



BAIL SLIP

The Petitioners/Accused/Viz., 1). Ammasi - Male / 71 Years, S/o.Muniyan, 2). Sakthivel - Male / 32 Years, S/o.Ammas, 3). Gunasekaran - Male / 40 Years, S/o.Manickam were released on bail as per the Order of this Court dated 27.01.2017 in CrI.MP.No.8127 in CrI.RC.No.1009 of 2016 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.06.2022

Pronounced on : 16.06.2022

Coram:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CrI.R.C.No.1009 of 2016

1.Ammas

2.Sakthivel

3.Gunasekaran

.. Revision Petitioners

/versus/

State rep.by:

The Inspector of Police,
Mangalampettai Police Station,
Cuddalore District.

(Crime No.68 of 2007)

.. Respondent

Prayer: Criminal Revision Case has been filed under Section 397 and 401 of Cr.P.C., praying to call for the records to set aside the order of conviction passed by the learned Additional Assistant Sessions Judge at Virudhachalam in S.C.no.214 of 2009 in order dated 26.07.2010 convicted the petitioners for A1 convicted offence under Section 324 of IPC imposed a fine of Rs.1000/- in default, 3 months R.I for the offence under Section 307 of IPC A1 convicted for 7 years of R.I and imposed a fine of Rs.1000/- in default 3 months R.I A3 and A4 convicted for the offence under Section 326 of IPC each 5 years R.I and confirming an appeal by the learned III Additional District and Sessions Judge, Cuddalore at Virudhachalam in CrI.Appeal No.94 of 2010 by the order dated 11.07.2016.



WEB COPY

For Petitioners :Mr.N.Chandrasekaran for
Mr.G.Anabayachozhan

For Respondent :Mr.N.S.Suganthan
Govt.Advocate (Crl.Side)

O R D E R

The accused 1, 3 and 4 are the revision petitioners before this Court. Aggrieved by the concurrent finding of guilty and the sentence imposed by the Courts below, this Revision Petition is filed.

2.A long standing title dispute is pending between the members of the petitioners family (Ammasi group) and the defacto complainant family (Palanivel group) over the enjoyment of 15 cents of land in R.S.No 108/13 at Siruvembar Village. This is the motive for the crime under consideration. The disposal of the Civil Appeal in favour of Ammasi confirming the trial Court decree has immediate trigger for the crime.

3.According to the prosecution, on 18/05/2007 at about 1.30 p.m., the accused 1 to 9 armed with weapon gathered at the disputed land and started preparing to plough it. Knowing this, the defacto complainant and his family members came to the disputed land and pleaded with the accused persons that he is contemplating to file Second Appeal in the High Court, so till the disposal of the appeal, his possession shall not be disturbed. The first accused Ammasi told Palanivel that he has consulted his Lawyer and his Lawyer told to plough the land. When Palanivel tried to prevent Ammasi from ploughing, Palanivel was attacked by Ammasi and others with spear and wooden log. When Rajendiran, Venkatesan and Ayyamperumal came to rescue Palanivel, they were also attacked. All sustained multiple injuries. Some were grievous in nature like, fracture and severance of part of the body. All the injured persons got admitted in the Hospital for treatment and survived.

4.The Mangalampettai Police, on intimation from the Pondicherry Government Hospital, went to the hospital and recorded the statement of Palanivel, who was under treatment for his injuries. First Information Report in Crime No.68/2007, dated 19/05/2007 against Ammasi and 9 others for the offences under Sections 147, 148, 341, 324, 323, 307 and 506(2) of IPC was registered and taken up for investigation.



5. On completion of investigation, Final report was filed arraying Ammasi and 8 others as accused. The learned Judicial Magistrate II, Virudachalam committed the case to the Sessions Court. The Additional Assistant Session Judge, Virudachalam took up the case on file in S.C.No.214/2009.

6. The trial Court framed charges against the accused as below:-

A-1: Ammasi- Under Sections 148, 506(ii), 326 and 307 IPC.

A-2: Myili: Under Sections 148, 323 and 506(ii) IPC

A-3: Sakthivel: Under Sections 148, 307 and 506(ii) IPC

A-4: Gunasekaran: Under Sections 148, 326 and 506(ii) IPC.

A-5: Devi: Under Sections 148 and 506(ii) IPC

A-6: Pownammal: Under Sections 148, 323 and 506(ii) IPC.

A-7: Kattaian@ Periyasamy: Under Sections 148, 342, 307 and 506(ii) IPC.

A-8: Muthammal: Under Sections 148, 323 and 506(ii) of IPC

A-9: Kasi: Under Sections 148, 324 and 506(ii) of IPC

7. Pending trial, A-6 [Pownammal] died and charges against her got abated

8. Before the trial Court, on the side of the prosecution, 12 witnesses were examined and 11 documents were marked as Exs.P1 to P11. On the side of the defence, no witness was examined. No document was filed.

9. Acquittal, Alteration of charge and convictions:

The trial Court acquitted all the accused for offences under Sections 148 and 506(ii) IPC. Acquitted A-2 and A-8 from the charges under Section 323 IPC. Acquitted A-7 from charge under Section 342 IPC. Acquitted 9th accused from the charges under Section 324 IPC.

Altered the charge under Sections 326 IPC to Section 324 of IPC against A-1. Altered the charge under Section 307 IPC to Section 326 IPC against A-3. Altered the charge under Section 307 IPC to Section 324 against A-7.



Sentence:

The trial Court which found A-1, A3, A-4 and A-7 guilty, sentenced them as below:-

A-1 [Ammasi] found guilty of offences under Section 324 and sentenced him to pay a fine of Rs.1,000/-, in default to undergo 3 months Rigorous Imprisonment; and guilty of offence under Section 307 IPC and sentenced to undergo 7 years Rigorous Imprisonment and to pay a fine of Rs.1,000/- In default, to undergo 3 months Rigorous Imprisonment.

A-3[Sakthivel] found guilty of offence under Section 326 IPC and sentenced him to undergo 5 years Rigorous Imprisonment and to pay a fine of Rs.1,000/-. In default, to undergo 3 months Rigorous Imprisonment.

A-4 [Gnanasekaran] found guilty of offence under Section 326 IPC and sentenced him to undergo 5 years Rigorous Imprisonment and to pay fine of Rs.1,000/-. In default, to undergo 3 months Rigorous Imprisonment.

A-7[Kattaiyan @ Periyasami] found guilty of offence under Section 324 IPC and sentenced him to pay a fine of Rs.1000/-, in default, to undergo 3 months Rigorous Imprisonment.

10. Aggrieved by the above said conviction and sentence, A-1, A-3 and A-4 preferred appeal in C.A.No.94/2010 before the III Additional District and Sessions Judge, Cuddalore at Virudachalam. In the appeal, on petition, defence witness DW-1 was examined and two documents Ex.D-1 and Ex.D-2 were marked to prove that in the mele on the date of incident, the accused persons also sustained injuries and it was case and case in counter, but the respondent police failed to investigate the counter complaint. However, the Appellate Court confirming the trial Court conviction and sentence and dismissed the appeal.

11. The learned counsel for the revision petitioners, while assailing the judgment of the Courts below submitted that, the defacto complainant and his relatives are the real aggressors. Even according to the First Information Report registered based on the statement of PW-1 [Palanivel], only after the civil suit ended in favour of Ammasi (A-1), possession of the property was taken and attempt to plough. PW-1, who lost the suit, came to the disputed land along with his relatives, who are PW-2, PW-3 and PW-4 and picked quarrel. In the fight, A-1 and A-4 also sustained injury and got admitted in the Ulundurpettai Government Hospital. The medical records marked as Ex.D-1 and Ex.D-2 are not properly appreciated by the Appellate Court.



12. Further the learned counsel submitted that, the recovery and identification of the weapon used is doubtful. The description of the weapon by the injured witnesses does not tally with the weapon produced before the Court. PW-1[Palanivel] admits that the spear used for causing injury to him is not produced before the Court below and the Material Objects produced before the Court does not belong to the accused persons. This part of admission has not been considered by the Courts below. Hence, it has led to miscarriage of justice.

13. The learned counsel for the petitioners further submitted that, the prosecution has falsely implicated the innocent persons as accused and the trial Court has held that there is no evidence to prove their presence in the scene of crime. The accused persons, who were ploughing their land, after duly establishing their right through Court of law were disturbed by the defacto complainant and others. In the mele, both side sustained injuries and there was no intention of causing death. While so, the trial Court and the Appellate Court has erred in holding A-1 guilty of offence under Section 307 IPC and sentenced him to undergo the maximum punishment of 7 years Rigorous Imprisonment. A-3 and A-4 were held guilty of offence under Section 326 IPC and sentenced him to undergo 5 years Rigorous Imprisonment. The Courts below at least ought to have considered the aggression of the witnesses and awarded lesser punishment.

14. Responding the above submissions, the learned Government Advocate (Crl.Side) submitted that the Courts below have fairly appreciated the evidence and arrived at proper conclusion. The gruesome attack with deadly weapon on 4 persons with intention to cause death was proved beyond doubt through oral and documentary evidence. The injured witnesses survived due to timely medical care and intervention. The injuries were caused on the vital parts of the body. The weapon used were deadly and the assault was intended to cause death. Non-recovery of one weapon namely the spear is not fatal to the prosecution case, when the injured proved and the witnesses have clearly attributed the overt act of the accused persons for causing the respective injury. The Court has convicted persons against whom the evidence is unimpeachable and beyond any reasonable doubt. The Courts below have acquitted 4 out of 9 accused (one died pending trial) and except A-1, other 3 are only guilty of offences under Section 326 or 324 IPC.

15. The learned Government Advocate (Crl.Side) further submitted that the belated introduction of wound certificates



Ex.D-1 and Ex.D-2 at appellate stage itself renders its reliability doubtful. Even otherwise, the injuries mentioned in the said wound certificates are simple in nature. They are contusion and lacerated wounds, which could have been a self inflicted or caused by the other accused by mistake in the course of the fight. Referring the wound certificates Ex.P-5 to Ex.P-9 and the evidence of the Doctor [PW-10], learned Government Advocate (Crl.Side) submitted that the evidence of the injured witnesses PW-1 to PW-4 is fully corroborated and the multiple injuries on the victims including fracture of left leg foot bone caused to PW-1, punctured wound on the abdomen and exposure of intestine caused to PW-2, fracture of left forearm of PW-4 and severance of right hand thumb of PW-4 proves the aggressive deadly attack by the accused persons on the witnesses and sought for confirmation of the trial Court judgment.

16. This is a case where 4 witnesses have mounted the witness box and deposed about the injuries sustained by them at the hands of the appellants herein. The wound certificates of each of the witnesses without any pale of doubt proves that they all have sustained multiple injuries caused by spear, knife and wooden log. One knife and two billhooks (M.O-1 to M.O-3) were recovered based on the confession statement of the A-3 [Sakthivel]. PW-9[Ayyamperumal] who is the mahazar witness for the recovery had deposed that these weapons were cleaned and concealed at the house of one Subramaniam. It is true that the spear and wooden log, which were alleged to have been used to attack the victim witnesses, were not recovered, but when the fact that the injuries found on PW-1 to PW-4 caused by A-1, A-3, A-4 and A-7 is proved through reliable evidence, the failure to recover the weapon used to cause the injuries pales to insignificance.

17. In respect of the testimony of DW-1 and Ex.D-1 and Ex.D-2, which are the evidence introduced by the defence at the stage of defence, the Appellate Court has considered the same and has held that the accused have not explained the reason for not producing these documents at the time of trial. The perusal of Ex.D-1 and Ex.D-2 indicates that A-1 and A-4 sustained simple injuries on 18/05/2007 and got treatment from DW-1 for the injuries. The wound certificate of Gunasekaran indicates, he has sustained 6 x 0.5 cm laceration in centre of scalp. He has informed DW-1 that he sustained this injury, when 6 known persons assaulted him with Thadi (wooden log), Kathi (machete) and Koduva (knife). For one single simple injury measuring 6 x 0.5 cm, the 4th accused has attributed it to 6 persons and three different weapons. This on the face of the appreciation of Ex.D-2 renders it unreliable and to hold it is a document



created for the purpose of diluting the gravity of crime committed by them. Similarly, the wound certificate of A-1 which is marked as Ex.D-1, this Court finds, 1 lacerated wound and 2 contusions. They are alleged to have been caused by 3 persons with thadi (wooden log).

18. As per the case of the prosecution, 9 persons joined together carrying weapons and attacked PW-1 to PW-4. When many assailants carrying weapons together attack their rival, the possibility of causing unintended injuries to their party men cannot be ruled out. The defence of counter case raised belatedly at the appellate stage does not mitigate the gravity of the crime committed.

19. Therefore, for the aforesaid reasons, this Court finds that there is no merit in the revision petition to interfere with the judgment passed in C.A.No.94/2010 by the III Additional District and Sessions Judge, Virudachalam confirming the judgment in S.C.No.214/2009 on the file of the Additional Assistant Session Judge, Virudachalam.

20. The learned counsel appearing for the revision petitioners submitted that the first petitioner[Ammasi] has cross 75 years and therefore, some lenience be shown regarding the period of sentence, since he is sentenced to undergo 7 years Rigorous Imprisonment for the offence under Section 307 IPC.

21. Taking note of the above submission and the age of the first petitioner/first accused [Ammasi], the term of sentence alone is modified from 7 years to 5 years Rigorous Imprisonment for the offence under Section 307 IPC. Except this modification, the conviction and sentence rendered by the trial Court in S.C.No.214/2009 (Additional Assistant Sessions Judge, Virudachalam) are confirmed. The trial Court is directed to secure the petitioners and confine them to prison to undergo the remaining period of sentence. The period of sentence already undergone by the petitioners are set off.

22. Accordingly, this Criminal Revision Case is disposed of.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

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To:

1. The III Additional District and Sessions Judge,
Cuddalore.
2. The Additional Assistant Sessions Judge,
Virudhachalam.
3. The Inspector of Police,
Mangalampettai Police Station,
Cuddalore District.
4. The Chief Judicial Magistrate,
Cuddalore (for information).
5. The Superintendent,
Central Prison,
Cuddalore.
6. The Judicial Magistrate,
Virudhachalam.
7. The Public Prosecutor,
High Court, Madras.

Copy to:

The Section Officer,
Criminal Section (Records),
High Court, Madras.

+1cc to Mr.G.Anbaya Chozhan, Advocate, S.R.No.36355

Cr1.R.C.No.1009 of 2016

JPL (CO)
UMA (23/06/2022)