

Bail Slip

The Appellant namely Suresh S/o.Ramamoorthy aged about 27 years was directed to be released on bail as per order dated 25.01.2012 and made in MP.NO.1/12 IN CRL RC.NO.36/2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.03.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.R.C.No.36 of 2012
and M.P.No.1 of 2012

Suresh

.... Petitioner

Vs.

The State Rep.by its
The Sub Inspector of Police,
Sembanarkoil Police Station,
Nagapattinam District

... Respondent

Prayer: Criminal Revision case filed under Section 397 r/w 401 of Cr.P.C. praying to call for the records of the Judicial Magistrate No.II, Mayiladuthurai in C.C.No.57 of 2007 and set aside the judgment dated 22.01.2009 as modifying the conviction and sentence passed by the Sessions Judge, Nagapattinam in C.A.No.5 of 2009 by judgment dated 10.10.2011.

For Petitioner : Mr.R.Shivakumar
for M/s.K.M.Vijayan Associates
For Respondent : Ms.Kritika Kamal, GA

O R D E R

The revision petitioner is the accused in C.C.No. 57 of 2007, on the file of Judicial Magistrate No.II, Mayiladuthurai. Due to dispute regarding fencing the land, he has caused grievous injury to one Kausalya, who is the neighbor and relative to the accused/revision petitioner.

2. The case of the prosecution is that on 23.10.2006, at about 16.00 hours when Kausalya (PW.1) was mending the fence, the accused Suresh living in the opposite house had attacked her over the head with மண் வெட்டி கொம்பு, (Spade handle) on her head. When Suresh tried to attack her further, Kowsalya defend with her right hand spade. The hit fell on her right hand and caused injury to the hand. On hearing screams, her husband Balakrishnan (PW.2), neighbors and others rushed to the spot and rescued PW.1 and took her to the hospital. Before proceeding to the hospital, a complaint was lodged at Sembanarkoil Police Station at about 17.30 hours. Based on the complaint, the police has investigated the case. Collected the accident report and the opinion of the doctor who treated PW.1. The wound certificate, the following injuries were

noted by her:

1. laceration about 2 X 1 X ½ c.m. on the right side of head;
2. Pain and restricted movement on the right shoulder and hand; and
3. Contusion about 3 X 1 X ½ c.m. on right hand.

3. Based on the ocular evidence of the injured witness PW.1 her husband (PW.2) and neighbors, the trial Court held Suresh guilty of offence under Section 325 IPC. Sentenced him to undergo 1 year Simple Imprisonment and fine of Rs.5000/-; in default 3 months Simple Imprisonment. The period of sentence already undergone by the accused shall be set off under Section 428 Cr.P.C.

4. On appeal, the learned Sessions Judge has confirmed the conviction. However, reduced the sentence for 3 months instead of 1 year. The fine amount imposed by the lower appellate Court was confirmed. While considering the appeal, the lower appellate Court has appreciated the facts placed before it and had found that there is no error in the finding of the trial Court. However, while interfering the sentence, the lower appellate Court has observed that the accused was about 23 years old at the time of occurrence and to give a chance for reformation, the period of sentence is reduced to 3 months Simple Imprisonment.

5. While canvassing the merit of the revision petition, the learned counsel for the revision petitioner would submit that the material object was not recovered. The prosecution case based on the sole witness PW.1. In the absence of corroboration, the Courts below ought to have acquitted. Since PW.1 and the accused had previous enmity.

6. The learned Government Advocate appearing for the State would submit that PW.1 and the accused are living in the opposite houses. The long standing feud between them had been spoken by the witnesses. On the day of occurrence without any provocation, the accused has assaulted PW.1 when she was mending the fence in her property. Though the weapon used to cause injury could not be recovered, the factum of injury sustained by PW.1 at the hands of the accused is spoken by PW.1 herself. The nature of injury caused has been examined by the doctor and she has given her opinion as grievous in nature in the wound certificate, which is marked as Ex.P3. Therefore, the Courts below has rightly held him guilty for an offence under Section 325 IPC, the period of imprisonment has also been considered by the appellate Court and reduced to 3 months. Since the offence committed by the revision petitioner and the sentence imposed by the Court commensurate each other. There is no necessity to interfere with the findings of the Courts below.

7. From the material place before this Court, this Court able to find that the injury found on the PW.1 has been

caused by the accused/revision petitioner. The ocular evidence of PW.1 who sustained injury at the hands of the accused/revision petitioner is cogent and had inspired the confidence of the Courts below. There is no material which could dislodge the said confidence. The nature of the injury found on the body also corroborates the manner in which the accused attacked her. The only point which could now be considered is whether the revision petitioner who committed the crime while he was in prime age should be sent to prison for completing the remaining period of sentence.

8. The learned counsel for the revision petitioner would submit that the pending revision petition PW.1 and the revision petitioner being neighbors have arrived at compromise and they were about to report the same to this Court, but unfortunately, the case was not taken up for hearing and in the meanwhile PW.1/defacto complainant lost her breath. Since the revision petitioner family and the defacto complainant family are living nearby after this incident, they have buried and living peacefully.

9. Taking note of his submission and the fact that the incident has taken place in the spur of moment and the revision petitioner now repents for his act of aggression, this Court while confirming the conviction for the offence under Section 325 IPC, modifying the sentence by reducing 3 months imprisonment to period already undergone. The fine of Rs.5,000/- imposed by the trial Court is confirmed.

10. In the result, this Criminal Revision Case is partly allowed as modified above. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

rpl
To

- 1.The Judicial Magistrate No.II, Mayiladuthurai
2.The Sessions Judge, Nagapattinam.
3.The Chief Judicial Magistrate, Nagapattinam
4.The Public Prosecutor, High Court ,Madras.
5.The Sub Inspector of Police,
Sembanarkoil Police Station,
Nagapattinam District

5.+1cc to M/s.K.M.Vijayan Associates. , Advocate SR.No. 22192
CrI.R.C.No.36 of 2012
and M.P.No.1 of 2012

A.SK(03/05/2019)