

Bail Slip

The Appellant namely 1.Mahendiran S/o.Pannerselvam  
2.Chitti Babu S/o. Pakirisamy are Accused 1 and 4. in  
C.C.No.129 of 2006 dated 22.02.2011 on the file of the  
Judicial Magistrate, No.II,Karaikal directed to be released  
on bail as per order dated 12.04.2018 in MP.NO.1/11 in  
Crl.R.C.No.1232 of 2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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|------------------------------------------|--------------------------------------------|
| Date of Reserving Judgment<br>12.09.2018 | Date of Pronouncing Judgment<br>30.01.2019 |
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CORAM

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

Crl.R.C.No.1232 of 2011

1.Mahendiran

2.Chitti Babu ... Appellants/A1 and A4

Vs.

State Rep.by  
The Station House Officer,  
T.R.Pattinam Police Station,  
T.R.Pattinam, Karaikal.  
Crime No.37 of 2006 ... Respondent/Complainant

Prayer: Criminal Revision filed under Section 397 r/w 401  
of Criminal Procedure Code, to set aside the judgment  
passed by the learned Additional Sessions Judge, Karaikal  
in Criminal Appeal No.5 of 2011 dated 20.08.2011 by  
confirming the conviction and sentence imposed on the  
petitioners herein by the learned Judicial Magistrate  
No.II, Karaikal by his judgment in C.C.No.129 of 2006 dated  
22.02.2011.

For Appellants : Mr.C.Siva Kumar

For Respondent : Mr.D.Bharathachakravarthy  
Public Prosecutor (Puducherry)

## O R D E R

The convicted accused 1 and 4 are the revision petitioners. The complainant is the resident of Keezha Vanjour. He is a committee member of Liberation Tiger. Previously one Baskar was the Joint Secretary of the said part. There was previous enmity between the complainant and the Baskar. On 22.02.2008, when the complainant along with one Karthikesan was pasting notice about the meeting of Thirumalvalvan, around 12.15 hours near the house of one Gopalakrishnan, all the accused came there, way laid and questioned him about the pasting of the said poster. Therefore, a wordy quarrel broke out. At the end of the said quarrel the first accused herein assaulted him on his right hand with the help of another stump at his back. When his brother Selvamani came there, the third accused herein assaulted him with hands. The fourth accused herein also assaulted him with the help of a stump on his hand. When on Senthamizhselvan(PW3) questioned the same A2 assaulted him with his hand. Therefore, the complainant took his brother to the police station and lodged a complaint against the accused.

2. The respondent police filed final report in Crime No.37/2006 alleging that A1 is the resident of Keezha Vanjour Joint Secretary of the said party. There was previous enmity between the complainant and Baskar. On 22.02.2006 when the complainant along with one Karthikesan was pasting notice about the meeting of Thirumalvalavan, around 12.15 hours near the house of one Gopalakrishnan, all the accused came there, way laid and questioned him about the pasting of the said poster. Therefore, a wordy quarrel broke out. At the end of the said quarrel, the first accused herein assaulted on his right hand with the help of a cricket stump. The second accused assaulted him with the help of another stump at his back. When his brother Selvamani came there, the third accused herein assaulted him with hands. The fourth accused therein also assaulted him with the help of a stump on his hand. When one Senthamizhselvan questioned the same, A2 assaulted him with his hand. Therefore, the complainant took his brother to the police station and lodged a complaint against the accused.

3. During the trial, prosecution examined P.W.1 to P.W.8 and marked Exs.P.1 to P.7 and also marked MO1 to MO2. Thereafter, based upon the oral and documentary evidence, the learned Judicial Magistrate, No.II Karaikal, convicted the accused under Sections 341, 326, 324, 352 r/w 34 IPC.

4. After trial, the learned trial Magistrate has acquitted A2 and A3 and convicted A1 and A4 as stated supra. Aggrieved against the said conviction and sentence passed in the above said C.C.No.129/2006, A1 and A4 preferred an appeal in C.A.No.5/2011 and after contest, the same was dismissed and hence this revision.

5.The learned counsel for the revision petitioners submitted that the charge against A1 being one under Section 326 IPC, the medical evidence of Doctor P.W.5 and the X-ray so as to demonstrate that the injury was grievous in nature was not marked and hence relied upon the decision 1998 criminal law journal 3651 P.Johnson and others Vs. State of Kerala contended that non production of x-ray report show that the victim has not suffered grievous injury and the offence under Section 326 IPC cannot be sustained.

6.On perusal of the evidence adduced before the trial Court, it is seen that P.W.1 and P.W.2 are the injured witnesses and P.W.3 is one of the occurrence witness so also P.W.5 is Doctor who deposed that P.W.1 Moorthy sustained injury in the nature of grievous on his right hand. Though x-ray was taken, the same was not marked and further deposed that P.W.2 Selvamani sustained abrasion on the right hand and left knee and wound certificate is marked as Ex.P5. P.W.6 Doctor deposed that P.W.3 has not sustained any external injuries. In view of the admitted position that the x-ray taken in respect of alleged grievous injury said to have been suffered by P.W.1 as to the attack of A1 being not marked, this Court is of the considered view that the ratio relied upon by the revision petitioner has to be accepted.

7.Accordingly, the conviction and sentence under Section 326 IPC awarded above by both the Courts below hereby are set aside and modified as 324 IPC. Taking into consideration the entirety of the circumstances, the sentence has been modified to Rs.10,000/- fine, with regard to the injury sustained by P.W.2 by the act of the accused and also taking into consideration, the evidence of P.W.2 and the Doctor P.W.5 and Ex.P.5, this Court is of the considered view that conviction has to be sustained. However, the quantum of sentence is modified as fine of

Rs.5,000/- in this account, conviction and sentence passed by both the Courts below for the offence under Section 341 IPC against A1 and A4 are sustained and the conviction and sentence passed by the Court below for the offence under Section 326 IPC against A1 has been modified as stated supra and sentence is also modified as stated supra, so also for the accused A4, the conviction under Section 341 and 324 r/w 34 IPC is confirmed. The sentence awarded for 324 IPC is modified as indicated above.

8.This criminal revision is partly allowed to the extent as indicated above.

Sd/-  
Assistant Registrar(CS vi)

//True Copy//

Sub Assistant Registrar

AT

To

1.The Judicial Magistrate, No.II, Karaikal.

2.The Chief Judicial Magistrate, Pudhucherry

3.The Additional Sessions Judge,  
Karaikal.

4.The Public Prosecutor, Pudhucherry

+1 cc to Government Pleader (pondy) Sr.No. 7427

Crl.R.C.No.1232 of 2011

A.SK(07/08/2019)

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