

BAIL SLIP

The 1st Petitioner/1st accused namely Settu @ Anantharaman S/o Chinnathambi was directed to released on bail as per order of this court dated 09.09.2011 and made in MP 1/11 in CrI Rc 1237/11 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

CrI.R.C.No.1237 of 2011

1. Settu @ Anantharaman

2. Ilayarasa @ Kannadasan ... Petitioners/Accused 1 & 2

Vs

State rep. By the
Inspector of Police,
Mayiladuthurai Police Station,
Nagapattinam District.
(Crime No.752 of 2006) ... Respondent/Complainant

Prayer:- Criminal Revision filed under Section 397 r/w. 401 Cr.P.C., to set-aside the conviction and sentence made in C.A.No.76 of 2007 on the file of the District and Sessions Judge, Nagapattinam dated 08.06.2011 in modifying the judgment made in S.C.No.9 of 2007 on the file of the Principal Assistant Sessions Judge, Mayiladuthurai dated 30.08.2007.

For Petitioners : Mr. D.Veerasekaran

For Respondent : Mr.M.F.Shabana,
Gov. Adv.(CrI. Side)

JUDGEMENT

A1 and A2 in S.C.No.9 of 2007 on the file of the Principal Assistant Sessions Judge, Mayiladurai, are the

revision petitioners herein. A1 stood charged for the offences under Sections 294(b), 326 and 307 IPC and A2 stood charged for the offences under Sections 326 and 307 IPC. The trial Court, by judgment dated 30.08.2007, convicted A1 under Section 326 IPC and sentenced him to undergo rigorous imprisonment for 3 years and to pay a fine of Rs.3000/- in default to undergo imprisonment for one month, and convicted A2 under Section 324 IPC and sentenced him to undergo rigorous imprisonment for 2 years and also to pay a fine of Rs.2000/- in default to undergo imprisonment for one month. Challenging the said conviction and sentence, the petitioners have filed an appeal in C.A.No.76 of 2007 before the District and Sessions Court, Nagapattinam. The appellate Court modified the conviction and sentence and convicted A1 under Section 335 IPC and sentenced him to undergo rigorous imprisonment for one year and to pay a fine of Rs.3000/- in default to undergo simple imprisonment for one month and A2 was convicted under Section 334 IPC and sentenced to undergo rigorous imprisonment for one month and to pay a fine of Rs.2000/- in default to undergo simple imprisonment for one month. Since A2 already undergone imprisonment for two months, and the period was set off under Section 428 CrI.P.C. and he was ordered to be released by the lower appellate court. Aggrieved over the same, the petitioners/A1 and A2 are before this Court with this revision.

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

A1, A2 and P.W.1 are brothers. There was a civil dispute between the parties regarding the partition of their ancestral house property. The accused and P.W.5, who is their mother, were residing in their house and P.W.1 was residing in a separate house, and he claimed the house property as an ancestral property. P.W.1 was using a room in the house and keeping his utensils there. On 15.06.2006, since the utensils put up by P.W.1 was found removed from the house, P.W.1 met his mother and questioned the same. At that time, P.W.5, informed him that they are doing some minor repair work in the house, hence it was removed. Then, P.W.1 pushed down P.W.5 and she fell down. At that time, A1, who was standing in the ground floor, went there with a knife and assaulted P.W.1 on the right hand and left hand and also in the stomach. Due to that, his intestine protruded, immediately A2 also came there and he attacked P.W.1 with 'karanai' on his hands and left thigh. Thereafter, P.W.1 went to the Government Hospital, Myiladuthurai, where P.W.9, has given a first aid and he referred P.W.1 to Government Medical College Hospital, Tanjavur, where P.W.10, Doctor, admitted him and given Accident register, Ex.P.8. P.W.11 another Doctor, conducted surgery on P.W.1.

3. On receipt of the intimation from the Government Hospital, Myiladuthurai, P.W.12, Sub-Inspector of Police, went

to the Government Hospital and obtained the statement of P.W.1 and based on the statement, he registered a case in Crime No.752 of 2006 for the offence under Sections 294(b), 326 and 307 IPC and prepared First Information Report, Ex.P.9. Then, he proceeded to the Medical College Hospital, Tanjavur, where he recorded the statement of P.W.1 and his wife P.W.2 and also seized the blood stained cloths worn by P.W.1. Subsequently, on 16.06.2006, he arrested both the accused and on such arrest, both of them have given a voluntary confession, based on their disclosure statement, P.W.11, seized the knife used by A1 and karanai, used by A2, thereafter, remanded them to judicial custody. Then, he handed over the case for further investigation to P.W.13, Inspector of police.

4. P.W.13, Inspector of Police, recorded the statement of all the witnesses and Doctor, who treated P.W.1 in the Government Hospital, Myiladuthurai as well as the doctor working in the Government Medical College Hospital, Thanjavur. After completion of investigation, he laid charge sheet against the accused.

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 its case, on the side of the prosecution, as many as 13 witnesses were examined and 12 documents were exhibited, besides 5 Material Objects.

6. Out of the witnesses examined, P.W.1 is the injured witness. According to him, there was a civil dispute regarding the partition of an ancestral house between A1, A2 and P.W.1. On 15.06.2006, at about 4.30 p.m., he found that some civil works were going on in the house, he asked P.W.5, their mother, regarding the same. P.W.5 informed him that since there was a leakage in the building, they were doing some minor repair work. At that time, P.W.5 slipped and fell down. After seeing his mother hand been slipped and fell down, A1 came with a knife and attacked P.W.1 on his stomach, right hand and left hand. A2 also came with Karanai and attacked him on his thigh. Then, P.W.1 managed to take an auto and rushed to Government Hospital, Myiladuthurai, and after first aid, he was referred to Medical College Hospital, Thanjavur, where he was admitted and surgery was conducted. P.W.2 is the wife of P.W.1, after hearing about the occurrence, she rushed to the scene of occurrence and then, she took P.W.1 to the hospital. P.W.3 is a relative to the accused and P.W.1. According to him, after the occurrence, he went to the hospital and saw P.W.1 and he is also a witness to the observation mahazar.

7. P.Ws.4, 5 & 6 have turned hostile. P.W.9, Doctor, working in the Government Hospital, Myiladuthurai, has given First Aid to P.W.1 and referred him to Government Medical College Hospital, Thanjavur. P.W.10, Doctor, working in the Government Medical College Hospital, admitted him in the hospital. P.W.11, Assistant Professor of the Medical College Hospital, conducted surgery on P.W.1.

8. P.W.12, Sub-Inspector of Police, registered the complaint, conducted initial investigation, arrested the accused and seized the material objects and handed over the case to P.W.13, for further investigation. P.W.13, Inspector of Police, conducted further investigation and after completion of investigation he laid charge sheet against the accused.

9. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. However, they did not choose to examine any of the witnesses on their side.

10. Having considered all the above, the trial Court found the accused guilty of the said charges and accordingly, sentenced them as detailed in the first paragraph of this judgment. Challenging said conviction and sentence, the accused/petitioners preferred an appeal in C.A.No.76 of 2007 on the file of the District and Sessions Court, Nagapattinam and the lower appellate court has modified the conviction and sentence imposed on the petitioners. Aggrieved over the same, the accused/petitioners are before this Court with this revision.

11. Heard Mr. D.Veerasekaran, learned counsel appearing for the revision petitioners and Mr.M.F.Shabana, Gov. Advocate (Crl. Side) appearing for the respondent.

12. P.W.1, A1 and A2 are brothers. P.W.5 is their mother. Admittedly, there was a civil dispute between the parties regarding the partition of their ancestral house. On the date of occurrence, when the accused were carrying out some maintenance work in the ancestral house, P.W.1 questioned the same with his mother(P.W.5). P.W.5 informed him that since there was leakage, they were doing minor works to seal the leakage. At that time, P.W.1 pushed down P.W.5, his mother, and after seeing the same, A1 and A2, who are other two sons of P.W.5, being provoked, said to have attacked P.W.1 with knife and karanai available there and caused injuries to him.

13. P.W.5, who is an eye-witness had turned hostile and the one and only evidence available is the injured witness P.W.1, and he has categorically stated that A1 attacked him with a knife on his stomach and on his left and right hands and A2 also attacked him with karanai on his left thigh, his evidence

is corroborated by the medical evidence, P.Ws.9, 10 and 11.

14. Considering the above, the trial Court convicted them under Sections 326 and 324 IPC. However, the lower appellate court, on scrutinizing the evidence and perusal of the records, came to a conclusion that A1 and A2 attacked P.W.1 only out of sudden provocation and hence modified the conviction into that of A1 under Section 335 IPC and A2 under Section 334 IPC. Considering the above, I find no reason to disbelieve the evidence of the injured witness, namely, P.W.1, and I am of the considered view that the prosecution has proved the guilt of the accused beyond any reasonable doubt. Hence, the conviction of the accused by the lower appellate court need not be interfered with.

15. So far as the quantum of sentence is concerned, A2 already undergone the sentence and he was released by the lower appellate court. So far as the sentence imposed on A1 is concerned, he is a poor man and he has no bad antecedent, and after seeing his mother being pushed down by P.W.1, out of sudden provocation, he lost his mental balance and attacked P.W.1 with a weapon available in the scene of occurrence. The learned counsel appearing for the petitioners would submit that A1 has already undergone sentence for nearly 3 months. In the above circumstances, the sentence of A1/first petitioner, is modified to that of the period already undergone by him.

16. In the result, the criminal revision case is partly allowed, the conviction of A1 and A2, by the lower appellate court is confirmed, and the sentence imposed on A1 is modified to the period already undergone by A1.

-s/d-

Assistant Registrar(CS-VI)

True Copy

Sub-Assistant Registrar

To

1. The District and Sessions Judge.,
District & Sessions Court,
Nagapattinam.
2. -do- Thro The Principal Sessions Judge
Nagapattinam

3. The Principal Assistant Sessions Judge,
Principal Assistant Sessions Court,
Mayiladuthurai.
4. The Judicial Magistrate I, Mayiladuthurai
5. -do- Chief Judicial Magistrate, Nagapattinam
6. The Inspector of Police
Mayiladuthurai Police Station
Nagapattinam District
7. The Superintendent, Central Prison
Trichy
8. The Public Prosecutor,
High Court, Madras.

Copy to

The Section Officer,
Criminal Sections
High Court
Madras

+1 CC to Mr. D.Veerasekaran, Advocate sr 1770

Crl.R.C.No.1237 of 2011

RSY(CO)
sp/9/3



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