



Bail Slip

The Revision Petitioner/Sole Accused viz., Thiagarajan S/o.Chelliah, was released on bail in MP(MD).No.2 of 2007 in Crl.Rc(MD).No.959 of 2007 dated 02.01.2008.by this Hon'ble High Court.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 09.12.2021

PRONOUNCED ON: 17.02.2022

CORAM

THE HONOURABLE MR.JUSTICE **K.MURALI SHANKAR**

CRL.R.C. (MD) .No.959 of 2007

Thiagarajan : Petitioner / Appellant/Sole Accused
Vs.

State represented by
The Inspector of Police,
Thiruvadanai Police Station,
Ramanathapuram District.
(Crime No.10 of 2005)

: Respondent/Respondent/Complainant

PRAYER: Criminal Revision Petition has been filed under Section 397 (1) r/w 401 of Cr.P.C, against the order dated 18.09.2007 in C.A.No.11 of 2006, on the file of the Additional Sessions cum Fast Trak Court, Ramanathapuram, which was modified by the order of the District Munsif cum Judicial Magistrate, Thiruvadanai in C.C.No.24 of 2005.

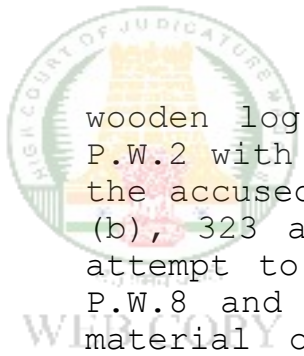
For Petitioner : Mr.P.Muthusamy

For Respondent : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor

ORDER

This Criminal Revision Petition is directed against the concurrent judgment of conviction passed in C.A.No.11 of 2006, dated 18.09.2007, on the file of the Additional District and Sessions Court, Ramanathapuram, confirming the judgment made in C.C.No.24 of 2005, dated 19.01.2006, on the file of the District Munsif cum Judicial Magistrate, Thiruvadanai.

2. The case of the prosecution is that the defacto complainant and the accused had previous enmity with regard to the cattle shed, that on 07.01.2005 at about 09.45a.m., when the defacto complainant-P.W.1 and his mother-P.W.2 were proceeding towards the cattle shed, the accused who was standing in front of his house, had abused the witnesses in filthy language and attacked P.W.1 with his hands and

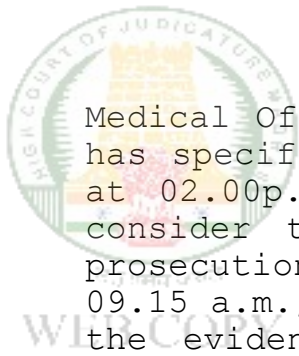


wooden log and caused simple injury and that, thereafter attacked P.W.2 with wooden logs and caused grievous injuries and that thereby the accused had committed the offences punishable under Sections 294 (b), 323 and 325 I.P.C. During the trial, the prosecution in an attempt to prove their case, has examined 8 witnesses as P.W.1 to P.W.8 and exhibited 9 documents as Ex.P.1 to P.9 and marked one material object as M.O.1. The revision petitioner/accused has adduced neither oral nor documentary evidence.

3. The learned Judicial Magistrate, upon considering the evidences adduced and on hearing the arguments of both sides, has passed the judgment dated 19.01.2006, convicting the accused for the offences under Sections 294(b), 323 and 325 I.P.C., and sentenced him to undergo one month simple imprisonment and to pay a fine of Rs.200/-, in default to undergo one week simple imprisonment for the offence under Section 294(b); to undergo six months simple imprisonment and to pay a fine of Rs.500/-, in default to undergo one month simple imprisonment for the offence under Section 323 I.P.C., and to undergo two years simple imprisonment and to pay a fine of Rs.2,000/- in default to undergo four months simple imprisonment for the offence under Section 325 I.P.C. Aggrieved by the said judgment of conviction and sentence, the accused has preferred an appeal in C.A.No.11 of 2006 and the learned Additional District and Sessions Judge, Ramanathapuram, upon considering the materials on record and on hearing the arguments of both sides, has passed the impugned judgment dated 18.09.2007, partly allowing the appeal, set aside the conviction and sentence passed for the offences under Section 294(b) I.P.C., and confirmed the conviction and sentence imposed for the offences under Sections 323 and 325 I.P.C., Challenging the judgment of the learned Additional District and Sessions Judge, Ramanathapuram, the accused has come forward with the present Criminal Revision Petition.

4. It is pertinent to note that there is a concurrent verdict of conviction and sentence against the revision petitioner. The power and the jurisdiction of revisional Court cannot be equated with the power and the jurisdiction of the appellate Court nor the same can be treated as the second appellate jurisdiction. The powers and the jurisdiction of the revisional Court under Sections 397 and 401 Cr.P.C., is confined to legality, propriety and correctness of the concurrent findings of the conviction entered and sentence imposed on the accused. No doubt, while exercising the revisional jurisdiction, there is absolutely no scope for re-appreciating the entire evidence, but at the same time, when the appreciation of evidence is tainted with perversity, the same can very well be looked into and interfered with by this Court. Bearing the above legal position in mind, let us consider the case on hand.

5. The learned Counsel for the revision petitioner would submit that there was a delay in lodging the complaint by the defacto
<https://hcservices.mca.gov.in/hcservices/> the delay is not properly explained, that the



Medical Officer - P.W.4, in his evidence as well as in his report, has specifically mentioned that the incident was allegedly occurred at 02.00p.m., on 10.01.2005, that the trial Court has failed to consider the above evidence of P.W.4-Medical Officer, since the prosecution has alleged that the incident was allegedly occurred at 09.15 a.m., on 07.01.2005, that there were so many contradictions in the evidence adduced by the prosecution witnesses and that the appellate Court has casually and mechanically confirmed the judgment of conviction and sentence passed by the trial Court.

6. It is not in dispute that the defacto complainant-P.W.1 is the daughter of P.W.2, that the alleged occurrence witness P.W.3 is their relative and that the accused is their neighbour. It is also not in dispute that there existed previous enmity between the families of P.W.1 and the accused with regard to cattle shed and the pathway leading to it.

7. As already pointed out, it is the specific case of the prosecution that on 07.01.2005 at about 09.15a.m., the accused, who was standing in front of his house, had abused P.W.1 and P.W.2 in filthy language and attacked them with hands and wooden logs and thereby caused simple injury to P.W.1 and grievous injury to P.W.2. Admittedly, the defacto complainant has lodged the complaint at 10.30a.m., on 10.01.2005 for the incident alleged to have been occurred at 09.15a.m., on 07.01.2005. In the F.I.R., itself, in column No.8, it has been stated that the delay was due to the defacto complainant and further added that there occurred a delay, as there was an attempt to negotiate through village elders. P.W.1 in his evidence before the trial Court would say that after the incident, she was informed that the dispute can be decided at the village panchayat and that since the accused has not responded for the same, she was forced to lodge the complaint on 10.01.2005. In cross-examination, she would say that after the incident, she had informed to Thangaraj, Sivakami, Aneez, Manimuthu and so many other persons in the village and that the accused had not agreed for the same. P.W.2 and P.W.3, in their evidence would reiterate the version of P.W.1 with respect to delay in lodging the complaint. The evidence of P.W.1 to P.W.3 with regard to the reason assigned for lodging the complaint with delay was not at all shaken during the cross-examination by the defence. The trial Court as well as the appellate Court had dealt with the above aspect specifically and came to the right decision that the delay was properly explained.

8. It is settled law that mere delay in lodging the complaint by itself is not sufficient to doubt the prosecution case. Even assuming for arguments sake, that there is a delay in lodging the complaint, it is for the accused to show that he was prejudiced by the delay. In the present case, as rightly contended by the learned Additional Public Prosecutor appearing for the State that the accused has failed to show in what way or manner, he was prejudiced by the delay in lodging the complaint.



9. As already pointed out, the next contention of the revision petitioner is that the Courts below have miserably failed to consider the vital contradictions with regard to time and date of the occurrence that P.W.4- Medical Officer, has specifically noted in the Accident Register and also gave evidence that he was informed that the incident was allegedly occurred at 02.00p.m., on 10.01.2005. The said contention of the revision petitioner cannot be looked into even for a moment, as P.W.1 and P.W.2 were examined by P.W.4-Medical Officer at 11.00a.m., on 10.01.2005 and as rightly observed by the Courts below that the Medical Officer has committed a mistake in noting the date and time of the alleged incident.

10. Though the learned Counsel for the revision petitioner, in his initial arguments, would say that there were so many contradictions in the evidence adduced by the prosecution witnesses, but in later part of his arguments, he has not shown any contradictions in the evidence of prosecution witnesses with regard to the material aspects of the case.

11. On a perusal of the evidence of P.W.4 and P.W.7 - Medical Officers and the medical records, it is very clear that the medical evidence corroborates the evidence of the occurrence witnesses and supports the case of the prosecution.

12. The next contention of the revision petitioner is that all the alleged occurrence witnesses are closely related to each other and are interested witnesses and that the prosecution has not chosen to examine any other independent witness to prove the alleged occurrence. As rightly contended by the learned Additional Public Prosecutor, it is not at all mandatory for the prosecution to examine all the witnesses, who were allegedly present in the occurrence place and it is sufficient to produce only such witnesses who are essential for unfolding the prosecution and that the question of examining the independent witnesses would arise only when the Court has some genuine doubt with regard to the evidence already examined.

13. In the case on hand, as already pointed out, the occurrence was alleged to have been held nearby the house of the accused and P.W.1 and according to the witnesses, P.W.3, on coming to know about the occurrence from P.W.1, came to that place and witnessed the attack allegedly made by the accused on P.W.2. As rightly held by the Courts below, the evidence of P.W.1 to P.W.3 are sufficient enough to prove the occurrence and as such, the non-examination of any independent witness does not affect the case of the prosecution. Considering the above, it is clearly evident that the appellate Court has properly reassessed the evidence and gave its findings concurrent with the trial Court.



14. This Court has called for a report from the Probation Officer, Ramanathapuram under Section 4 of the Probation of Offenders Act and after enquiry, the Probation Officer submitted a report stating that the accused is not having any previous conviction and that his character and conduct are good and therefore, he has recommended that it is a fit case for invoking Section 4(1) and 4(3) of the Probation of Offenders Act.. Considering the above, the report of the Probation Officer, Ramanathapuram is accepted.

15. As already pointed out, the occurrence was held on 07.01.2005 and the appellate Court has passed the judgment on 18.09.2007 and already 16 years had lapsed since the date of occurrence and 14 years since the date of judgment of the appellate Court. It is further evident from the records that the accused was shown to be aged 45 years in the year 2005 and on that basis, it comes to 61 years. Considering the nature of the offences and the date on which, the occurrence was held and also the age of the accused and upon considering the unblemished records and good character and the conduct of the accused, this Court is inclined to invoke Section 4 of the Probation of Offenders Act.

16. Hence, the conviction passed against the revision petitioner stands confirmed, but instead of sentencing him at once, in exercise of Section 4 of the Probation of Offenders Act, the accused is ordered to be released on entering into a bond for a sum of Rs.25,000/- (Rupees Twenty five thousand only) with two solvent sureties for a like sum and to appear and receive the sentence and as and when called upon during the period of one year and he shall be under the supervision of the District Probation Officer, Ramanathapuram during that period. The District Probation Officer, Ramanathapuram shall send a periodical report to the trial Court quarterly. The revision petitioner is directed to keep peace and good behaviour during that period. Further the revision petitioner is directed to deposit a sum of Rs.15,000/- (Rupees Fifteen thousand only) as compensation under Section 5 of the Probation of Offenders Act and is directed to deposit the same before the trial Court to the credit of C.C.No.24 of 2005, on the file of the District Munsif cum Judicial Magistrate, Thiruvadanai and on such deposit made, the trial Court is directed to disburse a sum of Rs.5,000/- to P.W.1 - defacto complainant and Rs.10,000/- to P.W.2

17. This Criminal Revision Petition is disposed of accordingly.

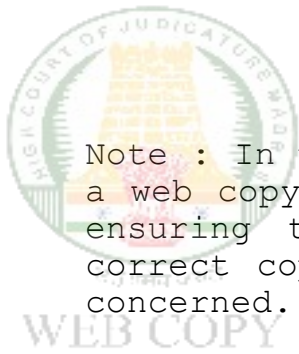
Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar (CS)



Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Additional Sessions cum Fast Trak Court,
Ramanathapuram.
2. Do through, The Principal Sessions Judge, Ramanathapuram.
3. The District Munsif cum Judicial Magistrate,
Thiruvadanai.
4. Do through, The Chief Judicial Magistrate, Ramanathapuram.
5. The Inspector of Police,
Thiruvadanai Police Station,
Ramanathapuram District.
6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to

1. The Section Officer,
Criminal Records,
Madurai Bench of Madras High Court,
Madurai. (2 copies)
2. The District Probation Officer,
Ramanathapuram.

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