



Bail Slip

Pandian @ Thangapandian, S/o.Nallan, (Accused No.1), Male aged about Nil of 2015 years was released on bail vide Court Order dated 15.12.2015 made in MP(MD)No.1 of 2015 in CRL RC(MD)No.600 of 2015.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	04.02.2020
Date of Judgment	12.06.2020

CORAM

THE HONOURABLE MRS. JUSTICE **T.KRISHNAVALLI**

Crl.RC(MD)No.600 of 2015

1.Pandian @ Thangapandian

2.Vijaya Kumar

3.Murugesan (Died)

4.Selvi

5.Parameswari

6.Amsau

7.Appavu

8.Kaniammal @ Kannepappa : Petitioners/Appellants/A1 to A8
Vs.

The State rep. by
The Inspector of Police,
Thogamalai Police Station,
Karur District.

(Crime No.107 of 2004) : Respondent/Respondent/Complainant

Prayer: Criminal Revision filed under sections 397 and 401 of the Code of the Criminal Procedure against the judgment, dated 26.09.2011 made in C.C No.195 of 2006 by the Judicial Magistrate No.1, Kulithalai, as confirmed by the Principal District and Sessions Judge, Karur, passed in Crl.A No.60 of 2011, dated 07.09.2015.

For Petitioners : Mr.T.A.Ebanazer for Mr.V.Karuna

For Respondent : Mr.A.P.G.Ohm Chairma Prabhu

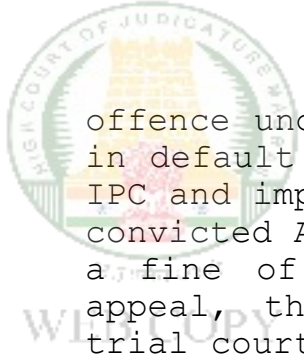
Government Advocate(Criminal side)

J U D G M E N T

This criminal revision is directed against the judgment, dated 26.09.2011 passed in C.C No.195 of 2006 by the Judicial Magistrate No.1, Kulithalai, as confirmed by the Principal District and Sessions Judge, Karur, in Crl.A No.60 of 2011, dated 07.09.2015.

2.The case of the prosecution is that on 25.02.2004, when the accused group removing iron fence in the bath room, the de-facto complainant group blocked them, due to which, there was free fight between two groups, in which both the groups were injured. In this regard, the Inspector of Police, attached to Thogamalai Police Station has filed a case in Crime No.107 of 2004 against the petitioners/accused.

3.The trial court, after proper appreciation of the entire materials on record, convicted A1 for the offence under section 326 IPC and sentenced him to undergo 3 months SI and to pay a fine of Rs.1,000/-, in default to undergo one month SI; convicted A1 and A2 for the offence under section 148 IPC and imposed a fine of Rs.500/- each, in default to undergo 2 weeks SI; convicted A2 and A3 for the

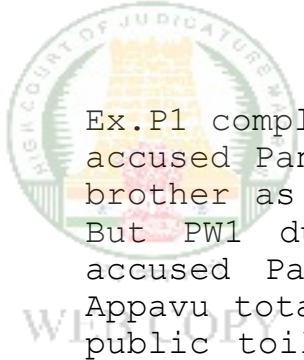


offence under section 323 IPC and imposed a fine of Rs.500/- each., in default 2 weeks SI; convicted A2 to A7 under section 323 r/w 149 IPC and imposed a fine of Rs.500/- each, in default two weeks SI and convicted A3 to A8 for the offence under section 147 IPC and imposed a fine of Rs.200/- each, in default to undergo 2 weeks SI. On appeal, the first appellate court confirmed the findings of the trial court. Aggrieved by the judgment of the both the courts below, the petitioners/A1 to A8 are before this court.

4. Heard both sides and perused the materials available on record.

5. The main contention raised on the side of the petitioners/A1 to A8 is that the prosecution witnesses alleged that A1 attempted to damage the toilet and if there was some iota of truth, the prosecution could have prosecuted and secured conviction to the accused under laws relating public property and the accused were denied to explain under section 313 Cr.P.C, on circumstances under which the accused were injured, they would have explained the possibility of their sustaining injury at afternoon following the first attack of the complainant party and neither FIR in C.C No.99 of 2005 was marked nor Wound Certificate for the accused was marked and on the other hand, the lower court relied on the Wound Certificate issued to the accused in C.C No.99 of 2005 in its judgment only and hence, the accused were denied the opportunity to explain them under section 313 Cr.P.C and there was no credible evidence against the petitioners and the prosecution failed to prove the case and the guidelines set out by the Hon'ble Apex Court in trial of cases and the counter cases were not properly followed by the trial court and there are contradictions in the evidence of PW1 to PW3 and prays that the petitioners/A1 to A8 are entitled to acquittal.

6. PW1 to PW3 are the injured. PW1 gave Ex.P1 complaint. PW1 in his complaint stated that there was previous dispute between his father and the accused family and on 25.02.2004 at 12.00 noon, the accused Pandian removed the fence and it was questioned by his brother Panneer Selvam as a Village President, quarrel arose between his brother and the accused Pandian and then, the accused Pandian with iron rod caused injury on his scalp, chest and the accused Selvi, Vijayakumar, Parameswari, Amsau and Appavu assaulted his brother with stone and stick and caused injury on his back side, mouth and when he tried to paucity, the accused Pandian with stick assaulted him and caused injury on the middle of his scalp and the accused Selvi fetched the stone towards him and it caused injury on his front side of his teeth and the accused Murugesan came and he caught his brother Arumugam's son Radhakrishnan and the accused Appavu with stick assaulted him and caused injury and the wife of the accused Murugesan with broom stick assaulted in his chest and the wife of the accused Arumugam assaulted Savithiri and the wife of the Mahivel assaulted Parvathammal and Amsu with stick and he and all the injured went to the Government Hospital, Trichy and he gave



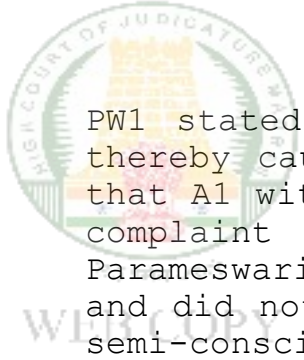
Ex.P1 complaint to the police. In his complaint, PW1 stated that the accused Pandian removed the fence and when it was questioned by his brother as an Village President, the accused Pandian assaulted him. But PW1 during his evidence stated that prior to 4 years, the accused Pandian, Amsu, Selvi, Murugesan, Kaniammal @ Kannepappa, Appavu totally eight persons came and removed the iron fence in the public toilet. But in his complaint, PW1 stated that the accused Pandian removed the fence and when it was questioned by his brother as a Village President, the accused Pandian assaulted him and when it was questioned by him, Paramasivam, Radhakrishnan, Annadurai, Murugesan, another Murugesan, Gulaiyan Chettiyar, A7/Appavu assaulted him with wooden log in his right side of scalp, the accused Selvi assaulted him with broom stick and all the accused assaulted him, Paramasivam and Radhakrishnan with wooden log and due to it, Paramasivam sustained injury on his teeth and then, he went to the police station and gave Ex.P1 complaint.

7.As per the version of Ex.P1, the accused Pandian assaulted Paramasivam and then, assaulted all other injured. But PW1 during his evidence stated that at first, he was assaulted by A7, the accused Selvi and Kaniammal @ Kannepappa. PW1 in his complaint has not stated that all the accused assaulted PW1 to PW3. PW1 in his complaint stated that some of the accused have caused injury on some of the injured. PW1 in his complaint stated that the accused Pandian with iron rod caused injury on the scalp and chest. But the above fact was not stated by PW1 in his evidence. On perusal of Ex.P1 complaint and the evidence of PW1, there are lot of contradictions between Ex.P1 complaint and the evidence of PW1.

8.PW2 and PW3 are the injured. PW2 deposed that there was a public toilet for woman in his village and on 22.05.2004, the accused Pandian removed the fence around the above toilet and when it was questioned by his wife, quarrel arose. But PW1 in his complaint stated that when the accused Pandian attempted to remove the fence, only his brother Paramasivam questioned it, quarrel arose between A1 and Paramasivam. But PW1 during his evidence stated that the above fence was removed by the accused Pandian, Amsu, Selvi, Murugesan, Kaniammal @ Kannepappa and Appavu, totally eight persons. Hence, there are contradictions in the evidence of the witnesses, who attempted to remove the fence in the public toilet.

9.PW1 in his complaint stated that A1 assaulted his brother Paramasivam with iron rod and Selvai the wife of Pandian, Vijayakumar the brother of the accused Pandian, the wife of Vijayakumar and Murugesan assaulted Paramasivam. But he has not deposed the above fact during his evidence.

10.PW2 is the brother of PW1. PW2 deposed that on the date of the occurrence, when the accused Pandian attempted to remove the fence put up in the public toilet, it was questioned by his wife, quarrel arose and then, he went to the house of PW1 with iron rod and assaulted and due to it, he sustained injury on his teeth. But



PW1 stated in his complaint that A1 assaulted PW2 with iron rod, thereby caused injury on his scalp and chest. PW2 has not stated that A1 with iron rod caused injury on his scalp chest. PW1 in his complaint stated that PW2 was assaulted by Selvi, Vijayakumar, Parameswari and Murugesan. But PW2 deposed that Selvi assaulted him and did not know, who are the others assaulted him since he was in semi-conscious position. But the above fact was not narrated by PW1 either in his complaint or in his evidence. PW1 stated in his complaint that he was assaulted by the accused Pandian and Selvi. But PW1 and PW2 during their evidence stated that all the accused assaulted PW1.

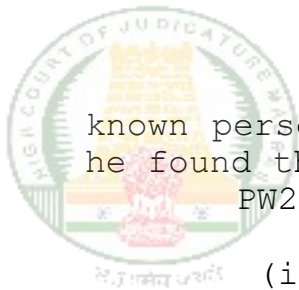
11. PW3 deposed that after hearing the occurrence, he went to the place of occurrence and saw that PW2 was assaulted by the accused Pandian, Selvi, Vijayakumar with iron rod and due to the assault by PW2, he sustained injuries on his teeth and the above persons assaulted him with stick and due to the assault by Vijayakumar, he sustained injury on his scalp and further, he was assaulted by Kaniammal @ Kannepappa and Murugesan. But the above fact was not spoken by PW1 and PW2. PW3 deposed that after hearing the occurrence, he came to the place of occurrence. But it was not stated by PW1 and PW2 during their evidence. PW3 during his cross examination stated that at the time of occurrence, he was in the tea stall and the tea stall is on the road. Hence, it is held that it is not possible for PW3 to see the occurrence.

12. PW4 and PW5 are cited as eye witnesses. But they turned hostile and did not support the case of the prosecution. The Doctor, who gave treatment to PW1 to PW3 was examined as PW8. PW8 deposed that on 25.02.2004 at 2.30 pm, when he was on duty, PW1 came for treatment and told him that he was assaulted by 10 persons with iron rod and with stone. PW8 found the following injuries on PW1:-

- (i) A Lacerated wound of size 3 x 1 x 2 cm in the frontal region of scalp;
- (ii) Two incisor teeth are broken and shaking in the upper jaw; and
- (iii) A contusion of size 3 x 2 cm in the chest.

13. PW1 in his evidence stated that the accused assaulted him with wooden log on the right of his scalp. The accused Selvi and Kannupappa assaulted him with broom stick and further, PW1 deposed that he was assaulted by all the accused with wooden log. But PW8 found only two injuries on the body of PW1. PW1 stated during his evidence that only eight accused came. But PW8 deposed that PW1 told him that he was assaulted by 10 known persons. PW2 also deposed that all the accused assaulted PW1. But PW3 deposed that A1, Selvi and Vijayakumar only assaulted PW1. PW1 has not stated during his evidence that he sustained injuries on his teeth. Hence, the evidence of PW1 is not corroborated with the evidence of PW8.

14. The Doctor, who gave treatment to PW2 and PW3 was examined as PW9. PW9 deposed that PW2 told him that he was assaulted by 10



known persons with iron rod, stones, soda bottle and with hands and he found the following injuries on PW2:-

PW2 (Radhakrishnan):-

- (i) An cut injury found on the head 6 x 1 x 1 cm;
- (ii) Minor abrasion on the right hand.

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15. PW1 in his complaint stated that the accused Pandian with iron rod caused injury on the scalp and chest of PW2. PW2 deposed that due to the assault by the accused Pandian, he sustained injuries on his teeth. PW2 has not stated that he sustained injury on his scalp and chest. PW9 during his cross examination stated that when the jaw was attacked, there is a chance for injuries to be sustained near the mouth. But PW9 has not found any injuries near the mouth of PW2. PW2 also has not stated during his evidence that he sustained injuries near his mouth. Further, PW9 deposed that PW3 told him that he was assaulted by 10 known persons with Aruval, iron rod, soda bottle and stone he found the following injuries on PW3:-

- (i) Upper incisor broken ;
- (ii) A contusion of size 6 x 6 cm on the frontal region of the scalp;
- (iii) minor abrasions on the entire body;
- (iv) headache

16. PW1 has not stated either in his complaint or during his evidence that PW1 to PW3 were assaulted with soda bottle. But PW1 during his evidence stated that PW3 was assaulted by all the accused with wooden log. Further, PW1 has not stated what are the parts of PW3 sustained injuries due to the assault. PW9 found injuries on the scalp and right hand knee. But PW3 has not deposed that due to the assault by the accused, he sustained injuries on his right hand knee. Hence, on perusal of the evidence of PW1 to PW3 and PW9, there are lot of contradictions. Hence, it is held that in this case, the oral evidence of PW1 to PW3 is not corroborated with the evidence of PW8 and PW9, the Doctors, who gave treatment to PW1 to PW3. When the oral evidence is not corroborated with the medical evidence, the accused are entitled to benefit of doubt.

17. The next contention raised on the side of the petitioners/A1 to A8 is that the trial court convicted the accused on the basis of the evidence of counter case and when the case and the counter case are tried simultaneously, the evidence of the counter case cannot be taken into account in the main case and the vice-versa, but in this case, the trial court convicted the accused only on the basis of the evidence recorded in the counter case and prays that the accused are entitled to acquittal. For that, the learned counsel appearing for the petitioners/A1 to A8 submitted a ruling reported in **1990 (Supp) SCC 145 (Nathilan and other Vs. State of U.P and another)**. In that case, it is held in para 2 as follows:-

"2. We think that the fair procedure to adopt in a matter like the present where there are cross cases, is to direct that the same learned Judge must try both the cross cases one after the other. After the



recording of evidence in one case is completed, he must hear the arguments but he must reserve the judgment. Thereafter, he must proceed to hear the cross case and after recording all the evidence he must hear the arguments but reserve the judgment in that case. The same learned Judge must thereafter dispose of the matters by two separate judgments. In deciding each of the cases, he can rely only on the evidence recorded in that particular case. The evidence recorded in the cross case cannot be looked into. Nor can the judge be influenced by whatever is argued in the cross case. Each case must be decided on the basis of the evidence which has been placed on record in that particular case without being influenced in any manner by the evidence or arguments urged in the cross case. But both the judgments must be pronounced by the same learned Judge one after the other."

18. On careful perusal of the judgment passed by the trial court, the learned Judicial Magistrate had taken into account the evidence of the witnesses stated in the counter case. Generally in a case, judgment can be passed only on the basis of the evidence recorded in that case. But in this case, the trial court came to the conclusion that the accused were found guilty mainly on the basis of the evidence recorded in the counter case. Hence, it is held that it is fatal to the prosecution. Therefore, the argument put forth on the side of the petitioners/A1 to A8 stating that the accused are entitled to acquittal is acceptable.

19. For all the reasons stated above, this court is of the considered view that the trial court as well as the first appellate court without considering the above aspects, had erroneously passed judgments, which according to this court, is liable to be set aside and accordingly, the findings of the courts below are set aside.

20. In the result, this Criminal Revision is **allowed**. The impugned judgment of conviction and sentence are set aside. The revision petitioners/A1 to A8 are acquitted of the charges levelled against them. The bail bond if any executed by them shall stand cancelled and the fine amount if any paid by them shall be refunded to them.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)



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To,

1. The Principal District & Sessions Judge,
Karur.

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2. The Judicial Magistrate No.1, Kulithalai.

3. The Chief Judicial Magistrate, Karur

4. The Inspector of Police, Thogamalai Police Station,
Karur District.

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

6. The Superintendent, Central Prison, Trichy

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12.06.2020

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