



BAIL SLIP

The Appellants / Accused 1,2 namely Mr.Haneefa @ Poongavanam, S/o.Shanmugam and Mr.Chandrasekaran, S/o.Shanmugam were directed to be released on bail as per order of this Court dated 03.02.2017 in CrI.M.P.No.13400 of 2016 in CrI.R.C.No.1631 of 2016 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2021

CORAM

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

CRL.R.C.NO.1631 OF 2016

1.Haneefa @ Poongavanam

2.Chandrasekaran

3.Sakthivel (Deceased)

...Petitioners / Accused

Vs.

State by Sub-Inspector of Police,
Mangalam Police Station,
Tiruvannamalai District.
(Crime No.455/2003)

...Respondent / Complainant

Criminal Revision Case filed under Sections 397 & 401 Cr.P.C. seeking to call for the records and set aside the judgement passed in C.A.No.9/2005 dated 31.03.2016 by the learned Sessions Judge, Tiruvannamalai District, confirming the order passed by the learned Principal Assistant Sessions Judge, Tiruvannamalai, in S.C.No.84/2004 dated 24.01.2005.

For Petitioners : M/s.M.Rebecca

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

ORDER

This Criminal Revision Case has been preferred challenging the judgement of the learned Sessions Judge, Tiruvannamalai District dated 31.03.2016 in CA.No.9 of 2005, confirming the



judgement of the learned Principal Assistant Sessions Judge, Tiruvannamalai made in S.C.No.84 of 2004 dated 24.01.2005.

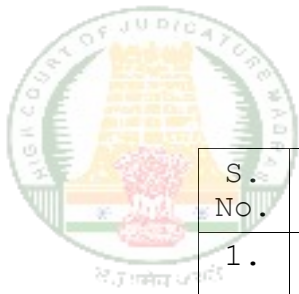
2. The case of the prosecution is that on 29.10.2003 at about 8.00 pm at Mansurabad Pudur Kattuthellur in front of the house of Kasi (P.W.3), the accused 1 to 3 quarrelled with P.W.1 & P.W.2 and attacked them with a knife with an intention to kill them; on the complaint statement given by P.W.1 in the hospital, P.W.10 registered a case in Crime No.455 of 2003 in Mangalam Police Station under Sections 324, 323 & 307 IPC; P.W.12 - Kanagasabapathy, took up the case for investigation, went to the place of occurrence, prepared observation Mahazar and rough sketch in front of the witnesses, examined the witnesses and recorded their statements; on the same day, he arrested A1 and A3 at Mansurabad Broad Road Junction and recorded their confession statement; on the confession given by A1, he recovered a knife (M.O.1) used for the occurrence under seizure Mahazar in the presence of witnesses; on 01.12.2003, he arrested A2 and recorded his confession statement in the presence of witnesses; he also recovered M.O.2 on the confession given by A2 under seizure Mahazar in the presence of witnesses; he examined the doctors who treated the injured and got wounds certificates.

3. After completing the investigation, he filed a charge sheet against the accused under Sections 324, 324 r/w. 34 & 307 IPC. After the case was taken on file by the learned Judicial Magistrate II, Tiruvannamalai in PRC.No.5 of 2004 and after complying the legal mandates, it was committed to the learned Principal Assistant Sessions Judge, Tiruvannamalai. Later it was made over to the file of the learned I Assistant Sessions Judge, Tiruvannamalai for trial.

4. On being satisfied with the materials placed on record, charges have been framed against the accused under Sections 307, 324 and 324 r/w. 34 (2 counts) of IPC. When the accused were questioned, they pleaded innocence and claimed to be tried and hence, the trial was conducted.

5. During the course of the trial, on the side of the prosecution, 12 witnesses were examined as P.W.1 to P.W.12 and 11 documents were marked as Exs.P1 to P11. Two material objects M.O.1 & M.O.2 were also marked. On the side of the defence, no witness was examined and no document was marked.

6. At the conclusion of the trial and on consideration of the materials available on record, the learned trial Judge convicted the accused guilty and the details of the conviction imposed on the accused are as under:-



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S. No.	Rank	Provisions under which convicted	Sentence
1.	A1	307 IPC	3 years Rigorous Imprisonment and to pay a fine of Rs.1,000/- in default to undergo 3 months simple imprisonment
		324 IPC	1 year Rigorous Imprisonment and to pay a fine of Rs.1,000/- in default to undergo 3 months simple imprisonment
		324 r/w. 34 (2 counts) IPC	1 year Rigorous Imprisonment for each counts
2.	A2	307 r/w. 34 IPC	3 years Rigorous Imprisonment and to pay a fine of Rs.1,000/- in default to undergo 3 months simple imprisonment
		324 IPC	1 year Rigorous Imprisonment and to pay a fine of Rs.1,000/- in default to undergo 3 months simple imprisonment
		324 r/w. 34 IPC	1 year Rigorous Imprisonment
3.	A3	307 r/w. 34 IPC	3 years Rigorous Imprisonment and to pay a fine of Rs.1,000/- in default to undergo 3 months simple imprisonment
		324 IPC	1 year Rigorous Imprisonment and to pay a fine of Rs.1,000/- in default to undergo 3 months simple imprisonment
		324 r/w. 34 IPC	1 year Rigorous Imprisonment

The sentences shall run concurrently.

7. Aggrieved over the above judgement, the accused preferred an appeal before the Sessions Judge, Tiruvannamalai in CA.No.9 of 2005 and the same was also dismissed on 31.03.2016. Aggrieved over that, the accused have filed this present revision case.



on hearing their voice, P.W.1 & P.W.2 came outside and asked them not to fetch up quarrel and go peacefully; without heeding to their words, the accused got wild and attacked P.W.1 & P.W.2 with kothua knife and also with the handle of the knife; on hearing the noise, P.W.3 rushed to the spot and saw P.W.1 & P.W.2 were injured; immediately P.W.3 and other neighbours took P.W.1 & P.W.2 to the hospital.

12.2 The occurrence so narrated by P.W.1 would show that at the time when the accused shouted, P.W.3 was not there and only after hearing their noise, he came out of the house. On this aspect, there is no contradiction in the contents of the F.I.R. and the evidence of P.W.1 to P.W.3. The evidence of the injured witnesses P.W.1 and P.W.2 elaborate about the occurrence and it is seen to be cogent and consistent. P.W.1 has stated that the first accused attacked him with knife and inflicted cut injuries on his left elbow, left upper arm and left knee, the second accused attacked him with knife and caused injuries on the backside of his right ear and the third accused hit him on the right side of his chest by attacking him with the handle of the knife.

13. It is submitted by the learned counsel for the petitioners/accused that from the evidence of the witnesses, it is seen that there is variation in the weapons seized from the accused and the weapons actually used for the occurrence. But it was clarified by P.W.1 during his cross-examination that the weapon he meant in his statement was knife only. Some of the witnesses used the word Koduva Kathi. The evidence of the injured witnesses and the eye witnesses would show that their evidence do not make any difference between the weapons used for the occurrence or the weapons seized from the accused on their confession.

14. The evidence of P.W.1 and P.W.2 are sufficient enough to prove that there was previous enmity between P.W.3 and the accused in connection with a wall raised by P.W.3. Immediately after the occurrence, P.W.3 rushed to the spot and he has also spoken about the same in his evidence. P.W.4 & P.W.5 have stated in their evidence that they rushed to the spot on hearing the noise during the occurrence. They also accompanied the injured when they were taken to the hospital. The recovery witnesses who were examined as P.W.8 and P.W.11 have also clearly stated about their standing as the witness for confession and the seizure of the weapon. P.W.8 identified M.O.1 and P.W.11 identified M.O.2. So the correlation between the weapons used for the occurrence and the weapon recovered have also been established from the evidence of the prosecution.



15. The doctor who treated the injured witnesses was examined as P.W.9 and he has stated that P.W.1 and P.W.2 were brought to him for treatment and they told him that they were attacked by three persons with a knife at the house of P.W.3. P.W.9 - Doctor, had noticed and listed the following injuries present on the body of P.W.1 and he certified that those injuries are simple in nature :-

1. Cut injury measuring 3x1x1 cms on the backside of right ear;
2. cut injury on the left middle arm measuring 2x1x1 cms;
3. abrasion measuring 7/2 cm on the left forearm;
4. abrasion measuring 2/1 cm on the left elbow;
5. abrasion measuring 5/3 cm on the left knee;
6. swelling on the right chest measuring 5/4.

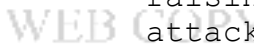
15.1 P.W.9 - Doctor noticed and listed the following injuries found on the body of P.W.2 and certified that the first injury is simple in nature and the second injury is grievous in nature :-

1. A lacerated injuries from her nose to upper lip measuring 8x2x2 cms
2. Loss of teeth on the upper jaw.

15.2. The injuries so noticed and recorded by the doctor and the evidence of the injured witnesses about the injuries sustained by them correlate with each other.

16. It is submitted by the learned counsel for the petitioners that P.W.2 has not stated about the loss of her teeth during the occurrence. However, P.W.9 - Doctor who examined P.W.2 at the earliest point of time, has stated that he noticed loss of teeth on the upper jaw of P.W.2. The weapons seized on the confession of the accused have also been shown to the doctor and the doctor has stated in his evidence that the injuries found on the bodies of P.W.1 and P.W.2 could have been inflicted by using those weapons recovered. P.W.1 and P.W.2 have also identified the weapons during the course of their examination. The doctor has given an opinion that one of the injury sustained by P.W.2 is grievous in nature. The doctor further certified that the injuries sustained by P.W.1 are simple in nature.

17. It seems that the learned trial Judge has convicted the accused for the offences under Sections 307 r/w. 34 and 324 r/w. 34 IPC. But the evidence on record would show that the accused did not have any intention to kill either P.W.1 or P.W.2. They had enmity only towards P.W.3. The overt act of the accused would show that they had the intention only to injure P.W.1 and P.W.2 and they did not have any motive to kill them. So it is



18. The occurrence had preceded a quarrel with regard to raising of a wall. During that course only the accused had attacked P.W.1 and P.W.2. So it does not show that there was any common intention between the accused that they should injure P.W.1 and P.W.2. Hence, the first accused ought to have been convicted for the offence under Sections 324 and 326 of IPC for causing simple injury on P.W.1 and grievous injury on P.W.2 respectively. And the second accused ought to have been convicted for the offence under Section 324 IPC for causing simple injury on P.W.1. Even though the third accused was also found to be guilty for the offence under Section 324, the case against A3 got abated since he died on 19.05.2011.

20. The first accused have caused grievous injuries on P.W.2 due to which she had lost her teeth and the face injury would have also caused cosmetic disadvantage to her. P.W.2 being a woman, apart from the physical pain she would have undergone the mental agony also. However, the prosecution has not stated that the revision petitioners are the habitual offenders. Taking into consideration all the various factors and also the delay in concluding the proceedings, I feel that the sentences should also be modified.

<https://hcservices.ecourts.gov.in/hcservices/>



Court is directed to issue Non-Bailable Warrant to secure the accused and to send them to prison for undergoing the punishment.

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Sd/-
Assistant Registrar(CS-VIII)

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Sub Assistant Registrar

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To

- 1.The Sessions Judge,
Tiruvannamalai District.
- 2.The Principal Assistant Sessions Judge,
Tiruvannamalai.
- 3.The Principal Sub Judge,
Tiruvannamalai.
- 4.The Superintendent,
Central Prison, Vellore.
- 5.The Sub Inspector of Police,
Mangalam Police Station,
Tiruvannamalai District.
- 6.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.M.Rebecca, Advocate Sr.No.67442

Cr1.R.C.No.1631 of 2016

SRA(CO)
RVM(14/02/2022)