



Crl.R.C(MD)No.855 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.03.2023

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C(MD)No.855 of 2017

1.Ramasamy
2.Subramaniyan

...Petitioners/A1 & A2

Vs.

The State represented by
The Inspector of Police,
Kuruvikulam Police Station,
Tirunelveli District.
(In Crime No.247 of 2012)

...Respondent

Prayer : This Criminal Revision has been filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the entire records pertaining to the judgment delivered by the Assistant Sessions Judge, Sankarankovil in S.C.No.384 of 2014, dated 09.09.2015 and which has been subsequently modified by the II Additional Sessions Court, Tirunelveli in C.A.No.107 of 2015, dated 21.09.2017 and set aside the same.

For Petitioners : Mr.R.Anand
For Respondent : Mr.K.Sanjai Gandhi
Government Advocate (Crl.side)



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ORDER

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This petition has been filed to set-aside the order made in S.C.No.384 of 2014, dated 09.09.2015 on the file of the learned Assistant Sessions Judge, Sankarankovil, thereby, modifying the order dated 21.09.2017 passed in C.A.No.107 of 2015 on the file of the learned II Additional Sessions Judge, Tirunelveli.

2.The case of the prosecution is that due to previous enmity on 04.12.2012 at about 04.30 p.m, when PW1 along with his brother namely PW2 were carrying body of their grandmother for burial near Palvadi, Anganvadi street, Azhagunatchiyarpuram, the petitioners/A1 & A2 intercepted them and scolded with filthy language and also attacked them with wooden log and iron sword (இரும்பு வாள்). Initially, the first accused attacked PW1 on his left side head and again he was attacked on his backside of the head. When PW2 prevented the accused from attack, the second accused attacked PW2 with iron wall and it was prevented by his hand and as such he sustained deep cut injury in the left hand thumb to wrist particularly the left hand thumb chopped off. Immediately, the others, who were got participated in the death procession had taken PW1 and PW2 to the Government Hospital, Sankarankovil. Thereafter, they



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were referred to Government Hospital, Tirunelveli for further treatment.

After their statement, the respondent police registered the First Information Report in Crime No.247 of 2012 for the offences under Sections 341, 294(b), 307 and 325 of IPC. After completion of investigation, the respondent police has filed a final report and the same was taken cognizance by the trial Court. In order to prove the charge, the prosecution had examined PW1 to PW11 and marked Ex.P1 to Ex.P13. The prosecution also produced material object marked as M.O.1. On the side of the accused, no one was examined and no document was marked. On perusal of oral and documentary evidence, the trial Court found that the petitioners were guilty and convicting them for the offence under Section 341 of IPC, to pay a fine of Rs.250/- each, in default, to undergo simple imprisonment for a period of one week and for the offence under Section 294(b) of IPC, to pay a fine of Rs.250/- each, in default to undergo simple imprisonment for a period of one week and for the offence under Section 307 of IPC, to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs.1,000/- each, in default, to undergo simple imprisonment for a period of three months and for the offence under Section 325 of IPC, to undergo rigorous imprisonment for a period of three years and to pay a fine of



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Rs.500/- each, in default to undergo simple imprisonment for a period of three months. Aggrieved by the same, the petitioners preferred an appeal and the Appellate Court partly allowed the appeal and thereby, acquitted the second accused for the offence under Section 325 of IPC alone and confirmed the conviction for the offences under Section 341, 294(b) and 307 of IPC. Hence, the present revision.

3. The learned counsel for the petitioners would submit that there are contradiction between the evidence of PW1, PW2 and PW9. Further there was confused with regard to M.O.1. According to the prosecution witnesses, the weapon, which was allegedly used for the crime without handle, whereas M.O.1 produced before the trial Court is having handle. Therefore, the recovery of material object are highly doubtful, since PW5 mahazar witness had not supported the case of the prosecution. That apart, there was a delay in lodging the complaint and as such the present complaint has been foisted as against the petitioners with *mala-fide* intention. He further submitted that the petitioners are the witnesses in the civil case, which was ended as against the relatives of PW1 and PW2. Due to the said previous enmity, the false case has been foisted as against the petitioners. In fact, there were thousands of



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persons participated in the death procession, even then prosecution failed to examine any independent witness. He further submitted that the first petitioner is having three daughters and the second petitioner is having three sons. They were only the sole bread-winners of their family and so far, they were not involved in any case. Therefore, they sought to invoke Probation of Offender Act by imposing some compensation.

4. Per contra, the learned Government Advocate (Crl.side) submitted that the petitioners herein had intention to do away the life of PW1 and PW2. Therefore, when they were proceeding to the burial ground to the death of their grand mother, the petitioners, who were lead them and attacked them with sickle and iron saw. Therefore, both were sustained grievous injury and admitted in the hospital. PW1 sustained head injury and PW2 sustained grievous injury on the left hand wrist. Therefore, they PW1 sustained fracture on the skull and PW2 sustained fracture on the left hand wrist. There were eye witnesses and they were deposed as PW3 and PW4 and they are not related to PW1 and PW2. They are independent witnesses. That apart, their evidence clearly corroborated with the evidence of Doctor -PW10, who treated PW1 and PW2. The prosecution also recovered the weapon, which was used in



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the crime and marked as M.O.1. Therefore, the prosecution categorically proved the case beyond any doubt and as such the Courts below rightly convicted the petitioners for the offences under Section 307 of IPC and other offences. Therefore, they are not entitled for any lenience under the Probation of Offender Act.

5. Heard the learned counsel appearing for the petitioners and the learned Government Advocate (Crl.side) appearing for the respondent.

6. PW1 and PW2 are brothers. The petitioners / A1 & A2 herein are also brothers. Admittedly, there was a previous enmity with both family. In order to do away the life of PW1 and PW2, the petitioners way laid the PW1 and PW2 when they were proceedings to burial ground to bury their grandmother and when PW1 was carrying the dead body of his grandmother and attacked them with wooden log and iron sword (இரும்பு வாள்). They also scolded them with filthy language. The first petitioner/A1 attacked with wooden log on PW1's right side head and also attacked back side of the head. The second petitioner/A2 herein attacked PW2 with iron sword on his head and fortunately, he



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prevented the said attack by his left hand, which rested on his left wrist thereby, there was deep cut injury. In fact, half of the hand broken and laying down. Immediately all the general public intercepted and protected the PW1 and PW2 from further attack of A1 and A2. Both were immediately taken to Government Hospital, Sankarankovil, thereafter, referred to Government Hospital, Tirunelveli and admitted as in-patient and taken treatment. The Doctor, who recorded the Accident Register examined as PW8. He found that the following injuries:

"04.12.2012 அன்று சுமார் 04.30 மணியளவில் வடக்கு அழகுநாச்சியார்புரத்தில் சுடுகாட்டுக்கு செல்லும்போது அடையாளம் தெரிந்த 2 ஆண் நபர்கள் அ.சா.1 ஐ கம்பால் அடித்தும் அருவாளால் வெட்டியும் காயங்களை ஏற்படுத்தியதாக சொன்னதாகக் கூறியுள்ளார். அவரை பரிசோதனை செய்ததில் கீழ்க்கண்ட காயங்கள் கண்டுள்ளார். 1) தலையின் இடது பக்கம் ப்ராண்டோ பெரைட்டல் பகுதியில் 10 x 2 செ.மீ எலும்பு ஆழத்தில் ஒரு சிதைந்த காயம், 2) அதே பகுதியில் எலும்பில் கீறல், 3) தலையின் பின்பக்கம் இடது பக்கம் பெரைட்டல் எலும்பில் 9 x 2 செ.மீ x எலும்பின் ஆழத்தில் ஒரு சிதைந்த காயம், அதே காயத்தில் எலும்பில் கீறல் காணப்பட்டதாகவும் ஆக்சிபெட்டல் பகுதி (தலையில்) 5 x 4 x 12 செ.மீ அளவில் ஒரு சிதைந்த காயம் ஆகிய காயங்கள் காணப்பட்டுள்ளது. அ.சா.1 ற்கு வழங்கப்பட்ட



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விபத்து பதிவேடு அ.சா.ஆ.8 ஆகும். அ.சா.2 ற்கு ஏற்பட்ட காயம் பற்றி அ.சா.8 மருத்துவர் குறிப்பிடகையில் இடது கை மணிக்கட்டு அருகில் 15 ஓ 8 எலும்பின் ஆழத்தில் வெட்டுக்காயம் அதே சதை எலும்பு வெட்டப்பட்டு கை பாதி தொங்கிய நிலையில் காணப்பட்டுள்ளது. இடது கை முட்டுக்கு கீழ் 10 x 6 x 1 செ.மீ அளவில் சிதைந்த காயம் (3) நெற்றியில் 3 x 1 செ.மீ எலும்பின் ஆழத்திற்கு சிதைந்த காயம் கண்டுள்ளார்□.

7.The Accident Register of PW1 was marked as Ex.P8 and the Accident Register of PW2 was marked as Ex.P9. Thereafter, they referred to Government Hospital, Tirunelveli, where PW10 – Doctor treated them. He also corroborated the injuries found by PW8.

8. PW1 and PW2 are injured witnesses. PW3 and PW4 are eye witnesses of the occurrence. On perusal of evidence of PW3 had revealed as follows:-

“நான் அன்னாபுரணாபுரம் கிரமத்தில் வசித்து வருகிறேன். காட்சி சொன்ன அ.சா.1, 2 ஆகியோர்களை எனக்கு தெரியும். ஆஜர் எதிரிகளை எனக்கு தெரியும். ஊர், பெயர் எனக்கு தெரியும். 04.12.2012 அன்று மதியம் 12 மணிக்கு எங்கள் ஊரிருந்து வடக்கு அழகுநாட்சியார்புரம் கிராமத்திற்கு



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கருப்பாயம்மாள் இறந்த துஷ்டிக்கு சென்றேன். அன்று 4.40 மணி அளவில் கருப்பாயம்மாள் பிரேதத்தை சுடுக்காட்டுக்கு தூக்கிச் செல்லும் போது அங்குள்ள அங்கன்வாடி தெருவில் உள்ள பால்வாடி பக்கம் செல்லும் போது அப்போது அ.சா.1 மற்றும் அ.சா.2 ஆகியோர்கள் எங்களுடன் வந்தார்கள். அப்போது வடக்கு அழகுநாட்சியாபுரத்தை சேர்ந்த ராமசாமி, சுப்பிரமணியன் ஆகியோர் கலையரசனையும், செந்தில் குமாரரையும் வழிமறித்து நில்லுங்கடா தேவடியா மகன்களா, புண்டமகன்களா என்று கூறி ஒன்றுவிட்ட பங்காளிக்கு சாட்சி சொல்லத்தான் செய்வேன் என்று சொல்லி உங்களை கொல்லாமல் விடமாட்டோம் என்று சொல்லி இராமசாமி தன் கையில் வைத்திருந்த கம்பால் கலையரசன் தலையில் இடது பக்கம் ஒங்கி அடித்தார். அடித்ததால் அவருக்கு தலையில் இடதுபுறம் இரத்தக் காயம் ஏற்பட்டது. அதன் பின்பு இராமசாமி கலையரசனின் பின்புறமும் அடித்ததில் இரத்தக் காயம் ஏற்பட்டது. உங்களை கொல்லாமல் உயிரோடு விடமாட்டோம் என்று சொல்லி, இதனை தடுக்க வந்த செந்தில்குமாரை சுப்பிரமணியன் தன் கையில் வைத்திருந்த வாளால் ஒங்கி வெட்டினார். செந்தில்குமார் அதனை தனது இடது கையால் தடுத்தார். இடது கையில் பெருவிரலில் இருந்து மணிக்கட்டு வரை ஒரு ஆழமான காயம் ஏற்பட்டது. இராமசாமி தன் கையில் வைத்திருந்த கம்பால் இடது முழங்கைக்குக் கீழே ஒங்கி அடித்தார். பின்பு இடது பக்க நெற்றியிலும்,



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நாடியிலும் இரத்தம் காயத்தை கம்பால் அடித்து உண்டு பண்ணினார்.செந்தில்குமாருக்கு முழங்கையில் ஒரு வெட்டு ஏற்பட்டது. அது சுப்பிரமணியனால் வெட்டப்பட்டது. அதைப்பார்த்து நாங்கள் அங்கு இருந்த நபர்கள் சத்தம் போட்டோம். சுப்பிரமணியன் தன் கையில் வைத்திருந்த வாளை அங்கன்வாடி கழிவு நீர் வாய்க்காலில் போட்டுவிட்டு சென்று விட்டார். இராமசாமி தன் கையில் வைத்திருந்த கம்புடன் ஓடி விட்டார். அதன்பின்பு ஒரு ஆட்டோவை பிடித்து நானும், பேச்சிமுத்துவும் அ.சா. 1, 2 வை மருத்துவமனைக்கு கொண்டு போய் சேர்த்தோம்.

9.It is clearly corroborated with the evidence of PW1 and PW2. PW3 is an independent witness and he had enmity with the accused. It is also corroborated by PW4, who also independent witness. Therefore, thus it is clear that the petitioners attacked PW1 and PW2 in order to do away their life. Fortunately, both were escaped from the petitioners. When PW1 and PW2 were proceeding to burial ground to carry the dead body of their grandmother, the petitioners waylaid them and attacked them. Hence, their intention is very clear and both the Courts below rightly convicted them. The learned counsel for the petitioners vehemently contended that the sentence alone may be set aside under the Probation of Offenders Act, since they had un-married



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children and they are the only bread-winner of the respective family by ordering compensation. In the manner of which, the petitioners attacked PW1 and PW2 shows their clear intention in order to do away the life of PW1 and PW2. Therefore, it is not the case for consideration under the Probation of Offender Act. However this Court is inclined to reduce the sentence alone to some extent. Accordingly, the conviction imposed by the trial Court against the petitioners, is hereby confirmed for both the offences under Sections 341 and 294(b) of IPC. Insofar as the sentence alone is reduced from seven years to three years for the offences punishable under Section 307 of IPC. Insofar as the sentence imposed for the offence under Section 325 of IPC is hereby confirmed. The respondent is directed to secure the revision petitioners/A1 & A2 and commit them to prison to undergo the remaining period of sentence.

10. Accordingly this Criminal Revision Case is partly allowed.

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NCC : Yes /No
Index : Yes / No
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G.K.ILANTHIRAIYAN, J.

vsd

To

- 1.The Assistant Sessions Judge,
Sankarankovil.
- 2.The II Additional Sessions Court,
Tirunelveli.
- 3.The Inspector of Police,
Kuruvikulam Police Station,
Tirunelveli District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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