

BAIL SLIP

Raji, S/o. Thothukan was granted bail in and by the order of this court dated 06.01.2011 made in MP.1/11 in CRL Rc.982/10.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Orders Reserved on : 10.08.2017)

Orders Pronounced on : 08.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.R.C.No.982 of 2010

Raji .... Petitioner/Accused

... Vs ...

State rep. by the Sub-Inspector of Police,  
Nagarasampatti,  
Krishnagiri District.  
(Crime No.241 of 2004)

... Respondent/Complainant

Prayer:- Criminal Revision Case filed under Section 397 r/w. 401 of Cr.P.C., against the judgment and order of conviction passed by the learned Principal Sessions Judge, Krishnagiri, in C.A.No.43 of 2005, dated 19.01.2010 confirming the conviction and sentence passed in C.C.No.131 of 2004, dated 10.08.2005 by the learned District Munsif-cum-Judicial Magistrate, Pochampalli, Krishnagiri District, convicting the petitioner for the offences under Sections 447, 341 and 326 of IPC and for the offence under Section 326 of IPC sentencing him to undergo one year R.I. and to pay a fine of Rs.500/- in default to undergo R.I. for two months; for the offence under Section 341 of IPC imposing a fine of Rs.250/- in default to undergo S.I. for one week and for the offence under Section 447 of IPC imposing a fine a sum of Rs.250/- in default to undergo S.I. for one week.

For Petitioner : Mr.C.S.Dhanasekaran

For Respondent : Mr.B.Ramesh Babu,  
Government Advocate (Crl.Side)

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## ORDER

The revision petitioner herein is an accused in C.C.No.131 of 2004 on the file of the learned District Munsif-cum-Judicial Magistrate, Pochampalli, Krishnagiri District, and he stands convicted by the trial Court for the offences under Sections 341, 447 and 326 of IPC and sentenced to pay a fine of Rs.250/- and in default, to undergo simple imprisonment for one week for the offence under Section 341 of IPC; sentenced to pay a fine of Rs.250/- and in default, to undergo simple imprisonment for one week for the offence under Section 447 of IPC and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.500/- and in default, to undergo rigorous imprisonment for two months for the offence under Section 326 of IPC.

2. The said conviction and sentence were confirmed by the learned Principal Sessions Judge, Krishnagiri, in C.A.No.43 of 2005, by an order dated 19.01.2010. Challenging the said order, the accused had preferred the above Criminal Revision Case before this Court.

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

[i] On 14.07.2004 at about 11.00 a.m. in Mallikal Village, when P.W.1/Radhakrishnan ploughing the tractor in his lands, the accused had trespassed and prevented him and due to oral quarrel, the accused had assaulted P.W.1 with knife over his left leg and over his back and thereby, caused grievous and simple injuries to P.W.1. P.W.1 was taken to Kaveripattinam Government Hospital.

[ii] On 14.07.2004, the Head Constable, who was on duty in Nagarasampatti police station, had received a message from Kaveripattinam Government Hospital, went to the hospital and received the statement given by P.W.1 under Ex.P.1.

[iii] P.W.10-Archunan, the Sub-Inspector of Police at Salem Urukkaalai police station, had received the statement given by P.W.1 and registered a case in Crime No.241 of 2004 for the offences under Sections 341, 447, 323 and 324 of IPC and prepared the First Information Report-Ex.P.6. Then, he went to the scene of occurrence and prepared an Observation Mahazar-Ex.P.7 and Rough Sketch-Ex.P.8 and enquired P.W.1 in the hospital and also enquired the witnesses in the scene of occurrence. Then he enquired the Dr.Ashokkumar in the hospital and received the wound certificate from him. The accused surrendered before the Court.

[iv] Since P.W.10, Sub-Inspector of Police was

transferred, P.W.11-Chandirasekaran, Sub-Inspector of Police, Nagarasampatti police station, took up further investigation in this case, enquired the witnesses and recorded their statements and after completing the investigation, he laid the final report against the accused for the offences under Sections 341, 447 and 326 of IPC. The learned District Munsif-cum-Judicial Magistrate, Pochampalli, taken the case in C.C.No.131 of 2004.

4. In order to prove the case, the prosecution examined P.Ws.1 to 11 and marked Exs.P.1 to P.8. The accused was questioned under Section 313 Cr.P.C. with regard to the incriminating circumstances and he denied his complicity. On behalf of the accused, no witness was examined and no document was marked.

5. Both the Trial Court and the Appellate Court, after analyzing the oral and documentary evidence, have convicted and sentenced the accused as already stated above. Aggrieved against the said concurrent judgments of both the Courts below, the above criminal revision case is preferred before this Court.

6. Heard the learned counsel appearing for the revision petitioner and the learned Government Advocate (Crl.Side) appearing for the respondent.

7. Points for determination:-

Whether the order of conviction is sustainable in law and whether the sentence awarded is excessive.

8. Learned counsel appearing for the revision petitioner/accused would contend that in the absence of producing the X-ray to show that the injuries are grievous in nature, the conviction imposed under Section 326 of IPC is not sustainable. It is further contended that both the Courts below have failed to take note of the motive alleged by the prosecution since the previous enmity, which is said to be the motive, is a double edged weapon and besides, sentences imposed for the offences under Sections 341 and 447 of IPC are excessive.

9. Learned Government Advocate (Crl.Side) appearing for the respondent made submissions in support of the judgment of the trial Court.

10. The main contention of the learned counsel for the

revision petitioner is that P.W.1 is an injured person. There is civil dispute between P.W.1 and his elder son. Revision petitioner/accused was one of the witnesses in the civil suit filed against P.W.1 and the same was admitted by P.W.1 and P.W.2 and in Ex.P.1-complaint, P.W.1 has not stated anything about the illicit intimacy of the accused with Kamala amounting to contradiction. Furthermore, the non-examination of the alleged driver of the Tractor at the time of alleged occurrence is fatal to the case of the prosecution. Further, the Material Object was not seized by the investigating agency. Under these circumstances, the prosecution theory ought to have been disbelieved and the learned counsel prayed to set aside the judgment of the lower Court.

11. In this case, Ex.P.1-complaint was given by P.W.1. The evidence of P.W.1 was corroborated by the evidence of P.Ws.2 to 5. Ex.P.4 was given by P.W.8 and in his evidence, he has stated that the injuries are caused by P.W.1 with a weapon like 'Koduval'. The evidence of P.W.8 also corroborated by the evidence of P.W.1. P.W.1 is the injured person while P.W.2 is the wife of P.W.1. Ex.P.4 is the wound certificate issued by P.W.8-Dr.Ashok Kumar. As stated supra, in Exs.P.1 to P.8, the alleged X-ray said to have been the sheet anchor for P.W.8-Dr.Ashok Kumar, who had issued Ex.P.4-wound certificate. Neither the classification of the injuries as that of the grievous in nature has been filed before the Court nor the accused had an opportunity to cross-examine P.W.8-Dr.Ashok Kumar in respect of the grievous nature of the alleged offence in the absence of producing X-ray.

12. In the decision reported in 2000 (3) MWN (Crl.) 91 [Arunachalam & Others Vs. State rep. by Sub-Inspector of Police, Nanguneri P.S., Tirunelveli District], this Court has held that in the absence of X-ray being marked, the Court cannot come to the conclusion convicting the accused for the alleged offence under Section 326 of IPC.

13. It remains to be stated that P.W.11-Chandirasekaran, Sub-Inspector of Police at Nagarasampatti police station, who had laid the charge sheet, in his cross-examination has admitted that he has not recovered the alleged weapon of the crime and offered an explanation that since the accused has surrendered before the Court, he has not taken any steps to produce the alleged weapon of the crime as material object before the trial Court and hence, on a combined reading of the oral evidence of P.W.8-Dr.Ashok Kumar with that of the wound certificate-Ex.P.4 and applying the principles enunciated in the above referred decision and also coupled with the evidence of the police witness P.W.11 regarding non-recovery of the alleged weapon of the crime said to have been used by the accused in causing the

injury, this Court is of the considered view that the conviction imposed by both the Courts below for the offence under Section 326 of IPC is not sustainable in law and hence, the same is modified into that of the offence under Section 324 of IPC.

14. Thus, the revision petitioner/accused stands convicted for the offence under Section 324 of IPC and sentenced him to pay a fine of Rs.500/-, in default, to undergo rigorous imprisonment for two months. The sentence already served by the revision petitioner/accused for the offence under Section 326 of IPC shall be treated as sentence for the offence under Section 324 of IPC with which he is now convicted.

15. It is seen that both the Courts below have convicted the revision petitioner/accused for the offences under Sections 341 and 447 of IPC and sentenced to pay a fine of Rs.250/- for each offence with default clause which is said to have been complied with and hence, the same does not warrant any interference by this Court. In the absence of any contra evidence or any acceptable evidence interfering the finding of the trial Court and the conviction therefor, the conviction and sentence imposed in respect of the offences under Sections 341 and 447 of IPC is hereby confirmed. The period of sentence already undergone by the revision petitioner/accused for the offence under Section 326 of IPC shall be given set off.

16. With the above modification only with regard to the conviction and sentence under Section 324 of IPC, this Criminal Revision Case is partly allowed.

Sd/-  
Assistant Registrar (CS-)

//True Copy//

सत्यमेव जयते  
Sub Assistant Registrar

Jr1

To

1. The Principal Sessions Judge,  
Krishnagiri.
2. The District Munsif-cum-Judicial Magistrate,  
Pochampalli, Krishnagiri District.
3. the Chief Judicial Magistrate,  
Dharmapuri at krishnagiri.

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4. The Sub-Inspector of Police,  
Nagarasampatti,  
Krishnagiri District.

5. The Public Prosecutor,  
High Court, Madras.

Order in  
Crl.R.C.No.982 of 2010

rk(CO)  
TR(19/01/2018)



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