



BAIL SLIP

The Petitioners / Accused viz. A1)Mr.Magadevan, Male, Aged 65 years, S/o.Chinnaya, A2)Ms.Nirmala, Female, Aged 35 years, D/o.Magadevan, A3)Mr.Ravi, Male, Aged 35 years, S/o.Kuppusamy were released on bail as per order of this Court dated 09.12.2016 in CrI.M.P.No.8632 of 2016 in CrI.R.C.No.1038 of 2016 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2022

CORAM :

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.R.C.No.1038 of 2016

1.Magadevan

2.Nirmala

3.Ravi

...Petitioners

Vs.

State rep. by
The Inspector of Police,
Mangadu Police Station,
Kancheepuram District.
[Crime No.728 of 2006]

...Respondent

PRAYER : Criminal Revision Petition filed under Sections 397 and 401 of Criminal Procedure Code, to call for the records and set aside the judgment of the learned Sessions Judge-II, Kancheepuram made in C.A.No.8 of 2014 dated 06.07.2016 partly modifying the judgment passed by the learned District Munsif cum Judicial Magistrate, Sriperumbudur, Kancheepuram District on 10.06.2014 in C.C.No.328 of 2008.

For Petitioners : Mr.S.Shinu

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor



ORDER

The petitioners, who are A2 to A4 in C.C.No.328 of 2008 were convicted by the learned District Munsif cum Judicial Magistrate, Sriperumbudur by judgment dated 10.06.2014 and sentenced them to undergo one month simple imprisonment for the offence under Section 341 IPC and three months simple imprisonment for the offence under Section 326 IPC and to pay a fine of Rs.100/- each, in default to undergo one week simple imprisonment. Aggrieved against the judgment of the Trial Court, the petitioners preferred an appeal before the Sessions Judge in C.A.No.8 of 2014. The learned Sessions Judge, Sessions Court-II, Kancheepuram by judgment dated 06.07.2016 confirmed the conviction of the petitioners under Section 341 IPC and acquitted the petitioners for the offence under Section 326 IPC and confirmed the conviction of A1 for the offence under Section 326 IPC. Against which, the petitioners/A2 to A4 preferred this revision petition.

2.The gist of the case is that on 12.12.2006 at about 7.30 p.m., P.W.1 Praveen Kumar was at his home, at that time, all the accused picked up quarrel with Praveen Kumar and P.W.2/Ezhilarasu, his brother. A2 to A4 caught hold of P.W.2, A1 alleged to have attacked P.W.2 using blade on his neck, caused abrasions and contusions. Therefore, A1 to A4 were charged for the offence under Sections 341 and 326 IPC. During the trial, P.W.1 to P.W.9 examined, Ex.P1 to Ex.P12 and M.O.1 marked. On the side of the defence, no witnesses examined and no documents marked. The Trial Court on conclusion of trial convicted the petitioners which was confirmed by the Lower Appellate court with modification as stated above.

3.The contention of the petitioner is that in this case P.W.1 to P.W.4 hails from the same family, P.W.1 and P.W.2 are brothers, P.W.3 and P.W.4 are their parents, mother and father. The alleged occurrence is said to have taken place outside the house but no public witness examined. P.W.3 and P.W.4 admit that P.W.3 was in the hospital at the time of occurrence, she reached home later and P.W.4 was on duty in his Company. P.W.1 states that he was at home, at that time, A1 to A4 barged into his house, enquired about his father, picked up quarrel, A2 to A4 caught hold of P.W.2, his brother and A1, a milk vendor in that area, slashed P.W.2's neck with M.O.1/blade. Thereafter, the accused beaten both P.W.1 and P.W.2 and ran away from the scene of occurrence. P.W.1 admits that at the time of occurrence, there were around 15 to 20 persons and none of them were examined as witness. The Trial Court on the evidence of P.W.1, P.W.2 and P.W.8/Doctor convicted the accused. It is submitted that the evidence of P.W.1 and P.W.2 are highly artificial and exaggerated. P.W.1 though states that he saw A1



inflicting cut injury on the neck of P.W.2 which is concurred by P.W.2. From the complaint, there is nothing to show there was any slash injury inflicted by A1. Further, in the Accident Register/Ex.P5 there is no recording of any usage of blade, inflicting cut injury. It is recorded that there is only abrasions and contusions. In the Accident Register, it is clearly mentioned that the assault was by using hands.

4.P.W.1 to P.W.3 admit that on the previous day of the attack, there was a local residents' meeting, A1 attended the meeting which was questioned by P.W.4 and there was a wordy altercation between them. A1 is the milk vendor in that area, after the wordy quarrel A1 stopped delivery of milk to P.W.4's house, which was questioned and there was some misunderstanding between them. It is the specific case of the accused that P.W.1 and P.W.2 along with their friends were passing lucid comments against A3 whenever she was seen near their house, which was questioned, which leads to wordy altercation and there was exchange of blows. The Investigating Officer failed to look into this complaint. Further, P.W.1 and P.W.2 admit that their friend Aravind was a press reporter and due to his influence, false complaint was lodged against the petitioners. Hence, he prayed for quashing of the complaint.

5.The learned Additional Public Prosecutor submitted that in this case P.W.1 lodged the complaint, P.W.1 and P.W.2 were alone at home, at that time, the petitioners and other accused entered into their house, picked up quarrel and assaulted them. A2 to A4 caught hold of P.W.2, A1 took a blade/M.O.1 and inflicted a slash injury on the neck of P.W.2. Since the other residents came there, the accused left the place. Thereafter, P.W.1 took P.W.2 to Shri Ramachandra Hospital immediately, P.W.8/Doctor gave him treatment and issued Accident Register/Ex.P5. Further P.W.3 and P.W.4 confirmed about P.W.2 going to the hospital and taking treatment. P.W.5 is the witness for the observation mahazar, P.W.6 and P.W.7 are the witnesses for arrest and confession of the accused, P.W.8 is the Casualty Doctor and P.W.9 is the Investigating Officer. On the evidence of these witnesses and the materials produced, the Trial Court relying on the evidence of P.W.1, P.W.2 and P.W.8 rightly convicted the petitioners. The Lower Appellate Court confirmed the conviction. Hence, he prayed for dismissal of this revision petition.

6.Considering the submissions made and on perusal of the materials placed before this Court, it is seen that P.W.1 to P.W.4 hail from one family, P.W.3 and P.W.4 not witnessed the occurrence. P.W.1 and P.W.2 were present in the house, at that time, the petitioners along with A1 said to have entered into their house, enquired about their father/P.W.4 and there was a



wordy altercation. P.W.1 lodged a complaint stating that his brother/P.W.2 was caught hold by A2 to A4, at that time, A1 assaulted him and inflicted cut injury in his neck using M.O.1/blade. From Ex.P5/Accident Register, it is seen that it is recorded as assault using hands, there is only abrasions and contusions and there is no slash or cut injury. The wound certificate was given on the reverse side of the Accident Register as grievous injury and there is no reference as to for what reason it was recorded as grievous injury. Further P.W.8 is not the Doctor who treated the injured. Further, he had not joined the Hospital when Accident Register and Wound Certificate issued. The Trial Court convicted the petitioners under Section 326 IPC for the reason that the injury on the neck of P.W.2 endangers the life, but from the Accident Register/Ex.P5 it is seen that there is no cut injury found in the neck, that to, using M.O.1/blade. The material object M.O.1 is commonly available blade, nothing significant. Further, in this case except P.W.1 to P.W.4 and P.W.5, the other witnesses not supported the case of the prosecution. Thus, the arrest, confession and recovery not proved. P.W.8 was projected as the Doctor who treated P.W.2 and issued Accident Register/Ex.P5. P.W.8 admits that Ex.P5 was issued in the year 2006, he joined the Hospital only in the year 2009, the person who treated P.W.2 is one Dr.Balu who had gone abroad, hence projection of P.W.8 familiar with signature and handwriting of Dr.Balu in Ex.P5 cannot be accepted. Hence, Ex.P5/Accident Register is not proved in the manner known to law which cannot be considered. Added to it, P.W.1 admits that there were around 15 to 20 persons at the time of occurrence but none of them were examined. P.W.1 and P.W.2 evidence are with exaggeration as could be seen from Ex.P5 and the cut injury on P.W.2's neck is a false version, highly contradictory. Both the witnesses, P.W.1 and P.W.2 given a motivated and contradictory statement against the accused. Thus, the evidence of P.W.1 and P.W.2 are exaggerated and unbelievable. It is seen P.W.8 joined the hospital years later after the occurrence and not worked with Dr.Balu, hence his evidence cannot be considered.

7.In view of the above, this Court is of the opinion that the prosecution has miserably failed to prove the case against the petitioners. Hence, this Court is inclined to allow this revision petition not only against the petitioners/A2 to A4 even against the other accused/A1.

8.The learned counsel for the petitioners further submitted that the first petitioner/A2 passed away on 08.09.2018.

9.In the result, the judgment dated 10.06.2014 made in C.C No.328 of 2008 on the file of the learned District Munsif cum Judicial Magistrate, Sriperumbudur, Kancheepuram which was



partly modified by the judgment dated 06.07.2016 made in C.A.No.8 of 2014 on the file of the learned Sessions Judge-II, Kancheepuram are set aside. Accordingly, the Criminal Revision Petition is allowed. The petitioners and A1 are acquitted of all the charges levelled against them.

Sd/-
Assistant Registrar(CS-VIII)

// True Copy //

Sub Assistant Registrar

cse

To

- 1.The District Munsif cum Judicial Magistrate,
Sriperumbudur,
Kancheepuram District
- 2.The Sessions Judge-II,
Kancheepuram.
- 3.The Inspector of Police,
Mangadu Police Station,
Kancheepuram District.
- 4.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.S.Shinu, Advocate Sr.No.28432

CrI.R.C.No.1038 of 2016

SKM(CO)
RVM(17/05/2022)