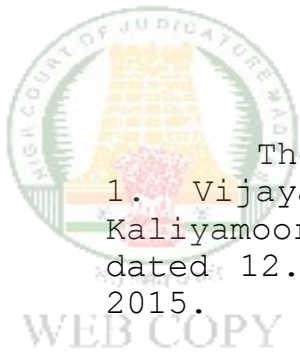




BAIL SLIP

The Revision Petitioners 1,2,4 & 5/Accused 1,2,4 & 5 Viz.,
1. Vijayakanth(A1), 2. Ramesh (A2), 3. Balamurugan(A4), 4.
Kaliyamoorthy(A5) were released on bail vide order of this Court
dated 12.08.2015 made in MP(MD).1 of 2015 in CRL RC(MD).330 of
2015.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 01.10.2020

Pronounced on : 06.11.2020

CORAM:

THE HONOURABLE MR. JUSTICE **B. PUGALENDHI**

Cr1.RC.(MD)No.330 of 2015

1.Vijayakanth
2.Ramesh
3.Vinoth
4.Balamurugan
5.Kaliyamoorthy
6.Sivasamy ... Petitioners / Accused Nos.1 to 5 & 7
Vs.

State rep. by
The Inspector of Police,
Thirukkattuppalli Police Station,
Thanjavur District.
Cr.No.239/2011 ... Respondent / Complainant

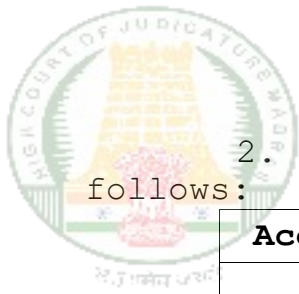
PRAYER: Criminal Revision Case filed under Section 397 r/w 401 of
Cr.P.C., to call for the records in C.A.No.24 of 2015 dated
06.07.2015, on the file of the learned II Additional District and
Sessions Judge, Thanjavur, confirming the conviction and sentence
imposed by the learned Judicial Magistrate, Thiruvaiyaru, in
C.C.No.239 of 2012, dated 18.03.2015 and set aside the same.

For Petitioners : Mr.M.Thirunavukkarasu,
Legai Aid Counsel

For Respondent : Mr.A.Robinson,
Government Advocate (Cr1. Side)

O R D E R

This Criminal Revision Case is filed by the revision
petitioners / accused nos.1 to 5 & 7, as against the conviction and
sentence passed by the learned Judicial Magistrate, Thiruvaiyaru, in
C.C.No.239 of 2012, dated 18.03.2015, as confirmed by the learned II
Additional District and Sessions Judge, Thanjavur, in C.A.No.24 of
2015, dated 06.07.2015.

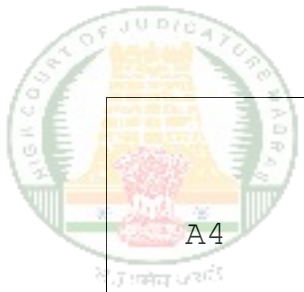


2. The accused persons were tried before the trial Court as follows:

Accused	Section of Law
A1	147, 148, 294(b), 323, 506(ii) IPC
A2	147, 148, 294(b), 326 IPC
A3	147, 148, 294(b), 323, 506(ii) IPC
A4	147, 148, 324, 326 (2 counts) IPC
A5	147, 148, 324, 326 IPC
A6	147, 148, 326, 506(ii) IPC
A7	147, 148, 323 IPC

The trial Court, in conclusion of the trial, by judgment dated 18.03.2015, in C.C.No.239 of 2012, found the accused persons guilty, convicted and sentenced them as follows:

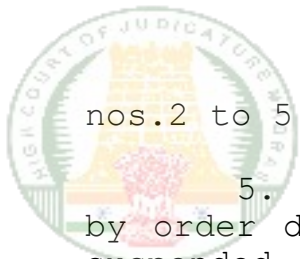
Accused	Section of Law	Punishment
A1	148 IPC	To pay a fine of Rs.500/-, i/d to undergo simple imprisonment for two weeks.
	294(b) IPC	To pay a fine of Rs.200/-, i/d to undergo simple imprisonment for one week.
A1	323 IPC	To pay a fine of Rs.400/-, i/d to undergo simple imprisonment for one week.
	506(ii) IPC	To undergo simple imprisonment for three months and to pay a fine of Rs.500/-, i/d to undergo simple imprisonment for two weeks.
A2	148 IPC	To pay a fine of Rs.500/-, i/d to undergo simple imprisonment for two weeks.
	324 IPC	To undergo simple imprisonment for three months and to pay a fine of Rs.600/-, i/d to undergo simple imprisonment for two weeks.
A3	148 IPC	To pay a fine of Rs.500/-, i/d to undergo simple imprisonment for two weeks.



A4	148 IPC	To pay a fine of Rs.500/-, i/d to undergo simple imprisonment for two weeks.
	324 IPC (2 Counts)	To undergo simple imprisonment for three months and to pay a fine of Rs.600/-, i/d to undergo simple imprisonment for two weeks, for each count.
A5	148 IPC	To pay a fine of Rs.500/-, i/d to undergo simple imprisonment for two weeks.
	324 IPC	To undergo simple imprisonment for three months and to pay a fine of Rs.600/-, i/d to undergo simple imprisonment for two weeks.
	326 IPC	To undergo simple imprisonment for three years and to pay a fine of Rs.1500/-, i/d to undergo simple imprisonment for one month.
A6	148 IPC	To pay a fine of Rs.500/-, i/d to undergo simple imprisonment for two weeks.
A7	148 IPC	To pay a fine of Rs.500/-, i/d to undergo simple imprisonment for two weeks.

3. As against the judgment of conviction and sentence, the accused persons preferred an appeal before the learned II Additional District and Sessions Judge, Thanjavur, in C.A.No.24 of 2015. The lower appellate Court, by judgment dated 06.07.2015, dismissed the appeal and confirmed the conviction and sentence imposed by the trial Court. Aggrieved over the concurrent findings of the Courts below, the petitioners have preferred the instant criminal revision case.

4. The case of the prosecution is that the accused persons, alleging that the prosecution party, namely, PWs.1 to 3 did not vote for the first accused's father in the election, developed motive and with an intention to attack them, unlawfully assembled in front of PW1's house with deadly weapons and abused in filthy words. According to the complainant [PW1], the first accused instigated the accused nos.2, 4 & 5 to kill him. The fourth accused, with an Aruval, gave a blow in his forehead and the accused nos.2 & 5 gave a blow on his head. When PW1 attempted to escape and raised an alarm, his wife, Valli [PW2] prevented the accused. The fourth accused, with an Aruval, gave a blow on her back and the accused nos.1, 3 & 6 gave a blow with Wooden Log on her back and left thigh. When PW2's brother, namely, Loganathan [PW3], came for the rescue, the accused



nos.2 to 5 & 7 attacked him. Hence the complaint.

5. This Criminal Revision Case was admitted on 12.08.2015 and by order dated 12.08.2015, the substantive portion of sentence was suspended. Thereafter, the matter was listed before the Court for final hearing for nearly 22 times. Even before this Court, though the matter was listed for final disposal, it was continuously adjourned at the instance of the petitioners, for nearly six times, either on no representation or on their request. When the matter was taken up for hearing on 03.09.2020, Mr.Chandrapandi, learned Counsel representing Mr.Arun Prasad, learned Counsel on record for the revision petitioners submitted that Mr.Arun Prasad, learned Counsel is not having any instruction from the revision petitioners and he is also withdrawing his appearance. Since the matter is lying before the Court from the year 2015 and despite repeated adjournments, the revision petitioners have not come forward to proceed with the case, this Court, by order dated 03.09.2020, appointed Advocate Mr.M.Thirunavukkarasu [Enrol.No.803/96], who is having a bar standing of 24 years, as legal aid Counsel to represent the revision petitioners.

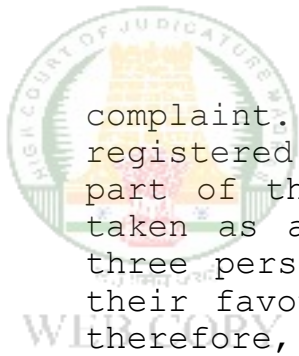
6. Heard Mr.M.Thirunavukkarasu, learned Counsel representing the revision petitioners and Mr.A.Robinson, learned Government Advocate (Cr1. Side) representing the respondent / State.

7. Mr.M.Thirunavukkarasu, learned Counsel for the revision petitioner submitted that the First Information Report in this case was registered after a considerable delay of fifteen days and this inordinate delay has not been explained by the prosecution. Apart from the delay in registering the FIR, there is also a delay in FIR reaching the Court.

8. He further submitted that the prosecution relied upon the evidence of PWs.1 to 3 in support of their case. PWs.1 & 2 are husband and wife and PW3 is the brother of PW2. All the three eye witnesses are interested witnesses and though there are several houses nearby the place of occurrence, no independent witness was examined. That apart, the evidence of PWs.1 to 3 are also contradictory to each other and also not corroborated with the Doctor evidence. Therefore, he prays for interference.

9. Per contra, Mr.A.Robinson, learned Government Advocate (Cr1. Side) submitted that the case of the prosecution is supported by the evidence of PWs.1 to 3. Merely because they are relatives, their evidence cannot be discarded, when the Wound Certificates issued by the Doctors [PWs.5 to 7] were marked before the trial Court.

10. He further submitted that there is no delay in this case. It is, in fact, the occurrence took place on 21.10.2011 and the revision petitioners immediately went to the police station and lodged a



complaint. The same was treated as petition enquiry and was registered only after fifteen days. Therefore, this lapse on the part of the investigation agency in registering the FIR cannot be taken as a delay in reporting the incident. This is a case where three persons have been assaulted brutally for not having voted in their favour. The occurrence was taken place at about 06.00 am and therefore, the minor contradictions with regard to the overtacts of the accused with the medical evidence cannot be a ground to disbelieve the case of the prosecution. Therefore, he prays for dismissal.

11. This Court paid it's anxious consideration to the rival submissions and also to the materials placed on record.

12. This Criminal Revision Case is filed as against the concurrent findings of the trial Court and the lower appellate Court. The scope of Criminal Revision under Section 397 r/w 401 Cr.P.C., is very limited and this Court cannot re-appreciate the evidence, unless and until there is a illegality, perversity or impropriety in the findings of the trial Court and the appellate Court.

13. This Court in **Anbarasu v. Mukanchand Bothra**, reported in **2019 (3) MWN (Cr) DCC 1 (Mad)** held that while exercising the revisional powers under Section 397 r/w 401 Cr.P.C., the Court is required to find out whether there is any illegality or impropriety in the findings of the trial Court and the appellate Court warranting interference and it is not open to this Court to exercise the revisional power as second appellate forum.

14. According to the prosecution, the victims were assaulted on 21.10.2011 for not having voted in favour of the first accused' father. The victims have suffered injuries and they have also lodged a complaint before the respondent police, immediately after the occurrence. But the same was treated as petition enquiry in No.366/2011 and thereafter, the case in Crime No.239 of 2011 was registered on 04.11.2011. From the prosecution witnesses, it is clear that the first accused instigated the accused nos.2, 4 & 5 to kill him. The fourth accused, with an Aruval, gave a blow in the forehead and the accused nos.2 & 5 gave a blow on PW1's head. When Valli [PW2] attempted to prevent the attack, the fourth accused, with an Aruval, gave a blow on her back and the accused nos.1, 3 & 6 gave a blow with Wooden Log on her back and left thigh. When PW2's brother, namely, Loganathan [PW3], came for the rescue, the accused nos.2 to 5 & 7 attacked him. In this occurrence, all of them sustained injuries and the Wound Certificates cum Accident Registers issued for the injuries sustained by the victims were also marked before the trial Court.

15. It appears, without any injury, the petitioners / accused have preferred a counter complaint, which was registered as against



the victim, in order to intimidate them from prosecuting the present case. The counter case registered at the instance of the petitioners / accused were later referred as mistake of facts. The respondent / Police, to some extent, it appears, have acted in a biased manner in favour of the petitioners / accused, since the victims happen to be poor.

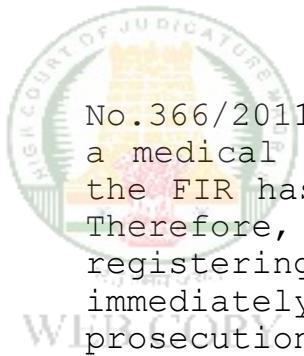
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16. The contention raised by the learned counsel for the petitioners that the prosecution witnesses were closely related to one another and no independent witness, who had seen the crime, was examined does not cut much ice with this Court, because, the law does not lay down any separate parameter for appreciating the evidence of a relative, *vis-a-vis*, the evidence of a person not related to the victim. In **State of Andhra Pradesh Vs. S.Rayappa, [2006 AIR SCW 929]**, the Hon'ble Supreme Court has observed as follows:-

"On the contrary, it has now almost become a fashion that the public is reluctant to appear and depose before the Court, especially, in criminal case, because of varied reasons. Criminal cases are kept dragging for years to come and the witnesses are harassed a lot. They are being threatened, intimidated and at the top of all, they are subjected to lengthy cross-examination. In such a situation, the only natural witness available to the prosecution would be the relative witness. The relative witness is not necessarily an interested witness. On the other hand, being a close relation to the deceased, they will try to prosecute the real culprit by stating the truth. There is no reason as to why a close relative will implicate and depose falsely against somebody and screen the real culprit to escape unpunished. The only requirement is that the testimony of the relative witnesses should be examined cautiously. The High Court has brushed aside the testimony of PW-1 and PW-2 on the sole ground that they are interested witnesses being relatives of the deceased".

17. In **Chakali Maddilety and others, Vs. State of Andhra Pradesh, [2010 (12) SCC 72]**, the Hon'ble Supreme Court has been held that the depositions of close relatives cannot be discarded, merely because they are relatives, but, their evidence has to be considered with due care and caution. In the case on hand, PWs.1 to 3, being injured eye witnesses, have clearly spoken about the occurrence and the defence has failed to shatter the same. Their evidence corroborates with that of the medical evidence and there is no reason to disbelieve the same.

18. The main ground taken by the learned Counsel for the petitioners is that there is a delay of fifteen days in registering the case. The occurrence was taken place on 21.10.2011 at 06.00 am. Immediately, the victim went to the police station and also lodged a complaint. But, the same was treated as a petition enquiry in



No.366/2011. The victims have also been referred to the Hospital by a medical memo and they were admitted in the Hospital. Even then, the FIR has been registered after fifteen days, only on 04.11.2011. Therefore, this delay on the part of the investigation agency in registering the complaint, though the incident was reported immediately, would not be fatal to the entire case of the prosecution.

19. In view of the foregoing discussions and reasonings and since this Court is exercising revisional jurisdiction, this Court is not inclined to interfere with the orders of the Courts below and accordingly, this Criminal Revision Case is dismissed. The trial Court is directed to secure the petitioners / accused, who were sentenced for imprisonment and confine them to prison so as to undergo the remaining period of imprisonment, if any. Bail bonds, if any executed, shall stand terminated. Pending miscellaneous petition, if any, shall stand closed.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

gk

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

- 1.The II Additional District and Sessions Judge,
Thanjavur.
- 2.do through
The Principal District Judge, Thanjavur.
- 3.The Judicial Magistrate,
Thiruvaiyaru.
- 4.Do Through
The Chief Judicial Magistrate, Thanjavur.
- 5.The Inspector of Police,
Thirukkattuppalli Police Station,
Thanjavur District.



6.The Section Officer,
Criminal Section (Records),
Madurai Bench of Madras High Court,
Madurai.(2 copies)

7.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Cr1.RC. (MD) No.330 of 2015
06.11.2020

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