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Bail Slip

Petitioner, namely K.Dhas and M.David were released on bail as per order of this Court dated 10/11/2016 made in CrI.Mp(MD) No.11015 of 2016 in CrI.Rc(MD)No.770 of 2016.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	11.08.2021
DELIVERED ON	09/09/21

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

CrI.RC(MD)No.770 of 2016

1. K.Dhas
2. M.David

...Petitioners/A-1 & A-2

Vs.

The State of Tamilnadu,
Represented by
The Inspector of Police,
Kaliyakavilai Police Station,
Kanyakumari District.
(In Crime No.403 of 2002).

...Respondent/Complainant

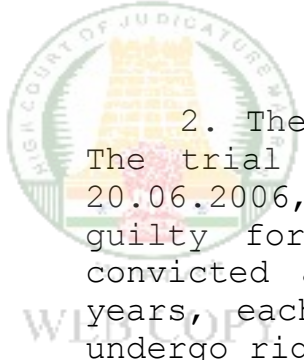
PRAYER: Petition filed under Section 397 r/w 401 of the Criminal Procedure Code, to call for the records pertaining to the Judgment in C.A.No.142 of 2006 dated 20.07.2016 by the learned Mahila Fast Track Court, Nagercoil, modifying the order of conviction and sentence to undergo one year Rigorous imprisonment and to pay a fine of Rs.1,000/-in default to undergo one year rigorous imprisonment passed by the learned Sessions Judge, Kuzhithurai, dated 20.06.2006 in S.C.No.36 of 2004 under Sections 326 of IPC and set aside the same and consequently acquit the revision petitioners.

For Petitioners : M/s.T.Lajapathi Roy

For Respondent : Mr.K.Sanjai Gandhi
Government Advocate (crl. side)

ORDER

This criminal revision case is preferred by the petitioners to set aside the Judgment, dated 20.07.2016 in C.A.No.142 of 2006 passed by the learned Mahila Judge, Fast Track Court, Nagercoil, modifying the Judgment, dated 20.06.2006, in S.C.No.36 of 2004, passed by the learned Sessions Judge, Kuzhithurai,



2. These petitioners/accused were tried before the trial Court. The trial Court, in conclusion of the trial, by judgment, dated 20.06.2006, in S.C.No.36 of 2004, found the petitioners/accused guilty for the offence under Section 326 of IPC and they were convicted and sentenced to undergo rigorous imprisonment of three years, each, and to pay a fine of Rs.1,000/-, each, in default to undergo rigorous imprisonment of one year (each).

3. As against the judgment of conviction and sentence, these petitioners/accused have preferred an appeal before learned Sessions Judge/Fast Track Mahila Court, Nagercoil, Kanyakumari District. The lower appellate Court, by judgment, dated 20.07.2016 in CrI.A. No.142 of 2016, modified the appeal. Aggrieved over the findings of the Courts below, these petitioners have preferred the instant criminal revision case.

4. Heard M/s.T.Lajapathi Roy, learned counsel appearing for the revision petitioners and Mr.K.Sanjai Gandhi, learned Government Advocate (crl. side) appearing for the respondent/State. Perused the material documents available on record.

5. The learned Counsel appearing for the revision petitioner submitted that the Court below has failed to consider that during the time of chief examination that the P.W.10/Doctor has deposed that when the injured witness (P.W.2) admitted with the hospital and he says that totally three persons were attacked him, but, as per prosecution case, totally two persons only involved in the occurrence. He further submitted that the entire reading of prosecution reveals that none of the accused acted with intention to kill P.W.2 and hence, the offence under Section 307 of IPC was not considered by the Court below. The same parameter would apply to the Section 326 of IPC, also. He further submitted that the sentence and conviction rendered by the Courts below is on the basis of conjecture and surmises. Hence, the Judgment of the Courts below are liable to be set aside. He prays to allow the Criminal Revision Case.

6. Per contra, Mr.K.Sanjai Gandhi, learned Government Advocate (Crl. Side) submitted that the petitioners have been charged and the offences charged against them was clearly proved by the prosecution. That is why, the trial Court came to a correct conclusion and there is no infirmity to interfere with the findings of the trial Court. Hence, the criminal revision case is liable to be dismissed.

7. These petitioners were charged for an offences under Sections 450 & 307 of IPC by the trial Court, but, they have convicted for the offence under Section 326 of IPC and sentenced to undergo rigorous imprisonment of three years, each, and to pay a fine of Rs.1,000/-, each, in default to undergo rigorous imprisonment of one year (each) which was modified as rigorous imprisonment for one year, each, and to pay a fine of Rs.1,000/-, each, in default to undergo rigorous imprisonment for one year, each, by the learned Mahila Judge, Fast



Track Court, Nagercoil.

8. The case of the prosecution is that, in the year 2000 the charge sheeted accused persons attacked one Sukumaran and caused injuries for which a criminal case was registered against them by the Kaliakkavilai P.S., in Crime No.294 of 2000 for the offences under Sections 341, 323 & 379 of IPC, and the same was taken cognizance in C.C.No.138 of 2001 on the file of the learned Judicial Magistrate No.I, Kuzhithurai. These revision petitioners/A-1 & A-2 insisted the injured person to withdraw the aforesaid case and hence, a strong enmity arose between them. Due to the previous enmity between the parties, on 12.07.2002, at about 12.30 p.m., while Sukumaran and his son/P.W.1 was in their home, these accused persons criminally trespassed into the house with common intention to commit murder of the said Sukumaran. A-1 attacked the Sukumaran by using Vettukathi and caused simple injuries and A-2 caused grievous injuries. Therefore, the respondent police has filed charge sheet against these accused persons.

9. P.W.1 & P.W.3 are eye witnesses. P.W.2 is the injured person. They clearly deposed that both the accused persons came to the house of P.W.1 and attacked P.W.2 with Vettukathi.

10. Already a criminal case was registered against these accused persons for attacking P.W.2, which was not denied by these accused persons.

11. Doctor was examined as P.W.10. He examined P.W.2 on 12.07.2002 at 02.40 p.m. P.W.2 sustained cut injuries all over his body. The only contradiction in the evidence of doctor is, three persons were attacked him. But, during the course of evidence, P.W.1 to P.W.3 are clearly stated that only A-1 & A-2 attacked P.W.2.

12. Further the learned counsel appearing for the petitioners would submit that P.W.1 to P.W.3 are close relatives and no other independent witness. The occurrence was occurred inside the house. So, there may not any other independent witness.

13. The alleged Occurrence was happened on 12.07.2002 at 12.30 p.m. After the occurrence, they rushed to the hospital and Doctor/P.W.10 examined P.W.2 at 02.40 p.m. The respondent police received an intimation from the hospital at 03.00 p.m., and they have recorded statement from P.W.1 at Hospital. There is no delay in registering First Information Report.

14. The injured persons P.W.1 to P.W.3 clearly deposed about the occurrence. There was a previous enmity pending between the parties. The evidences of P.W.1 to P.W.3 corroborated by the evidence of P.W.10/Doctor. The injuries were tallied from the evidences of P.W.1

15. Every witness who is related to each and with injured cannot be said to be an interested witness, who will depose falsely to implicate the accused statement of every related witness cannot as a matter of rule be rejected by the Courts.

16. The relevant portion of the Judgment reported in the case of **Ram Bharosey V. State of Uttar Pradesh [A.I.R. 2010 SC 917]** is extracted hereunder:

.....

"where the Court stated the dictum of law that a close relative of the deceased does not, per se, become an interest witness, an interest witness is one who is interested in securing the conviction of a person out of vengeance or enmity or due to disputes and deposes before the Court only with that intention and not to further the cause of justice. The law relating to appreciation of evidence of an interest witness is well settled, according to which, the version of an interested witness cannot be thrown over-board, but has to be examined carefully before accepting the same. In the light of the above judgments, it is clear that the statements of the alleged interested witnesses can be safely relied upon by the Court in support of the prosecution's story. But this needs to be done with care and to ensure that the administration of criminal justice is not undermined by the persons, who are closely related to the deceased. When their statements find corroboration by other witnesses, expert evidence and the circumstances of the case clearly depict completion of the chain of evidence pointing out to the guilt of the accused, then we see no reason why the statement of so called 'interested witnesses' cannot be relied upon by the Court. In the present case, the circumstances are such that we cannot find any error in the concurrent findings of fact recorded by the Trial Court, as well as by the High Court that these two witnesses were present at the respective places and had actually seen the occurrence. Their statements about gun fires, as well as the injuries caused by the kulhari and sphere respectively are duly supported by the medical evidence, as well as by the statements of the investigating officers. Thus, we find that the contention raised on behalf of the appellants is liable to be rejected".

17. In the case of Jayabalan V. U.T. Of Podicherry [(2010) 1 SCC 1991] the Hon'ble Supreme Court had occasion to consider whether the evidence of interested witnesses can be relied upon. The Court took the view that a pedantic approach cannot be applied while dealing



with the evidence of an interested witness. Such evidence cannot be ignored or thrown out solely because it comes from a person closely related to the victim. The Hon'ble Supreme Court held as under:

.....

"23. We are of the considered view that in cases where the Court is called upon to deal with the evidence of the interested witnesses, the approach of the Court, while appreciating the evidence of such witnesses must not be pedantic. The Court must be cautious in appreciating and accepting the evidence given by the interested witnesses but the Court must not be suspicious of such evidence. The primary endeavour of the Court must be to look for consistency. The evidence of a witness cannot be ignored or thrown out solely because it comes from the mouth of a person who is closely related to the victim.

24. From a perusal of the record, we find that the evidence of P.Ws.1 to 4 is clear and categorical in reference to the frequent quarrels between the deceased and the appellant. They have clearly and consistently supported the prosecution version with regard to the beating and the ill-treatment meted out to the deceased by the appellant on several occasions which compelled the deceased to leave the appellant's house and take shelter in her parental house with an intention to live there permanently. P.Ws.1 to 4 have unequivocally stated that the deceased feared threat to her life from the appellant. The aforesaid version narrated by the prosecution witnesses viz., P.Ws.1 to 4 also finds corroboration from the facts stated in the complaint".

18. Further, the evidences of P.W.1 to P.W.3 are corroborated by medical evidence. Hence, both the Courts below have clearly perused the evidence and delivered Judgment.

19. This Court has no sufficient reason to interfere with the findings of the Courts below. Already punishment was modified by the appellate Court.

20. In view of the foregoing discussions and reasonings and since this Court is exercising revisional jurisdiction, this Court is not inclined to interfere with the orders of the Courts below. Accordingly, this Criminal Revision Case is dismissed by confirming the Judgment, dated 20.07.2016 in C.A.No.142 of 2006 passed by the learned Mahila Judge, Fast Track Court, Nagercoil, modifying the conviction and sentence, dated 20.06.2006, in S.C.No.36 of 2004, passed by the learned Sessions Judge, Kuzhithurai, The trial Court is directed to secure the petitioners/accused, who were sentenced for



imprisonment and confine them to prison so as to undergo the remaining period of imprisonment, if any. Bail bonds, if any executed, shall stand terminated.

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// True Copy //

Sd/-

Assistant Registrar (CS-II)

/ /2021

Sub Assistant Registrar(CS)

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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 Assistant Sessions Judge,
Kuzhithurai.
2. The Mahila Fast Track Court, Nagercoil.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
4. The Principal District and Sessions Judge,
Kanyakumari at Nagercoil.
5. The Judicial Magistrate No.I, Kuzhithurai,
Kanyakumari District.
6. The Chief Judicial Magistrate,
Kanyakumari at Nagercoil.

Copy to:-

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

Cr1.RC(MD) No.770 of 2016
09.09.2021

RD(17.09.2021) 6P 9C