

BAIL SLIP

The Petitioner/2nd Accused namely Satheesh Kumar S/o.Murugasamy was directed to be released on bail vide order dated 07/01/2013 made in CrI.MP.No 1/3 in CrI.Rc.No 1511/2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON:03.03.2020

PRONOUNCED ON:11.03.2020

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

CrI.R.C.No. 1511 of 2013

1. Murugasamy

2. Satheeshkumar

...Petitioners/Accused

-Vs-

State by

The Inspector of Police,
Chennaiamalai Police Station,
(Crime No.295 of 2003)

...Respondent/Complainant

Prayer: Criminal Revision Petition filed under section 397 & 401 CrPC, against the judgment of the learned Principal Sessions Judge of Erode District at Erode in C.A.No.17 of 2013 dated 14.06.2013 modifying the conviction and sentence passed by the learned District Munsif cum Judicial Magistrate, Perundurai in C.C.No.395 of 2003 dated 07.03.2013.

For Petitioners: Mr.S.Kaithamalai Kumaran

For Respondent : M/s.S.Thankira
Government Advocate, (CrI Side)

ORDER

This Criminal Revision Petition is directed against the judgment of the Principal Sessions Judge, Erode District in CrI.Appeal.No.17 of 2013 dated 14.06.2013 modifying the conviction and sentence passed by the District Munsif cum

Judicial Magistrate, Perunthurai dated 07.03.2013 in C.C.No.395 of 2013.

2. From the materials placed on record, it is found that civil dispute has been existing between the accused and P.Ws.1 to 3. Further it is noted that on 31.10.2003, at about 5 pm, while P.W.2 Duraisamy was grazing his buffaloes, the accused came to his field and tried to remove the common fence and the same was objected to by P.W.2. According to the prosecution, at that point of time, the second accused cut P.W.2 with aruval on the left elbow, caused injury on his and left ring finger and the first accused attacked P.W.2 on the head with the stick and the second accused cut P.W.2 below the left knee and the left ankle. It has also been put forth that the first accused caught hold his hands and on hearing the cries of P.W.2, P.W.3 Soundaram, the wife of P.W.2 rushed to the spot and according to the prosecution, the second accused cut P.W.3 on her left forehead and the first accused also beat her with stick. Immediately thereafter, the other witnesses namely P.Ws.1, 4 and 5 rushed to the spot and accordingly based on the complaint lodged by P.W.1, the case was registered and the investigation was commenced against the accused and after completing the investigation, charge has been laid against the first accused under sections 341, 323 (two counts) IPC and the second accused under sections 324, 326 and 506(ii) IPC.

3. To sustain the prosecution of the case, P.Ws.1 to 10 were examined. Exs.P1 to P15 were marked. On the side of the accused, no oral and documentary evidence has been adduced.

4. On a consideration of the materials placed on record, both oral and documentary, the trial court namely the District Munsif Cum Judicial Magistrate, Perunthurai convicted the first accused under sections 341 and 323 (2 counts) IPC and convicted the second accused under sections 324 and 326 IPC and acquitted the second accused of the offence under section 506(ii) IPC and accordingly sentenced the first accused to pay a fine of Rs.500/- in default to undergo Simple Imprisonment for one week for the offences 341 IPC and also to pay a fine of Rs.1000/- for each count in default to undergo simple imprisonment for one month for each count for the offences under section 323 IPC (2 counts) and sentenced A2 to undergo Rigorous imprisonment for six months and to pay a fine of Rs.2000/- in default to undergo simple imprisonment for three month for the offences under section 324 IPC and further sentenced him to undergo Rigorous imprisonment for two years and to pay a fine of Rs.3,000/- in default to undergo Simple Imprisonment for six months for the offence under section 326 IPC and ordered the sentence imposed on the accused to run concurrently.

5. Challenging the same, the accused preferred the appeal and the first appellate court, on an appreciation of the materials placed on record, partly allowed the Criminal Appeal preferred by the accused and resultantly confirmed the conviction sentence imposed on the first accused under sections 341 and 323(2 counts)IPC and the conviction and sentence imposed on the second accused under section 324IPC. However, the first appellate court modified the conviction and sentence imposed on the second accused under section 326IPC and instead convicted him for the offence under section 324IPC and sentenced him to undergo Simple Imprisonment for six months and to pay a fine of Rs.2000/- in default to undergo Simple imprisonment for three months. Challenging the same, this Criminal Revision has been preferred by the accused.

6. As rightly found by the appellate court, it seen that the injured persons namely PWs.2 and 3 have clearly deposed about the injuries sustained by them and furthermore, their evidence had been corroborated by the evidence of medical officers examined in the matter as PWs.8 and 9. It is seen that both the injured persons namely PWs.2 and 3 were examined by the medical officer P.W.8 at the Government Hospital, Erode and has noted the cut injury on the left elbow of P.W.2 measuring 10x5 cm bone deep exposing muscles, a cut injury below left knee measuring 2x1 cm bone deep with bone injuries, cut injury 10x5cm bone deep in the left leg exposing muscles and also the contusion on the left forehead and cut injury in the right hand measuring 3x1cm with abrasion and swelling and the accident register issued by him has been marked as Ex.P.7. Similarly, P.W.8 has also noted the cut injury measuring 3 1/2 cm x 1/2 cm of P.W.3 left hand and the accident register issued by him with reference to P.W.3 is marked as Ex.P.8.

7. Similarly, the medical officer attached to Duraisamy Hospital examined as P.W.9 has also noted the cut injuries of P.W2 and he has opined that the injuries 1 to 6 noted by him are grievous in nature. Similarly he has also noted the injuries of P.W.3

8. The weapon used by the accused for causing injuries of P.Ws2 and 3 was seized and it is found that the second accused had caused the cut injuries on P.Ws.2 and 3.

9. As far as the evidence of P.Ws2 and 3 are concerned, they being the injured persons, they have clearly spoken about the over acts of the accused and their evidence has been corroborated by the medical officers examined in the matter as P.Ws.8 and 9.

10. As rightly found by the appellate court, in the absence

of the X-ray regarding the injuries sustained by P.W2, the offences under section 326 IPC cannot be inferred, merely on the basis of the evidence of the medical officers, and inasmuch as the prosecution has failed to produce the X-ray for explaining the grievous nature of the injuries sustained by the victim, as rightly held by the first appellate court, the offence under section 326 cannot be held to have been committed by the accused beyond reasonable doubt. The appellate court rightly relied on the decisions reported in 2000(2) LW(Crl) 861 [Sampath and others Vs. State rep. by the Sub Inspector of Police, Dusi Police Station Cr.No.105 of 1994] and 1993 MLJ (Crl) 7 [Nallasingam and others Vs. State respondent] Further, the discharge summary has not been produced by the prosecution. In such view of the matter, the first appellate court has rightly held that the prosecution has not established the offence under section 326 IPC.

11. I do not find any reason to interfere in the matter having regard to the injuries caused to P.Ws2 and 3 by the accused and accordingly taking into account of the date of the occurrence as well as the age of the second accused, the appellate court has while modifying the sentence imposed on the second accused under section 324 IPC, has rightly sentenced him to undergo Simple imprisonment for six months and pay a fine of Rs.2,000/-.

12. In such view of the matter, the appellate court having already shown lineancy in favour of the second accused. I do not find any valid ground to interfere with the conviction and sentence imposed on the accused by the appellate court, confirming/modifying the sentence imposed on the accused as determined by it.

13. In the light of the abovesaid reasons, no reason is warranted to interfere with the judgment of the appellate court. In conclusion, this Criminal Revision Petition fails and if the accused has not complied with the sentence, the trial court is directed to secure the presence of the accused to undergo the sentence imposed on them as per law. Accordingly, this Criminal Revision Petition is dismissed.

sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mfa

To

1.The Principal Sessions Judge of Erode District
Erode.

2.District Munsif cum Judicial Magistrate,
Perundurai.

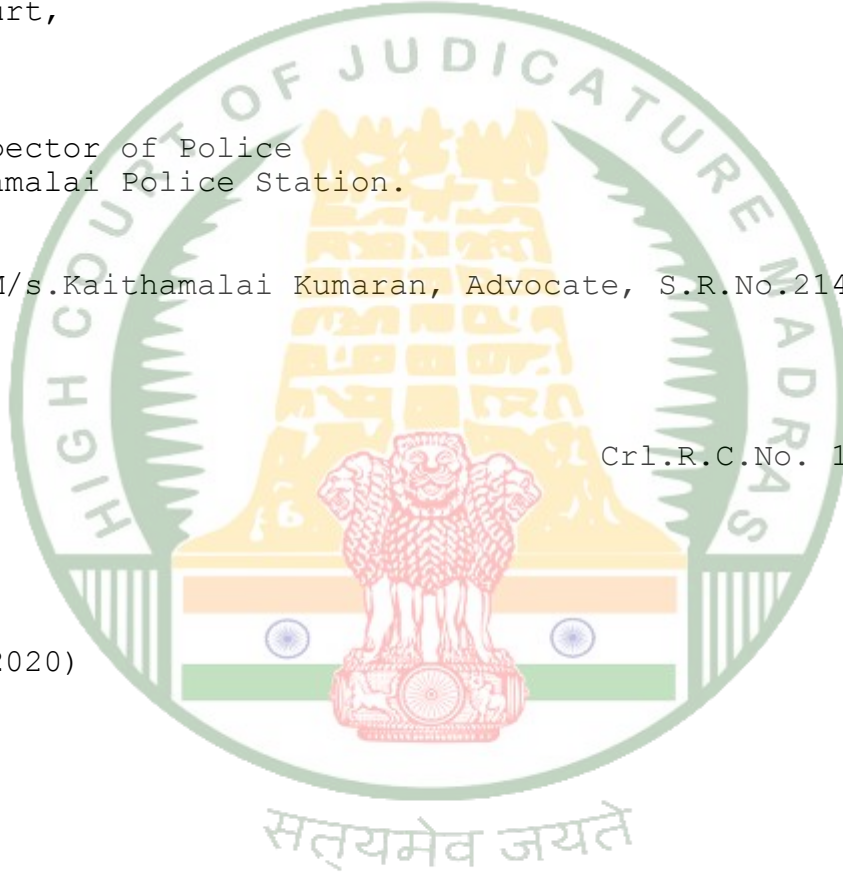
3.The Public Prosecutor,
High Court,
Madras.

4.The Inspector of Police
Chennaiamalai Police Station.

+1 cc to M/s.Kaithamalai Kumaran, Advocate, S.R.No.21462

Crl.R.C.No. 1511 of 2013

RSI (CO)
RN(22/05/2020)



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