



Bail Slip

The Petitioner / Appellant / Accused namely Kalaiselvi, female, aged 31 years was released on bail vide order made in M.P.No.1/2014 in CRL RC No.281/2014.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Cr1.R.C(MD)No.281 of 2014

Kalaiselvi ... Petitioner / Appellant / Accused No.1

Vs.

State represented by
The Inspector of Police,
Aranthangi Police Station,
Pudukkottai District.

[Crime No.588 of 2006] ... Respondent / Respondent / Complainant

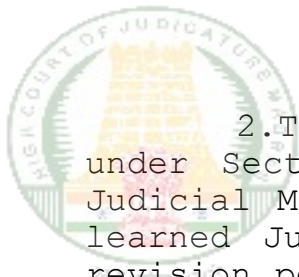
Common Prayer: Criminal Revision Case has been filed under Section 397 r/w 401 of the Criminal Procedure Code, to call for the records of the Principal District and Sessions Judge, Pudukkottai in Cr1.A.No.38 of 2013 by judgment dated 26.10.2013, confirming the conviction and sentence imposed by the learned Judicial Magistrate, Aranthangi in C.C.No.122 of 2011 by the judgment dated 18.07.2013.

For Petitioner : Mr.D.Rameshkumar

For Respondent : Ms.S.Bharathi,
Government Advocate (Cr1 Side)

ORDER

The Criminal Revision Case has been filed by the petitioner / accused No.1 as against the judgment passed in C.A.No.38 of 2013 by the Principal District Sessions Judge, Pudukkottai, and the order of conviction and sentence imposed by the trial Court in CC No.122 of 2011, dated 18.07.2013 for the commission of offence under Section 325, IPC.



2.The revision petitioner [A1] was tried for the offence under Section 325 IPC along with two others, before the learned Judicial Magistrate Court, Aranthangi in CC No.122 of 2011 and the learned Judicial Magistrate by order dated 18.07.2013, found the revision petitioner / A1 guilty for the commission of offence under Section 325 IPC and convicted and sentenced her to undergo imprisonment for a period of three months with a fine of Rs.500/-, in default to pay the fine amount, two weeks of simple imprisonment was also ordered and the other were acquitted from the charges.

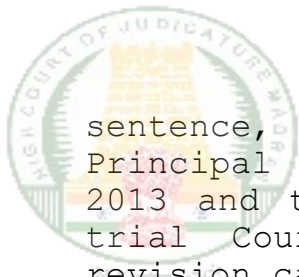
3.As against the order of conviction and sentence, the petitioner / A1 has preferred an appeal before the Principal District Sessions Judge, Pudukottai in C.A.No.38 of 2013 and the same was dismissed by judgment dated 26.10.2013 confirming the order passed by the learned Judicial Magistrate, Aranthangi. As against the order of conviction imposed by the trial Court as well as the appellate Court, the present revision petition has been filed.

4.The case of the prosecution is that on 10.10.2006 at about 6.00pm, in front of the house of Balsamy (A2), the victim / PW1 had questioned why the accused were talking about her sister and scolding her. At that time A1 attacked PW1 with the wooden handle of Aruval and caused injury on the mouth and in that attack a teeth of PW1 was broken. The accused Nos.2 and 3, who were also present attacked the victim and caused simple injuries. The PW1 was taken to Government Hospital at Aranthangi and on information from the Hospital, PW11 Special Sub Inspector of Police, went to the Aranthangi hospital and recorded the statement of PW1 and registered the FIR in Exp6.

5.PW11 the investigating officer on receipt of the information went to the place of occurrence and prepared an observation mahazar [Exp7] and a rough sketch [Exp8] and recovered MO1 aruval under a cover of mahazar in Exp9 and arrested the accused at 08.00 am on 11.10.2006 and recorded the statement of the witnesses. The Doctor PW10, who treated the PW1, issued a wound certificate [Ex.P5] that the injury is of grievous in nature. In conclusion of the investigation, the PW11 filed a final report, as against the petitioner and others.

6.On the side of the prosecution 13 witnesses have been examined and 9 documents were marked and 1 material object was produced. The incriminating materials were put to the accused and the same was denied. No witness was examined and no document was marked on the side of the accused.

7.In conclusion of the trial, the trial Court found this petitioner guilty, convicted and sentenced her and acquitted two others as stated supra. As against the order of conviction and



sentence, the revision petitioner / A1 filed an appeal before the Principal District and Sessions Judge, Pudukottai, in C.A.No.38 of 2013 and the appeal was dismissed by confirming the order of the trial Court. As against the dismissal, this present criminal revision case has been filed.

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8.Heard Mr.D.Ramesh Kumar, learned Counsel for the revision petitioner and Mrs.S.Bharathi, learned Government Advocate (Crl side) appearing for the State.

9.The learned Counsel for the revision petitioner has raised the following grounds:

(i) The occurrence has taken place on 10.10.2006 at about 18.00 hours and the complaint was lodged at about 23.00 hours and therefore, there is a delay of five hours in lodging the complaint.

(ii)There are contradictions with regard to the place of occurrence and the manner of occurrence.

(iii) According to the complaint and FIR, the occurrence has taken place in front the house of one Balsamy [A2] and during cross examination, it has been stated that the place of occurrence is in front of the house of A1. Though A1 is the daughter of A2, she got married and living separately and A2 and A3 the parents of A1 are living separately. There is a distance of 300 meters between their houses.

(iv) According to PW1, in the complaint[ExP1], A1 is said to have assaulted the victim with wooden handle portion of the aruval and caused injury, whereas during the evidence, PW1 stated that A1 assaulted him with the tip of the aruval. According to PW1, he sustained injury in the lips and he also lost a teeth in the attack. But, the broken teeth in this case has not been recovered.

(v) The Doctor [PW10] in his evidence would state that there is no other injury other than the injury in the lips.

(v) Even with regard to the breaking of teeth and the injury caused thereon, there is no evidence whether it was the new injury or old one. The Doctor had deposed that with the available medical records, it cannot be ascertained, whether the injury is the recent one or old one.

(vi)In this case no independent witness has been examined and all the witnesses are family members of the complainant. Therefore, the learned Counsel for the revision petitioner prays for allowing this revision case.

(vii) The learned Counsel relied upon the judgment of the Hon'ble Supreme Court, in **Kanakarajan alias Kanakan Vs State of Kerala**, in **AIR 2017 SC 2779**, wherein it has been held as follows:

<https://hcservices.ecourts.gov.in/hcservices/>



"18.We feel that non examination of the credible independent witnesses in this case is very much fatal to the prosecution's case. Particularly when it is their own case that there were several shops and houses in the vicinity and several people were present. It is not necessary that in each and every case on the ground of non examination of independent witnesses the case of the prosecution has to be brushed aside, if the evidence of the prosecution witnesses is consistent, cogent and corroborated by other evidence it can be safely relied upon, but it is not so in the case at hand. The High Court disbelieved the presence of PW2 and PW3 turned hostile, statements of PW4, PW5 and PW22 do not inspire confidence. No other independent witness is examined. PW11 the panchwitness for recovery of weapon has also turned hostile and deposed that he signed without reading the same. Moreover, there is no evidence to show any results of forensic examination of the weapon so recovered. In our considered opinion the High Court, while convicting the appellant, should have been more cautious while weighing the evidence of these prosecution witnesses."

He also relied on the decision of this Court in **Senthil Kumar Vs State of Tamil Nadu**, reported in **[2007] 3 Crimes 8**, wherein this Court has held as follows:

"12.Further, there is discrepancy in the scene of occurrence. According to the prosecution, the occurrence took place in the marriage panthal. But the injured witnesses spoke to the Doctor that the occurrence was taken place in the house. There is difference between the house and the marriage panthal. This discrepancy was not explained by the prosecution and this will also affect the prosecution."

10.Per contra, the learned Government Advocate (Crl Side) would submit that the prosecution has proved its case beyond reasonable doubt through the evidence. The occurrence has taken place on 10.10.2006 at about 18.00 hours and within 5 hours the complaint has been lodged and this cannot be stated as a delay. It has been established that A1 has caused injury to PW1 with aruval through eye witnesses PW1 also an injured witness, PW2, PW5 and PW6 and they had clearly stated in their statement that A1 has caused injury to the PW1, which is also in line with the First Information Report. With regard to the place of occurrence, the trial Court has observed that it is only 200 meters distance between the two places, which are said to be the place of occurrence and this cannot be a ground to acquit the accused. The trial Court has rightly found the revision petitioner guilty and therefore, there is no need to interfere with the judgment of the Courts below and hence, prays for dismissal of this revision case.

11.This Court has paid its best attention and anxious consideration to the rival submissions made and perused the materials placed on record.



12.The witnesses examined in this case are all family members of the complainant. PW2 is the mother; PW3 is the father; PW4,PW5 and PW7 are the sons of the complainant. The other witnesses PW8, PW9 and PW13 did not support the case of the prosecution.

13. It is stated in the complaint [ExP1] the occurrence has taken place in front of the house of A2, but, PW1 in his cross examination has stated that the accused had attacked him in front of the house of A1. Admittedly, there is a distance of 300 meters between the house of A1 and the house of A2. Similarly with regard to the injury sustained by him in the complaint it has been stated that the A1 had attacked the victim with the wooden handle of the aruval. But PW1, in his cross examination had deposed that A1 was holding the wooden handle of the aruval and with the tip of the aruval caused the injury. The Doctor [PW10], who had treated PW1, in his evidence had stated that in the wound certificate he has not stated whether the injury found on the lips is new injury or old injury and he also accepted the suggestion that when one is being pushed from back, there is a possibility of breaking of the teeth and he also admitted the suggestion that there is a possibility for the PW1 to have sustained the injury so. Further the alleged broken teeth was not recovered and placed before the Court. Considering the available evidence, the trial Court acquitted the accused Nos.2 and 3 in this case.

14.Under such circumstances, it may not be safe to convict the petitioner and this Court is of the view that the above discrepancies and contradictions have not been explained satisfactorily by the prosecution and the benefit of doubt has to be extended to the petitioner on the ratio laid down by the Hon'ble Supreme Court and this Court in the judgments cited supra.

15.In the result,

(i) the Criminal Revision Case is allowed and the judgment dated 26.10.2013 passed by the Principal District Sessions Judge, Pudukkottai in Crl.A.No.38 of 2013 confirming the conviction and sentence imposed by the learned Judicial Magistrate, Aranthangi in C.C.No.122 of 2011 dated 18.07.2013 are set aside the appellant is acquitted from the charges. The bail bonds executed by the revision petitioner shall stand terminated; Fine amount, if any paid, shall be refunded to her.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



- 1.The Principal District Sessions Judge,
Pudukottai.
- 2.The Judicial Magistrate,
Aranthangi.
- 3.The Chief Judicial Magistrate, Pudukkottai.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
- 5.The Record Keeper, (2copies)
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.D.RAMESHKUMAR, Advocate (SR-95719[F] dated
04/11/2019)

Cr1.R.C (MD) No.281 of 2014
01.11.2019

dsk
SDS (13.08.2020) 6P-8C