



BAIL SLIP

The Appellant herein/A3, namely Babu was directed to be released on bail as per Order of this Court dated 28.05.2015 made in CrI.M.P.No.1 of 2015 in CrI.RC.No.492 of 2015.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	18.11.2021
Pronounced on	23.12.2021

CORAM

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

CrI.R.C.No.492 of 2015

Babu ... Petitioner/Appellant/A-3

Vs

State Rep. By
The Inspector of Police,
B-13, Police Station,
Coimbatore .

[Crime No.109/2010] ... Respondent/Respondent/complainant

PRAYER: This Criminal Revision Case is filed under Section 397 r/w 401 Cr.P.C.,1973, against the judgement dated 12.03.2015 made in CrI.A.No.28 of 2015 on the file of the Principal District Sessions Judge, Coimbatore in confirming the judgement dated 13.01.2015 made in S.C.No.192 of 2010, on the file of the II Additional Assistant Sessions Judge, Coimbatore.

For Petitioner : Mr.C.Prabhakaran

For Respondent : Mr.A.Gopinath
Government Advocate (CrI.Side)

O R D E R

This Criminal Revision Petition has been preferred by the accused to set aside the judgement dated 12.03.2015 made in C.A.No.28 of 2015 on the file of the learned Principal District and Sessions Judge, Coimbatore, confirming the judgement dated



13.01.2015 made in S.C.No.192/2010 on the file of the II Additional Assistant Sessions Judge, Coimbatore.

2. For the sake of convenience of discussion the appellant is referred as per his rank (as A-3).

3. The facts of the case in brief are as follows:

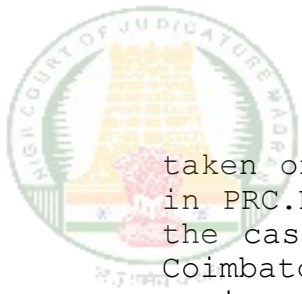
On 24.01.2010, there was a dispute with regard to sharing of wages among A-1 and three others with one Ramesh, who is the son of de facto complainant. In view of that a police complaint has been given and an FIR was registered in Cr.Nos.98/2010 and 100/2010 of the Kothanur Police Station. On the same day itself, some of the accused have been arrested in the said case but A-1 was absconding; and he had an intention to do away with the complainant's family in view of his previous enmity with the son of de facto complainant.

3.1. On 28.01.2010 at about 11.30 pm, A-1 to A-3 with a common intention trespassed into the house of the de facto complainant. They had the intention to murder the de facto complainant and her daughter; while both were sleeping inside the room, the accused poured petrol on them by telling that they would kill their entire family by setting fire on them. The de facto complainant and her daughter rushed outside and escaped. Enraged over that, the accused set fire on the house of the de facto complainant and damaged their properties worth around of Rs.5,000/-.

3.2. On the complaint (Ex.P.1) given by PW.1-Raja Lakshmi, an FIR (Ex.P.6) was registered in Crime No.109/2010 for the offence under sec. 147, 452 and 307 IPC by PW.8- Parveen Banu, the Sub Inspector of Police.

3.3. PW.9-Thirumeni, Inspector of Police took up the case for investigation and went to the place of occurrence and prepared Observation Mahazaar (Ex.P.2) and Rough Sketch (Ex.P.7) in the presence of witnesses. He also recovered (M.O.s 1 to 6) from the place of occurrence through Seizure Mahazaar (Ex.P.3) in the presence of witnesses PW.5 Anandhan and one Sahul Hameed. He enquired the witnesses and arrested the accused on 11.02.2010 and recorded their confession statements (Ex.P.4) in the presence of witnesses PW.6 and one Pandian and thereafter sent them for remand. He sent the Material Objects for chemical examination through Court and got the report (Ex.P.5). He examined the photographer who took photographs from the place of occurrence. After completing the investigation, he filed the charge sheet against the accused under secs. 450, 436 and 307 IPC.

3.4. After completing the investigation, charge sheet has been laid down under Secs.447, 307 and 436 IPC. The case was



taken on file by the learned Judicial Magistrate-VII, Coimbatore in PRC.No.27/2010 and after observing the due legal formalities, the case was committed to the learned Principal Sessions Judge, Coimbatore. After the case was taken on file, the case was assigned to the file of the learned Second Additional Assistant Sessions Judge for conducting trial. The learned sessions judge framed the charges against A-1 for the offences under Secs.447, 307, 436 IPC and under Sec. 449, 309 r/w 34 IPC against A2 and A3 and questioned the accused. The accused pleaded not guilty and claimed to be tried.

4. During the course of trial, on the side of the prosecution, 9 witnesses were examined and Exs.P1 to P12 were marked and M.Os.1 to 6 were marked. On the side of the defense, no witness was examined and no documents was marked.

5. The evidence of the prosecution in brief:

PW1- Rajalakshmi, the defacto complainant has stated about the occurrence in the same manner as how she had stated in the complaint. PW.2 is the daughter of PW1 and she also corroborated the evidence of PW1. She also identified the Material Objects seized from the place of occurrence. PW.3- Vasanthi is the neighbour of PW.1 and 2 and she stayed along with her child in the place of occurrence on 25.10.2010 and was sleeping with PW.1 and 2. So, she also witnessed the occurrence and gave evidence on this aspect.

5.1. P.W.4-Jayaraj, is the relative of PW.1 and 2 and he knew about the earlier dispute between A-1 and the son of PW.1. In the said dispute the husband of PW.1 was arrested along with other accused and the son of PW.1 was attacked. Since the son of PW.1-Ramesh was admitted in the hospital, PW.4 visited him in the hospital and then came to the house of PW.1. After having dinner he went outside and was conversing with his neighbour. At about 11.30 pm, he heard the noise made by PW.1, 2 and 3 and rushed to the place of occurrence and found A-1 and others were running. He came to know from PW.1 that A-1 had set the house on fire.

5.2. P.W.5-Ananth is the husband of PW.3. He also had knowledge about the earlier enmity between the accused and PW.1's husband. In the earlier case, the husband of PW.1 was also arrested with other accused. Hence at the request of PW.1, P.W.5 allowed his wife/ PW.3., to stay at the house of PW.1. On the next day morning he came to know that the house of PW.1 was burnt by A-1 to A-3. He stood as a witness for observation mahazaar and seizure of the Materials Objects from the place of occurrence.

5.3. PW.6-Kumar, was working as an electrician and he stood as a witness for the confession given by the accused and affixed his signature (Ex.P.4). PW.7 is the scientific expert who conducted the chemical examination on the properties seized from



the place of occurrence and gave his report (Ex.P.5). PW.9-Thirumeni/Investigation Officer, conducted the investigation and filed charge sheet against the accused under sec. 449, 307, r/w 436 r/w 34 IPC.

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6. On considering the evidence available on record, the learned Trial Judge found A-1 guilty for the offence under Sec.307, 436 and 448 IPC and found A-2 and A-3 guilty for the offence under Sec.307 r/w 34, 436 r/w 34 and 448 IPC and convicted the accused as under:

Sl. No.	Rank of the Accused	Conviction passed by the trial Court	Sentence passed by the trial Court
1.	A.1	307 IPC	Sentenced to undergo 5 years Rigorous Imprisonment and to pay a fine of Rs.500/-, and in default, to undergo Simple Imprisonment for another six months.
		436 IPC	Sentenced to undergo 5 years Rigorous Imprisonment and to pay a fine of Rs.500/-, and in default, to undergo Simple Imprisonment for another six months.
		448 IPC	Sentenced to undergo 1 month Simple Imprisonment
2.	A.2 & A.3	307 r/w.34 IPC	Sentenced to undergo 5 years Rigorous Imprisonment and to pay a fine of Rs.500/-, and in default, to undergo Simple Imprisonment for another six months for each of the accused.
		436 r/w 34 IPC	Sentenced to undergo 5 years Rigorous Imprisonment and to pay a fine of Rs.500/-, and in default, to undergo Simple Imprisonment for another six months for each of the accused.
		448 IPC	Sentenced to undergo 1 month Simple Imprisonment for each of the accused.



The sentences were ordered to run concurrently. Aggrieved over the same, the accused have preferred the Criminal Appeal before the Principal District and Sessions Court, Coimbatore and the same was also dismissed. Aggrieved over that the accused have filed this Revision Case.

7. Heard, Mr.C.Prabhakaran learned counsel for the petitioner and Mr.A.Gopinath, learned Government Advocate (Crl.Side) appearing for the respondent/State.

8. The learned counsel for the petitioners/accused 1 to 3 submitted that the trial Court has passed the judgement without considering the material contradiction found in the evidences of PW.1 to 9; as per the evidence of PW.7- scientific expert, petrol was not detected on the material objects seized from the place of occurrence and that would earn the benefit of doubt in favour of the accused; the accused were not properly identified; and the Courts below have convicted the accused basing on the evidences of the interested witnesses and hence he prayed to set-aside the judgement of the learned First Appellate Court.

9. The learned Government Advocate (Crl. Side) appearing for the State, submitted that PW.1, 2 & 5 are the eyewitnesses and they have spoken about the occurrence in a consistent manner and there is no reason to reject their evidences. He further submitted that there is no material inconsistencies in the evidences of the eyewitnesses hence the Criminal Revision should be dismissed.

10. Point for consideration:

Whether the conviction and sentence of A-1 for the offences under Sec.307, 436 and 448 IPC; A2 and A3 for the offences under Sec.307 r/w 34, 436 r/w 34 and 448 IPC imposed by the Trial Court as confirmed by the First Appellate Court basing on the materials available on record is fair and proper?

11. The complainant, PW.1- Rajalakshmi and her daughter PW.2 were present in the house on the night of the occurrence. There was previous enmity between the complainant's family and A-1 in connection with sharing of wages among A-1 and others along with the son of PW.1 and it had resulted in a criminal case. In the said case the husband of PW.1 was also arrested along with some of the accused. Hence PW.1 and 2 were alone at their house. In order to feel safe PW.1 requested the husband of PW.3 namely Ananth (PW.5) to send his wife and child to her house and to sleep there. So PW.5 sent his wife and child to the house of PW.1. At about 11.30 pm, PW.1 and 2 heard someone talking outside their door. PW.1 opened the door and saw that A-



1 coming with A-2 and A-3 and A-1 was holding a petrol Can. After coming there, A-1 poured the kerosene on PW.1 and 2. PW.1 and 2 escaped through the other door. So the accused got angry and burnt household articles of PW.1. These events have been coherently stated by PW.1 and her evidence was corroborated with the evidence of PW.2. PW.3 who was sleeping along with PW.1 and 2 have also stated about the violence caused by the accused during that night.

12. PW.4 is the relative of PW.1 and he had been into the house of PW.1 on the night of occurrence incidentally, after visiting the husband of PW.1 at hospital. He had also stated about the noise he heard from the house of PW.1. The evidence PW.1 to 4 who were present at the time of occurrence are consistent and reliable. There is no reason for PW.3, 4 and 5 to implicate the accused falsely in this case. Though there was previous enmity between PW.1's husband and A-1, PW.1 and 2 did not have any enmity with him. A.1 to A.3 gained access into the house of PW.1 by committing trespass when the ladies were alone at night.

13. The learned counsel for the revision petitioner submitted that A2-and A3 were merely present in the scene of crime and they did not participate in any offence as stated above. A.1 was found to be having petrol cane while coming to the house of PW1 and so it is obvious that A2 and A3 who accompanied him knew about the intention of A1. They neither prevented A1 from causing violence nor went away from him. They participated in the occurrence along with A1 and that would show about their common intention. Despite there are some minor contradiction in the evidence of the eyewitnesses that did not create any strong suspicion, so as to demolish the case of the prosecution.

14. Since the prosecution had proved the guilt of the accused beyond reasonable doubts the courts below did not find any reason to reject the same and thus convicted the accused.

15. It is submitted by the learned counsel for the petitioner that some of the material witnesses have been omitted to be cross examined despite the petition was filed under Sec.311 Cr.P.C for recalling the witnesses and got it allowed. The tabulation shown in the judgement of the First Appellate Court mentions that A1 to A2 did not make use of the opportunity and cross examine PW.1 to P.W.5.

16. The learned First Appellate Judge relied on the judgement rendered by the Hon'ble Supreme Court in Vinoth Kumar Vs. State of Pubjab [Crl.A.No.554/2012 dated 21.01.2015] in order to support his finding that the cross examination of the



witnesses cannot be deferred for a long time. In this case, the opportunity to recall PW.1 to 4 was granted by way of allowing the petition filed for that reason. Despite that, the revision petitioner omitted to pay batta and cross examine the witnesses PW.1 to P.W.3. There is no exceptional circumstance or extraneous reason seem to be present for justifying the conduct of the accused in not cross examining PW.1 to 4. It is well within the knowledge of the accused that PW.1 to 4 are material witnesses and they have to be cross examined. In fact the petitioners have chosen to file a recall petition after they were questioned under Sec.313 Cr.P.C. Despite the petition was allowed on 08.04.2015, the petitioner and the other accused did not choose to pay batta to summon PW.1 to P.W.4. Thereafter A-1 remained absent and NBW was issued. When NBW was pending against A-1, A-2 and A-3 remained absent and Non Bailable warrants were issued once again against them. After a considerable length of time, A-2 and A-3 have chosen to surrender and NBW was recalled at their request. A-1 remained absconding and thereafter he was secured. Once again a petition was filed under Sec.311 Cr.P.C, on 03.12.2014 and the same was returned. The petitioners neither represented the said 311 petition nor challenged the order of return or any other order passed in 311 petition, filed by them on 02.12.2014. The accused had purposefully evaded to cross examine the witnesses and thereafter jumped out of the bail.

17. The learned counsel for the revision petitioner/A-3 submitted that the failure to cross examine PW.1 to 4 would prejudice the interest of A-1 to A-3 and that would amount to denial of opportunity to trial. He further submitted that the case may be remanded back to the trial Court for the purpose of giving opportunity to the petitioner to cross examine PWs.1 to 4. A fair trial does not mean giving unlimited time for cross examining the witnesses. Sec.311 Cr.P.C., filed by the accused for recalling the witnesses was allowed. But the accused failed to pay batta to summon the witnesses and also jumped out bail.

18. The conduct of the accused would show that they waived their right to cross examine the above witnesses. So it is right for the Courts below to rely on the evidence of the prosecution and found that the accused is guilty. Hence I don't find any reason for interference.

In the result, this Criminal Revision Case stands dismissed and the judgement dated 12.03.2015 made in CrI.A.No.28 of 2015 on the file of the Principal District Sessions Judge, Coimbatore in confirming the judgement dated 13.01.2015 made in S.C.No.192



of 2010, on the file of the II Additional Assistant Sessions Judge, Coimbatore is upheld.

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Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

jrs

To

1. The Principal District Sessions Judge,
Coimbatore.
2. The II Additional Assistant Sessions Judge,
Coimbatore.
3. The Judicial Magistrate,
No.VII, Coimbatore.
4. The Chief Judicial Magistrate,
Coimbatore.
5. The Inspector of Police,
B-13, Police Station,
Coimbatore.
6. The Superintendent,
Central Prison,
Coimbatore.
7. The Public Prosecutor,
High Court of Madras,
Chennai.
8. The Section Officer,
Criminal Section,
High Court, Madras-104.

+1cc to Mr.W.Camyles Gandhi, Advocate, S.R.No.69410

Cr1.R.C.No.492 of 2015

EV(CO)
SU(11/01/2022)