

Bail Slip

The Petitioner herein/ Accused No.1 to 4 Namely 1.Munusamy, aged 44 yrs, S/o. Ammasi 2.Selvam, aged 41 yrs, S/o.Ammas 3.Murugan, aged 37 yrs, S/o. Ammasi 4.Ammas, aged 67, yrs S/o.Sadaiya Gounder, they are released on bail of this Hon'ble Court on 18.12.2013 in Crl.M.P.No. 1 of 2013 in Crl.R.C.No. 1497 of 2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 24.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN
Crl.R.C.No.1497 of 2013

1.Munusamy
2.Selvam
3.Murugan
4.Ammas

...Petitioners

Vs.

State, rep. by the,
Inspector of Police,
Valapady Police Station,
Salem District.
(Crime No.46/008)

... Respondent

PRAYER: Criminal Revision filed under section 397 (1) and 401 Criminal Procedure Code, to call for the records and set aside the judgement passed by the learned III Additional District and Sessions Judge, Salem, in C.A.No.24 of 2013 by judgement dated 30.08.2013, modifying the sentence ordered by the learned Judicial Magistrate VI, Salem, in C.C.No.130 of 2008 by judgement dated 04.03.2013.

For Petitioners : Mr.B.Vasudevan

For Respondent : Mr.R.Ravichandran

Government Advocate(Crl. Side)

O R D E R

This criminal revision has been filed by the petitioner seeking to set aside the judgment of conviction dated 30.08.2013 made in C.A.No.24 of 2013 by the learned III Additional District and Sessions Judge, Salem, modifying the judgment of conviction dated 04.03.2013 made in C.C.No.130 of 2008 by the learned Judicial Magistrate VI, Salem.

2 Case of the prosecution is that on 17.01.2008 at about 8.00 p.m. the petitioners/accused, due to civil dispute, had

caused injuries to P.W.1 to P.W.3 with deadly weapons and hence a case has been registered by the Police under Sections 354, 324, 323 of IPC against the first petitioner/A1, 326 and 323 of IPC against the second petitioner/A2 and 324 of IPC against the petitioners 3 & 4/A3 and A4. After investigation, respondent police had filed a final report before the learned VI Judicial Magistrate, Salem, which was taken on file in C.C.No.130 of 2008.

3 Before the trial Court, in order to prove case of the prosecution, P.W.1 to P.W.8 were examined and Ex.P1 to Ex.P9 were marked and on the side of the defence, D.W.1 was examined and Ex.D1 to Ex.D4 were marked. No material object had been produced before the Court.

4 The learned Magistrate, after trial, found the accused 1, 3 and 4 guilty of offences punishable under Sections 324 of IPC and found the second accused guilty of offence punishable under Section 326 of IPC and by judgment dated 04.03.2013, convicted them and sentenced the accused 1, 3 and 4 to undergo simple imprisonment for six months under Section 324 of IPC, with fine of Rs.1000/- each, in default, to undergo simple imprisonment for a further period of one month and sentenced the second accused to undergo rigorous imprisonment for two years with fine of Rs.2000/-, in default, to undergo simple imprisonment for a further period of one month for the offence under Section 326 of IPC.

5 Aggrieved against the judgment of conviction dated 03.04.2013, the accused had preferred an appeal before the learned III Additional District and Sessions Judge, Salem, in C.A.No.24 of 2013. The Sessions Court, as a first appellate Court, after re-appreciating entire evidence on record, by judgment dated 30.08.2013, had dismissed the appeal and modified the sentence imposed on the accused 1, 3 and 4 from six months to one month for the offence under Section 324 and reduced the sentence imposed on the second accused from two years rigorous imprisonment to one year for the offence under Section 326 of IPC. Assailing the judgment of the first appellate Court dated 30.08.2013, the accused have preferred the present criminal revision before this Court.

6 The learned counsel appearing for the petitioners would submit that, during pendency of this revision, third petitioner/A3 died and hence charges against him gets abate. Further, there are material contradictions between the entry in Accident Register and oral and documentary evidences produced by the prosecution. In the copy of the Accident Register, which is first available document, even before commencement of investigation, it has been stated that eight known persons had attacked, whereas, in evidence, it has been stated that four persons had attacked, which creates doubts and it is fatal to

the case of the prosecution. The weapons, alleged to have been used at the time of occurrence, had not been produced before the Court. P.W.1, died soon after chief examination and hence the accused could not cross examine P.W.1. Admittedly, there was a civil dispute between the parties and they are all close relatives and hence the alleged occurrence was not a pre-planned one. Both the Courts below had failed to consider the above facts and erroneously convicted the petitioners, which warrants interference. Further, now the fourth respondent/A4 is aged about 75 years. The petitioners/accused were in imprisonment for more than nine months, before granting suspension of sentence by this Court. Therefore, quantum of sentence may be considered and same may be reduced.

7 The Government Advocate (Crl.Side) appearing for the respondent police would submit that P.W.3 is the Victim girl and P.W.1 and P.W.2 are her parents. The evidence of P.W.1 has been clearly corroborated by P.W.2 & P.W.3. Even though, in the Accident Register copy, it has been stated that eight known persons had attacked, after investigation, the police found that only the petitioners/A1 to A4 had involved in the occurrence. Hence the contradiction pointed out by the learned counsel for the petitioners, is only a minor contradiction, which will not affect the entire case of the prosecution. P.W.1 to P.W.3, who are the eye witnesses to the occurrence, had clearly spoken about the involvement of the petitioners/accused and stated that they only caused injuries. P.W.7, the Doctor, who treated them, had also spoken about the injuries sustained by P.W.1 to P.W.3 and corroborated the evidence of P.W.1 to P.W.3. Further, from the evidence of ocular witnesses, medical records and the evidence of the P.W.7/Doctor, prosecution had clearly proved its case beyond reasonable doubt and hence conviction recorded by the Courts below does not warrants any interference.

8 Heard the learned counsel appearing on either side and perused the materials available on record.

9 On reading of evidences of eye witness P.W.1 and P.W.2 and the victim girl P.W.3, it reveal that the offence against the accused, had clearly been made out. The Doctor/P.W.7, had also corroborated the evidences of P.W.1 to P.W.3. Both the Courts below had elaborately gone into the facts and circumstances of the case, and the documents produced by the prosecution, and found the accused guilty and hence convicted them. Admittedly, the parties are close relatives and there is civil dispute between the parties. This Court, as a revision Court, need not re-appreciate entire evidence on record and it has to see whether there is any perversity in the judgment passed by the Courts below. This Court has carefully perused the judgments of both the Courts below and perused the evidences of prosecution witnesses and does not find any perversity in

appreciating evidence while deciding the case by the Courts below.

10 However, considering the fact that the fourth petitioner/A4 is aged about more than 75 years, the period of imprisonment already undergone by him shall be treated as punishment and the fine amount of Rs.50,000/- deposited by the petitioners/accused, at the time of obtaining bail, shall be paid to the victim girl P.W.3 as compensation under Section 357 of Cr.P.C. and the victim is entitled to receive the same. The revision is dismissed as against the petitioners 1 and 2/A1 & A2, since the offence committed by them has been clearly proved.

11 With the above modifications, this criminal revision is partly allowed. The trial Court is directed to secure the presence of the accused 1 and 2 to undergo remaining period of imprisonment, if any.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The III Additional District and Sessions Judge, Salem.
2. The Judicial Magistrate VI, Salem.
3. The Chief Judicial Magistrate, (Information), Salem.
4. The Inspector of Police, Valapady Police Station, Salem District.
5. The Deputy Superintendent of Police, Mylapore, Chennai -4.
6. The Public Prosecutor, High Court of Madras.

+1cc to Mr.B.Vasudevan, Advocate, S.R.No.72724

Cr1.R.C.No.1497 of 2013

BS (CO)

RRS (25/04/2019)