



BAIL SLIP

The Petitioner/Accused viz P.Mathivanan, S/o.Pavadai and Manga @ Alamelu Mangai, W/o.Mathivanan were directed to be released on bail vide order of this Court dated 02.03.2017 and 06.03.2017 made in Crl.MP.No.2521 of 2021 in Crl.RC.No.245 of 2017.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.02.2022

CORAM:

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

Crl.R.C.No.245 of 2017

1. P.Mathivanan
2. Manga @ Alamelu Mangai ... Petitioners
Vs.

The State Represented by
Inspector of Police,
Chidambaram Town Police Station,
Chidambaram.

... Respondent

Prayer: Criminal Revision filed under Sections 397 and 401 Cr.P.C praying to set aside the conviction and sentence imposed in S.C.No.238/2009 dated 06.04.2009 on the file of the Assistant Sessions Court, Chidambaram convicting the petitioners under Sections 294(b) in fine Rs.250/- and 341 IPC in Rs.250/- fine, 307 IPC 7 years Rigorous Imprisonment with fine Rs.1,000/- (fine paid) and confirming the conviction and sentence in Crl.A.No.34/2016 dated 18.01.2017 on the file of the Second Additional District and Sessions Court at Chidambaram.

For Petitioners : Mr.R.Sankarasubbu

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

O R D E R

This Criminal Revision case has been preferred challenging the judgment of the learned Judicial II Additional Sessions Judge, Chidambaram dated 18.01.2017 made in C.A.No.34 of 2016 which confirmed the judgment of the learned Assistant Sessions Judge, Chidambaram dated 06.04.2016 made in S.C.No.238 of 2009.



2. The revision petitioners are the first and second accused before the trial Court. The case against the third accused is said to have been split because of his long abscondence. The case of the prosecution is that on 23.09.2007 at about 6.00 p.m when PW1/Seetharaman was alighting from a private TMT bus at Arasamarathadi bus stop, East Street, Chidambaram, the accused also followed him by getting down from the bus and abused him publicly in filthy language and restrained him from proceeding further. At that time, the accused Kamalakannan came in a cycle and he had casuarina log in his hands. He abused PW1 by stating that he would finish him. In order to execute the common intention of killing PW1, A1 & A2 held PW1 tightly with their hands and A3-Kamalakannan attacked PW1 on his left eyes, left eyebrow, left side of his mouth and at the centre of his head and thereby all the accused have committed the offences punishable under Section 294(b), 341, 325, 307 read with 34 IPC.

3. On the complaint statement given by PW1-Seetharaman at Krishna Hospital, Cuddalore, PW12-Aranganathan, Special Sub Inspector of Police had registered the case in Crime No.490 of 2007 of Chidambaram Town Police Station under Sections 294(b), 341, 323, 307 and 394 IPC and prepared FIR (Ex.P7), went to the place of occurrence and recovered the blood stained clothes of PW1 under Form-95. PW14-Ramalingam, Inspector of Police took up the case for investigation, went to the place of occurrence, inspected and prepared the observation mahazar and rough sketch. He also recovered the casuarina stick and the cycle from the place of occurrence. He sent the Material Objects recovered from the place of occurrence to the Court. Thereafter, he kept the file for the perusal of his Superior. Subsequently, PW15-Narendra Nair, Assistant Commissioner of Police had taken up further investigation as per the order the High Court and continued the same. He once again examined the witnesses already enquired by the previous Investigation Officer and did not find any difference in their statements. He examined the doctor, who gave treatment to the injured and got the wound certificate from him. Since the properties of the injured was not stolen, PW15 deleted the charge under Section 394 IPC and prepared the alteration report (Ex.P9) and sent it to the Court. After completing the investigation, he filed the charge sheet against the accused for the offences under Sections 294(b), 341, 325, 307 read with 34 IPC. After the case was taken on file by the learned Judicial Magistrate-II, Chidambaram in PRC.No.6 of 2009 and after the copies were furnished to the accused and complying all legal mandates, the case was committed to the file of the learned Principal Sessions Judge, Cuddalore. From there, the case was assigned to the file of the learned Assistant Sessions Judge, Chidambaram for trial. On perusal of the records and on being satisfied with the materials available on record, the



learned trial Judge framed the charges against the accused under Sections 294(b), 341 and 307 read with 34 IPC and the accused were questioned. Since the accused 1 and 2 pleaded innocence and claimed to be tried, trial was conducted.

WEB COPY

4. During the course of trial on the side of the prosecution, 15 witnesses were examined as PW1 to PW15 and 9 documents were marked as Exs.P1 to P9 and 8 Material Objections have been marked as M.O.1 to 8. When the incriminating materials found from the prosecution evidence were put to the accused under Section 313 Cr.P.C, they denied the same. On the side of the defence, two witnesses were examined as DW1 and DW2 and 5 documents were marked as Exs.D1 to D5.

5. At the conclusion of the trial and on considering the evidence available on record, the learned trial Judge found the accused 1 and 2 guilty for the offences under Sections 294(b), 341 and 307 read with 34 IPC and convicted and sentenced them as below:-

Rank of the Accused	Charges framed	Findings	Punishment
A1	294(b), 341, 325 and 307 read with 34 IPC	294(b), 341 and 307 read with 34 IPC	(i) To pay a fine of Rs.250/- in default to undergo one month Simple Imprisonment for the offence u/s 294(b) IPC. (ii) To pay a fine of Rs.250/- in default to undergo one month Simple Imprisonment for the offence u/s 341 IPC. (iii) To undergo seven years Rigorous Imprisonment and to pay a fine of Rs.1,000/- in default to undergo Six Months Simple Imprisonment for the offence u/s 307 r/w 34 IPC.



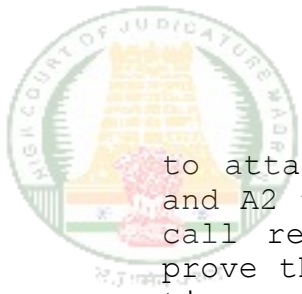
for the respondent submitted that the evidence of PW1 is clear about the presence of the revision petitioners in the place of occurrence. The motive between PW1 and the accused was proved by the evidence of the defence themselves. PW1 has stated in his evidence that even while he was travelling in the same bus along with the revision petitioners, they called their son/A3 through cell phone and asked him to come; the above evidence of PW1 would show that there was meeting of minds between A1 to A3 and hence, it is right for the Court to convict the accused for having the common intention for attempting to murder PW1; since the evidence on record proved the guilt of the accused beyond reasonable doubt, it does not require interference.

10. Point for consideration:

Whether the confirmation of the guilt of the accused for the offences under Sections 294(b), 341 and 307 read with 34 IPC by the learned Appellate Judge is fair and proper?

11. The fact that the de facto complainant Seetharaman/PW1 and the accused 1 to 3 are known to each other was not denied. Even according to the revision petitioners, there was motive between PW1 and the accused in connection with some property transactions. The civil dispute between the accused and PW1 was proved from the defendant side evidence itself. PW1 has stated that only because of the previous motive, he was attacked by the accused. As per the evidence of PW1, on the day of occurrence, he was travelling in a private bus by name TMT and the accused 1 and 2 were also travelling along with him. When PW1 alighted at Arasamarathadi bus stop, the accused 1 and 2 also got down from the bus and followed him. PW1 has stated that even while A1 and A2 were travelling in the bus, they called their son/A3 and asked him to come to the bus stop. When PW1 got down from the bus and proceeded to move further, he was restrained by the accused 1 and 2 and he was abused by them in filthy language.

12. Apart from the evidence of PW1, the evidence of other eye-witnesses namely PW2 to PW5 also corroborate that the evidence of revision petitioners were present at the place of occurrence. Other witnesses have also stated that A1 and A2 held PW1 and he was beaten up by their son/A3. None of the witnesses have stated that the revision petitioners/A1 and A2 had assaulted PW1 with any weapon. Even in the evidence of PW1, it has stated that the accused 1 and 2 called their son/A3 to come to the bus stop. While travelling in a bus, it is quiet natural for anyone to call their relatives and to receive them at bus stop for various reasons like, taking them in a vehicle or receiving the luggages etc. In the case on hand, it is stated by PW1 that A3 was called by his parents/A1 and A2 just



WEB COPY

to attack PW1. It cannot be presumed from one call made by A1 and A2 that A3 was summoned only for attacking PW1. Neither the call records have been seized by the Investigation Officer to prove that a call was made by A1 and A2 at the relevant point of time.

13. But A3, who had exactly arrived at the spot when the bus reached the bus stop, had a Casuarina stick with him. So this might to some extent probablize that he was called by A1 and A2 to the spot to fetch up some quarrel with PW1. However, it cannot be presumed that all the accused had a common intention of either attacking PW1 or attempting to kill him. The evidence of the prosecution witnesses would prove that the first and second accused had abused PW1 in filthy language publicly and also restrained him from moving further. During that time A3 took advantage and attacked PW1 with casuarina stick. It might be possible for A3 to act on his own with casuarina stick in his hands even without forming a common intention with A1 and A2 for attacking PW1. So the evidence of the prosecution witnesses would only prove that A1 and A2 have committed the offences of abusing PW1 with obscene language and unlawfully restraining him from proceeding on his way. Only because of that reason, when PW1 was examined by the doctor/PW10, he stated to him that he was attacked by only one person.

14. Apart from his own statement, the other witnesses/ PW8 & PW9 have also stated that PW1 was attacked by one person. PW1 to PW5 who have stated about the presence of A1 and A2 in their evidence have not stated that A1 to A3 had common intention between themselves. The evidence of PW1 would show that after restraining him in his way A3 voluntarily attacked him. Even when A1 and A2 abused PW1, they have not instructed A3 to attack PW1. PW2 to PW5 have also not stated that before A3 started to attack PW1, he was instructed by A1 and A2 to do so. Though PW1 has stated at the first instance that A3 voluntarily attacked he has stated subsequently that A1 and A2 asked A3 to attack him. On this aspect alone, the evidence of PW1 is self-contradictory. None of the other witnesses have stated that A3 was instructed by A1 and A2 before he started to attack PW1. Hence, the evidence on record would only prove that A1 and A2 have committed the offences punishable under Sections 294(b) and 341 IPC alone and they did not have any common intention with A3 either to attack PW1 or to kill him. Since the Courts below have omitted to appreciate the fine-line difference and held that the accused had acted with the common intention and punished A1 and A2 also for the offence under Sections 307 read with 34 IPC, it calls for interference.

15. In the result, this Criminal Revision is partly allowed



and the judgement of the learned Second Additional District and Sessions Judge at Chidambaram dated 18.01.2017 made in C.A.No.34 of 2016 is modified to the effect that the accused 1 and 2 are found guilty for the offences under Sections 294(b) and 341 IPC and directed them to pay a fine of Rs.250/- in default to undergo one month Simple Imprisonment for the offence u/s 294(b) IPC and to pay a fine of Rs.250/- in default to undergo one month Simple Imprisonment for the offence u/s 341 IPC and the accused 1 and 2 are not guilty for the offence under Section 307 read with 34 IPC and they are acquitted from the said charge.

Sd/-
Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

kmi

To

1. The II Additional District Sessions Judge,
Chidambaram.
2. The Assistant Sessions Judge,
Chidambaram.
3. Do-Through, The Principal Sessions Judge,
Chidambaram.
4. The Inspector of Police,
Chidambaram Town Police Station,
Chidambaram.
5. The Superintendent,
Central Prison, Cuddalore.
6. The Public Prosecutor,
High Court of Madras, Chennai-104.

Copy to: The Section Officer,
Criminal Section, High Court, Madras

+3ccs to Mr.R.Sankara Subbu, Advocate, S.R.Nos.6760, 6945

Cr1.R.C.No.245 of 2017

SSV(CO)
SU(02/03/2022)