

BAIL SLIP

The Petitioner in Criminal Revision Petition case Viz., Balakrishnan, aged 32 years S/o.Lakshmanasamy was directed to be released on bail as per order of this court dated 18/06/2013 and made in MP.Nos.1 and 3 of 2013 in Cr1.R.C.No.749/2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 21.02.2019

Pronounced on: 04.03.2019

Coram:

The Honourable Dr.Justice G.Jayachandran

Criminal Revision Case No.749 of 2013
& M.P.No.3 of 2013

Balakrishnan,
S/o.Lakshmanasamy,
No2/275, NGR Nagar,
Poolankinar,
Ollankinar, Udumalpet

... Petitioner/Accused

/versus/

The State
Rep by Inspector of Police,
Pollachi East Police Station,
Coimbatore District.

... Respondent/Complainant

Prayer: Criminal Revision Case is filed under Section 397 r/w 401(1) of Cr.P.C praying to call for the records and set aside the conviction imposed in the Judgment of the Learned Additional District Sessions Judge cum Fast Track Court No.1, Coimbatore made in C.A.No.180 of 2011 dated 07.10.2011 by partly modifying the order dated 21/07/2011 passed in CC No.44/2009 on the file of the Judicial Magistrate No.I, Pollachi.

For Petitioner : Mr.Umapathi

For Respondent : Mrs.P.Kritika Kamal
Government Advocate (Cr1.Side)

J U D G M E N T

This revision petition is preferred by the accused who was found guilty by the trial Court and the appeal preferred by him was negatived by the Lower Appellate Court.

2. The Appellant is the 1st accused in C.C.No.44 of 2009. This revision petitioner along with one Gopinath was

tried for offences under Sections 294(b) and 332 of I.P.C. The trial Court held this revision petition guilty. For offence under Section 294(b) of I.P.C imposed fine of Rs.1,000/- in default 15 days S.I and for offences under Section 332 of I.P.C imposed 1 year S.I and fine of Rs.2,000/- in default 2 months S.I. The period of sentence already undergo ordered to run concurrently.

3. Aggrieved by the conviction and sentence this revision petitioner and Gopinath (A2) preferred C.A.No.180 of 2011. The Lower Appellate Court acquitted both the appellants/accused from charge under Section 294(b) of I.P.C. Confirmed the conviction of the revision petitioner for offence under Section 332 of I.P.C, hence the present revision petition.

4. The case of the prosecution is that the accused Balakrishnan and Gopinath were the Conductor and driver of the private SRTS transport bus plying from Pollachi bus stand. Nataraj (PW.1) and Umamakeswaran (PW.2) were the driver and conductor of Tamil Nadu State Transport Corporation "hereinafter referred as "TNSTC" Bus plying from Sethumadai to Pollachi. On 13.12.2008, at about 10.20 a.m when the Government Bus driven by PW.1 entering the Pollachi Bus stand to park in the bay, the accused blocked the way and refused to move their bus. When Mr.Natarajan requested the 1st accused Balakrishnan, Conductor of private SRTS transport bus to move the bus, Balakrishnan and Gopinath started abusing him. Balakrishnan (A1) hit Mr.Natarajan with a bag filled with iron bolts. Natarajan sustained head injury and was taken to the hospital for treatment.

5. The respondent police registered a complaint against the conductor and the driver of the private SRTC transport bus for offences under Sections 294(b), 332 and 506(ii) of I.P.C.

6. The charges were framed accordingly based on the materials collected during the investigation.

7. To prove the case, the prosecution has examined 9 witnesses and marked 8 Exhibits.

8. The trial Court, after considering the evidence of injured witness PW.1 and the eye witness PW.2 which has been corroborated with the wound certificate Ex.P.4 and the material object M.O.1 held both the accused guilty. Convicted Balakrishnan (A1) for offences under Sections 294(b) and 332 of I.P.C. Convicted Gopinath A2 for offence under Section 294(b) of I.P.C.

9. On appeal, the Lower Appellate Court held that the prosecution though proved offence under Section 332 of I.P.C for the injury caused to the defacto complainant by the 1st accused, failed to prove the charge under Section 294(b) of I.P.C regarding utterance of word in a public place causing annoyance to others. Against the conviction under Section 332 of I.P.C the present revision petition.

10. The learned counsel appearing for the revision petitioner/accused would submit that the Courts below have erroneously relied upon the evidences of PW.1 and PW.2. Convicted the accused without proper understanding that these two witnesses are interested witness and not telling the truth. Since, there was some conflict between the crew members of private bus and the Government bus regarding the timing and collection, a false complaint was lodged against the revision petitioner. The place at which the complaint received from PW.1 itself doubtful, in view of the contradiction between the evidences of PW.1 and PW.8. The evidence of PW.1 is not corroborated by PW.2 regarding the place the complaint Ex.P.1 given. The alleged occurrence has taken place in public. but no independent witnesses were examined by the prosecution. All the witnesses for the prosecution are employees of "TNSTC." They are co-works of PW.1 and PW.2. The police has not properly investigated due to bias. Suppressing material facts and true version of the case, the final report filed. Since the Courts below have not taken note of the contradictions and the biased investigation the judgment of conviction has caused prejudice to the revision petitioner.

11. The learned Government Advocate (Crl.Side) appearing for the respondent would submit that the prosecution has proved through the Court that on 13.12.2008 the accused and PW.1 engaged themselves in a wordy quarrel regarding their timing. The revision petitioner without any provocation had hit PW.1 on his head with a plastic bag filled with iron bolts. The injured persons was treated by the doctor attached to the Government Hospital, Pollachi. PW.6 Dr.Yasodarani had deposed about the nature of injury sustained by PW.1, the bag filled with iron bolts were recovered under mahazar Ex.P.8, it is marked as M.O.1. The injured victim PW.1 has identified M.O.1. His evidence is corroborated by the other witness to the occurrence PW.2. The presence of PW.1 and PW.2 at the said place, during the occurrence is natural. Their evidence is cogent and reliable. Therefore, the judgment of the Lower Appellate Court has to be confirmed.

12. In response, the learned Counsel appearing for the appellant would emphasis that the defacto complainant and the accused were crew members of the passenger bus operated by the

private individual and the Government respectively. Due to conflict in timing, word quarrel has aroused. There is no evidence to prove the alleged injury was caused by the revision petitioner. The doctor who treated PW.1 admits in the cross examination to the suggestion that the injury found on the forehead of PW.1 might have caused due to fall on sharp iron material. PW.1 in his chief examination has deposed that he was taken to the hospital by Conductor Umamaheswarn (PW.2). The police recorded the statement at the hospital and Ex.P.1 is the complaint given by him. This witness has deposed that due to the head injury, he sustained bleeding and his shirt got bloodstain. But the police has not recovered the blood stained shirt and sent for Serology test. The contradiction in the previous statement of PW.1 recorded by the police during the investigation and the deposition before the trial Court not been properly appreciated by the Courts below. For the said reasons, the learned counsel would submit that the benefit of doubt should given to the accused/revision petitioner.

13. Per contra, the learned Government Advocate (Crl.Side) would submit that the prosecution has proved the guilt of the accused to the core through PW.1. The injured witness (PW.1) and PW.2 to PW.5 are witnesses to the occurrence. The accused has cross examined these witnesses to the Court but could not impeach their credibility. Mere because they are all staff members of TNSCT, their evidence cannot be doubted. Their presence in the scene of occurrence is natural and they have deposed what they have seen. For causing injury and deterred a public servant from discharging his duty, the revision petitioner has been rightly convicted for the said offence.

14. The complainant and the accused were working in Government transport service and in private transport Company respectively. Their presence on the day of occurrence not disputed. The injury noted in the wound certificate Ex.P.4 is proved beyond doubt through doctor PW.6 (Dr.Yashdha Rani) and the injured victim (PW.1) with the corroborate evidence of PW.2 and others. In the said circumstances, failure to recover the bloodstain shirt pales to insignificant. The accused does not dispute that PW.1 is a public servant. By preventing their bus entering the bay amounts to deterring public servant from discharging his duty. When PW.1 has requested the accused to give way, he has not only refused to give way but also attacked him and caused injury. Therefore, the finding of the Courts below holding the revision petitioner guilty for offence under Section 332 of I.P.C is sustainable.

15. Regarding the punishment, the learned Counsel for the revision Petitioner would submit that the revision petitioner who was employed in the private transport company is

removed from service and presently the revision petitioner is without any gainful employment. If the petitioner is detained in prison, he will be put to great hardship. The incident took place in the heat of passion, without any pre-meditation, leniency in sentence may be shown.

16. Considering the submission and the circumstance under which the crime being committed, the punishment of imprisonment is modified to three months Simple Imprisonment.

17. Accordingly, the Criminal Appeal is Partly Allowed. The period of sentence for offence under Section 332 of I.P.C is modified to imprisonment for the period of three months S.I and fine of Rs.2,000/- in default 15 days S.I. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

bsm

To,

1. The Additional District Sessions Judge
cum Fast Track Court No.1,
Coimbatore.
2. - do - through The Principal Sessions Judge,
Coimbatore.
3. The Judicial Magistrate No.I, Pollachi.
4. - do - through The Chief Judicial Magistrate,
Coimbatore.
5. The Inspector of Police,
Pollachi East Police Station,
Coimbatore.
6. The Public Prosecutor,
High Court, Madras.

+1cc to M/s.N.Umapathi, Advocate, S.R.No.19855

Criminal Revision Case No.749 of 2013

VP(CO)
SSM(01/04/2019).