



Bail Slip

Kandasamy, S/o.Veeranan, aged about 45 years, sole accused was released on bail vide order of the Court dated 27.01.2014 made in MP(MD)2 of 2014 in Crl.R.C(MD)No.37 of 2014

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :03.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.R.C(MD)No.37 of 2014

Kandasamy ... Petitioner /Appellant/ Sole Accused

Vs.

State through
The Inspector of Police,
Aruppukottai Taluk Police Station,
Virudhunagar District,
[Crime No.82 of 2011] ... Respondent/Respondent/ Complainant

PRAYER: Criminal Revision Case filed under Section 397 and 401 of the Code of Criminal Procedure, to call for the records pertaining to the judgment in S.C.No.24 of 2002 on the file of the learned Assistant Sessions Court, Aruppukottai, virudhunagar District by convicting the petitioner by an order dated 13.09.2007 and the same was confirmed by the learned Principal Sessions Judge, Virudhunagar District at Srivilliputhur in C.A.No.192 of 2007 dated 16.04.2013, and set aside the same.

For Petitioner : Mr.B.Viswanathan,
for Mr.M.Karunanithi

For Respondent : Mrs.S.Bharathi,
Government Advocate (crl side)

ORDER

This Criminal Revision Case is filed as against the conviction and sentence imposed on the petitioner by the learned Assistant Sessions Judge, Aruppukottai in S.C.No.24 of 2002 by order dated 13.09.2007 and confirmed by the learned Principal Sessions Judge, Virudhunagar District at Srivilliputhur in C.A.No.192 of 2007 by judgment dated 16.04.2013.



2.The petitioner was charged for the offence under Section 307 IPC before the trial Court and the trial Court by order dated 13.09.2007 found the appellant guilty under Section 307 IPC, convicted and sentenced him to undergo seven years rigorous imprisonment with a fine of Rs.5,000/-. As against the same, the appellant preferred the appeal before the Principal Sessions Court, Virudhunagr at Srivilliputhur in C.A.No.192 of 2007, wherein the sentence imposed by the trial Court has been modified from seven years to three years. Aggrieved over the same, this revision petition has been filed by the petitioner/ accused.

3.Heard Mr.B.Viswanathan, learned Counsel for the revision petitioner and Mrs.S.Bharathi, Learned Government Advocate (Crl Side) appearing for the respondent.

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

4.1. There is eight hours of delay in lodging the complaint before the respondent police from the time of occurrence.

4.2.There is a contradiction in the evidence of the witnesses that the Doctor/PW5 who treated the injured /PW1 deposed that PW1 came from Police Station for taking treatment, but the prosecution case is PW1 went to the hospital, took treatment and then lodged complaint.

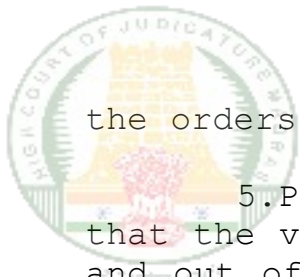
4.3.The Doctors PW5 and PW6 deposed that there were three injuries on the victim including one sutuchered injury, which shows that PW1 had taken treatment in a private hospital and this fact has been suppressed.

4.4.Dr.Gunasekaran, who had given initial treatment to the PW1 has not been examined

4.5.The witnesses PW2 and PW3 are interested witnesses and they could not be eye witnesses to the occurrence, which is said to have taken place at 7.00am.

4.6.Dr.Sahul Hameed/ DW1 deposed that the petitioner is a mentally retarded person and has been taking treatment for ten years and this fact has not been taken into account by the trial Court as well as appellate Court.

4.7.There is discrepancy between the medical evidence and the ocular evidence and hence, the prosecution witnesses cannot be relied upon and there is no corroborative evidence. Therefore, prays for allowing this criminal revision case and setting aside



the orders of the Courts below.

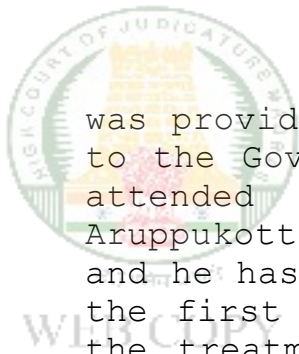
5.Per contra the learned Government Advocate would submit that the victim / PW1 in this case has sustained multiple injuries and out of that two injuries are grievous in nature. The Doctor / PW5, who examined the victim at the time of admission has issued accident register Ex.P2 and the Doctor / PW6 who gave a final opinion in Ex.P3 has categorically stated that the injury sustained by the victim in this case is possible in the course of the occurrence. Apart from the injured witness/ PW1, PW2 and PW3 the co-workers of the petitioner/accused had also stated about the occurrence and the manner in which the petitioner caused injury to the victim/PW1. The victim was taken to the hospital by PW2 and the evidence of PW8 would disclose that immediately after the occurrence the petitioner was taken to a private hospital. Where he was given first aid and thereafter, he was taken to the Government Hospital at Aruppukottai.

6.The prosecution has established its case through three eye witnesses and among them PW1 is the injured eye witness and the prosecution has established its case beyond reasonable doubt. There is no reason to interfere with the conviction imposed by the trial Court. Considering the nature of the injury the victim sustained, the appellate Court modified the sentence of imprisonment from seven years to three years and even the punishment imposed by the appellate Court is a very minimum one with regard to the offence under Section 307 IPC, when the victim has sustained two grievous injuries.

7.Heard the learned Counsel on either side and perused the materials placed on record.

8.The case of the prosecution is that PW1 was working as a Factory Manager in Ramalinga Mills at Aruppukottai, wherein the revision petitioner/ accused was a co-worker. Due to previous enmity regarding the administration of work, the accused was warned by PW1, for not attending the duty regularly. Infuriated over the same, the petitioner/accused has attacked the PW1 / Factory Manager of the company with iron rod on his forehead left ribs and caused multiple injuries.

9.The main contention of the learned Counsel for the revision petitioner is that the occurrence has taken place at 7.00am on 26.05.2001 and the complaint was lodged only at 2.30pm with a delay of seven hours and therefore, it would definitely affect the case of the prosecution as this delay has not been properly explained. But in this case, though the occurrence has taken place at 7.00am, immediately to the occurrence, the victim PW1 was taken to a private hospital at Aruppukottai, wherein he



was provided with first aid treatment and thereafter, he was taken to the Government Hospital at Aruppukkottai. PW.5 the Doctor, who attended the victim PW1 at the Government Hospital at Aruppukkottai, has noted down the injuries found on the victim PW1 and he has also noted down a sutuchered wound that would establish the first aid provided to him, however, the Doctor, who provided the treatment at the private hospital has not been examined and there is no evidence to that effect. But, that alone cannot be a ground to conclude that the occurrence has not taken place as alleged by the prosecution.

10.The evidence of the Doctor PW.5 about the sutuchered wound on the victim PW1 would show that a first aid was provided to the victim even before, he was taken to the Government Hospital at Aruppukkottai and therefore, the victim who has sustained multiple injuries and out of which, two injuries are grievous in nature and it would necessarily be looked into. A person who sustains grievous injury would be particular in taking treatment, rather than lodging a complaint and therefore, the lodging of the complaint after seven hours from the incident took place cannot be a delay in this case to discard the evidence of the eye witnesses PW1, PW2 and PW3. The prosecution has established their case by the evidence of PW1 and the co-workers of mill the natural witnesses and therefore, there is no reason to disbelieve the case of the prosecution and accordingly, the criminal revision case is dismissed.

11.The learned Counsel for the revision petitioner also pleaded that the petitioner is also suffering with mental illness, requested for modification of sentence. There is no material placed on record to show that at the relevant point of time, the accused was mentally ill. The fact remains that he was working as a labour in the company and therefore, this ground cannot be acceptable. However, if any materials are placed before the concerned jail authorities that the petitioner is suffering with mental illness, the jail authorities can consider the same and provide necessary treatment to the revision petitioner. The petitioner was found guilty for the offence punishable under Section 307 IPC, originally convicted and sentenced to seven years of imprisonment and during the appeal, the sentence has been modified from seven years to three years. The punishment awarded by the appellate Court itself is a very lenient punishment and therefore, this Court is not inclined to interfere with the sentence imposed by the appellate Court.

12.In the result, the Criminal Revision Case is dismissed and the conviction imposed by the Courts below are confirmed and the sentence modified by the learned Principal Sessions Judge,



Virudhunagar District at Srivilliputhur in C.A.No.192 of 2007 dated 16.04.2013, is confirmed.

Sd/-

Assistant Registrar (RECORDS)

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/ /2020

Sub Assistant Registrar (CS)

TO

- 1.The Principal District and Sessions Judge,
Virudhunagar District at Srivilliputhur
- 2.The Assistant Sessions Judge,
Aruppukkottai, Virudhunagar District
- 3.The Judicial Magistrate, Aruppukkottai
Virudhunagar District
- 4.Do Through
The Chief Judicial Magistrate,
Virudhunagar District at Srivilliputhur
- 5.The Inspector of Police
Aruppukkottai Taluk Police Station,
Virudhunagar District
- 6.The Additional Public Prosecutor
Madurai Bench of Madras High Court, Madurai

Cr1.R.C(MD)No.37 of 2014

03.10.2019

KM/ (04.02.2020) 5P 7C