



Bail Slip

1.Karuppuchamy, S/o.Muthuchamy Gounder, Male, aged about 64 years/2016(Accused No.1), 2.Marimuthu, S/o.Karuppuchamy, Male, aged about 34 years/2016(Accused No.2), 3.Kumaresan, S/o.Karuppuchamy, Male, aged about 41 years/2016(Accused No.3), were released on bail vide Court order dated 08.02.2016 made in Crl.MP(MD)No.1125/2016 in Crl.RC(MD)No.55/2016.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.R.C(MD)No.55 of 2016

1.Karuppuchamy

2.Marimuthu

3.Kumaresan

: Petitioners/Appellants/Accused

Vs

The State represented by
The Inspector of Police,
Palani Adivaram Police Station,
Palani,
Dindigul District.

: Respondent/Respondent/Complainant

PRAYER: Petition filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the records and set aside the Judgment passed by the Principal Sessions Judge, Dindigul, in Crl.A.No.31 of 2015, dated 14.12.2015 modifying the Judgment passed by the Judicial Magistrate, Palani, in C.C.No.440 of 2010, dated 23.07.2015.

For Petitioners : Mr.K.Balasundharam

For Respondent : Mr.R.Srinivasan

Government Advocate (Crl.side)

ORDER

This Criminal Revision Case is directed against the Judgment dated 14.12.2015 made in Crl.A.No.31 of 2015 on the file of the Principal Sessions Judge, Dindigul. The said criminal appeal was filed by the petitioners herein questioning the Judgment dated 23.07.2015 made in C.C.No.440 of 2010 on the file of the Judicial Magistrate, Palani. The particulars regarding the charge, conviction and sentence are as under:-



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SI.No.	Charge	Conviction and Sentence before the learned Judicial Magistrate, Palani made in C.C.No.440 of 2010, dated 23.07.2015	Conviction and Sentence before the learned Principal Sessions Judge, Dindigul made in CrI.A.No.31 of 2015, dated 14.12.2015
1.	U/s 325, 506 (i) of IPC against the first petitioner	(I) Acquitted under Section 506(i) of IPC (II) Convicted under Section 325 of IPC to undergo three years RI and fine Rs.5,000/- in default one month simple imprisonment	Confirmed the same
2.	Under Section 341 (wrong full restraint), 323 and 506(I) of IPC against 2 nd and 3 rd petitioner (died)	(I) Convicted under Section 323 of IPC to undergo one year rigorous imprisonment and no fine has been imposed. (ii) Convicted under Section 342 (wrong full confinement) of to undergo one year rigorous imprisonment and no fine has been imposed. (III) Convicted under Section 506(I) of IPC to undergo one year rigorous imprisonment and no fine has been imposed. All sentence shall run consequently. And Judicial custody shall be reduced.	(I) Conviction set aside under Section 323 of IPC and acquitted. (ii) Confirmed the same.

2.The case of the prosecution is that on 22.11.2009, at about 09.00 a.m., P.W.1 Jothimani and P.W.2 Rajeswari wife of P.W.1 were going in a two wheeler near Palani Thiruvinnankudi Temple. The said two wheeler appears to have grazed the first accused Karuppuchamy. Though P.W.1 Jothimani would claim that he apologized for the said inadvertent happening, A1-Karuppuchamy, whose tea shop was located in the vicinity, called his sons namely A2-Marimuthu and A3-Kumaresan. A2 and A3 are said to have caught hold of P.W.1-Jothimani and A1 had punched P.W.1-Jothimani on his face leading to



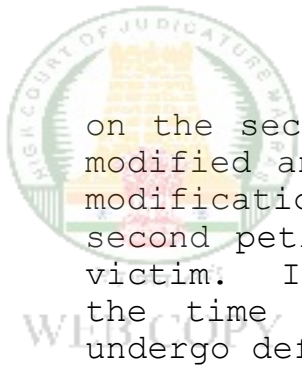
loss of vision in his left eye. In this regard, P.W.1-Jothimani lodged a complaint before the respondent police station, vide Ex.P1. Based on the same, FIR-Ex.P4 in Crime No.440 of 2010 was registered for the offences under Sections 341, 325 and 506(1) of IPC. Investigation was taken up and final report was filed and cognizance of the offences under Sections 325, 323, 341 and 506(1) of IPC was taken. Summons were issued against the accused. The accused denied the charges framed against them and claimed to be tried. The prosecution examined P.W.1 to P.W.8 and marked Ex.P1 to Ex.P5. On the side of the accused, no evidence was adduced. The learned trial Magistrate, by Judgment dated 23.07.2015, convicted and sentenced the accused as mentioned above. Challenging the same, the revision petitioners filed Crl.A.No.31 of 2015 before the Principal Sessions Court, Dindigul and the learned Sessions Judge partly allowed the appeal and modified the conviction and sentenced as mentioned above. Challenging the same, this revision case has been filed.

3.Heard the learned counsel on either side.

4.Even before commencing his argument, the learned counsel for the revision petitioners brought to my notice that the third petitioner Thiru.Kumaresan is no more. However, the death certificate has not been produced. No memo has been filed to that effect. However, taking the statement made by the learned counsel for the revision petitioners, I record that these proceedings stand abated as far as the third petitioner Kumaresan is concerned. That leaves me only with the petitioners 1 and 2.

5.It is seen that the injury in question was caused only by the first petitioner Kumaresan. It was he who landed the punch on the left eye of P.W.1. The second petitioner is only said to have caught hold of the victim. I can visualize the circumstances that could have then prevailed. The tea shop of the first petitioner was located nearby. The first petitioner is an aged person. The first petitioner was involved in some fracas with P.W.1. When the father called them for assistance, the natural conduct of the sons will be to rush to the side of the father. That is exactly what the second petitioner had done.

6.Therefore, I am of the view that an indulgent view can be taken in this case. I am led to take such a view because the learned counsel for the petitioners made an offer that the second petitioner would deposit a sum of Rs.50,000/- to the credit of C.C.No.440 of 2010 on the file of the Judicial Magistrate, Palani, within a period of eight weeks from the date of receipt of a copy of this order. The second petitioner states that the injured witness P.W.1-Jothimani can withdraw the same by way of compensation. The learned counsel for the petitioners also states that he would not challenge the finding of guilt as far as the second petitioner is concerned. Therefore, even while confirming the conviction imposed



on the second petitioner, the period of sentence imposed on him is modified and reduced to the period already undergone by him. This modification and reduction in the matter of sentence is given to the second petitioner, because of the offer to pay compensation to the victim. If the second petitioner fails to make the deposit within the time stipulated above, the second petitioner will have to undergo default sentence of three months simple imprisonment.

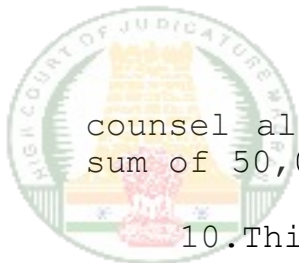
7.The primary contentions urged by the learned counsel for the petitioners is that the Court below erred in framing the charge under Section 325 of Cr.P.C. According to him, Section 335 of IPC is attracted. Section 335 of IPC reads as follows:-

"335. Voluntarily causing grievous hurt on provocation

Whoever voluntarily causes grievous hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause grievous hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to four years, or with fine which may extend to two thousand rupees, or with both."

8.The learned counsel states that the entire occurrence has been triggered by provocation. I am of the view that this may not make any difference in this case. Section 335 of IPC provides for sentence for a period upto four years. In the case on hand, the first petitioner Karuppuchamy had been punished only with the imprisonment of three years. Therefore, I am of the view that there is no need to go into the issue.

9.A careful reading of the evidence on record indicates that the two wheeler ridden by P.W.1 had merely grazed A1. A1 does not appear to have suffered any major injury. The learned counsel would claim that the little toe on the left leg was crushed on account of the running over of the two wheeler. There is no substantial evidence to that effect. The accused admittedly did not enter the witness box. No evidence was adduced. On the other hand, in the FIR, it has been mentioned that the first accused suffered bruises. Even if I assume that the first petitioner was provoked, his reaction could not have been disproportionate. The reaction and response of the person provoked ought to be proportional. In this case, his reaction has been out of proportion. He has landed a punch on the eye of the victim. The first petitioner ought to note that if one hits the other person on the eye, the other person would definitely suffer a grievous hurt. I, therefore, have to conclude that the first petitioner had deliberately caused the injury. In fact, having regard to the evidence on record, the learned counsel for the revision petitioner states that he would not challenge the finding of guilt and that, he would only plead for substantial modification in the matter of sentence. The learned



counsel also states that the second petitioner is willing to pay a sum of 50,000/- as compensation.

10.This Court can take this into account, while imposing the sentence on the first petitioner. It is seen that the first petitioner was charged for having committed the offences namely Sections 325, 342 and 506(1) of IPC. Sentence had been imposed for each of the offences.

11.Taking note of the said submissions made by the learned counsel for the revision petitioners, I reduce the period of sentence imposed on the first petitioner from three years rigorous imprisonment to nine months simple imprisonment and to pay a fine of Rs.1,00,000/-. The said fine amount shall be paid by the first petitioner within a period of eight weeks from the date of receipt of a copy of this order. The said fine amount shall be passed on to the victim P.W.1. The period of incarceration already undergone by the first petitioner shall be set off in terms of Section 428 of Cr.P.C. If fine amount is not paid, the sentence imposed by the Appellate Court shall stand restored. The Court below shall take steps to enforce this order.

12.Even while confirming the conviction imposed on the second petitioner, the period of sentence imposed on him is modified and reduced to the period already undergone by him. This modification and reduction in the matter of sentence is given to the second petitioner, because of the offer to pay a sum of Rs.50,000/- as compensation to the victim. If the second petitioner fails to make the deposit within the time stipulated above, the second petitioner will have to undergo default sentence of three months simple imprisonment.

13.With this modification in the matter of sentence, this criminal revision case is partly allowed.

Sd/-

Assistant Registrar (CS-III)

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/ /2021

Sub Assistant Registrar(CS)

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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 Judicial Magistrate, Palani.
2. The Chief Judicial Magistrate, Dindigul.
3. The Principal Sessions Judge, Dindigul.
4. The Inspector of Police,
Palani Adivaram Police Station,
Palani,
Dindigul District.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to: The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai. (2)

Crl.R.C (MD) No.55 of 2016

MJ(CO)
CS(08.01.2021) 6P 8C