



BAIL SLIP IN CRL.R.C.No.594 OF 2019

The Petitioners / Accused 1 to 3 namely, (1) Viji @ Vijayaraj, male, aged 39 years, S/o.Rangasamy Pillai, (2)Balamurugan, Male, aged 43 years, S/o.Rangasamy Pillai, (3)Kolanchi, Male, aged 49 years, S/o.Rangasamy Pillai were directed to be released on bail in and by the order of this Court dated 09.07.2019 made in Crl.M.P.No.8024 of 2019 in Crl.R.C.No.594 of 2019.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2022

CORAM :

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

Crl.R.C.No.594 of 2019
and Crl.MP.Nos.8023 & 8025 of 2019

1.Viji @ Vijayaraj

2.Balamurugan

3.Kolanchi

...Petitioner / Accused 1 to 3

Vs.

STATE Rep. by
The Sub Inspector of Police
Kadampuliyur Police Station.
Crime No.376 / 2001

...Respondent / Complainant

PRAYER : Criminal Revision Petition filed under Section 397 and 401 of Cr.P.C., to call for the records culminating in the impugned judgment dated 30.04.2019 passed in C.A.No.39 of 2017 by the I Additional District and Sessions Judge, Cuddalore confirming the judgment dated 22.03.2017 passed in C.C.No.370 of 2009 by the Judicial Magistrate No.II, Panruti, examine the correctness, legality and propriety of the findings made therein, and set aside the same.

For Petitioners : Mr.Arun Anbumani

For Respondent : Mr.Leonard Arul Joseph Selvam
Government Advocate (Crl. Side)



O R D E R

The present revision is preferred by A1 to A3 in C.C.No.370/2009 on the file of the Judicial Magistrate Court No.II, Panruti. The case was registered in Crime No.376/2001 on the file of the respondent-police. All the accused persons were charged of committing an offence under Section 294, 452, 323 & 324 of IPC., Post trial, the trial Court convicted all the three accused for offences under Section 452 IPC., and sentenced them to undergo simple imprisonment for two years and to pay a fine of Rs.1,000/-, in default, one month simple imprisonment. A1 was also convicted for offence under Section 324 IPC and was sentenced to undergo simple imprisonment for one year. In short, A1 to A3 were convicted for offence under Section 452, and in addition A1 was convicted for 324 IPC., and that all the accused were acquitted of other offences.

2. Challenging the same, all the accused preferred C.A.No.39 of 2017 before the I Additional District and Sessions Court, Cuddalore. The learned Additional Sessions Judge vide his judgment dated 30.04.2019, confirmed the conviction of the trial Court, but modified the sentence of all the accused persons, and sentenced them to undergo simple imprisonment for six months for offence under Section 452 IPC and to pay a fine of Rs.1,000/- each, in default to undergo simple imprisonment for one month. And so far as the first accused whose conviction under Section 324 IPC is concerned, he is sentenced to undergo simple imprisonment for three months in terms of 325 Cr.P.C., and that both the sentences are directed to run concurrently,. This revision is directed against the same.

3. The case of the prosecution is as follows :

- On 11.09.2001 at about 9.45 p.m., a certain Siva Chidambaram, an advocate by avocation, (who was examined during trial as P.W.1, and the victim of the offence), heard a noise of some quarrel and came out of his house. There he saw a wordy altercation between a certain Elumalai and A2, and also saw his brother Krishnamurthy (P.W.2) intervening to pacify those involved in the altercation. P.W.1 would then told his brother P.W.2 not to intervene and required him to move away. Thereafter, P.W.1 went inside the house. But enraged by P.W.1's intervention, all the three accused entered the house of P.W.1, with A1 carrying a knife measuring about 10 c.m and A2 and A3 holding a casuarina-log in their hands, and abused P.W.1, and questioned why P.W.1 intervened in the quarrel.
- A1 then tried to stab P.W1 with a knife, which P.W.1 prevented, owing to which he suffered lacerated injury measuring 2 x 1/2 x 1/2 cm., in his left forearm. A2



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with his log is alleged to have assaulted him on his right shoulder, and A3 with the log he carried had assaulted him on his left thigh.

- After assaulting the victim, one of the accused persons have pulled and removed the gold ring and a chain which the victim was wearing and left the place.
- The victim got himself admitted in the hospital on the same day, where he was examined by P.W.11, the doctor, and she gave Ext.P8, wound certificate.
- The next day, P.W.12, the Inspector of Police took Ext.P1, complaint statement from P.W.1 and registered Ext.P9, FIR in Crime No.376/2001 which was registered for offences under Sections 294, 452, 328, 307 & 379 IPC., and then he proceeded to investigate the matter and visited the scene of occurrence, prepared Ext.P10, observation mahazar in the presence of P.W.5 and P.W.8 and rough sketch Ext.P11. Thereafter, he interrogated various witnesses and laid the final report for offences under Sections 294, 452, 323 and 324 IPC.,
- The trial Court then framed charges against all the three accused persons and proceeded to try the matter. During trial, the prosecution examined 12 witnesses, of whom P.W.1 is the victim of the alleged crime. P.W.2 is the brother of P.W.1, and P.W.3 and P.W.4 are stated to be the independent witnesses. P.W.6 is another eye witness, but the relative of P.W.1. When put in the box, all except P.W.1, P.W.2 and P.W.6 have turned hostile.
- So far as the other evidence goes, P.W.11 was the doctor who treated P.W.1. P.W.12, the Inspector of Police testified about the investigation part of the case.

4. The learned counsel for the revision petitioners argued that :

- The case of the prosecution appears illogical. Here is a situation where according to P.W.1, on the date and about the time of occurrence, there was a quarrel in front of his house, and that he came out only to advise his brother P.W.2, who he saw trying to pacify A-1 and a certain Elumalai. Therefore, P.W.1 is far too remotely connected with what was happening between A2 and Elumalai. Now the prosecution has not examined Elumalai. He is a critical witness who may be competent to speak about the incident. According to the prosecution case, since A2 is inimically disposed with such Elumalai, it is only probable that Elumalai alone would speak against A2, if only an occurrence as alleged by the prosecution were true. The Investigating Agency has not even cited Elumalai as witness.
- For an occurrence that had taken place on the previous



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night, P.W.1 had given a complaint after a delay of about 11 hours. It is required to be stated that P.W.1 is a practising advocate, and he ought to have known the significance of giving the complaint promptly to the police. The delay is astonishing.

- Secondly, in narrating the incident in his complaint, P.W.1, helped himself with some freedom to embellish it: He would say that a gold chain and a ring that he was wearing, were stolen by one of the accused persons. However, he was careful enough not to name which among the accused persons has done it. And, later he would alter this, and has stated that the jewellery were not lost. He then tries to explain the same when he stated that he had made a wrong statement in the heat of the moment. This explanation is plainly unbelievable, since P.W.1 would not have been in degree of stress or anxiety, since the complaint was not given immediately after the occurrence, but after several hours while he was in the hospital. Therefore, he had adequate time to comfort himself before he gave Ext.P1, complaint-statement. This implies that whatever stress, even if it were true, that might have been there, it would have evaporated by the time P.W.12 recorded the complaint statement. Therefore, this is not an ordinary mistake, but a deliberate intent to manipulate the real facts.
- That P.W.1 is building a story that never happened can also be inferred from the fact that medical evidence does not support his case. According to P.W.1, A1 tried to assault him with a knife, but when he tried to prevent it, he suffered a lacerated injury measuring $2 \times \frac{1}{2} \times \frac{1}{2}$ cms., in his left forearm. He positively asserts that A2 had assaulted him on his right shoulder and A3 have assaulted him on the left thigh. P.W.11, the doctor however, does not find any injury on the left thigh of P.W1. According to P.W.1, A2 had assaulted him on his right shoulder. Even though, P.W.11, the doctor finds a contusion on the right shoulder, the trial Court finds A2 is not guilty of offence under Section 323 Cr.P.C., since that fact was not adequately proved.
- If the testimony and the inconsistency that P.W.1 brings in aid of the prosecution case is juxtaposed with his brother P.W.2's evidence, he upto an extent parrots the statement of P.W.1, but after a while, he was blissfully ignorant. Here it may be noted that he admits that he did not admit P.W.1 in the hospital. If only P.W.2 was present at the scene of occurrence, it is inconceivable, that he being the brother of



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P.W.1, and was also available at that time of occurrence, would have run to the aid of P.W.1 and would have removed him to the hospital. Therefore, a combined reading of the testimonies of the lawyer which P.W.1 is, and that of his brother P.W.2 together, brings to fore their combined ability for scripting an incident that never had taken place.

- P.W.1 had a brother Thirunavukkarasu, and there are several litigation between Thirunavukkarasu and A2. When confronted on this aspect, P.W.1 would say that he did not know about those litigation, and chose not to deny it. Indeed, during his cross-examination, he would also concede that he had a property, about the middle of which the accused persons also had their property, but proceeded to plea ignorance to the suggestion made by the accused persons that the accused persons were constrained to sell their property to P.W.1's brother since P.W.1 did not provide access to the accused property. It is surprising that P.W.1, an Advocate to emphasise, did not even know what has happened to the property of the accused persons and his own brother. After all it is not his case that he did not have a brother Thirunavukkarasu, nor did he claim that his terms with Thirunavukkarasu was not cordial.
- The occurrence had taken place in the night and admittedly P.W.2 and P.W.3 were not inside the house of P.W.2, but were outside. To show that P.W.2 and P.W.3 could have witnessed the occurrence, if at all happened, some source of light is mandatory. But neither the observation mahazar nor the rough sketch (Ext.P11) produced by P.W.12 show any street light at the relevant place. Secondly, the size of the knife is so small and that it will be extremely difficult to infer that P.W.3 could have seen it.
- It is not necessary in a criminal trial that defense should travel the entire distance to disprove the prosecution case. The evidence on record raises a serious doubt about the quality of the prosecution case, and necessarily its benefit shall go to the revision petitioner.

5. The learned Government Advocate (Criminal Side) on his part argued that:

- The fact that P.W.1 is an advocate has little to do with the quality of investigation, for, a crime is a crime is a crime, no matter who the persons involved are. It may be that P.W.1, P.W.2, P.W.6 and attestors of the observation mahazar have turned hostile, but the person injured in the occurrence has spoken about the



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occurrence.

- Secondly, the witnesses have spoken about facts more than 10 years after the occurrence, and therefore, there may be some lapses in the memory, and the advantage of the same shall not be shifted to benefit the revision petitioners/accused. To the extent, the trial Court has relied on P.W.1, P.W.2 and P.W.3, it has categorically held that all the three accused persons had gone into the house of P.W.1 with A1 holding a knife in his hand.
- So far as the delay in filing the complaint and registration of FIR is concerned, it has to be contextually understood that on suffering an injury, the instant reaction of the injured would be to rush to the hospital and not to the police station. And, hence, the conduct of P.W.1 perfectly fits with ordinary course of human conduct.

He added that the learned Additional Sessions Court was more than charitable to the accused persons when it modified the sentence to a bare six months for Section 452 IPC, and three months for Section 324 IPC.,

6.1 Rival submissions are carefully considered. There are some consistencies, and there are also equal amount of inconsistencies in the case of the prosecution. The consistency-aspect is only about the two injuries which P.W.1 has indicated - one is the lacerated injury in his left forearm, and the other is the contusion injury in his right shoulder. And he specifies in his complaint which he admittedly has given while he was in the hospital to P.W.12, some 11 hours after the occurrence, that A2 was responsible for the contusion injury in the shoulder. But this fact was disbelieved by the trial Court. He also had another injury to his thigh caused by an assault with the casuarina log. But, P.W.11, the doctor did not see any injury on the left thigh of P.W.1.

6.2 Next, the embellishment in the complaint. It is startling. First P.W.1 introduces a case of theft in a complaint given by him one hour and fifteen minutes after the occurrence, but he casually withdraws this accusation later. Here P.W.1 may appear fair, may be on a sudden dawning of enlightenment which might have provoked his conscience to withdraw it, but to make an allegation such as that in the initial stage is not just an embellishment, but a deliberate ploy to deviate the prosecution. Secondly, for registering a complaint, it is not necessary that the Inspector of Police should go all the way to get the complaint. After all it is a cognizable offence, and P.W.2 and P.W.6, both male relatives of P.W.1 were available at the relevant time, and they could have alerted the police. But they did not do so. Thirdly, the



conduct of P.W.2 himself poses a big question mark as to his integrity. After the occurrence, he did not even care to accompany P.W.1 to the hospital and admit him. Inexplicable is his conduct that affects the believability of his evidence. And lastly P.W.1's statement as to his ignorance about certain civil dispute between his brother and A2. What is significant here is that P.W.1 did not deny that there was no such litigation.

7. If all facts have to be collated to the extent the records of this case disclose, there are more than that which meets the eye. An injury to a shoulder or a scratch like lacerated injury in the forearm per se may not be conclusive of the occurrence as the prosecution narrates. Whether the accused persons are involved in it is of greater significance. Here the standard of proof requires greater accuracy. After all, it is the job of the prosecution to prove its case beyond all reasonable doubts.

8. With few critical holes in the prosecution case, it will be too dangerous to conclude that the prosecution, indeed has proved its case beyond all reasonable doubts.

9. In the result, this criminal revision is allowed. The judgment of conviction and sentence passed by the learned Judicial Magistrate No.II, Panruti in C.C.No.370/2009 are set aside. Bail bond executed by the revision petitioners will stand discharged. Fine amount, if any, paid by them shall be refunded. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar

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To:

- 1.The I Additional District and Sessions Judge
Cuddalore.
- 2.The Judicial Magistrate No.II
Panruti.
- 3.(do through) The Chief Judicial Magistrate,
Cuddalore.



4.The Sub Inspector of Police
Kadampuliyur Police Station.

5.The Superintendent,
Central Prison,
Cuddalore.

6.The Public Prosecutor
High Court, Madras.

Copy To

The Section Officer,
Criminal Section,
High Court, Madras.

Cr1.R.C.No.594 of 2019

GPL (CO)
RVM(30/03/2022)