



BAIL SLIP

The Petitioner/1st Accused namely Tamilarasan aged 29 years S/o.Thangavel was directed to be released on bail in and by order of this court dated 22.03.2017 made in Crl.M.P.No.4329/2017 in Crl.R.C.No.482/2017 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.04.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Orders Reserved On 21.03.2022	Orders Pronounced On 07.04.2022
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Crl.R.C.No.482 of 2017

Tamilarasan

...Petitioner/1st Accused

Vs.

State rep. by
Inspector of Police,
Kodumudi Police Station,
Erode.
[Crime No.92 of 2015]

...Respondent/Complainant

PRAYER: Criminal Revision Petition filed under Sections 397 r/w 401 of Criminal Procedure Code, to call for the records on the file of the learned II Additional District and Sessions Judge, Erode in Crl.A.No.141 of 2016 by judgment dated 05.01.2017 partly confirming the judgment and sentence passed by the II Additional Assistant Sessions Judge, Erode in S.C.No.140 of 2015 dated 28.07.2016 in erroneously convicted the petitioner herein under Section 325 IPC and sentencing him to 3 years Rigorous imprisonment and fine of Rs.1,000/- default sentence of 3 months Rigorous imprisonment.



For Petitioner : Mr.M.Saravanakumar

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor

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ORDER

The petitioner was convicted by the learned II Additional Assistant Sessions Judge, Erode and imposed a fine of Rs.500/-, in default to undergo three months Simple Imprisonment for offence under Section 294(b) IPC and to undergo three years Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default to undergo six months simple imprisonment for offence under Section 325 IPC, by judgment dated 28.07.2016 in S.C.No.140 of 2015. As against the judgment of the trial Court, an appeal was preferred by the petitioner in C.A.No.141 of 2016 before the learned II Additional District Sessions Judge, Erode/lower appellate Court. The lower appellate Court, by judgment, dated 05.01.2017 partly allowed the appeal by acquitting the petitioner for the offence under Section 294(b) IPC and confirming the conviction and sentence for the offence under Section 325 IPC. Against which, the present Criminal Revision Petition is filed.

2.The gist of the case is that the defacto complainant/P.W.1, Jayaraj was doing small time business of selling plastic vessels in his TVS XL Super and he used to travel various places in Erode District. On 13.03.2015, when he was near Kodumudi selling the items, at about 5.00 p.m., his vehicle got repaired, hence he gave the vehicle for service with P.W.5/Senthil Kumar, a two wheeler mechanic, he paid Rs.1,400/- for repair and retained Rs.100/- for his own use. Thereafter, using the same P.W.1 bought a brandy bottle and was consuming the same at Salaipudur Sandhai Thida Kazhivu Park. At that time, the petitioner along with one Sekar/A2, his uncle, both were already in a drunken state, enquired the defacto complainant/P.W.1 on his presence in the Sandhai, the defacto complainant explained that he is from Erode, his vehicle got repaired and that is why he is there. The accused demanded the defacto complainant to purchase brandy for them, assaulted him using the sticks brutally, left him there and went home. On the next day morning, P.W.3, watchman of Salaipudur Sandhai and P.W.4, Municipal Staff found P.W.1 in an injured state, informed, 108 Ambulance, who took him to Government Hospital, Kodumudi, where P.W.7, Casualty Doctor examined him, found contusions and grievous injuries referred him to General Hospital, Erode, where P.W.8 examined him. Thereafter, P.W.1 got admitted in Sri Vijaiah Trauma Care Hospital, Erode, took treatment as inpatient and later discharged. P.W.7 informed the Police,



P.W.11/Special Sub-Inspector of Police came to the Hospital, recorded the statement of P.W.1, on receipt of the complaint registered a case under Sections 294(b), 324 and 506(ii) IPC. P.W.11 visited the scene of occurrence, prepared observation mahazar, rough sketch and examined the witnesses present in the scene of occurrence. P.W.12 conducted further investigation, thereafter altered the offence under Sections 294, 393 r/w. 397, 506(ii) IPC and charge sheet filed.

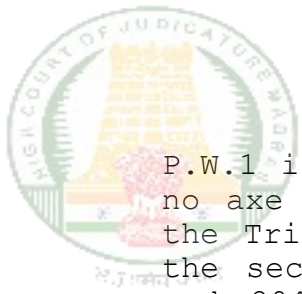
3.Before the Trial Court, P.W.1 to P.W.12 were examined and Ex.P.1 to Ex.P19 were marked. During investigation, A1 and A2 were arrested. Based on the confession of A1, M.O.1 to M.O.3 recovered. On the side of defence, Ex.D1 marked, on conclusion of the trial, the Trial Court convicted the petitioner which was modified and conviction was sustained by the Lower Appellate Court as stated above.

4.The contention of the petitioner is that the Trial Court on its own altered the section and convicted the petitioner under Section 325 IPC without putting the accused on notice on the alteration of section. In this case, P.W.1 admits that he was drunk, thereafter a quarrel arose between the defacto complainant and the accused. Further, before P.W.7, Casualty Doctor, the defacto complainant informed that three persons attacked which is recorded in Ex.P7/Accident Register, but nobody knows as to what happened to the third person, the case projected as though the petitioner along with another accused assaulted the victim. It is further submitted that P.W.2, wife of P.W.1 is only a hearsay witness, who came to the hospital after coming to know about her husband being injured. P.W.3 and P.W.4 the watchman of Sandhai and Municipal staff, were projected as eye witness to the occurrence, their presence in the scene of occurrence is highly doubtful. It is admitted that at the time of occurrence, the place was dark without light, both P.W.3 and P.W.4 state that they heard commotion, went near the Sandhai gate where they saw two persons attacking and assaulting P.W.1. It is further stated that both P.W.3 and P.W.4 due to fear for life, gone back and only on the next day, when P.W.3 opened the gate, found P.W.1 lying with injuries and thereafter only informed 108 Ambulance. Their presence and witnessing the assault on the previous day night is highly artificial which is not a normal human conduct. P.W.5 and P.W.6 are the witnesses to the observation mahazar and rough sketch, in whose presence M.O.1 to M.O.3 recovered. The recovery itself is highly doubtful. Further, P.W.11, Special Sub-Inspector of Police states that while he was in the scene of occurrence, he saw the first accused standing there, A1 was arrested and on his confession, the other accused was also arrested. The arrest and confession appears to be highly artificial.



5. It is further submitted that P.W.7, Casualty Doctor issued Accident Register/Ex.P7 records that three persons assaulted P.W.1, thereafter, P.W.1 against the medical advice of Doctor at Government Hospital, Erode got admitted himself in a private hospital, Sri Vijaiah Trauma Care Hospital, Erode. Further, P.W.1 admits that he is a stranger to that area, due to repair of his vehicle he stayed there, in such circumstances, naming the petitioner and the other accused in the complaint cause serious doubt about the veracity, truthfulness of the complaint. It is further submitted that P.W.3 and P.W.4 admit that there was no proper lighting in the area, they saw the commotion and beating using the mobile phone light. Further, the Court below convicted the petitioner merely on presumption not based on any tangible evidence. Hence, the petitioner prayed for setting aside the order passed by the Courts below.

6. The learned Additional Public Prosecutor submitted that in this case, P.W.1 hails from Erode, a stranger to Kodumudi area, who came there in connection with his business, since his two wheeler got repaired he stayed there and handed over the vehicle to P.W.5, a two wheeler mechanic. Thereafter, P.W.1 purchased a brandy, consuming the same near Salaipudur Sandhai Thida Kazhivu Park, A1 and A2 who were already in an inebriated condition demanded him to purchase a brandy for them, when P.W.1 replied that he had no money, A1 and A2 took the sticks, M.O.1 and M.O.2 beaten him black and blue all over his body. P.W.1 sustained grievous injuries with contusions, fracture on his hand, legs, face and also on the head and he was left there. P.W.1 was moaning with pain, nobody came to his rescue, P.W.3 and P.W.4 witnessed the commotion and fight but in fear for their life, left the place and on the next day morning found P.W.1 in an injured condition suffering in pain, immediately they took P.W.1 to the hospital. P.W.7, Casualty Doctor attended P.W.1, examined him and issued Accident Register/Ex.P7, on finding that there are grievous injuries, contusions and fracture, he needed x-ray and scanning, P.W.1 was referred to Government Hospital, Erode. By that time, P.W.2, wife of P.W.1 was informed about the incident, she came there, took P.W.1 and got admitted him in a Private Hospital in Sri Vijaiah Trauma Care Hospital, Erode. P.W.10 is the Doctor who treated P.W.1 and issued wound certificate/Ex.P9, x-ray/Ex.P10, CT scan report/Ex.P11 and discharge summary/Ex.P12. He further submitted that from the medical records, it is seen that P.W.1 was grievously injured all over the body, fracture confirmed on both the legs with 7 pieces of Tibia and 3 pieces of fibula, CT scan confirms that there was thin subdural haemorrhage at the bilateral parietooccipital region and there was also nasal bone fracture on both sides. Thus, P.W.1 got admitted on 14.03.2015, surgery conducted on 16.03.2015, he was discharged from the hospital on 26.03.2015 with instructions to periodically come for review.



P.W.1 is totally a stranger to the Kodumudi area and he has got no axe to grind against A1 and A2. He further submitted that the Trial Court considering the evidence and materials, altered the section and convicted the petitioner/A1 under Sections 325 and 294(b) IPC, which is perfectly in order and further the Lower Appellate Court independently on assessment of evidence and materials acquitted the petitioner under Section 294(b) IPC and convicted him under Section 325 IPC, further A2 who is a maternal uncle of A1 not preferred any appeal and undergone his sentence. He further submitted that the points raised by the petitioner were already decided by the Courts below. Hence, he prayed for dismissal of the revision petition.

7. Considering the submissions made and on perusal of the materials placed on record, it is seen that in this case P.W.1 hails from Erode, who is a small time trader making his livelihood by selling plastic and household items carrying it in his TVS XL Super, on 13.03.2015, when he was selling his articles near Kodumudi area, at about 5.00 p.m. his vehicle broke down and became immobilised, thereafter he gave the vehicle to P.W.5, a two wheeler mechanic, who charged Rs.1,500/-, for which P.W.1 paid Rs.1,400/- and the balance Rs.100/- he kept for himself. Thereafter, he purchased a brandy for himself, when he was consuming the same at Salaipudur Sandhai Thida Kazhivu Park, A1 and A2 who were already in an inebriated condition demanded P.W.1 to buy them a brandy and assaulted him in black and blue using M.O.1 and M.O.2. On the next day morning, P.W.3 and P.W.4 finding P.W.1 moaning with pain due to injuries, immediately took him by 108 Ambulance to Kodumudi Government Hospital, where P.W.7 examined him, found injuries to be grievous in nature, referred him to Government Hospital at Erode, where P.W.8 examined him and thereafter, he got admitted in a private hospital at Sri Vijaiah Trauma Care Hospital, Erode. P.W.10 examined him, he undergone various tests, x-ray, CT scan, surgery was conducted and he was in the hospital as inpatient for 12 days. Fracture was found all over the body including vital parts of the body like head, nose, etc. The injuries confirm that P.W.1 was brutally attacked by A1 and A2. P.W.1 is a stranger, got nothing against A1 and A2, his evidence is natural, he is an injured witness and there is no reason to doubt the veracity of the complaint. The evidence of P.W.1/victim clearly narrate about the attack, injuries sustained, the Doctor confirms the same and the medical evidence are also in confirmity to the evidence of P.W.1. Thus, this Court finds that the Courts below had rightly convicted the accused. In view of the same, this Court finds no reason to interfere with the judgment of the Courts below.

8. In the result, the judgment, dated 28.07.2016 in S.C.No.140 of 2015, passed by the learned II Additional



Assistant Judge, Erode which was partly allowed by the judgment dated 05.01.2017 passed by the learned II Additional District and Sessions Judge, Erode in C.A.No.141 of 2016 are hereby confirmed. Accordingly, this Criminal Revision Petition is dismissed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

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To

1. The II Additional District and Sessions Judge,
Erode.
2. The II Additional Assistant Sessions Judge,
Erode.
3. The District Munsif Cum Judicial Magistrate,
Kudumudi.
4. The Chief Judicial Magistrate, (For Information)
Erode.
5. The Inspector of Police,
Kodumudi Police Station,
Erode.
6. The Public Prosecutor,
High Court, Madras.

Copy To

The Section Officer,
Criminal Section,
High Court,
Madras

+1cc to Mr.M.Saravana Kumar, Advocate, S.R.No.23985 [09/06/2022]

Cr1.R.C.No.482 of 2017

GPL(CO)
RGA(20/04/2022)