

Bail Slip.

The Petitioner namely Kubandran S/o.Karunkannan accused in S.C.No.189 /2006 dated 12.11.2008 on the file of the Assistant Sessions Judge, Subordinate Court, Mettur was directed to be released on bail as per order of this court dated 09.02.2012 and made in Crl.M.P. 1/2012 in Crl.R.C.No.171 of 2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.03.2019

PRONOUNCED ON : 29.03.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Revision Case No.171 of 2012

Kubandran

Vs

..Petitioner

State rep. By Inspector of Police,
Nangavalli Police Station,
Salem District
(Cr.No.158/2005)

..Respondent

Prayer:- This Criminal Revision case is filed under Section 401 Cr.P.C., against the order passed in Crl.A.No.4 of 2009 on the file of the learned Additional District & Sessions Judge-Fast Track Court No.1, Salem dated 18.11.2011 confirming the order passed in S.C.No.189 of 2006 on the file of the learned Assistant Sessions Judge - Subordinate Court, Mettur dated 12.11.2008.

For Petitioner : Mr.S.Doraisamy

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

ORDER

The revision petitioner herein is the sole accused who was tried for offence under Section 307 I.P.C. The trial Court as well as the First Appellate Court held him guilty for offence under Section 307 I.P.C., and sentenced him to undergo 5 years rigorous imprisonment and to pay a fine of Rs.1,000/- in default to undergo two months simple imprisonment. Aggrieved by the concurrent finding of conviction and sentence, the present

Criminal Revision is filed.

2.The learned counsel for the revision petitioner would submit that it is the case of the prosecution that, due to previous enmity, with intention to cause death of P.W.1 - Natesan, the revision petitioner, indiscriminately attacked him with Koduval while he was sleeping on the pial of selvam house on 12.09.2005 night.

3.The motive attributed by the prosecution for the attack is that, the said Natesan (P.W.1) had illicit intimacy with the wife of the accused which has led to separation of the accused and his wife Palaniammal. Though the evidence of P.W.1 is unreliable due to the motive and his ill will against the accused. The Courts below had relied upon the testimony of P.W.1 who is an interested witness and had animosity with the accused. In the complaint - Ex.P.1, it is alleged that P.W.1 was assaulted by two persons. However, the prosecution is only against the revision petitioner. There is no whisper in the investigation about the other person. Though, it is alleged that the incident took place on 12.09.2005, at about night 1 'O' clock, the complaint was given only on 13.09.2005 at about morning 7 'O' clock. The delay in lodging the complaint not been explained by the prosecution. The discrepancy in the evidence of the prosecution witnesses not been properly appreciated by the Courts below. The medical evidence, the ocular evidence of P.W.1 and his complaint Ex. P.1 does not tally with each other. The statement of the defacto complainant before Police and his deposition before the Court are contradictory to each other.

4.P.W.2 - Selvam on whose house pial, P.W.1 was sleeping on that night has not corroborated the version of P.W.1. Therefore, the learned counsel for the revision petitioner contended that the Courts below have erred in convicting the petitioner. The learned counsel would also submit that the accused amputated left hand could not have caused 13 injuries noticed in the Accident Report by the Doctor who treated the defacto complainant. This has not been properly considered by the Courts below. In the Accident register, the Doctor has recorded that P.W.1 was assaulted by two known persons. However, P.W.1 has deposed that he was assaulted by the accused alone with Koduval.

5.Per contra, the learned Government Advocate (crl.side) appearing for the State would submit that the incident happened at 1 'O' clock on 13.09.2005 night. Next day, the Sub Inspector of Police - P.W.8, went to the spot early morning and recorded the statement from Natesan (P.W.1) and taken him to hospital. The occurrence had happened soon after mid night. The victim was found with injuries in a semi conscious state. In the early morning on 13.09.2005, the Police received information about the incident and went to the house of Selvam. Recorded the

statement of the injured victim (P.W.1) leading to the registration of F.I.R., at 9.00 am on 13.09.2005. There is no inordinate delay in the said process and there is no lapse on the part of the Police in registering the F.I.R., which could cause prejudice.

6.The victim who was severely injured all over the body particularly, on his face and head, was in a semi conscious state and had given his statement - Ex.P.1 to Police wherein, he has stated that the accused along with another person has assaulted him. The complaint is not an encyclopedia of entire offence and it is only the trigger which initiated the criminal investigation. Therefore, the discrepancy pointed out by the learned counsel for the accused in the complaint and in the deposition regarding number of assailants is ignorable discrepancy, considering the nature of physical and mental pressure sustained by the defacto complainant.

7.The learned Government Advocate (crl.side) would further contend that the injured victim (P.W.1) need not implicate a wrong person for causing grievous injuries on him. The evidence of P.W.1 is unassailable. A few contradictory statements which are easily separable renders the evidence of P.W.1 more credible and reliable. Immediately after the occurrence, the other witnesses have come to the rescue of P.W.1. P.Ws.2 and 3 had seen P.W.1 with several cut injuries. P.W.1 has told them that Kubandran/accused assaulted him which is to be taken as res gestae evidence.

8.The learned Government Advocate (crl.side) submitted that apart from the evidence of the Doctor and medical records, the severance of right hand index finger and middle finger is the telltale proof for the nature of the injuries sustained by P.W.1.

9.Therefore, the learned Government Advocate (crl.side) would submit that the evidence of P.W.1 has been corroborated by the evidence of P.Ws.2 and 3, regarding the substantial part of occurrence. This coupled with the Accident Register, it is clear that the accused has indiscriminately attacked the defacto complainant (P.W.1) with intention to cause death.

10.Heard both sides. Records perused.

11.P.W.7, the Doctor found the following injuries on P.W.1:-
"1.10x3 cm cut injury forehead 3 cm deep
2.2x2 cm forehead injury
3.5x2 cm cut injury parietal region
4.cut injury
5.mandible 2x3 cm
6.A cut injury 3x5 cm one (H) ring

finger

7.A loss of (R) index finger up to metacarpal

8.Loss of middle finger terminal phalanx upto 1st metatarsal joint

9.A cut injury left wrist 7x3 cm

10.A cut injury (L) wrist 6x6cm

11.A cut injury 3x6 cm above left wrist

12.A cut injury 3x4 cm below elbow

13.A cut injury 10x3 cm over left temporal region."

The Doctor P.W.7 who has treated the defacto complainant and given the Wound Certificate has opined that the injuries found on the defacto complainant might have been caused by the material object like M.O.1 and the said injuries if not properly treated, might have caused the death.

12.The Accident Register which is marked as Ex.P.6 reveals that P.W.1 was severely injured on his forehead, jaw, left little finger, right index finger and cut injuries on his right wrist, left wrist and left leg. 13 lacerated injuries of various size been noted and P.W.1 was treated for the said injuries. The injured were termed as grievous injuries by the Doctor.

13.Exs.P.6 and P.7 are the Accident Register and Medical Report respectively. In the accident register, the Doctor has recorded that the victim was brought by his friend Ranjith. At that time, P.W.1 was conscious and oriented. The evidence of P.W.8 - Sampath, the Sub Inspector of Police attached to Nagavalli Police Station is that on 13.09.2005, at about 6.00 am, he went to Veerakal area to enquire about the information received that one Natesan (P.W.1) was assaulted by Kubandran/accused. After receiving the statement from Natesan (P.W.1), he returned to the Police Station and registered a case at 9.00 am under Crime No.158/2005 for offence under Section 307 I.P.C. The printed F.I.R., is marked as Ex.P.8.

14.The sequence of event, the time and place of occurrence provides reason for registering the F.I.R., at 9.00 am on 13.09.2005 for the incident that occurred at 1.00 am, previous night. P.W.8 has further deposed about his visit to the scene of occurrence again and the preparation of observation mahazar, rough sketch and recovery of sample cement floor and the blood stained cement floor.

15.In the cross examination, P.W.8 has stated that he got information about the incident through some individual and to confirm the same, he went to the spot. Having found P.W.1 with severe injuries, he recorded the statement from him arranged for his admission in the hospital and returned to the Police Station

for registering F.I.R. Thus, the evidence of P.W.8 gives the answer for the contention raised by the learned counsel for the accused suspecting embellishment in the complaint due to delay in registering the F.I.R. The doubt of the accused alleging the delay in registering the F.I.R., is only a vague allegation which has no substance in the given facts and circumstances.

16.The learned counsel for the revision petitioner would emphasize that, it is unsafe to convict the revision petitioner/accused based on an uncorroborated evidence of P.W.1. When admittedly the incident had taken place during the mid night on 12.09.2005 while P.W.1 was sleeping and not sure whether, he was attacked by one person or two persons, merely on suspicion, the revision petitioner/accused has been roped in this case as accused.

17.The weapon used by the accused have been recovered based on the confession given by the accused. P.W.5 - Narayanan, the Village Administrative Officer of the Village has deposed about the recovery of M.O.1 based on the confession given by the accused. The Doctor who treated P.W.1 has opined that the injuries found on P.W.1 might have been caused by weapon like M.O.1.

18.P.W.4 - Parimala has deposed that she has running a petty shop near the scene of occurrence. On the day of occurrence, when she went to her shop, she saw blood stains on the pial of the house of Selvam and she heard that the accused had assaulted P.W.1. As far as the incident is concerned, though her evidence is an hearsay evidence, the fact that, she saw blood stains on the pial of the house of Selvam is a direct evidence which corroborates the evidence of P.Ws.1 to 3.

19.When the occurrence is spoken by the injured witness - P.W.1, the Police - P.W.8, who has gone to the spot and shifted the injured person to hospital; the wound certificate issued by P.W.7 the Doctor; the recovery of M.O.1 - Koduval, based on the confession statement given by the accused in the presence of Village Administrative Officer - P.W.4 on cumulative assessment, it is well proved that, the revision petitioner is the assailant and he has attacked the defacto complainant - P.W.1 with M.O.1 causing multiple injuries.

20.The X ray report of P.W.1 indicates that the right hand index finger is missing and middle finger is severed. A fracture noted on the index finger on the left hand. X rays marked as M.O.4 series. The nature of the injuries and the weapon used to cause injuries on P.W.1 clearly indicates the intention of the accused.

21.Therefore, the finding of the courts below that the

revision petitioner/accused had committed the offence with intention to cause the death of P.W.1 and had the victim - P.W.1 not properly treated, the injuries would have caused death of P.W.1 is amply proved by the prosecution.

22.The Courts below have found the accused guilty and sentenced him to undergo five years rigorous imprisonment and fine of Rs.1,000/- in default to undergo two months simple imprisonment for the offence under Section 307 I.P.C.

23.On considering the evidence placed before the Court and the submissions of the learned counsel for the revision petitioner/accused, this Court finds no perversity or illegality in the findings of the Courts below to interfere under the revisional jurisdiction. Accordingly, the Criminal Revision is dismissed. The judgments of the Courts below are confirmed. The trial Court is directed to secure the presence of the accused to undergo the remaining period of sentence, if any, the period of sentence already undergone shall be set off.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

jbm
To

1. The Judicial Magistrate No.1
Mettur Dam, Salem.
2. The Chief Judicial Magistrate
Salem.
3. The Superintendent
Central Prison, Salem.
4. The Inspector of Police
Nangavalli Police Station
Salem District.
- 5.The Additional District & Sessions Judge-
Fast Track Court No.1,
Salem.
- 6.The Assistant Sessions Judge -
Subordinate Court,
Mettur

7.The Public Prosecutor,
High Court, Chennai.

Copy to
The Criminal Section,
High Court, Madras.

+1 CC to Mr.S.Doraisamy, Advocate sr 30744.

Cr1.R.C.No.171 of 2012

SSI (CO)
SP(02/05/2019)



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