

**BAIL SLIP**

1)Rajkumar, Male, 37 years (2016), S/o.Ramachandran
2)Vairam @ Vairavan, Male, 29 years(2016) S/o.Ramachandran, were released on bail vide order of this Hon'ble Court Dated:17.03.2017, in Cr1.M.P(MD)No.12157 of 2016 in Cr1.R.C(MD) No.835 of 2016.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	05/08/21
DELIVERED ON	02/09/21

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI
Cr1.RC(MD)No. 835 of 2016

1.Rajkumar
2.Vairam @ Vairavan ... Petitioners/Appellants/A-1 & A-2

Vs.

The State rep. by
The Inspector of Police,
S.S.Colony Police Station,
Madurai.

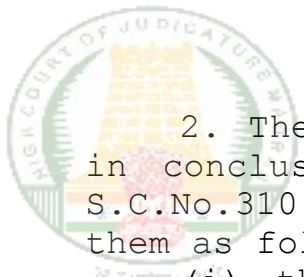
Crime No.94 of 2012 ... Respondent/Respondent/Complainant

PRAYER: Petition filed under Section 397 r/w 401 of the Criminal Procedure Code, to set aside the Judgment passed in C.A.No.4 of 2016 and the learned I Additional District and Sessions Judge, Madurai, dated 27.09.2016 by confirming the conviction and sentence passed by the learned Chief Judicial Magistrate, Madurai was pleased to convict the petitioners in S.C.No.310 of 2013, dated 21.01.2016 and acquit the petitioners.

For Petitioners : Mr.N.Anantha Padmanaban
for M/s.APN Law Associates
For Respondent : Mr.R.M.S.Sethuraman
Government Advocate (crl. side)

ORDER

This Criminal Revision Case has been filed by the petitioners to set aside the Judgment, dated 27.09.2016 in C.A.No.4 of 2016 passed by the learned I Additional District and Sessions Judge, Madurai, confirming the conviction and sentence passed by the learned Chief Judicial Magistrate, Madurai, dated 21.01.2016 in



2. The accused persons were tried before the trial Court and in conclusion of the trial, by judgment, dated 21.01.2016, in S.C.No.310 of 2013, found the accused persons guilty and convicted them as follows:

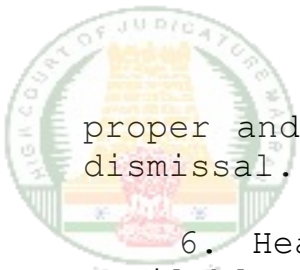
(i) the first petitioner/A-1 is convicted and sentenced to undergo simple imprisonment for ten days and to pay a fine of Rs.500/-in default to undergo simple imprisonment for two days for the offence under Section 148 of IPC and to undergo simple imprisonment for five years and to pay a fine of Rs.3,000/-in default to undergo simple imprisonment for one month for the offence under Section 307 of IPC.

(ii) the second petitioner/A-2 is convicted and sentenced to undergo simple imprisonment for ten days and to pay a fine of Rs.500/-in default to undergo simple imprisonment for two days for the offence under Section 148 of IPC and to undergo simple imprisonment for four years and to pay a fine of Rs.2,000/-in default to undergo simple imprisonment for one month for an offence under Section 326 of IPC.

3. As against the judgment of conviction and sentence, the accused persons preferred an appeal before the learned I Additional District and Sessions Judge, Madurai, in C.A.No.4 of 2016. The lower appellate Court, by judgment, dated 27.09.2016, dismissed the appeal and confirmed the conviction and sentence imposed by the trial Court. Aggrieved over the concurrent findings of the Courts below, these revision petitioners have preferred the instant Criminal Revision Case.

4. The learned counsel appearing for the petitioners would submit that the Courts below have failed to note that the contra and ambiguity prevailing in the lodgment of complaint. He would further submit that the investigation authorities were also stated that they have met the victim (P.W.1) and obtained her statement in the common ward of the Hospital, but, per contra, P.W.1 deposed in her evidence that she was met by the police in ICU of the Hospital. He would further submit that the prosecution has failed to prove its case in every platform, such as, complaint, material objects, enquiry, doctor evidence, non-explanation on injuries sustained by the accused persons, contradiction in 161 of Cr.P.C. statements, and the prosecution has failed to investigate the wounds on the petitioners and hence, these petitioners are liable to be acquitted.

5. Per contra, the learned Government Advocate (Crl. Side) submitted that the case of the prosecution is supported by the evidence of PWs.1 to 15. He further submitted that P.W.1 to P.W.4 have clearly spoken about the occurrence and the wound certificates produced as Ex.P.6 to P.8 would reveal that the prosecution has proved the occurrence beyond reasonable doubt and therefore the conviction and sentence imposed on the accused is



proper and does not warrant interference. Therefore, he prays for dismissal.

6. Heard on either side and perused the material documents available on record.

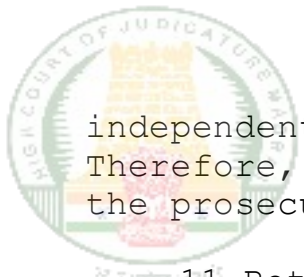
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7. The case of the prosecution is that the defacto complainant was residing with her father and sister. The defacto complainant with her own money has purchased the house belongs to one Shanmugam in the same street by way of sale. The third accused also wanted to purchase the said house. However, the said Shanmugam sold the house to the defacto complainant as she gave the money demanded by him. Therefore, the fourth accused and his family had previous enmity with the family of the defacto complainant.

8. The further case of the prosecution is that, due to previous enmity between the parties, on 10.02.2012, at about 03.30 p.m., the defacto complainant and her sister came out of the house to see what was happening. At that time the accused 1 & 2 were having an iron rod in their hand, the third and fourth accused were having stones in their hand. At that time, they shouted the defacto complainant by using filthy language and asked her to come outside from home. The defacto complainant opened the gate and was followed by her sister. When she came out from the house, the first accused hit on the head of the defacto complainant with iron rod by uttering the words 'you better die'. The deceased accused Pandiarajan hit the head on the defacto complainant's sister by using iron rod and pushed her down and stamped her on chest and legs. At that time, when the defacto complainant's father came there, the second accused immediately by stating that he should be done away with, attacked the head of the father of the defacto complainant with stone and caused injury. The third and fourth accused attacked the defacto complainant with stones. The defacto complainant, her sister and her father sustained injuries in the occurrence and therefore a complaint was preferred. On completion of investigation, the respondent police has filed final report against the accused Nos.1 to 4 and the deceased accused Pandiarajan for the offences under Sections 147, 148, 294(b), 307 and 326 of IPC. Before the trial Court, the prosecution has examined P.W.1 to P.W.14 and marked Ex.P.1 to Ex.P.145. Material objects 1 and 2 were produced and marked.

9. Firstly, the issue to be decided is Whether the motive for the occurrence is proved or not?

10. As per prosecution case, both P.W.1 and the accused persons have wanted to buy the same property, but, P.W.1 purchased the property from Shanmugavel. Only oral evidence of P.W.1 to 3 to corroborate the motive. They have not filed any sale deed or any other documents to prove their ulterior motive and there is no



independent witness was examined to prove their enmity. Therefore, the enmity and the motive was not properly proved by the prosecution. The prosecution ought to receive the sale deed.

11. Both the revision petitioners were convicted for the offence under Section 148 of IPC. At the time of occurrence, totally six accused persons were involved in the alleged occurrence and the same was clearly established through the First Information Report, evidences of P.W.1 to 3 and statements of P.W.1 to 3 before the doctor. Therefore, the offence under Section 148 of IPC is clearly established by the prosecution.

12. Further, the first petitioner herein was convicted for the offence under Section 307 of IPC. Motive was also not proved. The first petitioner attacked P.W.1 with iron rod on her head after shouted as 'nrj;Jg;Nghb', and the injuries on the head caused by the first petitioner is simple in nature. Therefore, the first petitioner ought not to have punished for the offence under Section 307 of IPC. But, P.W.1 was sustained fracture in her right fourth ringer, which was grievous in nature and suffered some other injuries also. Therefore, from the above, it is clearly proved that the first petitioner committed an offence under Section 326 of IPC.

13. Further, the second petitioner attacked P.W.3 with stone on his head. When P.W.3 tried to prevent with his left hand he sustained fracture on his left index finger which was grievous in nature. Therefore, both the Courts below have correctly punished the second petitioner for the offences under Sections 148 and 326 of IPC.

14. P.W.1 to P.W.4, eventhough close relatives they clearly stated about the occurrence. Medical report also corroborated the evidences of P.W.1 to P.W.4. Material objects were also seized which strengthened the prosecution case.

15. P.W.1 to P.W.4 are close relatives. Mere fact that they are closely related cannot be a ground for rejection of their evidences. While appreciating the evidence of a witness, minor discrepancies on trivial matters which do not affect the case of prosecution case.

16. The testimony of an injured witness has its own relevancy as he has sustained injuries at the time and place of occurrence. Medical report is strong and corroborated with the facts.

17. In view of the aforesaid reasons, this Court finds that both the revision petitioners/A-1 & A-2 are found guilty for the offences under Sections 148 and 326 of IPC. Both the accused are first offenders and there is no subsequent bad antecedents also.



18. Considering the facts and circumstances of the case, this Court is inclined to modify the conviction and sentence passed by the trial Court. These petitioners/A-1 & A-2 are found guilty for the offences under Section 148 and 326 of IPC.

19. Accordingly, the Judgment, dated 27.09.2016 in C.A.No.4 of 2016 passed by the learned I Additional District and Sessions Judge, Madurai, confirming the conviction and sentence passed by the learned Chief Judicial Magistrate, Madurai, dated 21.01.2016 in S.C.No.310 of 2013, is hereby confirmed against these petitioners only for the offence under Section 148 of IPC, and the conviction and sentence is modified against these revision petitioners/A-1 and A-2 for the offence under Section 326 of IPC, to undergo simple imprisonment for one year and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for one month. The period of sentence already undergone by these revision petitioners/A-1 & A-2 is set off under Section 428 of Cr.P.C. and if these petitioners already paid fine the same shall also be deducted.

20. With the aforesaid modification, this Criminal Revision Case is partly allowed.

Sd/-

Assistant Registrar (CS II)

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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 I Additional District and Sessions Judge,
Madurai.
2. Do-Through The Principal District and Sessions Judge,
Madurai.
3. The Chief Judicial Magistrate, Madurai.
4. The Judicial Magistrate No.5, Madurai.



5. The Inspector of Police,
S.S.Colony Police Station, Madurai.

6. The Superintendent,
Central Prison, Madurai.

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

Copy to

The Section Officer, Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

Crl.RC (MD) No. 835 of 2016
02.09.2021

PK (CO)
SB(09.09.2021) 6P 9C