

Bail Slip

Sathish Kumar S/o Radhakrishnan was granted Bail in and by the order of this Court dated 13/12/2012 made in M.P.No.1/2012 in Crl.R.C.No.1453 of 2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.12.2019

PRONOUNCED ON : 11.12.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.R.C.No.1453 of 2012

Sathish Kumar ...Petitioner/Appellant/Accused

Vs.

State represented by
The Inspector of Police,
Mangalam Police Station,
Tiruppur. ... Respondent/Respondent/Complainant

Criminal Revision filed under Section 397 r/w 401 Cr.P.C., to set aside the judgment and order dated 23.12.2011 passed in S.C.No.187 of 2009 on the file of the Assistant Sessions Court, Tiruppur, confirmed by the judgment and order dated 27.11.2012 passed in C.A.No.26 of 2012 on the file of the Principal Sessions Court, Tiruppur.

For Petitioner : Mr.P.M.Duraiswamy

For Respondent : Mrs.P.Kritika Kamal
Govt. Advocate (Crl.Side)

O R D E R

This criminal revision has been filed seeking to set aside the judgment and order dated 23.12.2011 passed in S.C.No.187 of 2009 on the file of the Assistant Sessions Court, Tiruppur, confirmed by the judgment and order dated 27.11.2012 passed in C.A.No.26 of 2012 on the file of the Principal Sessions Court, Tiruppur.

2. Minus the minute details, the germane facts which are just necessary for deciding this criminal revision are stated as under:

2.1 It is the case of the prosecution that Preethi Megala (PW1) is the wife of Saravanakumar (PW2) and they lived in door No.2/892-A, 3rd Gandhiji Street, S.R. Nagar (South), Tiruppur; they were childless and so, they adopted a baby; Saravanakumar (PW2) is the Proprietor of Avenue Knitwear; Sathishkumar, the petitioner/accused herein, was an employee under Saravanakumar (PW2); because of some acts of delinquency, he (accused) was removed from service; on 29.03.2007, around 11.00 a.m., the accused came to the house of Saravanakumar (PW2) to see the adopted child; at that time, Saravanakumar (PW2) was not at home and only Preethi Megala (PW1) was there; she (PW1) received the accused and after seeing the child, he left; on the same day, around 2.00 p.m., the accused came to Saravanakumar's (PW2's) house once again and asked Preethi Megala (PW1) whether he had left his mobile phone; when Preethi Megala (PW1) was looking out for it, the accused brandished a knife and attempted to snatch her 'thaali' chain (M.O.2); when she (PW1) resisted, he (accused) attacked her, snatched her 'thaali' chain (M.O.2) and a pair of gold bangles (M.O.3) and fled; Preethi Megala (PW1) started hollering, hearing which, Palanisamy (PW3), her neighbour and other residents chased the accused, caught him and handed him over to the police; around the same time, Saravanakumar (PW2) returned home and he also got involved in apprehending the accused.

2.2 On the complaint (Ex-P1) lodged by Preethi Megala (PW1), Murugesan (PW6), Sub-Inspector of Police, registered a case in Crime No.71 of 2007 on 29.03.2007 at 15.30 hours for the offence under Section 394 IPC, against the accused and prepared the printed FIR (Ex-P4). Since the accused was apprehended by the locals and handed over simultaneously, Murugesan (PW6) seized the knife (M.O.1), 'thaali' chain (M.O.2) and a pair of gold bangles (M.O.3) under Form-95 in the station. The accused was arrested by the police and Preethi Megala (PW1) was referred to the Government Hospital for treatment.

2.3 Preethi Megala (PW1) got admitted in G.Kuppusamy Naidu Memorial Hospital, where, she was medically examined by Dr.Rajasekar (PW7) and the following injuries were noted by him:

"The injured person was first seen at 9.25 p.m. on 29.03.2007 and the examination was

commenced at 9.25 p.m. when following injuries were found.

(1) 4 x 1.5 cm lacerated cut wound middle of the face over the mandible facing vertically.

(2) 7 x 2 cm lacerated cut wound middle of the neck left side.

(3) 8 x 2 cm lacerated cut wound lower aspect of neck extends upto back side.

(4) 2 x 1 cm lacerated cut wound dorsal aspect left thumb of left hand.

(5) 3 x 0.5 cm lacerated cut wound right dorsal aspect of thumb of right hand.

I am of the opinion that injuries numbers 2,3,4 & 5 are simple in nature and injury number 1 is grievous in nature."

2.4 After examining witnesses and collecting various reports, the respondent/police completed the investigation and filed a final report in P.R.C.No.10 of 2007 before the Judicial Magistrate No.II, Tiruppur, for the offences under Sections 392 and 394 r/w 397 IPC, against the accused.

2.5 On appearance of the accused, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session in S.C.No.187 of 2009 and was made over to the Assistant Sessions Court, Tiruppur, for trial.

2.6 The trial Court framed charges under Sections 392 and 394 r/w 397 IPC against the accused. When questioned, the accused pleaded "not guilty".

2.7 To prove the case, the prosecution examined nine witnesses and marked six exhibits and three materials objects.

2.8 During the cross-examination of the prosecution witnesses, the defence marked a certificate dated 10.12.2004 (Ex-D1) issued by Saravanakumar (PW2) certifying that the accused was residing at No.26, Kolippennai, Therku Thottam, Karuvampalayam, Tiruppur-4.

2.9 When the accused was questioned under Section 313 Cr.P.C., he stated that he was having illicit intimacy with Preethi Megala (PW1) and she had called him to her house; while they were together, her husband suddenly came, and therefore, she (PW1) created a scene as if the accused had attacked her and snatched her jewels.

2.10 After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 23.12.2011 in S.C.No.187 of 2009, convicted the accused and sentenced him as follows:

Provision under which convicted	Sentence
Section 392 IPC	Seven years rigorous imprisonment and fine of Rs.1,000/-, in default to undergo one year rigorous imprisonment.
Section 394 r/w 397 IPC	Seven years rigorous imprisonment and fine of Rs.1,000/-, in default to undergo one year rigorous imprisonment.

The aforesaid sentences were ordered to run concurrently.

2.11 The appeal in C.A.No.26 of 2012 filed by the accused was dismissed by the Principal Sessions Court, Tiruppur, on 27.11.2012.

2.12 Aggrieved by the concurrent findings of fact arrived at by the Courts below, the accused has preferred the present revision invoking Section 397 r/w 401 Cr.P.C.

3. Heard Mr.P.M.Duraiswamy, learned counsel for the accused and Mrs.P.Kritika Kamal, learned Government Advocate (Crl.Side) for the respondent/State.

4. Before advertng to the rival submissions, it may be necessary to state here that while exercising revisional jurisdiction in a case involving concurrent findings of fact arrived at by two Courts below, the High Court cannot act as a second appellate Court [See State of Maharashtra vs. Jagmohan Singh Kuldip Singh Anand and Others, etc.¹]. Very recently, in Bir Singh vs. Mukesh Kumar², the Supreme Court has held as under:

¹(2004) 7 SCC 659

²(2019) 4 SCC 197

"17. As held by this Court in Southern Sales & Services v. Sauermilch Design and Handels GmbH [Southern Sales & Services v. Sauermilch Design and Handels GmbH, (2008) 14 SCC 457] , it is a well-established principle of law that the Revisional Court will not interfere even if a wrong order is passed by a court having jurisdiction, in the absence of a jurisdictional error. "

(emphasis supplied)

5. Mr.P.M.Duraiswamy, learned counsel for the accused submitted that both the Courts below have not appreciated the evidence of Preethi Megala (PW1) and Saravanakumar (PW2) in the proper perspective, inasmuch as Preethi Megala (PW1) has not stated anything about Saravanakumar (PW2) joining the chase and apprehending the accused, whereas, Saravanakumar (PW2) has stated that he also joined the chase to apprehend the accused. He further submitted that Preethi Megala (PW1) was admitted to the Government Hospital , but, the accident register was not marked.

6. Per contra, Mrs.P.Kritika Kamal, learned Government Advocate (Crl.Side) refuted the submissions made by the learned counsel for the accused.

7. The evidence of Preethi Megala (PW1) is in line with the prosecution.

8. It is the defence of the accused that, while he was having sex with Preethi Megala (PW1), her husband Saravanakumar (PW2) suddenly came there and to save herself, she staged a drama.

9. To appreciate this defence, it may be relevant to examine the evidence of Palanisamy (PW3), the neighbour.

10. Palanisamy (PW3), in his evidence, has stated that he knows Preethi Megala (PW1) and Saravanakumar (PW2); on 29.03.2007, around 2.00 p.m., Preethi Megala (PW1) came with the child to his (PW3's) house and was feeding the child; at that time, the accused came there; Preethi Megala (PW1) told him (PW3) that the accused was working in the factory of her husband (PW2) and took him (accused) to her house; within a few minutes, he heard Preethi Megala (PW1) hollering "save me, save me" in Tamil; hearing her (PW1) cries, he (PW3) ran out of the house and at that time, he saw the accused running out of Preethi Megala's (PW1's) house with a knife; the accused threatened the onlookers who were attempting to nab him; however, the local people

caught him and handed him over to the police. In the cross-examination of Palanisamy (PW3), he has specifically stated that he saw blood stains in the knife that was held by the accused. The defence was not able to make any serious dent in the evidence of Palanisamy (PW3).

11. Preethi Megala (PW1), in her evidence, has also stated that the accused came to her house at 11.00 a.m. to see the child and again in the afternoon, while she was in Palanisamy's (PW3's) house feeding her child, he came there saying that he had left his mobile phone when he came in the morning; so, she (PW1) took him to her house; after entering the house, he brandished a knife, threatened her, attacked her and relieved her off her jewels.

12. Both the Courts below have rightly disbelieved the defence theory.

13. It is very easy to cast aspersions of immorality against a lady in a patriarchal society and put her to shame. Had Preethi Megala (PW1) invited the accused, she would not have foolishly received him in Palanisamy's (PW3's) house. She would have rather put her child to sleep and would have made the accused to come inside the house without being noticed by anyone. In today's post-truth world everyone is vulnerable to calumny. The plight of women is still worse. They can be easily maligned by making such reckless allegations.

14. As regards the submission of Mr. Duraisamy, learned counsel for the accused that the accident register of the Government Hospital was not marked, the failure of the prosecution to mark the accident register cannot be a reason to reject the prosecution case. Further, his submission that the evidence of Preethi Megala (PW1) should be rejected, since she did not speak about the injury No.1 in the complaint, deserves to be stated only to be rejected. The contention of the defence that Preethi Megala (PW1) herself inflicted the five injuries especially on her face and neck in order to avoid being caught by her husband Saravanakumar (PW2) deserves to be rubbished.

15. In such perspective of the matter, this Court does not find any infirmity in the judgments and orders passed by the Courts below, warranting interference.

In the result, this criminal revision is dismissed as being devoid of merits. The trial Court is directed to secure the accused and commit him to prison to serve out the remaining period of sentence.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1.The Judicial Magistrate No.II,
Tiruppur.

2.The Chief Judicial Magistrate,
Tiruppur.

3.The Superintendent,
Central Prison, Coimbatore.

4. The Assistant Sessions Judge,
Tiruppur.

5. The Principal Sessions Judge,
Tiruppur.

6. The Inspector of Police,
Mangalam Police Station,
Tiruppur.

7. The Public Prosecutor,
High Court, Madras.

Copy to

The Deputy Registrar,
(Crl.Section)
Madras High Court,
Chennai - 104.

with a direction to return
the original records to the
Courts below concerned

+1cc to Mr.P.M.Duraiswamy, Advocate Sr.103206

Crl.R.C.No.1453 of 2012

rsv[col]
srg 21/01/2020



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