



BAIL SLIP

The Crl.Revision Petitioner/Accused namely S.Shanmugam was directed to be released on Bail vide order dated 10.06.2016 in Crl.MP(MD)No.4527 of 2016 in Crl.RC(MD)NO.363 of 2016 on the file of the Madurai Bench of Madras High Court.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	22.02.2021
DELIVERED ON	05/03/21

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

Crl.RC(MD)No. 363 of 2016

Shanmugam

... Petitioner/1st Appellant/A-1

Vs.

State,rep. By Inspector of Police.
Nainarkovil Police Station,
Ramanathapuram District.

... Respondent/Respondent/
Complainant

PRAYER: Petition filed under Section 397 & 401 of the Criminal Procedure Code, to call for the records of the learned Additional District and Sessions Judge, Ramanathapuram in Crl.A. No. 19 of 2013 by Judgment, dated 30.03.2016, by which partly confirming the findings of the Trial Judgment and sentence imposed by the learned Judicial Magistrate, Paramakudi in C.C. No. 36 of 2006, by the Judgment, dated 09.05.2013 and set aside the Judgements of the Courts below, acquit the petitioner.

For Petitioner : Mr.R.Murugan
For Respondent : M/s.M.Anantha Devi
Government Advocate (crl. Side)

ORDER

This criminal revision case has been filed by the petitioner to set aside the Judgment, dated 30.03.2016, in Crl.A. No.19 of 2013 passed by the learned Additional District and Sessions Judge, Ramanathapuram, which partly confirmed the conviction and sentence passed by the learned Judicial Magistrate, Paramakudi in C.C. No. 36 of 2006 by Judgment, dated 09.05.2013.



2. This petitioner was tried before the trial Court for the offences under Sections 147, 148, 149, 324, 326 and 506(ii) of IPC. The trial Court, in conclusion of the trial, by judgment dated 09.05.2013, in C.C.No.36 of 2006, found the petitioner guilty, convicted and sentenced to pay a fine of Rs.1,000/-, i/d to undergo simple imprisonment for One week for the offence under Section 147 of IPC, and to undergo rigorous imprisonment for 3 months for the offence under Section 148 of IPC and to undergo rigorous imprisonment for Two years and to pay a fine of Rs.1,000/-, i/d to undergo simple imprisonment for Two weeks for the offence under Section 326 of IPC and to undergo rigorous imprisonment for One year for the offence under Section 506(2) of IPC.

3. As against the judgment of conviction and sentence, this petitioner has preferred an appeal before the learned Additional District and Sessions Judge, Ramanathapuram in Crl.A. No. 19 of 2013. The lower appellate Court, by Judgment dated 30.03.2016, partly allowed the appeal and the conviction and sentence was modified to undergo rigorous imprisonment for Six months and to pay a fine of Rs.2,000/-i/d to undergo simple imprisonment for Two weeks for the offence under Section 324 of IPC and to undergo rigorous imprisonment for Six months for the offence under Section 506(ii) of IPC. Aggrieved over the findings of the Court below, the petitioner has preferred the instant criminal revision case.

4. The case of the prosecution is that due to previous enmity between the family members of the petitioner/accused and P.W.1 & P.W.2, on 01.09.2005, morning at 06.00 a.m., while P.W.2 & P.W.3 were standing in front of the P.W.2's house, this petitioner/A-1 came and attacked with Aruval and caused blood injury on P.W.1's head, 2nd accused came and attacked with spear and caused blood injury on P.W.3's left hand, 3rd accused beaten the P.W.3 and caused simple injury, this petitioner/A-1 attacked and caused blood injury on P.W.4 left hand, 4th accused came and attacked with wooden log and caused injury on P.W.4's back portion, A-1's son Mohan came and beaten one Karuppiyah with wooden log and caused injury and this petitioner/A-1 has also made life threat.

5. The learned Counsel for the petitioner contended that there are material contradictions with regard to the prosecution witnesses and the versions on the exhibits. He further contended that the Courts below have failed to consider that there is an inordinate delay in preferring the complaint and the same has not been explained by the prosecution, the same is fatal to the prosecution. He further contended that there is no prima facie case to convict the petitioner under Section 506(ii) of IPC and the Court below have failed to consider that the prosecution has produced only interested witnesses. He further contended that the Court below have failed to consider that the weapon of crime has not been produced. He further



contended that the Court below have failed to see that the investigation officer was not at all examined as witness before the trial Court and the same is fatal to the prosecution case and the same is liable to be set aside.

6. The learned Government Advocate (crl. Side) appearing for the respondent police submitted that the case of the prosecution is supported by the evidence of PWs.1 to 10. Merely because they are relatives, their evidence cannot be discarded, when the Wound Certificates issued by the Doctor [PW.7] were marked before the trial Court. Therefore, she prays for dismissal.

7. Heard the learned Counsel appearing for the petitioner and the learned Government Advocate (crl. Side) appearing for the respondent police and perused the material documents available on record.

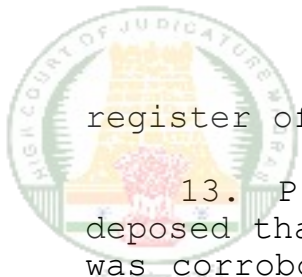
8. The revision petitioner/A-1 has filed this criminal revision to set aside the Judgment, dated 30.03.2016, in Crl.A. No.19 of 2013 passed by the learned Additional District and Sessions Judge, Ramanathapuram, which partly confirmed the conviction and sentence passed by the learned Judicial Magistrate, Paramakudi in C.C. No. 36 of 2006, by the Judgment, dated 09.05.2013.

9. The revision petitioner herein was charged for the offences under Sections 147, 148, 149, 324, 326 and 506(ii) r/w 149 of IPC by the learned Judicial Magistrate, Paramakudi in C.C. No 36 of 2006 and the conviction and sentence was modified in C.A. No. 19 of 2013 by the learned Additional District and Sessions Judge, Ramanathapuram, as the petitioner/A-1 was punished for the offences under Sections 324 & 506(ii) of IPC.

10. Whether the conviction and sentence for the offences under Sections 324 & 506(ii) of IPC are sustainable?

11. There is a long delay in filing the First Information Report. An occurrence was took place on 01.09.2005 at 06.00 a.m., and the complaint was given on the same day at 05.30 p.m. P.W.9 went to the Hospital and received the complainant. Hence, the delay in filing the First Information Report is not fatal to the prosecution.

12. P.W.1 was examined as eye witness who turned hostile. P.W.2 has deposed that this petitioner/A-1 gave a blow on his brother's head with aruval and also made a life threat to him. P.W.3 who was the injured person also deposed that A-1 gave a blow on his head and also made life threat. He was also unconscious till 10.00 p.m. P.W.4 to P.W.6 are eye witnesses. But, P.W.5 never stated anything about threatening. Doctor was also examined as P.W.7 and as per his evidence, P.W.2 had a cut injury on the forehead. P.W.8 was grievous in nature. Ex.P.3 is the accident



register of P.W.3. The injury was grievous in nature.

13. P.W.2 to PW.6 are eye witnesses and they were clearly deposed that A-1 attacked P.W.2 with aruval on the head and the same was corroborated by the medical evidence. But, regarding 506(ii) of IPC., P.W.5 did not say anything about threatening. P.W.1 was also turned as hostile. There was previous enmity between them. Previous enmity is like a 'Sword' which is having two edges.

14. The Appellate Court did not consider the Accident register which was issued by the Doctor and the Accident registered narrated the nature of injuries. But, the prosecuting agency has not preferred an appeal. Regarding conviction and sentence for the offence under Section 324 of IPC, the punishment is also lesser. Therefore, this Court is not inclined to interfere with the findings of under Section 324 of IPC and sentence and conviction with regard to 506(2) of IPC is set aside.

15. Accordingly, this Criminal Revision Case is partly allowed and conviction and sentence for the offence under Section 324 of IPC passed by the learned Additional District and Sessions Judge, Ramanathapuram, in Crl.A. No. 19 of 2013, dated 30.03.2016 is hereby confirmed and set aside the sentence and conviction for the offence under Section 506(ii) of IPC. Since the petitioner/A-1 is in bail, the trial Court is directed to secure and confine him, in accordance with law. Bail bonds, if any executed, shall stand terminated.

Sd/
Assistant Registrar(CO)

/True copy/

/ /2021
Sub Assistant Registrar(CS-)

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 Additional District and Sessions Judge,
Ramanathapuram.

2.Do through the Principal Sessions Judge,
Ramanathapuram.

3.The Judicial Magistrate, Paramakudi.

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



4.Do through the Chief Judicial Magistrate,
Ramanathapuram.

5.The Inspector of Police.
Nainarkovil Police Station,
Ramanathapuram District.

6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

7.The Section Officer, Criminal Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

Crl.RC (MD) No.363 of 2016
05.03.2021

ksa

PK/16.03.2021 : 5P/9C