



Bail Slip

The Appellant/Accused, namely Mr. Asai Thambi (32 years) S/o. Ponnusamy was directed to be released on bail as per order of this Court dated 13.07.2012 IN CRL MP.NO.1/2012 IN Crl.R.C.693/12 on the file of this Hon'ble court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.07.2019
CORAM:

THE HONOURABLE MR. JUSTICE P. VELMURUGAN

Crl.R.C.693 of 2012

Asai Thambi

...Petitioner

Vs.

State rep. by
The Inspector of Police,
Vikramangalam Police Station,
Perambalur District.
Crime No.192/2007

...Respondent

Prayer: This Criminal Revision filed under Section 397 and 401 of Code of Criminal Procedure to set aside the order dated 21.06.2012 in C.A.No.6 of 2012 on the file of the learned Principal District and Sessions Judge, Ariyalur, against C.C.No.15 of 2008 dated 25.01.2012 on the file of the learned Judicial Magistrate, Jayamkondan.

For Petitioner	: Mr.T.Muruganantham
For Respondent	: Mr.T.Shanmugarajeswaran Govt. Advocate (Crl.Side)

ORDER

This criminal revision has been filed against the judgment of conviction made by the learned Principal District and Sessions Judge, Ariyalur, in C.A.No.6 of 2012, dated 21.06.2012, modifying the conviction and sentence passed by the learned Judicial Magistrate, Jayamkondan, in C.C.No.15 of 2008 dated 25.01.2012.

2 Case of the prosecution is that petitioner and victim P.W.1 are relatives and due to property dispute, on 15.12.2007 at about 9.00 a.m. while the defacto complainant was coming along the road near Amboor Rajendran Tamarind Grove, the petitioner who is first accused and his wife 2nd accused abused him in a filthy language and attacked him



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with reaper stick on his head and shoulder and criminally intimidated him. Therefore respondent police has registered a case against the petitioner and his wife in Crime.No.192 of 2007 for the offence punishable under Sections 294(b), 323 and 506(i) of IPC and after investigation laid a charge sheet, which was taken on file by the learned Judicial Magistrate, Jayamkondan, in C.C.No.15 of 2008.

3 The learned Magistrate, after trial found both the accused guilty for the offence under section 294(b) and 323 of IPC and hence by judgment dated 25.01.2012, convicted both the accused and sentenced them to under to simple imprisonment for a period of one month for the offence under Section 294(b) and to undergo simple imprisonment for a period of one year for the offence under Section 323 of IPC, however, acquitted both the accused for the offence under Section 506(1). Aggrieved against the judgment of conviction, both the accused had preferred an appeal before the learned Principal District and Sessions Judge, Ariyalur, in C.A.No.6 of 2012. The learned Principal District and Sessions Judge, after hearing both the parties and after considering the materials placed on record, by judgment dated 21.06.2012 set aside the conviction and sentence against the second accused for all the offences and acquitted the petitioner for the offence under Section 294(b) and confirmed the conviction and sentence made against the petitioner for the offence under Section 323 of IPC. Being not satisfied with the judgment of the lower appellate Court, the petitioner is before this Court with the present revision petition.

4 According to learner counsel appearing for the petitioner both the petitioner and the defacto complainant are close relatives. Some wordy quarrel happened between them and that too the defacto complainant only invited the quarrel. There is one day delay in lodging the complaint and registering the FIR. The alleged occurrence had taken place on 15.12.2007, whereas, FIR has been registered only on 16.12.2007, prosecution has failed to explain the same properly, which creates doubt. The injuries sustained by P.W.1 has not tallied with the medical evidences. The Doctor P.W.7, who gave treatment to P.W.1, has opined that the injuries sustained by P.W.1 is only simple in nature. P.Ws.2 & 3, who are said to be eye witnesses to the occurrence, had turned hostile. Except the defacto complainant P.W.1 and P.W.4, all other eye witnesses have turned hostile and not supported the case of the prosecution. Therefore the learned counsel prays to extend benefit of doubts towards the petitioner/accused. Even though, the trial Court had acquitted both the accused for



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the offence under Section 506(1) and the lower appellate Court had acquitted the second accused from all the charges and acquitted the petitioner for the offence under Section 294(b), but, erroneously confirmed the conviction made against the petitioner by the trial Court for the offence under Section 323 IPC, which warrants interference.

5 The learned Government Advocate (Crl.Side) would submit that P.W.1, who is injured eye witness to the occurrence, has clearly spoken about the incident and involvement of the petitioner in the occurrence. P.W.4, one who came to the place of occurrence, had taken the defacto complainant to the Government Hospital, Ariyalur, and he has clearly deposed that the petitioner/accused assaulted P.W.1 with reaper wood. P.W.7, the Doctor, who treated the victim at the first instance in the Government Hospital at Ariyalur, and made entry in the Accident Register, has clearly spoken about the injuries sustained by P.W.1, which corroborates the evidence of P.W.1. In the AR/Ex.P4, it has been clearly stated that at the time of admission P.W.1 was conscious and stated two known persons attacked. The victim, immediately after the occurrence was admitted in the Hospital at Ariyalur and thereafter taken to Thanjavur Medical College and Hospital for further treatment and information was given to police. Thereafter, respondent police came and obtained statement from the victim and based on the same, after reaching police Station, had registered the FIR and hence the one delay has occurred and hence prosecution has clearly explained the delay of one day. Even though, the trial Court convicted both the accused, the lower appellate Court with the available materials, found A2 not guilty of any of the offence charged against her and hence acquitted the second accused and convicted the first accused for the offence under Section 323 of IPC alone and sentenced, which does not call for any interference.

6 Heard the learned counsel appearing on either side and perused the materials available on record.

7 It is seen that the petitioner and P.W.1 the victim are close relatives and there is some civil dispute and due to that the occurrence had taken place. P.W.4, who is an independent witness had clearly deposed that he took P.W.1 to Government Hospital Ariyalur and thereafter to Thanjavur Medical College, for further treatment. P.W.7, the Doctor, who gave treatment to the victim and made entries in the Accident Register, had clearly spoken about the injuries sustained by P.W.1. Even though as contended by the learned counsel for the petitioner that the injuries



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sustained by P.W.1 is only simple in nature, the Accident Register/Ex.P4 shows that there are multiple injuries on the vital parts of the body i.e. head and fore head. A combined reading of the evidence of P.Ws.1, 4 and 7 and the medical evidence, it is clear that the petitioner has committed offence punishable under Section 323 of IPC and the lower appellate Court, being a final Court of fact finding, had independently re-appreciated the entire evidence and accordingly confirmed the conviction made against the petitioner for the offence under Section 323 of IPC and this Court does not find any perversity on the same. However, considering the nature of the relationship between the parties and the injuries sustained by P.W.1, this Court is inclined to modify the period of imprisonment alone.

8 Accordingly, the conviction made by the lower appellate Court against the petitioner/accused for the offence under Section 323 of IPC is hereby confirmed and the period of imprisonment alone modified from one year to six months. Trial Court is directed to secure the presence of the petitioner/accused to undergo remaining period of imprisonment, if any. The criminal revision case is disposed of with the above modification.

Sd/-

Assistant Registrar(CS VI)

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Sub Assistant Registrar

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To

1. The Principal District and Sessions Judge, Ariyalur.
2. The Judicial Magistrate, Jayamkondan.
3. The Additional Public Prosecutor, High Court of Madras.
4. The Inspector of Police, Vikramangalam Police Station, Perambalur District.

+1cc to Mr.T.Muruganantham , Advocate SR.No. 54592

Cr1.R.C.693 of 2012

A.SK(09/08/2019)