

Bail Slip

The appellant/accused namely Veerasekaran S/o.Thayumanasamy be and hereby was denoted to be released as bail vide cort order dt 19/12/2011 in MP.1/2011 in CRL.R.C.No.1785/2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2018

CORAM:

THE HON'BLE MR.JUSTICE N. ANAND VENKATESH

Crl.R.C.No.1785 of 2011

Veerasekaran ... Petitioner/Appellant/Accused

..Vs..

The State
Rep. Inspector of Police,
Valivalam Police Station,
Presently at Thirukuvalai Police Station.

...Respondent/Respondent/Complainant

PRAYER: Criminal Revision Petition filed under Section 397 r/w 401 of read with 401 of Criminal Procedure Code, 1973, against the dismissal of Criminal appeal in Crl.A.No.66 of 2008 dated 16.08.2011 on the file of District and Session Judge, at Nagapattinam except the modification of the sentence in confirming the order of conviction passed by the learned Judicial Magistrate No.II, Nagapattinam in C.C.No.69 of 2002 dated 29.09.2008.

For Petitioner : M/s.G.Keerthana

For Respondent : M/s.S.Thankira

Government Advocate (Crl.Side)

O R D E R

This Criminal Revision Petition has been directed against the judgment of the District and Sessions Court, Nagapattinam made in Crl.A.No.66 of 2008 confirming the judgment of the Trial Court in so far as conviction under Section 326 IPC is concerned and modifying the sentence from two years to one year simple imprisonment and fine of Rs.3,000/- and in default to undergo six months S.I.

2.The case of the prosecution in brief:-

2.1. On 10.01.1999 at 12.45 p.m when P.W.1 was working in his field, the petitioner/accused came with an Aruval and caused a cut injury on the right hand and also on the right hand wrist of P.W.1. According to the prosecution P.W.1 is the eye witness and P.W.3 also came to the scene of occurrence on hearing the cries of P.W.1. P.W.4 also stands in the same footing to that of P.W.3.

2.2. Immediately thereafter, P.W.1 was taken to Tiruthuraipundi Government Hospital and from there, he was taken to Thanjavur Medical College Hospital. The police has taken the statement of P.W.1 in the hospital and registered an FIR on 11.01.1999 (Ex.P.12) for the offences under Section 326 and 506 (ii) IPC in Crime No.7/1999. The FIR was also sent to the Court on the same day.

2.3. P.W.10 is the Medical Officer who treated P.W.1 has noted down the following injuries:-

1) cut injury measuring 10 X 3 X 2 c.m above the postero medial aspect of the middle 1/3rd right fore arm ulna also found fracture.

2) cut injury measuring 15 X 7 X 4 c.m over the posterior aspect of middle 1/3 of right hand exposing blood muscles and nerves.

P.W.11 was the Medical Officer who treated P.W.1 at Thanjavur Medical College Hospital, has stated that X-ray was taken and fracture was found in ulna and humerus bones. Even though, X-ray was not marked, Ex-P.8 Report given by P.W.11 was marked by the prosecution, to substantiate the above said fracture.

2.4. After FIR was registered by P.W.14, he went to the scene of occurrence and prepared the Observation Mahazar Ex-P.2 in the presence of witness. Subsequently, the petitioner was arrested on 12.01.1999 by P.W.15, the Investigating Officer and based on his confession, seizure was made and sketch was also prepared which were all marked as Ex-P.14 to Ex-P.16.

2.5. P.W.16 Investigating Officer took the statement of witnesses and on completion of the investigation filed a final report against the petitioner for the offences under Section 326 and 506 IPC.

2.6. The Trial Court took cognizance of the final report and framed charges against the petitioner for an offences under Sections 326 and 506 (ii) IPC. Prosecution examined P.W.1 to P.W.16 and marked Ex.P.1 to Ex.P.20 and MO.1 to MO.4, in order to substantiate the case.

2.7. The Trial Court on examination of the oral and documentary evidence, convicted the petitioner for the offence under Section 326 IPC and acquitted the petitioner for an offence under Section 506 (ii) IPC. The petitioner was sentenced to undergo two years simple imprisonment and to pay a fine of Rs.3,000/- and in default to undergo six months simple imprisonment.

2.8. The petitioner aggrieved by the said judgment, preferred an appeal before the District and Sessions Court, Nagapattinam. The Appellate Court on appreciation of the oral and documentary evidence concurred with the findings of the Trial Court in so far as the conviction is concerned. However, the Appellate Court on taking in to consideration, the fact and circumstance of the case was pleased to modify the sentence from two years to one year simple imprisonment. Aggrieved by the same the present Criminal Revision petition has been filed.

3. M/s.G.Keerthana, the learned counsel appearing for the petitioner would submit that in the earliest statement that was made before the Doctor by P.W1, he has categorically stated that he was attacked by four known persons. However, while giving the complaint before the police, only the name of the petitioner was mentioned. Admittedly, there was previous enmity between the parties and therefore the learned counsel would submit that the petitioner has been roped in this case. The learned counsel for the petitioner further submitted that there was a delay in registering the FIR. Even though, the incident took place at 12.45 p.m on 10.01.1999, the FIR was registered only on 11.01.1999 at about 2.30 p.m and there is no reason for such a delay since the police station is only 10 kilo metres from the scene of occurrence. The learned counsel further submitted that the X-ray which is a vital document in order to come to the conclusion whether there was fracture of bone, was not marked in this case by the prosecution. The only reason given by the prosecution in not marking X-ray is that the X-ray was destroyed by termite bite. Therefore, without the X-ray being marked, both the courts below had erroneously come to the conclusion that the injuries suffered by P.W.1 are grievous injuries. The learned counsel further submitted that P.W.2 is a close relative of P.W.1 and is an interested witness and none of the other witnesses examined by the prosecution were eye witnesses to the incident. The learned counsel also made a plea before this Court to modify the sentence, if in the event, this Court concurs with the findings of conviction given by both the Courts below.

4. Per contra, M/s.S.Thankira, learned Government Advocate (Crl.Side) would submit that the evidence of P.W.1 and P.W.2 clearly go to show that it was the petitioner who attacked P.W.1 with Aruval and caused grievous injuries to him. The learned Government Advocate (Crl.Side) further contended that even though X-ray was not marked, in Ex-P.8, the report prepared by P.W.12 which was based on the X-ray taken on P.W.1, It has been clearly mentioned about the fracture of ulna and humerus bone. That apart, P.W.11 has also spoken about the X-ray taken for P.W.1. The learned counsel further contended that the incident, the injury and also the involvement of the petitioner in the crime has been sufficiently established by the prosecution beyond reasonable doubts. Both the Courts below have elaborately considered the evidence available on record and have rendered their findings on appreciation of the oral and documentary evidence and therefore, there is no ground for this Court to interfere with the same, in exercise of the revisional jurisdiction.

5. This Court has carefully considered the submissions made on either side and also taken in to the consideration, the materials available on record.

6. The evidence of P.W.1 and P.W.2 read with the evidence of P.W.3 to P.W.5 clearly goes to show that the incident did happen on the fateful day. The evidence of P.W.1 and P.W.2 clearly fixes the petitioner to be the assailant and this has not been in any way discredited in the course of cross examination. It is true that P.W.1 had stated before the Doctor that four known persons had attacked him. Taking into consideration the previous enmity, this Court feels that P.W.1 has attempted to exaggerate incident. In cases of this nature, the Court has to remove the chaff from the grain and find out the truth behind the statement. The evidence of P.W.2 who is an eyewitness clearly established the involvement of the petitioner in the offence. Even though, P.W.2 is a related witness, not all related witnesses can be termed as interested witnesses under all circumstances.

7. The evidence of P.W.3 to P.W.6 also becomes a relevant fact under Section 6 of the Evidence Act since all of them had come to the scene of occurrence on hearing the cries from P.W.1 and seen P.W.1 suffering with the injuries and their acts are so connected with the fact in issue, so as to form part of the same transaction. A cumulative reading of the evidence of P.W.1 to P.W.6 clearly establishes the involvement of the petitioner in the crime.

8. The next important issue is with regard to the non marking of the X-ray by the prosecution. It is relevant to refer to the judgments rendered by this Court, which reads as follows:-

1) Nallasingam and others Vs. State reported in (1993) M.L.J (Crl.)

"13) Coming to the question of conviction and sentence for the third accused is concerned, for the reasons stated above, it is seen that P.W.5 has specifically claimed the half fracture of the bone was visible through injury No.1 found on the person of P.W.1 and that was being X-rayed. But admittedly no X-ray has been filed into court nor relied on in the context of the said claim made by P.W.5. It was well laid and accepted principle of law that the X-ray taken by the radiologist to sustain the nature of the injury is to be produced before a court of law and that evidence given by the Radiologist, the gravity and the nature of the injury has to be subscribed as clearly laid down under Section 320 of the Indian Penal Code, but consequently, no attempt has been made by prosecution in this case to let in any evidence on this score.

2) i) Sampth and two others Vs. State represented by Sub Inspector of Police, Dusi Police Station reported in 2000-2-L.W. (Crl.) 861

"3) However, as far as the first accused is concerned the question that still survives for consideration is as to whether his conviction for the offence under Section 325 of the Indian Penal Code is legal. In this respect the learned counsel for the petitioner would argue that the doctor's opinion that one of the injuries to P.W.1 is grievous in nature is based on his reading of the X-ray of the injured P.W.1. P.W.5 would submit that X-ray was taken. Unless the X-ray is before the Court, it cannot be legally sustained that the nature of the injury stated to have been sustained by P.W.1 was grievous in nature. I have perused the judgments of the Courts below in this context and I find that X-ray was taken for P.W.1 with regard to the injury found on his left hand. That X-ray is not marked. The opinion of P.W.5 in Ex.P.2 and his oral evidence that P.W.1 had sustained grievous injury must get the support from the X-ray. Unless, the X-ray is exhibited before the court, the Court would not be in a position to come to a conclusion that P.W.1 sustained grievous injury or not. The burden is on the prosecution to

establish this fact by exhibiting the X-ray, which they have not done for the reasons best known to them. In the absence of X-ray relating to P.W.1 it cannot be legally accepted that P.W.1 it cannot be legally accepted that P.W.1 had sustained grievous injury."

9. It is true that it is only the X-ray which can specifically point out whether the injured person really suffered a fracture in the bone in order to bring the case under the requirements of Section 320 IPC. In this case P.w.12, Doctor who treated the petitioner at Thanjavur Medical College Hospital, has given a report which is marked as Ex-P.8. This report was prepared by him after taking into consideration the X-ray that was available at that point of time. In the said report, he has noted the fracture of the ulna and humerus bones. Even in the course of evidence, P.W.12 has spoken about the fracture that was sustained by P.W.1 on account of the attack made by the petitioner. Therefore, even in the absence of X-ray, this Court can safely rely upon the evidence of P.W.12 and also Ex.P.8 report marked, through him, in order to come to the conclusion that P.W.1 suffered fracture in the ulna and humerus bone.

10. The prosecution has established the case beyond reasonable doubts against the petitioner and both the Courts below have thoroughly appreciate the evidence available on record and have come to the conclusion that the petitioner has committed the offence. This Court does not find any illegality or perversity in the findings of both the Courts below and concurs with the findings of the Courts below, Insofar as the conviction of the petitioner under Section 326 IPC is concerned.

11. Insofar as the sentence is concerned, this is an incident which helped in the year 1999 and a long time has lapsed since the incident took place and the petitioner has also under gone imprisonment both during the pre-trial stage as well as after the judgment of the Appellate Court. The petitioner is the sole bread winner of the family. Taking into consideration the totality of the circumstances of case, this Court is of the considered view that the sentence needs to be modified.

12. Accordingly, the sentence of one year simple imprisonment is modified to the period already undergone by the petitioner. However, this is a fit case where compensation has to be imposed against the petitioner. The petitioner is directed to deposit a compensation of sum of Rs.10,000/- before the Trial Court within a period of four

weeks from the date of receipt of a copy of this order and in default to undergo six months simple imprisonment. On such deposit, the Trial Court is directed to issue notice to P.W.1 and permit him to withdraw the entire compensation amount deposited by the petitioner. If the petitioner fails to deposit the compensation amount, the Trial Court is directed to ensure that the petitioner suffers the default sentence.

13. The Criminal Revision Petition is partly allowed to the extent indicated above.

14. This Court places on record its appreciation to M/s.G.Keerthana, learned Junior counsel who presented the case after thorough preparation and assisted the Court in disposing of this Criminal Revision Petition.

Sd/-

Assistant Registrar(Audit)

//True Copy//

Sub Assistant Registrar

dss

To

1. The learned Judicial Magistrate No.II,
Nagapattinam.
- 2.The Chief Judicial Magistrate,
Nagapattinam
3. The District and Session Judge,
Nagapattinam.
4. The Inspector of Police,
Valivalam Police Station,
Presently at Thirukuvalai Police Station.
- 5.The Superintendent Central prison, trichy.
- 6.The Public Prosecutor,
High Court, Madras.

+1 cc to M/s.G.Keerthana & R.k.Ayyappan Advocate SR.NO.
51451

CrI.R.C.No.1785 of 2011

KJI (CO)

ASK(20/08/2018)

27.07.2018



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