

BAIL SLIP

C.Kesavan, (Accused) S/o.Chinna Appavu was granted Bail in and by the order of this court dated 25.02.2011 made in Mp.1/2011 in Crl.R.C.No.295/11 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 24.04.2018

ORDERS PRONOUNCED ON : 07.06.2018

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Crl.R.C.No.295 of 2011

C.Kesavan

..

Petitioner

versus

State, rep by its
Inspector of Police,
Nellikuppam Police Station,
Nellikuppam,
Cuddalore District.

..

Respondent

Prayer: Criminal Revision Petition is filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the records pertaining to the order dated 21.06.2010 in C.A.No.90 of 2008 on the file of the learned Additional District Sessions Judge [Fast Track Court No.2], Cuddalore confirming the order dated 20.11.2008 in S.C.No.264 of 2007 on the file of the Principal Assistant Sessions Judge, Cuddalore, set aside the same and acquit.

For Petitioner : Mr.C.Sivakumar

For Respondent : Ms.T.P.Savitha

Government Advocate [Crl. Side]

O R D E R

Being aggrieved over the judgment dated 21.06.2010 passed by the learned Additional District Sessions Judge [Fast Track Court No.2], Cuddalore in C.A.No.90 of 2008, the petitioner, who is the first accused in S.C.No.264 of 2007 has filed this revision.

2. In the Trial Court, the case of the prosecution is as follows:

2.1. The petitioner and the de facto complainant are the neighbours. Prior to the alleged occurrence, due to the property dispute the petitioner [A-1] is having the previous enmity with one Rangasamy, who is the de facto complainant. On 08.09.2003, at about 5.00a.m., the present petitioner [Kesavan] and his wife [Kowslaya] waylaid P.W.1 [Rangasamy] and P.W.2 [Radhakrishnan] and by using the iron rod assaulted the P.W.2. Due to the assault made by the petitioner, P.W.2 sustained injuries on his lips, cheek, 3 tooth are also broken. In the course of same transaction, the wife of the petitioner assaulted P.W.1 by using the stick and caused simple injury over the chest and back side of P.W.1. Further, they made criminal intimidation and thereby, they committed the offences punishable under Sections 341, 326, 323, 506[iii] and 307 IPC.

2.2. After taking cognizance, the learned Judicial Magistrate No.I, Cuddalore, committed the case to the Court of Sessions, Cuddalore District, in which, the case was taken on file as S.C.No.264 of 2007 and subsequently made over to the learned Principal Assistant Sessions Judge, Cuddalore, for disposal. In the said Court, 11 witnesses were examined on the side of the prosecution. Further, 7 documents were marked as Ex.P.1 to Ex.P.7. Subsequent to that, after adopting all formalities, the Trial Court came to the conclusion that the present petitioner was found guilty for the offences under Sections 341 and 325 IPC. In the judgment the petitioner was convicted and sentenced to pay a fine of Rs.1,000/- for the offence punishable under Section 341 IPC, in default to undergo 6 months simple imprisonment. Further awarded Rigorous Imprisonment for 3 years and a fine of Rs.3,000/- for the offence punishable under Section 325 of IPC, in default to undergo 6 months simple imprisonment. Against which, the petitioner filed Criminal Appeal [C.A.No.90 of 2008] before the learned Additional District Sessions Judge [Fast Track Court No.2], Cuddalore.

2.3. At the end of appeal, the conviction and sentence awarded by the Trial Court is modified to the extent that this petitioner was found guilty for the offence punishable under Section 325 IPC alone. After modifying as above, the punishment awarded for the offence under Section 325 IPC is confirmed. Against which, the petitioner being the first accused has filed this revision to check the correctness of the judgments rendered by the above two Courts.

3. The learned counsel appearing for the petitioner submitted that only because of the previous enmity, a false case

has been foisted against this petitioner. Further, he pointed out that so many contradictions are found in the evidences given by the prosecution witnesses.

4. It is true that previous to the alleged occurrence, the petitioner and the de facto complainant are having the previous enmity in respect to the immovable property. However since the previous enmity is a double edged weapon, we cannot come to the conclusion that the false case has been foisted against the petitioner due to the previous enmity. In the First Information Report, the de facto complainant has clearly mentioned the date, time and the manner of the assault made by the petitioner and his wife. Further mentioned the nature of injuries sustained by P.W.1 and P.W.2. Even though the First Information Report has been registered by the Police with the delay of 4 days from the date of occurrence, P.W.10, who is the Sub-Inspector of Police, Nellikuppam Police Station, stated in his evidence that on 08.09.2003 itself, the alleged complaint was received from the P.W.1. Further, he stated in his evidence that only after enquiry, the case has been registered on 12.09.2003. In the said circumstances, we cannot come to the conclusion that the complaint was lodged belatedly.

5. On going through the cross-examination of P.W.1, the answers given by him is not in the form of impeaching the trustworthy of evidence given in the chief examination. As already discussed, the previous enmity alone is not a reason for lodging the false complaint. Further, on going through the evidence of P.W.2, who is also the victim in this case have narrated the entire happenings as stated by P.W.1. On going through the evidence of P.W.3, he also corroborated the evidence given by P.W.1. In the said circumstances, except P.W.3, the other eye-witnesses examined on the side of prosecution had not supported the case of the prosecution. However, on going through the evidence given by P.W.7, who is the Doctor, attached with E.S.I. Hospital, who treated P.W.1 and P.W.2 discloses that P.W.2 suffered a lacerated injury on the upper lip, measuring about 2 x 2, 1 x 1 and 3 of his upper tooth had been partly broken. So, applying ration of the evidence given by P.W.1 and P.W.2 with the evidence of P.W.7 it shows the Expert evidence also corroborated the evidence of P.W.1 and P.W.2. That apart, P.W.10 and P.W.11, being the Police Officers gave evidence clearly with regard to the registration of the case and the manner of investigation.

6. In the said circumstances, the learned counsel appearing for the revision petitioner would submit that the property, which was mentioned by P.W.1 and P.W.2 have not been recovered and marked as M.Os. Further, he added that the above lacuna shows that the alleged occurrence have not been happened

as stated by P.W.1 and P.W.2. On considering the said arguments, it is true in this case no property was recovered by the Investigating Officer. Further, the Mahazar which was prepared for the recovery of the material object also have not been marked as exhibits. In this regard, the prosecution has not stated any reason for none recovery of the material object which was used by the petitioner for the commission of offence. Even according to the evidence of Doctor [P.W.7], the weapons have not been shown to the Doctor at the time of recording his statement. This aspect may be the omission on the part of the prosecution. But that alone is not a ground for setting aside the entire judgment passed by the learned Additional District Sessions Judge [Fast Track Court No.2], Cuddalore.

7. In this aspect, the learned counsel appearing for the petitioner made submission before this Court that confirmation of the appeal will lead more enmity between the petitioner and the de facto complainant and thereby, he prayed to modify the sentence.

8. It is true that as per the evidence given by P.W.1 to P.W.3 and other witnesses supported the case of the prosecution reveals that the petitioner and the de facto complainant are living in the same village and they are having the property nearer to each other. In the said circumstances, if the conviction and sentence awarded by the First Appellate Court is confirmed, it will lead further complications in the life of the petitioner and the de facto complainant. Moreover, the petitioner is attending the Court from the year 2003 onwards. Hence, this Court is having the considered opinion that it is necessary to modify the punishment awarded to the petitioner.

9. Now, on going through the earlier order passed by this Court in M.P.No.1 of 2011 in CrI.R.C.No.295 of 2011 dated 25.02.2011, it appears that the present petitioner has undergone the sentence of imprisonment right from 04.01.2011 to 25.02.2011, so nearly 2 months he enjoyed the imprisonment. Hence, this Court is of the considered opinion that the sentence of imprisonment of 3 years for the offence punishable under Section 325 IPC awarded by the learned Additional District Sessions Judge [Fast Track Court No.2], Cuddalore in C.A.No.90 of 2008 dated 21.06.2010 to the petitioner is modified to the extent of 6 weeks and the same was ordered to set off under Section 428 Cr.P.C. The fine of Rs.3,000/- imposed and confirmed by the Court below are confirmed.

10. In the result, this Criminal Revision Case is partly allowed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Judicial Magistrate No.1, Cuddalore.
- 2.The Chief Judicial Magistrate, Cuddalore.
- 3.The Additional District and Sessions Judge
[Fast Track Court No.2],
Cuddalore.
- 4.The Principal Assistant Sessions Judge,
Cuddalore.
- 5.The Inspector of Police,
Government of Tamil Nadu,
Nellikuppam Police Station,
Nellikuppam,
Cuddalore District.
- 6.The Public Prosecutor,
High Court, Madras.
- 7.The Superintendent,
Central Prison,
Cuddalore.
- 8.The Record Keeper,
Criminal Section,
High Court, Madras.

+2ccs to Mr.C.Sivakumar, Advocate, S.R.No.35253

Cr1.R.C.No.295 of 2011

na(co)
cs/18/06/18