

BAIL SLIP

The petitioner/Accused namely Mr.FYROSE,S/O. Ammeen, was directed to be released on bail as per the order of this court dated 11/08/2011 in MP.No.1/2011 in Crl.R.C.No.1111/2011 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Crl.R.C.No.1111 of 2011

Fyrose

...

Petitioner

Vs

State rep. by
Inspector of Police,
Bagayam Police Station,
Vellore, Vellore District
Crime No.383/2007

...

Respondent

Prayer:- Criminal Revision filed under Section 397 and 401 Cr.P.C., against the order of dismissal passed by the learned Additional District Judge, Fast Track Court, Vellore, in Crl.A.No.18 of 2009 dated 29.12.2010 by confirming the judgment made in S.C.No.61 of 2008 dated 19.09.2008 on the file of the Assistant Sessions Judge-cum-Chief Judicial Magistrate, Vellore.

For Petitioners

: Mr. A.Nagarajan,
Legal Aid Counsel

For Respondent

: Mrs. M.F.Shabana,
Government Advocate (Crl. Side)

ORDER

The sole accused in S.C.No.61 of 2008 on the file of the Assistant Sessions Judge-cum-Chief Judicial Magistrate, Vellore, is the revision petitioner herein. He stood charge for the offences under Sections 224, 307 and 506(ii) IPC. The trial court, by judgment dated 19.09.2008, convicted the petitioner/accused under Section 224 IPC and sentenced him to

undergo rigorous imprisonment for one year and to pay a fine of Rs.200/-, in default, to undergo rigorous imprisonment for one week, convicted for the offence under Section 307 IPC and sentenced him to undergo rigorous imprisonment for 4 years and to pay a fine of Rs.500/- in default to undergo rigorous imprisonment for one month, and convicted for the offence under Section 506(ii) IPC and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.300/- in default to undergo rigorous imprisonment for two weeks. Challenging the above said conviction and sentence the petitioner/accused filed an appeal before the learned Additional District Judge, Fast Track Court, Vellore and the lower appellate court dismissed the appeal by confirming the conviction and sentence of the trial Court. Aggrieved by the same, the present revision has been filed.

2. The case of the prosecution, in brief, is as follows:-

The petitioner is a notorious criminal and he was wanted in another criminal case in Crime No.357/2007 for the offences under Sections 457 and 380 IPC. In order to arrest the petitioner/accused, in that case, a police team headed by P.W.1, went in search, when they were trying to apprehend the petitioner, he resisted the police party and threatened him with dire consequences and also attempted to stab P.W.3 with a pen knife on his chest and when he tried to ward off the attack, he sustained simple injury on his left hand. Thereafter, P.W.3 went to the police station and lodged a complaint.

3 . P.W.8, Head Constable, attached to the respondent police, on receipt of the complaint, registered a case in Crime No.383 of 2007 for the offences under Sections 224, 307 and 506 (ii) IPC and prepared First Information Report, Ex.P.6 and sent the same to the concerned judicial magistrate and also higher officials. P.W.9, Inspector of Police, on receipt of the First Information Report, commenced investigation and sent P.W.3 to the Government Hospital for treatment.

4 . P.W.6, Doctor, working in the Government Hospital, has given treatment and opined that the injuries are simple in nature and also issued a wound certificate, Ex.P.5. Then, P.W.9, proceeded to the scene of occurrence and prepared an observation mahazar, Ex.P.4 and drew a rough sketch, Ex.P.7 in the presence of the witnesses. Then, he arrested the accused and on such arrest, he has voluntarily given a confession and based on the disclosure statement, he recovered the knife (M.O.1). Thereafter, he recorded the statements of the witnesses and on completion of investigation he laid charge sheet for the offences under Sections 224, 307 and 506(ii) IPC.

5 . Based on the above materials, the trial Court framed the charges as detailed in the first paragraph of this judgment against the accused. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 9 witnesses were examined and 7 documents were exhibited, besides 1 Material Object was marked.

6 . Out of the witnesses examined, P.W.1 is the Sub-Inspector of Police, P.Ws.2 and 3 are Head Constable. According to P.W.1 on the date of occurrence, all the police parties, went in search of the accused, in connection with another case in Crime No.357/2007, at Palavansathukuppam village, on 10.08.2007, at about 6.00 a.m., and they found the accused in his father-in-law's house and when they tried to arrest the accused, he threatened them with dire consequences and also assaulted P.W.3 with pen knife and caused injury on his left hand. P.W.2 is the Head Constable, who also reiterates the same. P.W.3, Head constable, is the injured witness. According to him, when they tried to arrest the accused, he threatened the police authorities and trying to attack him with pen knife on his chest and when he prevented him, he got cut injury on his left hand. P.W.4 turned hostile. P.W.5, is a witness to the observation mahazar. P.W.6, Doctor, working in the Government Medical College Hospital, Vellore, who treated P.W.3 and has given a wound certificate, Ex.P.5. He has opined that the injury is simple in nature. P.W.7, Head Constable, who took P.W.3 to the hospital. P.W.8, Head Constable, attached to the respondent police, registered the case and prepared First Information Report, Ex.P.6. P.W.9, Inspector of Police, conducted investigation, recorded the statements of the witnesses, arrested the accused and after completion of investigation, he laid charge sheet against the accused.

7 . When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he did not choose to examine any of the witness or marked any documents on his side.

8. Having considered all the above, the trial Court found the accused guilty under the said charges and accordingly, sentenced him as detailed in the first paragraph of this judgment. Challenging said conviction and sentence, the petitioner/accused preferred an appeal in C.A.No.18 of 2009 on the file of the Additional District Judge, Fast Track Court, Vellore and the lower appellate court has dismissed the appeal and confirmed the conviction and sentence imposed on the petitioner. Aggrieved by the same, the petitioner/accused is before this Court with this revision.

9. Earlier when the matter came up for hearing on 22.12.2016, there was no representation for the appellant, and the appeal was posted under the caption for dismissal on 06.01.2017 and on that day also there is no representation for the appellant. Hence, Mr. A.Nagarajan, learned counsel is appointed as legal aid counsel for the appellant.

10. Mr. A.Nagarajan, learned Legal Aid Counsel, appearing for the revision petitioner would submit that all the witnesses are the police personnels and all are interested witnesses and in the absence of any corroboration from independent witness, the conviction imposed on the petitioner/accused cannot be sustained based on the interested testimony of the police party. A false case has been registered against him by the police in order to keep him in jail and hence, he sought for acquittal of the petitioner/accused.

11 . Per contra, Mr.M.F.Shabana, Gov. Advocate (Crl. Side) appearing for the respondent, would submit that the occurrence took place when the police officials were discharging their public duty and P.W.3 is the injured witness and his evidence was also corroborated by medical evidence and hence, there is no reason to disbelieve the evidence of the prosecution and sought for dismissal of the revision.

12. I have heard the rival submissions and also perused materials on record, carefully.

13 . P.W.3 is the injured witness in this case and it is the consistent evidence of P.Ws.1, 2 and 3 that when they went in search of the accused in respect of another criminal case in Crime No.357/2007, where the accused was staying at his father-in-law's house in a village . When the accused saw the police parties, he threatened them with dire consequences, and when they tried to apprehend the accused, the accused tried to attack P.W.3 with pen knife on his chest and when P.W.3 ward off the attack, he sustained injury on his left hand. Immediately, they lodged a complaint and P.W.3 was also taken to hospital. P.W.6, Doctor, examined P.W.3 and found that there is a cut injury on the left hand is likely to cause by pen knife and he has also opined that the injury was simple in nature.

14 . From the evidences of P.Ws.1, 2 and 3, it would be seen that it is only when the police party trying to apprehend the accused, he threatened them with dire consequences and trying to attack them with pen knife and in the above course, P.W.3 sustained injury on his left hand. But from the evidence of P.W.3, none of the ingredients for an offence under Section 307 IPC has been made out. However, from the evidence available, the accused is liable to be convicted under Section 332 of IPC as he voluntarily causes hurt to P.W.3 while he was

discharging his duty as public servant.

15 . In the above circumstances, the petitioner is liable to be convicted only under Section 332 IPC. So far as the quantum of sentence considering all the mitigating circumstances, the petitioner is sentenced to undergo rigorous imprisonment for two years. In respect of other offences, the court-below, carefully considered the evidences and materials, rightly convicted the petitioner/accused. I find no reason to interfere with the above conviction and sentence imposed on the petitioner/accused in respect of other offences.

16 . In the result, the Criminal Revision is partly allowed and the conviction and sentence imposed on the petitioner/accused under Section 307 IPC are set aside, and instead, he is convicted under Section 332 IPC and sentenced him to undergo rigorous imprisonment for two years. The conviction and sentence in respect of other charges are confirmed and all the sentences are ordered to run concurrently. The period of sentence already undergone by petitioner/accused shall be set off under Section 428 Cr.P.C. Since, the petitioner is on bail, the trial court is directed to take steps to secure the custody of the accused to undergo the remaining period of sentence, if any.

17 . While parting with the case, I appreciate the services rendered by Mr.A.Nagarajan, learned counsel who appeared on behalf of the revision petitioner/accused, as Legal Aid Counsel. The Legal Services Authority is directed to pay his remuneration.

mrp

Sd/-
Asst.Registrar

/true copy/

सुतरासे न्याते
Sub Asst. Registrar

To

1. The Additional District and Sessions Judge,
Fast Track court,
Vellore.
2. The Assistant Sessions Judge,
Cum Chief Judicial Magistrate,
Vellore.
3. The Judicial Magistrate I, Vellore.

4. The Superintendent,
Central Prison, Vellore.

5. The Inspector of Police,
Bageyam Police Station,
vellore, Vellore District.

6. The Public Prosecutor,
High Court, Madras.

7. The Section Officer,
Record Section, (Criminal),
High Court, Madras.

+1cc to M/s A.Nagarajan, Advocate Sr.3604

Cr1.R.C.No.1111 of 2011

BR(CO)
RVR 29/11/2017



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