



The Revision Petitioner/1st Accused Gobi Alias Gobinathan, S/o.Arulnathan, male aged 26/2016 was directed to release on bail vide Order of the Court dt. 22.11.2016 made in Cr1 MP(MD)No.10752 of 2016 in Cr1 RC(MD)No.752 of 2016

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	12.03.2021
DELIVERED ON	25.03.2021

CORAM:

THE HONOURABLE MRS.JUSTICE S.ANANTHI

Cr1.RC(MD)No.752 of 2016

Gobi alias Gobinathan

...Revision petitioner/A-1

Vs.

State,
Rep. By Inspector of Police,
Mayanoor Police Station,
Karur District.
(Crime No.37 of 2013)

...Respondent/Complainant

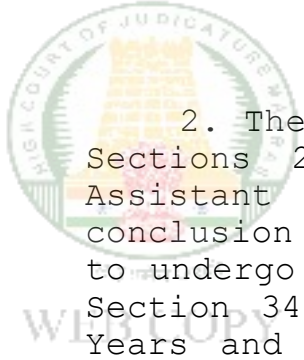
PRAYER: Criminal Revision filed under Section 397 r/w 401 and 482 of the Criminal Procedure Code, to set aside the Judgment of conviction and sentence imposed upon the revision petitioner/1st accused by the learned Assistant Sessions Judge, Kulithalai in Sessions Case No. 26 of 2014, dated 26.10.2015 and confirmed by the Mahalir Neethimandram (Fast Track Mahila Court), Karur in Criminal Appeal No. 62 of 2015 dated 31.05.2016 and acquit the revision petitioner/A-1 giving benefit or doubt.

For Petitioner : Mr.K. Suresh for
Mr.E.K. Kumaresan

For Respondent : Mrs. M. Anantha Devi
Government Advocate (crl. Side)

O R D E R

This Criminal Revision Case has been filed by the revision petitioner/A-1, to set aside the Judgment of conviction and sentence imposed by the learned Assistant Sessions Judge, Kulithalai in Sessions Case No. 26 of 2014, dated 26.10.2015 and confirmed by the Mahalir Neethimandram (Fast Track Mahila Court), Karur in Criminal Appeal No. 62 of 2015 dated 31.05.2016.



2. The revision petitioner/A-1 was tried for the offences under Sections 294(b), 341, 307 r/w 34 of IPC, before the learned Assistant Sessions Judge, Kulithalai, and the trial Court, in conclusion of the trial, found him guilty, convicted and sentenced to undergo simple imprisonment for One month for the offence under Section 341 of IPC and to undergo rigorous imprisonment for Five Years and to pay a fine of Rs.500/-in default to undergo simple imprisonment for Three months for the offence under Section 307 r/w 34 of IPC. The petitioner preferred an appeal before the Court of Sessions and the same was taken in C.A.No.62 of 2015 and was confirmed by order, dated 31.05.2016 on the file of the learned Sessions Judge, Mahalir Fast Track Court, Karur, confirming the conviction and sentence imposed by the trial Court. Aggrieved by the orders of the Courts below, the petitioner has preferred this revision case.

3. The brief fact of the case is that P.W.2 fall in love with the sister of the petitioner/A-1 and A-1 had objected their love and developed enmity on P.W.2. On 29.01.2013, at 11.30 a.m., A-1 called P.W.1 over phone and asked him to come along with P.W.2 to Library near Sithalavai Gurunathar temple. Both of them went at 11.45 a.m., in the occurrence place. Due to previous enmity, this petitioner/A-1 abused P.W.2/Kathiravan by using filthy language, juvenile accused Vasanth hold the right hand of P.W.2 and the 2nd accused hold the left hand of P.W.2, this petitioner/A-1 stabbed with knife on P.W.2's chest and also made life threat to P.W.1 with knife. Based on the complaint given by PW1, a case in Crime No. 37 of 2013 was registered by the respondent Police. After investigation, the respondent police has filed the final report for the offences under Sections 294(b), 341 and 307 r/w 34 of IPC and both the Courts below have convicted the petitioner/accused as stated supra.

4. The learned Counsel for the revision petitioner contended that the Court below have failed to appreciate the evidence of the witnesses in a proper prospective and have based its conviction on mere conjectures and surmises and failed to give explanation for the contradictions of the prosecution case. He further submitted that the 1st appellate Court has wrongly come to the conclusion that the non-seizure of the blood stained articles and non-obtaining the report from the Forensic Science Laboratory will not affect the prosecution case. He further submitted that the Court below have failed to prove the motive for the occurrence. He further contended that the Court below have wrongly come to the conclusion that though there are certain contradictions in the evidence of P.W.1 and P.W.2, the same will not affect the case of the prosecution. He prayed to allow the Criminal Revision Case.

5. Per contra, the learned Government Advocate (Crl. Side) submitted that the prosecution has clearly established the occurrence. She further submitted that there is no reason to interfere with the Judgment of Court below and the same is liable to



be confirmed and therefore, she prays for dismissal.

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

7. The petitioner/accused has filed this Criminal revision case to set aside the Judgment of conviction and sentence imposed by the learned Assistant Sessions Judge, Kulithalai in Sessions Case No. 26 of 2014, dated 26.10.2015 and confirmed by the Mahalir Neethimandram (Fast Track Mahila Court), Karur in Criminal Appeal No. 62 of 2015 dated 31.05.2016.

8. The petitioner/A-1 was charged for an offences under Sections 294(b), 341, 307 r/w 34 of IPC. The petitioner/A-1 was convicted and sentenced to undergo simple imprisonment for One month for the offence under Section 341 of IPC and to undergo rigorous imprisonment for Five Years and to pay a fine of Rs.500/-in default to undergo simple imprisonment for Three months for the offence under Section 307 r/w 34 of IPC.

9. P.W.2, the injured person had filed an affidavit stating that the dispute was compromised between him and the revision petitioner/A-1. But, as per Section 320 of Cr.P.C., Section 307 of IPC is non-compoundable.

10. The case of the prosecution is that P.W.2 fall in love with the sister of the petitioner/A-1 and A-1 had objected their love and developed enmity on P.W.2. On 29.01.2013, at 11.30 a.m., A-1 called P.W.1 over phone and asked him to come with P.W.2 to Library near Sithalavai Gurunathar temple. Both of them went there at 11.45 a.m. At that time, 3rd accused/Juvenile was present and A-1 abused P.W.2 by using filthy language and Juvenile accused hold right hand of P.W.2 and A-2 hold the left hand of P.W.2. A-1 has made a life threat and stabbed P.W.2's chest and also threatened one Vinothkumar.

11. Though, it is stated in the First Information Report that A-1 stabbed P.W.2's chest with knife. But, P.W.2 has deposed in his evidence that A-1 stabbed on his stomach. As per the evidence of P.W.1, there was blood on the dress of P.W.2 and other witnesses. The Knife which was used by this petitioner/A-1 was recovered and blood stained dress materials were not collected from the victim and witnesses. But, the recovered knife was not sent to Forensic Lab.

12. The relevant portion of the Judgment reported in **2010(1) Cri. MLJ, Page 687 (SC), Prabir Mondal and Another Vs. State of West Bengal**, is extracted hereunder:

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

Indian Penal Code (45 of 1860) Section 307 read with Section 34 - Conviction and sentence - Appeal -



Manner in which alleged incident is supposed to have taken place does not fit in with injuries received by the complainant - Further, knife which was seized and was alleged to have been used for commission of offence, was never sent for forensic examination so as to connect it with offence - Also, there is delay in lodging FIR and chances of fabrication in FIR cannot be ruled out - Neither trial Court nor High Court appears to have looked into such details properly - Judgment of conviction and sentence imposed by trial Court and upheld by High Court is set aside - Appeal allowed".

13. The doctor who gave first aid to the victims was not examined on the side of the prosecution. The previous motive between P.W.2 and the accused is stated to be a love affair between P.W.2 and the petitioner/A-1's sister. But, sister of A-1 was not examined. All the witnesses are relatives and no independent witness was examined on the side of the prosecution. The seizure witness was also examined as P.W.9 and he did not say anything about where the knife was seized by the respondent police.

14. In view of the foregoing discussions and reasonings, there are lot of contradictions about the place and time of the occurrence. The prosecution has not proved the case beyond reasonable doubt against the petitioner/A-1.

15. Finally, this Criminal Revision Case is allowed and set aside the Judgment of conviction and sentence imposed by the learned Assistant Sessions Judge, Kulithalai in Sessions Case No. 26 of 2014, dated 26.10.2015 and confirmed by the Mahalir Neethimandram (Fast Track Mahila Court), Karur in Criminal Appeal No. 62 of 2015 dated 31.05.2016. The petitioner/ accused is acquitted from the charge framed against him. Fine amount, if any paid, shall be refunded and bail bonds, if any executed, shall stand terminated.

Sd/-

Assistant Registrar

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

ksa

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 Mahalir Neethimandram (Fast Track Mahila Court), Karur.

2. The Assistant Sessions Judge, Kulithalai.

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

4. The Section Officer, Criminal Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1 CC to M/s.E.K.KUMARESAN, Advocate (SR-13999[F] dated 26/03/2021)

**Order made in
Cr1.RC(MD)No. 752 of 2016**

25.03.2021

CN(17.05.2021) 5P 7C