

Bail Slip

The appellants 1 to 9/Accused 1to9 Viz 1) Nandakumar, S/o. Ramasamy Goundar, 2) Kozhi Pannai Ramasamy, S/o. Palanisamy, 3) Govindasamy, S/o. Muthusamy, 4) Palanisamy, S/o. Karuppana Goundar 5) Senthilkumar, S/o. Govindasamy, 6) Swaminathan S/o. Ramasamy, 7) Sivakaumar, S/o. Sellamuthu, 8) Periyasamy Goundar S/o. Muthusamy Goundar 9) Subbaraya Goundar S/o. Nachimuthu Goundar were released on bail by on order of this court, dated 4.10.2007 made in CrI.M.P.NO.1 of 2007 in CrI.A.No.908/2007.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.908 of 2007

1. Nandakumar
2. Kozhi Pannai Ramasamy
3. Govindasamy
4. Palanisamy
5. Senthilkumar
6. Swaminathan
7. Sivakumar
8. Periyasamy gounder
9. Subbarayagounder

..Appellants/Accused 1to9

Vs

State rep. By
The Deputy Superintendent of police,
Dharapuram, Erode District,
Crime No. 7/2007
(Uthiyur P.S.)

..Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., to call for the records and set aside the judgment made in S.C.No.63 of 2007 on the file of the Principal Sessions and Special Court, Erode dated 25.09.2007 and acquit the appellant by allowing this appeal.

For Appellants : Mr. S.Lakshmanasamy
For Respondent : Mr.R.Sekar,
Government Advocate

JUDGEMENT

The accused in S.C.No.63 of 2007 on the file of the Principal District and Sessions court, Erode, are the appellants herein. A1 stood charged for the offences under Sections 147, 341(2 counts), 352(2 counts), 352 r/w.149 (4 counts) IPC, 3(1)(x) SC/ST Act & 436 IPC r/w. 3(2)(iv) r/w. 3(2)(v) of SC/ST Act r/w.149 IPC; A2 stood charged for the offences under Sections 147, 341(2 counts), 352(2 counts), 352 r/w.149 (4 counts) and 3(1)(x) SC/ST Act & 436 IPC r/w. 3(2)(iv) r/w. 3(2)(v) of SC/ST Act r/w.149 IPC; A3 stood charged for the offences under Sections 147, 341(2 counts), 352 (2 counts), 352 r/w.149 (4 counts) & 436 IPC r/w. 3(2)(iv) r/w. 3(2)(v) of SC/ST Act r/w.149 IPC; A4 stood charged for the offences under Sections 147, 341(2 counts), 352 r/w.149(5 counts), 352 IPC & 436 IPC r/w. 3(2)(iv) r/w. 3(2)(v) of SC/ST Act r/w.149 IPC; A5 stood charged for the offences under Sections 147, 341(2 counts), 352 r/w.149 (4 counts), 352 (2 counts) & 436 IPC r/w. 3(2)(iv) r/w. 3(2)(v) of SC/ST Act r/w.149 IPC; A6 stood charged for the offences under Sections 147, 341 (2 counts), 352 r/w. 149 (5 counts), 352 IPC & 436 IPC r/w. 3(2)(iv) r/w. 3(2)(v) of SC/ST Act r/w.149 IPC; A7 stood charged for the offences under Sections 147, 341(2 counts), 323 r/w.149, 352 r/w.149(6 counts) & 436 IPC r/w. 3(2)(iv) r/w. 3(2)(v) of SC/ST Act; A8 stood charged for the offences under Sections 147, 341 (2counts), 323, 352, 352 r/w. 149 (5 counts) IPC & 436 IPC r/w. 3(2)(iv) r/w. 3(2)(v) of SC/ST Act r/w.149 IPC; A9 stood charged for the offences under Sections 147, 341 (2 counts), 323 r/w.149, 352 r/w.149 (4 counts), 352 (2 counts) IPC & 436 IPC r/w. 3(2)(iv) r/w. 3(2)(v) of SC/ST Act r/w.149 IPC. By judgment, dated 25.09.2007, the trial Court convicted the appellants 1 to 9 under Section 147 IPC and sentenced them to undergo rigorous imprisonment for 2 years, convicted A1 and A2 under Section 3(1)(x) of SC/ST Act and sentenced them to undergo rigorous imprisonment for 2 years and to pay a fine of Rs.2000/-, in default to undergo rigorous imprisonment for one year and convicted A8 under Section 323 and sentenced him to undergo rigorous imprisonment for one year and to pay a fine of Rs.1000/-, in default, to undergo rigorous imprisonment for 6 months, A1 to A7 and A9 stood charged for the offence under Section 323 r/w.149 IPC and sentenced them to undergo rigorous imprisonment for one year and to pay a fine of Rs.1000/- in default to undergo rigorous imprisonment for 6 months and the trial Court ordered the sentences to run concurrently and acquitted them from the other charges. Challenging the said conviction and sentence, the appellants/accused are before this Court with this Criminal Appeal.

2. The case of the prosecution, in brief, is as follows:-

P.W.1 is the injured eyewitness in this case. He belongs to Schedule caste Maadhari community. All the accused

belong to backward class community. All of them were residing in the same village. P.W.5 in this case is brother of P.W.1 and he was working in a mill belongs to A3, Govindasamy. Earlier there was a quarrel between A3 and P.W.5 and A3 are said to have scolded P.W.5 and P.W.5 has given a complaint against A3 and in the police Station, thereafter, there was a mediation and in the mediation, they have agreed to withdraw the complaint. On the next day, A1 in this case called all the prosecution witnesses, P.Ws.1 to 5, to his shop and there was a quarrel between the accused and P.Ws.1 to 5. At that time, A8 attacked P.W.1. Thereafter, A1, A2 attacked her and A7 set fire to the house of P.W.1 and caused loss to a sum of Rs.5000/-. Apart from that the other accused also attacked P.Ws.1 to 5 with hands. Then P.W.1 was taken to the Government Hospital, Dharapuram. P.W.8, Doctor, working in the Government Hospital, Dharapuram, examined P.W.1 and issued Accident Register(Ex.P.2) and found that the injuries are all simple in nature and he also examined other injured witnesses and given accident registers (Ex.P.3 to Ex.P.5). Then, based on a memo given by the Chief in the hospital, P.W.15, Sub-Inspector of Police, went to the hospital and received a complaint from P.W.1 and based on the same, he registered a case in Crime No.7 of 2007 under Sections 147, 341, 323, 435 and Section 3 (2)(v) of SC/ST Act and prepared First Information Report (Ex.P.34) and sent the same to higher officials and the Judicial Magistrate Court. In the mean time, the injured witnesses, namely P.Ws.1 to 5 were referred to Government Hospital, Erode.

3. P.W.16, after receipt of the First Information Report, commenced investigation and proceeded to the scene of occurrence, where he prepared an Observation Mahazar and drew a rough sketch (Ex.P.36 & 37) and also recorded the statement of the witnesses. In the mean time, the accused party has also given a complaint against P.W.1 and others, which was registered in Crime NO.8 of 2007 for the offences under Sections 147, 148, 324, 435 and P.W.16 after investigation, referred the complaint given by the accused party as mistake of fact and filed final report (Ex.P.39). Then, he arrested A4, A5 & A6 in the hospital, where they had taken treatment and altered the charge into Sections 147, 341, 323, 436 IPC r/w. 3(2)(4) and (5) 1989 SC/ST Act, the alteration report is Ex.P.40 and after completion of investigation, final report was filed.

4. Based on the above materials, the trial Court framed the charges as detailed in the first paragraph of this judgment against the accused. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 17 witnesses were examined and 40 documents were exhibited, besides 3 material objects.

5. Out of the witnesses examined, P.W.1 is the injured eye-witness in this case. According to her, on 11.01.2007, there was a quarrel between P.W.5 and A3, who was his employer and hence P.W.5 has given a complaint and the said complaint has been compromised in the police station. Being agitated over the same, on the next day morning at the instance of A1, all the prosecution parties were called to his office, where a quarrel arose between the parties and A8 attacked him with hands and A1 and A2 also attacked him with hands and he suffered injuries and then, he was admitted in the Government Hospital, Dharapuram, where he consulted P.W.4 and had given a complaint. P.W.2 also belongs to schedule caste community. According to him, in order to take revenge for the earlier occurrence, A1 and other accused called the prosecution witnesses to his shop and at that time A1, A2 and A3 attacked him and A7 set fire to the house of P.W.7 and he was taken to Government Hospital, Dharapuram. P.W.3 also belongs to the same scheduled caste community. According to him, during the quarrel A4 and A6 attacked him with hands and A7 set fire to the house of P.W.7. P.W.4 was also present at the time of the occurrence. According to him, A9 attacked him with hands and when he fell down, A9 kicked him and A7 set fire to the house of P.W.1. P.W.5 is the brother of P.W.1. He has spoken about the earlier occurrence and filing of complaint, according to him, there was a quarrel and during the quarrel A3 and A5 attacked him with hands on the head and chest and A7 set fire to his house. P.W.6 also belongs to schedule caste community. During the quarrel, while he was trying to prevent the accused attacking others, A1 and A4 attacked him with hands and A7 set fire to the house of P.W.1. P.W.7 also present in the scene of occurrence. According to him, during the quarrel, they were trying to run away from the scene of occurrence and at that time A8, A9 attacked him with hands and A7 set fire to the house of P.W.1 and caused damage to the tune of Rs.3,000/- and then, they went to the hospital for taking treatment. P.W.8, Doctor, working in the Government Hospital, Dharapuram, examined P.Ws.1, 2, 3, 4 and issued accident registers (Ex.P.2 to Ex.P.5). At the time of admission, P.W.1 has stated that 2 known persons attacked him with hands and vessels near Nochipalayam bus stand and he found no external injuries on her and he referred her to Government Hospital, Erode. Likewise P.W.2 told him that near Nochipalayam road, known persons attacked him and P.W.3 has stated that near Nochipalayam bus stop 5 known persons attacked him with hands and P.W.4 told her that one known person attacked him with hands. P.W.9, another Doctor, working in the Government Hospital, Dharapuram, examined P.Ws.5, 6 and 7 and found a small lacerated injuries, and they have stated that 4 known persons attacked them near Nochipalayam colony and all of them were referred to Government Hospital, Erode. P.W.10 also belongs to the schedule caste community and he was also present during the quarrel. According to her, during quarrel when all the prosecution witnesses were trying to go to their house, the

accused waylaid them and attacked them and P.W.7 set fire to the house of P.W.1. P.W.11, Village Administrative Officer, is the witness to the Observation Mahazar and Rough Sketch. P.W.12 is the Tahsildar, who has given a community certificate to the prosecution parties stating that all belong to Madhari community. P.W.13, Zonal Deputy Tahsildar, given community certificate to the accused. P.W.14, Sub-Inspector of Police, registered the earlier complaint given by P.W.5 and a mediation was conducted by him. P.W.15, Inspector of Police, has spoken about the registration of the case. P.W.16, Deputy Superintendent of Police, conducted investigation, arrested the accused and examined the witnesses and after completion of investigation, he filed the final report. P.W.17, photographer, took photograph of the house of P.W.1, which was burned by the accused.

6. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false, but they did not examine any witness on their side, however the Accident register issued to P.Ws.1 and 2 were marked as Ex.D1 and Ex.D2, wherein P.W.1 told the doctor that 2 known persons attacked them with hands and vessels at Nellur bus-stand and P.W.2 told that 3 known persons attacked him with hands.

7. Having considered all the above materials, the trial Court convicted the appellants/accused as stated in the first paragraph of this judgment. Challenging the same, the appellants/accused are before this Court with this Criminal Appeal.

8. We have heard Mr.S.Lakshmanasamy, learned counsel appearing for the appellant and Mr. R.Sekar, learned Government Advocate, appearing for the State and I have perused the records carefully

9. The learned counsel appearing for the appellant would submit that the court below partly disbelieved the evidence of the prosecution parties and acquitted the accused from some charges, but partly believing the evidence of P.Ws.1 and 2, convicted the accused for the offences under Sections 147, 323 and 3(1)(x), 3(2)(iv) SC/ST Act. Apart from Ex.P.1, complaint, absolutely there is no allegation that all the accused had abused him by calling his caste name. But only to improve the case, he has come out with a new story that all the accused abused him. Apart from that, at the time of admission in the hospital, P.W.1 has stated that she was attacked by known persons near Nochipalayam bus stand and P.W.2 has also stated that he was attacked near Nochipalayam bus stop. But, the evidence of all witnesses stated that the occurrence took place in the shop belonging to A1. Apart from that, P.W.1 also stated in the evidence that only A8, A1 and A2 attacked her with hands, but the Court below partly disbelieved the evidence and acquitted the accused, but

convicted the appellants under Section 323 IPC. There are lot of contradictions in the evidence of the prosecution witnesses and they are also interested witnesses in this case. Eventhough the quarrel was said to have taken place in the main road, number of independent witnesses would be present, but the prosecution has not chosen to examine any independent witness to corroborate the interested testimony of the injured witnesses and sought for acquittal of the accused.

10. Per contra, the learned Government Advocate submitted that P.Ws.1 to 7 are injured eye witnesses in this case. All of them consistently stated that A1 deliberately called them to his house and abused them and thereafter all the accused attacked the prosecution witnesses and caused injuries. Immediately, they have been taken to the Government Hospital, Dharapuram and thereafter, they were referred to Government Hospital, Erode and complaint was also given on the next day. All the injured witnesses belong to the same family and their presence in the scene of occurrence is also natural. Hence, there is no reason to disbelieve their evidence. Merely because there is no independent witness examined, on that ground alone, the evidence of P.Ws.1 to 7 can not be disbelieved. The Court below also believing all the evidences and convicted the appellant and there is no reason to interfere with the well considered judgment of the trial Court.

11. I have considered the rival submissions and perused the materials available on record.

12. P.Ws.1 to 7 are injured eyewitnesses in this case. According to them, a day prior to the present occurrence, there was a quarrel between P.W.5 and A3, for which a complaint has been given by P.W.5. P.W.15, Inspector of Police also spoken about the same and in the police station, there was a mediation, in which the matter has been settled. P.W.14 Inspector of Police has also spoken about the registration of the said case. According to the prosecution, in order to take revenge, on the next day, A1 called all the injured witnesses and others to his shop in the guise of conducting a mediation. At that time, there was a quarrel and according to P.W.1, during the quarrel, A1, A2 abused him by calling their caste name. Then, A8 attacked him with hands. Then, A1 and A2 also attacked them with hands and A7 set fire to the house and caused damage to the tune of Rs.5000/-. Subsequently, she was taken to the Government Hospital, Dharapuram, where , on the next day morning, she lodged a complaint (Ex.P.1). In her cross examination, she has clearly admitted that the complaint has been given only after due consultation with P.W.4 and in the complaint, Ex.P.1, absolutely, there is no allegation that A1 and A2 abused the prosecution witnesses by calling their caste name. Apart from that when she was admitted in the Government Hospital,

Dharapuram, he told that two known persons attacked her at Nochipalayam bus stand with hands and vessels and P.W.8 , Doctor, also issued an accident register to that effect. But the prosecution did not mark the accident register where as the accused marked the same as Ex.D.1. Likewise, P.W.2 another injured witness in this case has also stated that A1 and A2 had attacked him and A7 set fire to the house of P.W.1. But, while he was admitted in the hospital, he has stated before the Doctor that known persons attacked him near Nochipalayam Road and P.W.8 also issued an accident register, which was also not marked by the prosecution. But the defence has marked the above accident register as Ex.D2. P.W.3 another eyewitness has also stated that the occurrence took place only in front of A1's house and other accused also attacked him. It is the consistent evidence of all the witnesses that A7 in this case has set fire to the house of P.W.1. The Court below after finding lot of contradictions in the evidence of the prosecution witnesses, though framed as many as 20 charges, acquitted the accused from 16 charges and convicted A1 to A9 under Section 147 IPC and A1, A2 were convicted under Section 3(1)(x) SC/ST Act and convicted A8 under Section 323 IPC on that score he was attacked by P.W.1 on hand and convicted A1 to 7 and A9 under Section 323 r/w.149 IPC. The Court below partly disbelieving their evidence acquitted the accused from the other charges.

13. On a perusal of the evidence of the prosecution witnesses, there are lot of contradictions in their evidence. Even though all the witnesses have stated that the occurrence took place in front of the shop of A1, but while in the first-ever statement given before the Doctor, all the witnesses had stated that the occurrence had taken place in various places. Apart from that in Ex.P.1, complaint, it is not mentioned that A1 and A2 abused all the prosecution parties by calling their caste name. Eventhough P.W.1 has stated that A1, A2, A8 attacked them, the trial Court disbelieving the evidence of P.W.1, acquitted A1 and A2 from the charge under Section 323 IPC but convicted only A8. So far as the charge under Section 147 IPC is concerned, in view of the above contradiction in the above prosecution witnesses, the trial Court came to a conclusion that all the accused formed unlawful assembly in front of the house of A1 and attacked the prosecution witnesses. In the above circumstances, in view of the contradiction in the prosecution witnesses, it is highly unsafe to convict the accused especially when the trial Court disbelieved the evidence partly and acquitted the other accused. Hence, the prosecution failed to prove the charge against the accused beyond any reasonable doubt and the appellants are entitled for acquittal.

14. In the above circumstances, I am of the considered view that the prosecution has failed to prove the charge against the accused beyond all reasonable doubt and the

appellants are entitled for acquittal. The trial Court without considering the evidence in proper perspective, convicted the appellants, which is liable to be set aside.

15. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellants/accused are set aside. The appellants/accused are acquitted of the charges. The bail bonds, if any, executed by them, shall stand cancelled. Fine amount, if any, paid by them shall be refunded .

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

mrp

To

1. The Principal Sessions and Special Judge,
Erode
- 2.The Public Prosecutor,
High Court, Madras.
3. The Deputy Superintendent of Police,
Dharapuram, Erode District
(Uthiyur Police Station)

Cr1.A.No.908 of 2007

GP(CO)
EU(16/02/2018)

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