

Bail Slip

The Petitioners/Accuseds 2&3 namely, 1.M.Murugesan S/o.Malli chettiyar , aged 44 years 2.M.Fathima @ Lakshmi w/o.M.Murugesan ,aged 36 years were to directed to be released on bail as per the order of this court dated 15.12.2011 in CRL MP.NO.1/11 IN CRL RC.NO.1753/2011 on the file of this Hon'ble court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.R.C.No.1753 of 2011

1. M.Murugesan

2. M.Fathima @ Lakshmi .. Petitioners/Accused 2&3

Vs.

State represented by
The Sub-Inspector of Police,
B2, R.S.Puram Police Station,
Coimbatore. .. Respondent/Complainant

Criminal Revision filed under Sections 397 and 401 Cr.P.C., against the judgment dated 16.11.2011 made in C.A.No.192 of 2011 on the file of the Additional District and Sessions Court (Fast Track Court No.1), Coimbatore, confirming the judgment dated 26.07.2011 made in C.C.No.40 of 2011 on the file of the Judicial Magistrate Court No. I, Coimbatore.

For Petitioners : Mr.S.Ashok Kumar

For Respondent : Mr.G.Ramar
Government Advocate
(Crl. Side)

ORDER

This criminal revision has been preferred seeking to set aside the conviction made by judgment 16.11.2011 made in C.A.No.192 of 2011 on the file of the Additional District and Sessions Court (Fast Track Court No.1), Coimbatore, confirming the judgment dated 26.07.2011 made in C.C.No.40 of 2011 on the file of the Judicial Magistrate Court No. I, Coimbatore.

2 The facts in brief leading to the filing of this criminal revision petition are as under:

2.1 It is the case of the prosecution that Marimuthu (PW1) was running a Mobile repair shop in Coimbatore; Amaran S/o Murugesan (A2) and Fathima (A3) came to the shop for repair work and at that time, a quarrel ensued between them; thereafter, Murugesan (A2) and Fathima (A3) came along with Sivakumar (A1) and questioned Marimuthu (PW1) as to why, he quarrelled with Amaran; in the altercation that ensued, it is alleged that Sivakumar (A1) slapped Marimuthu (PW1), Murugesan (A2) bit the right thumb of Marimuthu (PW1) and Fathima (A3) threw stone at Marimuthu (PW1), on account of which, Marimuthu (PW1) suffered injuries.

2.2 On the complaint given by Marimuthu (PW1), a case in Crime No.107 of 2011 was registered and after completing the investigation, charge sheet was filed in C.C.No.40 of 2011 before the Judicial Magistrate I, Coimbatore, against Sivakumar (A1), Murugesan (A2) and Fathima (A3) and they were convicted and sentenced as follows:

Accused	Provision under which convicted	Sentence
Sivakumar (A1)	Section 75(1)(c) of the Tamil Nadu City Police Act	Fine of Rs.500/-, in default to undergo one month simple imprisonment
	Section 323 IPC	Fine of Rs.500/-, in default to undergo one month simple imprisonment

Accused	Provision under which convicted	Sentence
Murugesan (A2)	Section 75(1)(c) of the Tamil Nadu City Police Act	Fine of Rs.500/-, in default to undergo one month simple imprisonment
	Section 324 IPC	Six months rigorous imprisonment and fine of Rs.500/-, in default to undergo one week simple imprisonment
Fathima (A3)	Section 75(1)(c) of the Tamil Nadu City Police Act	Fine of Rs.500/-, in default to undergo one month simple imprisonment
	Section 324 IPC	Six months rigorous imprisonment and fine of Rs.500/-, in default to undergo one week simple imprisonment

Sivakumar (A1) paid the fine and did not agitate the matter further. However, Murugesan (A2) and Fathima (A3) filed C.A.No.192 of 2011 before the Court of Session, which was dismissed on 16.11.2011, aggrieved by which, Murugesan (A2) and Fathima (A3) have filed the present revision petition.

3 Heard Mr.S.Ashok Kumar, learned counsel appearing for the petitioners and Mr.G.Ramar, learned Government Advocate (Crl. Side) appearing for the State/respondent.

4 The learned counsel for the petitioners submitted that the Courts below have erroneously convicted the revision petitioners under Section 324 IPC inasmuch as the injuries sustained by Marimuthu (PW1) do not support the conviction. He further contended that it is the case of the prosecution that Fathima (A3) had thrown a brick at Marimuthu (PW1), in support of which, a brick was seized under the cover of Mahazar (Ex-P3) but in Form-95 (Ex-P7), it was stated as a small stone. He further contended that, whatever seized was not even produced before the trial Court. Marimuthu (PW1) has not stated that he was attacked with a stone, but had only stated that, she (A3)

had thrown a stone at him. In the absence of the prosecution marking the stone or brick or whatever it is, after having allegedly seized it under the cover of Mahazar (Ex-

P2), a reasonable doubt arises in the mind of this Court, as to the very nature of the weapon allegedly used by Fathima (A3). As rightly contended by the learned counsel for the petitioners, the injuries sustained by Marimuthu (PW1) cannot be said to be grievous in nature. Hence, the conviction under Section 324 IPC, by the Courts below, requires interference. However, the prosecution have established that Marimuthu (PW1) had suffered injuries and the appreciation of evidence by the Courts below, on this aspect, cannot be interfered with.

5 Accordingly, the conviction and sentence imposed on the revision petitioners under Section 324 IPC are hereby set aside. The revision petitioners are instead convicted under Section 323 IPC and sentenced to pay a fine of Rs.500/- each, in default to undergo one month rigorous imprisonment. One month time is given from today, to remit the fine of Rs.500/- if not already remitted, before the trial Court. The conviction and sentence under Section 75(1)(c) of the Tamil Nadu City Police Act stands confirmed. Fine, if any, already paid by the petitioner shall be adjusted towards the fine imposed by this Court.

In the result, this revision petition is partly allowed.

Sd/-

Assistant Registrar(CS viii)

//True Copy//

Sub Assistant Registrar

nsd/dua

To

1. The Additional District and Sessions Judge, Coimbatore.

2.The Judicial Magistrate I, Coimbatore.

3. The Sub-Inspector of Police,
B2, R.S.Puram Police Station,
Coimbatore.

4. The Public Prosecutor,
Madras High Court, Chennai - 104.

+1cc to Mr.S.Ashok Kumar , Advocate SR.No. 2816

Cr1.R.C.No.1753 of 2011

A SK (29/01/2019)