

BAIL SLIP

The Petitioner/Accused viz., Thirugnanam, aged 51 years S/o Pakirisamy was released on Bail as per order of this Hon'ble Court dated 27/02/2012 in MP No.1 of 2012 in CrI.Rc.No.213 of 2012 on the file of this Hon'ble Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.03.2019

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THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CrI.R.C.No.213 of 2012
and M.P.Nos.1 & 3 of 2012

Thirugnanam ... Petitioner/Appellant/Accused

Vs.

State rep.by Inspector of Police,
Manalmedu Police Station,
Nagapattinam District.
(Cr.No.262 of 2007)

... Respondent/Respondent/Complainant

Prayer: Criminal Revision case filed under Section 397 r/w 401 of Cr.P.C. praying to set aside order passed by the learned District and Sessions Judge, Nagapattinam in C.A.No.17/2009 dated 08.11.2011 modifying the conviction that the sentence passed in C.C.No.555/2007 dated 02.04.2009 by the learned Judicial Magistrate No.I, Mayiladuthurai.

For Petitioner : Mr.A.Abdul Hadhi

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

O R D E R

The Criminal Revision Case is directed against the modified judgment of the lower appellate Court holding the accused guilty of offence under Sections 323, 325 IPC, whereas acquitted the accused from offence under Sections 294 (b) and 352 IPC by reversing the judgment of the trial Court.

2. The brief facts of the case is that on 29.06.2007, the accused has caught the goat owned by PW.1, since it has entered the sugarcane field of the accused, late in the night on the same day at about 10.30 p.m, he brought back the goat and left it in front of PW.5, also abused PW.2 with filthy language. Furthermore, he also attacked PW.2 with stick on her head and left hand. When PW.2 tried to defend her right wrist got fractured. On seeing the attack of her mother PW.1 and PW.3 rushed to the spot. However, they both were also attacked by the accused. Based on the complaint given by Veeramani, the respondent police has registered First Information Report on 01.07.2007 at 12.30 hours.

3. The trial Court has framed charges under Section 294 b, 323, 325 and 352 IPC. Based on the material collected by the respondent police in the course of investigation. The prosecution has examined 9 witnesses as PW.1 to PW.9. 6 exhibits and one material objects namely the X-ray report was marked as M.O.1. The trial Court considered the wound certificate of PW.2 and X-ray report and found that PW.2 has sustained fracture injury on her right wrist. As per the wound certificate given by Dr.Vennila [PW.7], which has marked as Ex.P3, Jyothy [PW.2] sustained four injuries and Dr.Rajasekar [PW.8] has opined that the second injury which is a contusion on the right wrist, is grievous in nature. The wound certificate of PW.1, which has been spoken by PW.7 indicates that the injury sustained by PW.1 Veeramani/defacto complainant is a simple in nature. Considering the evidence of the injured witnesses and the medical records, the trial Court has held that the accused is guilty of offence under Section 323, 294(b) IPC for using filthy language and abusing PW.2 on 29.06.2007 at 22.30 hours at Kalliamman Koil Street, Periya Illuppapattu village. In the course of same transaction, he has caused simple injury to PW.1 attracting offence under Section 323 IPC, causing grievous injury to Jyothy [PW.2] attracting 325 IPC, by using criminal force by hand over Sudha [PW.3], has committed offence under Section 352 IPC. The trial Court convicted the accused and imposed a fine of Rs.1000/-, in default to undergo one week Simple Imprisonment for offence under Section 294(b) IPC; to pay a fine of Rs.1000/-, in default to undergo one week Simple Imprisonment for offence under Section 323 IPC; to pay a fine of Rs.500/-, in default to undergo one week Simple Imprisonment for offence under Section 352 IPC; and to undergo 1 year Simple Imprisonment and to pay a sum of Rs.5000/- towards fine for offence under Section 325 IPC. From out of the fine amount sum of Rs.5000/- was ordered to pay as compensation to the victim.

4. On appeal, the lower appellate Court after considering the grounds of appeal and taking note of the delay in lodging the First Information Report and the possibility of suppressing the earlier information held that Ex.P1 and Ex.P5 cannot be considered as the earliest information. The substantive evidence of injuries cannot be discarded. The injury sustained by the witnesses PW.1, PW.2 and PW.3, corresponding wound certificate and the deposition of the doctor who issued the wound certificate and opinion proves that PW.1 and PW.2 had sustained simple and grievous injuries respectively. Therefore, the lower appellate Court held the accused guilty of offence under Section 323 IPC while confirming the conviction for offence under Sections 325 IPC and modifying sentence from one year Simple Imprisonment to 3 months Simple Imprisonment.

5. The present revision petition is filed on the ground that the Courts below ought to have considered the contradiction between the evidence of PW.1, PW.2 and PW.7 and ought to have acquitted the accused. Non recovery of weapon has not been properly considered by the Courts below. Further, the delay of 3 days in lodging the First Information Report leading to embellishment and falsehood has not been properly considered by the Courts below.

6. Heard the counsel for the revision petitioner and the learned Government Advocate(crl.side) for the respondent. Perused the records.

7. This Court does not find any error or illegality leading to perverse the judgment by the lower appellate Court on facts. The lower appellate Court had reappreciated the evidence placed by the prosecution and has found that there was a delay in lodging the First Information Report. However, the factum of injury sustained by PW.1 and PW.2 proved and well established through the evidence of the victims as well as the medical certificates issued by the doctors. Applying the grain and chaff theory, the lower appellate Court acquitted the revision petitioner for offence under Section 294 b and 352 IPC and held him guilty for offence under Sections 323 and 325 IPC based on the evidence of the injured victim and the medical records and also modified the sentence from one year Simple Imprisonment to 3 months Simple Imprisonment.

8. In the light of the above facts, this Court finds no illegality or perversity. Hence, the Criminal Revision Case is dismissed. The judgment of the District and Sessions Judge, Nagapattinam in C.A.No.17/2009 dated 08.11.2011 is hereby confirmed. The respondent police is directed to secure the accused to undergo the remaining period of sentence. The period of sentence already undergone by the accused is ordered to be

set off. Bail bond if any executed by the accused shall be cancelled. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-VI)

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Sub Assistant Registrar

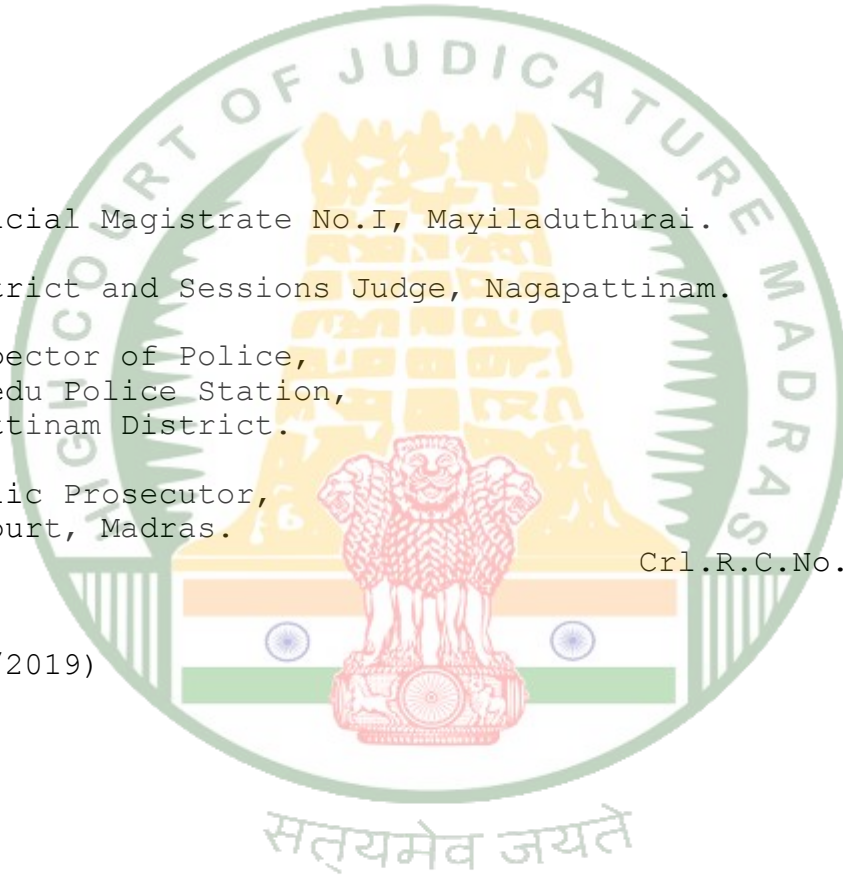
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To

- 1.The Judicial Magistrate No.I, Mayiladuthurai.
- 2.The District and Sessions Judge, Nagapattinam.
- 3.The Inspector of Police,
Manalmedu Police Station,
Nagapattinam District.
- 4.The Public Prosecutor,
High Court, Madras.

Crl.R.C.No.213 of 2012

PM(CO)
GMY (07/05/2019)



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