



Bail Slip

The Petitioner/Accused namely Murugesan(M/Aged about 35 Years) S/o.Loganathan was directed to be released on bail in and by the order of this Court dated 18.11.2016 and made in Crl.MP.No.11288/2016 in Crl.RC.No.1246 of 2016. On the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.12.2021

CORAM

THE HON'BLE Ms. JUSTICE R.N.MANJULA

Crl.R.C.No.1246 of 2016

Murugesan

... Petitioner/Accused

Vs.

State rep. by Special Sub Inspector of Police,
Thimri Police Station,
Vellore District.
(Crime No.361 of 2009)

... Respondent/Complainant

Criminal Revision Case filed under Section 397 & 401 Cr.P.C. seeking to call for the records on the file of the learned II Additional District and Sessions Judge, Vellore at Ranipet, Vellore District in Crl.A.No.29 of 2011 dated 16.09.2016 confirming the judgement in C.C.No.5 of 2010 on the file of the learned District Munsif cum Judicial Magistrate, No.1, Walajapet, Vellore District dated 10.01.2011 and to set aside the judgement dated 16.09.2016.

For Petitioner : Mr.E.Kannadasan

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

ORDER

This Criminal Revision Case is preferred challenging the judgement of the learned II Additional District and Sessions Judge, Vellore at Ranipet dated 16.09.2016 in C.A.No.29 of 2011.



2. The case of the prosecution is that on 10.11.2009 at about 6 pm the accused assaulted the defacto complainant Deivanayagi, her husband Jayakumar and her daughter Poongavanam with hands and firewood and caused grievous injury to P.W.1 and simple injuries to Poongavanam and Jayakumar. The occurrence is said to have taken place in front of the house of the accused. Immediately after the occurrence, P.W.1 - defacto complainant and her husband - P.W.2 were taken to hospital. P.W.8 Dr.Priyalatha had registered the Accident Register when P.W.1 and P.W.2 were brought to the Government Hospital Walajapet for treatment. On the intimation received from the hospital, P.W.9 - Thagur, Head Constable of Thimiri Police Station went to the Walajapet Hospital and recorded the statement of P.W.1.

2.1 After receiving the statement of P.W.1, he registered a case in CSR No.329 of 2009. An enquiry was conducted on the said CSR by the Sub-Inspector of Police. On 23.11.2009, the CSR was converted into an F.I.R. in Crime No.361 of 2009 under Sections 323, 324 & 325 of IPC. P.W.10 took up the case for investigation, went to the place of occurrence, prepared observation Mahazar and rough sketch and examined the witnesses; he has also recovered the firewood which was used as weapon for the occurrence from P.W.11; when P.W.11 handed it over to him, the said firewood was seized under the seizure Mahazar in the presence of witnesses. The accused was arrested on the same day at about 4.45 pm and sent for remand. He also examined the doctor who treated P.W.1 & P.W.2 and got wound certificate. After the completion of the investigation, charge sheet was filed against the accused under Sections 323, 324 & 325 IPC.

2.3 After observing the legal mandates and on being satisfied that there are sufficient materials available on record, the learned trial Judge framed charges against the accused under Sections 323(2), 324 & 325 IPC. Since the accused denied the charges and claimed to be tried, trial was conducted.

3. During the course of the trial, on the side of the prosecution, 11 witnesses were examined as P.W.1 to P.W.11 and 7 documents were marked as Exs.A1 to A7. The firewood used for the occurrence was marked as M.O.1. On the side of the defence, no witness was examined and no document was marked.

4. At the conclusion of the trial and on consideration of the materials on record, the learned trial Judge found the accused guilty for the offence under Section 325 IPC alone and convicted and sentenced him to undergo six months Rigorous Imprisonment and a fine of Rs.3,000/- in default to undergo one month Simple Imprisonment. The accused was found not guilty for



WEB COPY

the rest of the charges and acquitted. The appeal filed by the accused challenging the judgement of the trial Court was also dismissed and the judgement of the trial Court was confirmed. Aggrieved over that, the accused preferred this Criminal Revision Case.

5. Heard the learned counsel for the petitioner/accused and the learned Government Advocate (Criminal Side) appearing for the respondent State.

6. The learned counsel for the petitioner/accused submitted that there are contradictions in the evidence of P.W.1 and P.W.8; despite the doctor had given her opinion that the injury sustained by P.W.1 was a grievous one, the X-Ray was not produced; further there is a delay in registering the F.I.R; on these grounds, the Courts below ought to have given the benefit of doubt and acquitted him.

7. The learned Government Advocate (Criminal Side) appearing for the respondent Police has submitted that P.W.1, who is the injured witness had deposed evidence in a consistent, cogent and clear manner and the same was corroborated by the medical evidence and medical certificate issued by P.W.8 - Doctor; the reason for the delay in registering the F.I.R. is not due to any delay on the part of the defacto complainant; the delay had occurred since the Police opted to treat the F.I.R. as CSR before registering the complaint; since the oral and documentary evidence on record proved the guilt of the accused, the Courts below have correctly found the accused guilty for the offence under Section 325 IPC.

8. Point for consideration :-

Whether the conviction and sentence of the accused for the offence under Section 325 IPC by the learned Judicial Magistrate I, based on the materials available on record is fair and proper?

9. The complaint statement was given by P.W.1 - Deivanayagi and it is available as Ex.P1. On perusal of the complaint statement given by P.W.1, it is seen that P.W.1 has referred about the previous day incident. The accused, who is the son of P.W.2's elder brother, had broken the water connecting pipe. In view of that, on 10.11.2009 at about 6 pm, P.W.1 stood in front of the house of the accused house and shouted why he had broken the pipe and done the same mischief repeatedly; on hearing this, the accused came out and shouted at P.W.1 and assaulted her with his hands; he also assaulted the daughter and the husband of P.W.1 who came for her rescue. It is stated that the accused assaulted P.W.2 with firewood. When P.W.1 interfered, she was



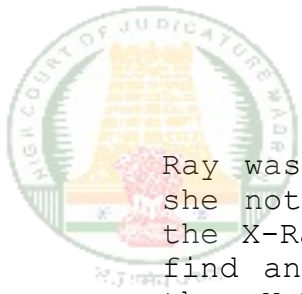
also beaten up by the accused with firewood and due to which P.W.1 got fractured injury over her left leg.

10. When the complainant was examined as P.W.1, she has stated about the above facts and her cross examination did not in any way demolish her evidence in chief. She has stated in her evidence that how she got injured in her left leg. P.W.8 - Doctor, who examined P.W.1 has also stated in her evidence that the X-Ray revealed the fracture on her left leg. On noticing the fracture in P.W.1's leg, P.W.8 - Doctor issued the certificate that the injury sustained by P.W.1 is a grievous one. P.W.2, the husband of P.W.1 has also stated about the occurrence in the manner in which he and his wife were assaulted by the accused. P.W.3 - daughter of P.W.1 & P.W.2 have also deposed evidence about how she tried to prevent the accused from beating her parents. The rest of the witnesses who were examined on the side of the prosecution as P.W.3 to P.W.5 are relatives and the people residing in the same locality. They had also witnessed the quarrel and the act of the accused beating P.W.1. However, the Courts below have not found the accused guilty for assaulting P.W.2 and P.W.3.

11. Since the guilt of the accused was established as against P.W.1 on the basis of the evidence of the injured witness and other witnesses who corroborated the evidence of P.W.1, I find no reason to reject the same. The doctor who examined P.W.1 has also stated that when P.W.1 came for treatment she told him that four people beat her. However, in this case, the prosecution has fixed only one accused.

12. The evidence of the defacto complainant and her husband, who also injured in the same occurrence coupled with the evidence of other witnesses would show that the occurrence is not an imaginary one. The accused seems to be in inimical terms with the defacto complainant. Since the accused had broken the water tap that was questioned by P.W.1., the accused got enraged and attacked her with firewood. The firewood used for the occurrence was also recovered by the Investigation Officer.

13. Since the involvement of the accused in the occurrence has been proved through oral, documentary and medical evidence, it is right for the Courts below to find the accused guilty for the offence under Section 325 IPC. It is true that the X-Ray taken for P.W.1 was omitted to be marked as a Material Object. But the said fault on the part of the prosecution alone will not falsify the evidence of the doctor who had stated that the injury sustained by P.W.1 is grievous in nature. Though the X-



Ray was not marked, the doctor has stated in her evidence that she noticed the fracture on the left leg of P.W.1 only through the X-Ray and her opinion is also based on it. Hence, I do not find any reason to suspect the evidence of the doctor, even if the X-Ray is not marked. Since the Courts below have appreciated the evidence in right perspective and found the accused guilty for the offence under Section 325 IPC, on the basis of the materials available on record, I find no reason for interference.

14. The learned counsel for the petitioner submitted that the families of both the accused and the defacto complainant share a very close relationship now. Since the accused is P.W.2's elder brother's son and he was very young at the time of occurrence, some leniency should be shown in the matter of punishment. The learned trial Judge has convicted the accused and sentenced him to undergo 6 months Rigorous Imprisonment and imposed a fine of Rs.1,000/- and that was confirmed by the First Appellate Court also. It is seen that this accused does not have any criminal antecedents. Taking into account of the above said facts and the close relationship between the petitioner/accused and the defacto complainant, I feel it is appropriate to reduce the quantum of sentence by increasing the fine amount.

In the result, this Criminal Revision Case is partly allowed and the judgement of the learned II Additional District and Sessions Judge, Vellore at Ranipet dated 16.09.2016 in C.A.No.29 of 2011 is modified and the accused is found guilty for the offence under Section 325 IPC and he is convicted and sentenced to undergo One month Simple Imprisonment and imposed with a fine of Rs.25,000/- in default to undergo Two weeks Simple Imprisonment. The fine amount if any, paid by the accused need not to be paid again. The Trial Court is directed to issue Non-Bailable Warrant to secure the accused and to send him to prison for undergoing the punishment.

Sd/-

Assistant Registrar(CS-IX)

//True copy//

Sub Assistant Registrar

Sni



To

1. The II Additional District and Sessions Judge,
Vellore at Ranipet, Vellore District.
2. The District Munsif cum Judicial Magistrate, No.1,
Walajapet, Vellore District.
3. The Chief Judicial Magistrate,
Vellore (For Information)
4. The Superintendent,
Central Prison, Vellore.
5. The Sub Inspector of Police,
Thimri Police Station,
Vellore District.
6. The Public Prosecutor,
High Court, Madras.

Copy To

The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.E.Kannadasan, Advocate SR.No.63675

Cr1.R.C.No.1246 of 2016

PL(CO)
GMY(07/03/2022)