

BAIL SLIP

The Appellants/Accused viz., 1.Muthukumar S/o.Rathinam, 2.Senthilkumar S/o.Chandran and 3.Palathandaudapani S/o.Muneeswaran were directed to be released on bail as per order dated 05/05/2016 in crl.mp.5480/2016 in CrI.Rc.732/2016, on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2020

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

CrI.R.C.No.732 of 2016

1. Muthukumar
2. Senthilkumar
3. Palathandaudapani .. Petitioners

Vs

The State rep by
Inspector of Police,
Thiruthuraipoondi Police Station,
Thiruthuraipoondi Post
Tiruvarur District.
(Crime No.1057 of 2011) .. Respondent

Prayer:- Criminal Revision Case filed under Section 397 read with 401 Cr.P.C. praying to set aside the judgment dated 03.03.2016 in CrI.A.No.38 of 2015 on the file of the learned Principal District and Sessions Judge, Tiruvarur confirming the judgment dated 13.07.2015 in C.C.No.38 of 2012 on the file of the learned Judicial Magistrate, Thiruthuraipoondi.

For Petitioners : Mr.D.Veerasekaran

For Respondent : Mr.K.Prabakar
Additional Public Prosecutor

ORDER

The revision petitioners/A1 to A3 were charged for the offences punishable under Sections 294(b), 353 and 506(i) IPC. After due contest, the trial Court viz., the learned Judicial Magistrate, Thiruthuraipoondi, by judgment dated 13.07.2015 in CC.No.38 of 2012, convicted the accused for the offences under Sections 353 and 506(i) IPC and sentenced them to undergo six months simple imprisonment in respect of the offence u/s 353

IPC and to undergo three months simple imprisonment in respect of the offence under Section 506(i) IPC, however, acquitted them in respect of the offence under Section 294(b) IPC. Challenging the said judgment of conviction and sentence passed by the trial Court, the accused preferred an appeal in CrI.A.No.38/2015 before the Appellate Court viz., the learned Principal District and Sessions Judge, Tiruvarur. By judgment dated 03.03.2016, the said appeal was dismissed by the Appellate Court. Assailing the legality, correctness and propriety of the said conviction and sentence as confirmed in appeal, this Criminal Revision Case has been preferred by the petitioners / A1 to A3.

2.The prosecution case, in brief, is that on 22.11.2011 at about 4.00pm, in front of Thiruthuraipoondi Therasal Girls Higher Secondary School, while P.W.1/complainant/Balasundari along with P.W.2/ Thilagavathi, Grade I Traffic Police Constables, was on duty, the accused, who were in drunken mood, were standing on the road and giving trouble to the public and also using filthy language; when P.W.1 and P.W.2 questioned the accused and asked them to go away from the road, the accused scolded them in unparliamentary words and deterred them from discharging their official duty as Traffic Police and also threatened them with dire consequences, if they inform the same to the police station; P.W.2 informed the same to the respondent police station; on such information, P.W.3/Selvanayagam, Head Constable rushed to the scene of occurrence, where P.W.1 and P.W.2 narrated the incident in detail; thereafter, PW1 came to the respondent police station and lodged a complaint (Ex.P1), which was received by P.W.6/Sub Inspector of Police and was registered as FIR in Crime No.1057/2011 (Ex.P2) against the accused for the offences punishable under Sections 294(b), 353 and 506(i) IPC; thereafter, P.W.6 came to the scene of occurrence and prepared observation mahazar (Ex.P3) and rough sketch (Ex.P4) in the presence of the witnesses P.W.4/Sankar and P.W.5/Senthilnathan; on 23.11.2011, P.W.6/Investigating officer, arrested the accused and remanded them to judicial custody; on completion of investigation, P.W.6 filed charge sheet, which culminated in CC.No.38 of 2012 on the file of the learned Judicial Magistrate, Thiruthuraipoondi.

3.Before the trial Court, the revision petitioners/ accused pleaded not guilty and claimed to be tried.

4.On the side of the prosecution, P.W.1 to P.W.6 were examined and Exs.P1 to P4 were marked, whereas, on the defence side, no one was examined and no document was marked.

5.On the basis of the evidence and materials available on record, the trial Court found all the accused guilty of the offences under sections 353 and 506(i) IPC and convicted for

the same and sentenced them as stated above. However, all the accused were acquitted from the charge under section 294(b) IPC. Aggrieved over the said conviction and sentence, the accused preferred Crl.A.No.38 of 2015, which ended in dismissal. Hence, this Criminal Revision Case by the accused.

6.The learned counsel for the revision petitioners has assailed the impugned judgments and submitted that the prosecution has not let any independent evidence, though the alleged occurrence happened in a public place i.e., in front of Thiruthuraipoondi Therasal Girls Higher Secondary School situated in Thiruthuraipoondi - Mannargudi Road and hence, the conviction and sentence passed by the trial Court, based on the official witnesses, are unsustainable in law. The learned counsel further submitted that there is no record to show that P.W.1/Balasundari was on duty in the place of occurrence at the relevant point of time and as such, the same would raise a doubt as to the alleged occurrence as stated by the prosecution. The learned counsel also submitted that mere using words is not enough and there must be evidence for reasonable apprehension to bodily hurt and therefore, no ingredient for the offence under Section 506(i) IPC is made out. Thus, according to the learned counsel, this Criminal Revision is liable to be allowed by setting aside the judgments passed by the Courts below.

7.Repudiating the aforesaid submissions, the learned Additional Public Prosecutor appearing for the respondent has submitted that there are sufficient materials and evidence available on record to show that the accused committed the offences as stated above, through which, the prosecution has proved the guilt of the accused beyond reasonable doubt and the trial Court has rightly placed reliance on the same and convicted the accused for the aforesaid offences and the same was also correctly affirmed by the Appellate Court. Thus, according to the learned Additional Public Prosecutor, the judgment of the Courts below being just and equitable, this Court need not interfere with the same.

8.Heard both sides and perused the records.

9.Originally, the petitioners/A1 to A3 were charge sheeted for the offences under Sections 294(b), 353 and 506(i) IPC, on the basis of the complaint lodged by P.W.1. After trial, they were found guilty of the offences under Sections 353 and 506(i) IPC and they were convicted and sentenced for the same. The Appellate Court has also confirmed the same. Hence, the petitioners are before this Court.

10. According to the learned counsel for the petitioners, the evidence and materials adduced on the side of the prosecution have not proved the guilt of the accused

beyond reasonable doubt and the accused have not committed any offence as alleged. However, both the Courts below erred in convicting the accused for the above stated offences, whereas the learned Additional Public Prosecutor resisted the said contention and submitted that the findings of conviction and sentence recorded by both the Courts below are based on the evidence and materials and hence, the same warrant no interference by this Court.

11.Before proceeding further, it is but relevant to have a look at the evidence and materials available on record. The prosecution, to establish the guilt of the accused, examined six witnesses as P.W.1 to P.W.6, out of which, P.W.1 to P.W.3 are police personnel, including P.W.6, who is the Investigating Officer and P.W.4 and P.W.5 are the mahazar witnesses. Apart from the oral evidence, the prosecution has marked Exs.P1 to P4 documents. However, on behalf of the accused, no oral and documentary evidence have been adduced.

12.It is the evidence of P.W.1, Balasundari, Grade I Police Constable (complainant) that on 22.11.2011 at about 4.00pm, while she along with P.W.2 Thilagavathi, Grade I Police Constable, was on duty to regulate the traffic before Therasa Girls Higher Secondary School situated at Thiruthuraipoondi-Mannargudi Road, all the accused were in drunken mood and standing on the road and using filthy language and thereby giving trouble to the public; when the accused was asked to go away from the road, they abused P.W.1 and P.W.2 with unparliamentary words and also threatened them with dire consequences if they inform the same to the police station and thereby deterred them from discharging their official duty. P.W.2, Thilagavathi, Grade I Police Constable, has deposed her evidence in corroboration with the evidence of P.W.1.

13.P.W.3, Selvanayagam, Head Constable has asserted in his evidence that on 22.11.2011, on receiving information from phone, he went to the scene of occurrence and came to know about the alleged occurrence from the public. P.W.6, Ananthakrishnan, Sub Inspector of Police/ Investigating officer has stated in his evidence that on 22.11.2011, based on the complaint received from the P.W.1, he registered the same as FIR in Cr.No.1057/2011 for the offences under Sections 294(b), 353 and 506(i) IPC; subsequently, he went to the scene of occurrence and prepared observation mahazar and rough sketch in the presence of the witnesses and obtained statement from the said witnesses. He has further stated that on 23.11.2011, at about 6.00 hours, he arrested the accused at Mangudi Shop Street and remanded them to judicial custody; and thereafter, he conducted investigation and filed charge sheet against the accused. However, P.W.4, Sankar and P.W.5, Senthilnathan / mahazar witnesses, have denied their

signature found in the mahazar and they turned hostile.

14.The first charge levelled against the petitioners is that they assaulted or used criminal force to deter the public servants from discharge of their official duties and committed offence under section 353 IPC. The evidence of PW1 and PW2 shows that there was no assault from the side of the accused, but criminal force was used. Using assault or criminal force against a police servant is defined under Section 353 IPC. The ingredients of the said offence are (i) there must be assault or use of criminal force; (ii) Such assault or use of criminal force must have been made on a public servant; and (iii) Assault / use of criminal force must have been of a public servant (a) while he was acting in the execution of his duty; or (b) with intent to prevent or deter him from discharging his duty; or (c) in consequence of anything done or attempted to be done by him in discharge of his duty.

15.Criminal force is defined under Section 350 IPC, which is usefully extracted hereunder:

"Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other". The essential ingredients of the aforesaid section are (i) there must be use of force as defined by Section 349; (ii) such force should be used intentionally; (iii) the force must be used against a person, and (iv) it should have been used without the consent of the person against whom it is used.

16.Assault is defined under Section 351 IPC, which reads as follows:-

"Assault - Whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.

Explanation - Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparation such a meaning as may make those gestures or preparations amount to an assault".

17.If the prosecution side evidence is appreciated in the light of the aforesaid legal proposition, it is manifest that there is categorical evidence of PW1 and PW2 that the accused abused them in filthy language and also threatened them with dire consequences if they inform the same to the police and thereby deterred them from discharging their official duties. The other witness P.W.3 has supported the

above evidence of P.W.1 and P.W.2. Further, there is nothing available on record to doubt the said prosecution evidence, which appears to be cogent and consistent. Thus, it is established by the prosecution that the accused committed the offence under Section 353 IPC.

18. Though it was contended on the side of the petitioners that there was no independent witness to prove the guilt of the accused and mahazar witnesses turned hostile, this Court is unable to digest the same, as now-a-days it is quite common that local witness having no connection with the occurrence, never comes forward to depose in favour of prosecution. In such a situation, if independent witnesses are not coming forward, on that score, consistent prosecution evidence cannot be brushed aside. Apart from that, there is absolutely nothing in the entire evidence nor any evidence has been adduced by the petitioners that P.W.1 / P.W.2 has any grudge against them before the incident and as such, they have been implicated as accused. Similarly, there is nothing available to show that there is any inconsistency in the evidence of P.Ws. In this context, reference may be made to the decision of the Apex Court in Appabhai vs. State of Gujarat [AIR 1988 SC 696], wherein it was held as under:

"Experience reminds us that civilized people are generally insensitive when a crime is committed even in their presence. They withdraw both from the victim and the vigilante. They keep themselves away from the Court unless it is inevitable. They think that crime like civil dispute is between two individuals or parties and they should not involve themselves. This kind of apathy of the general public is indeed unfortunate, but it is there everywhere whether in village life, towns or cities. One cannot ignore this handicap with which the investigating agency has to discharge its duties. This Court, therefore, instead of doubting the prosecution case for want of independent witness, must consider the broad spectrum of the prosecution version and then search for the nugget of truth with due regard to probability, if any, suggested by the accused. The Court, however, must bear in mind that witnesses to a serious crime may not react in a normal manner. Nor do they react uniformly. The horror stricken witnesses at a dastardly crime or an act of egregious nature may react differently. Their course of conduct may not be of ordinary type in the normal circumstances. The Court, therefore, cannot reject their evidence merely because they have behaved or reacted in an unusual manner."

19. Yet another ground raised by the learned counsel for the petitioners is that there is no proof on the side of the prosecution that P.W.1 and P.W.2 were on duty at the relevant point of time. This Court is not inclined to accept the same. Section 21 of Tamil Nadu District Police Act, 1959

says, every police officer shall, for all purposes, be considered to be always on duty and shall have the powers of a police officer in every part of the General Police District. It shall be his/her duty to use his/her best endeavours and ability to prevent all crimes, offences and public nuisances, to preserve the peace, to apprehend disorderly and suspicious characters, to detect and bring offenders to justice, to collect and communicate intelligence affecting the public peace and promptly to obey and execute all orders and warrants lawfully issued to him/her. As such, when there is consistent evidence available on record to show that P.W.1 and P.W.2 were on duty in the place of occurrence at the relevant point of time, the failure of the prosecution to produce the Duty Register would not make their case as false or unbelievable.

20.It is well settled that the discrepancies, which do not shake the basic version of the prosecution case, can be discarded. At the same time, the errors due to lapse of memory, may be given due consideration. It is also well established principle that when a doubt arises in respect of certain facts alleged by such witness, the proper course is to ignore that fact unless it goes into the root of the matter so as to demolish the entire prosecution story. In the present case also, P.W.1 has fully supported the prosecution story as stated in the FIR and the same was further corroborated by the evidence of P.Ws. 2, 3 and 6 as they have consistently supported the prosecution case. In the said circumstances, even there is some minor discrepancy, that does not create any shadow of doubt in the prosecution case. Therefore, it can safely be inferred that the petitioners have deterred P.W.1 and P.W.2 from discharging their lawful duties and hence, they were rightly found guilty under Section 353 IPC and convicted for the same.

21.The second charge is that the petitioners were found guilty under Section 506(i) IPC. In order to attract an offence under the said provision, the prosecution has to prove that the accused intimidated P.W.1 and P.W.2 as defined under Section 503 IPC. The essential ingredients are (1) there should be a threat of injury to a person (i) to his person, reputation or property (ii) to the person or reputation of any person in which the person is interested (2) that the threat must be with intend to (i) cause alarm to that person or (ii) to cause that person to do an act which he is not legally bound to do as the means to avoiding the accused of such threat; (iii) to cause that person to omit to do any act which that person is legally entitled to do as means of avoiding the causing of such threat. If one person threatening another person, in a particular set of action, however a mere threat without causing any alarm does not amount to a criminal intimidation. But, if the threat is made with intend to cause alarm to another person threatened, the offence will

automatically come into play. It is immaterial whether the recipient of threat caused alarm or not. Therefore, the soul of the definition of criminal intimidation is the intention, which has to be gathered from the surrounding circumstances and the words used by the person intimidating.

22. On a close scrutiny of the evidence of P.W.1 and P.W.2, it is crystal clear that the accused threatened them with dire consequences if they inform the same to the police. This threat was made with intent to cause alarm to PW1 and PW2, which is obvious from the words uttered by the accused and it amounts to criminal intimidation as stated under Section 506(i) IPC. The immediate purpose is to induce the persons threatened to cause alarm and abstain from doing something, which they were legally bound to do. A public servant, while discharging his duty is often exposed to considerable risk and the law protects his official act and any obstruction made towards him is an offence. Hence, the evidence and materials available on record would prove the guilt of the petitioners under Section 506(i) IPC, for which, they were rightly convicted by the Courts below.

23. Thus, this Court does not find any patent illegality or perversity in appreciating the evidence by the Courts below. It could not be pointed out that the petitioners had been indicted in the present case on account of any animosity or the complainant stood any gain by the alleged false implication of the petitioners. Therefore, the conviction recorded by the Courts below is not liable to be interfered in exercise of the revisional powers vested on this Court. Accordingly, the same is upheld.

24. As regards the quantum of sentence, by the impugned judgments, the petitioners were sentenced to undergo simple imprisonment for six months for the offence under Section 353 IPC and three months simple imprisonment for the offence under Section 506(i) IPC and the same were ordered to be run concurrently.

25. The Supreme Court in B.G. Goswami Vs. Delhi Administration, [1973 AIR 1457], while dealing with the quantum of sentence, held as under:

"Now the question of sentence is always a difficult question, requiring as it does, proper adjustment and balancing of various considerations, which weigh with a judicial mind in determining its appropriate quantum in a given case. The main purpose of the sentence broadly stated is that the accused must realise that he has committed an act, which is not only harmful to the society of which he forms an integral part but is also harmful to his own future, both as an individual and as a member of the society. Punishment is designed to protect society by deterring potential offenders as also by preventing the guilty party from repeating the offence; it is also designed to reform the offender and

reclaim him as a law abiding citizen for the good of the society as a whole.

Reformatory, deterrent and punitive aspects of punishment thus play their due part in judicial thinking while determining this question. In modern civilized societies, however, reformatory aspect is being given somewhat greater importance. Too lenient as well as too harsh sentences both lose their efficaciousness. One does not deter and the other may frustrate thereby making the offender a hardened criminal. In the present case, after weighing the considerations already noticed by us and the fact that to send the appellant back to jail now after 7 years of the annoy and harassment of these proceedings when he is also going to lose his job and to earn a living for himself and for his family members and for those dependent on him, we feel that it would meet the ends of justice if we reduce the sentence of imprisonment to that already undergone but increase the sentence of fine from Rs.200/- to Rs. 400/-. Period of imprisonment in case of default will remain the same."

26. In Mohd. Giasuddin v. State of AP, [AIR 1977 SC 1926], explaining rehabilitary and reformatory aspects in sentencing, it was observed by the Supreme Court:-

"Crime is a pathological aberration. The criminal can ordinarily be redeemed and the state has to rehabilitate rather than avenge. The sub-culture that leads to ante-social behaviour has to be countered not by undue cruelty but by re-culturization. Therefore, the focus of interest in penology in the individual and the goal is salvaging him for the society. The infliction of harsh and savage punishment is thus a relic of past and regressive times. The human today vies sentencing as a process of reshaping a person who has deteriorated into criminality and the modern community has a primary stake in the rehabilitation of the offender as a means of a social defence. Hence a therapeutic, rather than an 'in terrorem' outlook should prevail in our criminal courts, since brutal incarceration of the person merely produces laceration of his mind. If you are to punish a man retributively, you must injure him. If you are to reform him, you must improve him and, men are not improved by injuries."

27. That apart, "Proper Sentence" was explained by the Supreme Court in Deo Narain Mandal Vs. State of UP [(2004) 7 SCC 257] by observing that "sentence should not be either excessively harsh or ridiculously low. While determining the quantum of sentence, the court should bear in mind the principle of proportionately. Sentence should be based on facts of a given case. Gravity of offence, manner of commission of crime, age and sex of accused should be taken into account. Discretion of Court in awarding sentence cannot be exercised arbitrarily or whimsically."

28. In subsequent decisions, the Supreme Court has laid emphasis on proportional sentencing by affirming the doctrine of proportionality. In *Shyam Narain vs State (NCT of Delhi)*, [(2013) 7 SCC 77], it was pointed out that sentencing for any offence has a social goal. Sentence is to be imposed with regard being had to the nature of the offence and the manner in which the offence has been committed. The fundamental purpose of imposition of sentence is based on the principle that the accused must realize that the crime committed by him has not only created a dent in the life of the victim but also a concavity in the social fabric. The purpose of just punishment is that the society may not suffer again by such crime. The principle of proportionality between the crime committed and the penalty imposed are to be kept in mind. The impact on the society as a whole has to be seen. Similar view has been expressed in *Sumer Singh vs Surajbhan Singh*, [(2014) 7 SCC 323], *State of Punjab vs Bawa Singh*, [(2015) 3 SCC 441], and *Raj Bala vs State of Haryana*, [(2016) 1 SCC 463].

29. Therefore, the legal position in operating the sentencing system is that the Court should adopt the corrective machinery or deterrence based on factual matrix. By deft modulation, sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration.

30. The learned counsel for the petitioners, during the course of argument, submitted that the alleged incident took place in the year 2011; and the petitioners have been facing the agony of trial for the last 9 years; and that the petitioners have not committed any such offence and have been living a disciplined life. Hence, the learned counsel sought indulgence of this Court to modify the sentence imposed on the petitioners.

31. Having regard to the submissions made by the learned counsel for the petitioners, which seem to be reasonable and taking note of the nature of the crime committed by the petitioners as well as keeping in view the position of law as mentioned above, this Court is of the view that no useful purpose would be served by sending the petitioners behind bars once again to undergo the remaining period of sentence. Hence, the ends of justice would be suitably met, if the sentence awarded to the petitioners is reduced to the period already undergone by them, subject to payment of fine of Rs.20,000/- each to the District Legal Services Authority, Thiruvavarur.

32. In fine, this Criminal Revision Case is partly allowed. The Judgment and decree of the Courts below, convicting the petitioners under Sections 353 IPC and 506(i) IPC and sentencing them to undergo simple imprisonment for six months and three months respectively, is hereby modified to the period already undergone by them, subject to fine of Rs.20,000/-, which shall be paid by each of the petitioners to the District Legal Services Authority, Thiruvarur, within a period of two weeks from the date of receipt of a copy of this order, failing which, they shall undergo simple imprisonment for one month.

33. The Registry is directed to send back the original records along with a copy of this order to the lower Courts concerned immediately, for compliance and further action.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

rk

To

1. The Principal District and Sessions Judge,
Thiruvarur.

2. The Judicial Magistrate,
Thiruthuraipoondi, Thiruvarur District.

3. Do Thro' The Chief Judicial Magistrate,
Thiruvarur.

4. Inspector of Police,
Thiruthuraipoondi Police Station,
Thiruthuraipoondi Post, Thiruvarur District.

5. The Public Prosecutor,
High Court, Madras - 104.

6. The Secretary,
The District Legal Services Authority,
Thiruvarur.

7. The Section Officer,
Criminal Side (Records)

Crl.R.C.No.732 of 2016

VM(CO)
CB(09/12/2020)