

BAIL SLIP

That the Appellant herein/1st Accused viz., Sadam Hussain, S/o.Babu was directed to be released on Bail as per order of this Court dated 09/01/2015 made in M.P.No.1/2015 in CrI.A.13/2015 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.03.2021

CORAM :

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

CrI.A.No.13 of 2015

SADAM HUSSAIN,
S/o. Babu

.. Appellant/Accused No.1

Vs.

State by
The Inspector of Police,
F-15 Choolaimedu Police Station,
Chennai.

(Crime No.2913 of 2011)

...Respondent/Complainant

PRAYER : Criminal Appeal filed under Section 374(2) of The Criminal Procedure Code, to set aside the Conviction and Sentence passed by the learned III Additional Sessions Judge, Chennai in S.C.No.381 of 2012, by judgment dated 16.12.2014.

For Appellant : Mr.S.Sasikumar

For Respondent : Mrs.Saradha Devi,
Government Advocate (CrI.Side)

JUDGMENT

This Criminal Appeal has been filed by the Appellant/Accused seeking to set aside the judgment of Conviction and Sentence in S.C.No.381 of 2012, dated 16.12.2014, passed by the learned III Additional Sessions Judge, Chennai.

2.The brief facts of the case is that due to previous enmity, on 24.11.2011 at about 12.30 a.m., the Appellant/1st Accused viz., Sadam Hussain and A2/Kasilingam along with one Naveenkumar and Maareswaran (Split up accused) (who were Juveniles in conflict with law at the time of offence) entered in to the house of the victim Sarathkumar and attacked him with knife on his hands and chest due to which, he sustained injuries. The specific allegation against the Appellant/A1 is that, he caught hold of the victim while the said Maareswaran (who was Juvenile in conflict with law at the time of offence)

attacked the victim with knife on his hands and chest. Insofar as A2 /Kasilingam is concerned, he was watching the movement of public outside the house of the victim. Hence, the case was registered for the offences under Sections 341, 307 and 506(ii) IPC r/w 34 IPC.

3.After completing the investigation, the Respondent Police filed charge sheet against A1/ Saddam Hussain and A2/Kasilingam, for the offences under Sections 341, 307 and 506(ii) IPC r/w 34 IPC., On appearance of the accused before the learned XVII Metropolitan Magistrate, Saidapet, Chennai, all the documents were provided to him free of cost under Section 207 Cr.P.C., Since, the case had to be tried by the Court of Sessions, the case was committed to the learned Principal Sessions Court, Chennai and thereafter, it was made over and taken on the file of the learned III Additional Sessions Court, Chennai, for trial.

4.After hearing both sides and examination of documents, charges were framed against the accused under Sections 341 r/w 34 IPC and Section 307 r/w 34 IPC and the accusations were explained to them and they were questioned. Since, the accused denied having committed any offences under Sections 341 r/w 34 IPC and Section 307 r/w 34 IPC, the case was posted for trial.

5.In order to establish the case of the prosecution, the prosecution has examined 8 witnesses as P.W.1 to P.W.8 and marked 9 documents as Ex.P1 to Ex.P9 and marked a knife as M.O.1.

6.After completion of trial, when the trial Court, questioned the Accused under Section 313(1)(b) Cr.P.C., to the incriminating circumstances found in the evidence of the prosecution witnesses the Accused had come with the version of total denial and stated that they have been falsely implicated in this case. On the side of the defence no oral and documentary evidence was adduced.

7.After hearing the arguments on both sides and on perusal of the materials placed, the trial Court found the Appellant/Accused guilty for committing the offence under Section 307 r/w 34 IPC and convicted and sentenced him to undergo Rigorous Imprisonment for a period of four years and to pay a fine of Rs.2,000/- and in default of paying the fine amount to undergo one year Rigorous Imprisonment and acquitted the 2nd accused for offence under Section 307 r/w 34 IPC and found the Appellant/Accused and the 2nd accused guilty for the offence under Section 341 r/w 34 IPC and convicted and sentenced him to undergo Simple Imprisonment for a period of two weeks and to pay a fine of Rs.100/- and in default of paying the fine amount, to undergo two days Simple Imprisonment.

8.Aggrieved against the said judgment of conviction and

sentence passed by the learned III Additional Sessions Judge, Chennai in SC.No.381 of 2012 dated 16.12.2014, the Appellant/Accused alone preferred the present Criminal Appeal before this Court.

9.Crux of the evidence:

(a) P.W.1/Sarathkumar, is the injured victim/de facto complainant in this case. He had deposed that on 24.11.2011, it was holiday for him and he was alone at home and at that time, his maternal aunt's son Naveenkumar, along with his 3 friends viz., Sadam Hussain, Maareswaran and Kasilingam had come to his house and they were chatting. During that time, the other split up accused Naveenkumar (juvenile in conflict with law) has asked Kasilingam to find out whether someone was standing out and at that time he had also enquired P.W.1., about his mother and when he had replied that his mother had gone to the shop, the said Naveenkumar had told the other accused that this is the right time to assault him and that the said Naveenkumar had asked the appellant/accused to catch hold of him and instigated the other accused Maareeswaran to stab him with knife and at the same time, Naveenkumar had told that if they attack him only the entire family would know who he is and at that time, the appellant/accused had stood behind him and caught hold of his hands and the said Maareeswaran stabbed him on the left side of his neck saying "die now". At that time, P.W.1 had kicked Maareeswaran with his leg due to which, he sustained injuries on his left thumb. Then he had raised alarm and at that time, the said Naveenkumar had threatened him that he will kill him and thereafter all the accused have run away from the house. P.W.1 had further deposed that he had immediately called his father P.W.3/Gunasekar over phone and after some time, his father along with his mother P.W.2/Yasodha had come home and they took him to the nearby private hospital and thereafter, police came there and immediately after treatment, the police had asked him to give a complaint and that on the next day he gave a complaint to the police. The complaint was marked as Ex.P1 and the knife with black colour handle was marked as M.O.1.

(b) P.W.2/Gunasekar and P.W.3/Yasodha are the parents of P.W.1/Sarathkumar. They have deposed that on receiving information from P.W.1 their son they had returned home. They have deposed about P.W.1 having been attacked by the accused and also deposed about the injuries sustained by P.W.1 on his left chest and left hand.

(c) P.W.4/Ashokkumar had deposed that he is a friend of P.W.3/Gunasekar and that he knows P.W.1/Sarathkumar and that on 24.11.2011, he had heard that when P.W.1 was at home, there was a quarrel between him and his friends and the accused had assaulted him with knife and that he heard that the incident had occurred due to a family dispute. He had further deposed that on 28.11.2011, he along with one Subramani, who is a staff at P.W.3's shop had gone to the police station and seen the police

examining the accused and that the split up accused Naveenkumar/ (Juvenile in conflict with law) had given a confession statement and that he had signed as witness in the confession. Based on the confession, a knife was recovered from the banks of river Coovam, near Veerapandi Nagar, and that he attested the Recovery Mahazar. The signature in the confession statement was marked as Ex.P2 and the Recovery Mahazar was marked as Ex.P3.

(d) P.W.5/Prasanna, had deposed that he had attested the Observation Mahazar, prepared by the respondent police, it was marked as Ex.P4.

(e) P.W.6/ Dr.Suresh Babu had deposed that on 27.11.2011 at about 1.50 p.m., while he was on duty at Kilpauk Medical College Hospital, the Head Constable Senthilkumar had brought one Sarathkumar/P.W.1, aged about 19 years for treatment along with a medical memo and when he had enquired P.W.1, he had informed that he was assaulted by two known persons with knife. When he had examined him he had found a 4 cm., sutured wound near the chest and 3 cm., sutured wound on his left thumb and when he had enquired P.W.1, he had deposed that one Dr.Sundarrajan had given treatment to him and thereafter referred P.W.1/Sarathkumar to the orthopedic surgeon for taking X-ray and further treatment. The Xerox copy of the Accident Register was marked as Ex.P5.

(f) P.W.7/Vijayalakshmi, Special Inspector of Police at F-5, Choolaimedu Police Station, Chennai. She had deposed that on 27.11.2011, at about 11.00 a.m., while she was on duty, she had received a complaint from P.W.1/defacto complainant, which was registered on 25.11.2011 in CSR No.443/F-5/2011 and and she had later registered a case in Crime No.2913 of 2011, under Section 341, 324 & 506(ii) IPC. The printed FIR was marked as Ex.P6.

(g) P.W.8/Guru, the Inspector of Police had deposed that on 27.11.2011, he had taken up the case in Crime No.2913 of 2011 for investigation and that he had examined P.W.1 /Sarathkumar and thereafter altered the case into one under Section 307 IPC and sent the Express FIR/Ex.P7 to the Court. Thereafter, he had visited the scene of occurrence and prepared an Observation Mahazar/Ex.P4 and a Rough Sketch/Ex.P8 and thereafter, examined the witnesses viz., Yasodha, Gunasekar, Neela, Ashokkumar and recorded their statements. Later, arrested the accused, based on the confession of Naveenkumar, (Juvenile in conflict with law) the weapon used for the offence was recovered from the banks of river Coovam, near Veerapandi Nagar, 1st Street and the weapon was recovered in the presence of witnesses under Ex.P3 and thereafter, completed the investigation and filed the final report and remanded the accused to the judicial custody. The material object was collected under Form-95, which was marked as Ex.P9.

10. Based on the above evidence, the trial Court had found the Appellant/Accused guilty and sentenced him as stated above.

11.Learned counsel appearing for the Appellant/Accused while assailing the Judgment of conviction and sentence would submit that as per the prosecution, the incident is stated to have occurred on 25.11.2011, at about 1.30 p.m., in a residential house located in a busy locality, P.W.1/sarathkumar, the injured witness is the solitary witness who has directly spoken about the incident and in such circumstances, the evidence of P.W.1/Sarathkumar, gains much significance in order to arrive at the conclusion of the guilt of accused. The testimony of the sole witness has to be harnessed with much care and caution and thereby, the conviction can be recorded on the basis of a solitary witness, if only, its credibility is not shaken by any adverse circumstances. If the occurrence is stated to have happened in a place or time where there was no possibility of any other witness being present, the Court should not insist on corroboration by any other witness, but if the occurrence is stated to have happened during the day time, that too in a broad day light, where other persons are available, the Court can place reliance on the testimony of the sole witness if only it raises above the standard of suspicion and doubt. It is the case of P.W.1/Sarathkumar that the accused Mareeswaran is his cousin, who had come along with his friends and assaulted him inside his house causing injuries on his chest and on his thumb and it is the case of P.W.1 that the accused have left immediately after the occurrence and thereafter, he had called his father P.W.3/Gunasekar and that within a short spell of time, his parents Yasodha/P.W.2 and Gunasekar/P.W.3 had come back home. Though the place of occurrence is stated to be very near to the Police Station, strangely the complaint has been given to the respondent only on 27.11.2011, after a lapse of two days. Though it is stated that the altered FIR and the Express FIR have been prepared on the same day of complaint, the Express FIR is stated to have reached the Court only on 29.11.2011, with further delay of two days. The prosecution has not explained the undue delay in registering the case and the Express FIR/Ex.P1 reaching the Court belatedly. It is the case of P.W1/Sarathkumar, after the assault, he was taken by his parents to a nearby private hospital, run by one Dr.Sundarrajan, and that the police came there and examined him on the same day but the case had been registered only on 27.11.2011. P.W.1/Sarathkumar had also admitted that he had narrated about the entire incident to them on the same day of occurrence.

12.The learned counsel for the Appellant/Accused would further submit that though the respondent is stated to have enquired the other persons in the residential flats in a busy locality, none of them have been examined before the Court and all the other witnesses examined before the Court are only interested witnesses. He would submit that the Trial Court failed to appreciate that the evidence of P.W.1 to P.W.4, who belong to the same family is bristled with contradictions and thereby, it is not safe to place reliance on their evidence more specially when P.W.1 to P.W.4 have not spoken anything about the

motive. Admittedly, no witnesses have been examined to speak about having seen the accused entering into the house and coming out of the place of occurrence which is a residential house in a busy locality, that too, during the day time. He would also further contend that as per the evidence of P.W.1/Sarathkumar, he was stated to have been initially treated by one Dr.Sundarrajan, the private doctor, who has given initial treatment and given sutures for the injury. Non examination and non production of the medical notes of the said Dr.Sundarrajan creates a grave suspicion in the case of the prosecution. Further, as per the evidence of P.W.6/Dr.Suresh Babu, Government Doctor and as per Ex.P5/Accident Register, P.W.1/Sarathkumar is stated to have informed him that he was assaulted by two known male persons around 1.00 p.m., on 24.11.2011 and it has been reflected in the Accident Registrar/Ex.P5 that he was treated by a private doctor for the assault committed by two known male persons. When that being the case, it creates a grave suspicion in the prosecution case, that they have arrested four persons in this case.

13.The learned counsel would further submit that even as per P.W.1, he knows only the name of his cousin Maareeswaran and that the other accused are absolutely strangers to him and in such circumstances, non conducting of Test Identification Parade creates a grave suspicion and dent in the prosecution case. The Appellant/Accused is stated to have been implicated only based on the confession of the said Maareeswaran. P.W.4/Ashok kumar had deposed that the confession was recorded from the said Maareeswaran in the Police Station and the Appellant/Accused had been implicated only based on the alleged confession stated to have been recorded from Maareeswaran. While, the said Maareeswaran and the other persons were in the custody of police no linking evidence has been let in by the respondent police to implicate the Appellant/Accused in the crime, that the Appellant/Accused came along with the said Maareeswaran and committed the offence when especially as per the Accident Register/Ex.P5 only two persons are said to have attacked the victim P.W.1. The identification of the accused for the first time before the Court is doubtful. When no significant identification details have been given about the assailants in the FIR.

14.The learned counsel would reiterate that P.W.1/Sarathkumar the injured witness is the only witness to the occurrence. Though there is no Rule of Law that there cannot be any conviction on the testimony of the sole eye witness, the Court should see that it inspires confidence. Taking into consideration, the entire evidence on record, the long delay of two days in registering the FIR, the delay in the FIR reaching the Court, and there being no explanation for the same, non conducting the Test Identification Parade and non examination of the private doctor, who attended the victim initially, creates suspicion in the entire prosecution case. The learned counsel

would ultimately contend that when there are grave suspicion in the prosecution case, the Trial Court ought to have extended benefit of doubt and acquitted the Appellant/Accused whereas the Trial Court erred in convicting the Appellant/Accused, without there being any legal evidence to support the case of the prosecution.

15.Per Contra, Mrs.Saradha Devi, learned Government Advocate (Crl.Side) would submit that P.W.1/Sarathkumar is an injured witness. The main accused in this case Mareeswaran is a relative of P.W.1. The Appellant/Accused is a friend, who had accompanied P.W.1 from Madurai and that after the arrest of Naveenkumar, he had confessed about the Appellant/Accused and other friends having accompanied him to Chennai and assaulted P.W.1/Sarathkumar with knife. Based on the confession recorded from the said Naveenkumar, the Appellant/Accused was implicated in this case and the knife/M.O.1 was also recovered. P.W.1 is an injured witness and his statement cannot be lightly brushed aside and further, the Appellant/Accused had been identified by P.W.1/Sarathkumar in the Trial Court. The learned Government Advocate would further submit that the Test Identification Parade is only a part of investigation and it is only used to corroborate the evidence in Court. Therefore, it is not the substantive evidence and failure to conduct the Test Identification Parade is not fatal to the prosecution.

16.At this juncture, the learned counsel for the Appellant/Accused would submit that failure to conduct the Test Identification Parade though not fatal to the prosecution case, the rule of prudence requires that when the accused is not known to the witnesses or the complainant, the Trial Judge will need to be circumspect in accepting the identification of an accused first time in Court if the accused is a stranger to the witness.

17.Heard the learned counsel on either side and perused the materials placed on record.

18.Now, while analyzing the evidence of the witness and the materials on record in this case, what is to be seen is that whether the prosecution has proved its case beyond all reasonable doubt and whether the Trial Court is right in convicting the Appellant/Accused, based on the evidence of the witnesses and the materials available on record.

19.Admittedly, the alleged occurrence as per P.W.1/Sarathkumar is stated to have happened on 24.11.2011 at 12.30 hours, when P.W.1 was at his residential house in a busy locality. At that time, his parents P.W.2/Gunasekar and P.W.3/Yasodha were not at home, and he was alone. The split up accused Maareeswaran (Juvenile in conflict with Law) along with his three friends had come to his house and while they were chatting, quarrel erupted between them and at that time, the said Maareeswaran had asked one of his friends to keep watch

outside and had directed the Appellant/Accused to catch hold of P.W.1/Sarathkumar. On his instructions, the Appellant/Accused had caught hold of P.W.1/Sarathkumar and the said Maareeswaran had inflicted injuries on the right chest and left thumb with a knife/M.O.1. P.W.1/Sarathkumar had deposed that he had raised hue and cry and thereafter, the Appellant/Accused is stated to have left the place of occurrence and thereafter, P.W.1 had called his parents over phone and they have arrived at the scene of occurrence after some time and they had taken him to the nearby private hospital, and one Dr.Sundarajan, is stated to have given first aid to P.W.1. Though the occurrence is stated to have taken place on 24.11.2011, as per the prosecution the complaint had been given to the respondent only after 3 days on 27.11.2011 at 10.00 a.m. Thereafter, on the same day, P.W.1 was taken to the Government hospital and at that time, Dr.Somasundram had noticed two injuries viz., one sutured injury was found near the left chest and one sutured injury was found on the left thumb, whereas, the FIR is silent with regard to the injury on the left thumb. Further in the Accident Register/Ex.P5, P.W.1/Sarathkumar had stated that he was assaulted by two known male persons around 1.00 p.m., at his residence with a knife. Whereas in this case, the respondent had arrested four accused persons. Though P.W.1 had stated that he was assaulted by two known persons, except the name of Mareeswaran, no other names were disclosed in the FIR. Further, though the case was altered into one under Section 307 IPC and the Express FIR was made ready on 27.11.2011, the FIR had reached the Court only on 29.11.2011 and no explanation had been offered by the prosecution for the delay in the FIR reaching the Court.

20.Further, though P.W.1/Sarathkumar had stated that he was immediately taken to the nearby private hospital and treatment had been given to him by one Dr.Sundarrajan, the respondent had not taken steps to enquire the said Dr.Sundarrajan with regard to the injuries sustained by P.W.1. Further, in this case, though the Appellant/Accused is stated to be a stranger and his name has not been stated in the FIR, no Test Identification Parade has been conducted by the prosecution to identify the accused, when especially, no details have been stated about the identification of the appellant in the complaint. Though, failure to hold the Test Identification Parade is not a fatal to the prosecution, it is necessary that the Trial Court, need to be circumspect in identification of an accused by a witness for the first time in Court, if the accused is a stranger to the witness. In this case, the Appellant/Accused is a stranger and no explanation had been offered by the respondent as to how and in what manner, the Appellant/Accused was fixed in this case and arrested at Madurai. Further the evidence of P.W.4/Ashokkumar creates a doubt with regard to the arrest and recovery made from the prime accused Maareeswaran. The alleged occurrence is stated to have taken place in a busy locality and that too in a day time and the non examination of independent witnesses in and around the neighborhood also creates grave doubt in the

prosecution case.

21. In view of the above discussions, this Court is of the opinion that the prosecution has failed to prove its case beyond all reasonable doubt and the Trial Court without proper appreciation of evidence of the witnesses and materials on record had erred in convicting the Appellant/Accused on the basis of uncorroborated and doubtful evidence of P.W.1/Sarathkumar which is in conflict with the other evidence and thereby the Appellant/Accused is entitled to the benefit of doubt.

22. In the result, the Criminal Appeal is allowed. The Judgment of Conviction and Sentence passed by the learned III Additional Sessions Judge, Chennai in S.C.No.381 of 2012, dated 16.12.2014 is set aside. Bail bond if any executed by the Appellant/Accused shall stand cancelled. The fine amount if any paid by the Appellant/Accused shall be returned to him.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

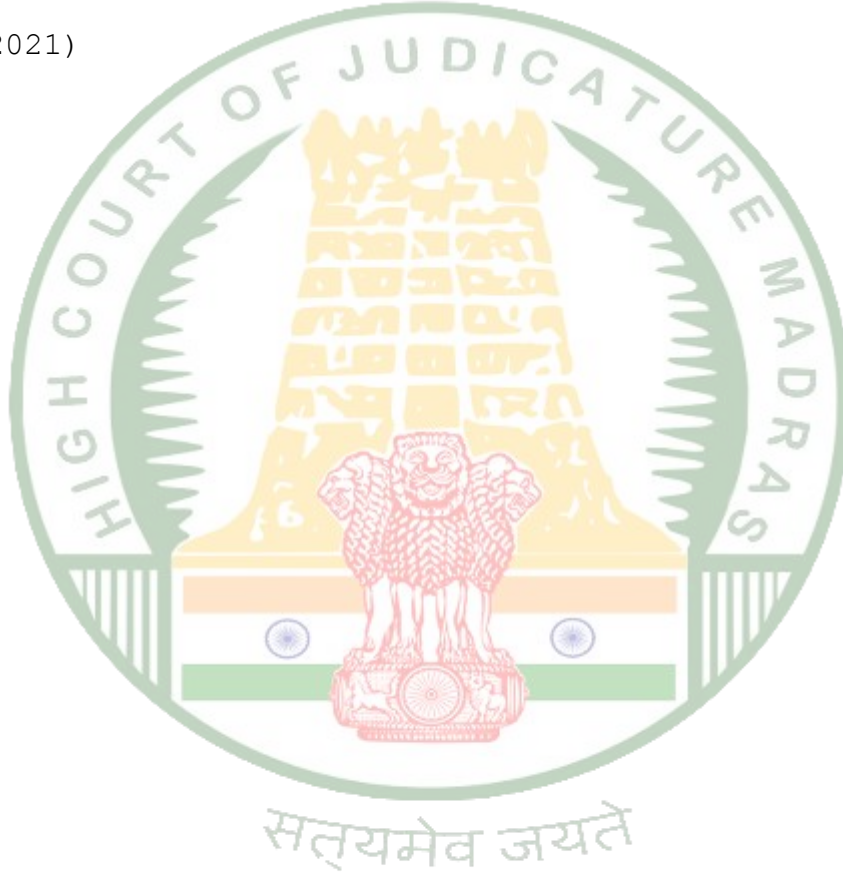
1. The III Additional Sessions Judge,
Chennai.
2. Do Thro The Principal Sessions Judge,
Chennai.
3. The XVII Metropolitan Magistrate,
Saidapet, Chennai - 15.
4. Do Thro The Chief Metropolitan Magistrate,
Egmore, Chennai-8.
5. The Superintendent,
Central Prison,
Puzhal, Chennai.
6. The District Collector,
Chennai.
7. The Director General of Police,
Mylapore, Chennai-9.

8.The Inspector of Police,
F-15 Choolaimedu Police Station,
Chennai.

9.The Public Prosecutor,
High Court of Madras,
Chennai.

Cr1.A.No.13 of 2015

SMI (CO)
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