

BAIL SLIP

The Appellant/Accused namely Ravi S/o.Egambaram was released on bail on 04.01.2018 in CrI.Mp.17/18 in CrI.Rc.2/2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE OF ORDERS RESERVED 14.12.2020	DATE OF ORDERS PRONOUNCED 30.12.2020
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CORAM

THE HON'BLE MR.JUSTICE G.CHANDRASEKHARAN

CRL.RC.NO.2 OF 2018

Ravi

...Petitioner/Appellant/Accused

Vs.

State rep. by
The Sub Inspector of Police,
Dusi Police Station,
Thiruvannamalai District.
(Crime No.9 of 2006)

...Respondent/Respondent/Complainant

Criminal Revision Petition is filed under Section 397 read with 401 Cr.P.C, to call for the entire records relate to the order passed in Criminal Appeal No.3 of 2010 dated 16.11.2017 on the file of the Additional District Judge, Fast Track Court, Arni, Thiruvannamalai District, which confirmed the order dated 26.05.2010 passed in C.C.No.33 of 2007 by the Principal District Munsif cum Judicial Magistrate No.1, Cheyyar, Thiruvannamalai District and set aside the same and acquit the petitioner.

For Petitioner : Mr.V.R.Appaswamee
For Respondent : Mr.K.Madhan
Government Advocate (Crl. Side)

ORDER

This Criminal Revision Petition is filed against the Judgment of the Learned Additional District and Sessions Judge, Fast Track Court, Arani, in C.A.No.3 of 2010 dated 16.11.2017 which confirmed the Judgment of the Learned Judicial Magistrate No.1, Cheyyar, in C.C.No.33 of 2007 dated 26.05.2010.

2. The respondent police filed a final report against the petitioner alleging that on 06.01.2006 at about 8.00 p.m., when the P.W.1, Defacto Complainant was cooking in her home, one Dass was in her home. The petitioner who came into the house questioned the defacto complainant why she is keeping Dass in the house and scolded her by stating that she was having illicit intimacy with him. The further allegation is that the petitioner attacked the defacto complainant with a knife in some parts of her body and caused grievous injuries. When P.W.2 Selvakumar, son of the defacto complainant, tried to prevent the petitioner from attacking defacto complainant, the petitioner had also caused simple injury in his hand. The act of the petitioner is liable to be punished under Sections 324 and 326 of IPC.

3. After the petitioner/accused entered appearance, the copies of all the records were given to him free of cost. Since there was material to frame charges against him under Sections 324 and 326 of IPC, charges have been framed under those sections and he was questioned with regard to the same. The petitioner/accused denied the charges and demanded trial.

4. During the course of trial, the prosecution had examined 10 witnesses, namely, P.W.1 to P.W.10, marked Exs.P1 to P11 and produced one knife measuring 12 inches long as material object.

5. The case of the prosecution in brief, as seen from the evidence of prosecution witnesses, is as follows :

6. P.W.1 is the Defecto Complainant, petitioner is her husband and P.W.2 is their son. The petitioner had married one Muniamma as the second wife and was living separately in some other place. The P.W.1 is living with her two sons. She was doing puffed rice business. In the year 2006, since she suffered loss in her business, she borrowed a sum of Rs.5,000/- from one Dass to manage the loss. On 06.01.2006 at about 8.00 p.m, she was cooking in her home. At that time, Dass had come to her home to get back the money lent to her. She informed Dass that her son had gone for work and she would repay the amount once her son came back from the work. Suddenly, the petitioner came into the house from the rear entry and pulled Dass. Dass ran out of the house. Petitioner scolded P.W.1 in filthy language by suspecting that she had affair with the said Dass and started attacking her with a knife and cut over her hands, legs, thighs, buttocks and other parts of the body. P.W.2, her son tried to stop the petitioner from attacking P.W.1, but the petitioner had also cut him and caused simple injury in his right hand. Then, the P.W.1 was taken to the hospital for treatment. P.W.1

corroborated with regard to the occurrence. P.W.8 Doctor has stated that on 06.01.2006 at about 11.25 p.m., one Selvi aged 40 was brought by her brother in law Muniandi for treatment. She informed her that she was attacked by one unknown person at about 8.00 p.m. on the same day. She had found cut injuries on her right and left side shoulder, upper part of her hand, right side of her head on the rear, her back, her left hand thumb and wrist. She also found some lacerated wound on her palms, legs and buttocks. The injuries suffered by her are grievous injuries. Ex.P6 is the Copy of the accident register. These injuries could have been caused by 8 c.m. long knife. On the same day, she examined one Selvam aged 17 years who was brought by his uncle Shanmugam. He informed her that he was attacked by his father with the knife at about 8.00 p.m. on 06.01.2006. He had injuries on his right palm, right little finger and back of his neck. Ex.P7 is the Copy of accident register. P.W.9 Sub Inspector of Police visited the hospital on the basis of telephonic information and recorded the statement of P.W.1. He registered FIR in Crime No.9 of 2006 under Sections 324 and 326 IPC and sent the same to the Court. He visited the scene of occurrence at about 10.30 a.m. and preferred Ex.P9 Rough Sketch and Ex.P10 observation in the presence of the witnesses Elumalai and Sivakumar. P.W.4 Sivakumar admitted his signature in the observation voucher. P.W.7 also admitted his signature in the observation voucher. However, both the witnesses had been treated as hostile witnesses. They have not supported the case of the prosecution. P.W.9 examined the witnesses and recorded their statements. On secret information, he arrested the petitioner in bus stand. He handed over the knife used in the commission of offence and he recovered the knife in the presence of P.W.5 Ponnurangam and P.W.6 Chandran. Though P.W.5 and P.W.6 admitted the signature in the Ex.P11 Magazar, they have not supported the case of the prosecution. Therefore, they had been treated as hostile witnesses. The Magazar is Ex.P11. P.W.9 sent the petitioner for judicial custody and he also sent the knife to the Court. P.W.10 took over further investigation in this case, examined the witnesses, completed the investigation and filed a final report against the petitioner under sections 324 and 326 IPC.

7. The petitioner/accused was questioned with regard to the incriminating evidence found against the petitioner in the evidence of prosecution witnesses. Petitioner claimed the evidence as false. No evidence was produced on the side of accused.

8. On considering the oral and documentary evidence available in the case and the submissions of the learned counsel

for the petitioner and the learned Assistant public prosecutor for the respondent, the Learned Judicial Magistrate No.1, Cheyyar, found the petitioner guilty under Sections 324 and 326 of IPC and sentenced him to undergo three years Rigorous Imprisonment and to pay fine of Rs.5,000/- under section 326 of IPC, in default to pay the fine, to undergo nine months simple imprisonment, and also sentenced him to undergo one year rigorous imprisonment and to pay fine of Rs.500/- under section 324 of IPC, in default to pay the fine, to undergo two weeks simple imprisonment. Further, it was directed that a sum of Rs.4,000/- from the fine amount to be paid as compensation to P.W.1. The substantive sentences to run consecutively and the period of imprisonment undergone during the trial to be set off under Section 428 Cr.P.C.

9. As against the order of the Learned Judicial Magistrate No.1, Cheyyar, the petitioner preferred an appeal in C.A.No.3 of 2010 on the file of the Learned Additional District and Sessions Judge, Fast Track Court, Arani. The Learned Sessions Judge did not find any valid reasons to interfere with the Judgment of the Learned Judicial Magistrate and confirmed the Judgment and dismissed the appeal. Against the said Judgment, the petitioner has filed this Criminal Revision Petition.

10. The learned counsel for the petitioner submitted that the Lower Courts have failed to take note of the fact that the P.W.1 and the Dass had illicit relationship and the injuries found on P.W.1 and P.W.2 were the result of running through thorn bushes and trees when pursuing the accused/petitioner who was trying to catch Dass. The injuries sustained by them was the result of hitting and rubbing against thorn trees. Suppressing these facts, P.W.1 has given a false complaint against the petitioner. Dass is a material witness in this case. The prosecution has deliberately omitted to examine him as a witness. No independent witnesses were examined to support the case of the prosecution. Even in the evidence of P.W.1 and P.W.2, there are material contradictions with regard to the occurrence.

11. The learned counsel for the petitioner further submitted that though it is stated by P.W.1 that some other persons had seen the occurrence, they have not been examined to support the case of the prosecution. When P.W.1 and P.W.2 say that the occurrence had happened inside the house, P.W.3 said that the occurrence had happened outside the house. It is the evidence of P.W.1 that when she was attacked by the petitioner, blood was oozing heavily from her body and it had to be stopped with the help of three sarees. But none of these Sarees have been

produced before the Court as material object. This case is made up with all these materials contradictions, lapses and omissions in the case of the prosecution. The Courts below have wrongly convicted and sentenced the petitioner. Therefore, the learned counsel for the petitioner prayed for setting aside the Judgment of the Courts below.

12. Countering the arguments of the learned counsel for the petitioner, the Learned Public Prosecutor submitted that as per Section 134 of the Indian Evidence Act, 1872, no particular number of witnesses need to be examined for the proof of any fact. In other words, it is the quality of the evidence that matters and not the quantity of the evidence. The occurrence in this case had happened inside the house. P.W.1 and P.W.2 were inside the house at the time of occurrence. Though Dass was also present at the time of the occurrence, his non examination is not fatal to the case of the prosecution. The Learned Public Prosecutor further submitted that Dass was not having an affair of P.W.1 as alleged by the petitioner. P.W.1 was left in lurch by the petitioner. Hence she was doing puffed rice business to make both the ends meet and educate her son. Unfortunately, she suffered some loss in her business. Hence she borrowed some money from the Dass. Dass had come to her house on the date of occurrence only for getting back his money which he lent to P.W.1. But without knowing this fact, the petitioner/accused started attacking P.W.1 and P.W.2 caused injuries with a knife. The evidence of P.W.1 and P.W.2 clinchingly and categorically establishes the case of the prosecution that it was the petitioner who caused injuries on P.W.1 and P.W.2. Hence, the Learned Public Prosecutor prayed for dismissal of this Criminal Revision Petition by confirming the Judgment of the Courts below.

13. The point for consideration in this petition is whether the Judgment of the Courts below, especially, the Judgment of the Learned Additional District and Sessions Judge, Fast Track Court, Arani, suffers from any incorrectness, illegality and impropriety in convicting and sentencing the petitioner for the offences U/s 326, 324 IPC.

14. The undisputed facts in this case are that the petitioner and P.W.1 are the husband and wife and they were not living jointly at the time of occurrence. The P.W.2 is their son. The occurrence had happened inside the house of P.W.1. The accused was present in the scene of occurrence. The presence of accused had been accepted during the cross examination of P.W.1, P.W.2 and P.W.9. During the cross examination of P.W.1, it was suggested to P.W.1 that the petitioner had come to the house of

P.W.1 to see her and children. He saw P.W.1 and Dass in an uncompromising position. When he asked them about this, they started running and P.W.1 ran behind Dass who was chased by the petitioner. Since they ran into a thorn forest, P.W.1 suffered grievous injuries as a result of hitting against thorn trees. The same suggestion was made to P.W.2 and P.W.9, but all the three have denied this suggestion. In fact, P.W.2 stated that there were no thorn trees or fence near their house. However, these suggestions made on behalf of the petitioner very clearly establishes the presence of the petitioner at the scene of crime on the date and time of occurrence.

15. As per the case of the prosecution, the cause of injuries found on the body of P.W.1 was only due to assault committed by the petitioner with the knife. The petitioner stated that it was a result of running into the thorn trees. Though P.W.8 Doctor stated that the injuries suffered by P.W.1 could have been caused by sharp thorns, this Court is of the considered view that this evidence of the doctor was just to escape the rigor of cross examination by the defence. It is seen from the injuries suffered by P.W.1 and P.W.2 that most of the injuries are cut injuries.

16. It is seen from Ex.P6, P.W.1 suffered the following injuries :

- 1) Contusion; head occipital region
- 2) Cut wound on the right shoulder measuring 5x1x1 c.m.
- 3) Cut wound on the upper part of the hand measuring 3x1 c.m.
- 4) Cut wound on the right side of the rear head measuring 7 x 3 x 3 c.m..
- 5) 5 wounds scratch wound with sharp edged weapon 15 x 1/2 c.m found on the back.
- 6) Cut wound on the left hand wrist measuring 3 x 1 x 2 c.m.
- 7) Cut wound on the back of palm measuring 2 x 1 x 1 c.m.
- 8) Lacerated wound on the left thumb measuring 1 x 1 c.m.
- 9) Lacerated wound in the left palm measuring 5 x 1 c.m.
- 10) Lacerated wound on the right hand wrist measuring 3 x 2 x 2 c.m.
- 11) Lacerated wound on the left shoulder measuring 5 x 2 x 2 c.m.
- 12) Lacerated wound on the right leg measuring 5 x 2 x 2 c.m.
- 13) Lacerated wound on the left leg measuring 5 x 2 x 2 c.m.
- 14) More than 7 scratch injuries on both the side of the buttocks measuring 15 x 1/2 x 1/2 c.m.

17. Ex.P7 shows that P.W.2 suffered the following injuries :

1) Deep scratch injury on the right hand from index finger to palm measuring 10 x 3 x 2 c.m.

2) Cut wound on the right little finger measuring 2 x 1 x 1 c.m.

3) Bite injury on the back of neck.

18. Absolutely, there is no possibility of getting cut injuries found on P.W.1 and P.W.2 by thorn trees or bushes. The doctor had also stated that the injuries found on P.W.1 and P.W.2 could have been caused by a knife. This Court can only accept the opinion of the doctor that the injuries, especially, the cut injuries found on P.W.1 and P.W.2 could have been caused only by the knife.

19. P.W.1 and P.W.2 had very clearly stated about the occurrence that the petitioner had entered into the house of P.W.1 through the rear entry and scolded P.W.1 and attacked her with a knife indiscriminately in various parts of her body. When P.W.2 tried to stop him from attacking P.W.1, he was also attacked by the petitioner. Both these witnesses have been cross examined extensively and nothing incriminating is elicited from their evidence to create any semblance of doubt to discredit their evidence with regard to the manner in which the occurrence had happened.

20. With regard to non examination of Dass and other independent witnesses, this Court of the considered view that as rightly pointed out by the Learned Public Prosecutor, it is the quality of the evidence that matters and not the quantity of the evidence. Even as per the evidence of P.W.1, though she was dragged outside of the house, none of the witnesses residing nearby came forward to rescue her. Independent witnesses may have their own reservations to prevent a crime, for the fear of being attacked by the assailant, and to come as a witness before the Court. It is not always necessary to expect the version of an independent witnesses, especially, when the evidence of injured witness is cogent, convincing and reliable.

21. When considering the weightage of evidence attached to the injured witness, the Hon'ble Supreme Court in Abdul Sayeed Vs State of Madhya Pradesh in Criminal Appeal No.1243 of 2007 dated 14.09.2010 held as follows :

"the question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant (s) in order to falsely implicate someone. "Convicting evidence is required to discredit an injured witness".

22. Thus, it is clear that the weightage attached to the injured witness is much more higher than the other witnesses. Main reason is that there is no reason for the injured witness to falsely implicate someone else in the place

of the real offender. Therefore, this Court is of the considered view that the non examination of Dass and other independent witnesses would no way affect the case of the prosecution.

23. With regard to non recovery of saree, though it is desirable that blood stained Saree could have been recovered, non recovery would no way affect the case of the prosecution for the reason that P.W.1 and P.W.2 had sufficiently spoken about the cause and sufferings of the injuries. Though P.W.1 has not specifically stated that she was attacked with the knife, P.W.2 had specifically stated that his father, the petitioner, had attacked with the knife. Nature of injuries suffered by P.W.1 and P.W.2 clinchingly prove that P.W.1 and P.W.2 were attacked by the knife.

24. It is seen from the evidence of P.W.8 Doctor and Exs.P6 and P7 that P.W.1 suffered grievance injuries and P.W.2 suffered simple injuries. Therefore, the conviction recorded against the accused for causing grievous injuries under Section 326 IPC to P.W.1 and conviction recorded under Section 324 IPC for causing simple injuries to P.W.2 cannot be faulted.

25. However, this Court is of the considered view that the Judgment of the Courts below that the substantive sentences are to run consecutively may be modified into the sentence of concurrent nature for the reason that the petitioner has been facing this case from 2007. Therefore, while confirming the conviction, period of sentence and the fine imposed under sections 324 and 326 of IPC, this Court directs that the substantive sentence should run concurrently instead of consecutively.

26. In this view of the matter, this Court finds that the Judgment of Courts below, especially, the Judgment of the Learned Additional District and Sessions Judge, Fast Track Court, Arani, in C.A.No.3 of 2010 does not suffer from any incorrectness, illegality and impropriety.

27. In fine, the Judgment of Courts below, in convicting the petitioner under Sections 324 and 326 of IPC and sentencing him to undergo three years rigorous imprisonment and to pay fine of Rs.5,000/- under section 326 of IPC, in default to pay the fine, to undergo nine months simple imprisonment, and also sentencing him to undergo one year rigorous imprisonment and to pay fine of Rs.500/- under section 324 of IPC, in default to pay the fine, to undergo two weeks simple imprisonment, and further in directing the petitioner to pay a sum of Rs.4,000/- from the fine amount as compensation to P.W.1 and in ordering to set off the period of imprisonment undergone during the trial under Section 428 Cr.P.C., are confirmed and the sentences are ordered to run concurrently instead of consecutively.

28. In the result, this Criminal Revision Petition is dismissed and the Trial Court is directed to issue warrant against the petitioner to undergo the sentence.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

raja

To

1.The Additional District Judge,
Fast Track Court, Arni, Thiruvannamalai District.

2.The Principal District Munsif cum Judicial Magistrate,
No.1, Cheyyar, Thiruvannamalai District.

3.The Chief Judicial Magistrate,
Thiruvannamalai.

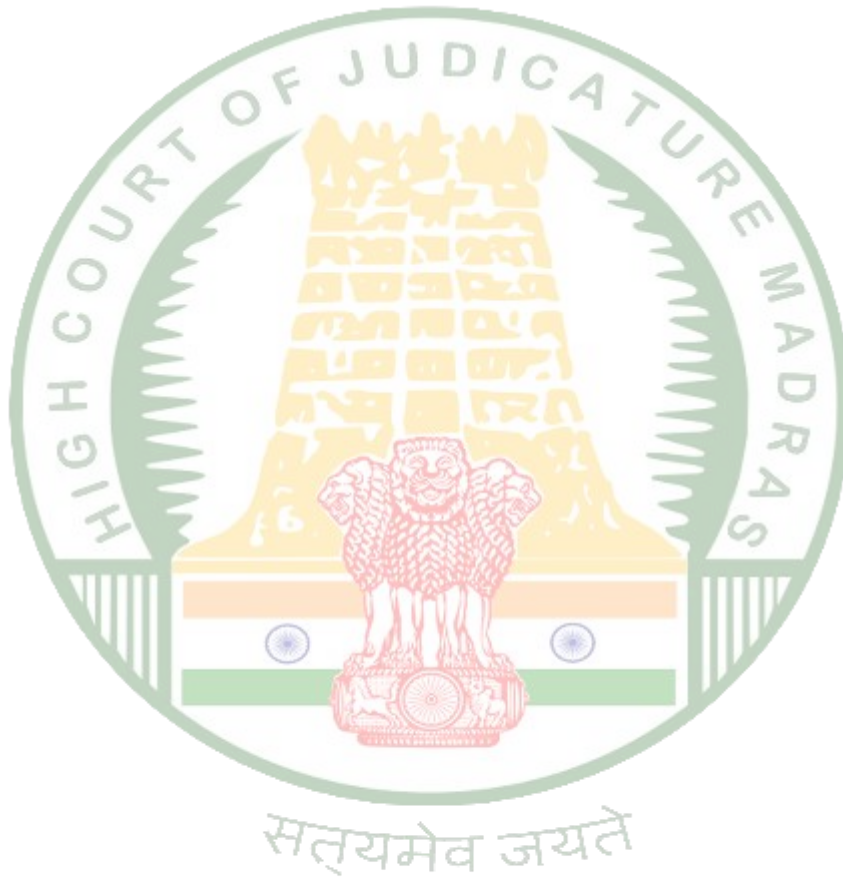
4.The Sub Inspector of Police,
Dusi Police Station,
Thiruvannamalai District.

5.The Public Prosecutor,
High Court, Chennai 104

+1cc to Mr.V.R.Appaswamee, Advocate, S.R.No.43224

Pre-Delivery Order in
CRL.RC.No.2 of 2018

PVS (CO)
KKV/26/02/2021



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