



BAIL SLIP

The Petitioner/ Accused namely Duraisamy Male aged 45 years S/o. Jadaiyan was directed to be released on bail in and by the order of this Court dated 20.01.2015 and made in MP. No.1/2014 in CrI.R.C.No.1359/2014 on file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2022

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

Criminal Revision Case No.1359 of 2014

Duraisamy

..Revision Petitioner

Versus

State rep. By
The Inspector of Police,
Mathikon Palayam Police Station,
Dharmapuri District.
Crime No.524 of 2009

..Respondent

PRAYER: Criminal Revision Case filed under Sections 397 and 401 of the Code of Criminal Procedure praying to set aside the judgment of the learned Principal Sessions Judge, Dharmapuri, Dharmapuri District made in C.A.No.37 of 2013 dated 10.09.2014 confirming the conviction and sentence passed by the learned Judicial Magistrate No.I, Dharmapuri, Dharmapuri made in C.C.No.68 of 2010 by judgment dated 01.10.2013 convicting the petitioner herein under Section 326 IPC and sentencing him to undergo two years RI and to pay a sum of Rs.3,000/- as fine in default to undergo one week SI.

For Petitioner : Mr.T.R.Ravi

For Respondent : Mr.L.Baskaran,
Government Advocate (Crl.side)



ORDER

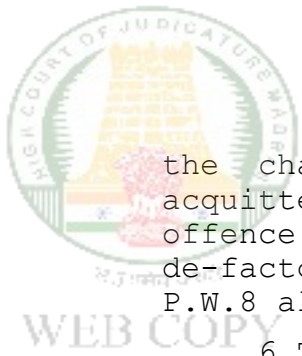
The petitioner has come forward with this Criminal Revision Case challenging the judgment of the learned Principal Sessions Judge, Dharmapuri, Dharmapuri District made in C.A.No.37 of 2013 dated 10.09.2014 confirming the conviction and sentence passed by the learned Judicial Magistrate No.I, Dharmapuri, Dharmapuri made in C.C.No.68 of 2010 by judgment dated 01.10.2013.

2.The revision petitioner is the unsuccessful accused before the Lower Court, who was convicted for the offences under Section 326 IPC with two year rigorous imprisonment and fine of Rs.3,000/- passed by the trial Court, which was confirmed by the 1st appellate Court, against which this Revision is preferred stating that there was a previous enmity between him and the de-facto complainant's family, with regard to land dispute and there was a case in counter in Crime No.525 of 2009, which was registered and the FIR was lodged in the case in hand in Crime No.524 of 2009. On suppressing the fact that the accused also sustained injuries due to the attack made by the defacto-complainant along with others, and thereby, the prosecution has not proved the charges beyond reasonable doubt. Both the Courts below, without appreciating the fact had erroneously convicted the accused under Section 326 IPC and sentenced him to undergo two years rigorous imprisonment and to pay a sum of Rs.3,000/- as fine, in default to undergo one week Simple Imprisonment. Hence he prayed to set aside the conviction passed by the trial Court which was confirmed by the 1st appellate Court in C.A.No.37 of 2013, before the learned Principal Sessions Judge, Dharmapuri.

3.The learned counsel for the revision petitioner submitted that there was a previous enmity between the petitioner family and the de-facto complainant's family. On the day of the alleged occurrence, the de-facto complainant along with others, assaulted the accused and thereby, he sustained injuries and based upon his complaint, counter FIR was lodged against him in Crime No.525 of 2009.

4.But the learned Government Advocate (Crl.Side) appearing for the respondent submitted that the accused had bitten the ear of P.W.1 at the time of alleged occurrence and the same was proved with the help of Doctor's evidence, and so, the trial Court rightly charged him under Section 326 IPC, which was also confirmed by the appellate Court thereby contended that there is no merit in the revision and prayed for dismissal.

5.On a perusal of the records, it reveals that before the trial Court along with this accused, another three persons were charged under Section 294(b) and 326 IPC for A1 and A2 to A4 were charged for the offences under Section 323 IPC and to prove their charge, on the side of the prosecution, P.W.1 to P.W.8 were examined and documents were marked as Ex.P1 to Ex.P7. As



the charges against A2 to A4 were not proved, they were acquitted and the petitioner / accused was charged for the offence under Section 326 IPC based on the evidence of P.W.1 / de-facto complainant / injured and also the evidence of Doctor P.W.8 along with Wound Certificate-Ex.P.7.

6.The case of the prosecution is that at the time of alleged occurrence, this accused went to land belonging to P.W.1 and attacked P.W.1's father. When it was questioned by P.W.1, the accused bitten his ear and torn with his pitch, thereby, he sustained grievous injuries on his right ear and immediately he was admitted in the hospital and a complaint was also given on the same day and FIR was lodged. As per the evidence of P.W.4 eye-witness, the alleged attack was made by this accused and thereby, P.W.1's right ear was torn. Furthermore, the evidence of Doctor-P.W.8 corroborates with the prosecution case and as per the evidence of P.W.1 he had sustained injuries in his right ear and the skin of the ear was torn and the same was grievous in nature and wound certificate was marked as Ex.P.7. About the torn of the ear, the learned trial Judge in his judgment " Paragraph.19" elaborately discussed as follows:

" 19.To have a word about the Anatomy of the Ear, Earlobes average about 2 centimeters long and elongate slightly with age and Earlobes are normally smooth, but occasionally exhibit creases. The Outer ear is called the Pinna and is made of ridged cartilage covered by skin. Auricle, also called Pinna, in human anatomy, the visible portion of the external ear. The auricle in humans is almost rudimentary and generally immobile and lies close to the side of the head. It is composed of a thin plate of yellow fibro cartilage covered by a tight-fitting skin. The external ear cartilage is molded into shape and has well defined hollows, furrows, and ridges that form an irregular shallow funnel. The deepest depression in the auricle, called the concha, leads to the external auditory canal or meatus. The one portion of the auricle that has no cartilage is the lobule, the fleshy lower part of the auricle. The auricle has several small basic muscles that connect it to the skull and scalp. Generally non-functional in human beings, they are capable of limited movement in some people. Although the word "ear" may properly refer to the pinna, this portion of the ear is not vital for hearing. But the pinna helps direct sound through the ear canal to the tympanic membrane (eardrum)."

Therefore, the injury and the outer ear though not vital for the hearing, but the outer ear helps direct sound through the ear tympanic canal membrane ear canal.



7. Hence, even though the hearing was not affected, but the vital portion of the ear got damaged due to the bite made by the accused at the time of the occurrence. Hence, the learned trial Judge convicted him under Section 326 IPC as the injuries are grievous in nature. But the arguments advanced by the revision petitioner that teeth is not a deadly weapon, so the trial Court erroneously charged the accused under Section 326 IPC which reads as follows:

"326. Voluntarily causing grievous hurt by dangerous weapons or means:-

Whoever, except in the case provided for by Section 335, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with (imprisonment for life), or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

8. It is true that the word 'instrument' has not been defined in the IPC, but it is a matter of common knowledge that the 'teeth biting' is either used as a weapon of attack or to defence. Therefore, the human teeth is an instrument as contemplated under Section 324 IPC, and with the help of that, the grievous injuries had been caused to P.W.1 in the present case and hence the accused is rightly charged under Section 326 IPC, which warrants no interference by this Court.

9. The trial Court convicted the accused for two years rigorous imprisonment. But on seeing the facts, it is seen that already, hearing loss is caused to him and there was a dispute between two families with regard to land, and he has no previous case. The Judgment relied on by the learned counsel for the appellant in Criminal Appeal No.536 of 2021 (Special Leave Petition (Crl.) No.5985 of 2016) Surendran Vs. Sub-Inspector of Police dated 30.06.2021, in which, the Hon'ble Supreme Court relied on the judgment in the case of "Prakash Chandra Agnihotri Versus State of M.P., (1990) Supp. SCC 764." which are supporting his submissions. The relevant para of the above judgment in Crl.A.No.536 of 2021 is extracted below:

"9. The judgment of this Court in Prakash Chandra Agnihotri (Supra) as relied by learned counsel for the appellant does support his submissions. In the above case, the accused was convicted and sentenced



WEB COPY

for six months under Section 304A. This Court converted the sentence of imprisonment into fine of Rs.500/-. The Court was of the view that it would be harsh to send the appellant to the jail after 18 years of the occurrence. Following was observed in paragraph 1 of the judgment:-

"1.The Courts below have maintained the conviction of the appellant under Section 304-A Indian Penal Code. We have gone through the judgments of Courts below and we find no infirmity therein. We uphold the conviction. The occurrence took place on February 18, 1972. The appellant has throughout been on bail. He has been sentenced to six months rigorous imprisonment and a fine of Rs.250. We are of the view that it would be rather harsh to send the appellant to jail after 18 years of the occurrence. The ends of justice would be met if the appellant is asked to pay a fine of Rs.2,000/-. The sentence is thus converted to a fine of Rs.2,000/-. On realisation the amount shall be paid to the family of the deceased girl. The amount be deposited with the Trial Court within two months from today and the trial Court shall disburse the same to the parents of the girl and in absence of the parents to the next of kin of the girl. In default of the payment of fine the appellant shall undergo imprisonment for six months."

10. Considering the nature of the injury, this Court is inclined to impose compensation instead of the imprisonment. On considering the nature of the injuries sustained by P.W.1, this Court directs the petitioner /accused to deposit a sum of Rs.40,000/- before the trial Court, which shall be paid to P.W.1 as compensation. The conviction and sentence are modified as above.

11. Accordingly, the revision is disposed of.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

rri



To

1.The Principal Sessions Judge,
Dharmapuri, Dharmapuri District.

2.The Judicial Magistrate No.I,
Dharmapuri.

3.The Chief Judicial Magistrate,
Dharmapuri.

4.The Inspector of Police,
Mathikon Palayam Police Station,
Dharmapuri District.

5.The Superintendent,
Central Prison,
Salem.

6.The Public Prosecutor,
High Court of Madras.

+1cc to Mr.T.R.Ravi, Advocate SR. No.5953

Cr1.R.C.No.1359 of 2014

MT (CO)

PR (17/03/2022)