

BAIL SLIP

The Petitioner/Accused namely 1)Jagannathan,S/o.Govindaraj, 2) Murugan, S/o.Kadirvel were directed to be released on bail as per the Order of this Court dated 27.09.2012 in CrI.M.P.No.1/2012 in CrI.R.C No.1149/202 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CrI.R.C.No.1149 of 2012

and

M.P.No.1 of 2012

1. Jagannathan

2. Murugan

...Petitioners/Accused

-Vs-

The State Rep. by its
The Inspector of Police,
Poraiyur,
Nagapattinam District.
Crime No.119 of 2008

...Respondent/Complainant

Prayer: This Criminal Revision filed under Section 397 read with 401 of Code of Criminal Procedure, to revise the judgment dated 09.01.2012 in C.A.No.55 of 2010 passed by the learned Sessions Judge, Nagapattinam, partly modified the judgment dated 22.04.2010 in C.C.No.131 of 2008 on the file of the learned Judicial Magistrate-II, Mayiladuthurai.

For Petitioners: Mr.Greetha Senthilkumar

For Respondent : Mr.T.Shanmuga Rajeswaran
Govt. Advocate (CrI.side)

O R D E R

The Criminal Revision Case has been filed to set aside the judgment dated 09.01.2012 in C.A.No.55 of 2010, passed by the learned Sessions Judge, Nagapattinam, modifying the judgment dated 22.04.2010 in C.C.No.131 of 2008, on the file of the learned Judicial Magistrate-II, Mayiladuthurai.

2. The respondent police has registered a case in Crime No.119 of 2008 against the petitioners for offences under Section 324 and 506(ii) IPC. After investigation, the respondent police laid a charge sheet against the petitioners for the above said offences before the learned Judicial Magistrate-II, Mayiladuthurai and the same was taken on file in C.C.No.131 of 2008.

3. Before the trial Court, in order to prove the case, the respondent police examined 8 witnesses and marked 5 documents. On the side of the defence, no oral and documentary evidence was marked. After full-fledged trial, the learned Judicial Magistrate found the first accused guilty for the offence under Section 342 IPC and convicted and sentenced him to undergo one month simple imprisonment and to pay a fine of Rs.500/-, in default, to undergo one month simple imprisonment; and the second accused was convicted for the offences under sections 324 and 506(ii) IPC and sentenced to undergo six months simple imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo one month simple imprisonment for the offence under Section 324 IPC; and sentenced the second accused to undergo three months simple imprisonment and to pay a fine of Rs.500/- in default, to undergo one month simple imprisonment for the offence under Section 506(ii) IPC.

4. Challenging the order dated 22.04.2010, the convicts have filed an appeal before the learned Principal District and Sessions Judge, Nagapattinam in C.A.No.55 of 2010. The learned Principal District and Sessions Judge, after hearing the arguments on either side, allowed the appeal in part, and the conviction and sentence in respect of the offence under Section 324 IPC against A1 and A2 was confirmed. But the fine amount imposed for the above said offence is modified as Rs.1,500/- instead of Rs.1,000/-. The second accused was found not guilty of the charge under Section 506(ii) IPC and has acquitted of the said offence. Challenging the judgment of the learned Principal District and Sessions Judge, Nagapattinam, in C.A.No.55 of 2010, dated 09.01.2012, the convicts have preferred the present revision before this Court.

5. The learned counsel for the petitioners would submit that there was no previous enmity between the petitioner and the defacto complainant. Due to wordy quarrel, P.W.1 and the revision petitioners attacked each other. The second accused is alleged to have attacked P.W.1 with aruval. However, the said weapon has not been recovered. The prosecution has failed to prove its case beyond reasonable doubt. P.W.2 is not an eyewitness, only after hearing some noise, P.W.2 came to the place of the occurrence. He is only a hearsay witness. There is material contradiction between the evidence of P.W.2, P.W.3 and

P.W.4. P.W.1 has given complaint before the respondent police and FIR has also been registered on the same day. But the same has reached the Court only on the next day, which creates doubt. Both the Courts have failed to consider all these aspects. Though the appellate Court has acquitted A2 for the offence under Section 506(ii) IPC and made observation that A1 has already undergone the period in jail, and the same would be treated as sentence. Whereas in the result portion, the learned Judge has confirmed the sentence against A1 and A2 for the offence under Section 342 IPC. The learned counsel would further submit that during the pendency of this case, A1 died. Therefore, he prays to allow this revision.

6. The learned Government Advocate (Crl. side) would submit that the revision petitioners have admitted the occurrence and P.W.1 is the injured witness. Soon after hearing the commotion, P.W.2 came out immediately. P.W.1 narrated him about the occurrence. P.W.7 Doctor, who treated the defacto complainant, has clearly stated that the defacto complainant was assaulted by known persons and also the injuries are simple in nature and it was caused by Aruval. Therefore, the evidence of P.W.1 and P.W.7, the medical officers, have corroborated the same. Both the Courts have rightly convicted the petitioners. Due to wordy quarrel, without any motive or other pre-plan, the incident has happened. Therefore, the Appellate Court has modified the sentence passed by the trial Court. Hence, there is no reason to interfere with the judgment of both the Courts below.

7. Heard the learned counsel for the petitioners and the learned Government Advocate (Crl. side) and perused the materials available on record.

8. It is the case of the prosecution that the defacto complainant is running a Brick-kiln. On 03.03.2009 at about 8.30 p.m., when the defacto complainant was proceedings to brick-kiln, the dog owned by the accused chased him and barked at him. The defacto complainant has questioned the accused regarding the dog. Suddenly, A1 caught hold the defacto complainant and the A2 cut him with Aruval on his shoulder and head. Based on the complaint given by P.W.1 the victim, the respondent police registered a case against the revision petitioners for the offence under Section 342, 324 and 506(ii) of IPC and laid charge sheet against them for the above said offences.

9. P.W.1 is the victim and he has clearly spoken that due to barking of the dog, there was a wordy quarrel between him and the petitioners, for which, A1 caught hold of the victim and A2 attacked him with aruval. Therefore, P.W.1 sustained injuries. P.W.2 is the brother of the P.W.1, after hearing noise, he went to the spot. Subsequently, P.W.1 narrated about the incident to

P.W.2. Immediately, P.W.2 took the victim and admitted in the hospital. P.W.7 the Doctor, who examined the victim, has made an entry in the Accident Register and given wound certificate viz., Ex.P3. Thereafter, P.Ws.1 and 2 went to the police station and lodged a complaint against the petitioners.

10. On a reading of the evidence of P.W.1, P.W.2 and P.W.7 and Ex.P3 the wound certificate, it is clear that P.W.1 sustained injury and the same was simple in nature. Though the aruval was not recovered, it is not fatal to the case of the prosecution. There is no reason to discard the evidence of the victim. The revision petitioners have admitted the occurrence and they have taken the defence that only due to wordy quarrel, the occurrence has happened. Therefore, mere non recovery of aruval would not make the prosecution case as false. The victim has been lodged a complaint against the revision petitioners on the same day and the FIR has also registered. The delay in filing the FIR and sending the same to the Court, has been properly explained by the prosecution. It is not fatal to the case of the prosecution.

11. Both the Courts are fact finding Courts and they have rightly appreciated the evidences and came to the conclusion and acquitted the revision petitioners.

12. This Court being a revisional Court, the scope of revision is very limited. While deciding a revision, this Court has to see as to whether there is any perversity in appreciating the evidence by the Courts below. On a reading of the entire materials, it is seen that the revision petitioners have committed the offence.

13. The first accused is no more. The learned counsel for the petitioners has produced the death certificate of the A1. This revision is dismissed as abated as against the first accused. So far as the second petitioner is concerned, the lower Appellate Court has confirmed the conviction. Considering the period already undergone, modified the fine and set aside the sentence for the offence under Section 506(ii) IPC. This Court does not find any reason to interfere with the judgement of the lower appellate Court. There is no merit in the revision.

14. Since, in paragraph No.8 of the judgment of the appellate Court, the learned District and Sessions Judge, has given a chance for reformation having regard to the ordeal undergone by the accused all these days, this Court is inclined to modify the imprisonment to the period already undergone by them during the period of investigation. However, the fine imposed for the offence under Section 324 IPC is modified as Rs.1,500/- instead of Rs.1,000/- and the fine amount imposed by

the lower Court for the offence under Section 506(ii) IPC shall be adjusted for the offence under Section 324 IPC. The sentence already undergone by the petitioner would be treated as imprisonment.

15. With the above observation and modification, this revision case is dismissed.

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Sd/-

Assistant Registrar(CJ Conf.)

//True Copy//

Sub Assistant Registrar

To

1. The Sessions Judge,
Nagapattinam

2. The Judicial Magistrate-II,
Mayiladuthurai.

3. -Do- Thro' The Chief Judicial Magistrate,
Nagapattinam.

4. The District & Sessions Judge,
Nagapattinam.

5. The Sub Inspector of Police,
Poraiyur, Nagapattinam District.

6. The public Prosecutor,
High Court, Madras.

CrI.R.C.No.1149 of 2012
and

M.P.No.1 of 2012

Kak(21/10/2019)

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