



BAIL SLIP

Suresh @ Sai Suresh, S/o. Natarajan, aged about 40 years, 2nd accused was released on bail vide order of the Court dated 08/03/2017 made in Crl MP(MD)No.1957 of 2017 in Crl RC(MD)No.227 of 2017.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 03.03.2021

Pronounced on : 26.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Crl.R.C(MD)No.227 of 2017

Suresh @ Sai Suresh

...Petitioner/Accused No.2

Vs

State represented by
The Inspector of Police,
Kottar Police Station,
Kanniyakumari.

Crime No.1622 of 2003

...Respondent

PRAYER: Criminal Revision Case has been filed under Section 397 r/w 401 of the Criminal Procedure Code, to set aside the conviction and sentence made in C.A.No.211 of 2015, dated 06.01.2017 on the file of Mahila Fast Track Court, Nagercoil modifying the conviction and sentence order passed in C.C.No.15 of 2004 on the file of Judicial Magistrate No.II, Nagercoil, dated 26.07.2005.

For Petitioner : Mr.R.Murali

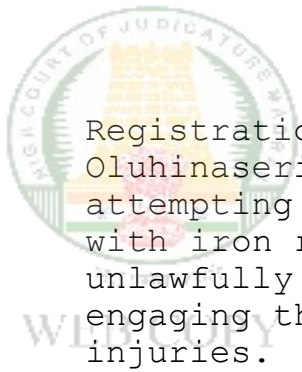
For Respondent : Mr.S.E.Veronica Vincent,
Government Advocate (Criminal Side)

ORDER

This Criminal Revision Case is directed against the concurrent judgments of conviction passed in C.A.No.211 of 2015, dated 06.01.2017 on the file of the Mahila Fast Track Court, Nagercoil, confirming the judgment made in C.C.No.15 of 2004, dated 26.07.2005, on the file of the Court of Judicial Magistrate Noo.II, Nagercoil.

2.The revision petitioner is the second accused in C.C.No.15 of 2004 on the file of the Court of Judicial Magistrate No.II, Nagercoil.

3.The case of the prosecution is that on 27.04.2003, at about 16.00 hours, the defacto complainant has parked his lorry bearing
<https://hcservices.ecourts.gov.in/hcservices/>



Registration No.TN 74 P 8568, in front of Kavitha Jewelry in Oluhinaseri Main Road, Meenakshipuram, Nagercoil and when they were attempting to deload the goods in the lorry, the accused 1 and 2 with iron rods and the accused 3 to 5 with wooden logs had assembled unlawfully and quarreled with P.W.1 for deloading the goods without engaging them and that all the accused had attacked P.W.1 and caused injuries.

4.The respondent Police, on the basis of the complaint given by the lorry driver, registered a case in Crime No.1622 of 2003 and after completion of investigation, filed the final report against five accused for the offences punishable under Sections 147, 148, 323, 324 and 326 r/w 34 IPC and the case was taken on file in C.C.No.15 of 2004 on the file of the Court of the Judicial Magistrate No.II, Nagercoil.

5.During trial, the prosecution in order prove its case, has examined 10 witnesses as P.W.1 to P.W.10 and exhibited 7 documents as Ex.P.1 to Ex.P.7 and four material objects as M.O.1 to M.O.4. The accused have adduced neither oral nor documentary evidence.

6.The learned Judicial Magistrate, upon considering the evidence and on hearing the arguments of both sides, has passed the judgment on 26.07.2005, convicting the first accused for the offences under Sections 148, 341 and 324 IPC and sentenced him to undergo three months simple imprisonment for the offence under Section 148; one month simple imprisonment for the offence under Section 341 IPC and to undergo six months simple imprisonment and to pay a fine of Rs.500/- in default to undergo one months simple imprisonment for the offence under Section 324 IPC; convicting the second accused for the offences under Sections 148, 341, 326 IPC and sentenced him to undergo 3 months simple imprisonment for the offence under Section 148 IPC ; one month simple imprisonment for the offence under Section 341 IPC and to undergo one year Rigorous Imprisonment and fine of Rs.1,000/- in default to undergo three months simple imprisonment for the offence under Section 326 IPC and convicting the accused 3 to 5 for the offences under Sections 148, 341 and 323 IPC and sentenced them to undergo three months simple imprisonment for the offence under Sections 148 IPC; one month simple imprisonment for the offence under Section 341 IPC and four months simple imprisonment and fine of Rs.100/- in default to undergo one month simple imprisonment for the offence under Section 323 IPC. Aggrieved by the said judgment of conviction, all the accused have preferred an appeal in C.A.No.211 of 2005 and the learned Sessions Judge, upon considering the materials on record and on hearing the both sides, has passed the impugned judgment on 06.01.2017, setting aside the conviction and sentence imposed for the offence under Section 148 IPC; convicting the first accused for the offence under Sections 341 and 324 IPC; the second accused for the offence under Sections 341 and 326 IPC; and the accused 3 to 5



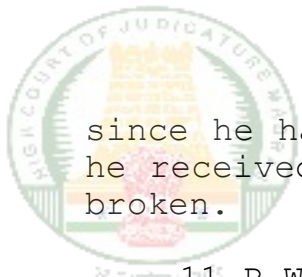
for the offence under Sections 341 and 323 IPC and sentenced them with fine of Rs.100/- each for the offence under Section 341 IPC for all the accused in default, to undergo one week simple imprisonment; and sentenced the first accused to pay a fine of Rs.1,000/- in default to undergo one month simple imprisonment for the offence under Section 324 IPC; sentenced the second accused to undergo one month simple imprisonment and confirming the fine amount for the offence under Section 326 IPC and setting aside the sentence of imprisonment and confirming the imposition of fine for the offence under Section 323 IPC as against the accused 3 to 5. Aggrieved by the judgment of conviction and sentence, the second accused has come forward with the present revision.

7.It is the specific case of the prosecution that on 27.11.2003 at about 04.00 pm, five accused including the revision petitioner had attacked the defacto complainant and caused simple injuries and grievous injury in his left hand ring finger. It is not in dispute that P.W.1 defacto complainant was the driver of the lorry bearing Registration No. TN 74 P8568 and on the occurrence day, he parked the lorry in front of Kavitha Jewelry in Meenakshipuram, Oluhinasery main road to de-load the goods.

8.The prosecution has cited and examined P.W.1 to P.W.3 and P.W.5 as occurrence witnesses.

9.The learned counsel for the revision petitioner would submit that P.W.3 to P.W.5 had turned hostile and that P.W.2 is not at all an occurrence witness and even according to P.W.2, he came to the occurrence place only after the incident. No doubt, as rightly pointed out by the defence, P.W.5 has not supported the case of the prosecution and hence, he was treated as hostile. Even according to the prosecution, P.W.4 is not an occurrence witness and is only a hearsay witness. P.W.3, while examining for the first time 30.06.2004 had deposed about the occurrence, but subsequently, when he was re-called for cross examination on 12.03.2005, he has given evidence contradicting to his earlier evidence and hence, he was treated as hostile and was subjected to cross examination by the prosecution.

10.Considering the above, as rightly contended by the learned Government Advocate (Criminal Side), the evidence of P.W.3 cannot be rejected or discarded in entirety. P.W.1 the injured in his evidence before the trial Court would say that on 27.11.2003 at about 04.00 pm, he parked his lorry before the Kavitha jewelry and was attempting to de-load the goods and that the accused came with iron rod and wooden logs and quarreled with him for not engaging them to de-load the goods and attacked him. He would say that the first accused had attacked with rod on his right side head and that the second accused had also attacked with a rod at the same place and



since he had placed his hands covering the injury already suffered, he received the hit on his left hand ring finger and got his finger broken.

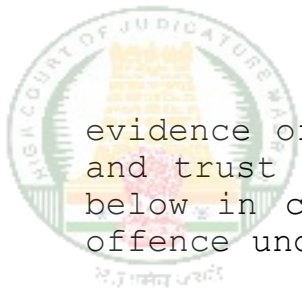
11.P.W.2 load man, who had accompanied P.W.1 in the lorry would say in his evidence that 6 or 7 persons came to the occurrence place and attacked P.W.1 and caused injury and that the accused 1 to 3 were present in that group. In cross examination, he would say that he was on the back side of the lorry at the time of incident and he came front side and found P.W.1 was bleeding on his head. P.W.3 another load man would reiterate the version of P.W.1 and P.W.2 and would further say that the accused Suresh had attacked P.W.1 with iron rod and caused bone injury on his left hand ring finger.

12.P.W.8 Medical Officer, who had attended P.W.1 would say that P.W.1 had lacerated injury 4x1x bone depth in scalp over (R) parietal bone, bone injury in his left hand ring finger and abrasions on his both knee joints and on his right elbow, that he was given inpatient treatment for the period between 27.11.2003 and 06.12.2003, that they had taken X-ray and that after treatment, he has given opinion that the second injury is grievous and other injuries are simple in nature. P.W.7 Radiologist would say that X-ray were taken and that there is a fracture in left ring finger i.e., proximal phalanx.

13.It is further evident that while P.W.1 was taking inpatient treatment, complaint statement was recorded from him and on that basis, FIR came to the registered. P.W.1 has given evidence reiterating the complaint contentions. As rightly contended by the learned Government Advocate (Criminal Side), though P.W.1 and P.W.2 were cross examined at length, nothing was elicited by the defence in their favour.

14.It is settled law that the revisional jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting the miscarriage of justice and more importantly, it confines to the correctness, legality or propriety of any finding or sentence or order. The revisional jurisdiction cannot be equated with the Appellate Jurisdiction nor can be treated as second Appellate Jurisdiction. It is pertinent to mention that while exercising the revisional jurisdiction, there is absolutely no scope for reappreciation of entire evidence once again. In case, if the appreciation of evidence is tainted with perversity, then only this Court can interfere with it.

15.As already pointed out, the evidence of P.W.1 to P.W.3 and even if the evidence of P.W.2 and P.W.3 are excluded for the reasons canvassed by the revision petitioner, the evidence of P.W.1 stands corroborated by the medical evidence. Even assuming for the arguments sake, the evidence of P.W.2 and P.W.3 are excluded, the



evidence of P.W.1 the injured witness is very much cogent, reliable and trust worthy. Considering the above, the finding of the Courts below in convicting the revision petitioner/second accused for the offence under Section 326 cannot be found fault with.

16. Now turning to the punishment imposed, as already pointed out, the learned Magistrate has sentenced the second accused to undergo one month Simple Imprisonment for the offence under Section 341 IPC and to undergo one year rigorous imprisonment and to pay a fine of Rs.100/- in default, to undergo one month Simple Imprisonment for the offence under Section 326 IPC.

17. The learned Appellate Judge has modified the sentence by setting aside the punishment of imprisonment for the offence under Section 341 IPC and confirmed the imposition of fine of Rs.100/- in default to undergo one week simple imprisonment and sentenced to undergo one month simple imprisonment for the offence under Section 326 IPC in addition to the fine already imposed.

18. Considering the nature of the offence and the injury suffered by P.W.1, the imposition of the punishment by the Appellate Court is very low, but the State has not challenged the impugned judgment. The learned counsel for the revision petitioner would submit the incident was occurred in the year 2003 and already more than 17 years had lapsed and that he was already in prison for 10 days. In case, if this Court is confirming the sentence imposed by the Appellate Court, the accused has to undergo 20 days imprisonment and sending him to prison, after 18 years for 20 days would not be proper.

19. At this juncture, it is necessary to refer the judgment of Hon'ble Supreme Court in **Hari Kishan and another Vs. Sukhbir Singh and others** reported in **AIR 1988 SC 2127** :

"10. Sub-section (1) of Section 357 provides power to award compensation to victims of the offence out of the sentence of fine imposed on accused. In this case. we are not concerned with sub-section. We are concerned only with sub-section (3). It is an important provision but Courts have seldom invoked it. Perhaps due to ignorance of the object of it. It empowers the Court to award compensation to victims while passing judgment of conviction. In addition to conviction, the Court may order the accused to pay some amount by way of compensation to victim who has suffered by the action of accused. It may be noted that this power of Courts to award compensation is not ancillary to other sentences but it is in addition thereto. This power was intended to do something to re-assure the victim that he or she is not forgotten in the criminal justice system. It is a measure of responding appropriately to crime as well of reconciling the victim with the offender. It is, to some



extent. a constructive approach to, crimes. It is indeed a step forward in our criminal justice system. We, therefore, recommend to all Courts to exercise this power liberally so as to meet the ends of justice in a better way.

11. The payment by way of compensation must, however, be reasonable. What is reasonable, may depend upon the facts and circumstances of each case. The quantum of compensation may be determined by taking into account the nature of crime, the justness of claim by the victim and the ability of accused to pay. If there are more than one accused they may be asked to pay in equal terms unless their capacity to pay varies considerably. The payment may also vary depending upon the acts of each accused. Reasonable period for payment of compensation, if necessary by installments, may also be given. The Court may enforce the order by imposing sentence in default."

20. Admittedly, the Courts below have not dealt with the above aspect. As already pointed out, in the case on hand, P.W.1 lorry driver had sustained injuries, including bone injury caused by the revision petitioner. Since the injured victim was not given any compensation under Section 357 Cr.P.C and this Court has already decided that sending of the accused to prison to undergo 20 days imprisonment at this point of time is not proper and on taking note of the entire facts and circumstances, this Court decides that the imposition of fine by the Courts below is to be set aside and the revision petitioner is to be directed to pay compensation of Rs.20,000/- to the defacto complainant and the same would meet the ends of justice.

21. In the result, the Criminal Revision Case is dismissed and the conviction of the revision petitioner/second accused for the offence under Section 326 IPC stands confirmed and the sentence of one month simple imprisonment imposed by the Appellate Court and the imposition of fine by the Courts below are set aside and the revision petitioner is directed to deposit a sum of Rs.20,000/- to the credit in C.C.No.15 of 2004 on the file of the learned Judicial Magistrate No.II, Nagercoil within a period of eight weeks from today, in default, to undergo two months simple imprisonment and on such deposit, the trial Court is directed to disburse the amount to the victim.

Sd/-

Assistant Registrar (CS III)

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/ /2021

Sub Assistant Registrar(CS)



das

To

1.The Judge, Mahila Fast Track Court, Nagercoil.

2.The Judicial Magistrate No.II, Nagercoil.

3.The Inspector of Police,
Kottar Police Station, Kanniyakumari.

4.The Superintendent,
Central Prison, Palayamkottai.

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

Copy to:

The Section Officer, (2 copies)

V.R. Section,

Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.R.MURALI, Advocate (SR-17480[F] dated 26/04/2021)

Crl.R.C (MD) No.227 of 2017
26.04.2021

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