

Bail Slip

Mr.Mariappan S/o.Pachiappan accused in C.A. 78 of 2012 on the file of Principal Sessions Judge, Erode, dated 17/09/12 condirming the Judgment dt.14/03/12 in C.C.183/08 on the file of the Judicial Magistrate, Bhavani was enlarged on Bail Vide this Court order dt 27/02/13 in M.P.1/13 in CrI.RC.252/13.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2018

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CrI.R.C.No.252 of 2013

Mariappan

...Petitioner

Vs.

State by Inspector of Police,
Andhiyur Police Station.
(Crime No.21/2008)

...Respondent

PRAYER: Criminal Revision filed under Section 397 and 401 of Criminal Procedure Code, against the common judgment of the learned Principal Sessions Judge of Erode District at Erode in C.A. No.78 of 2012 dated 17.09.2012 confirming the conviction and sentence passed by the learned Judicial Magistrate, Bhavani, C.C. No.183 of 2008 dated 14.03.2012.

For Petitioner : Mr.A.K.Kumaraswamy Senior Counsel
for Mr.S. Kaithamalai Kumaran.

For Respondent : Mr.R.Ravichandran
Government Advocate(crl side)

J U D G M E N T

The case of the prosecution is that P.W.1 is the residence of Pallipalayam Village. P.W.2 is the wife of P.W.1. P.W.3 is the relative of P.W.1. P.W.4 is the brother of P.W.1. P.W.5 is the brother- in-law of P.W.1. P.W.6 is the another brother of P.W.1. The petitioner is also resident of the same village.

2. On 11.01.2008 at about 12.00 noon while P.W.1 was standing in front of bank at Anthiyur, the petitioner came near P.W.1 and said that he would give Rs.15,000/- and requested P.W.1 to give back his lands. However, P.W.1 did not agree for that. There arose some quarrel. Therefore, P.W.1 left to his house. Subsequently, at night hour, the petitioner entered into the house of P.W.1. There was no lock inside the house of P.W.1. While the petitioner opening the door on hearing the sound, P.W.1 woke up. Immediately, the petitioner by saying that in spite of repaying the amount, you are not giving my land and saying so, the petitioner attacked P.W.1 below the left eye with hammer and also attacked on the back of the head. At that time, P.W.1 shouted. On hearing the sound, others woke up and thereafter the petitioner ran away from the house. While running, he thrown away the hammer MO1 in front of the house of P.W.1. Immediately, P.W.1 was admitted in the hospital. While he was in the hospital, the police came and recorded his statement Ex.P.1. P.W.2, the wife of P.W.1 while she was sleeping in the house at 2.00 am, the petitioner entered into the house and attacked P.W.1 with hammer. P.W.3 also witnessed the occurrence at the relevant time. Likewise, P.W.4 also witnessed the occurrence. P.W.5 after hearing the sound of P.W.1 rushed to the spot and at the time the petitioner was running from the place of occurrence. P.W.6 also seen the petitioner from the place of occurrence i.e., from the the house of P.W.1. Thereafter all of them taken P.W.1 at 2.00 am to the Hospital and admitted him for treatment. On the next day, in the presence of P.W.7, the police prepared the observation mahazer Ex.P2 and seizure mahazer Ex.P3, under which the police seized the hammer. The police also seized lungi and shirt under Ex.P4. P.W.8 also signed in the observation mahazer. His signature is Ex.P5. P.W.9 the Medical Officer attached to Government Hospital at Erode at 2.45 am while he was on duty at Government Hospital, Anthiyur. P.W.1 came for treatment and he has stated that he was attacked by known person at 2.00 am with hammer. P.W.9 has noted 5x2x3 cm cut injury on the left cheek and 3x2x2 cm deep cut injury on the back of the head. P.W.9 admitted P.W.1 in the hospital and referred to Government Hospital, Erode. Ex.P6 is AIR Copy. P.W.10, the Head Constable at the relevant time, after receipt of the intimation Ex.P7 went to the Government Hospital, Anthiyur and recorded the statement of P.W.1 and registered the case in Crime No.21 of 2008 under Section 324 IPC and the printed FIR is Ex.P8. He forwarded the FIR and complaint to the Judicial Magistrate and copies to the superiors. P.W.11 took up the case for investigation and went to the place of occurrence and prepared obeservation mahazer and rough sketch Ex.P9 and also seized MO1 hammer in the place of occurrence. He examined the witnesses and recorded their statements. After examining the Medical Officer, finally he

laid the charge sheet for the offence under Section 324 IPC.

3.The learned Magistrate, after completing the trial, in C.C.No.183 of 2008 convicted the petitioner. Against which he preferred the Crl.A.No.78/2012 before the Principal Sessions Judge, Erode. The Principal Sessions Judge, after hearing, confirmed the conviction and sentence passed by the Judicial Magistrate. Against the said judgment, the petitioner herein has preferred the present revision before this Court.

4.The learned counsel for the revision petitioner submitted that the weapons used in the case is hammer. Further P.W.1 to P.W.3 have stated that occurrence took place during the night, at the time of occurrence, place of occurrence was so dark. Therefore, the petitioner involved in the occurrence itself is doubtful and also the weapon is also doubtful. The prosecution has not proved the case as projected in the case. Therefore, once doubt arises, the benefit of doubt goes to the favour of the petitioner. In this case the petitioner is entitled for the benefit of doubt. Both the Courts below have committed an error that it is not possible for the cut injuries would be caused through the seized weapon.

5.The learned Government Advocate would submit that the P.W.1 is the injured witness and also eye witness, he has clearly spoken that petitioner only came to his house and attacked with the said weapon. P.W.2 is the wife of P.W.1, eye witness and the Doctor who has opined, that injury can be caused even through the Ex.P1 Hammer. The prosecution has proved its case beyond reasonable doubt that the petitioner has committed offence under Section 448 IPC.

6.Heard and perused the materials available on record.

7.In this case, P.W.1 clearly stated that the petitioner came to his house in the midnight and attacked with hammer, P.W.2 also stated that at the time of occurrence the accused was having the hammer, while the petitioner attacking P.W.1, it is depend upon the place, hit on the body of the person the nature of the injury would be caused. It is not always necessary that the cut injury cannot be caused by blunt weapon but only sharp edged weapon. However, P.W.1 and P.W.2 has clearly stated that the petitioner used the weapon. The witnesses have spoken that the petitioner attacked with hammer, the Doctor also clearly opined that the injury sustained by P.W.1 can be caused through the hammer.

8.Under these circumstances, the prosecution has proved the case beyond reasonable doubt through the eye witnesses and also the motives. Therefore, this Court cannot

sit as appellate Court and re-appreciate the entire evidence, this Court has to see any perversity in the judgment passed by the Courts below in appreciation of evidence, reading of the judgments of the Magistrate and also first appellate Court, they have given a reason for conviction and this Court does not find any perversity in the judgments of both the Courts below. Lower Appellate Court is final Court of fact finding, it appreciated the evidence and given reason for conviction while exercising revisional jurisdiction, this Court cannot substitute its own view particularly when there is no perversity in appreciation of evidence and finding thereon.

9. Therefore, this Court does not find any merit in the revision. Therefore, the revision stands dismissed.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

AT

To

1.The Principal Sessions Judge,
Erode.

2.The Judicial Magistrate,
Bhavani.

3. The Inspector of Police,
Andhiyar Police Station.

4.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.A.K.Kumaraswamy, Advocate sr.58725

Cr1.R.C.No.252 of 2013

ss(co)
nr 23/09/2019