



Bail Slip

The Appellant/Sole Accused Naveen Raja, S/o.Selvaraj @ Vandikara Selvam, is released on Bail Order Dated 13/09/2017 made in Crl.MP(MD)No.8420 of 2017 in Crl.RC(MD)No.719 of 2017.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 22.09.2021

PRONOUNCED ON : 29.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE **R.PONGIAPPAN**

Crl.R.C. (MD)No.719 of 2017

Naveen Raja

... Petitioner/Appellant/Accused/Accused

Vs.

The State Rep. by
The Inspector of Police,
Sanarpatti Police Station,
Dindigul District.
(Crime No.428 of 2012)

... Respondent/Respondent/
Respondent/Complainant

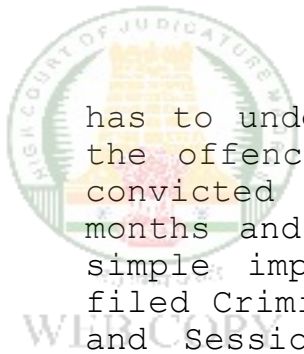
PRAYER: The Criminal Revision Case is filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the records pertaining to the order dated 21.03.2017 made in Crl.A.No.15 of 2016, on the file of the learned Principal Sessions Judge, Dindigul confirming the conviction and sentence imposed by the learned Chief Judicial Magistrate, Dindigul in CC No.24 of 2015, dated 16.03.2016 and set aside the same by allowing the above Revision Petition.

For Petitioner	: Mr.J.Lawrance
For Respondents	: Mr.E.Antony Sahaya Prabahar Government Advocate (Crl.side)

ORDER

This Criminal Revision Case is directed against the order, dated 21.03.2017 in Crl.A.No.15 of 2016, on the file of the learned Principal Sessions Judge, Dindigul confirming the conviction and sentence imposed by the learned Chief Judicial Magistrate, Dindigul in CC No.24 of 2015, dated 16.03.2016.

2.The accused in CC No.24 of 2015 on the file of the Chief Judicial Magistrate Court, Dindigul is the revision petitioner herein. The respondent police laid a Final Report against him, alleging that the petitioner had committed offences punishable under Sections 294(b), 324, 427 and 506(ii) IPC. By judgment dated 16.03.2016, the trial Court convicted the petitioner herein under sections 323, 324 IPC. In respect of section 323 IPC, the petitioner was sentenced to pay a fine of Rs.1000/-, in default, he



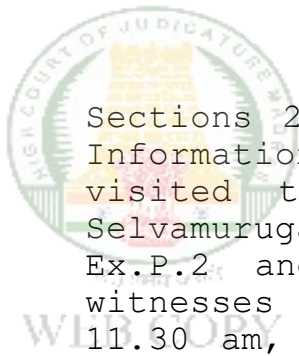
has to under go simple imprisonment for three months. Further, for the offence punishable under Section 324 IPC, the petitioner was convicted and sentenced to undergo rigorous imprisonment for six months and a fine of Rs.3000/- and in default, he has to undergo simple imprisonment for three months. Challenging the same, he filed Criminal Appeal No.15 of 2016. The learned Principal District and Sessions Judge, Dindigul, by judgment dated 21.03.2017 has dismissed the appeal, thereby confirmed the judgment and sentence of the trial Court. Challenging the above conviction and sentence, the petitioner has come forward before this Court with this present Criminal Revision Petition.

3.The case of the prosecution in brief is as follows:-

PW 1 Antony Xavior and PW 2 Sankari are the injured in this case. They were the residents of Kosavapatti, Dindigul District., PW 5 Thomas and PW 6 Selvamurugan are the residents of Anna Nagar, Sanarpatti. On the date of occurrence, that is on 13.11.2012, at about 3.00pm, the accused in drunken mood came to the place of the defacto complainant and created problem. The accused had thrown stone on the asbestos sheet roof and caused damages to the tune of Rs.1000/-. The accused had also beaten PW 1 with wooden log and caused injuries on his left side of the head, above the left ear and also on left chest and shoulder. The accused had also threatened PW 1 as to kill him and at that time, when PW 2 Sankari intervened, the accused had also beaten PW 2 on her left hand. Due to dispute over the lease hold lands, the accused and the injured are having previous enmity and due to that enmity, the accused had attacked PW 1. Immediately after the occurrence, PW 1 was taken to the Government Hospital, Dindigul and he was admitted as inpatient. He had 5 sutures for his left head injury and took treatment for six days. Neighbours including PW 3 and PW 4 had seen the occurrence.

4.In the Hospital, PW 7 Dr.Ramya, Assistant Surgeon attached with the Government Hospital, Dindigul, who treated PW 1, found that there was laceration on his left forehead. In this regard, she issued Accident Register under Ex.P.3, stating that the injuries sustained by PW 1 was simple in nature. Similarly, PW 7 treated PW 2 Sangavi and found the following injuries:- Swelling and pain on the left hand, blood clot measuring 5 x 4cm found in her stomach and fracture in the wrist i.e radius bone. In respect of the injuries sustained by her, PW 7 issued Accident Register under Ex.P.4, stating that the injuries sustained by her is grievous in nature.

5.In the meantime, PW 8 Manoharan, who is the then Sub Inspector of Police, Dindigul Taluk Police Station, on receipt of information from the Hospital, visited the Hospital and examined PW 1, he recorded the statement under Ex.P.1 from PW 1. After returning from the Hospital, he registered a case against the accused under Cr.P.C. No. 428 of 2012, for the offences punishable under



Sections 294(b), 323, 427 and 506(ii) IPC. Printed form of First Information Report was marked as Ex.P.5 and on the same day, he visited the occurrence place and in the presence of PW 6 Selvamurugan and Jesuraj, he prepared observation mahazar under Ex.P.2 and drew Rough Sketch under Ex.P.6. He examined the witnesses and recorded their statements. On 16.11.2012 at about 11.30 am, at Kosavapatti Bus stand, he arrested the accused and sent him to remand. Thereafter, he handed over the case records to PW 9 for further investigation as per law.

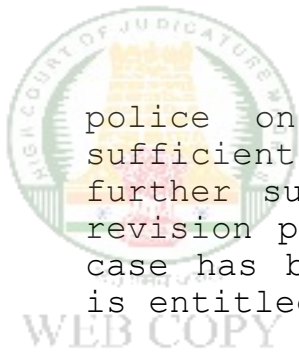
6.PW 9, Rajagopal, the then Inspector of Police, on receipt of the case records from PW 8, obtained Wound Certificate and examined the Doctor, who gave treatment to PW 1 & PW 2 and recorded her statement. After completing the investigation, he came to the conclusion that the accused herein is liable to the convicted under Sections 294(b), 324, 427, 506(ii) IPC and on the basis of which, he filed Final Report. Based on the above materials, when the trial court tried the accused for the offences punishable under Sections 294(b), 427 and 506(ii) IPC, he denied the same.

7.In order to prove the charge against the accused, the prosecution had examined as many as nine witnesses, of whom, PW 1 and 2 are injured and PW 3 to 5 are the eye witnesses. PW 6 gave evidence in respect of preparation of Observation Mahazar and PW 7 is the doctor spoken about the treatment given to PW 1 and PW 2 and about the nature of injuries sustained by them. PW 8 & PW 9 are the police officials spoken about the registration of the case and about the entire investigation done. When the above ingredients are put up under Section 313 of Cr.P.C to the accused, he denied the same as false.

8.According to the defence, due to the dispute over the lease hold rights, PW 1 lodged a false complaint against the accused and thereafter, without examining the real fact, the Investigating Officer in this case, foisted a false case against the accused. Thus, according to the petitioner, he had not committed any offence punishable under Sections 323 & 324 IPC. Having considered all the above materials, the trial Court found him guilty under Section 323 & 324 IPC and the lower Appellate Court confirmed the same. That is how, the accused is before this Court with this revision petition.

9.I have heard Mr.J.Lawrance, learned counsel appearing for the petitioner and Mr.E.Antony Sahaya Prabakar, Government Advocate (Crl.side) appearing for the respondents and also perused the records carefully.

10.The learned counsel appearing for the revision petitioner would submit that as per the case of the prosecution, the alleged occurrence had happened on 13.11.2012 at 3.00pm, and the complaint was said to have been lodged before the



police on 15.11.2012 with the delay of two days, which is sufficient to hold that the occurrence is a false one. It is the further submission made by the learned counsel appearing for the revision petitioner that due to previous enmity with PW 1, a false case has been foisted against the accused. Therefore, the accused is entitled for acquittal.

11.Per contra, Mr.E.Antony Sahaya Prabahar, learned Government Advocate, (Crl.side) appearing for the respondent would vehemently opposed the contentions raised in the criminal revision petition. According to him, the evidence of PW 1, PW 2 & PW 4 would clearly go to show that the alleged incident was wholly due to the previous enmity having by the accused with PW 1. He would further submit that there may be possibility of attack on PW 1 by the accused due to previous enmity. Thus, according to him, the conviction and sentence imposed on the petitioner, does not require any interference by this Court.

12.I have heard the rival submissions and perused the materials available on record.

13.Now on considering the submissions made by the petitioner's counsel, it is true that the alleged occurrence had happened on 13.11.2012 and thereafter the case has been registered on 15.11.2012 with the delay of two days. In this regard, PW 8, Mr.Manoharan, the then Sub Inspector of Police, Dindigul Taluk Police Station, who registered the case would state before the trial Court that he received the information regarding the admission of PW 1 and PW 2 from the Hospital only on 15.11.2012. On the other hand, on going through the evidence given by PW 7, who treated PW 1 & PW 2, it appears that both PW 1 & PW 2, were admitted in the Hospital on 13.11.2012 itself. Therefore, the evidence given by PW 7 establishes the fact that on the date of occurrence, both injured persons were in the Hospital and therefore for the delay in lodging the complaint, the injured persons are no way responsible. It is absolutely fault on the part of the Hospital authorities in not informing the admission of PW 1 and PW 2 to the police officials immediately.

14.Eventhough it was stated by PW 2 that, on the date of occurrence itself, the police officers examined her, the evidence of PW 1 shows that immediately after the occurrence, both PW 1, PW 2 & PW 4 went to the police station, wherein, the police officials advised to go to Hospital. It is natural that if the injuries sustained by the injured persons are found serious, it would be proper on the part of the police officers to advise them to take treatment first. To cull out of the evidence given by PW 7, it would appear that only due to the lapse found on the part of the Hospital authorities, a case has been registered with the delay of two days. In otherwise, the same cannot be considered as a fatal to



15.Secondly in respect of previous enmity having by PW 1 with the accused, it was submitted by the petitioner's counsel that in respect of lease hold right pertains to the land, which belongs to one Logu, PW 1 is having previous enmity with the accused. As far as this submission is concerned, it is necessary for the accused to establish that under what circumstances, the land pertains to one Logu was given to PW 1 for lease and also the same has been changed to some other persons. In this regard, in order to clarify the same, none have been examined on the side of the accused as defence witness. In this connection, PW 9, the Investigating Officer had not even examined the said Logu. Therefore, without any iota of evidence in respect of previous enmity having by PW 1 with the accused, the defence taken as this case has been foisted against the accused due to previous enmity cannot be accepted. Even assuming that PW 1 is having previous enmity with the accused, being the reason that previous enmity is double edged weapon. The submission made by the learned counsel for the petitioner in this aspect can not be taken into account for deciding this Revision Petition in his favour. Therefore, the second submission made by the petitioner's counsel do not have any merits and substance.

16.Now, on going through the judgment rendered by the Courts below, it is seen that as per the case of the prosecution and in view of the evidence given by PW 1 & PW 2, during the relevant point of time, the accused herein by using wooden log attacked PW 2 and caused grievous injuries. But, in this regard, charge under Section 326 IPC has not been framed by the trial Court, in respect to the said occurrence. Charge has been framed under Section 324 IPC alone.

17.Yet another aspect to be considered in this case is that in respect of the assault made on PW 1, the trial Court has not framed any charge at the initial stage. Only after examination of PW 1 and PW 2 on 16.03.2016, charge under Section 323 IPC has been framed, which is erroneous on the facts projected by the prosecution. Further, in respect of omission found out, it would necessary to see the judgment of our Honourable Apex Court, reported in a case of **Dalbir Singh Vs State of UP, (2004) 5 Supreme Court Cases 334**, wherein, it was held as follows:-

"In view of Section 464 Cr.P.C, it is possible for the appellate or revisional court to convict an accused for an offence for which no charge was framed unless the court is of the opinion that a failure of justice would in fact occasion. In order to judge whether a failure of justice has been occasioned, it will be relevant to examine whether the accused was aware of the basic ingredients of the offence for which he is being convicted and whether the main



facts sought to be established against him were explained to him clearly and whether he got a fair chance to defend himself.''

18. Here is the case after recording evidence from prosecution witnesses, during the time of 313 Cr.P.C examination, the accused informed about the evidence given by PW 1 and PW 2, with regard to the attack made by him. Only after informing as above, the case has been disposed of by the trial Court. Therefore, the error found in the procedure adopted by the trial Court would not prejudice the accused and therefore the said error is not sufficient to allow the revision in entirety. However, on going through the evidence given by doctor, it seems that PW 2 sustained fracture in radius bone. In otherwise, in order to find out the nature of injuries sustained by PW 2, the doctor has not spoken about the X-ray, if any taken at the time of treatment. Therefore, in the absence of any material to show that the injuries sustained by PW 2 is grievous, we cannot hold that during the relevant point of time, the accused caused grievous injuries to PW 2.

19. In view of the foregoing discussions, I am of the considered opinion that the petitioner herein committed an offence under Section 323 IPC (2 counts) alone. In respect of quashment of sentence, the learned counsel appearing for the revision petitioner would contend that the accused being a senior citizen facing this case for the past 10 years, some leniency must be shown in awarding the sentence to the accused.

20. This is the case, while at the time of convicting the accused/revision petitioner for the offence under Section 323 IPC, fine of Rs.1,000/- was imposed on him. But, at the same time, in respect of offence under Section 324 IPC, the trial Court, apart from imprisonment, sentenced to pay a fine of Rs.3000/-, (Rupees Three Thousand Only) in default, simple imprisonment of three months was imposed. Therefore, it is appropriate to adjust the said fine amount of Rs.3000/-, as the fine to another count of 323 IPC. (Now altered).

21. Hence, in view of the foregoing reasons, this Criminal Revision is disposed of with the above modification.

Sd/-

Assistant Registrar (T & P)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

vrn

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



To

1.The Inspector of Police,
Sanarpatti Police Station,
Dindigul District.

2.The Principal District and Sessions Court,
Dindigul.

3.The Chief Judicial Magistrate Court,
Dindigul.

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

+1 CC to M/s.J.LAWRANCE, Advocate (SR-33456[F] dated 01/11/2021)

Crl.R.C. (MD)No.719 of 2017
29.10.2021

KS (CO)

RS/JGB (18.11.2021) 7P 6C