

BAIL SLIP

The Petitioner/Accused namely Iyyappan Alias Balaji was directed to be released on bail as per order of this court dated 04.10.2016 are made in CrI.M.P.No.2608/10 in CrI.R.C.No.392/2016 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.02.2022

PRONOUNCED ON : 01.03.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.R.C.No.392 of 2016

Iyyappan @ Balaji ...Petitioner/Appellant/Accused No.1

Vs.

State by its,
Inspector of Police,
Vellore North Police Station,
Vellore,
Vellore District.
(Crime No.24 of 2009).

...Respondent/Respondent/Complainant

PRAYER: Criminal Revision is filed under Section 397 r/w 401 of the Code of Criminal Procedure, to set aside the conviction and sentence passed in judgement C.A.No.45 of 2012 dated 18.07.2013 by the District and Sessions Judge, Vellore District by dismissing the appeal by confirming the judgement of conviction and sentence passed in S.C.No.16 of 2011 dated 17.02.2012 by the Assistant Sessions-cum-Judicial Magistrate, Vellore and acquit the petitioner.

For Petitioner : M/s.D.Chandralekha,
Legal Aid Counsel

For Respondent : Mr.A.Damodaran,
Additional Public Prosecutor

ORDER

The petitioner/A1 was convicted by the learned Assistant Sessions Judge-cum-Chief Judicial Magistrate, Vellore/trial Court in S.C.No.16 of 2011, dated 17.02.2012, for offence under

Section 394 IPC and sentenced to undergo seven years Rigorous Imprisonment. Similarly, A2 and A3 were convicted for offence under Section 394 r/w 34 IPC and sentenced to undergo seven years Rigorous Imprisonment. As against the judgment of conviction and sentence, the petitioner/A1 and A3 preferred an appeal before the learned Principal District and Sessions Judge, Vellore/lower appellate Court. The learned Principal District and Sessions Judge, by judgment, dated 18.07.2013 in C.A.No.45 of 2012 confirmed the judgment of the trial Court in S.C.No.16 of 2011, dated 17.02.2012, against which the petitioner/A1 is before this Court, by way of this Criminal Revision Case.

2.Since there was no representation for the petitioner, this Court appointed Ms.D.Chandralekha as Legal Aid Counsel for the petitioner.

3.The gist of the case is that on 14.01.2009, at about 08.30 p.m., near grave yard at Kagithapattarai, Vellore, while one Panchacharam and PW2 taking drinks, the petitioner/A1, A2 & A3 attacked them and committed theft of cellphone, wrist watch and currency notes all worth Rs.3,550/- and caused grievous injury to them. On the complaint [Ex.P1], an FIR in Crime No.24 of 2009 [Ex.P10] was registered and the injured persons were sent to medical treatment. After registration of the case, the respondent Police visited the scene of occurrence, prepared Observation Mahazar [Ex.P3], Rough Sketch [Ex.P12], arrested the accused, recorded their confession statements [Ex.P4], pursuant to the confession statement, recovered the Material Objects under Seizure Mahazars [Exs.P5 to P8]. On completion of investigation, charge sheet was filed before the learned Judicial Magistrate No.IV, Vellore and it was taken on file as P.R.C.No.14 of 2009. Thereafter, the case was committed to the Court of Assistant Sessions Judge-cum-Chief Judicial Magistrate, Vellore and it was renumbered as S.C.No.16 of 2011. During trial, 12 witnesses were examined as PW1 to PW12 and 16 documents were marked as Exs.P1 to P16 and 10 Material Objects were collected as MO1 to MO10 on the side of the prosecution. On the side of the defence, no witness was examined and no document was marked. On completion of the trial, the petitioner/A1 and A2 & A3 were convicted and sentenced as stated above.

4.The submissions of the learned counsel for the petitioner is as follows:-

(i)The admitted case of PW2 is that when he was having liquor along with Panchacharam on 14.01.2009, during night hours at about 08.30 p.m., the petitioner/A1, A2 and A3 alleged to have committed assault and robbery. PW2 for the first time had seen the accused and he has not identified them during investigation. When the accused appeared before the trial Court for the first time, PW2 identified the accused as though they

committed the offence, which is highly doubtful. PW2 admitted that at the time of occurrence, he and his relative Panchacharam were in a intoxicated condition due to having liquor. While being so, they cannot identify the accused who committed the offence. This fact is lost sight by the trial Court as well as the lower appellate Court. He further submitted that the witness Panchacharam died subsequent to the occurrence for some other reason. The only witness available to the occurrence is PW2. The evidence of PW2 is highly doubtful. PW1 though stated that he was along with PW2 and Panchacharam on the fateful day, he also consumed alcohol with them. It is to be noted that none of the witnesses stated that PW1 sustained any injury and he took part in rescuing PW2 and Panchacharam. Hence, the presence of PW1 is highly doubtful. The complaint [Ex.P1] of PW1 is without any details of the accused, which is admitted by PW8, the Sub Inspector of Police, who received the complaint [Ex.P1] and registered the FIR [Ex.P10].

(ii) The learned counsel further submitted that at the time of occurrence, PW3 was working as Security at Gayathri Timber Depo. In his evidence, he stated that he saw PW2 and Panchacharam, who sustained injuries on their hand and leg. He further stated that he made arrangement for sending the injured persons to hospital by ambulance. PW4 is the hearsay witness in this case. PW5 is the Doctor, who gave treatment to the injured witness PW2. PW2 informed PW5 that he was assaulted by seven unknown persons, PW5 recorded the same in the Accident Register [Ex.P2]. PW9 is another Doctor, who gave treatment to Panchacharam. Panchacharam informed PW9 that he was assaulted by unknown persons. PW6 is the witness for arrest and confession of the accused. In pursuant to the confession, the Material Objects [MO1 to MO10] were recovered through Seizure Mahazar [Exs.P5 to P8]. The recovery of Material Objects [MO1 to MO10] is highly doubtful for the reason that no witness was examined in support of the same and ownership of the Material Objects have not been conclusively proved. Thus, the petitioner has been falsely implicated in this case and the prosecution failed to prove the case beyond all reasonable doubt. Therefore, the judgment of the Courts below is liable to be set aside.

5. The learned Additional Public Prosecutor appearing for the respondent Police submitted that on the complaint [Ex.P1] of PW1, PW8, the Sub Inspector of Police registered the FIR in Crime No.24 of 2009 [Ex.P10]. During trial, the Doctor who gave treatment to Panchacharam was examined as PW9. PW9 stated that he examined Panchacharam on 15.01.2009, at about 07.30 a.m., and issued the Wound Certificate [Ex.P11] that Panchacharam has lost his tooth and the nature of injury was grievous. PW9 further stated that Panchacharam informed him that he was assaulted by

unknown persons. In this case, PW1 is also an eye witness, he was present along with PW2 and Panchacharam at the time of assault of the accused. PW1 and PW3 had helped the injured Panchacharam and PW2 and taken them to hospital for treatment. PW5, the Doctor examined PW2 and issued the Wound Certificate, which was marked as Ex.P2. PW3, the Security in Gayathri Timber Depo has stated that he saw Panchacharam and PW2 with bleeding injury on their hand and leg. PW3 is the independent witness in this case and he has got no animosity against the accused to falsely implicate them. On registration of FIR [Ex.P10], the accused were arrested, their confession statements [Ex.P4] recorded in presence of PW6, pursuant to it, Material Objects were recovered. PW10, PW11 & PW12 are the Investigating Officers, who conducted investigation and filed the final report against the accused. In this case, all the witnesses categorically stated about the involvement of the accused. Considering all these aspects, the trial Court had rightly convicted and sentenced the petitioner and other accused. He further submitted that A2 and A3 did not file any Criminal Revision and they have already undergone the period of sentence in this case. The petitioner was granted suspension of sentence till the disposal of the Criminal Revision, but he has not complied with the conditions. The petitioner has got nine cases to his credit and the same is extracted as follows:-

Iyyappan @ Balaji, (31), S/o.Palani Goundar, No.1/3, Melanda Street, Kagithapattarai, Vellore. Now at Pillaiyar Koil Street, Arappakkam, Vellore.

S.No	P.S Cr.No.	Sec. of Law	Stage of Case
1	Vellore North Crime PS Cr.No.24/09	392 r/w 394 IPC r/w 397 IPC	Conviction RI for 7 years by CJM Vellore SC.No.16/11, dt.17.03.12.
2	Vellore North Crime PS Cr.No.119/11	399 IPC	PT SC.141/15, CJM, Vellore
3	Arcot Town PS Cr.No.159/14	454, 511 IPC	PT
4	Thiruvannamalai TK PS Cr.No.388/11	392, 397 IPC	PT
5	Natrampalli PS Cr.No.715/12	457, 511 IPC	Disposal
6	Ranipet PS Cr.No.501/13	392 IPC	PT

7	Arcot Town PS Cr.No.176/14	8(c), 20(b)ii (A) of NDPS Act	UI
8	TV Malai TK. PS. Cr.No.382/2011	457, 511, 302 IPC	PT
9	Vellore North PS Crime PS Cr.No.181/19	294(b), 341, 392, 397 & 506(ii) IPC	UI

6.Hence, he prayed for dismissal of this Criminal Revision and sought direction to secure the accused.

7.This Court considered the rival submissions and perused the materials available on record.

8.In this case, while PW1, PW2 and one Panchacharam were consuming liquor, they were attacked by the petitioner and other two accused and further, their cell phones, currency and watches were robbed by them. PW2 and Panchacharam are the injured witnesses.PW2 sustained simple injury and Panchacharam sustained serious injury.Immediately after the occurrence, they were taken to the hospital for treatment. PW5 and PW9, the Doctors gave treatment to PW2 and Panchacharam and issued Wound Certificates [Exs.P2 & P11] for the injuries sustained by them. PW3 is the Security in Gayathri Timber Depo, who helped the injured persons to send them to hospital through ambulance. PW6 is the witness for arrest and confession [Ex.P4] of the accused persons. PW10 to PW12 are the Investigating Officers in this case. PW8 is the Sub Inspector of Police, who registered the FIR and conducted initial investigation. In this case, all the witnesses have clearly deposed against the accused and confirmed the case of the prosecution.

9.Exs.P1 to P16 are the documents marked, which were marked during trial.Exs.P2 & P11 are the Wound Certificates, which were issued by PW5 and PW9. Ex.P4 is the admissible portion of confession statement of the accused. Pursuant to it, the Material Objects [MO1 to MO10] were marked. Exs.P13 to P16 are form 95, which were marked to prove the case properties sent to the Court.

10.Thus, the trial Court recording the evidence and analyzing the materials, had rightly convicted the accused. The lower appellate Court on reappraisal of evidence and materials, had rightly confirmed the judgment of the trial Court. This Court does not find any illegallity or infirmity in the judgments of the Courts below and the same are hereby confirmed. Accordingly, this Criminal Revision case is dismissed.

11.The trial Court is directed to issue necessary warrant to

secure the accused. The respondent Police is to execute the same and arrest the petitioner for sufferance of remaining period of sentence.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

vv2

To

1. The Principal District and Sessions Court,
Vellore District.
2. The Assistant Sessions Judge-cum-Judicial Magistrate Court,
Vellore.
3. The Judicial Magistrate-IV,
Vellore.
4. Do Thro Chief Judicial Magistrate,
Vellore.
5. The Inspector of Police,
Vellore North Police Station,
Vellore, Vellore District.
6. The Superintendent,
Central Prison,
Vellore.
7. The Public Prosecutor,
High Court, Madras.

Copy To

1. The Section Officer,
Criminal Section,
High Court.
2. The Secretary,
High Court Legal Services Authorits Committee,
Chennai.

Cr1.R.C.No.392 of 2016

KG(CO)
RGA(11/03/2022)