

Bail Slip

The Appellant/Accused namely Veerakumar, was directed to be released on bail as per the order of this court dated 13.9.2011 made in MP.No.1/11 in CrI.R.C.No.1231/2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2018

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CrI.R.C.No.1231 of 2011

Veerakumar,
Aged about 42 years,
S/o. Vadivel,
Colony Street, Thirukuvalai,
Nagapattinam District.

... Petitioner/Accused

Vs.

State Represented by
Inspector of Police,
Thirukuvalai Police Station,
Nagapattinam District,

... Respondent/Complainant

Prayer: Criminal Revision filed under Sections 397 and 401 Cr.P.C. to set aside the Judgment passed by the Learned District and Sessions Judge, Nagapattinam in Criminal Appeal No.11 of 2008 dated 05.07.2011 in partly allowing the Judgment passed by the Learned Assistant Sessions Judge (Sub Judge), Nagapattinam by Judgment in S.C. No.134 of 2007 dated 01.02.2008 and may pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

For Petitioner : Mr.S.Ranjith Kumar

For Respondent : Mr.S.Thankira

Government Advocate

O R D E R

This civil revision petition has been filed by the first accused. Aggrieved by the Judgment made in criminal appeal No.11 of 2008, on the file of the District and Sessions Judge, Nagapattinam, confirming the Judgment of the learned Assistant Sessions Judge, Nagapattinam made in S.C. No.134 of 2007 convicting the petitioner for an offence under Sections 341 and 307 IPC and sentencing to pay a fine of Rs.200/- and in default to undergo one month S.I. for the offence under

Section 341 IPC and sentenced to undergo seven years R.I. [modified to 5 years R.I. by the Appellate Court) and to pay a fine of Rs.1,000/- and in default to undergo three months S.I. for the offence under Section 307 IPC.

2. The case of the prosecution in a nutshell:-

2.1. P.W.2 is a resident of East Street, Thirukuvalai. A2 was residing just opposite to the house of P.W.2. A1 & A2 had elicited intimacy and A1 used to visit the house of A2. This was objected by the residents of the street. With a view to resolve the same, the Panchayat was conducted in the house of one Pavadaisamy (PW-4) on 07.02.2004 and it was decided that A1 & A2 should not meet each other. This incident created enmity between A1 & A2 and P.W.2.

2.2. On the same day i.e. 07.02.2004, at about 08.45 pm near Thirukuvalai market place in front of the barber shop belonging to P.W.6, when P.W.2 was coming in that way, A1 & A2 waylaid him and at the instigation of A2, A1 assaulted P.W.2 with an Aruval in his head as a result of which he sustained three injuries in the head and in the course of averting the attack, also sustained a cut injury in the right hand little finger.

2.3 On the said attack, P.W.2 fell down and P.W.7 who was standing near the shop and who witnessed the occurrence along with P.W.1 informed the wife of P.W.2 [PW-3] and all the three of them took P.W.2 to the Hospital.

2.4 P.W.1 gave a complaint to P.W.14 which was reduced into writing [Ex.P.1] and in the presence of P.W.7, M.Os.1 to 4 were seized under Ex.P.2 mahazar. The Police prepared observation mahazar, Ex.P.3 in the presence of P.W.8. A1 was arrested on 09.02.2004 by P.W.15 and M.Os.5 to 9 were seized in the presence of P.Ws.10 and 11.

2.5 P.W.2 was treated by P.W.12 and he has recorded the injuries in the accident register which was marked as Ex.P.7. The following injuries were recorded by P.W.12.

First injury:- Measuring 3x1 c.m on the right side frontal.

Second injury:- Measuring 4x1 c.m on the right parietal region.

Third injury:- Measuring 6x1 c.m on the left parieto occipital region. P.W.12 also noted 1x1/2 c.m laceration injury on the right little finger.

3. P.W.15 undertook the investigation and examined witnesses. On the completion of the investigation, a final report was laid for an offence under Section 341 and 307

r/w.109 IPC and the trial Court framed charges against both the accused persons for the said offences.

4. The prosecution examined P.W.1 to P.W.15 and mark Ex.P.1 to Ex.P.11 and also M.O.1 to M.O.11, in order to substantiate its case.

5. The trial Court after considering the oral and documentary evidence and on assessing the facts and circumstances of the case, was pleased to hold that the prosecution has proved the case beyond reasonable doubts and convicted both the accused persons for an offence under Section 341 IPC. The Petitioner herein who was A1 was also found guilty for the offence under Section 307 IPC and A2 was acquitted in so far as the charge under Section 307 r/w.109 IPC.

6. A2 did not choose to file any appeal against the conviction under Section 341 IPC. However, A1 aggrieved by the conviction and sentence passed by the trial Court, filed a appeal before the District and Sessions Court, Nagapattinam. The Appellate Court on appreciation of the entire materials placed on record, concurred with the findings of the trial Court in so far as the conviction is concerned. Insofar as the sentence is concerned, the appellate Court thought it fit to modify the sentence insofar as the offence under Section 307 IPC is concerned from seven years to five years R.I. Aggrieved by the said Judgment, the present revision petition has been filed.

7. The learned Counsel for the petitioner Mr.S.Ranjith Kumar submitted that the prosecution has not established the motives behind the crime. He further submitted that P.W.2 in his evidence had only stated that he was attacked from the back side and he did not see the real assailant. The learned counsel further contended that even though the prosecution has heavily relied upon the evidence of P.W.1 and P.W.7, who are the eye witnesses, there are lots of discrepancies in their evidence. The learned Counsel further contended that M.O.4 which was the weapon, was not even shown to the Doctor P.W.12 and there was no clear cut evidence correlating the injury and the weapon used to cause the said injury. The learned counsel also contended that the another injury as recorded by P.W.12 in Ex.P.7 does not attract conviction under Section 307 of IPC. The Learned Counsel further contended that the police on hearing about the incident did not go to the hospital and get the statement of P.W.2 and register an FIR. Rather the complaint was said to be given by P.W.1 at about 1.30 Am., on 08.02.2004 and therefore respondent police have taken time to build up a case in favour of the prosecution and therefore the same requires the interference of this Court in exercise of its revisional jurisdiction.

8. Per contra the learned Government Advocate (Crl.side) would submit that the evidence of P.W.1 and P.W.7 coupled with the evidence of P.W.2 and the evidence of Doctor P.W.12 and the injuries sustained by P.W.2 recorded in Ex.P.7, would clearly clinch the case of the prosecution and the prosecution has proved the case beyond reasonable doubts. The learned Counsel further contended that even assuming the prosecution did not prove the motive behind the incident, in a case where there is an eyewitness for the incident, motive becomes irrelevant. The Learned Counsel further contended that both the Courts below have properly appreciated the oral and documentary evidence and have come to a correct conclusion and in the absence of perversity in the findings of both the Courts below, this court exercising its revisional jurisdiction should not interfere with the Judgment passed by both the Courts below.

9. This court has carefully considered the submissions made on either side. P.W.2 who is the injured witness has clearly spoken his evidence about the relationship between A1 and A2 and also about the Panchayath that took place in the presence of P.W.4 on 07.02.2004. P.W.4 also in his evidence clearly speaks about the Panchayath that took place between 9.00 am to 10.00 am on 07.02.2004 in his residence and he has also spoken about the presence of P.W.2 at the time of the Panchayath. This court is therefore of the view that this was the incident that triggered the subsequent attack which was made on P.W.2. More particularly, due to the fact that the incident happened on the very same day at about 8.45 pm. Therefore, the prosecution did establish the motive behind the incident.

10. The evidence of P.W.1 and P.W.7 who are the eyewitness clearly establishes the fact that both A1 and A2 were present in the scene of occurrence and A1 attacked P.W.2 with Aruval [M.O.4] as a result of which P.W.2 sustained three injuries in his head and one injury in the little finger in his right hand. The evidence of the eyewitness has not been in any way discredited in the course of cross-examination. There is no reason for this court to disbelieve the evidence of P.W.1 and P.W.7 and both the Courts below have properly appreciated the evidence of both these witnesses and have given categorical findings. P.W.3 who is the wife of P.W.2, who was not eyewitness, was informed by P.W.1 and she rushed to the scene of occurrence, and she along with P.W.1 and P.W.7 took P.W.2 to the hospital. Therefore, the incident as such has also been clearly established by the prosecution.

11. The evidence of P.W.7, P.W.8, P.W.9, P.W.10 and P.W.11 clearly establishes the recovery and seizure of articles which have been marked by the prosecution as M.O.1 to M.O.11. P.W.5 was the person who had taken P.W.2 in his Maruthi Van to the hospital.

12. The contention of the learned Counsel for the Petitioner that even though the police went to the hospital and saw P.W.2, rather than taking statement from P.W.2 and registering FIR based on the same, chose to take a complaint from P.W.1 and the same was registered as an FIR only on 08.02.2004 at 1.30 am. P.W.14 who was the police officer who registered the FIR has stated in his evidence that immediately after receipt of the information from the hospital, he went to the hospital and he saw P.W.2 in an unconscious state and was not in a position to speak. Therefore, he was not able to take statement from P.W.2. Therefore, P.W.14 chose to record the statement of the eyewitness P.W.1 and reduce it into a complaint. The fact that this complaint came to be registered at 1.30 Am., clearly shows that the respondent police have taken all the steps to get the FIR registered at the earliest point of time. Just because the FIR was registered based on the statement of P.W.1, the same does not in anyway take away the credentials of FIR, since P.W.1 was an eyewitness to the incident.

13. Insofar as the contention of the learned Counsel that the wound and the weapon were not properly correlated by P.W.12 Doctor, the Doctor does state in his evidence that the nature of injuries found in P.W.2 was capable of being caused if a person is attacked with an arruval. In fact the Doctor, was also confronted in the cross-examination in this regard, had given cogent answers. Therefore, this court does not find any merit in the submission made by the learned Counsel for the petitioner in this regard.

14. The last submission made by the learned counsel for the petitioner that the nature of the injury sustained by P.W.2 does not warrant a conviction under Section 307 IPC, also does not have any force. To constitute an offence under Section 307 IPC, what is required is that

- (a) the death of a person should have been attempted
- (b) that such death was attempted to be caused by, or in consequence of the act of the accused and
- (c) that such act was done with an intention of causing death or that it was done with an intention of causing such bodily injury sufficient in the ordinary course of nature which is likely to cause death.

15. To justify a conviction under Section 307 IPC, it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances and may even, in some cases, be ascertained without any reference at all to the actual wounds. In short, inflicting of serious injuries is not all necessary in order to convict a person under Section 307 IPC.

16. This Court does not find any illegality, infirmity or perversity in the judgment of both the Courts below. This Court sitting in revisional jurisdiction cannot re-appreciate the facts, unless the Courts below have rendered perverse findings on the facts. There is no ground to interfere with the judgments of both the Courts below.

17. In the result, this revision petition is dismissed. The trial Court namely the Assistant Sessions Judge, Nagapattinam is directed to immediately issue Non-Bailable-Warrant to the petitioner and secure him in order to make him undergo the remaining sentence. The period already under gone by the petitioner must be set off under Section 428 Cr.P.C.

18. This Court records its appreciation to Mr. S.Ranjith Kumar learned counsel appeared on behalf the petitioner, who was appointed as the Legal Aid Counsel, for thoroughly preparing the case and assisting the Court in this criminal revision petition.

Sd/-
Assistant Registrar (Audit)

//True Copy//

Sub Assistant Registrar

AT
To

1. The Judicial Magistrate No.2, Nagapattinam.
- 2.-do- Thro' the Chief Judicial Magistrate,
Nagapattinam.
3. The Assistant Sessions Judge, (Sub Judge)
Nagapattinam.
4. The Inspector of Police,
Thirukuvalai Police Station,
Nagapattinam District.
5. The Public Prosecutor, High Court, Madras.

Copy to: The Secretary Legal Service Authority,
High Court, Madras.

Cr1.R.C.No.1231 of 2011

MG (CO)
EU (28/08/2018)

<https://hcservices.ecourts.gov.in/hcservices/>