

**BAIL SLIP**

Arumugam, S/o. Kaliaperumal, male aged about 50 years, (Accused No.2) and Balasubramanian, S/o. Gnanarathinam, male, aged about 49 years, (Accused No.3) were released on Bail vide the order of this Court dated 10.03.17 made in CrI.M.P(MD)No.108/2017 in CrI.RC.(MD) No.14 of 2017.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.09.2018

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CrI.RC.(MD)Nos.306 & 14 of 2017

CrI.RC.(MD)No.306/2017:

B.Krishnan : Revision Petitioner / De facto
Complainant / De facto Complainant
in CrI.Rc.(MD).No.306 of 2017

Vs.

1.The State represented by
The Inspector of Police,
Cantonment Police Station,
Trichy.

(In Crime No.436 of 2014) : 1st Respondent / Complainant /
Complainant

2.Jegan

3.Adha @ Arumugam

4.G.Balasubramanian

: Respondents 2 to 4 / Accused Nos.1 to
3/ Accused Nos.1 to 3
in CrI.Rc.(MD).No.306 of 2017

CrI.RC.(MD)No.14/2017:

1.Arumugam

2.Balasubramanian

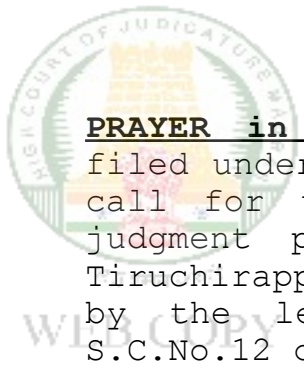
: Revision Petitioners / Accused Nos.2
and 3 in CrI.Rc.(MD).No.14 of 2017

Vs.

The Inspector of Police,
Cantonment Police Station,
Trichy.

(In Crime No.436 of 2014) : Respondent / Complainant
in CrI.Rc.(MD).No.14 of 2017

PRAYER in CrI.Rc.(MD).No.306 of 2017: Criminal Revision Petition filed under Section 397 read with 401 of Criminal Procedure Code to call for the records in C.A.No.72 of 2015 and set aside the judgment passed by the learned III Additional Sessions Judge, Tiruchirappalli dated 09.12.2016 in confirming the judgment passed by the learned Chief Judicial Magistrate, Tiruchirappalli in S.C.No.12 of 2015, dated 13.07.2015 and convict the accused.



PRAYER in CrI.Rc. (MD) .No.14 of 2017: Criminal Revision Petition filed under Section 397 read with 401 of Criminal Procedure Code to call for the records in CrI.A.No.64 of 2015 and set aside the judgment passed by the learned III Additional Sessions Judge, Tiruchirappalli, dated 09.12.2016, in confirming the judgment passed by the learned Chief Judicial Magistrate, Tiruchirappalli, in S.C.No.12 of 2015, dated 13.07.2015 acquit the revision petitioners.

For Petitioners	: Mr.D.S.Haroon Rasheed
For R1	: Mr.A.Robinson
	Government Advocate (CrI. side)
For R2	: Mr.C.M.Arumugam
For R3 and R4	: No Appearance
	(In CrI.RC.(MD).No.306 of 2017)
For Petitioners	: Mr.R.Pandi Maharaja
For Respondent	: Mr.A.Robinson
	Government Advocate (CrI. side)
	(In CrI.RC.(MD).No.14 of 2017)

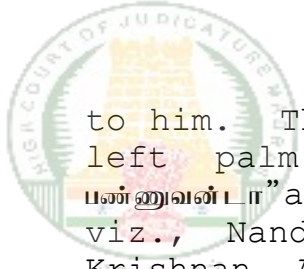
COMMON JUDGMENT

Heard the learned Government Advocate (CrI. side) appearing for the official respondent in both Appeals.

2.The grounds raised in these revision cases have been perused carefully.

3.The learned counsel appearing for the revision petitioners are not ready, despite the adjournments granted at the request of the revision petitioner in CrI.RC.(MD).No.306 of 2017 on 12.04.2018, 23.04.2018, 20.06.2018, 28.06.2018, 10.07.2018, 02.08.2018, 16.08.2018, 27.08.2018, 30.08.2018 and 07.09.2018. Therefore, after hearing the learned Government Advocate (CrI. side) appearing for the official respondent, this Court passes the following order:-

4.Based on the complaint given by one B.Krishnan / de-facto complainant, the respondent / Police has registered a complaint against Jegan, Adha @ Arumugam, G.Balasubramanian and two others. After investigation, the respondent Police filed a final report on 26.09.2014. On 10.06.2014, at about 10.00 p.m., near Othakadai in Trichirappalli District, when the de-facto complainant along with witnesses Nandakumar, Lohesh and Balajeyakandhan were talking in front his shop, at that time, due to previous enmity between the first accused and Krishnan-de-facto complainant, the Accused No.1-Jegan, Accused No.2-Adha @ Arumugam and Accused No.3-G.Balasubramanian, came there with Knife, Scissors and iron rod and the first accused using filthy languages and with intention to kill the de-facto complainant to cut the neck of the de-facto complainant with a knife uttering the words "இவனை குத்திக் கொல்லுங்கடா". The victim tried to defend him with his hand hence the attack fell on his left palm. The Accused No.2 Adha @ Arumugam stabbed Krishnan on his left chest uttering the words "இத்தோடு ஒழிந்து போடா" and caused injury



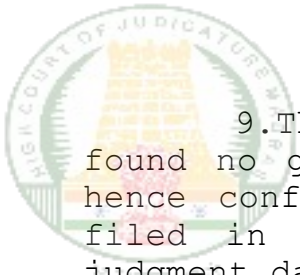
to him. The third accused attacked the de-facto complainant on his left palm with iron rod by uttering the words “உன்னை காலை பண்ணுவேன்” and caused injuries to him. When the friends of Krishnan, viz., Nandakumar, Lokesh and Balajeyagandhan came to rescue of Krishnan, Accused No.2 stabbed Nandakumar on his flank and back and Accused No.3 assaulted Balajeyagandhan with iron rod on the forehead, left wrist and right ankle. Based on the final report of the respondent / Police, the Trial Court had framed charges under Sections 294 (b) and 307 I.P.C. against Accused No.1, 294(b) and 307 (2 counts) against Accused No.2 and 294(b), 307 and 324 (2 counts) against Accused No.3. To prove the case, the prosecution had examined 15 witnesses as P.W.1 to P.W.15 and 19 Exhibits were marked on the side of the Prosecution as Ex.P.1 to Ex.P.19 and three material objects viz., knife, scissors and iron rod used to assault the victim were marked as Mo.1 to Mo.3.

5. On appreciation of the evidence, the Trial Court has found that the charges against the first accused has not been proved and charge under Section 294(b) IPC against Accused Nos.1 to 3 has also not been proved and hence acquitted them from the above charges.

6. The Trial Court, considering the evidence of the injured witnesses (PW-1 to PW-4) and the medical evidence, held that the other charges against Accused Nos.2 and 3 are proved and convicted Accused No.2 for the offence of attempt to commit murder of the de-facto complainant (PW-1) and his friend Nandakumar (PW-3) and sentenced him to undergo 3 years rigorous imprisonment with fine of Rs.3000/- in default to undergo 2 months simple imprisonment each for the offence under Section 307 (2 counts).

7. The Trial Court also convicted Accused No.3 for causing grievous hurt on Logesh (PW-2) and on Balajeyagandhan (PW-4) and sentenced him to undergo 1 year rigorous imprisonment with fine of Rs.1500/- in default to undergo 1 month simple imprisonment each for the offence under Section 324 IPC (2 counts). The charge under Section 307 IPC against this accused was not proved, but the material evidence available was not sufficient to hold him guilty of attempt to murder PW-4, but enough to convict him under Section 324 IPC and hence the Trial Court has sentenced him under Section 324 IPC instead of 307 IPC.

8. Aggrieved by the Trial Court's judgment, the Accused Nos.2 and 3 preferred Criminal Appeal No.64 of 2015, before the learned Third Additional Sessions Judge, Tiruchirappalli, challenging the conviction and sentence. Whereas the de-facto complainant [victim witness (PW-1)] preferred an appeal in C.A.No.72 of 2015, against the acquittal of Accused No.1 to Accused No.3 from the charge under Section 294(b) IPC, acquittal of the first accused from the charge under Section 307 IPC and also the acquittal of Accused No.3 from the charge under Sections 307 and 324 IPC (1 count).



9. The First Appellate Court on re-appreciation of evidence, found no ground to interfere the judgment of the trial court and hence confirmed the same and dismissed both the criminal appeals filed in C.A.No.64 of 2015 and C.A.No.72 of 2015 vide common judgment dated 09.12.2016.

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10. Aggrieved by the Judgment of the First Appellate Court confirming the Judgment of the trial court, the victim (de-facto complainant) has preferred CrI.R.C.No.306 of 2017 and the second and the third accused have filed CrI.R.C.No.14 of 2017.

11. The primary contention raised in CrI.R.C.(MD).No.14 of 2017 filed by the accused Nos.2 and 3 is that while the Court below is rightly held that the prosecution has failed to prove the guilt of Accused No.1 against whom, the motive is attributed by the de-facto complainant, these two accused ought not to have been found guilty and convicted. The mistaken identity of Adha / Arumugam had been pointed out during the examination of witnesses. The Court below has not properly appreciated the same. The findings of the Court below that the injury caused by Accused No.2 with intention to cause death to the victim is not based on proven facts. While so, the second accused ought not to have been convicted under Section 307 I.P.C. for the same reason recorded by the Court to acquit Accused No.1. The Accused No.3 should have been found not guilty

12. Whereas, in the Revision Petition preferred by the de-facto complainant, challenging the acquittal of Accused No.1, the motive to kill is proved through the utterance of the accused persons, while causing of injury on him was not properly appreciated by the trial Court as well as the Appellate Court. The utterance of Accused No.1 at the time of attacking the de-facto complainant “இவனை குத்திக் கொல்லுங்கடா” and also the utterance of accused No.2 “இத்தோடு ஒழிந்து போடா” while causing the injuries were not taken into consideration by the trial Court as well as the Appellate Court to prove the intention of the second accused. Further the de-facto complainant would also challenge the order of the Courts below, acquitting the accused persons for the offences under Section 294 (b).

13. Heard the learned counsels on either side.

14. Perused the records and the grounds of appeals. The evidence of de-facto complainant, who has been examined as P.W.1 and the other injured eye witnesses PW.2 to PW.4, who were present and sustained injuries, coupled with the wound certificates viz., Ex.P.6, Ex.P.8, Ex.P.10 and Ex.P.12 which list out the nature of injury caused to P.W.1, P.W.2, P.W.3 and P.W.4 proves only due to the proven overt act of the Accused Nos.2 and 3. These witnesses sustained injuries as found in the wound certificate. When there are sufficient and overwhelming evidence for convicting these two accused persons for their act of crime, the finding of the Courts below warrant no interference.



15.The trial Court as well as the Appellate Court undoubtedly show due consideration for the discrepancies found in the prosecution case, which has led to the acquittal of Accused No.1 and modifying charge from Section 307 to Section 324 I.P.C in respect of Accused No.3. The court cannot lose sight of the fact that the three persons who were sustained injuries have come to the Court and given evidence against the accused persons. The wound certificate corroborates their evidence regarding the injuries inflicted on them by the respondent / accused. The weapons which have been used to cause injury have also been seized by the prosecution and marked as Mo.1 to Mo.3. Therefore, the challenge to the impugned judgment deserve to be negated.

16.In the light of the above discussion, this Court finds no justifiable reason to interfere the judgment of the trial Court, as confirmed by the Appellate Court. There is no illegality or infirmity, which requires interference.

17.Both these Revision Cases stand dismissed, accordingly.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar (CS-II)

To

1.The III Additional Sessions Judge,
Tiruchirappalli.

2.The Chief Judicial Magistrate, Tiruchirappalli.

3.The Judicial Magistrate No.II, Tiruchirappalli.

4.The Inspector of Police,
Cantonment Police Station, Trichy.

5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

6.The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court, Madurai. **(2 Copies)**

+1CC to Mr.D.S.Haroon Rasheed, Advocate, SR.No.85226

+1CC to Mr.C.M.Arumugam, Advocate, SR.No. 85825

Cr1.RC.(MD) Nos.306 & 14 of 2017
19.09.2018

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