

Bail Slip

The Revision Petitioners/Accused 1 to 7 namely (1) Marimuthu (2) Kathavarayan (3) Sakthivel (4) Govindan @ Govindaraj (5) Elumalai (6) Kaliappan (7) Thangaraj @ Perumal was directed to be released on bail as per order of this court dated 13.08.2008 made in M.P.No.1 of 2008 in Crl.R.C. No.1054 of 2008 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2015

CORAM:

THE HONOURABLE MR.JUSTICE B. RAJENDRAN

CRL. R.C. No. 1054 of 2008

1.Marimuthu
2.Kathavarayan
3.Sakthivel
4.Govindan @ Govindaraj
5.Elumalai
6.Kaliappan
7.Thangaraj @ Perumal

...Petitioners/Accused 1 to 7

Versus

State by
Inspector of Police
Jalakandapuram Police Station
Mettur Taluk
Salem District
(Cr.No.257 of 2001)

...Respondent/Complainant

Criminal Revision Case filed under Sections 397 and 401 of the Criminal Procedure Code, against the Judgment dated 30.06.2008 passed in Crl.A. No. 193 of 2005 on the file of the Additional District & Sessions Judge-cum-Special Judge for EC Act Cases, Salem, confirming the judgment of conviction and sentence dated 16.12.2005 passed in S.C. No.170 of 2003 on the file of the learned Additional Sessions Judge, Mettur.

For Petitioners : Mr.Ilantherian

For Respondent : Mr.V.Arul
Government Advocate (Crl.Side)

ORDER

On the basis of the complaint given by the defacto complainant a case was registered against the petitioners/accused Nos. 1 to 7 in Cr.No.257 of 2001. The Trial Court proceeded with the case. Ultimately, after trial, the Trial Court convicted the first accused under Section 307 r/w.109 IPC and sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.2,000/-, in default to undergo simple imprisonment for one year; second accused is convicted for the offences under Sections 307, 323 and 148 IPC and sentenced to undergo rigorous imprisonment for three years for the offence under Section 307 IPC and to pay a fine of Rs.2,000/-, in default to undergo simple imprisonment for one year and sentenced to undergo rigorous imprisonment for six months for the offence under Section 323 IPC and sentenced to undergo rigorous imprisonment for one year for the offence under Section 148 IPC; accused Nos. 3 to 5 were convicted for the offence under Sections 307 and 148 IPC and sentenced each of them to undergo rigorous imprisonment for three years for the offence under Section 307 IPC and to pay a fine of Rs.2,000/-, in default to undergo simple imprisonment for one year and sentenced each of them to undergo rigorous imprisonment for one year for the offence under Section 148 IPC. Accused Nos. 6 and 7 were convicted for the offences under sections 147 IPC and 307 r/w. 149 IPC and sentenced each of them to undergo rigorous imprisonment for six months for the offence under Section 147 IPC and sentenced each of them to undergo rigorous imprisonment for three years for the offence under Section 307 read with 149 IPC and to pay a fine of Rs.2,000/-, in default to undergo simple imprisonment for one year. Aggrieved by the same, the accused Nos.1 to 7 have filed CrI.A. No. 193 of 2005 before the learned Additional District and Sessions Judge-cum-Special Judge for EC Act Cases, Salem, and the same were dismissed by the Appellate Court, confirming the judgment of conviction and sentence imposed on the accused Nos.1 to 7 by the Trial Court. Aggrieved against the same, the petitioners, who are arrayed as accused Nos.1 to 7, have filed the present Criminal Revision Case.

2. The case of the prosecution is that there was a previous enmity between the defacto complainant and the accused. On 05.07.2001, at about 3.00 p.m., accused Nos.2 to 7, at the instigation of first accused, were alleged to have formed themselves into an unlawful assembly and waylaid the defacto complainant and attacked him with Koduval and Thadi and in this context, the defacto complainant has given a complaint, based on which, the accused Nos.1 to 7 were proceeded with for the offences as mentioned above.

3. Today, when the matter is taken up, Mr.Ilantherian, learned counsel appearing for the petitioners/accused Nos.1 to 7 would contend that there are lot of contradictions found in the evidence of P.Ws. 1 to 4. He would further submit that the injury sustained by the defacto complainant, P.W.1, who is the injured witness, has not been specifically stated. He would further submit that in the

evidence given by P.Ws. 1 to 4, there is discrepancy in respect of the weapon used for the alleged commission of the offence. He would further contend that the alleged occurrence has taken place at the spur of moment due to sudden provocation and it is not a preplanned one. He would further add that the parties are all close relatives and that the accused are repenting for the offence committed by them and that the parties have now come to settlement. He would further add that the accused Nos.1 to 7 have already undergone 67 days of sentence. At this point of time, learned counsel would submit that only to have a peaceful relationship with the otherside, he would plead that he is not arguing the matter on merits but he is confining his argument only on the question of sentence imposed on the petitioners by the Courts below and therefore, he prayed for showing leniency in reduction of sentence to the effect that the period already undergone may be held sufficient.

4. I heard Mr.V.Arul, learned Government Advocate appearing for the respondent, who on instructions would confirm that the accused have undergone 67 days of imprisonment. He would however submit that the injury caused by the defacto complainant/P.W.1 is grievous in nature, therefore, the Trial Court has come to the conclusion finding the accused Nos.1 to 7 guilty of the offences and convicted and sentenced them to undergo imprisonment as stated supra. As far as the reduction in sentence is concerned, he leaves it to the discretion of the Court.

5. Heard both sides. By consent, this Criminal Revision Case is taken up for final disposal.

6. As rightly pointed by the learned counsel for the petitioners/accused Nos.1 to 7 and on an overall analysis of the judgments of both Courts below and also on a perusal of the materials available on record, it is seen that the defacto complainant/P.W.1, who is the injured witness, in his evidence, has clearly deposed that the recording of the statement of P.W.1 was in the Government Hospital, Salem, whereas, P.W.8 would state in his evidence that the respondent police has recorded the statement of P.W.1 at Government Hospital, Mettur. Thus, it is clear that there is contradiction in the place where the statement was recorded. Apart from that, P.W.1 would state that immediately after the occurrence, he went to the Police Station and from the Police Station accompanied by a Police, he went to the Government Hospital, Mettur, but, the Doctor in his evidence has deposed to the effect that he has recorded the evidence and statement of P.W.1 and he has not mentioned anything regarding the presence of Police Constable or any intimation was sent to the Police Station from the hospital. Apart from that, it is seen that the injury sustained by P.W.1 has not been specifically stated. Further, in the evidence of P.Ws. 1 to 4, there is a discrepancy in respect of the weapon used for the alleged commission of the offence. Thus, it is evident that there are lot of discrepancies in the evidence of prosecution witnesses, but, now having regard to the fact that the petitioners/accused Nos.1 to 7 have already undergone

sentence for a period of 67 days and that the parties have arrived at a settlement and the petitioners/accused Nos. 1 to 7 prayed for showing leniency in reduction of sentence to the effect that the period already undergone may be held sufficient, I am of the view that some leniency can be shown to the petitioners/accused Nos. 1 to 7 in reducing the sentence. Accordingly, while confirming the conviction imposed by the Courts below, the sentence alone is reduced to the period already undergone by the petitioners/accused Nos.1 to 7.

7. With the above modification in sentence, this Criminal Revision Case is partly allowed.

Sd/-

Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

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To

1. The Inspector of Police
Jalakandapuram Police Station
Mettur Taluk, Salem District.
2. The Additional District & Sessions Judge
-cum-Special Judge for EC Act Cases, Salem.
3. The Additional Sessions Judge,
Mettur.
4. The Judicial Magistrate No.II,
Mettur.
5. The Chief Judicial Magistrate,
Salem.
6. The Public Prosecutor,
High Court, Madras - 104.
7. The Section Officer
(Criminal Section Records)
High Court, Madras - 104.

CRL. R.C. No. 1054 of 2008

MSM (CO)

PSI (01.07.2015)