



BAIL SLIP IN CrI.R.C.No.1069 of 2015

Raja, S/o. Dakshinamurthy, Petitioner/Appellant/Accused was directed to be released on bail in and by the order of this Court dated 12.10.2015, made in M.P. 1 of 2015 in CrI.R.C.No.1069 of 2015.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.07.2021

PRONOUNCED ON : 12.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CrI.R.C.No.1069 of 2015

Raja

... Petitioner/Accused

Vs.

The State represented by
The Inspector of Police,
Keezhaiyur Police Station,
Nagappattinam District.
Crime No.07 of 2012.

... Respondent/Complainant

Prayer: This Criminal Revision Case has been filed under Section 397 read with Section 401 of Cr.P.C., against the Judgment dated 27.07.2015 passed in C.A.No.52 of 2013 by the learned District and Sessions Judge, Nagappattinam, confirming the judgment dated 26.07.2013 passed in C.C.No.15 of 2013 by the learned Chief Judicial Magistrate, Nagappattinam.

For Petitioner : Mr.V.Raghavachari

For Respondent : Mr.R.Vinoth Raja
Government Advocate

JUDGMENT

(The case has been heard through Video Conference)

This Criminal Revision Case is preferred against the Judgment dated 27.07.2015 passed in C.A.No.52 of 2013 by the learned District and Sessions Judge, Nagappattinam, confirming the judgment dated 26.07.2013 passed in C.C.No.15 of 2013 by the learned Chief Judicial Magistrate, Nagappattinam.



2.The revision petitioner, who is arrayed as A.1 in C.C.No.15 of 2013, was convicted by the learned Chief Judicial Magistrate, Nagappattinam, and sentenced him to undergo rigorous imprisonment for three years and to pay a fine of Rs.2,000/-, in default, to undergo rigorous imprisonment for three months. The said conviction and sentence were confirmed by the learned District and Sessions Judge, Nagappattinam, in C.A.No.52 of 2013. Challenging the same, the petitioner/A.1 is before this Court with this criminal revision.

3.Heard Mr.V.Raghavachari, learned counsel for the revision petitioner and Mr.R.Vinoth Raja, learned Government Advocate (Crl.Side) appearing for the respondent and perused the materials placed on record.

4.The learned counsel for the revision petitioner would contend that there is no positive evidence before the Court to come to the conclusion that the alleged injuries are grievous in nature as defined under Section 320(1) of IPC and the alleged material object namely, metal rod was also not produced before the trial Court as Material Object. Further, according to him, in the prosecution witnesses PW1 to PW3, there is a material contradiction with regard to the material object viz., weapon. PW3/wife of the injured would depose that it is a wooden log, while PW1/son of the injured would depose that it is a iron rod and no document was produced or marked before the trial Court.

5.Further, the learned counsel for the revision petitioner would rely upon a decision of this Court reported in 2019 SCC online Mad 30722 - [Mahendiran & another Vs. State] in [Crl.RC.No.1232 of 2011, dated 30.01.2019], wherein, this Court has observed that in the absence of X-ray report being marked as one of the exhibits before the Trial Court, the ingredients of the offence under Section 326 IPC as to whether the injury is grievous in nature or not cannot be made out.

6.On a perusal of the order passed by the learned District and Sessions Judge, Nagapattinam, in Crl.A.No. 52 of 2013, it is seen that the accused has assaulted PW2 with iron rod and immediately after the occurrence, the injured/PW2 was taken by PW1 to the Government Hospital, Nagapattinam. As the injured was unconscious position, PW1 has given a complaint and the said complaint was marked as Ex.P1. It is specifically averred in the complaint that the revision petitioner/A1 has assaulted PW2 on his head with iron rod and PW2, who is the injured, has clearly deposed the act of attacking the accused on his body and causing injury with iron rod. Admittedly, the assault made by the accused on the body of PW2/injured was clearly spoken to by PW11/Doctor, who had given treatment to the injured. PW11/Doctor would depose that PW2 was in unconscious stage and he was



assaulted by known persons with 'Kathi', 'iron rod' and 'Urttu Kattai' and he had noted the injury on the head of PW2. The said accident register is Ex.B4.

7.Further, PW4 to PW7, who are the persons alleged to have present at the scene of occurrence, have turned hostile and not supported the case of the prosecution, assumes significance.

8.After perusing the evidence of PW1/son of PW2, PW1/injured and PW3/wife of PW2, it is seen that in connection with the conducting of 16th ceremony for the death of one of the relative of PW2, they engaged themselves in a conversation and at that time, the accused said to have intervened and asked about certain issues, whereby, PW2 has entertained heat exchange and spoken in defaming words, and as a result of which, the accused has taken a iron rod and caused injury. However, the alleged weapon of the crime namely, the iron rod was not seized by the investigation officer/PW14 and no plausible explanation was offered for non production of the material object. In fact, there is a material contradiction with the evidence of PW2 and PW3 regarding the alleged weapon of the Crime.

9.In the absence of producing X-ray and in view of the above said decision, this Court is of the considered view that the conviction under Section 326 IPC cannot be sustained taking into account the evidence of PW1 and PW2. As extracted supra, due to sudden provocation given by PW2, the accused said to have caused injury on the head of P.W.2 and the weapon of the crime is not proved in the manner known to law also assumes significance. Neither any material object was produced nor any acceptable explanation was offered by the investigating officer.

10.Taking into consideration the entirety of the circumstances, the conviction made by both the Courts below under Section 326 of IPC against the revision petitioner/A1 stands modified as that of one under Section 334 of IPC and a fine of Rs.4,000/- is imposed for the proved offence.

11.In the result, the conviction passed by both the Courts below under Section 326 of IPC is hereby set aside and modified as that of one under Section 334 of IPC and the revision petitioner/accused-A1 is sentenced for the period already undergone, for the offence under Section 334 of IPC and imposed to pay a fine of Rs.4000/-. In view of the fact that the revision petitioner/A1 had already undergone the sentence of imprisonment during the time of investigation, the fine of Rs.4,000/- has to be paid within a period of three weeks from the date of receipt of a copy of this order and on such deposit made before the learned Chief Judicial Magistrate, Nagapattinam, the same has to be paid as compensation to the injured/PW2.



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12. With the above observations, this Criminal Revision Case is partly allowed to the limited extent indicated as above.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The District and Sessions Judge, Nagappattinam.
2. The Chief Judicial Magistrate, Nagappattinam.
3. The Inspector of Police,
Keezhaiyur Police Station,
Nagappattinam District.
4. The Superintendent,
Central Prison,
Cuddalore.
5. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.V.Raghavachari, Advocate, S.R.No.32409

Cr1.R.C.No.1069 of 2015

AKII (CO)
BE (26/07/2021)