



Bail Slip

The Appellants herein/Accused, namely Gowtham Raj, S/o.Jothi Baskar, 2) Arun, S/o.Ashok, were directed to be released on bail as per order of this Court dated 29.06.2017 made in CrI.M.P.No.7966 & 7968 of 2017 in CrI.R.C.No.858 of 2017.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.04.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.R.C.No.858 of 2017

1.Gowtham Raj
2.Arun

... Petitioners/Accused

Vs.

The State rep. by
Inspector of Police,
F5 Choolamedu Police Station,
Chennai.
[Crime No.1459 of 2015]

... Respondent/Complainant

PRAYER: Criminal Revision Petition filed under Sections 397 r/w. 401 of Criminal Procedure Code, to call for the records pertaining to the judgment and sentence dated 27.04.2017 passed in CrI.A.No.265 of 2016 by the learned XIX Additional Sessions Judge, Chennai confirming the judgment and sentence dated 05.10.2016 passed by the learned XVII Metropolitan Magistrate, Saidapet, Chennai in C.C.No.3260 of 2015 convicting the petitioner under Sections 341, 294(b), 326, 506(ii) IPC and acquit the petitioners from all charges.

For Petitioners: Mr.K.V.Shanmuganathan

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor



ORDER

The petitioners who are accused in C.C.No.3260 of 2015 was convicted by the learned XVII Metropolitan Magistrate, Saidapet, Chennai by judgment dated 05.10.2016 for the offence under Section 341 IPC and sentenced them to undergo one month simple imprisonment and to pay a fine of Rs.500/- each, in default to undergo one month simple imprisonment, under Section 294(b) IPC sentenced them to undergo three months simple imprisonment and to pay a fine of Rs.1,000/- each, in default to undergo one month simple imprisonment, under Section 326 IPC sentenced them to under one year simple imprisonment and to pay a fine of Rs.1,000/- each, in default to undergo one month simple imprisonment, under Section 506(ii) IPC sentenced them to undergo three months simple imprisonment and to pay a fine of Rs.1,000/- each, in default to undergo one month simple imprisonment. Against which, the petitioners preferred an appeal before the Sessions Court in C.A.No.265 of 2016. The learned XIX Additional Sessions Judge, City Civil Court, Chennai by judgment dated 27.04.2017 dismissed the appeal confirming the conviction and sentence passed by the Trial Court. Against which, the present revision petition is filed.

2.The gist of the complaint is that the defacto complainant/P.W.1 was running a courier service in the name of Airflight International Courier service at Choolaimedu and he was also having a rice mill at Redhills. The father of the first petitioner/A1 was employed in the rice mill of P.W.1. and there was some dispute in payment which was questioned by the first petitioner. On 21.04.2015, at about 4.30 p.m. When the defacto complainant parked his car, walking towards his courier office, at that time, A1 and A2 restrained the defacto complainant, abused him, threatened him and assaulted using the knife by indiscriminately cutting him. On hearing the commotion and noise, the employees of the defacto complainant, namely, P.W.2 to P.W.4 rushed out and on seeing them, A1 and A2 fled away from the place of occurrence. Thereafter, P.W.2 to P.W.4 took the defacto complainant in an Auto to Sivasakthi Nursing Home, where he took treatment as inpatient. P.W.7/Doctor administered sutures and issued wound certificate/Ex.P4 stating that the injuries are serious in nature. P.W.8/Investigating Officer on receipt of information, went to the Hospital, received the complaint from P.W.1 and registered FIR/Ex.P6. Thereafter, P.W.8 visited the scene of occurrence, prepared observation mahazar, rough sketch in the presence of P.W.5 and P.W.6, enquired the witnesses in the scene of occurrence and thereafter arrested the accused. On the confession of A1, M.O.1/knife was recovered and thereafter charge sheet was filed before the Trial Court. During the trial, P.W.1 to P.W.9 were examined, Ex.P1 to P11 and M.O.1 were marked. On conclusion of



5. Alternatively, it is submitted that P.W.1 is the uncle of the first petitioner/A1 and closely related, at the time of occurrence both the petitioners were of teens aged 21 years, now the first petitioner recently got married, his wife is on the family way, the second petitioner completed his education and is employed, due to the pendency of the above case, his employment is greatly affected. Considering all these factors and also the family relationship along with the intervention of elders in the family, the issue got resolved to the extent that the petitioners can be let off recording the period already undergone.

6. The learned Additional Public Prosecutor submitted that in this case P.W.1 was brutally attacked in the public road. On 21.04.2015 at about 4.30 p.m., both the petitioners using the knife indiscriminately cut and attacked P.W.1, due to which P.W.1 sustained seven cut injuries on his head, 4th and 5th finger in his right hand got fractures, sustained fracture below his left knee and he also fainted due to the attack. On hearing the commotion, P.W.2 to P.W.4 who were inside the office, rushed out, on seeing them the accused fled away from the scene of occurrence and P.W.2 took P.W.1 to the hospital in an Auto. P.W.7/Doctor administered sutures and P.W.1 took treatment as inpatient for 11 days. P.W.5 and P.W.6 are the witnesses for observation mahazar and rough sketch. P.W.7/Doctor, who treated P.W.1 and through him wound certificate/Ex.P4 and x-ray/Ex.P5 were marked. P.W.8, who is the witness for the arrest and confession not supported the case of the prosecution, from the confession of the first petitioner, M.O.1/knife was recovered. P.W.9, on receipt of information visited the hospital, registered the case, thereafter visited the scene of occurrence, prepared observation mahazar and rough sketch, recorded the statement of witnesses, arrested the accused and thereafter, filed charge sheet in this case. In the Trial Court, except P.W.8 all other witnesses supported the case of the prosecution. The Trial Court on the evidence of witnesses, more particularly, the injured witness/P.W.1, which corroborate with the medical evidence, P.W.7/Doctor confirms the same. Hence, the Trial Court convicted the petitioners, confirmed by the Lower Appellate Court. He fairly submitted that the defacto complainant is none other than uncle of the first petitioner, both the defacto complainant and the first petitioner appeared before this Court filed an affidavit, confirming the defacto complainant, compromise arrived between them, the defacto complainant forgiven the petitioners who are at the young age without knowing the consequences, for a family dispute taken irrational extreme step and now repenting at the intervention of the family members and also considering the future of the petitioners, the defacto complainant filed an affidavit stating



that he has no objection for reduction of sentence imposed on the petitioners.

7. Considering the submissions made and on perusal of the materials placed before this Court, it is seen that the first petitioner attacked his uncle P.W.1 over a family dispute. P.W.1 was attacked in the broad day light in a public place, near his courier office, P.W.1 sustained injury on his head and on his left knee. Thereafter, he fell down, immediately he was taken to the hospital by P.W.2. P.W.7/Doctor confirm the same, from the hospital, information was sent to P.W.8, who on receipt of the complaint visited the scene of occurrence, prepared observation mahazar and rough sketch, thereafter examined the witnesses and later arrested the accused. There is no delay to impute any motive in this case. Though it was stated that both the accused were armed with knife and inflicted indiscriminate cut injury to P.W.1, only one knife/M.O.1 recovered. The first petitioner on seeing the pain and suffering of his parents, contrary to the wealthiness of his uncle/P.W.1, under whom first petitioner's father was employed, gone there questioned him and demanded money and also claimed some property, due to the emotional fight there seems to be some attack and inflicting of injuries. As regards A2, except he being present along with A1 and a sweeping statement that he also inflicted injuries, there is no specific evidence against him. Admittedly, during the occurrence, the petitioners were aged about 21 years, now the first petitioner got married, his wife is on family way, the second petitioner completed his education searching for employment. P.W.1/defacto complainant forgiven the petitioners and with hope of cordial relationship to prevail within the family. Both the defacto complainant and the accused appeared before this court and filed individual affidavit stating that the issue got resolved between them. As regards the second petitioner except for the sweeping allegation there is no specific overt act attributed against him and added to it, no weapon was seized which is said to have been used by A2/second petitioner during the attack.

8. Since the issue between the defacto complainant and the petitioners got resolved and they filed individual affidavits to that effect, this Court is inclined to set aside the conviction and sentence imposed on the first petitioner for the offence under Sections 341, 294(b) and 506(ii) of IPC and in respect of Section 326 of IPC, this Court reduce the sentence imposed by the Court below from one year simple imprisonment to that of the period of incarceration already undergone by the first petitioner. As regards the second petitioner, this Court is inclined to set aside the conviction and sentence imposed by both the Courts below and he is acquitted from all the charges.



9. In the result, the judgment, dated 05.10.2016 in C.C.No.3260 of 2015, passed by the learned XVII Metropolitan Magistrate, Saidapet which was confirmed by the judgment dated 27.04.2017 passed by the learned XIX Additional Sessions Judge, Chennai in C.A.No.265 of 2016 is hereby modified in respect of the first petitioner as stated above and the same is hereby set aside in respect of the second petitioner. Accordingly, this Criminal Revision Petition stands partly allowed.

Sd/-

Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

cse

To

1. The XIX Additional Sessions Judge,
Chennai.
2. The XVII Metropolitan Magistrate,
Saidapet, Chennai.
3. The Inspector of Police,
F5 Choolamedu Police Station,
Chennai.
4. The Public Prosecutor,
High Court, Madras.
5. The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.K.V.Shanmuganathan, Advocate SR.No.23971

CrI.R.C.No.858 of 2017

EV (CO)

GMV (13/05/2022)