

Bail Slip

Thiru.Selvaraj S/o.Chellan, Appellant/Accused No.3 and Thiru.Kumaresan S/o.Selvaraj, Appellant/Accused No.5 were released on Bail vide order dated 14.06.2016 made in Crl.MP(MD)No.2662 of 2016 in Crl.A(MD)No.100 of 2016

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.A(MD)No.100 of 2016

1.Selvaraj
2.Kumaresan

: Appellants/Accused 3 & 5

Vs.

State, rep. by
Inspector of Police,
Vattathikottai Police Station,
Thanjavur District.
(Crime No.122/2013)

: Respondent/Complainant

PRAYER: The Criminal Appeal is filed under Section 374(2) of the Code of Criminal Procedure, to set aside the conviction and sentence, dated 11.03.2016 in S.S.C.No.43 of 2014 on the file of the I Additional District Sessions Judge, (P.C.R), Thanjavur and acquit the appellants.

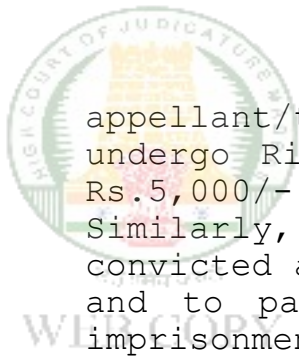
For appellants : Mr.M.Karunanithi
For Respondent : Mr.E.Antony Sahaya Prabahar
Government Advocate (Crl.side)

JUDGMENT

The present appeal is directed against the conviction and sentence, dated 11.03.2016, made in Spl.S.C.No.43 of 2014, on the file of the I Additional District Sessions Court, (P.C.R), Thanjavur.

2.The appellants are arrayed as accused Nos.3 & 5 in the above case. The appellants along with 6 other accused stood charged for the offences punishable under Sections 147, 148, 294(b), 324, 352, 354, 506(ii), 302 of IPC and Section 3(2)(V) of SC/ST (POA) Act, 1989. All the accused denied the charges as false and opted for trial. Therefore, they were put on trial on the charges.

3.After full-fledged trial, the learned I Additional District and Sessions Judge (P.C.R.), Thanjavur, came to the conclusion that the appellants 1 & 2 found guilty for the offences under Sections 326 and 324 of IPC, respectively and accordingly, the first



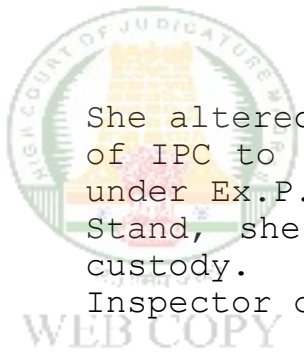
appellant/third accused Selvaraj was convicted and sentenced to undergo Rigorous Imprisonment for 7 years and to pay a fine of Rs.5,000/- in default to undergo Simple Imprisonment for 6 months. Similarly, the second appellant/fifth accused Kumaresan was convicted and sentenced to undergo Rigorous Imprisonment for 2 years and to pay a fine of Rs.2,000/- in default to undergo simple imprisonment for three months. Challenging the said conviction and sentence, both the accused Nos.3 & 5 are before this Court, by way of filing the present Criminal Appeal.

4.The relevant facts of the case, which gave rise to filing of this appeal are necessary to be recapitulated for the disposal of this appeal:-

(i)Both the accused and the victims in the alleged occurrence are the resident of Neiveli Vadapathi Village. Due to the land dispute, there was a prior enmity between both parties. The accused Nos.1 & 2 are belonged to Hindu Kallar community. The witnesses P.W.1-Karuppaiah, P.W.3-Savithiri, the deceased and the accused Nos.3 to 8 are belonged to Hindu Parayan community.

(ii)On 10.10.2013 around 06.00 p.m., when P.Ws.1 to 3 and the deceased Sekar were doing tillage work at Seeniyaviduthi, all the accused in this case, unlawfully assembled with deadly weapons viz., iron rod, wooden log, Sickle and mud cutter came there and at the time of occurrence the accused Nos.1 & 2 abused the witnesses P.Ws.1, 3 and the deceased with filthy language by citing their caste name, further Accused Nos.1 & 3 attacked the deceased Sekar with Iron rod on his left forehead and thereby caused his death. While such a time, Accused Nos.2,4 and 5 in this case by using the iron rod attacked one Karuppaiah and caused simple injuries. Further, Accused Nos.3 & 5 attacked Padma with iron rod on her left forearm and there by the said Padma sustained simple injury. Apart from that, in the said occurrence, the third accused attacked Savithiri with iron rod on her left forehead and the sixth accused attacked her with wooden log on her left leg, further, seventh accused with mud cutter and accused No.8 with sickle threatened her.

(iii)Immediately, after the said occurrence, the deceased Sekar and other injured witnesses were hospitalised at Government Hospital, Pattukottai and on receipt of intimation from the Hospital, P.W.14 Madhavi, the Sub-Inspector of Police, visited the said hospital and recorded the statement from deceased Sekar. On 11.10.2013 upon the statement given by the deceased, she registered a case in Cr.No.122/2013 for the offences punishable under Sections 147, 148, 294(b), 323, 324, 354 IPC. After registration of the case, on 12.10.2013 at about 17.00 hours, she herself took up the investigation, visited the place of occurrence and in the presence of witnesses P.W.6-Raman and one Mahalingam, she prepared an Observation Mahazar under Ex.P2. She drawn the Rough Sketch under Ex.P3. She examined the witnesses and recorded their statements.



She altered the Sections of law from 147, 148, 294(b), 323, 324, 354 of IPC to Sections 147, 148, 294(b), 323, 324, 354, 506(ii) of IPC under Ex.P.24. On 14.02.2013 around 11.00 hours near Sengkollai Bus Stand, she arrested the fourth accused and remanded into judicial custody. Thereafter, she handed over the case records to the Inspector of Police for further investigation.

(iv) P.W.15-Thiru Ulaganathan, the then Inspector of Police, Pappanadu Police Station, took up further investigation and visited the place of occurrence. He examined the witnesses and recorded their statements. He altered the section of law from under Sections 147, 148, 294(b), 323, 324, 354 and 506(ii) of IPC to Sections 147, 148, 294(b), 323, 324, 354 and 307 of IPC r/w Section 3(2)(v) SC/ST Act and submitted the alteration report to the learned Judicial Magistrate, Pattukottai and thereafter, he placed the entire case records to the Superintendent of Police, Thanjavur, to nominate the Investigation Officer. After getting an order of nomination from the Superintendent of Police, P.W.17-Vivekanandan, the then Deputy Superintendent of Police took up the investigation under Ex.P28 and altered the sections from 147, 148, 294(b), 323, 324, 354, 560(ii) and 307 of IPC to under Sections 147, 148, 294(b), 323, 324, 354, 506(ii) and 302 of IPC r/w 3(2)(v) SC/ST (POA) Act. He visited the place of occurrence and examined the witnesses and he conducted an inquest on the body of the deceased Sekar and prepared Ex.P.29-Inquest Report. Thereafter, on 07.11.2013 around 05.30 p.m., he arrested the accused Karuppaiah in Perambakudi Bus Stop. After made arrest, he recorded the disclosure statement given by the said accused Karuppaiah in the presence of P.W.7- Kamaraj and P.W.8-Mathiyalagan. In the disclosure statement, he had admitted that he concealed the iron rod (M.O.1) behind his house, and after reaching his house he handed over the same to the Investigating Officer and the same was recovered by P.W.17 under the cover of Ex.P.31 Recovery Mahazar. On 09.11.2013, P.W.17 arrested the third accused Selvaraj/1st appellant at 10.00 a.m., in Pattukottai Bus Stop and on examination, he has voluntarily gave confession statement and the same was recorded by P.W.17 in the presence of P.W.11 Chelladurai and P.W.13 Karuppaiah. In the said confession, the accused Selvaraj disclosed that he concealed the iron rod behind his house. In turn, he brought the investigation team to his house and handed over the iron rod and the same was recovered by the Investigating Officer under the cover of Ex.P.33 Recovery Mahazar.

(v) In continuation of investigation, P.W.17 applied for the Community certificate pertains to the deceased, injured witnesses and obtained the same. He recorded the statement from the Tahsildar, who issued the community certificate. He examined the Doctor, who had conducted an autopsy over the dead body of the deceased. After concluding the investigation, he came to the positive conclusion that the appellants herein and the other accused are all committed the offence punishable under Sections 147, 148, 294(b), 324, 352, 354, 506(ii) of IPC and Section 3(2)(V) of SC/ST (POA) Act,



1989 and accordingly, he filed a final report.

5. Based on the above materials, the trial Court framed the charges against the first appellant under Sections 147, 148, 354, 352 and 302 of IPC and as against the fifth accused/second appellant, framed the charges under Sections 147, 148, 354 and 324 of IPC. Along with other accused, the appellants herein also denied the charges and opted for trial. Therefore, the accused were put on trial.

6. During the course of trial proceedings, in order to prove their case, on the side of the prosecution, 17 witnesses had examined as PW1 to PW17 and 37 documents were exhibited as Ex.P1 to Ex.P37, besides, two Material Objects [M.O.1 and M.O.2].

7. When the above incriminating materials were put to the accused under Section 313 Cr.P.C. the accused denied the same as false. However, they did not chose to examine any witness or mark any document on their side.

8. Having considered all the above, the learned I Additional District and Sessions Judge (P.C.R), Tanjavur, found the first appellant guilty of causing grievous hurt by using dangerous weapon. Further, he found the second appellant guilty of causing simple hurt by using dangerous weapon as stated above in paragraph 4(ii). Accordingly, both the appellants are convicted as stated supra. Aggrieved by the said conviction and sentence, the appellants are before this Court with this appeal.

9. I have heard Mr.M.Karunanithi, learned counsel appearing for the appellants and Mr.E.Antony Sahaya Prabahar, learned Government Advocate (Crl.side) appearing for the State. I have also perused the records carefully.

10. Before the trial court, in order to prove the guilt of the accused, P.Ws.1 to 3 were examined as occurrence witnesses. Among the above witnesses, P.W.2 has stated before the trial Court as both the appellants herein had attacked her with iron rod on her left hand. The said evidence was corroborated by Ex.P22 complaint also. In respect of the injury sustained by P.W.2, the doctor P.W.9, who treated P.W.2, gave an opinion that the injury sustained by P.W.2 is could have caused by single person and therefore, in respect of the attack made by the second appellant, the evidence given by the victim was corroborated through the evidence of doctor, who treated P.W.2. Similarly, P.W.3 has also stated about the attack made by the first appellant on her left shoulder and left knee with iron rod and wooden log. The said evidence had also been corroborated through P.W.9 doctor. Only by believing the evidence of P.Ws.2 & 3, the learned Trial Judge had convicted the appellants herein as stated above.



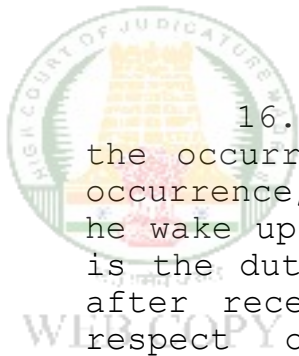
11. In this occasion, the learned counsel appearing for the appellants would contend that on whole reading of the history of the case narrated by the prosecution reveals a fact that something was suppressed. Initially, the case has been registered as against 8 persons and during the time of investigation, P.W.14, one of the Investigating Officers filed an alteration report, dated 14.10.2013 wherein he dislodged the case against the second appellant. Consequently, another investigating officer after completing the investigation, filed a final report after including the second appellant.

12. He would further submit that as per the case of the prosecution, on the date of occurrence itself all the injured and the deceased were admitted in the hospital. In this regard, the investigating officer, who registered a FIR, has given an evidence that statements have been recorded from the deceased on the date of occurrence itself. But, contrary to the said evidence, FIR pertains to the case has been registered after two days from the date of occurrence, therefore, the genesis of occurrence itself suppressed in this case and there by the appellants are entitled the benefit of doubt.

13. Per contra, the learned Government Advocate (Crl.side) appearing for the respondent would contend that since in the alleged occurrence more than 10 persons were involved, the minor contradictions found in the evidence given by the occurrence witnesses cannot be taken into account for considering the case of the prosecution.

14. By considering the said submissions with relevant records to decide the issue raised in this appeal, primarily we have to go through the contents of FIR Ex.P21. The contents of FIR reveals the fact that the alleged occurrence had happened on 10.10.2013 around 18 hours, thereafter, information has been received by the police on 12.10.2013 around 17 hours. More than that, after registration of the FIR, the same has been received by the Magistrate on 14.10.2013 at 05.00 p.m. Therefore, it is made clear from the averments found in the FIR, the present FIR has been registered after two days from the date of occurrence. So, it is necessary to see whether the prosecution offered a reasonable explanation for the delay occurred in registering the case.

15. As per the case of the prosecution, P.W.14-Mathavi has registered a case. In respect of receipt of the complaint, while at the time of giving evidence as P.W.14, she has stated that she received intimation only on 12.10.2013 and thereafter she reached the hospital on the same day at about 18.15 hours. She has further stated after recording the statement from the deceased Sekar, a case has been registered on the same day.



16.In this regard, P.W.1-Karuppaiah, who is the injured in the occurrence, has stated in his evidence as during the time of occurrence, he fell in unconscious and thereafter on the same day, he wake up in the police station. If such evidence is true one, it is the duty of the police officer to register the case immediately after receiving the complaint from P.W.1. But in the case, in respect of evidence given by P.W.1 to resolve the said contradictions, the other witnesses examined on the side of the prosecution does not say anything in contra to the evidence given by P.W.1 and therefore, in respect of the registration of the FIR, something was suppressed by the prosecution.

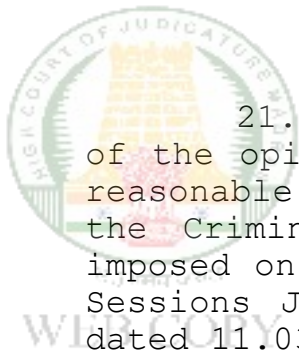
17.Apart from that, after registration of the FIR, the same has been received by the Magistrate with the delay of 2 days. In this aspect also, no explanations was offered by the investigating officer, who registered the FIR.

18.In this occasion, it is necessary and useful to see the judgment in the case of **Bhagwan Sahai and another vs. State of Rajasthan** reported in **(2016) 13 Supreme Court Cases 171**, wherein, in Paragraph-8 the Supreme Court has held as follows:-

"8. The aforesaid view of the High Court is devoid of legal merits. Once the Court came to a finding that the prosecution has suppressed the genesis and origin of the occurrence and also failed to explain the injuries on the person of the accused including death of father of the appellants, the only possible and probable course left open was to grant benefit of doubt to the appellants."

19.Applying the ratio laid down in the above referred judgment, herein also, as rightly pointed out by the learned counsel for the appellants that the genesis of occurrence was suppressed and thereby, both the appellants are entitled to avail the benefit of doubt.

20.One another aspect, which is necessary to decide in this appeal is that while at the time of framing the charge, the trial Court framed the charge against the second appellant under Section 148 and 354 of IPC alone. But during the time of concluding the trial, came to the conclusion that the second appellant is found guilty under section 324 of IPC and convicted him accordingly. In this occasion, it is necessary to see that the offence under Section 354 of IPC is not a major offence. Even assuming that the trial Court is having a power to convict the appellants to a minor offence, here it is a case, offences under Section 354 of IPC and 324 of IPC are not related to each other and therefore, this area also, convicting the second appellant under section 324 of IPC is liable to be set aside.



21.In the light of the above discussions stated supra, we are of the opinion that the prosecution has not proved its case beyond reasonable doubt in respect of the appellants herein. Therefore, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellants, by the learned I Additional District and Sessions Judge, (P.C.R), Thanjavur, made in S.S.C.No.43 of 2014, dated 11.03.2016, is set aside and the appellants are acquitted from all the charges. The fine amount, if any, paid by them, shall be refunded to them. Bail bond, if any, executed by the appellants shall stand cancelled.

Sd/-

Assistant Registrar (CRL)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

- 1.The I Additional District Sessions Judge,
(P.C.R), Thanjavur.
- 2.Do through The Principal Sessions Judge, Thanjavur at Kumbakonam.
- 3.The Superintendent Central Prison, Trichy.
- 4.The Inspector of Police,
Vattathikottai Police Station,
Thanjavur District.
- 5.The Inspector of Police, Cantonment Police Station,
Thiruchirapalli.
- 6.The Section Officer,
Criminal Section Records,
Madurai Bench of Madras High Court,
Madurai.
- 7.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Crl.A(MD)No.100 of 2016
05.08.2021