

Bail Slip

The Petitioner/Accused Viz., A.Senthil S/O Aruchamy Gounder was released on bail as per order of this Court dated 4/5/2012 in CrI.M.P.No.1/2012 in CrI RC 502/2012 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.04.2019

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THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CrI.R.C.No.502 of 2012
and M.P.No.1 of 2012

A.Senthil

... Petitioner

Vs.

State rep.by
Sub-Inspector of Police,
Negamam Police Station,
(Cr.No.96/2007)

... Respondent

Prayer: Criminal Revision case filed under Section 397 r/w 401 of Cr.P.C. praying to call for the records pertaining to the Judgment passed in C.C.No.452 of 2007 on the file of the Judicial Magistrate-II, Pollachi dated 30.03.2011 and confirmed by the Judgment in C.A.No.90 of 2011 dated 10.01.2012 on the file of the Additional District and Sessions Judge FTC-II, Coimbatore, set aside the same.

For Petitioner : Mr.A.Mohammed Ismail

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

O R D E R

Heard the learned counsel for the revision petitioner and the learned Government Advocate(Crl.side) for the respondent.

2. This Criminal Revision Case is directed against the concurrent findings of the Courts below holding the revision petitioner guilty of offence under Section 326 IPC (2 counts)

and sentencing him to undergo 6 months Rigorous Imprisonment and to pay a fine of Rs.500/-; in default 3 months Rigorous Imprisonment for each counts.

3. The case of the prosecution is that, PW.1 while grazing goat, his younger son A1 came there and quarrelled with him regarding partition of the property and attacked him with manvetti ("மணவெட்டி"). When his wife PW.5 and elder daughter-in-law [PW.2] tried to prevent the assault, A1 and his wife A2 together attacked him and caused injury. PW.1 was taken to the hospital and treated for injury. The doctor has given medical certificate that PW.1 has sustained 9 injuries and PW.2 has sustained 4 injuries and some of injuries are grievous in nature. The Trial Court after appreciating the evidence of prosecution found A1 guilty for offence under Section 326 IPC (2 counts), however for want of evidence, A2 was acquitted. Aggrieved by that, A1 preferred appeal before the Session Court. On reappreciating the evidence, the Lower Appellate Court confirmed the finding of the Court below.

4. The learned counsel for the revision petitioner would submit that the case of the prosecution is bristled with vital contradictions and the evidence of PW.1 does not corroborate with PW.2 and PW.5. While PW.1 sustained injury and the alleged eye-witness PW.3 also has not said anything to corroborate the version of PW.1 and others. Further, there is vital contradiction regarding the place of occurrence and the weapon used. Pointing out that PW.1 had deposed that while he was grazing goat in his place A1 came and attacked him. PW.1 says in his chief-examination while grazing goat and in the cross-examination says that it was cow he was grazing. The material objects recovered from the scene of crime has not been properly identified by the witnesses. In the cross-examination of PW.1 he along with his wife were grazing cow and at that time A1 assaulted him which is contrary to the deposition of PW.5. Pointing out that in the Accident Report, the doctor has recorded that three persons assaulted PW.1, only 2 persons were prosecuted and who was the third person referred has not been properly proved by the Investigating Officer. One of the witness to the incident, PW.3 [Baby] also stated that three persons attacked PW.1 and others. The silence of the prosecution about the third person clearly indicates that the complaint as well as the investigation not based on proved facts.

5. The learned counsel would submit that when PW.1 had deposed that he went to the police station on the date of occurrence at 8.30 p.m., and gave a report and thereafter went to the hospital, the evidence of the Investigating Officer is

that he went to the hospital on receiving the intimation and thereafter recorded the statement of PW.1. It is clear that the first information received by the police not been recorded and the same had been screened. Therefore, the Courts below ought to have considered the possibility of embellishments and falsehood of the complaint and investigation. But the omission on the part of the investigation to place the first information and the lapse of the Courts below for not considering vital contradictions between the prosecution witnesses regarding the place of occurrence and the nature of the act of the accused person entirely strengthened the benefit of doubt. In view of the illegalities, the judgment of the Courts below has to be set aside.

6. Per contra, the learned Government Advocate (Crl.side) would submit that the Courts below have properly appreciated the evidence of prosecution witnesses. The evidence of PW.1 who sustained injury at the hands of his son is corroborated by the medical record and the same had proved beyond doubt that it was A1 who had caused grievous injury with dangerous weapon. The wound certificate reveals that the revision petitioner has caused 9 injuries on PW.1. The injuries which PW.1 has sustained on his right side of said right arm with the handle of the Manvetti ("மண் வெட்டி") are grievous injuries. Similarly, the injury caused to PW.2 is also opined as grievous injury. Hence, the Courts below has rightly arrived at conclusion of holding A1 guilty of offence under Section 326 IPC. The learned Government Advocate(crl.Side) would submit that the field and the house of PW.1 are nearby the cattle shelter, which is located near the house and place of grazing is indicated in the sketch which would show that there was no material difference or contradiction in the evidence of prosecution regarding the place of occurrence.

7. On considering the rival submissions and on perusing the records, this Court finds that there is no illegality or error in the judgment of the Courts below. Some of the contradictions which have been pointed out by the learned counsel for the revision petitioner has already been taken note by the Courts below which has enured acquittal of A2. The injuries sustained are grievous in nature. The doctor who has treated PW.1 has given the wound certificate and opined that the injury fracture of the left shaft hena is grievous in nature.

8. In the light of the above facts, since the evidence of the injured witness who is none other than the father of the accused has deposed clearly implicating the revision petitioner

for the cause of the injury, this Court finds no error in the conclusion of the Courts below.

9. Accordingly, the Criminal Revision Case is dismissed. Consequently, the connected miscellaneous petition is also closed. The judgment of the lower appellate Court is confirmed. The period of sentence already undergone by the accused shall be given set off. Bail bond, if any executed by the accused shall stand cancelled. The respondent police is directed to secure the revision petitioner and commit him into the prison for the remaining period of sentence.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

- 1.The Judicial Magistrate Court No.II,
Pollachi..
- 2.The Additional District and Sessions Judge FTC-II,
Coimbatore.
- 3.Sub-Inspector of Police,
Negamam Police Station,
- 4.The Public Prosecutor,
High Court, Madras.
- 5.The Chief Judicial Magistrate,
Coimbatore.

+1cc to M/S.A.Mohamed Ismail, Advocate Sr.34292

Cr1.R.C.No.502 of 2012

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srg 23/05/2019