

Bail Slip

The Petitioners Accused Viz., mani @ Manimaran, Babu were released on bail as per order of theis Court dated 26/06/2012 in Crl.M.P.No.1/2012 in Crl.R.C.No.632 of 2012 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.04.2019

Coram::

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Revision Case No.632 of 2012

1. Mani @ Manimaran,
S/o.Ramaiya Pillai.
 2. Babu,
S/o.Ramaiya Pillai. ... Petitioners/Accused No.1 & 2
- /versus/

The State rep. by,
The Sub-Inspector of Police,
Thittacheri Police Station,
Nagapattinam. ... Respondent/Complainant

Prayer:- This Criminal Revision Case is filed under Section 397 & 401 of Cr.P.C, praying to set aside the judgment passed by the District and Sessions Judge, Nagapattinam in C.A.No.57/2010 dated 13.03.2012 modifying the judgment of the trial Court viz., Judicial Magistrate No.2, Nagapattinam, dated 05.05.2010 made in C.C.No.201 of 2002.

For Petitioners : Mr.A.S.Balaji

For Respondent : Mr.T.Shanmugarajeswaran
Government Advocate

O R D E R

Heard the Learned Counsel for the Revision Petitioner and the Learned Government Advocate for the respondent/state.

2. Aggrieved by the modified judgment of the Lower Appellate Court, the present revision petition is filed.

3. The brief facts of the prosecution case is that on 18.01.2002, at about 9.00 p.m while PW.1 was standing in front of her house A1 and A2 came there abused her with filthy language and attacked her with iron rod and wooden log. A1 sustained fracture in her left forearm and injury on her head. Based on her complaint, the police registered First Information Report against these two appellants and filed final report for offence under Section 294-B, 326 and 506(ii) as against A1 and 294-B, 323 and 506(ii) as against A2.

4. Before the trial Court, the prosecution has examined 13 witnesses. Marked 6 Exhibits. The injured victim Sumathi was examined as PW.1. In her deposition, she has stated about the previous enmity between her and the accused and pursuant to the enmity on 18.01.2003, about at 9.00 p.m, they came to the house used very abusive language and attacked her with iron rod and wooden log. The injured witness gone to the hospital, taken treatment for injury. PW.10 Dr.Rajendran, the causality Doctor attached to Government Hospital, Nagapattinam has admitted PW.1 who came for treatment on 18.01.2002 at midnight. In the Accident report, he has mentioned the swelling on her left forearm and on her head. He has advised to take x-ray. PW.1 was later shifted to Thanjvur Medical College Hospital, wherein, she was treated for the injury. PW.11 Dr.Vijayalakshmi has examined the x-ray and found that PW.1 has sustained fractured injury on her left forearm. Noticed two fractures. So, based on the opinion given by the Doctor who treated PW.1 that the injury sustained by PW.1 on her left forearm is grievous and the other injury is simple in nature. Coupled with the evidence of PW.1 who is the witness sustained injury and PW.2, PW.5 and PW.7 who were present at the SOC, the trial Court has held A1 guilty of offence under Section 326 of I.P.C and A2 guilty of offence under Section 323 of I.P.C. So far as the charges under Sections 294 (b) and 506 (ii) was held to be not proved.

5. The trial Court, while convicting A1 and A2 imposed sentenced of 1 year S.I and fine of Rs.1,000/-, in default 6 months S.I., for offence under Section 326 of I.P.C as against A1. Imposed fine of Rs.1000/- in default 3 months S.I for offence under Section 323 as against A2.

6. Aggrieved by the conviction and sentence, both the accused have preferred appeal before the District and Sessions Judge, Nagapattinam in C.A.No.57 of 2010.

7. The Lower Appellate Court, after considering the grounds of appeal and re-appreciating the evidence held that considering the nature of injuries and the fact that, PW.1 sustained grievous injury not established in view of non-production of x-ray held that A1 could be punished under Section 324 of I.P.C and A2 also to be punished under Section 324 of I.P.C. Having held so, the Lower Appellate Court, taking note of the long pendency of the case since 2002 and the age of the accused, to give a chance for reformation modified the sentence of imprisonment to the each of the accused simple imprisonment for a period of three months with fine of Rs.1000/-, each in default one month S.I.

8. The learned counsel appearing for the revision petitioner, at the outset would point out that the trial Court has convicted A-2 under Section 323 I.P.C and imposed fine of Rs.1,000/- for the offence under Section 323 of I.P.C. Whereas, the Lower Appellate Court has wrongly presumed that A2 was convicted under Section 324 of I.P.C and sentenced to undergo 6 months imprisonment and ventured to modify it to three months. While, the Trial Court has found A2 guilty for offence under Section 323 of I.P.C., contrarily the Lower Appellate Court has observed that A2 is guilty of offence under Section 324 of I.P.C. Pointing out that, offences under Sections 323 and 324 of I.P.C are entirely different in nature. When the weapon or objects not being recovered and produced before the Court, the Lower Court has convicted A2 only for offence under Section 323 of I.P.C - For causing simple injury. Whereas, without any substance or material in the appeal, by the accused the Lower Appellate Court has erroneously held A2 guilty for offence under Section 324 of I.P.C - For causing hurt by dangerous weapon or means, which is a factual error so the order is illegal and perverse.

9. As far as, 1st appellant is concerned, the learned counsel for the appellant would submit that the Lower Appellate Court after holding that non-production of x-ray causes doubt about the nature of injury, ought not to have convicted A1 for the offence under Section 324 of I.P.C. When the prosecution has failed to produce either the weapon or the x-ray report, convicting the accused for offence under Section 324 of I.P.C is unsustainable.

10. As far as, 2nd appellant is concerned, this Court is convinced that the Lower Appellate Court has not applied the mind properly. When the trial Court has held the 2nd appellant guilty of offence under Section 323 of I.P.C and imposed fine of Rs.1000/- on appeal by the accused enhanced sentence of imprisonment has been imposed. Therefore, the conviction

imposed on him for offence under Section 324 of I.P.C and sentencing him to undergo 3 months S.I., is illegal and perverse. Hence, the sentence imposed by the Lower Appellate Court as against A2/Babu is set-aside. The trial Court judgment of conviction and sentence against the appellant/A2 for offence under Section 323 of I.P.C imposing fine of Rs.1000/- is upheld.

11. As far as, A1 is concerned, the contention of the learned counsel for the revision petitioner is that the nature of grievous injury not proved through x-ray. But while perusing the testimony of PW.11 Dr.Vijayalakshmi, this Court finds that the x-ray report of PW.1 indicating the fractured injury was destroyed during the Tsunami. Her evidence categorically indicates that the prosecution was not able to produce the x-ray due to the fact of destruction and not because of any failure or omission. Whereas, the wound certificates of Sumathi are marked as Ex.P.3 and Ex.P.4. The records maintained by the hospital clearly indicates that x-ray of the patient was taken, number has been assigned to it. In the Accident Register, the number of x-ray is mentioned, which correlates with the number mentioned in the wound certificates. Therefore, the non-production of x-ray duly been explained by the prosecution witness. The grievous nature of injury caused to PW.1/Sumathi, cannot be doubted. Therefore, the modified sentenced imposed on A1/Mani @ Manimaran, by the Lower Appellate Court is confirmed.

12. In the result, the Criminal Revision Case is Partly Allowed. The judgment of sentence and conviction of the Lower Appellate Court as against A1/Mani @ Manimaran is confirmed. As against A2/Babu, the sentence and conviction passed by the Lower Appellate Court is set-aside. The conviction and sentence of the trial Court imposed on A2/Babu is restored. Bail Bond stand cancelled. The trial Court is directed to secure A1/Mani @ Manimaran and commit him to prison to undergo the remaining period of sentence. The period of sentence already undergo by A1/Mani @ Manimaran shall be set off under Section 428 of Cr.P.C.

13. In the result, the Criminal Revision Case is Partly Allowed on the above terms.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

To

1. The District and Sessions Judge,
Nagapattinam.
2. The Judicial Magistrate No.2,
Nagapattinam.
3. The Public Prosecutor,
High Court, Madras.
4. The Sub-Inspector of Police,
Thittacheri Police Station,
Nagapattinam.
5. The Section Officer,
Criminal Section, High Court, Madras.
6. The Chief Judicial Magistrate,
Nagapattinam.
7. The Superintendent,
Central Prison, Cuddalore.

+1cc to M/S.A.S.Baalaji, Advdocate Sr.36417

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सत्यमेव जयते

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srg 30/05/2019

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