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BAIL SLIP

The Petitioner/Accused Viz; Senthil was released on bail as per the Order of this Court Dated 05.10.2012 in Crl.MP.No.1 of 2012 in Crl.RC.No.1145/2012 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 19.07.2019

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.1145 of 2012

Senthil

... Petitioner

Vs

The State of Tamil Nadu
Rep. by the Inspector of Police,
Manalmedu Police Station,
Nagapattinam District.
(Crime No.136 of 2003)

... Respondent

PRAYER: Criminal Revision Case filed under Section 397 r/w 401 of Criminal Procedure Code to set aside the judgment and sentence dated 19.09.2011 in C.A.No.28 of 2008 on the file of the learned District and Sessions Judge, Nagapattinam, confirming the judgment and sentence dated 14.03.2008 in C.C.No.567 of 2003, on the file of Judicial Magistrate No.I, Mayiladuthurai.

For Petitioner : Mr.K.Selvaraj

For Respondent : Mr.T.Shanmugarajeshwaran
Government Advocate (Crl. Side)

O R D E R

This criminal revision case has been filed to set aside the judgment of the learned District and Sessions Judge, Nagapattinam, dated 19.09.2011 in C.A.No.28 of 2008.

2. The respondent police registered the case as against the revision petitioner in Crime No.136 of 2003. After investigating the matter, the respondent police laid a charge sheet before the learned Judicial Magistrate No.I, Mayiladuthurai. The learned Magistrate No.I, Mayiladuthurai, has taken the complaint on file in C.C.No.567 of 2003, after trial, the learned Magistrate, found that the petitioner/accused guilty for the offence punishable under Section 326 IPC, convicted and sentenced him to undergo three years Simple Imprisonment and to pay a sum of Rs.20,000/- towards compensation to P.W.1 in default to undergo six months simple imprisonment.



3. Challenging, the said judgment of the learned Magistrate No-I, the convict had filed an appeal before the learned District and Sessions Judge, Nagapattinam, in Crl.A.No.28 of 2008. After hearing the arguments, the learned District and Sessions Judge, dismissed the appeal and confirmed the judgment of the learned Judicial Magistrate No-I.

4. Aggrieved against the said Judgment passed by the learned District and Sessions judge in Crl.A.No.28 of 2008 dated 19.09.2011, the convict has filed the present Criminal Revision Case before this Court.

5. The learned counsel for the petitioner submitted that the occurrence alleged to have taken place at Chinnadurai's house on 14.03.2003 at 08.00 a.m., due to previous enmity, the petitioner attacked the defacto complainant with knife and caused grievous injury to him. On the very same day the complaint was given and also FIR was registered. But, the FIR has reached the Court only on 24.03.2003. There is an inordinate delay of 10 days. This inordinate delay is fatal to the prosecution case. He further submitted that P.W.1 has suffered injuries all over the body and he was admitted in Mayiladuturai Government Hospital on 14.03.2003. Subsequently, he was referred to Thanjavur Medical College Hospital for further treatment. The Court below failed to see that the Material Object, namely, the blood-stained cloth was not seized by the Police, no magazar prepared for the seizure of the alleged Material Objects. They have not been produced before the Court. Therefore, the non-production of the material objects with which the accused was linked to the offence is fatal to the case of the prosecution. He further submitted that P.W.1's evidence is not reliable. The other independent witnesses also turned hostile and the weapon has not been recovered from the place of occurrence. P.W.6/Selvaraj alone has stated that the petitioner ran away with knife but P.W.1 was not asked about the said knife and blood stained cloth and also the Investigating Officer has not properly investigated the matter and as such, the prosecution foisted a false case against the petitioner, which warrants interference by this Court.

6. The learned Government Advocate (Criminal Side) appearing for the respondent would submit that the Investigating Officer filed FIR immediately after receipt of information from the hospital and the evidence of P.W.1 to P.W.6 clearly show that the attack was caused by the petitioner/accused and P.W.1/injured himself has clearly spoken about the nature of attack caused on him. P.W.6 the eye witness clearly spoken about the place of occurrence and also the attack caused by the



petitioner. The Medical Officers' evidence/P.W.7 and P.W.8 clearly indicates that P.W.1 has suffered injury on the vital part on the stomach. P.W.8 is the Medical Officer attached to the Thanjavur Medical College Hospital, who had clearly spoken about the nature of surgery conducted on P.W.1. He further submitted that due to previous enmity, the petitioner attacked the defacto complainant and caused injuries.

7. Heard the learned counsel for the petitioner and the learned Government Advocate (Criminal Side) appearing for the respondent and perused the materials available on records.

8. The case of the prosecution is that on the date of occurrence, the defacto complainant was returning from the shop near one Chinnadurai house, the accused beat the defacto complainant with stick on the hand and also stabbed him on the stomach. P.W.3 also on hearing the sound of P.W.1/defacto complainant at Pillaiyar temple, rushed to the spot and found P.W.1 injured on the stomach. P.W.4 is also a resident of the same village and he has compromised the dispute between the petitioner and P.W.1 two days prior to the occurrence in respect of fence dispute. Thereafter he has also visited P.W.1 in the hospital. The Sub Inspector of Police after receipt of the information from the hospital, went to the hospital and recorded the statement of P.W.1 and examined the witnesses and recorded the statement and finally laid the charge sheet against the petitioner under Section 326 of IPC. P.W.5 also, on one day compromised the petitioner and P.W.1, in respect of the dispute over the fence. On the date of occurrence, P.W.6 was also standing near the place of occurrence along with one Murugadoss and Kannan.

9. On reading of the entire evidences on record and the judgment of the learned Magistrate No-I, Mayiladuthurai, and the Judgment of the Appellate Court, this Court finds that though the learned Magistrate has failed to appreciate the evidence, the Appellate Court is final Court of fact finding and it has rightly appreciated the facts and also dismissed the appeal. However, considering the facts and circumstances of the case, the petitioner and the defacto complainant were very known persons to each and other, in order to meet the ends of justice, the sentence of imprisonment imposed by the Courts below has to be necessarily modified.

10. Accordingly, the sentence imposed on the petitioner i.e., imprisonment for a period of three years Simple Imprisonment is modified to two years Simple Imprisonment and the compensation amount is set aside, which will meet the ends of justice.



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11. In the result, the criminal revision case is partly allowed.

Sd/-
Asst.Registrar (CS VI)

/true copy/
Sub Asst. Registrar

tta

To

1. The learned Judicial Magistrate No.I,
Mayiladuthurai
2. The learned District and Sessions Judge,
Nagapattinam

+1 cc to Mr.K.Selvaraj Advocate sr62249

Cr1.R.C.No.1145 of 2012

aa22/01/2020