

BAIL SLIP

The Appellant herein/Petitioner Viz., Paulsamy, was released on Bail by order dated 27.05.2009 in M.P.No.1 of 2009 in CrI.RC.No.496 of 2009.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.08.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No. 496 of 2009

Paulsamy

... Petitioner/Accused

Versus

State rep. by
Inspector of Police
Tirupur Police Station
Tirupur North,
Coimbatore District.

... Respondent/Complainant

Criminal Revision Case filed under Section 397 read with 401 of Cr.P.C. against the judgment dated 06.05.2009 passed in C.A.No.312 of 2008 on the file of the Additional Sessions Fast Track Court-IV, Coimbatore at Tirupur, confirming the conviction and sentence imposed in C.C.No.254 of 2005 dated 20.08.2008 on the file of the Judicial Magistrate I, Tirupur.

For Petitioner : Mr.K.Sankarasubbu

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

ORDER

This Criminal Revision Case is filed against the judgment dated 06.05.2009 in C.A.No.312 of 2008 on the file of the Principal Sessions Judge, Dharmapuri, confirming the order dated 20.08.2008 made in C.C. No. 254 of 2005 on the file of the Judicial Magistrate-I, Tirupur.

2. According to the respondent/complainant, on 07.02.2005 at about 06.30a.m., the accused used filthy language and alleged to have assaulted the defacto complainant, in which he sustained

injury. 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 Sections 294(b) and 324 IPC. After investigation, the respondent filed final report which was taken on file in C.C.No.254 of 2005 on the file of the Judicial Magistrate-1, Tirupur. The Trial Court, after analysing the oral and documentary evidence, convicted the accused for the offence under Sections 294(b) and 324 of IPC and sentenced him under Section 294(b) to pay a fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for one month and under Section 324 of IPC to undergo rigorous imprisonment for one month, which came to be confirmed by the Appellate Court, against which, the present Criminal Revision Case has been filed by the accused.

3. Mr.K.Sankarasubbu, learned counsel for the petitioner/accused would contend that the alleged weapon (Stick) 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.V.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.

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 Stick, 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.6, in his evidence has stated that the injury sustained by the defacto complainant is only abrasion. In view of the above, 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/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

Smi

To

1.The Judicial Magistrate No.1,
Tirupur.

2.The Chief Judicial Magistrate,
Coimbatore (For Information)

3.The Superintendent,
Central Prison, Coimbatore.

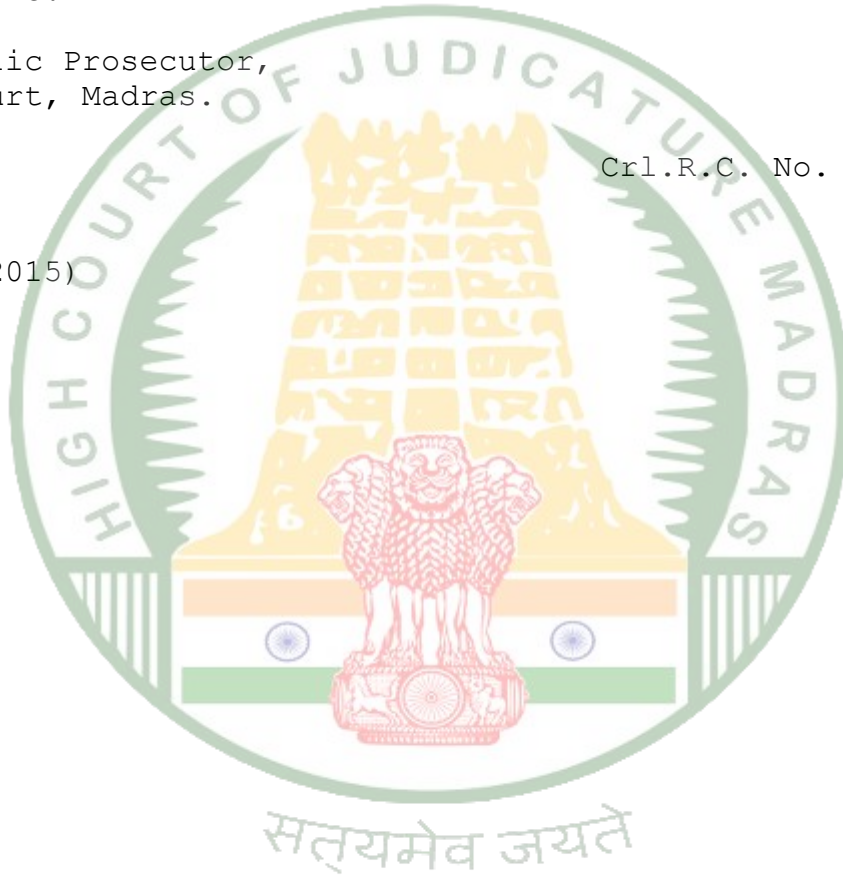
4.The Inspector of Police,
Tirupur North, Coimbatore.

5.The Additional Sessions Judge,
Coimbatore.

6.The Public Prosecutor,
High Court, Madras.

Crl.R.C. No. 496 of 2009

PUR(CO)
CA(27/10/2015)



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