

BAIL SLIP

The Petitioner viz. Sheshathri was directed to be released on bail in and by the order of this court dated 22.4.2015 passed in CrI.R.C.892 of 2010 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22-04-2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No. 892 of 2010

Sheshathri

.. Petitioner

Versus

State by
Sub-Inspector of Police
Arani Town Police Station
(Cr.No.52/2005)

.. Respondent

Criminal Revision Case filed under Sections 397 (1) and 401 of Cr.P.C. against the judgment of conviction and sentence imposed in CrI.A.No.42/2006 on the file of the learned Sessions Judge, Tiruvannamalai, Tiruvannamalai District, dated 23.07.2010, confirming the judgment of conviction and sentence imposed in C.C. No. 90 of 2005 on the file of the learned Judicial Magistrate, Arani, dated 01.02.2006.

For Petitioner : Mr. C.Vijayakumar

For Respondent : Mr. R.Prathap Kumar
Government Advocate (CrI.side)

ORDER

The petitioner/accused has filed the above Criminal Revision Case challenging the judgment of conviction and sentence imposed in CrI.A.No.42/2006 on the file of the learned Sessions Judge, Tiruvannamalai, Tiruvannamalai District, dated 23.07.2010, confirming the judgment of conviction and sentence imposed in C.C. No. 90 of 2005 on the file of the learned Judicial Magistrate, Arani, dated 01.02.2006.

2. The case of the prosecution is that the defacto complainant, viz., Kalyanasundaram is the Manager working in Karthikeyan Cinema Theatre at Arani. On 08.01.2005, at about 11.00 p.m., the Tamil Cinema "Thenkasipattinam" has been screened as the 2nd show. At that

time, the petitioner/first accused and one Thoma/second accused and nine others came to the Cinema Theatre and wanted to see the movie without ticket, which was condemned by the defacto complainant as the Manager of the Cinema Theatre. Thereafter, while the defacto complainant was verifying the ticket at the office near the Cinema Theatre main gate, at about 11.15 p.m., the first accused is alleged to have abused him in filthy language and took a knife and assaulted him. At that time, one Poongavanam, who was examined as P.W.2, came there and (he) intervened, as a result of which, he also sustained injuries on different parts of the body and hence, the complaint. The complaint was taken on file in C.C.No. 90 of 2005 on the file of the learned Judicial Magistrate, Arani. Based upon the oral and documentary evidence, the Trial Court, by judgment dated 01.02.2006, acquitted the second accused for want of evidence and convicted the first accused for the offence under Section 324 IPC and he was sentenced to undergo rigorous imprisonment for six months and he was imposed with a fine of Rs.5,000/-, in default, to undergo simple imprisonment for three months and he was acquitted from the charges under Sections 294(b) and 506 (ii) IPC. Aggrieved against the said judgment of conviction and sentence passed by the Trial Court, the first accused has preferred the appeal in CrI.A.No.42 of 2006 before the learned Sessions Judge, Tiruvannamalai, Tiruvannamalai District. The Appellate Court, by judgment dated 23.07.2010, confirmed the conviction and sentence imposed on the first accused. Aggrieved against the same, the Criminal Revision Case is filed.

3. Mr.C.Vijayakumar, learned counsel appearing for the petitioner would bring to the notice of this Court that the second accused was acquitted by the Trial Court, as the defacto complainant, who was examined as P.W.1, in his evidence has deposed to the effect that he was not involved in the offence. He would further submit that to convict the petitioner/first accused, the Trial Court mainly believed the evidence of one Poongavanam, who was examined as P.W.2, who in the course of examination has categorically stated that he has not seen the defacto complainant being inflicted injury by the first accused, but, the said fact has not been taken into consideration by the Trial Court. He would further submit that during cross-examination, P.W.2 has clearly stated that the gate of the Theatre will be closed at 10.45 p.m., thereafter, nobody could enter into the theatre, whereas, the occurrence is alleged to have taken place at 11.15 p.m. Pointing out to the same, learned counsel for the petitioner would submit that there was neither evidence to corroborate that the accused came inside the Theatre before the gate was closed nor what was the necessity for them to enter into the Theatre after the gate was closed and when these two vital discrepancies are there, both Courts below have failed to take into consideration of the same, especially, believing the evidence of P.W.2, the conviction should not have been granted to the petitioner/first accused.

4. Mr.R.Prathap Kumar, learned Government Advocate appearing for the respondent would contend that the defacto complainant is the person, who sustained injury and therefore, his evidence has been rightly taken into consideration and conviction has been granted to the petitioner/first accused. He would further add that there is no other evidence let in by the petitioner/first accused to show that there is any need or necessity for the defacto complainant to say anything against the first accused, because, they are total strangers and they have never met earlier. He would further submit that in the light of the evidence given by P.W.6-Doctor in respect of the injury sustained by the defacto complainant, both Courts below have rightly come to the conclusion and convicted the first accused and therefore, the judgment of both Courts below warrants no interference.

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

6. The short point for consideration in this Criminal Revision Case is regarding the appreciation of evidence of both sides. As rightly pointed out by the learned counsel appearing for the petitioner/first accused, when we take into consideration the evidence of defacto complainant, who was examined as P.W.1, it is seen that the first accused and second accused along with nine persons entered into the Cinema Theatre after 11.00 p.m. and demanded the defacto complainant to permit them to see the movie without ticket. Thereafter, the first accused is alleged to have entered into the office of the defacto complainant along with knife and threatened him as to why he is calling the Police and thereafter, inflicted injury. At that time, it is alleged that one Poongavanam came there and he intervened, as a result of which, P.W.2 also sustained cut injury. This is corroborated in the evidence of P.W.1, but, in the cross-examination, he has clearly admitted that the Ticket Counter will be closed at 10.30 p.m., thereafter, the gate will be closed even between 10.30 p.m. to 10.45 p.m. and thereafter, nobody could enter into the premises. He has further averred that the distance between the main gate and the alleged place of occurrence is 50 feet. First of all, there is neither evidence to corroborate that the accused came inside the Theatre before the gate was closed nor what was the necessity for them to enter into the Theatre after the gate was closed and therefore, there is a vital discrepancy in this regard.

7. Secondly, it is a clear case of the prosecution as well as the defacto complainant that P.W.2 viz., Poongavanam intervened and attempted to save P.W.1 from sustaining cut injury. When we compare the evidence of P.Ws. 1 and 2, it is seen that P.W.1 in his evidence has averred that, “தடுக்க வந்த பூங்காவனம் என்பவரையும் எ1 கத்தியால் வெட்டி அடிப்பட்டுள்ளது...” On a perusal of the evidence of P.W.2, it is seen that he, in his cross-examination has categorically stated that, “எதிரிகள் எ1

அ.சா.1ஐ வெட்டும்போது நான் தடுக்கவில்லை."P.Ws.1 and 2 in their evidence has averred that the gate of Theatre will be closed at 10.45 p.m., therefore, the entry of accused at 11.00 p.m. has not been clearly explained by them. Further the evidence of P.W.1 is to the effect that P.W.2 also sustained cut injury. But, on a perusal of the evidence of P.W.2, it is seen that he has categorically stated that, "நான் சிகிச்சைக்காக மருத்துவமனை செல்லவில்லை. எதிரிகளுடன் டிக்கெட் சில்லறை விசயமாக தகராறு என்றால் தெரியாது."Thus, it is seen that P.W.2 has stated that he has not gone to the hospital for treatment as he has not sustained any injury. Thus, there is a clear contradiction in between the evidence of P.Ws. 1 and 2 and the statement made by P.W.1 is in total contradiction to the statement made by P.W.2.

8. These contradictions are vital and when we take these vital contradictions, coupled with the fact the Doctor, who was examined as P.W.6, in his evidence has stated that on 09.01.2002 at about 12.15 p.m., the defacto complainant came to his hospital and during examination by the Doctor, he has not stated anything regarding the actual incident, but, he has only stated that a known person came to the Cinema Theatre on 08.02.2002 at 10.30 p.m. and caused injury using knife. Further, the Doctor in his evidence has stated that the injury sustained by the defacto complainant is simple in nature. The Trial Court has rightly taken into consideration of the fact that the presence of second accused has not been properly explained and hence, giving benefit of doubt, he was acquitted. When there are vital discrepancies as stated supra regarding the involvement of the first accused in the alleged occurrence, giving benefit of doubt, the first accused also should have been acquitted.

9. Above all these things, the Trial Court, though, taken into consideration the very occurrence place, in my considered opinion, there is a distinction and there is difference, it is not known as to whether the occurrence has taken place inside the Cinema Theatre or outside the Theatre or at the entrance of the gate. Thus, it is seen that there are lot of contradictions in the evidence of P.Ws.1 and 2, therefore, taking into consideration all these contradictions, benefit of doubt should have been given to the petitioner/accused. Hence, I am of the view that this is a fittest case where benefit of doubt should be given to the petitioner/first accused and hence, giving benefit of doubt in favour of the petitioner/first accused, he is entitled for acquittal.

10. In the result, the judgment dated 23.07.2010 passed by the Appellate Court made in Criminal Appeal No. 42 of 2006 on the file of the learned Sessions Judge, Tiruvannamalai, Tiruvannamalai District,

is set aside. The Criminal Revision Case is allowed. The fine amount paid by the petitioner/first accused is directed to be returned to him.

paa

s/d-
Deputy Registrar(J)

True Copy

Sub-Assistant Registrar

To

1. The Judicial Magistrate,
Arani
2. -do- thro' The Chief Judicial Magistrate,
Thiruvannamalai.
3. The Sessions Judge,
Thiruvannamalai.
4. -do- thro' The Principal Sessions Judge,
Thiruvannamalai.
5. The Sub Inspector of Police,
Arani Town Police Station,
Arani.
6. The Public Prosecutor,
High Court, Madras

Copy to:

The Section Officer,
Criminal Section,
High Court, Madras.

+ 1 cc to Mr.C.Vijayakumar, Advocate SR 22026

rsy(co)
prk14/5

Cr1.R.C. No. 892 of 2010