



BAIL SLIP

The Petitioner/Accused Viz., M.G., Aged 40 years S/o. Thamukku, was released on bail as per order of this Court dated 22.11.2016 in Crl.Mp.No.12151 of 2016 in Crl.Rc.No.1380 of 2016 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.R.C.NO.1380 OF 2016

M.G.,
S/o. Thamukku

... Petitioner

Vs.

The State rep. by
The Sub-Inspector of Police,
Santhavasal Police Station,
Thiruvannamalai District.
[Crime No.345 of 2007]

... Respondent

PRAYER:

Criminal Revision Petition filed under Sections 397 r/w. 401 of Criminal Procedure Code, to call for the records pertaining to the order dated 09.09.2016 made in C.A.No.22 of 2011 passed by the Sessions Judge, Thiruvannamalai and set aside the same and consequently set aside the order dated 03.11.2011 passed by the Judicial Magistrate Court, Polur in C.C.No.238 of 2008

For Petitioner : Mr.R.Sasikumar
For Respondent : Mr.A.Damodaran
Additional Public Prosecutor

ORDER

The petitioner/A2 in C.C.No.238 of 2008 was convicted by the learned Judicial Magistrate, Polur by judgment dated 03.11.2011



and sentenced the petitioner along with three others for the offence under Section 323 IPC and to pay a fine of Rs.1,000/- in default to undergo three months simple imprisonment. As regards this petitioner/A2 under Section 325 IPC, two years rigorous imprisonment and to pay a fine of Rs.2000/- in default to undergo three months simple imprisonment. Against which, A2 to A4 preferred an appeal in C.A.No.22 of 2011 before the learned Sessions Judge, Thiruvannamalai. The lower Appellate Court by judgment dated 09.09.2016 dismissed the appeal confirming the conviction and sentence of the Trial Court. Against which, the present revision petition is filed.

2.The gist of the case is that on 21.10.2007 at about 12.30 p.m. the accused A1 to A4 came to the house of P.W.1, picked up a quarrel, abused him, A2 caught hold of him by his hair and dashed him against the wall, due to which, two teeth broken and fell down. He had also sustained injury on his left knee. A3 and A4 beaten him. When P.W.2 intervened, the petitioner/A2 slapped her on her cheek and assaulted her. P.W.1 went to Arani Government Hospital, took treatment, from there complaint/Ex.P1 was received by P.W.7/Sub-Inspector of Police who registered FIR/Ex.P6, thereafter visited the scene of occurrence, prepared observation mahazar/Ex.P7, rough sketch/Ex.P8, recorded the statement of witnesses, obtained wound certificate and on completion of investigation, charge sheet filed. In the Trial Court, P.W.1 to P.W.7 examined and Ex.P1 to Ex.P8 marked. On completion of trial, the Trial Court convicted the petitioner which was confirmed by the Lower Appellate Court as stated above.

3.The contention of the petitioner is that P.W.1 states that he lodged a complaint on 21.10.2007 and later states that it was on 22.10.2007, giving contradictory dates with regard to the alleged assault. P.W.1 further states that the complaint was recorded by P.W.7 and he only affixed his signature. It is further submitted that had the occurrence taken place as spoken by P.W.1, there could be corresponding external injuries on the face but no such injury found, as could be seen from the evidence of P.W.6/Doctor and the wound certificate/Ex.P4. Further, P.W.2 took treatment and wound certificate/Ex.P5 marked. P.W.2 states that she initially went to the Police Station, thereafter gone to hospital at about 5.00 p.m., but P.W.1 states that he went to the hospital first where the Police came and recorded his statement. P.W.1 to P.W.3 are closely related witnesses, P.W.2 is the wife of P.W.1 and P.W.3 is the mother of P.W.1. No other independent witness examined in this case, more so, when the offence is said to have taken place in open in front of the house. There was an earlier motive, P.W.1 had given a sum of Rs.2,000/- to A1 for a committed work in the brick chamber, after receiving the money A1 failed to report for the work, due to which there was some dispute. Hence a wordy



quarrel is exaggerated and a false complaint lodged. In this case, admittedly neither Dentist examined nor any report obtained to confirm the injury of tooth. On the other hand, a General Physician/P.W.6 gives an opinion for the dental injuries which is not proper. P.W.4 and P.W.5 are the witnesses to the observation mahazar and rough sketch, not supported the case of the prosecution. The evidence of P.W.1 to P.W.3 are contrary to the observation mahazar and rough sketch. It is further submitted that in the rough sketch, the place of occurrence was shown elsewhere, thus the very genesis of the case becomes questionable, the scene of occurrence shifted. Further, the Trial Court acquitted the petitioner and others for the offence under Section 294(b) IPC for the reason that there is no evidence for any abuse. The Trial Court admit that the rough sketch/Ex.P8 is contra to the ocular evidence ought to have acquitted the petitioner. It is further submitted that from the evidence of the Investigating Officer, it is seen that the occurrence took place on 21.10.2007, the complaint was lodged only on 23.10.2007, no reason given for the delay and there is contradictory version with regard to the manner in which complaint was lodged. Hence, the petitioner prayed for acquittal.

4.The learned Additional Public Prosecutor submitted that in this case P.W.1 and P.W.2 are the injured witnesses, the accused in this case are known to P.W.1, A1 received a sum of Rs.2,000/- for the brick chamber work, and after receiving the money, not attended the work. When it was questioned by P.W.1, in offensive A1 along with other accused entered the house of P.W.1 assaulted him by using force, caused grievous injuries, due to the assault P.W.1 sustained injuries, two teeth broken and fell down. P.W.2, wife of P.W.1 intervened and she was also assaulted. Immediately, they rushed to Arani Government Hospital where P.W.6 examined, P.W.1, was given initial treatment and thereafter, referred to the Government Hospital, Vellore. P.W.7 received the complaint visited the scene of occurrence, prepared observation mahazar, rough sketch, examined the witnesses present in the scene of occurrence, after collecting documents and medical evidence filed the charge sheet. In this case, P.W.1 and P.W.2 are the injured witnesses, P.W.3 witnesses to the occurrence, P.W.4 and P.W.5 not supported the case of the prosecution, P.W.6/Doctor examined P.W.1 and P.W.2 given the wound certificates/Ex.P4 and Ex.P5. From the wound certificate and the evidence of P.W.6/Doctor, it is confirmed that P.W.1 and P.W.2 were assaulted and sustained injuries. P.W.1 sustained grievous injuries. It is further submitted that Dentist given a report based on which P.W.6 gave wound certificate which cannot be found fault with. P.W.7 narrated the sequence of events and the investigation done. The Trial Court finding that there is some variation in rough



sketch/Ex.P8 with the ocular evidence acquitted the petitioner and other accused for the offence under Section 294(b) of IPC and convicted A1 to A3 under Section 323 IPC and A2 under Section 325 IPC. He further submitted that the judgment of the Trial Court is a reasoned one and the Lower Appellate Court independently weighed the evidence, materials produced and rightly confirmed the conviction of the Trial Court. He would further submit that the points raised by the petitioner were raised earlier which have been considered by both the Courts below. Hence, he prayed for dismissal of the revision petition.

5.Considering the submissions made and on perusal of the materials placed before this Court, it is seen that in this case P.W.1 and P.W.2 are the injured witnesses, P.W.1 had dispute with A1, since A1 after receiving a sum of Rs.2,000/- from P.W.1 promising to attend a work in the Brick Chamber, failed to do so. P.W.1 questioned the same with A1, due to which A1 to A4 entered into the house of P.W.1 and assaulted him. Further, the petitioner is said to have caught hold of P.W.1 by his hair and dashed him against the wall, due to which P.W.1 sustained injuries and two teeth fell down. Admittedly, in this case, the occurrence took place on 21.10.2007, FIR was registered only on 23.10.2007, no reason given for the delay. P.W.1 states that P.W.7 came to the hospital and received the complaint, on the other hand P.W.7 states that P.W.1 appeared before the Police Station and lodged a complaint. P.W.2 states initially they had been to Police Station, then to the Government Hospital, Arani. In the rough sketch/Ex.P8 and from the ocular evidence, it is seen that the occurrence is said to have occurred in a different place. Added to it, P.W.4 and P.W.5, the witnesses to the Mahazars not supported the case of the prosecution. Thus, the genesis of the complaint itself become doubtful. Further, in this case admittedly the Dentist not examined and no dental report or x-ray produced, confirming the loss of teeth. Admittedly, in this case no weapon used and from the evidence and materials produced, it cannot be conclusively held that the offence under Section 325 IPC proved. In view of the same, this Court is inclined to alter the conviction of the petitioner from Section 325 IPC to Section 323 IPC and reduce the sentence imposed by the Trial Court from two years rigorous imprisonment to that of the period of incarceration already undergone by the petitioner.

6.In the result, the judgment, dated 03.11.2011 in C.C.No.238 of 2008, passed by the learned Judicial Magistrate, Polur which was confirmed by the judgment dated 09.09.2016 by the learned Sessions Judge, Thiruvannamalai in C.A.No.22 of 2011 is hereby modified, by altering the Sentence from one under Section 325 IPC to Section 323 IPC and accordingly, the sentence of imprisonment imposed on the petitioner is reduced from two



years rigorous imprisonment to that of the period of incarceration already undergone by the petitioner. Accordingly, this Criminal Revision Petition stands partly allowed with modification.

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Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

cse

To

1. The Sub-Inspector of Police,
Santhavasal Police Station,
Thiruvannamalai District.
2. The Judicial Magistrate,
Polur.
3. The Sessions Judge,
Thiruvannamali.
4. The Public Prosecutor,
High Court, Madras.

+lcc to Mr.V.R.Appaswamee, Advocate, S.R.No.24950

Cr1.R.C.No.1380 of 2016

SKM(CO)
PM/28/04/2022