

BAIL SLIP
in CrI.R.C.No.1101 of 2014

The Petitioner/Accused namely Gnanamanickam, S/o.ESadaiyan age 35 years was released on bail dated 20/11/2014 made in MP.2/2014 in CrI.R.C.1101 of 2014 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.11.2020
PRONOUNCED ON : 03.12.2020

CORAM

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

CRL.R.C.NO.1101 OF 2014

1. Vasuki
2. Jayakumar
3. Santhoshkumar
4. Ramasamy
5. Gnanamanickam
6. Ponnuvel
7. Raji alias Rambaraja

...Revision Petitioners/
Accused

VS.

State Rep. by its
The Sub Inspector of Police,
Kallakurichi Police Station,
Kallakurichi.

...Respondent /Complainant

Criminal Revision Case filed under Section 397 r/w 401 of of the Code of Criminal Procedure, against the judgment dated 25.08.2014 in C.A.No.28 of 2013 on the file of the III Additional District Sessions Judge, Kallakurichi, confirming the judgment dated 20.02.2013 in C.C.No.301 of 2004 on the file of the Judicial Magistrate, Kallakurichi.

For Revision Petitioners : Mr.A.G.Rajan

For Respondent : Mr.S.Karthikeyan
Additional Public Prosecutor

O R D E R

Aggrieved over the concurrent finding made in CC No.301 of 2004 on the file of the Judicial Magistrate, Kallakurichi, and C.A.No.28 of 2013 on the file of III Additional District and Sessions Judge, Kallakurichi, the petitioners who are the appellants in C.A.No.28 of 2013, preferred this Criminal Revision, praying to set aside the conviction and sentence awarded by the Court below. The appellants are arrayed as accused No.1 to 7, in CC No.301 of 2004 on the file of the Judicial Magistrate, Kallakurichi.

2. Before the trial Court, charges under Sections 147, 148, 294-b, 323, 324, 325 and 506 (ii) of IPC were framed against the accused. At the end of the trial, all the accused were convicted and sentenced as follows:

Sl.No.	Accused No.	Offence and Period of Punishment
1	A1	(i) for offence under Section 294(b) of IPC, sentenced to pay a fine of Rs.200/-, in default simple imprisonment for one week. (ii) for offence under Section 147 of IPC, sentenced to pay a fine of Rs.500/-, in default simple imprisonment for one week. (iii) for offence under Section 506(i) of IPC, sentenced to pay a fine of Rs.500/-, in default simple imprisonment for one week. Total fine amount is Rs.1,200/-
2	A2	(i) for offence under Section 147 of IPC, sentenced to pay a fine of Rs.500/-, in default simple imprisonment for one week. (ii) for offence under Section 506(i) of IPC, sentenced to pay a fine of Rs.500/-, in default simple imprisonment for one week. Total fine amount is Rs.1,000/-

Sl.No.	Accused No.	Offence and Period of Punishment
3	A3	(i) for offence under Section 147 of IPC, sentenced to pay a fine of Rs.500/-, in default simple imprisonment for one week. (ii) for offence under Section 506(i) of IPC, sentenced to pay a fine of Rs.500/-, in default simple imprisonment for one week. Total fine amount is Rs.1,000/-
4	A4	(i) for offence under Section 147 of IPC, sentenced to pay a fine of Rs.500/-, in default simple imprisonment for one week. (ii) for offence under Section 506(i) of IPC, sentenced to pay a fine of Rs.500/-, in default simple imprisonment for one week. Total fine amount is Rs.1,000/-
5	A5	(i) for offence under Section 147 of IPC, sentenced to pay a fine of Rs.500/-, in default simple imprisonment for one week. (ii) for offence under Section 148 of IPC, sentenced to pay a fine of Rs.1,000/-, in default simple imprisonment for one week. (iii) for offence under Section 325 of IPC, sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rs.2,000/-, in default simple imprisonment for one month. (iv) for offence under Section 506(i) of IPC, sentenced to pay a fine of Rs.500/-, in default simple imprisonment for one week. Total fine amount is Rs.4,000/-

Sl.No.	Accused No.	Offence and Period of Punishment
6	A6	(i) for offence under Section 147 of IPC, sentenced to pay a fine of Rs.500/-, in default simple imprisonment for one week. (ii) for offence under Section 148 of IPC, sentenced to pay a fine of Rs.1,000/-, in default simple imprisonment for one week. (iii) for offence under Section 324 of IPC, sentenced to pay a fine of Rs.1,000/-, in default simple imprisonment for one month. (iv) for offence under Section 506(i) of IPC, sentenced to pay a fine of Rs.500/-, in default simple imprisonment for one week. Total fine amount is Rs.3,000/-
7	A7	(i) for offence under Section 147 of IPC, sentenced to pay a fine of Rs.500/-, in default simple imprisonment for one week. (ii) for offence under Section 148 of IPC, sentenced to pay a fine of Rs.1,000/-, in default simple imprisonment for one week. (iii) for offence under Section 324 of IPC, sentenced to pay a fine of Rs.1,000/-, in default simple imprisonment for one month. (iv) for offence under Section 506(i) of IPC, sentenced to pay a fine of Rs.500/-, in default simple imprisonment for one week. Total fine amount is Rs.3,000/-
In all, total fine amount is Rs.14,200/-		

Challenging the same, they filed an appeal in C.A.No.28 of 2013.

3. The said conviction and sentence awarded by the Judicial Magistrate, Kallakurichi, was confirmed by the III Additional District and Sessions Judge, Kallakurichi in C.A.No.28 of 2013. Aggrieved over the same, to check the correctness of the said conviction and sentence, all the accused are before this Court, with the present criminal revision.

4. The case of the prosecution, before the trial Court, is as follows:

(i) PW1-De-facto complainant, Rahamathullah and the 1st revision petitioner Vasuki and her husband Ramasamy, the 4th revision petitioner are the partners in Muruga Polytechnic. Due to the incident, happened on 15.07.2003 in Muruga Polytechnic, dispute arose between the 1st petitioner and the de-facto complainant, resultantly, on 04.08.2013, at about 6.00PM, the 1st petitioner Vasuki contacted the de-facto complainant and threatened to settle the balance amount due to her.

(ii) Consequently, on 05.08.2003, at about 10.30pm, when at the time, the de-facto complainant/PW1 was in front of the Sudha Canteen, the 1st petitioner Vasuki along with her husband, son and also with three known persons came there and on instructions given by the 1st petitioner, the above referred three known persons by using iron rod attacked the de-facto complainant on his abdomen, left eye and chest. Further, by using the knife, one person attacked on the back side of the PW1. Immediately, after seeing this, the neighbours came there and on seeing them, all the accused have made life threat to the PW1 and ran away from the scene of occurrence. Before that they damaged the two wheeler, which belongs to the PW1.

(iii) Thereafter, on the next day, on 06.08.2003, at about 6.30 pm, upon the complaint given by PW1, the SHO, Kallkurichi Police Station, registered a case in Cr.No.442 of 2003 under Sections 147, 148, 323, 324, 294(b) and 506(ii) of IPC. The complaint given before the police station was marked as Ex.P1. The printed FIR is marked as Ex.P5. Immediately after the registration of the case, PW7-Mr.Durai Rajagopal, the then Sub Inspector of Police, Kallakurichi Police Station, took up the case for investigation and visited the scene of occurrence. In presence of PW6-Subramani and one Palanisamy, he prepared the Observation Mahazar under Ex.P4. He had drawn the rough sketch and the same was marked as Ex.P6.

(iv) Immediately after the registration of the case, the investigating officer who registered the FIR issued a memo to the PW1 for taking treatment in the Government Hospital. Upon receipt of the same, PW4-Dr.Kalaiarasi, attached with Government Hospital, Kallakurichi examined the PW1 and found the following injuries.

1. Bleeding through both nostrils present.
2. Contusion of left zygoma present of size 5x4cm
3. Abrasion in left eyelid of size 2x2 cm
4. Congestion of left eye present
5. Abrasion in chest of size 5x1cm
6. Two linear abrasion over left back each 5x½ cm
7. Linear abrasion on the right side of the neck of size 3x½ cm
8. Abrasion over right side of neck of size 12x12cm

(v) Further, in respect to the injuries sustained by PW1, PW5-Dr.Johnson, the Radiologist took the x-ray and found that some of the injuries sustained by PW1 was grievous in nature and some of them are simple in nature. The Accident Register copy issued by PW4 was marked as Ex.P2 and the certificate issued by PW5 was marked as Ex.P3. The x-ray taken at the time of treatment was marked as M.O.1 series.

(vi) In continuation of the investigation, the PW7 examined the witnesses and recorded their statements. Consequently, he received the wound certificate from the Doctors and completed the investigation. He came to the positive conclusion that the accused committed the offence under sections 147, 148, 323, 325, 294(b) and 506(ii) of IPC and filed the final report.

5. Based on the above materials, the trial Court tried the accused for the offence under Sections 147, 148, 323, 325, 294 (b) and 506(ii) of IPC and all the accused denied the same and opted for trial. Therefore, in order to prove the case of the prosecution, eight witnesses have been examined as PW1 to PW8 and six documents are marked as Exs.P1 to P6, besides one material object (M.O.1).

(i) Out of the said witnesses, PW1-Rahamathullah, is the de-facto complainant, he had spoken about the previous enmity having been by the 1st petitioner and about the assault made by three known persons as per the instructions given by the 1st petitioner. PW2-Bakruddin is an eyewitness to the occurrence. He has narrated the incident as stated by the PW1. PW3-Fiyaz, is also an eyewitness to the occurrence. He had also narrated the occurrence as stated by PW1 and PW2.

(ii) PW4 and PW5 are the Doctors attached with Government Hospital, Kallakurichi, they have spoken about the injuries sustained by the PW1 and about the nature of injuries sustained. PW6 is the person who attested in the observation mahazar which was prepared by PW7.

(iii) PW7-Thiru.Durai Rajagopal, the then Sub Inspector of Police, at Kallakurichi had spoken about the registration of the case, details of the investigation, receiving of wound certificates from the Doctors and also about the examination of the witnesses. He has also stated about the filing of the final report in this case. PW8-Dr.Ruby Premila, is the Doctor attached to Salem Mohan Kumaramangalam Medical College and Hospital. She has spoken about the serial numbers in which x-rays had taken for PW1.

6. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., the Revision Petitioners herein denied the same as false. However, in order to prove their case, they neither produced any witness on their side nor marked any documents.

7. Having considered all the above materials, the trial Court found the accused/revision petitioners guilty under Sections 147, 148, 323, 325, 294(b) and 506(ii) of IPC and the lower Appellate Court confirmed the same and sentenced them as stated supra. That is how, the accused are before this Court with this revision.

8. I have heard the learned counsel for the revision petitioners and the learned Additional Public Prosecutor appearing for the respondent State and also perused the records carefully.

9. The learned counsel appearing for the revision petitioners would contend that due to previous enmity, a false case has been foisted against the revision petitioners. In the First Information Report, in respect to the persons who are all assaulted the PW1 by using the knife and iron rod, nothing was stated. Therefore, in the absence of any identification parade, those persons cannot be identified and secured by the investigation officer. But in this case without conducting any identification parade, the investigation officer came to the conclusion that petitioners 4 to 7 have assaulted the accused, which is erroneous in law. He would further submit that for proving the offence, except the relative of PW1, none of the persons who have been present in that area are examined and also for their non examination, the prosecution has not stated any specific reasons. Accordingly, he prayed to set aside the conviction and sentence awarded to the petitioners.

10. Per contra, the learned Additional Public Prosecutor, appearing for the respondent would submit that though in the complaint as well as in the First Information Report, the name of the petitioners 4 to 7 are not mentioned, during the time of

giving evidence, the PW1 and other witnesses have clearly identified the accused and therefore, non conducting of identification parade is not fatal to the case. Further PW2 and PW3 who happened to be the eyewitnesses to the occurrence have narrated the incidence as stated by the victim. Therefore, interference of this Court is not necessary in the findings arrived at by the Court below.

11. Now on considering the rival submissions made by the learned counsel appearing on either side, it is an admitted fact that being the partners of Muruga Polytechnic, both the PW1 and petitioners 1 and 2 are having the previous enmity. Since previous enmity is a double edged weapon, there may be a chance that only due to the previous enmity, the 1st and 2nd petitioners, in order to get back the balance amount, might have committed the offence. Hence, the contention of the learned counsel for the revision petitioners that only because of the reason that the 1st petitioner and the de-facto complainant, were having previous enmity, a false case has been initiated against the petitioners, is not acceptable. Accordingly, the first contention raised by the counsel for the petitioners, is rejected.

12. In respect to the second submission, it is true, in the complaint given to the police officer and in the First Information Report, the name of those persons i.e. 4th to 7th petitioners, who are all attacked the PW1/de-facto complainant, was not mentioned. In this regard, on a close reading of the First Information Report given by the PW1, he has specifically stated that those persons are known persons. Therefore, only because of the reason that the name of the persons are not mentioned in the complaint, it cannot be said that those persons are not involved in the occurrence. Though, no identification parade is conducted during the time of investigation, it is not in dispute that when at the time of giving evidence, PW1 to PW4 had clearly identified the accused and stated about the manner of attack committed by them. At this juncture, it is relevant to refer to the judgment of our Hon'ble Apex Court in Shyamal Ghosh Vs. State of West Bengal, reported in 2012 (7) SCC 647, wherein it is held as under.

"It is equally correct that the Cr.P.C does not oblige the investigating agency to necessarily hold the Test Identification Parade. Failure to hold the test identification parade while in police custody, does not by itself render the evidence of identification in court inadmissible or unacceptable. There have been numerous cases where the accused is identified by the

witnesses in the court for the first time. One of the views taken is that identification in court for the first time alone may not form the basis of conviction, but this is not an absolute rule."

Therefore, the ratio laid down in the above referred judgment is very clear that identifying the accused before the Court is sufficient to hold that 4th to 7th petitioners have also participated in the occurrence.

13. In respect to the non production of weapons which were used at the time of occurrence, it is true, PW7, the Investigation officer had admitted that no such weapons, which have been used by the accused, were recovered during the time of investigation. May be the same would amount to defective in nature. However, now it is well settled, only because of the reason that the investigation officer conducted a defective investigation, the same alone is not sufficient to hold that the entire occurrence is false.

14. Herein, it is a case, in order to prove the nature of injury sustained by the PW1, x-rays taken at the time of giving treatment has been produced on the side of the prosecution. Therefore, the same is sufficient to accept as only because of the reason that the dangerous weapons were used at the time of occurrence, PW1, sustained grievous injuries.

15. Finally, the learned counsel for the petitioners would contend that in order to prove the occurrence, no independent witnesses have been examined on the side of the prosecution. He would further submit that the persons who all supported the evidence given by the PW1 and PW2, belongs to the same religion.

16. Now, on considering the said submission with the relevant records, it is necessary to see the time of occurrence, during which the alleged occurrence had happened. As per the evidence given by the PW1 to PW4, the alleged occurrence had happened at midnight. Therefore, we cannot expect an independent witness for proving the alleged occurrence. More than that, though the evidence given by the PW1 and 3 is having some minor contradictions, in the judgment rendered by our Hon'ble Apex Court, in Sachin Kumar Singhraha Vs. State of Madhya Pradesh, reported in 2019 (8) SCC 371, our Hon'ble Apex Court has held as follows:

"It is worth reiterating that though certain discrepancies in the evidence and procedural lapses have been brought on record, the same would not warrant giving the benefit of doubt to the appellant-accused."

17. Accordingly, it is a settled position that minor contradictions and procedural lapses found in the case of the prosecution is not a ground to disbelieve the case of the prosecution in entirety. Herein also as already observed, the evidence given by the PW1 to PW3, is having some minor contradictions, in the form that the same alone would not be sufficient to hold that the entire prosecution case is false one.

18. The Court below concluded the case only on the same principle. Accordingly, this Court is of the opinion that the evidence given by PW1 is fully corroborated by the evidence given by the Doctor, who gave treatment to the PW1 and also from the evidence of PW2 and PW3, the prosecution proved their case beyond reasonable doubt.

19. Finally, the learned counsel appearing for the revision petitioners would contend that the alleged offence had happened before 15 years and hence, he prayed for lenient view in the matter of sentence.

20. It is true, the alleged occurrence had happened in the year of 2003. Subsequently, after so many years now only the case has come before this Court to check the correctness of the judgments rendered by the Court below. Upon going through the sentence awarded to the revision petitioners, except the 5th revision petitioner/Accused No.5, all the remaining accused were convicted and sentenced to pay fine only. For the offence under Section 325 of IPC, the 5th revision petitioner/Accused No.5, alone is convicted and sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rs.2,000/-, in default simple imprisonment for one month. In this regard, this Court is of the opinion that since already 15 years over, sending the 5th revision petitioner/Accused No.5, again for imprisonment is not necessary.

21. In the result, the Criminal Revision Case is partly allowed and the fine imposed upon all the revision petitioners are confirmed and in respect to the sentence of imprisonment awarded to 5th revision petitioner/Accused No.5, for the offence under Section 325 of IPC, alone is set aside. Further, the trial Court is directed to give a sum of Rs.10,000/- out of the total fine amount of Rs.14,200/- to PW1 as compensation.

Sd/-

Assistant Registrar(CO)

// True Copy//

Sub Assistant Registrar

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To

1. The III Additional District Sessions Judge,
Kallakurichi,

2. The Judicial Magistrate,
Kallakurichi.

3. The Chief Judicial Magistrate,
Villupuram.

4. The Sub Inspector of Police,
Kallakurichi Police Station,
Nagapattinam District.

5. The Public Prosecutor,
High Court, Madras.

Pre-delivery order in
Crl.R.C.No.1101 of 2014

SR(CO)
KKV/14/12/2020



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