

Bail Slip

The Appellants/Accused viz 1.Chinnasamy S/o. Pachiappan
2.Muniappan S/o. Chinnasamy were directed to be redressed on
bail as per order dated 25/04/2012 made in CrI.MP 1 of 2012 in
CrI.Rc.345 of 2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 15.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE DR.G.JAYACHANDRAN

Criminal Revision No.345 of 2012

1. Chinnasamy

2. Muniappan ...Petitioners 1 &2/Accused 1 & 2

Vs

The State by
Inspector of Police
Anjetti Police Station
Krishnagiri District
Cr.No.41 of 2004

...Respondent/Complainant

Prayer: Criminal Revision Petition filed under Sections 397 r/w
Section 401 of Cr.P.C. to call for the records pertaining to the
Judgment dated 06.07.2011 in CrI.A.No.17 of 2008 made by
Additional District and Sessions Court, Krishnagiri partially
confirming the Judgment dated 26.02.2008 in SC No.100 of 2005
passed by Assistant Sessions Judge, Hosur.

For Petitioners : Mr. R. Selvakumar

For Respondent : Mr. T. Shunmugarajeswaran
Government Advocate

O R D E R

This Revision Petition is filed aggrieved by the
modified conviction and sentence imposed by the lower Appellate
Court, while partially allowing the appeal preferred by the
present Revision Petitioners.

2. The brief facts of the case is that, there was a dispute between the Revision Petitioners and the family of Defacto Complainant in respect of property bearing Survey No. 207/4A and 207/5B in Aerikodi Village, Krishnagiri District. About 18 years before the incident, PW-2 the father of PW-1 alleged to have been put in possession of the property by the 1st Revision Petitioner, pursuant to the sale agreement. Though, there was an agreement for sale, sale deed not completed and executed. While so, the Suit was filed by PW-2 for Specific Performance. In the mean time, counter Suit was filed by the 1st Revision Petitioner for Declaration and Injunction.

3. On 12.04.2004. When PW-1 and PW-2 went to collect the fruits of Pungai tree, the Revision Petitioners have protested not to collect the same by claiming right over the property. In the said course, PW-1 and PW-2 were attacked by the accused persons and both of them sustained injuries. The injuries sustained by PW-2 were grievous in nature. Complaint was given by PW-1 to the police narrating the incident alleging the Revision petitioners along with 5 others assaulted them with deadly weapon. The case was registered against the Revision petitioners and five others for offence under Sections 148, 147, 307 and 307 r/w 109 and 324 IPC.

4. Before the trial Court, 17 witnesses were examined, 17 Exhibits and 9 Material Objects were marked through those witnesses. On the side of the defence, 5 documents were marked.

5. The trial Court after appreciating the evidences before it, found that only accused 1 to 4 were involved in the crime and held them guilty, acquitted the 5th to 7th accused. Aggrieved by that, the 1st to 4th accused preferred an appeal before the Additional District and Sessions Court, Krishnagiri in C.A.No.17 of 2008. On re-appreciation of evidence, the lower Appellate Court found only the 1st and 2nd accused are guilty and the case against the 3rd and 4th accused not proved beyond doubt. Therefore, the lower Appellate Court has held the 1st accused guilty for offence under Section 307 (2 Counts) and sentenced him to undergo seven years rigorous imprisonment and imposed a fine of Rs.2,000/- for each count, in default three months rigorous imprisonment. As far as the second accused, who is the 2nd Revision Petitioner herein, the lower Appellate Court acquitted him for offence under Section 148 of IPC, held him guilty for offence under Section 324 of IPC and confirmed the fine of Rs.500/- in default three months rigorous imprisonment.

6. The learned Counsel representing the Revision Petitioners would submit that PW-1 and PW-2 are the aggressors and trespassers into the land of the accused persons, who are

the Revision Petitioners herein. Despite the clear finding by the Civil Court, which dismissed the suit for Specific performance of PW-2 and allowed the Suit filed by the 1st accused for declaration and injunction. PW-1 and PW-2 along with the men came to collect the fruits of Pungai tree, which was protested by the Revision Petitioners. In the Course, both side sustained injuries. The Courts below has miserably failed to appreciate the defence documents, which are marked as Ex.D.1 to Ex.D.5, which would clearly show that the Civil Suit regarding the property has ended in favour of the Revision Petitioners.

7. The 3rd and 4th accused also sustained injuries and the fact has been admitted by the Doctor, who has treated them. The Village Administrative Officer of the village has also admitted that the Patta, Chitta and Adangal of the property stands in the name of the 1st accused. While so, the lower Appellate Court ignoring the evidence in support of the accused persons has held the 1st and 2nd accused guilty for the offence under Sections 307 and 324 respectively, which is perverse and illegal and against the principle established under law.

8. The learned Counsel would also point out that the recovery of Koduval marked as M.O.4 and other weapons marked as M.O.5 to M.O.9 were identified by the witnesses to the recovery. Particularly, M.O.4 Koduval, which is alleged to have been used by the 1st accused to assault PW 2 and caused grievous injuries, were not shown to the Doctor to probablise that M.O.4 was the weapon used by the 1st accused to cause injuries found on PW-2. Therefore, the counsel would submit that due to perversity of the finding of the Courts below, the Judgment of Sentence and conviction passed against the Revision petitioners is to be set aside.

9. Per contra, the learned Government Advocate appeared for the State would submit that the Courts below have gone into the defence documents in detail and has found that the possession of the property on the date of occurrence was with the victims. In the complaint given by PW-1, he has stated about the civil dispute. Ex.P.13 First Information Report disclose the facts which has lead to the occurrence. The witnesses have identified the weapon used by the accused to cause injuries. They have also identified the 1st and 2nd accused as assailants, who have caused the injuries. PW-2, who has sustained multiple injuries was initially taken to the Tenkanikottai Hospital, then referred to Government Hospital, Dharmapuri. Thereafter, he was shifted to Private Hospital and finally to the General Hospital at Salem, where he was given special treatment and due to the treatment given to him, he survived. The doctors, who have treated and seen the injuries of PW-2 had issued Wound Certificates, which are marked as Ex.P.8, Ex.P.11 and Ex.P.12. The Wound Certificates for PW 1 are marked as Ex.P.9 and

Ex.P.10. The evidence of Doctors coupled with Wound Certificates and ocular evidence of injured witnesses clearly proves the fact that the 1st and 2nd accused have caused injuries found on PW-1 and PW-2, in the manner in which the witnesses deposed.

10. As far as the evidence of Village Administrative Officer is concerned, he has spoken about the Patta, Chitta and Adangal only and he has not stated anything about the actual possession of the property. Therefore, the Courts below after considering the evidences placed before it, including the defence documents as well as the defence taken by the accused persons to probablise right of private defence and Counter case had arrived at appropriate conclusion, which needs no interference.

11. On perusal of the Judgments rendered by the Courts below, this Court finds that neither the trial Court nor the lower Appellate Court has missed any of the significant and substantial evidence let in by the prosecution as well as the defence. The number of persons caused injury is not consistently spoken by PW-1 and PW-2. What is recorded by the Doctor regarding the manner of injury in the Accident Register may not be the conclusive proof. It is recorded based on the information given by the injured or the person who accompanied the injured. In this case, on perusal of the Wound Certificates, we are not sure, who has given the information about the history of injuries. However, it has been indicated during the cross examination of PW-14 that when PW-1 was brought to the Hospital, he was conscious. PW-13 Dr. Gandhi, who treated PW-2 has stated that when patient was brought to the Hospital, he was in good conscious and was able to speak and informed him that he was assaulted while he was in his field. Though PW-2 in his deposition has stated that immediately after the attack, he became unconscious and regained conscious only after eight days, the evidence of PW-13 is contrary to the evidence of PW-2. This indicates element of embellishment on the part of the victim so as to exaggerate the nature of injury, he sustained. So, on going through the evidence of doctor, this Court finds that the injuries sustained by PW-2 particularly two lacerated wounds on the parietal bone has lead to fractures. Doctor has opined as grievous in nature.

12. As far as the injuries found on PW-1 Kanthabalan, doctors have opined that it is simple in nature. Since the evidence of PW-1 and PW-2 would indicate the injuries sustained by PW-2 was caused by the 1st accused and grievous in nature, intention to cause death of PW-2 is injurable from the seat of injuries. So far as the injuries sustained by PW-1, Defacto complainant, the Doctor has given opinion that the injuries are simple in nature. The seat of attack of PW-1 and the nature of weapon used to cause injury and the intention of the 1st accused

as spoken by the witnesses would show that he had clear intention to commit murder and it is an attempt to commit murder.

13. In the light of the above fact, this Court while confirming the conviction and sentence imposed on the Revision Petitioners, considering the age of the 1st Revision petitioner and the circumstances under which the offence has occurred to show that this has happened due to the attempt of PW-1 and PW-2 for plucking of fruits of Pungai tree, despite loosing the Civil case, claiming his right over the property.

14. Therefore, this Court holds that the sentence imposed on the 1st Revision Petitioner is to be reduced. Considering the age and circumstances of the case, the sentence imposed on the 1st Revision Petitioner needs modification. Accordingly, the sentence imposed on the first accused [under Section 307 (2 Counts) Rigorous imprisonment for a term of seven years and fine of Rs.2,000/- for each count, in default three months rigorous imprisonment] is modified to rigorous imprisonment of Two years and fine of Rs.2,000/- for each count. The period of imprisonment is ordered to run concurrently. Period of sentence already undergone by the first accused is ordered to be set off under section 428 of Cr.P.C. The sentence imposed by the lower Appellate Court as against the 2nd Revision Petitioner stands confirmed.

15. Accordingly, this Criminal Revision is partly allowed.

Sd/-

Assistant Registrar (CS IV)

//True Copy//

Sub Assistant Registrar

vrn

To

1. The Additional District and Sessions Court,
Krishnagiri.
2. The Assistant Sessions Judge,
Hosur.
3. The Public Prosecutor,
High Court,
Madras

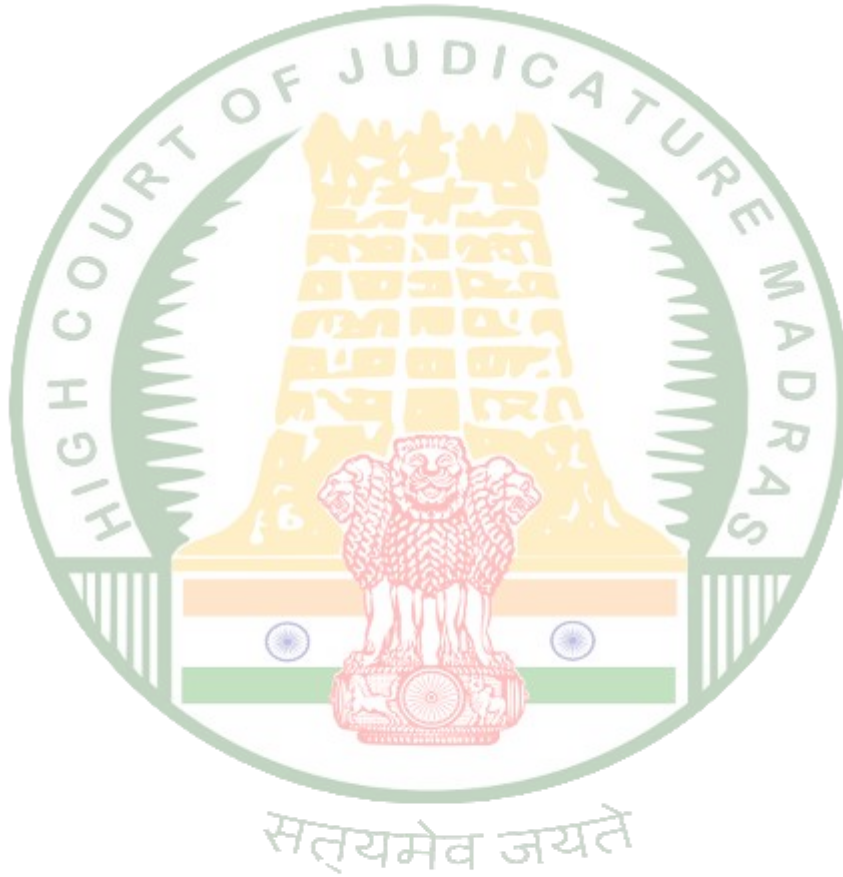
4.The Inspector of Police,
Anjetti Police Station,
Krishnakiri Dt.

+1cc to Mr.R.Selvakumar, Advocate, S.R.No.24601.

Criminal Revision No.345 of 2012

SVI (CO)

RRS (02/05/2019)



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