

**BAIL SLIP**

The Revision Petitioners/Accused were ordered to be released on bail vide order of this Court dated 30.01.2013 made in MP(MD) No.2/2013 in CRL.R.C(MD)No.57/2013 on the file of the Madurai Bench of Madras High Court, Madurai.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 08.10.2018

DELIVERED ON : 22.10.2018

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.R.C (MD)No.57 of 2013

1.M.Mayandi

2.M.Chinna Marudupandi

3.P.Murugan

4.P.Ukkirapandi

5.M.Sekar

6.P.Paldurai

7.S.Jothi

8.R.Jeyamani

9.V.Selvi : Petitioners/ Accused

Vs.

The State rep. By
The Sub Inspector of Police,
Chekkanoorani Police Station,
Madurai.

(Crime No.713 of 2004) : Respondent/ Complainant

PRAYER: Criminal Revision Case is filed under Section 397 and Section 401 of the Code of Criminal Procedure, against the Judgment and sentence passed by the learned Sixth Additional Sessions Judge, Madurai in C.A.No.23 of 2011, dated 04.07.2012, confirming the Judgment and sentence passed in C.C.No.198 of 2005, dated 15.02.2011 on the file of the learned District Munsif-cum-Judicial Magistrate No.I, Usilampatti.

For Petitioners : Mr.N.Satheesh Kumar

For Respondent : Mr.A.Robinson,

<https://hcservices.ecourts.gov.in/hcservices/>

Government Advocate (Criminal side).

**ORDER**

The revision petitioners herein are accused 1 to 9, who were tried for the offence committed by them on 21.12.2004 at about 10 O' Clock. The complaint of one Ramesh (P.W.1) is that pursuant to the land dispute, when he was cleaning his land along with his brother, mother and relatives, A.1 to A.9 with illegal intention to cause disturbance to his peaceful possession of the property, came with weapons like aruval and sticks and with common object, trespassed into his land and assaulted him indiscriminately with their weapons. When his mother tried to prevent, she was pulled by her hair and stamped. One Vellaipandi, who came for their rescue, was also pushed down and stamped by the accused persons. Attributing overtact to each of the accused and injuries found on their body, the complaint was given for offence under Sections 147, 148, 447, 323, 324, 353 and 506(ii) IPC specifying overtact to each of the accused. The matter was investigated by the respondent police and final report was filed.

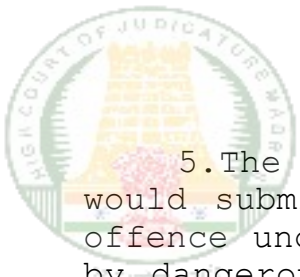
2. Pursuant to the final report, the Trial Court framed the charge against the accused as below:

- (i) A.1 : 148, 447, 326 and 506(ii) IPC;
- (ii) A.2 to A.4 : 148, 447, 324 and 506(ii) IPC;
- (iii) A.5 and A.6 : 147, 447 and 323 IPC; and
- (iv) A.7 to A.9 : 147, 447, 323 and 353 IPC.

To prove the charges, the prosecution has examined 10 witnesses and marked 8 exhibits and 1 material object.

3. The learned District Munsif cum Judicial Magistrate No.I, Usilampatti on considering the ocular evidence of the injured witness (Ramesh), the medical certificate issued by Dr. Paunraj (P.W.9), the witnesses to the occurrence Vellaipandi (P.W.2) and Ponmuthu (P.W.6) had held that due to the attack of A.1 with M.O.1, P.W.1 has sustained cut injury on his forearm. Considering the nature of the injury, the doctor has certified it as grievous injury. Accused 1 to 9 have assembled unlawfully carrying weapon and caused hurt to P.W.1, has been proved beyond reasonable doubt by the prosecution and therefore, A.1 is guilty of offence under Section 326 IPC, A.2 to A.4 are found guilty of offence under Section 324 IPC, A.5 is found guilty of offence under Section 323 IPC, A.1 to A.4 are found guilty of offence under Section 148 IPC, A.5 to A.9 are found guilty of offence under Section 147 IPC and A.1 to A.9 are found guilty of offence under Section 447 IPC. For the rest of the charges, the Trial Court has acquitted the accused for want of proof. Aggrieved by that, the accused 1 to 9 have preferred appeal before the learned Sixth Additional Sessions Judge, Madurai.

4. The lower appellate Court on appreciation of the evidence has confirmed the Judgment of the Trial Court. The present Criminal Revision case is preferred against the Judgment of the learned Sixth Additional Sessions Judge, Madurai passed in C.A.No.23 of 2011 confirming the Judgment of the Trial Court passed in C.C.No.198 of 2005.



5.The learned counsel appearing for the revision petitioners would submit that the Trial Court has erred in convicting A.1 for offence under Section 326 IPC for voluntarily causing grievous hurt by dangerous weapon while none of the witnesses would specifically attribute any particular overtact against A.1. The learned counsel would submit that the Trial Court failed to appreciate the contradiction in the testimony of P.W.1 and his complaint given to the police. In the absence of production of X-ray Report, the Courts below ought not to have held A.1 guilty for offence under Section 326 IPC.

6.In so far as the sentence and conviction for the other accused is concerned, the learned counsel would submit that a sympathetic view shall be taken regarding the sentence and the same may be modified.

7.The learned Government Advocate (Criminal side) representing the State would submit that non-production of X-ray is not a ground to disbelieve the case of the prosecution or to acquit a person for causing grievous hurt. X-ray is not a pre-condition for all injuries. It depends upon the nature of injuries caused. Omission to take X-ray or produce X-ray per se will not be a reason to disbelieve the evidence of an medical expert. Unless and until the nature of injury whether grievous or simple, could not be ascertained without X-ray.

8.In this regard, the learned Government Advocate (Criminal side) would rely upon the Judgment of this Court in Appukutti v. The State reported in MANU/TN/3723/2018. The learned Judge after considering the nature of the case has held as below:

"15.P.W.7 was the Doctor who conducted the plastic surgery on P.W.1. in order to restore the two fingers which were cut off during the incident. Even though, he speaks about the X-ray that was taken at the time when he gave treatment to P.W.1, no X-ray was marked in this case. The evidence of P.W.7 and the wound certificate clearly established the seriousness of the injury sustained by P.W.1. The non-making of the X-ray in the considered opinion of this Court, will not in any way minimise the value of the medical opinion given by P.W.7. Therefore, non-marking of the X-ray will be of no consequence and does not in any way affect the case of the prosecution.

16.Even if, the photographs (MO.2) are to be eschewed since it was not properly marked, the evidence of P.W.7 and the wound certificate marked as Ex.P.4 clearly establishes the grievous injuries sustained by P.W.1".

9.In the case in hand also though the doctor admits that the X-ray was not taken for the injury caused to A.1, the certificate



issued by him would go to show that Ramesh (P.W.1) had sustained the following injuries:

(i) 6x3 c.m. bone depth lacerated injury on left forearm;

(ii) 2x1x1/2 c.m. cut injury below his left side chin;

(iii) 1x1x1 c.m. cut injury below the second injury.

The doctor has certified that the first injury is grievous in nature. It is also to be understood that it is not a fractured injury to insist upon X-ray. Omission to take X-ray was not necessary in the opinion of the medical expert as spoken through Dr. Pounraj (P.W.9) and the injured witness has deposed about the nature of the injury and respective overtact committed by the accused persons. Hence, this Court finds no error in the Judgments of the Courts below warrants interference.

10. The weapon alleged to have used for the crime also has been recovered, marked as M.O.1 and same identified by the victim. In the said circumstances, this Court holds that the nature of first injury namely 6x3 c.m. bone depth lacerated wound in the left forearm, needs no proof through X-ray to corroborate the medical certificate that the said injury is of grievous nature.

11. In the light of the above finding, the only point which needs to be considered is whether the sentence imposed on the accused persons needs to be modified?

12. The learned counsel appearing for the revision petitioners would submit that the crime has occurred due to a sudden impulse between the relatives and after the lapse of fourteen years, the parties are living peacefully and therefore committing them to prison to undergo the remaining period of sentence, may dislocate their peaceful life.

13. Taking note of the above submission, this Court is of the view that while confirming the conviction, the sentence imposed upon the revision petitioners/accused 1 to 6 by the Trial Court and confirmed by the lower appellate Court, shall be modified.

14. From the records, this Court finds that A.1, A.2, A.3, A.6, A.7, A.8 and A.9 were arrested soon-after registration of the First Information Report on 21.12.2004 and released on bail on 29.12.2004. A.4 and A.5 were arrested on 22.12.2004 and released on bail on 29.12.2004. In the above said circumstances, instead of committing them to undergo the remaining period of sentence, this Court is of the view that while confirming the conviction, the sentence shall be modified as imprisonment period already undergone and in lieu of committing them to prison to undergo the remaining period of sentence, they shall pay fine as below:

Sl. No.	Accused	Offence	Sentence modified by this Court
1.	A.1 to A.9	447 IPC	The period of imprisonment already undergone and to pay fine of Rs.1,000/- each.
2.	A.1 to A.4	148 IPC	The period of imprisonment already undergone and to pay fine of Rs.1,000/- each.
3.	A.5 to A.9	147 IPC	The period of imprisonment already undergone and to pay fine of Rs.1,000/- each.
4.	A.1	326 IPC	The period of imprisonment already undergone and in addition to fine of Rs.1,000/- paid already, he should pay fine of Rs.4,000/-.
5.	A.2 and A.4	324 IPC	The period of imprisonment already undergone and to pay fine of Rs.1,000/- each.
6.	A.5	323 IPC	The period of imprisonment already undergone and to pay fine of Rs.1,000/-.

In total, each of the revision petitioner/accused shall pay fine as below:

- (i) A.1 : Rs.7,000/-; [Rs.1,000/- already paid]
- (ii) A.2 : Rs.3,000/-;
- (iii) A.3 : Rs.2,000/-;
- (iv) A.4 : Rs.3,000/-;
- (v) A.5 : Rs.3,000/-;
- (vi) A.6 : Rs.2,000/-;
- (vii) A.7 : Rs.2,000/-;
- (viii) A.8 : Rs.2,000/-;
- (ix) A.9 : Rs.2,000/-.

Total fine amount is Rs.26,000/-.

15. With the above said modification, this Criminal Revision Case is partly allowed.

Sd/-
Assistant Registrar(P&A)

/True Copy/

Sub Assistant Registrar(CS-II)

To

1. The VI Additional Sessions Judge,
Madurai.

2. The District Judge, Usilampatti.
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3.The Sub Inspector of Police,
Chekkanoorani Police Station,
Madurai.

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

Copy To:

The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai. **(2 Copies)**

+1CC to Mr.N.SATHEESH KUMAR, Advocate, SR.No.91043

Crl.R.C (MD) No.57 of 2013
22.10.2018

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ES/SKN/RSK/SAR 2/29.11.2018/6P/8C