



BAIL SLIP

The Petitioners/Accused viz., 1.M.Sivakumar S/o.Sivalingam, 2. Harikesavan, S/o.Arumugam, were released on bail as per the Order of this Court dated 03.03.2017 in CrI.MP.No.3472/2017 in CrI.RC.No.372 of 2017 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.06.2022	PRONOUNCED ON: 16 .06.2022
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CORAM::

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

CRIMINAL REVISION CASE NO.372 OF 2017

1. Sivakumar,
S/o.Sivalingam,
No.132, New Street,
Thuthipet Colony,
Vellore Taluk & District.
2. Harikesavan,
S/o.Arumugam,
No.4/9, Beemaroo Street,
Moonjurpet, Vellore Taluk & District.

... Petitioners/Appellants

/versus/

State by Inspector of Police,
Bagayam Police Station,
Vellore District,
Crime No.323 of 2011

... Respondent

Prayer:

Criminal Revision Case is filed under Sections 397 & 401 of Cr.P.C., to set aside the Judgment of the Trial Court made in S.C.No.132 of 2012 dated 23.04.2015 on the file of the Learned Assistant Sessions Judge-cum-Chief Judicial Magistrate, Vellore, Vellore District as confirmed by the judgment of the learned Additional District Judge (FTC), Vellore made in C.A.No.29 of 2015 dated 23.02.2017 and acquit them from the charges.



WEB COPY

For Petitioner : Mr.L.Mahendran &
Ms.A.Veeramarthini, Legal Aid counsel

For Respondent : Mr.N.S.Suganthan,
Government Advocate (Crl.Side)

O R D E R

This revision petition is filed by the accused 1 & 2 being aggrieved by the concurrent findings of the Courts below holding them guilty for offences under Section 341 and 326 of I.P.C. The trial Court convicted the accused 1 & 2 for offence under Section 341 of I.P.C and sentence to pay fine of Rs.500/- in default one week S.I also convicted them for offence under Section 326 and sentenced to undergo 3 years R.I and to pay fine of Rs.1000/- in default one month S.I.

2. The gist of the prosecution case as unfold during the course of investigation is that the defacto complainant T.C.Rajmohan and the accused Harikesavan who is the 2nd revision petitioner herein were partners in finance business. There was some dispute in managing the business. Therefore, due to the said enmity, on 30.05.2011 at about 8.45 p.m., when the defacto complainant T.C.Rajmohan was returning to his home in the self driven car, he was voluntarily restrained by four persons near lake bund of Thuthipet Village, near his residence. When the defacto complainant get down from the car, the 2nd accused caught hold of his shirt and slapped on his cheek. The 2nd accused took a stone and thrown on the left leg causing fractured injury. While throwing the stone, he also utter 'you get lost'. Charges were framed against them under Sections 341 and 307 of I.P.C.

3. To prove the charges, the prosecution examined 16 witnesses and marked 16 exhibits and produced 1 material object.

4. The delay in filing F.I.R, while the complaint is against 4 persons only two were prosecuted, contradictions between P.W.1 to P.W.4 were pointed by the defence for acquittal. However, the Trial Court, on appreciating the evidence held that the prosecution has proved the case beyond doubt in respect of charge under Section 341 of I.P.C. Insofar as charge under Section 307 of I.P.C., it held that there is no intention of causing death and likelihood of causing death, therefore, offence under Section 307 of I.P.C, is not made out. Only offence under Section 326 of I.P.C, is made out.



5. The Trial Court, on considering the fact that, soon after the incident the victim was taken to the hospital he become unconscious. Therefore, Manokaran (P.W.14), Sub-Inspector, who went to the C.M.C hospital on receiving the intimation, could not record the statement of the victim, F.I.R was therefore not registered. Only on 03.06.2011, when the injured victim regained his conscious his statement was recorded and F.I.R in Crime No.323 of 2011 was registered. Later, on recording the further statement of the victim, charges were altered. Since the delay in registered the F.I.R duly explained by P.W.14/Manokaran, same cannot be a fact adverse to the prosecution.

6. Regarding embellishment in the statements of the victim witness, the Trial Court disbelieved the witness regarding snatching of two phones and cash of Rs.1 lakh by the accused persons. However, believed the statement of witnesses in respect of other allegations and has held accused 1 & 2 are found guilty of the offences under Section 341 of I.P.C and Section 326 of I.P.C

7. On appeal, the Learned Additional District Sessions Judge, Fast Track Court, Vellore, confirmed the judgment of the Trial Court.

8. The present revision petition is filed on the ground that the reasoning given for the delay in registering the F.I.R is untenable and contrary to the evidence of prosecution witnesses P.W.2/Kajenthiran & P.W.3/Vimal Raj. These two witnesses have specifically stated that on the early hours of 31.05.2011, the respondent police came to the C.M.C Hospital, Vellore, to make enquiry. Kajenthiran/P.W.2 had specifically stated that, soon after the incident, the injured witness P.W.1/T.C.Rajmohan, narrated the incident to him and named the accused persons as the assailants.

9. Therefore, when the respondent police had information about the cognizable offence, the police ought to have registered the F.I.R and should not have awaited for the injured witness to regain conscious to record his statement. Setting criminal law into motion by registering F.I.R does not dependent upon the consciousness of the injured witness. Therefore, the reasoning given by the Courts below to justify the delay is not inconsonance with the provisions of the Cr.P.C., which mandate the law enforcing agency to register the F.I.R, on receipt of the information about any cognizable



offence through any source. Further, pointing out that, in the F.I.R, the injured had stated four persons were involved in the offence. Whereas, the Investigating Officer had not made any investigation regarding the other two unknown persons. The F.I.R does not say anything about snatching away of two cellphones and cash of Rs.1 lakh from the injured witness. As embellishment the further statement of P.W.1 has been recorded to add, on 30.05.2011, at 8.45 p.m., the accused persons, after causing injury to P.W.1/Rajmohan also snatched away two cell phones and cash of Rs.1 lakhs. The prosecution witnesses and the Investigating Officer have not spoken about these facts. This would clearly indicate that the injured victim had come out with an imaginary complaint and the prosecution has helped him by registering the F.I.R belatedly.

10. The Learned Counsel for the revision petitioner submitted that the alleged incident taken place on 30.05.2011 at about 8.45 p.m. The injured gone to the Government Hospital, Adukkamparai and thereafter, taken to C.M.C Hospital, Vellore. P.W.15, the doctor who treated the victim had deposed that the victim came to C.M.C Hospital, Vellore, on 31.05.2011 at early hours of 1.20 hours. P.W.15 has also deposed that, when he saw the patient, he was conscious. P.W.2/Kajenthiran, relative of the injured defacto complainant had categorically stated that, he accompanied the injured person to the hospital and the victim become unconscious only on the next day at about 7.00 a.m., just before, he was taken to operation theatre. He has further deposed that the victim told him about the assailants and the manner in which he was attacked. The respondent police came to the C.M.C Hospital, Vellore, got his signature and also the signatures of Duraisamy (P.W.4), Annamalai (P.W.8) and Vimal Raj (P.W.3).

11. Pointing out these portions of the deposition, the Learned Counsel appearing for the petitioner submitted that there are ample evidence to show that P.W.1/Rajmohan was conscious till 7.00 a.m., of the next day and he disclosed about the incident to P.W.2/Kajenthiran. While so, there is no reason for registering the F.I.R belatedly after 5 days.

12. Pointing out the fact that P.W.3/Vimalraj, in his evidence admits that the 1st accused was accompanying the injured to the hospital and was with them all along till the injured was admitted in the C.M.C Hospital, Vellore and taken for surgery on the next day. Submitted that, if really Al/Sivakumar, was the assailant and the victim had informed it to P.W.2, then P.W.2 could have informed the police who visited the hospital soon



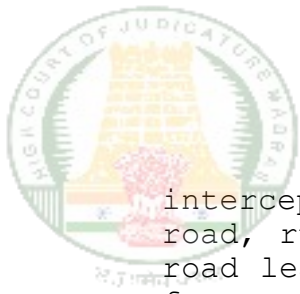
after, P.W.1 was admitted in the hospital. Therefore prosecution has failed to explain, why A1 was not arrested when he was in the hospital along with P.W.2, P.W.3 and P.W.8, when the P.W.1 was taken to the hospital and admitted in the hospital, in spite of the fact that, P.W.1 has named his assailants A1 to P.W.2 and P.W.3.

13. The Learned Counsel for the revision petitioners further submitted that case of the prosecution is highly doubtful it bristles with embellishment of fact. The Investigating Officer has badly failed to conduct the investigation properly and find out the real assailants. His inaction and failure to identify the four persons who alleged to have been restrained the car of P.W.1 and registration of belated F.I.R to fix the present revision petitioner as accused are very serious lapse but not been taken note by the Courts below.

14. The Courts below has also failed to appreciate the fact that the witnesses for recovery of M.O.1 had turned hostile and there is no proof the injury sustained by P.W.1 was caused due to throwing stone/M.O.1. Further, as per P.W.1/Rajmohan, A2 took the stone (M.O.1) and thrown it on his leg causing fractured injury. This witness has also said that the weight of the stone will be around 40kg. It is a fact that, the A2/Harikesavan, has lost three of his left hand fingers. He had only two fingers in his left hand and he could not lift heavy objects like M.O.1

15. The Learned Government Advocate (Crl.Side) for the respondent submitted that the quality of testimony to be taken into consideration and not the quantity. In this case, the prosecution has proved the charges against the accused persons through the injured witness and medical evidence. The delay in registering the F.I.R has also been properly explained and accepted by the Courts below. Therefore, at the stage of revision, the finding of fact cannot be questioned since there is no perversity in the order of the Courts below. Hence, pray for confirmation of the judgment and dismissal of the revision.

16. Heard the Learned Counsel for the revision petitioners and the Learned Government Advocate (Crl.Side) for the respondent. Records perused.



17. The case of the prosecution is that, four persons intercepted the car of P.W.1 on 30.05.2011 at 8.45p.m., on the road, running along the lake bund of Thuthipet Village. The said road leads to Thuthipet Village where P.W.1 was residing. Out of four persons, there is specific overt act attributed to two of them. Since these two accused persons who are the revision petitioners herein are residence of the same village, they both are known to P.W.1 and other prosecution witnesses, who are relatives of P.W.1. The further case of prosecution is that after sustaining fracture, the victim was able to drive his car with one leg and reached the home and took the help of P.W.2, P.W.3 and P.W.4 to get admitted in the Hospital. First the P.W.1 was taken to Government Hospital, Adukkamparai and thereafter, to C.M.C Hospital, Vellore. The Investigating Officer has not collected any evidence to prove that the victim was first taken to the Government Hospital, Adukkamparai. It is admitted by P.W.2 that, the respondent police station is located between Government Hospital, Adukkamparai and C.M.C, Hospital Vellore. But none of the relatives or nearby public had informed the matter to the police. The fact of this incident had come to the notice of the respondent police on receiving intimation from Vellore, C.M.C. Hospital. The evidence of P.W.14 and the medical records indicate that P.W.1 was admitted in C.M.C, Hospital, Vellore, on 31.05.2011, at about 1.20 hours. The victim as well as P.W.2 & P.W.3 had deposed that after sustaining injury, the victim drove his car and came to the house of P.W.2., which is about 1 ½ km from the scene of occurrence. P.W.1 has also deposed, in his chief-examination that, he informed his junior paternal uncle Kajenthiran that, he was attacked by the petitioners herein. But, these fact never been brought to the light till the F.I.R. was registered 5 days after the occurrence. In any event, P.W.2 and P.W.3 are only hearsay witnesses. The injured victim had identified the accused persons as the assailants and they are not strangers to the witness. They are his own villagers and known acquaintance. Strangely till the recording of P.W.1 further statement on 12.06.2011 facts of snatching away his cell phones, jewels and cash not spoken by any witness and this embellished version of P.W.1 is disbelieved by the Courts below for lack of corroboration.

18. For the sole reason that P.W.1 who lost his conscious and regained only on 03.06.2011 and even on that day, he was not fully conscious. The Courts below erred in believing the version of P.W.1 who had given statements in piecemeal improvising his case stage by stage and not been supported by any other corroborative evidence.



19. The Courts below has failed to remember the fact that the best evidence in this case will be the testimony of the injured victim. The other witnesses namely P.W.2, P.W.3, P.W.5 and P.W.8 are only hearsay witnesses. If the evidence of P.W.14 is to be believed that, when he visited the hospital, the victim was unconscious, then the evidence of P.W.2 & P.W.3 claiming P.W.1 narrated to them about the incident and the name of the assailants has to be rejected out rightly.

20. The reason stated by P.W.14 for not registering the F.I.R soon after he confirmed the intimation receipt from the police has to be viewed as a serious lacuna on the part of the prosecution. Since, it has given room for improvising. In any event, the case of the prosecution through P.W.1 has been improvised slowly and has culminated in prosecuting only two persons for offences under Section 341 and 307 of I.P.C., without any reference to the other two unknown persons whom according to F.I.R intercepted the vehicle of the informant P.W.1 and one among them also allegedly took the stone from A2 and thrown it on his leg. The untenable reason for inordinate delay in registering the F.I.R, failure to prove recovery of the stone marked as M.O.1, failure to identify two other accused and the possible doubt created by the defence about the capacity of A2/2nd petitioner to lift M.O.1(stone) with his deformed hand coupled with the embellished version of P.W.1 regarding the incident of robbing of cell phones, jewels, cash and rings, which are not supported by any piece of evidence renders the finding of the Courts below perverse and made without proper appreciation of evidence. Therefore, this Court holds that the judgment of the Courts below and render without proper application of mind and law.

21. Accordingly, this Criminal Revision Petition is allowed. The judgment of the Additional District Judge, Fast Track Court, Vellore is set aside. As a result, the order of conviction and sentence imposed by the Court below are set aside. The petitioners herein are set at liberty. Bail Bond executed if any, shall stand cancelled.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

bsm



To

1. The Assistant Sessions Judge-
cum-Chief Judicial Magistrate, Vellore.
2. The Inspector of Police,
Bagayam Police Station, Vellore District.
3. The Additional District Judge (FTC)
Vellore.
4. The Public Prosecutor, High Court, Madras.
5. The Judicial Magistrate No.I,
Vellore, Vellore District.
6. The Chief Judicial Magistrate,
Vellore District.
7. The Superintendent,
Central Prison,
Vellore.

Copy To

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

+1cc to Mr.L.Mahendran, Advocate, S.R.No.35758
+2ccs to Ms.A.Veeramarthini, Advocate, S.R.No.35997

Cr1.R.C.No.372 of 2017

KV(CO)
PM/04/07/2022