

BAIL SLIP

The Petitioner/Accused Viz., R.Ramesh was released on bail as per the Order of this Court dated 14.03.2016 in CrI.M.P.No.2867 of 2016 in CrI.R.C.No.435 of 2016.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

CrI.R.C.No.435 of 2016

R.Ramesh

... Petitioner

Vs

State rep. By
The Station House Officer,
Grand Bazaar P.S.
Through Public Prosecutor
Puducherry.

... Respondent

Criminal Revision was filed under Section 397 and 401 Cr.P.C., seeking to set aside the order passed by the learned Chief Judicial Magistrate, Puducherry in C.C.No.277 of 2011 dated 12.12.2014 convicting the petitioner for imprisonment of six months and imposing a fine of Rs.10,000/- as confirmed by the order passed by the II Additional Sessions Judge, Puducherry in C.A.No.1 of 2015, dated 29.02.2016.

For Appellant : Mr.R.Sreedhar

For Respondent : Mr.M.R.Thangavel
Public Prosecutor (P)

ORDER

Petitioner is the sole accused in C.C.No.277 of 2011 on the file of the Chief Judicial Magistrate, Puducherry. He stood charged for an offence under Section 325 of IPC, the trial court convicted the petitioner for the above said charge and sentenced him to undergo six months simple imprisonment and to pay a fine of Rs.10,000/- out of the said amount Rs.9,000/- was ordered to be given to P.W.1 as compensation and in default to pay fine of Rs.10,000/- hence directed to undergo further imprisonment of one month. Challenging the above said conviction and sentence, the petitioner preferred an appeal in C.A.No. 1 of 2015 and the Lower Appellate Court also confirmed the conviction and sentence of the trial court,

and dismissed the appeal. Aggrieved over the same, the present revision has been filed.

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

(i) P.W.1 is the injured witnesses in this case. Both the accused and P.W.1 are running shops in Gandhi Street, Pondicherry. On 23.12.2017, at about 9.30a.m., while P.W.1 came to open his shop and found the petitioner/accused, put up a cloth stand in the front of his shop blocking his shops name Boards, when P.W.1, questioned the accused there was a wordy quarrel between P.W.1 and the accused. At that time, the accused punched in his mouth and broken his teeth. Immediately, P.W.1 has given a complaint before the respondent police. P.W.4, Sub Inspector of Police, on receipt of the complaint registered a case in Crime No.623 of 2007 for offence under Section 325 of IPC and prepared the First Information Report.

(ii) In the meanwhile, P.W.1 was taken to Government Hospital, Pondicherry and one Dr.Mohandass, given treatment to him and found the following injuries :

'a small contusion over the lower lip also found and the injuries are grievous in nature.'

He has issued a wound certificate, Ex.P3, and given the opinion that the injuries are grievous in nature. P.W.4, conducted investigation, recorded the statement of witnesses and after completing the investigation filed charge sheet. Based on the above materials, the Trail Court framed charge for an offences under Section 325 of IPC, and the accused denied the same. In order to substantiate their case, prosecution examined five witnesses and exhibited four documents.

(iii) Out of the witnesses examined, P.W.1 is the injured witness, according to him on 23.12.2007 at about 9.30a.m., while he was opening his shop for the day, he found the accused has put up the cloth stand in front of his shop obstructing the front view of his shop. When he questioned him, there was a wordy quarrel, at that time all of a sudden the accused punched him in his mouth, and because of the said act, his two teeth in upper jaw were broken. Immediately, he lodged a police complaint and then went to Government hospital for treatment. P.W.2, is the brother of P.W.1, according to him, he had also taken part in the wordy quarrel along with P.W.1, with the accused, and the accused attacked P.W.2 also. P.W.3 is the doctor working in Government Hospital, Pondicherry. He had deposed that on 23.02.2007 at about 11.00a.m., P.W.1 was admitted in the hospital and he was given treatment by one Dr.V.Mohandass. He issued wound certificate Ex.P.3, and also given opinion that the injuries are grievous injuries. P.W.4, Sub Inspector of Police registered the complaint and prepared the First Information

Report, and handed over the file to P.W.5. P.W.5, Inspector of Police conducted investigation and filed a final report.

3. When the accused were questioned under Section 313 of Cr.P.C., on the above incriminating materials he denied the same. Neither any witnesses nor any documents were produced by the accused. Considering the all the above materials, trial court convicted the petitioner as mentioned in paragraphs of the judgement. Challenging the same, he filed an appeal, the lower Appellate Court confirmed the conviction and sentence and dismissed the appeal. Being aggrieved over the same, the present revision has been filed.

4. I have heard the learned counsel for the petitioner and the learned counsel for the respondent and perused the materials available on record.

5. P.W.1 and accused were admittedly doing business in Gandhi Road, Pondicherry, according to prosecution, on the occurrence day, the accused put up a cloth stand in the front portion of P.W.1's shop, thereby, obstructing his business. There arose a wordy quarrel and due to sudden provocation, the accused attacked P.W.1 by punching in his mouth due to which, his two teeth in the upper jaw were broken. P.W.2, who is the brother of the deceased also witnessed the occurrence and deposed to that effect and the medical evidence also corroborated their evidence. P.W.1 and the accused were doing business in the same place for quite a long time, there is no dispute between them prior to the date of occurrence. Since the accused put up the cloth stand obstructing the front portion of P.W.1's shop, he questioned the accused. The accused at that time lost his mental balance due to words spoken by the P.W.1 and in sudden provocation accused attacked P.W.1 in his mouth. From the evidence available on record, it cannot be said that the accused has intentionally attacked P.W.1 and that he had knowledge that grievous injuries would likely to cause on account of his act. Hence, the act of the accused will not fall under Section 325 of IPC, but his act will fall under Section 335 of IPC.

6. So far as the quantum of sentence is concerned, the petitioner and P.W.1 are running petty shop in the same area and only due to sudden provocation the petitioner had attacked P.W.1 and the accused had also had no bad antecedent, prior to the date of occurrence, and considering the fact that the petitioner had already undergone considerable period of incarceration, I am inclined to sentence the petitioner for the period of sentence already undergone.

7. Learned counsel appearing for the revision petitioner would submit that the fine amount had already been paid and as directed, by the Trial Court the compensation had also been paid to P.W.1.

8. In fine, this Criminal revision is partly allowed and the conviction and sentence imposed on the petitioner under Section 325 of IPC is set aside instead the petitioner is convicted under Section 335 of IPC and sentence to undergo the period of sentence already undergone and pay the fine of Rs.10,000/- and out of which Rs.9,000/- to be paid to the P.W.1 as compensation under Section 357(3) Cr.P.C.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Chief Judicial Magistrate,
Puducherry.
- 2.The II Additional Sessions Judge,
Puducherry.
- 3.The Public Prosecutor,
High Court, Madras.

+lcc to Mr.R.Sreedhar, Advocate, S.R.No.18147
+lcc to the Government Pleader(Pondy), S.R.No.18719

Cr1.R.C.No.435 of 2016

RSK(CO)
CA(12/05/2017)

सत्यमेव जयते

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