

BAIL SLIP

The Petitioners / Accused Nos.1 to 5 namely,

- 1.Karthick, S/o.Balan,
- 2.Settu, S/o.Balasundaram,
- 3.Udhaya, S/o.Jaya,
- 4.Pithagarasu, S/o.Vallikanni,
- 5.Rajee, S/o.Devaraj.

Were directed to be released on bail as per the Order of this Court dated 01.02.2012 in CrI.M.P.No.1 of 2012 in CRL.R.C.No.118 of 2012 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.04.2019

PRONOUNCED ON : 24.04.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Revision Case No.118 of 2012

- 1.Karthick
- 2.Settu
- 3.Udhaya
- 4.Pithagarasu
- 5.Rajee

...Petitioners/Appellants/Accused

vs

State rep. By Inspector of Police,
Kanchi Taluk Police Station,
Kancheepuram District.

...Respondent/Respondent/Respondent

Prayer:-

This Criminal Revision is filed under Section 397 r/w 401 Cr.P.C., against the judgment dated 20.12.2011 passed in C.A.No.27 of 2011 on the file of the District Sessions Court No.2, Kancheepuram confirming the judgment passed in C.C.No.245 of 2010 dated 17.06.2011 on the file of the learned Judicial Magistrate No.2, Kancheepuram.

For Petitioners : Mr.K.G.Senthilkumar

For Respondent : Mr.T.Shunmuga Rajeswaran,
Government Advocate (crl.side)

ORDER

This criminal revision petition is directed against the concurrent finding of the courts below. The petitioners are the accused in C.C.No.245/2010 on the file of the learned Judicial Magistrate No.2, Kanchipuram. The trial Court held them guilty of offences under sections 147 , 323 , 325, 323 r/w 149 and 325 r/w 149 IPC. For offence under section 147 IPC, sentenced A-1 to A-5 (petitioners 1 to 5) to undergo 3 months Simple Imprisonment and to pay a fine of Rs.500/- each in default to undergo one month Simple Imprisonment. For offence under section 323 IPC, A-1 (Karthic - the first petitioner) and A-2 (Settu-the second petitioner) and for offence under section 323 r/w 149 IPC, A-3 (Udaya-the third petitioner), A-4 (Pithagarasu-the fourth petitioner) and A-5 (Raji- the fifth petitioner) were Sentenced to undergo 3 months Simple Imprisonment and to pay a fine of Rs.500/- each, in default to undergo one month Simple Imprisonment. For offence under section 325 IPC, A-1 (Karthic - the first petitioner) and A-2 (Settu-the second petitioner) and for offence under section 325 r/w 149 IPC, A-3 (Udaya-the third petitioner), A-4 (Pithagarasu-the fourth petitioner) and A-5 (Raji- the fifth petitioner) were Sentenced to undergo one year Simple Imprisonment and to pay a fine of Rs.5,000/- each, in default to undergo one month Simple Imprisonment. Out of total fine amount of Rs.30,000/-, Rs 10,00/- was ordered to be given as compensation to the grievously injured person, Saravanan (PW-3).

2.Aggrrieved by the above judgment of conviction and sentence imposed by the trial Court, the petitioners herein preferred an appeal in C.A.No.27 of 2011 before the District and Sessions Court at Kanchipuram. The Lower Appellate Court after re-appreciating the evidence, confirmed the trial Court judgment and dismissed the appeal.

3.In this revision petition, the following two points are raised by the accused/petitioners for consideration which according to the learned counsel for the petitioners deem to be not considered by the courts below which has lead to miscarriage of justice:

(i) The incident of assault by the accused/petitioners alleged to have taken place on 15/08/2010 at about 4.00 pm near the residence of PWs-1 to 4. The complaint was given only on 01/09/2010 after delay of 17 days. Even though the reason for the inordinate delay in lodging the complaint not properly explained by the prosecution witnesses, the Courts below have

accepted the case of the prosecution, without taking note of the probabilities of exaggeration and falsehood.

(ii) The accused/petitioners were not identified by the prosecution witnesses for any specific overt act. The evidence of Pws -1 to 4 are vague and general, in nature. Their evidence is conflicting and contradicting to each other regarding the incident and cause for the injuries sustained by the injured. Therefore, the Courts below ought to have given the 'benefit of doubt' to the accused persons.

4. Heard the learned counsel for the revision petitioners and the learned Government Advocate (crl.side) appearing for the respondent Police. Records perused.

5. The complaint - Ex.P-1 given by PW-1 alleges that, on 15/08/2010 at about 4.00 pm, the petitioners 1 to 5 herein in an inebriated state climbed the jamun tree and plucked jamun fruits from her house garden against her protest. She and her husband (PW-2) requested them not to pluck fruits and told them that they depend on it, for their livelihood. If they want fruits, they can buy it from them. The accused persons started abusing them in obscene language. Pulled PW-1 saree and torn the dress of PW-2. When PW-3, the son of P.W.1 came out from the house, for their rescue, the accused persons started attacking PWs-2 and 3 by hands and pelting stones on them. The accused persons entered the house of P.W.1 and threatened PW-4, the wife of PW-3 that, if they go to Police and give complaint, they will kill PW-3 and rape her.

6. PWs-2 and 3 got admitted in the hospital. Meanwhile again on 20/08/2010 a four member gang armed with weapons came to their house and threatened them that, if they don't vacate the village, they will burn them all alive. They are teasing PW-4 whenever she go out from the house for shopping.

7. The respondent Police on receipt of the complaint has investigated and recorded the statements of witnesses, collected the Accident Report and filed final report. Through PWs-1 to 8, Exhibits P-1 to P-5 and M.O-1 X-Ray were marked. The prosecution has proved that on 15/08/2010, the accused persons formed an unlawful assembly near the house of PW-1; plucked jamun fruits illegally despite protest by the defacto complainant (P.W.1) and her husband (P.W.2). The accused persons attacked them with stones and caused fracture of the right hand little finger of

PW-3 which was opined as grievous injury by the Doctor - PW-6 and also caused simple injuries to PW-2 on his left thigh which was opined by the Doctor - P.W.6 as simple injury. Ex P-2 is the accident register for Saravanan (PW-3) and Ex P-3 is the accident register for Chandran (PW-2).

8.The accused persons are known to the defacto complainant (P.W.1) and her family. PWs-1 and 2 are wife and husband respectively. Their son and daughter in law are PWs-3 and 4. In their deposition, they have identified the accused persons and their act of climbing the tree and collecting the fruits. They have done the said act in furtherance of common object. The prosecution even before laying the final report has found that there is no evidence to charge them for criminal intimidation, hence, deleted the charge under Section 506(ii) of IPC and submitted the altered charge sheet - Ex P-5.

9.From the deposition of PWs-1 to 4, it is clearly established that, immediately after the incident at about 4.00 pm on 15/08/2010, they reported the matter to the Police and they were directed to go to the hospital. Exs.P-2 and P-3 are the accident registers kept in the hospital. They reveal that PW-2 and PW-3 got admitted in hospital on 15/08/2010 at about 6.40 pm. In the accident registers, the Doctor has recorded that, they have alleged that, five known persons attacked them near their residence. The fractured injury sustained by PW-3 is proved through the X-ray (M.O.1) and the opinion of the Doctor based on the X-ray (M.O.1).

10.As far as the delay in registering the FIR is concerned, the complaint itself reveals that the accused persons on the date of incident and thereafter, threatened the injured victims with dire consequence, if they go to Police. From the deposition of PWs-1 to 4, it could be inferred that Police was put to knowledge of the incident. Though there are some contradictions in the evidence of PWs-1,2 and 3 about this aspect, it is not so relevant, since, even if they have not gone to the Police station immediately after the incident, the Police should have received intimation from the hospital about the 'medico legal case' immediately after the admission of PWs-2 and 3 into the hospital for the injuries they have sustained.

11.PW-7 - the Sub-Inspector of Police, who has registered the FIR on 01/09/2010, in his cross examination, admits that, he was not aware 'whether the victims came to the Police station on 15/08/2010 immediately after the occurrence' or 'whether they received any intimation from the hospital'.

12.The accused cannot take advantage of the failure of the Police in their due discharge of duty. PW-1, in her deposition, has said that, 'when she went to the Police station, on the date of occurrence, to give complaint', the Police directed her and other injured to go to the hospital. At the hospital, the Police came and enquired and recorded their statements. After discharge from the hospital, when they enquired with the Police, they came to know that, the Police has not registered the case against the accused persons. Hence, she gave petition to the District Collector. Thereafter, the Police got the complaint - Ex.P-1 and registered the complaint.

13.The testimony of PW-1 indicates that the Station House Officer of the Kancheepuram Taluk Police Station, has failed to register the case despite, he had the necessary information about the cognizable offence. Only after the matter was taken up by the victims to the notice of the District Collector, they have registered the case and done the investigation. But for the medical records Exs.P-2 and P-3, the delay in registering the FIR could have been a reason for extending the benefit of doubt presuming possibility of embellishment or falsehood.

14.When the testimony of the injured witnesses coupled with the medical records Exs.P-2, P-3 and M.O-1 proved the factum of unlawful assembly of the accused persons and the act of causing grievous hurt to PW-3 and simple hurt to PW-2, the finding of the Courts below holding the petitioners herein guilty of the offences does not suffer any illegality or infirmity.

15.In the result, the Criminal Revision Petition deserves to be dismissed as devoid of merits. Accordingly Crl.R.C.No.118 of 2012 is dismissed. The trial Court judgment of conviction and sentence stands confirmed. The respondent Police shall secure the petitioners and commit them to prison to undergo the remaining period of sentence. The period of imprisonment, if already undergone by the petitioners shall be given set off. The period of substantive sentence shall run concurrently. Bail bonds, if any, stand cancelled.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

jbm

To

1. The District Sessions Judge,
The District Sessions Court No.2,
Kancheepuram.
2. The Judicial Magistrate-II
The Judicial Magistrate Court No.2,
Kancheepuram.
3. The Chief Judicial Magistrate,
Chengalpattu.
4. The Section Officer,
The Criminal Section (Records)
High Court, Madras
5. The Inspector of Police,
Kanchi Taluk Police Station,
Kancheepuram District.
6. The Public Prosecutor,
High Court, Madras

Crl.R.C.No.118 of 2012

BR(CO)
CS/27/06/2019



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