accused No.1, viz., Ranjithkannan
were already released on bail vide this court order dated 05.01.2016
in CRL MP(MD).23/16 in CRL A(MD)No.1/16, 18.05.2016 in CRL MP(MD)
No.1712/16 in CRL A(MD)No.60/16, 12.07.2017 in CRL MP(MD)No.3229/17
in CRL A(MD)No.118/17 and 17.06.2019 in CRL MP(MD)No.4818/19 in CRL
A(MD)NO.253/19 respectively.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE **G.R.SWAMINATHAN**

Crl.A(MD).Nos.1 and 60 of 2016,

Crl.A(MD).No.118 of 2017

and Crl.A(MD).No.253 of 2019

Poonai @ Ramesh	: Appellant/Accused No.4 in CRL A(MD).1/16
Uthayakumar	: Appellant/Accused No.2 in CRL A(MD).60/16
Karthihasan	: Appellant/Accused No.3 in CRL A(MD).118/17
Ranjithkannan	: Appellant/Accused No.1 in CRL A(MD).253/19

Vs.

The State Represented by
The Inspector of Police,
Sellur Police Station,
Madurai.

(Crime No.3703 of 2010)

: Respondent / Complainant
in all appeals

COMMON PRAYER : Criminal Appeals filed under Section 374 of Cr.P.C,
to set aside the judgment and Conviction passed in S.C.No.3 of 2013
dated 15.12.2015 by the VI Additional Sessions Judge, Madurai for
the offence punishable under Section 307 IPC wherein the appellants
were sentenced to undergo seven years R.I and to pay a fine of
Rs.5000/- in default to undergo to 6 months S.I and allow the
appeal.

In all appeals

For Appellants : Mr.K.Govindarajan
for Mr.S.Arun Arockiasamy

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



COMMON JUDGMENT

All the four appeals arise out of the judgment dated 15.12.2015 made in S.C.No.3 of 2013 on the file of the VI Additional District and Sessions Judge, Madurai.

2.By the impugned judgment, the appellants herein have been convicted for the offence under Section 307 IPC and sentenced to 7 years R.I and fine of Rs.5,000/-, default sentence was also imposed.

3.The case of the prosecution is that PW.2-Prabhu was having illicit intimacy with one Anushya. The said Anushya is a close relative of A2-Uthayakumar. It appears that notwithstanding the warnings held out him, PW-2 continued his relationship with Anushya. On 22.11.2010, the accused herein who are four in number went to the house of P.W.2 and called him out. P.W.2 was taken to a nearby place. This happened at around 6.00 pm., on the said date. The appellants herein are said to have been inflicted grievous injuries on P.W.2. This information about occurrence reached P.W.1-Prabhu, who is none other than the brother of P.W.2. P.W.1-Prabhu rushed to the spot and took P.W.2 in Ambulance to Madurai Rajaji Government Hospital. P.W.2 was admitted and thereafter, P.W.1 went to Chellur Police Station and lodged Ex.P.1-Complaint. Based on the same, Ex.P.8-FIR was registered in Crime No.3703 of 2010 for the offence under Section 307 IPC. P.W.10 registered the FIR. Thereafter, investigation was conducted initially by P.W.12 and thereafter, by P.W.13. Final report was filed before the Judicial Magistrate No.II, Madurai. Cognizance of the offence was taken and case was committed to the Sessions Court. It was made over to VI Additional District Sessions Judge in S.C.No.3 of 2013. Summons were issued to the appellants herein. Charge under Section 307 IPC was framed against them. They denied the charge and claimed to be tried. The prosecution examined P.W.1 to P.W.12 and marked Ex.P.1 to Ex.P.11 and M.O.1 to M.O.4. The incriminating circumstances were put to the accused, who denied the same. On the side of the accused no evidence was adduced. After hearing the prosecution and the accused and going through the evidence on record, the learned trial Judge convicted and sentenced the accused as mentioned above. Challenging the same, these appeals have been filed.

4.The learned counsel appearing for the appellants pointed out that immediately after P.W.2 was admitted, the police appeared to have received intimation. It can be seen from the evidence of P.W.2 that he was enquired by Police and statement was also taken. But then, the same has been suppressed. The learned counsel further would contend that the initial complaint has not been placed before



5.They also would contend that eventhough the occurrence had taken place on 22.11.2010 and FIR was also registered on the same day, the FIR reached the Court only after delay of 48 hours and the said delay has not at all been explained. They would also contend that though the relationship between P.W.2 and Anushya is said to be the motive for the occurrence, Anushya was not examined. It is also submitted that the person, who is said to have given information to P.W.1 was also not examined as a witness. The learned counsel also would contend that the prosecution marked the wound certificate alone and not the accident register. Though these and many other contentions were raised by the learned counsel for the appellant, I am of the view that they do not persuade this Court to differ with the view take by the Court below. This is for more than one reason.

6.As rightly pointed out by the learned Government counsel, the injured witness Arunkumar was examined as P.W.2, he had clearly and categorically spoken about the role played by each of the accused. He would state that A1-Ranjithkumar hacked him on the back of his head, while A2-Uthayakumar slapped him, A3 Kathiresan and A4-Punai @ Ramesh caused injuries on the hands. The injuries spoken to by the victim have been duly corroborated by the testimony of P.W.7-Dr.Padmanaban and the wound certificate/Ex.P.9. It is true that accident register was not marked, but the learned Government counsel would draw my attention to the decision of the Hon'ble Supreme Court reported in **(1985) 4 SCC 80 and (2017) 13 SCC 585**, . The Hon'ble Supreme Court in the decision held as follows:

"(2017) 13 SCC 585:

11. The failure of the prosecution to place the injury report of the witness from the Udumalpet Government Hospital, where he was first taken for treatment is a lacuna, but cannot be held to be fatal as to doubt the entire prosecution case or shake the credibility of the witness. It cannot lead to any conclusion of his injury report, Exhibit P-6 from the Ramakrishna Hospital being fabricated. No such suggestion was made by the defence to PW-12 Dr. Krishnaraj.

The appellants are named in the FIR registered soon after the occurrence. The fact that the witness may have stated of assault by two known persons to PW-12, without naming any of the appellants is inconsequential. The Doctor was a prosecution witness for the limited purpose of the injury report and not a prosecution witness with regard to the occurrence. The observations in Pattipati Venkaiah v. State of A.P., (1985) 4 SCC 80 as follows are considered relevant:

"17. Another argument advanced before us was that



8.The occurrence had taken place way back in Nov-2010, more than 10 years have elapsed. The first accused Ranjithkannan was in prison for more than 3 ½ years. The impugned judgment was passed on 15.12.2015. Crl.A.(MD).No.253 of 2019 was filed only on 27.11.2018. Suspension of sentence was granted only on 17.06.2019. During trial also he was in incarceration for few months. Therefore, it is obvious that the first accused Ranjithkannan who had caused the most serious injury was in incarceration for almost four years. He is also said to be suffering from mind related issues. A1 is a Coolie. Therefore, I am of the view that even while confirming the conviction imposed on him, the sentence can be reduced to the period already undergone by him. Accordingly, Crl.A(MD).No.253 of 2019 is disposed of.

9.As regards A3- Kathiresan and A4-Punai @ Ramesh, it is seen that they had caused injuries only on the left and right wrist of P.W.2. The injuries do not appear to be that deep. The primary injuries were caused only by A1 and A2. A-3 Kathiresan filed an appeal only on 22.03.2017 and obtained suspension of sentence on 12.07.2017, from this one can come to the conclusion that A3-Kathiresan also had been in prison for more than 1 years and 8 months. He is also said to be a coolie. Therefore, even while confirming the conviction imposed on him, the sentence is modified and reduced to the period already undergone by him.

10.A4-Poonai@Ramesh was granted suspension of sentence on 05.01.2016. It appears that A4 had spent only around 70 days in incarceration. The learned counsel for the fourth accused stated that the overt act attributed to Ponai is really minor and that therefore, this Court can take an indulgent view. The said accused shall deposit a sum of Rs.25,000/- to the credit of S.C.No.3 of 2013 on the file of the VI Additional Sessions Judge, Madurai within a period of twelve weeks from the date of receipt of a copy of this order. On such deposit, the same can be withdrawn by P.W.2 as token compensation as it cannot exactly compensate for the suffering undergone by him. If A-4 makes the deposit within the time as mentioned above, then the sentence imposed on him will be modified and reduced to the period already undergone by him. If A4 fails to make deposit, he will have to undergo default sentence of six months R.I.

11.Coming to A2-Uthayakumar, learned Government counsel points out that he has been implicated in theft case in the year 2014. It is Uthayakumar, who obviously organized the other accused to get involved in the instant occurrence. Even according to the prosecution, the motive is said to be relationship between PW.2 and Anushya, who is the relative of Uthayakumar/A2. Uthayakumar was granted suspension of sentence on 18.05.2016. He is said to have spent around 8 months in custody. A2 Uthayakumar had inflicted



serious injury. He had stabbed the victim in his chest. It is a vital part of the body. Unlike A4 and A3, who had caused injury only on a portion of wrist, A2 has chosen to cause injury on vital parts of P.W.2. Therefore, the case of Uthayakumar cannot be viewed with too much indulgence. As already pointed out, Uthayakumar was involved in a subsequent criminal case also. The other accused had not come under adverse notice. Since Uthayakumar appears to have played the principal role and he had also caused grievous injury on vital part of the body and since he is involved in a subsequent case, I am of the view that appropriate sentence will have to be passed on him. However, taking note of the mitigating circumstance pleaded by the learned counsel appearing for A2, even while confirming the conviction, the sentence is reduced from 7 years R.I to 18 months R.I. The period of incarceration already undergone by A2 Uthayakumar is set off in terms of Section 428 of Cr.P.C. The trial Court is directed to secure the accused to undergo remaining period of sentence.

12.With these observation, these Criminal Appeals are disposed of.

Sd/-

Assistant Registrar(AD-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

rmk

To

- 1.The VI Additional Sessions Judge, Madurai.
- 2.The Judicial Magistrate No.II, Madurai.
- 3.The Judicial Magistrate No.V, Madurai.
- 4.The Inspector of Police, Sellur Police Station, Madurai.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
6. The Superintendent, Central Prison, Trichy.
- 7.The Record Keeper, Criminal Section,
Madurai Bench of Madras High Court, Madurai(2 copies).

Crl.A(MD).Nos.1 and 60 of 2016,
Crl.A(MD).No.118 of 2017
and Crl.A(MD).No.253 of 2019
21.12.2020

KM(CO)

TR(18.03.2021) 6P 9C