

BAIL SLIP

The Petitioner/Accused viz., Mr.K.Raja, S/o.Karuppaiya Devar be and hereby was directed to be released on bail as per order of this order of the Court, dated 13.02.2012 and made in Crl M.P.No.1 of 2012 in Crl.RC No.178 of 2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.08.2019

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.178 of 2012

K.Raja

...Petitioner

Vs.

State rep. by
Inspector of Police,
B-15 Rathinapuri Police Station,
Coimbatore.
(Crime No.664/2010)

..Respondent

Criminal Revision case filed under Sections 397 and 401 Cr.P.C., praying to set aside the judgment dated 20.12.2011 made in Crl.A.No.149 of 2011 on the file of the Additional District and Sessions Judge, Fast Track Court-III, Coimbatore, confirming the judgment dated 13.06.2011 made in C.C.No.504 of 2010 on the file of the Judicial Magistrate No.II, Coimbatore.

For Petitioner : Mr.M.N.Balakrishnan

For respondent : Mr.T.Shanmugarajeswaran
Government Advocate (Crl.Side)

O R D E R

This Criminal Revision Case has been filed by the petitioner seeking to set aside the judgment dated 20.12.2011 passed in Crl.A.No.149 of 2011 by the learned Additional District and Sessions Judge, Fast Track Court-III, Coimbatore, by confirming the judgment dated 13.06.2011 passed in C.C.No.504 of 2010 by the learned Judicial Magistrate No.II, Coimbatore.

2. The respondent police registered a case in Crime No.664 of 2010 for the offences under Sections 326, 506(ii) of IPC against the revision petitioner/A1 and another accused and after

completing investigation, laid a charge sheet before the learned Judicial Magistrate No.2, Coimbatore and the same was taken on file in C.C.No.504 of 2010. After trial, the learned Magistrate found the revision petitioner/A1 alone guilty for the offence under Section 326 of IPC and sentenced him to undergo 3 years Simple Imprisonment and fine of Rs.5000/-, in default, to undergo 3 months Simple Imprisonment and acquitted A2 by judgment dated 13.06.2011. Challenging the said judgment, the accused preferred an appeal in Crl.A.No.149 of 2011 before the learned Principal District and Sessions Judge, Coimbatore. The learned Sessions Judge made over the case to the Fast Track Court No.3 for disposal. The learned Additional District and Sessions Judge, after hearing the arguments, dismissed the appeal and confirmed the conviction and sentence passed by the trial Court by judgment dated 20.12.2011. Against the said judgment, the accused preferred the present revision before this Court.

3. The learned counsel appearing for the revision petitioner would submit that PW-1/injured witness has stated that after the occurrence, he took away the weapon, whereas, the recovery mahazar shows that the weapon recovered from the spot, which creates doubts. Though the weapon was recovered, it has not been produced before the Court and marked as evidence during trial and also not identified by the witnesses. PWs-2 and 4 are the daughters of PW-1 and they are interested witnesses. No independent witness was examined. There is a dispute between the petitioner and his wife. The prosecution has not proved its case beyond reasonable doubts and that the petitioner/accused went for collecting the balance amount given as advance during taken the house of PW-1 for rent. Though PW-1 has stated that he sent notice to the revision petitioner/A1, the same has not been produced before the Court, which itself creates doubt. The prosecution has also not proved that who is the author of the complaint. When two views are possible, the benefit of doubt should be extended to the accused. In this case, there are material contradictions between the evidence of prosecution witnesses and the same has not been considered by both the Courts below. Since the revision petitioner is the bread winner of his family, the learned counsel prays some leniency.

4. The learned Government Advocate (Crl. Side) appearing for the respondent would submit that PWs-2 and 4 are the eye-witnesses and PW-9 is the Doctor, who admitted PW-1 in the hospital and given treatment. Ex.P7/wound certificate clearly shows that one known person attacked PW-1 with iron rod, due to which, he sustained injuries. The evidence of PWs-1, 2, 4 and 9 and Ex.P7/wound certificate clearly show that the revision petitioner/accused attacked PW-1 with deadly weapon and also caused grievous injuries. Considering all the facts, the trial

Court has rightly convicted him and the Appellate Court has also rightly confirmed the judgment of the trial Court, which does not warrant any interference.

5. Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Crl.Side) appearing for the respondent and also perused the materials available on record.

6. The case of the prosecution is that the petitioner asked PW-1 to return the lease amount, which was paid to him at the time of taking the house for lease, when he refused for the same, the petitioner along with the other accused are alleged to have attacked PW-1.

7. In order to prove the case of the prosecution, PWs-1, 2 and 4 are being cited as injured witnesses and they have also been examined as eye-witness. PW-9/Doctor has clearly spoken about the treatment given by him and he has also issued wound certificate to PW-1. Though the learned counsel for the petitioner submitted that there are contradiction between the prosecution witnesses, the Appellate Court has found that all the contradictions pointed out by the defence are only minor contradictions and it is not the reason for discarding the evidence of PW-1. Though the learned counsel for the petitioner submitted that the actual truth has not come out in this case, the prosecution has proved its case as projected by the prosecution. The Appellate Court, being the final Court of fact finding, has rightly re-appreciated the entire evidence of prosecution and given the finding. This Court, while exercising the revisional jurisdiction, cannot exercise the power of the Appellate Court and reassess the entire evidence, when there is no perversity in the appreciation of the evidence. Admittedly, in this case there is no reason to interfere with the judgment of Appellate Court and there is no merit in this revision and the same is liable to be dismissed. However, considering the facts and circumstances of the case, this Court is inclined to reduce the sentence imposed on the petitioner. Accordingly, the sentence imposed on the petitioner/A1 is reduced to 2 years instead of 3 years. The other conditions imposed by the trial Court remains unaltered. The trial Court is directed to secure the custody of the petitioner to undergo the remaining period of sentence.

8. This Criminal Revision Case is dismissed with the above modification.

KMI

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Additional District and Sessions Judge,
Fast Track Court-III,
Coimbatore.
2. The Judicial Magistrate No.2,
Coimbatore.
3. The Inspector of Police,
B-15 Rathinapuri Police Station,
Coimbatore.
4. The Public Prosecutor,
High Court, Madras-104.
5. The Chief Judicial Magistrate,
Coimbatore.

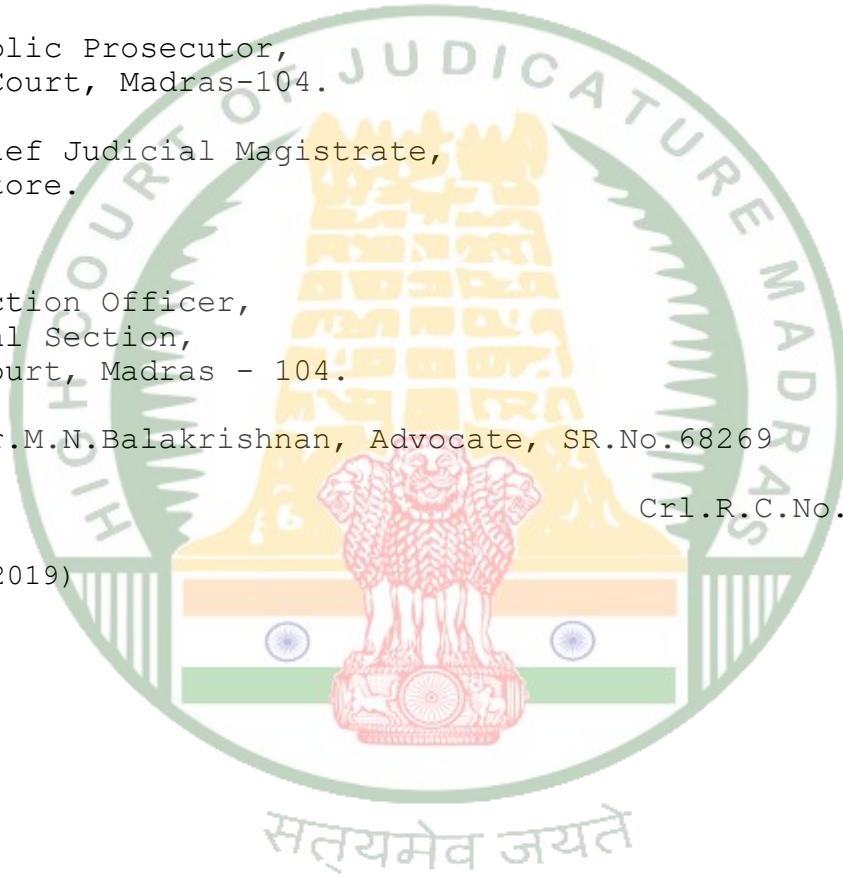
Copy to:-

The Section Officer,
Criminal Section,
High Court, Madras - 104.

+1cc to Mr.M.N.Balakrishnan, Advocate, SR.No.68269

CrI.R.C.No.178 of 2012

Kak(14/10/2019)



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