

Bail Slip

The Appellants 1 & 2/Accused 1 & 2 viz., 1. Gunasekaran S/o Anand 2. G. Kumaresan @ Kumaresbose S/o Gokuldoss, are released on bail as per order of this court dated 03.02.2011 made in M.P.No.1 of 2011 in Cr1.R.C.No.137 of 2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2018

CORAM

THE HON`BLE MR.JUSTICE N.SATHISH KUMAR

Cr1.R.C.No.137 of 2011

1. Gunasekar

2. G. Kumaresan @ Kumaresbose

... Petitioner/Appellants/Accused 1 & 2

Vs

State by

The Inspector of Police,
F-2, Egmore Police Station
Chennai

[Cr.No.820/2000]

... Respondent/Respondent/Complainant

Criminal Revision Case filed under Section 397 r/w 401 Cr.P.C. to set aside the judgment passed by the learned VII Additional Sessions Judge, Chennai in C.A.No.106 of 2009 dated 09.12.2010 confirming the trial Court judgment made in C.C.No.10509 of 2000 dated 25.05.2009 on the file of the XIV Metropolitan Magistrate, Egmore, Chennai.

For Petitioner : Mr.G. Pavendhan

For Respondent : Mr.R. Ravichandran

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O R D E R

This revision has been filed against the judgment of the first Appellate Court viz., VII Additional Sessions Court, Chennai in C.A.No.106 of 2009 dated 09.12.2010, confirming the judgment of the XIV Metropolitan Magistrate, Egmore, Chennai, in C.C.No.10509 of 2000 dated 25.05.2009 for the offences under Section 341, 326 r/w 34 I.P.C.

2. The brief facts leading to file the revision case is as follows:

2.(a) P.W.1 and accused are auto drivers. P.W.2 is the resident of Egmore. On 28.8.2000 at about 11.00 p.m. when P.W.1 came out from the house to the Tea shop near the Junction of Halls Road and Samireddy Road, due to the previous enmity, the accused restrained P.W.1. When the 1st accused caught hold of P.W.1, A2 stabbed him with knife on his both hands. P.W.1 was taken to the hospital. Before that P.W.1 lodged complaint Ex.P.1 before P.W.6 Investigating Officer, who registered the complaint Ex.P.1 and registered the case in Cr.No.820 of 2000 under Section 341, 324 I.P.C. F.I.R. was marked as Ex.P.4. P.W.6 arrested the accused on the same day and sent them for remand. P.W.4 Medical Officer admitted P.W.1 in the hospital and found a stab wound on left hand 1 1/2" x 1/2" deep and on the right hand a stab wound 3" x 1/2" deep. P.W.1 was treated for the lacerated injury of 2.5 cm. near the left hand wrist and 1.7 cm. on his left hand arm and the bone was broken. P.W.4 has given wound certificate Ex.P.3 in which he has opined that the nature of the injury was grievous. P.W.5 has given further treatment to the P.W.1. After completion of the investigation P.W.6 lodged final report. The trial Court on the basis of the materials and evidence found the accused guilty under Section 341 and 326 r/w 34 I.P.C. and sentenced them as follows:

Accused	Conviction	Sentence
A1 & A2	u/s. 341 I.P.C.	One month simple Imprisonment each
	u/s.326 I.P.C.	Six Months Rigorous Imprisonment each .

Further, the sentences were directed to run concurrently. The First Appellate Court has confirmed the above conviction and sentence, against which the present revision came to be filed.

3. The learned counsel for the revision petitioner would submit that the evidence of P.W.1 and P.W.2 are inconsistent with each other and P.W.1 has not identified the accused properly. Different version has been spoken by the witnesses. Material Objects have also not seized by the Investigating Officer. The place of occurrence is also not established and no bloodstain found in the place of occurrence by the Investigating Officer. Hence the prosecution case is highly doubtful. Therefore, prayed for allowing the revision.

4. Learned Government Advocate would submit that the injuries noted by the doctor on the body of P.W.1 was properly explained by the P.W.1. P.W.1 also clearly spoken about the nature of the injuries and motive. Though there are minor contradiction regarding the scene of occurrence and the non-seizure of the material objects by the investigation same not affected the prosecution case. The courts below on the basis of clear evidence of the witnesses regarding involvement of the accused in the occurrence causing grievous injuries to P.W.1, convicted the accused and there is no materials to interfere the conviction and sentence of the trial court and first appellate court. Hence he prayed for the dismissal.

5. Perused the entire records. P.W.1 in his evidence has stated that on 28.08.2000 while he came out from his house to the nearby tea shop two persons came and restrained him one among them i.e., second accused stabbed him. P.W.2 in his evidence has stated that only A1 caused stab injury. The evidence of P.W.1 and P.W.2 read with other witnesses clearly show that immediately after the occurrence, P.W.1 went to the police station and lodged complaint and thereafter went to the hospital. The first information has been lodged promptly without any delay. Therefore this Court is of the view that there is no circumstance to disprove the evidence of P.W.1 with regard to the occurrence.

6. P.W.4 evidence clearly shows that P.W.1 was injured with stab injury. Merely because Material Objects were not seized by the investigating officer, that is not the determinative factor to hold that the entire occurrence is false. Hence, non recovery of material objects is not fatal to the prosecution. It is to be noted that the occurrence took place in the junction of Halls Road and Samireddy Street, Egmore, Chennai at about 11.30 p.m.. That area is always busy, that too the occurrence took place in the night time, it is highly difficult to collect each and every material objects by the investigating officer. The injured P.W.1 has clearly spoken about the motive and the manner in which he was assaulted. That itself is sufficient to base the conviction as against A2. The injuries sustained by P.W.1 have also clearly spoken by the Medical Officer and Exs.P.2 and P.3 were also marked in this regard. All these facts have clearly proved the guilty of the 2nd accused.

7. P.W.1 was injured by A2. Though P.W.1 in his evidence has spoken that two persons attacked him, he has not identified A1 during his examination. P.W.2 though spoken about the injuries, he has not spoken about the injuries caused by A1. Therefore, it is highly unsafe to convict A1 on the assumptions

and surmises and merely on the fact that A1's name is found in the F.I.R. Hence, A1 is entitled for acquittal. As discussed above the conviction and sentence as against A2 is confirmed.

8. Though the trial Court has convicted accused under Section 326 I.P.C., to prove the nature of the grievous injury, the prosecution has not produced any medical records, like case sheet, X-ray etc., In the absence of such evidence, this court cannot be recorded conviction under Section 326 I.P.C. And therefore A2 is liable to be found guilty only under Section 324 I.P.C. Accordingly the conviction recorded by the trial court as against A2 under Section 326 is set aside and he is convicted under Section 324 of I.P.C. Since there is no evidence to show that A2 restrained P.W.1, he is acquitted from the charge under Section 147 I.P.C.

9. Taking into consideration of the nature of the dispute and the 2nd accused has not taken any undue advantage this court is of the view that the conviction and sentence of two months R.I.would meet the ends of justice.

10. Accordingly, the revision is partly allowed and the conviction of A2 under Section 326 I.P.C. is modified to under Section 324 I.P.C. and convicted to undergo rigorous imprisonment for two months. The period of incarceration already undergone by A2 is ordered to be set off. A2 is found not guilty under section 341 I.P.C.and acquitted from that charge. A1 is acquitted of all charges. The trial Court is directed to take necessary steps to secure A2 to serve the remaining period of sentence.

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

1. The VII Additional Sessions Judge, Chennai
 2. The XIV Metropolitan Magistrate, Egmore, Chennai.
 3. The Public Prosecutor, High Court, Madras.
- +1 CC to Mr.G. Pavendhan, Advocate sr 17494.

Cr1.R.C.No.137 of 2011

GP(CO)
SP(26/04/2018)