

Bail Slip:- the petitioner Azhagar @ Azhagarsamy in Crl.R.C.No.535 of 2011 (Accused in C.A.No.10 of 2010 on the file of Additional Sessions Court, Karaikal) was released on bail vide order of this court dated 7.4.2011 in Crl.M.P.No.106 of 2011 n Crl.R.C.No.535 of 2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.11.2016

CORAM

THE HON'BLE DR.JUSTICE P.DEVADASS

Crl.R.C.No.535 of 2011

Azhagar @ Azhagarsamy ... Petitioner/Accused

Vs.

The State rep. by
The Station House Officer,
Kottucherry Police Station,
Karaikal, Puducherry,
Crime No.39/2006

... Respondent/Complainant

This Criminal revision is filed under Section 397 & 401 of Cr.P.C., against the judgment of the Additional Sessions Court, Karaikal dated 30.03.2011 in C.A.No.10 of 2010 confirming the judgment of conviction and sentence passed by the learned Judicial Magistrate II, Karaikal dated 17.09.2010 in C.C.No.119/2006.

For Petitioner : Mr.S.Sounthar

For Respondent : Mr.M.R.Thangavel,
Addl. P.P. (Puducherry)

O R D E R

The sole accused in the Calender case in C.C.No.119 of 2006 on the file of the learned Judicial Magistrate No.II, Karaikal, is the revision petitioner.

2. Appreciating the evidence adduced, the trial Court acquitted the accused from the charge under Section 506(ii) IPC, however, convicted and sentenced him for the remaining charges as under:

Conviction	Sentence
341 I.P.C.	Fine Rs.400/- i/d One month S.I.
326 IPC.	2 years S.I and fine Rs.2,000/- i/d Five months S.I.

Fine amount paid.

3. The case of the prosecution in brief runs as follows:

On 10.03.2006, at about 8 p.m., when P.W.1 came in his bicycle, the accused wrongfully restrained him. Assaulted him with an Aruval. P.W.1 sustained injury on his head and also right thumb. P.Ws.3, 4 and 5 have witnessed the occurrence. P.W.7, Doctor, treated the injured (Wound Certificate-Ex.P.5).

4. The accused was tried before the trial Court for charges under Sections 341, 326 and 506(ii) IPC.

5. To substantiate the charges, prosecution examined P.Ws.1 to 8, marked Ex.Ps.1 to 5 and exhibited M.O.1.

6. In C.A.No.10 of 2010, the said conviction and sentence were confirmed by the learned Additional Sessions Judge, Karaikal.

7. Aggrieved by the findings and sentences, the accused has directed this revision.

8. Learned counsel for the revision petitioner contended that the required ingredients for the offences has not been established. The weapon has not been recovered. P.W.1 did not sustain grievous injury.

9. On the other hand, the learned Additional Public Prosecutor contended that the accused had thrown the weapon into a pond. Defence cannot expect things which is impossible to perform. The weapon has become irrecoverable. P.W.7, Doctor, has clearly stated that P.W.1 had sustained fracture on his head. In the circumstances, both the Courts have rightly recorded the conviction and appropriately punished the accused.

10. I have anxiously considered the rival submissions, perused the impugned judgments and the entire materials on record.

11. As per the prosecution version, at the time of occurrence, P.W.1 came in his bicycle. The accused did not allow him to proceed further. He has wrongfully restrained him. His evidence is natural and no significant dent has been made by the defence in cross examining him. His evidence is

believable. In the circumstances, he has been rightly convicted under Section 341 IPC and fined Rs.400/-.

12. The accused has also been found guilty under Section 326 IPC and he has been punished accordingly. For such an offence, nature of the injury as defined in Section 320 I.P.C. is to be determined. The type of weapon assumes importance. In this case, the weapon used is Aruval. But, it could not be recovered by prosecution. This has been explained in prosecution evidence. The evidence of P.W1 and other witnesses establishes that at the time of occurrence, the accused had used an Aruval. But, the evidence of P.W.7 would show that P.W.1 has sustained a lacerated injury. To substantiate the fact that he suffered fracture, no x-ray report has been marked. In the circumstance, an offence under Section 324 IPC alone is made out.

13. In view of the foregoing, it is ordered as under.

(i) This Criminal Revision is allowed in part.

(ii) The conviction and sentence under Section 341 IPC is maintained.

(iii) The conviction and sentence under Section 326 IPC is set aside. Instead the revision petitioner is convicted under Section 324 IPC. He is sentenced to period undergone, 105 days of simple imprisonment. Fine amount of Rs.2000/- is maintained.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

mrp

To

1 The Additional Sessions Judge, Karaikal

2. Do thro the Principal Sessions Judge
Puducherry

3. The Judicial Magistrate-II, Karaikal.

4. Do thro the Chief Judicial Magistrate
Puducherry

5. The Superintendent, Sub-Jail, Karaikal.

6. The Station House Officer,
Kottucherry Police Station, Karaikal,
Puducherry,

7 The Public Prosecutor, Union Territory of Puducherry,
attached to High Court, Madras

1 cc to Mr.S. Sounthar, Advocate, sr. 65134

1 cc to Government Pleader, Sr. 64994

Cr1.R.C.No.535 of 2011

GJ (CO)
kk 14/12



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