



WEB COPY

Bail Slip

The Petitioner/Accused namely Saravanan S/o.Munusamy was directed to be released on bail as per order of this Court dated 13.04.2016 and made in CrI.MP.No.1314/2016 in CrI.RC.No.601 of 2016.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2022

CORAM

THE HON'BLE Ms. JUSTICE R.N.MANJULA

CrI.R.C.No.601 of 2016

Saravanan

... Petitioner/Accused

Vs.

The State of Tamil Nadu,
Rep by the Inspector of Police,
G 6, Cheyyur Police Station,
Kanchipuram District.

... Respondent/Complainant

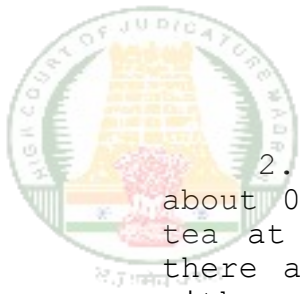
Criminal Revision Case filed under Section 397(1) r/w. 401 of Cr.P.C., to call for the records relating to the judgement dated 21.03.2016 in C.A.No.57 of 2009 on the file of the Additional District and Sessions Court, Chengalpattu, modifying the order in S.C.No.137 of 2009 on the file of the Assistant Sessions Court, Maduranthakam, set aside the same, acquit the accused and allow the above revision.

For Petitioner : Mr.M.Deivanandam

For Respondent : Mr.A.Gopinath
Government Advocate (CrI. Side)

ORDER

This Criminal Revision Case has been preferred challenging the judgment of the learned Additional District and Sessions Judge, dated 21.03.2016 passed in C.A.No.57 of 2009, by which the judgment of the learned Assistant Sessions Judge, Maduranthakam, dated 17.09.2009 passed in S.C.No.137 of 2009, was modified in respect of the sentence alone.



2. The case of the prosecution is that on 21.11.2005 at about 04.00 p.m., when P.W.1 - S.Ramakrishnan/victim was having tea at the tea shop of P.W.5 - Subramaniam, the accused came there and sprinkled chilli powder on his face and attacked him with a knife over his left cheek and ears, right and left side of his abdomen and on his back by telling that he would do away with him and inflicted serious injuries knowing pretty well that would cause the death of the victim and thereby, committed an offence under Section 307 of IPC. Thereafter, the victim was taken to hospital by P.W.2 - Jayaseelan to the Government Medical College Hospital, Chengalpet; P.W.10 - SAR Police went to the hospital and obtained the complaint statement of P.W.1; on the next day at about 3.30 a.m, when P.W.1 was under treatment, he registered a case in Crime No.517 of 2005 for the offence under Section 307 of IPC in Cheyyur Police Station.

2.1 P.W.11 took up the case for investigation, went to the place of occurrence, prepared observation Mahazar and rough sketch in the presence of witnesses; he also examined the witnesses and recorded their statement; thereafter, he arrested the accused on 22.11.2005 at about 1 p.m; he recorded the confession statement of the accused in the presence of the witnesses and recovered M.O.1 - knife on the basis of his confession under seizure mahazar in the presence of witnesses; he also enquired the doctor who registered the Accident Register and the doctor who performed surgery and had also given the wound certificate for P.W.1. After completing his investigation, he filed a charge sheet against the accused for the offence under Section 307 IPC.

3. Thereafter, the case was taken on file by the learned Judicial Magistrate, Maduranthakam in PRC.No.6 of 2006; after furnishing the copies of the charge sheet to the accused and observing all legal mandates, the case was committed to the file of the learned Principal Sessions Judge, Chengalpet and after the case was taken on file, it was assigned to the file of the learned Assistant Sessions Judge, Maduranthakam for trial. When the accused was questioned, he pleaded innocence and claimed to be tried. Hence, the trial was conducted.

4. During the course of the trial, on the side of the prosecution, 11 witnesses were examined as P.W.1 to P.W.11, 8 documents were marked as Exs.P1 to P8 and one material object was marked as M.O.1. When the incriminating materials surfaced in the evidence of the complainant was put to the accused under Section 313 Cr.P.C., the accused denied the same. On the side of the defence, no witness was examined and no document was marked.



5. After concluding the trial and on being satisfied with the materials available on records, the learned trial Judge framed the charges against the accused for the offence under Section 307 IPC and convicted and sentenced him to undergo 7 years of Rigorous Imprisonment and imposed with a fine of Rs.1000/-, in default to undergo 6 months of Rigorous Imprisonment. The accused challenged the above judgment by preferring the appeal in C.A.No.57 of 2009 before the Additional District Sessions Court, Chengalpattu and the same was dismissed. Aggrieved over that, the petitioner/accused has filed this present Revision Case.

6. Heard the learned counsel for the petitioner/accused and the learned Government Advocate (Criminal Side) for the respondent State.

7. The learned counsel for the petitioner submitted that though the motive is attributed against the accused in the complaint given by P.W.1, the same was not spoken in his evidence; P.W.1 could not have seen the person who had attacked him since he has stated that chilli powder was sprinkled on his eyes; there is a delay in registering the F.I.R.; contradictions are found in the evidence of P.W.1 and F.I.R. with regard to time during which the complaint was given; the arrest, confession and recovery are not done in the manner as stated by the prosecution; the doctors' evidence does not correlate to the injuries alleged to have been sustained in the occurrence; the learned trial Judge and the Appellate Judge had given undue credence to the evidence of P.W.1 and found the accused guilty; hence, this Revision Case should be allowed.

8. The learned Government Advocate appearing for the respondent State submitted that the injured witness had spoken clearly about the occurrence and P.W.2 has corroborated; immediately after occurrence, P.W.2 took P.W.1 to the hospital; the evidence of the doctor who wrote the Accident Register, the doctor who performed surgery on P.W.1 and the doctor who had given wound certificate have also corroborated the evidence of P.W.1 as such. The delay in contradiction as pointed out by the learned counsel for the petitioner is not fatal to the case of the prosecution in the circumstances of the case. P.W.1 was attacked so violently to the extent of expelling his intestine and hence, it is right for the Courts below to convict the accused and hence, this Revision Case has to be dismissed.

9. Point for consideration :-

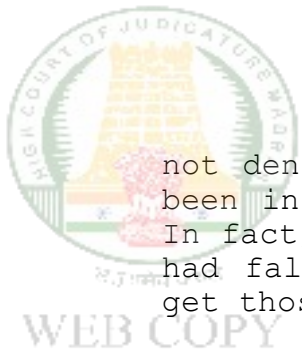


Whether the finding of the guilt of the accused for the offence under Section 307 of IPC by the learned Assistant Sessions Judge, based on the materials available on record is fair and proper?

10. It is seen from the complaint statement given by P.W.1 that he is a fortune teller and the accused had suspicion over him that he had done some black magic and only because of that, his brother Kannan had died 10 years ago and his mother had also died four days before the occurrence. It is further alleged that on the day of occurrence, the accused had attacked P.W.1 only with the previous motive and by telling that he would do away him, but in the evidence of P.W.1, nothing is stated about the motive or the previous enmity the accused is said to have had with P.W.1.

11. By drawing the attention of this Court to the above omission, it is claimed by the learned counsel for the petitioner that the entire case of the prosecution is a false one and the accused was falsely implicated in this case. But the evidence of P.W.1 would show that he has stated clearly as to the identity of the person who had attacked him and also the manner in which the injuries inflicted on him with a knife used on the occurrence; Ex.P4 - wound certificate would also correlate to the injuries sustained by P.W.1 in the occurrence. Though the prosecution had failed to prove the motive as alleged in the complaint, it is equally true that P.W.1 did not had any motive to file a foist case against the accused. Neither the cross-examination of P.W.1 nor in the answers given during the Section 313 Cr.P.C. proceedings, no motive is suggested against P.W.1. so as to implicate the accused falsely in this case.

12. On seeing P.W.1 (injured), P.W.2 rushed to the hospital along with one Vijaykumar. Though the said Vijaykumar who assisted P.W.2 in the hospital turned hostile, the evidence of P.W.2 is found to be supporting the case of the prosecution and there is no reason for the Courts below to reject the evidence of P.W.2. The doctor who had seen P.W.1 immediately after he was brought to the hospital, has registered the Accident Register by listing out the injuries sustained by him and the same was marked as Ex.P3. The injuries listed in Ex.P3 would also coincide with the injuries sustained by P.W.1. P.W.9 - Doctor has stated that since the intestine of P.W.1 got expelled from his stomach, he had performed a surgery on P.W.1 immediately and that P.W.1 was taking treatment as an in-patient for nearly 21 days; even to P.W.8 & P.W.9 / Doctors, P.W.1 has stated that he was attacked with a knife by a person. The Doctor had certified that the injuries sustained by P.W.1 are grievous in nature. There were cut injuries found in the body of P.W.1. The injury inflicted on his stomach was a stab injury. It was



not denied by the petitioner that those injuries could not have been inflicted with knife and in the manner as stated by P.W.1. In fact, when it was suggested to P.W.9 - Doctor that if someone had fallen on an iron rod or a tin sheet from a height, could get those injuries, the Doctor denied the same.

13. So the evidence of the prosecution is sufficient enough to prove that the accused had attacked P.W.1 with a knife and caused grievous injuries on his body. Though it was not proved by the prosecution that the accused had a previous motive against P.W.1 to kill him and thereby, attempted to murder him. It is proved by the prosecution that the accused had attacked P.W.1 and caused grievous injuries. Hence, in my view, the accused ought to have been found guilty for the offence under Section 326 IPC instead of 307 IPC.

In the result, this Criminal Revision Case is partly allowed and the judgment of the learned Additional District and Sessions Judge, Chengalpattu, dated 21.03.2016 passed in C.A.No.57 of 2009 is modified and the accused is found guilty for a lesser offence under Section 326 of IPC and is convicted and sentenced to undergo One Year Rigorous Imprisonment and imposed with a fine of Rs.1,000/-. If the fine amount is already paid by the accused, it need not to be paid again. The trial Court is directed to issue Non-Bailable Warrant to secure the accused and to send him to prison for undergoing the punishment.

Sd/-
Assistant Registrar (CS-II)

//True copy//

Sub Assistant Registrar

Sni

To

- 1.The Additional District and Sessions Judge,
Chengalpattu
2. -do-The Principal Sessions Judge,
Chengalpattu
- 3.The Assistant Sessions Judge,
Maduranthakam.



4. The Judicial Magistrate,
Maduranthakam.

5. -do-Through The Chief Judicial Magistrate,
Chengapattu

6. The Inspector of Police,
Cheyyur Police Station,
Kanchipuram.

7. The Public Prosecutor,
High Court, Madras.

+2cc to Mr.M.Deivanandam, Advocate SR.No.4182

Cr1.R.C.No.601 of 2016

BD(CO)
GMY(23/02/2022)