

**BAIL SLIP**

1.R.Balraj, S/o Rengasamy, 2. Sakthivel, S/o Balraj, petitioners were released on bail vide court order dated 26.02.2014 made in MP(MD)No.2 of 2014 in Crl Rc(MD)No.151 of 2014.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	30.08.2019
Date of Judgment	22.11.2019

CORAM

THE HONOURABLE MRS. JUSTICE **T.KRISHNAVALLI****Crl.RC(MD)No.151 of 2014**

1.R.Balraj
2.Sakthivel

: Petitioners/Petitioners

Vs.

State represented by
The Sub Inspector of Police,
Gandharvakottai Police Station,
Pudukkottai District.
(Crime No.147 of 2010)

: Respondent/Respondent

Prayer: Criminal Revision has been filed under Section 397 r/w 401 of the Code of Criminal Procedure, against the judgment, dated 15.07.2013 passed in Crl.A.No.2 of 2013 by the Additional District and Sessions Judge, Pudukkottai, confirming the conviction and modifying the sentence of imprisonment imposed by the Judicial Magistrate, Pudukkottai, dated 06.12.2012 passed in C.C.No.63of 2012 and set aside the Judgments of the Courts below and acquit the petitioners.

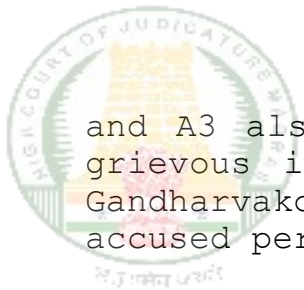
For Petitioner : Mr.S.Poornachandran

For Respondent : Mr.APG Ohm Chairma Prabhu
Government Advocate (Crl.side)

J U D G M E N T

The Criminal Revision is directed against the judgment, dated 15.07.2013 passed in Crl.A.No.2 of 2013 by the Additional District and Sessions Judge, Pudukkottai, confirming the judgment of the Judicial Magistrate, Pudukkottai, dated 06.12.2012 passed in C.C.No.63of 2012.

2.The case of the prosecution is that on 08.06.2019 at about 7.00 am, when Rajaletchumi was clearing the ground in front of her house at Kallupatti, all the accused persons objected to the same and abused her in filthy language and at that time, A1 assaulted her with kambu on her left forearm and caused grievous injury on her



and A3 also assaulted her with kamu on her left wrist and caused grievous injury to her. The Sub Inspector of Police attached to Gandharvakottai Police Station has filed a final report against the accused persons examining the witnesses.

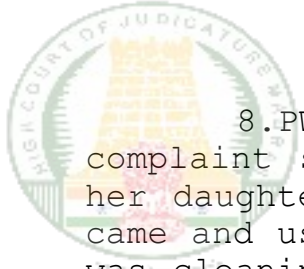
3. The trial court, on proper appreciation of the entire materials available on record, convicted the petitioners/A1 and A3 for the offence under section 325 IPC and each of them sentenced to undergo one year RI and to pay a fine of Rs.1,000/-, each in default to undergo SI for one month each. Aggrieved by the same, the petitioners/A1 and A3 preferred appeal before the first appellate court. The first appellate court confirmed the conviction, but the sentence of imprisonment alone is modified into 6 months of RI each. Challenging the judgment of the first appellate court, the petitioners/A1 and A3 are before this court.

4. Heard both sides and perused the materials available on record.

5. The first contention raised on the side of the revision petitioners/A1 and A3 is that in this case, there was a case and counter case and hence, both cases must have been tried by one and the same Judge as per the dictum laid down in various Judicial pronouncements by the Hon'ble Apex Court and in this case, the case and the counter case were not tried by one and the same Judge and therefore, the procedure adopted is illegal and vitiated. For that, the learned counsel appearing for the petitioners submitted a rulings reported in **1990 (Supp) SCC 145 (Nathi Lal and others Vs. State of U.P and others)** and 2001 CRI.L.J 1072 (Sudhir Vs.State of Madhya Pradesh).

6. In this case, it was admitted by the Investigating Officer that there was a counter case. It is the bounded duty of the accused to inform the trial court about the counter case. But the accused have not taken any steps to try the case and counter case jointly. It is seen that already the counter case was disposed by the Special Magistrate. At this stage, the accused have not raised the plea that the case and counter case were not jointly tried and it is fatal to the prosecution. Hence, the argument put forth on the side of the petitioners/A1 and A3 stating that the case and counter case were not jointly tried by the same Judge and hence, it is fatal to the prosecution is not at all acceptable.

7. The next contention raised on the side of the petitioners/A1 and A3 is that the occurrence witnesses are interested witnesses and the oral evidence of the occurrence witnesses is not corroborated with the medical evidence and the prosecution failed to mark the X-ray taken for PW1 to prove that the injuries sustained by PW1 are grievous in nature and non-production of X-Ray is fatal to the prosecution and prays that the petitioners/A1 and A3 are entitled to acquittal.



8. PW1 is the injured and she gave Ex.P1 complaint. PW1 in her complaint stated that one day during the year 2010, while she and her daughter were inside their house, at that time all the accused came and used filthy language and in the next day morning, when she was cleaning in the front yard, at that time the accused came with wooden leg, assaulted on her left hand and due to it, she sustained injury and then, she went to the police station and gave Ex.P1 complaint. Hence the evidence of PW1 is corroborated with the contentions found in Ex.P1 complaint.

9. PW2 is cited as eye witness. PW2 deposed that one day during the year of 2010 at 7.00 am, while he was sleeping in his house, he heard the sound from his son's house and he rushed to his son's house, at that time he saw the accused with wooden leg assaulted his daughter-in-law on her left hand and due to it, she sustained fracture on her left hand and he took steps to take her to the police station and after giving the complaint, he took PW1 to the Government Hospital, Thanjavur for treatment. Hence the evidence of PW1 is corroborated with the evidence of PW2.

10. The Doctor, who gave first treatment to PW1 was examined as PW6. PW6 deposed that on 08.06.2010 when he was on duty, PW1 came for treatment and she told him that on the same day at 7.00 am, she was assaulted by four persons and he found a contusion injury in her left forearm and an abrasion injury in her left hand and she was referred to the Thanjavur Government Hospital for further treatment and on the basis of the X-ray report and the opinion given by the Orthopaedic surgeon, both the injuries are grievous in nature.

11. PW6 gave Wound Certificate on the basis of X-ray and opinion given by the Orthopaedic Doctor and the Doctor, who gave future treatment to PW1 was examined as PW7. PW7 deposed that when he examined PW1, he found contusion on her left hand and contusion on her ring finger and X-ray was taken for PW1 and after perusal of the X-ray, he found that the alula bone in his left hand and the distal phalanx bone in the ring finger of PW1 were fractured and he gave the Wound Certificate.

12. PW1 in her evidence stated that the petitioners assaulted her with wooden log on her hands and legs and several parts of body and PW1 in her evidence specifically stated that the accused with wooden leg assaulted on her left hand and she sustained injury on her left hand and fingers. PW2 also deposed that all the accused with wooden leg assaulted PW1 and PW2 sustained injury on her left hand.

13. The learned counsel for the petitioners/A1 and A3 argued that the X-ray taken for PW1 was not produced and hence, the non production of X-ray was fatal to the prosecution. For that the learned counsel for the petitioners/A1 and A3 submitted a ruling reported in **2000(3) MWN (Cr.) 91 (Aunachalam and others State rep. By Sub Inspector of Police, Nanguneri P.S, Tirunelveli District)**. In that case, it is held in para 9 as follows:-



"The only evidence to show that PW1 had sustained a fracture injury, is the X-ray, which is not marked in this case. The radiologist is also not examined. Ex.P8 is the report of the radiologist. The said report shows that PW1 had sustained a fracture. According to me, the materials noticed above namely Ex.P8 and the evidence of PW8 in the absence of the X-ray as well as the evidence of radiologist, cannot be held to be legal materials to arrive at a conclusion that PW1 had suffered a fracture. The accused had been denied the opportunity of cross-examining the radiologist on the basis of the X-ray and a point in his favour might come out during that examination. Under these circumstances, I am of the opinion that the marking of the X-ray as well as the examination of the radiologist are the basis requirements to establish that the injured had suffered a fracture. Since those materials had been withheld by the prosecution, I am not inclined to hold that A.3 is guilty of the offence punishable under Section 326 of the I.P.C. Therefore, I have to hold that A.3 can be found guilty for the offence punishable only under section 324 of the I.P.C."

14. In this case, X-ray report was not filed. But the Doctor who gave treatment to PW1 in the Thanjavur Government Hospital categorically stated that he took X-ray and on the basis of X-ray, he found that the ulna bone in the left hand and fiscal baslings bone in ring finger and on the basis of the X-ray, PW7 gave Ex.P4 Wound Certificate.

15. On perusal of Ex.P4, it is stated that on the basis of X-ray, PW7 found fracture on the left hand and ring finger of PW1. The Doctor, who gave further treatment deposed that he found fracture on the left hand and on ring finger in left hand on the basis of X-ray findings. Hence, the non-production of X ray will not affect the case of the prosecution.

16. In this case, PW6 and PW7 found fracture on the left hand of PW1. PW1 and PW2 also deposed that PW1 sustained injury on the left hand by wooden log used by the accused. Hence the evidence of PW1 is corroborated with the evidence of PW6 and PW7/Doctors. Therefore, the oral evidence of PW7 is corroborated with the medical evidence. Hence, the argument put forth on the side of the petitioners/A1 and A3 stating that the evidence of PW1 is not corroborated with the evidence of medical evidence is not at all acceptable.

17. Further, the learned counsel for the petitioners/A1 and A3 argued that PW1 and PW2 are close relatives and they are interested witnesses and hence, their evidence cannot be relied upon.



18. In this case, on perusal of the evidence of PW1 to PW2 and PW5, it reveals that their evidence was cogent, trustworthy and normally in the village, the independent persons have hesitated to give evidence. Hence, the evidence of PW1 to PW5 are cogent, trustworthy and hence, their evidence can be relied upon.

19. Further, the learned counsel appearing for the petitioners/A1 and A3 argued that the date of occurrence is 08.06.2010 and the date of registration of FIR is 10.06.2010 and the delay in registration of FIR has not been properly explained by the prosecution and hence, it is fatal to the prosecution.

20. In this case, PW8 received the complainant and at first registered as petition No.179, which shows that petition enquiry was going on till the registration of the FIR. Hence, it is held that there was no delay in registering the FIR and hence the argument put forth on the side of the petitioners/A1 and A3 that there was delay in registering the FIR is not at all acceptable.

21. For all the reasons stated above, this court is of the considered view that the judgment of the first appellate court does not call for any interference by this court. However, consider the facts and circumstances of the case and also consider the fact that the petitioners/A1 and A3 are the only breadwinners, the punishment imposed on the petitioners/A1 and A3 requires modification and accordingly, the punishment imposed on them is reduced to 3 months RI.

22. In the result, the criminal revision is **partly allowed**. The punishment imposed on the revision petitioners/A1 and A3 for the offence under Section 325 IPC is reduced to **3 months RI**. In respect of fine amount, the findings of the Courts below are confirmed. The period of sentence, if any, already undergone by the revision petitioners/A1 and A3 shall be given set off under Section 428 of Cr.P.C. The petitioners/A1 and A3, after adjusting the period of imprisonment already undergone shall undergo imprisonment for the remaining period.

Sd/-

Assistant Registrar (AS)

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Sub Assistant Registrar (CS)

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To,

1. The Additional District and sessions Judge,
Pudukkottai.

2. The Judicial Magistrate,
Pudukkottai.

3. The Sub Inspector of Police,
Gandharvakottai Police Station,
Pudukkottai District.

+1 CC to Mr.K.N. GOVARDHANAN, Advocate (SR-100833[F] dated
25/11/2019)

Judgment made in
Crl.Rc.(MD)No.151 of 2014
22.11.2019

VB(20.12.2019) 6P 5C