

Bail Slip

The petitioner/accused viz., Paramasivam, S/o. Govinda Gounder, in CrI.R.C.No.1030 of 2010 was directed to be released on bail in and by the order of this court dated 05.01.2011 made in M.P.No.1 of 2011 in CrI.R.C.No. 1030 of 2010.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16-06-2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No. 1030 of 2010

Paramasivam

...Petitioner

Versus

State rep. by
Sub-Inspector of Police
Marandahalli Police Station
Palacode
Dharmapuri
(Crime No.165/2008)

...Respondent

Criminal Revision Case filed under Section 397 read with 401 of Cr.P.C. against the judgment dated 13.07.2010 in C.A.No.25 of 2009 on the file of the Principal Sessions Judge, Dharmapuri, confirming the order dated 08.10.2009 made in C.C. No. 132 of 2008 on the file of the Judicial Magistrate, Palacode.

For Petitioner : Mr.M.Selvam

For Respondent : Mr.T.Arul
Government Advocate (CrI.side)

ORDER

This Criminal Revision Case is filed against the judgment dated 13.07.2010 in C.A.No.25 of 2009 on the file of the Principal Sessions Judge, Dharmapuri, confirming the order dated 08.10.2009 made in C.C. No. 132 of 2008 on the file of the Judicial Magistrate, Palacode.

2. According to the respondent/complainant, on 09.04.2008 at about 12.00 noon, the accused is alleged to have assaulted the defacto complainant using Koduval on his left side of neck, left side of chest and left hand. In connection with this incident, the defacto

complainant had given a complaint before the respondent, based on which, a case came to be registered against the accused for the offence punishable under Section 324 IPC. After investigation, the respondent filed final report which was taken on file in C.C.No.132 of 2008 on the file of the Judicial Magistrate, Palacode. The Trial Court, after analysing the oral and documentary evidence, convicted the accused for the offence under Section 324 IPC and sentenced him to undergo six months simple imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for an additional period of three months, which came to be confirmed by the Appellate Court, against which the present Criminal Revision Case is filed by the accused.

3. Mr.M.Selvam, learned counsel for the petitioner/accused would contend that the alleged weapon used for the commission of the offence has not been produced as Material Object and using the weapon, the injury caused is only an abrasion, which is not correlated with the weapon used, therefore, the theory put forward by the prosecution is not legally sustainable and it is not in accordance with law, hence, giving benefit of doubt, the Courts below ought to have acquitted the accused and hence, prayed for allowing the Criminal Revision Case.

4. Mr.T.Arul, learned Government Advocate appearing for the respondent/complainant would contend that mere non-production of the Material Object is not fatal to the prosecution case and it is not a ground for acquittal and hence, prayed for the dismissal of the Criminal Revision Case. In this connection, he relied on the judgment of the Hon'ble Apex Court reported in (2013) 6 SCC 595, Kashmiri Lal vs. State of Haryana, wherein, in paragraph No.8.4, it was held that "The non-production of the scooter in the Court cannot be ground for setting aside the conviction, since all the witnesses have specifically mentioned about the registration number of the Scooter and there is no justification to discard their testimony."

5. I heard the learned counsel for the petitioner as well as the learned Government Advocate appearing for the respondent. By consent, the Criminal Revision Case itself is taken up for final disposal.

6. On a careful consideration of the entire evidence available on record as well as the judgments of both Courts below, it is seen that it is a fight between two brothers, on the spur of moment, due to sudden provocation, the alleged occurrence has taken place. The main case of the prosecution is that the accused has attacked the complainant with Koduval, but, admittedly, the weapon was neither recovered nor produced as an Material Object. There is no evidence given by the Investigation Officer, as to why, he has not produced the weapon and marked the same as Material Object, though, it may not be a sole ground for acquittal as rightly pointed out by the learned Government Advocate by relying on the decision of the Hon'ble Apex Court reported in (2013) 6 SCC 595, cited supra, coupled with the

fact, the injury caused is only an abrasion, which is not correlated with the weapon used, apart from the fact that the Doctor, who was examined as P.W.7, in his evidence has stated that the injury sustained by the defacto complainant is only abrasion and it would not have been caused by a weapon like Koduval. In view of the above discrepancy, in my considered opinion, the Trial Court ought to have given the benefit of doubt and acquitted the accused.

7. In the decision of the Hon'ble Apex Court reported in (Ram Swaroop and others vs. State of Rajasthan) (2005 SCC (Cr1.) 61) it was held that it is well settled that if two views are reasonably possible on the basis of the evidence on record, the view which favours the accused must be preferred.

8. Applying the aforesaid decision to the facts and circumstances of this case, in the present case, there are no evidence available on record to connect the accused to the offence complained of and the prosecution has miserably failed to establish the guilt against the accused beyond reasonable doubt. Therefore, I am of the view that the Appellate Court ought to have acquitted the accused by giving benefit of doubt. Hence, it has to be concluded that the prosecution has not proved the guilt against the revision petitioner/accused beyond reasonable doubt and therefore the revision petitioner/accused is entitled to benefit of doubt.

9. Accordingly, the conviction and sentence imposed on the petitioner by the Courts below are set aside. The Criminal Revision Case is allowed. The surety bond, if any, executed by the revision petitioner/accused shall stand cancelled. Fine amount, if any, paid by the revision petitioner/accused is ordered to be refunded.

Sd/-
Deputy Registrar (J)

//True Copy//

सत्यमेव जयते

Sub Assistant Registrar

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To

1. The Judicial Magistrate,
Palacode,
Dharmapuri.

2. -Do- Through The Chief Judicial Magistrate,
Dharmapuri @ Krishnagiri.

3. The Sub Inspector of Police,
Marandahalli Police Station,
Palacode, Dharmapuri.

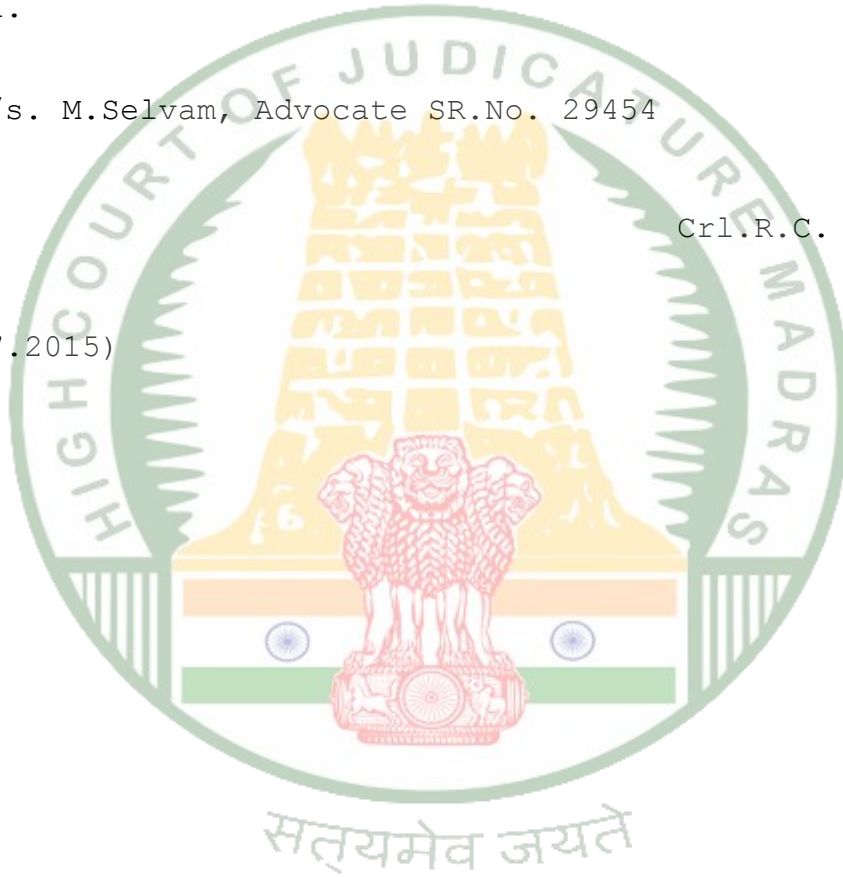
4. The Public Prosecutor,
High Court, Madras.

5. The Principal Sessions Judge,
Dharmapuri.

1 CC to M/s. M.Selvam, Advocate SR.No. 29454

Crl.R.C. No. 1030 of 2010

GP (CO)
PSI (06.07.2015)



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