

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.08.2015

CORAM :

THE HONOURABLE Mr.JUSTICE B.RAJENDRAN

Crl.R.C.No.143 of 2015

and

M.P.Nos.1 & 2 of 2015

Paramasivam

... Petitioner/Appellant/
Accused No.1

Versus

State, rep. by
The Inspector of Police,
Thalaivasal Police Station,
Salem District.
(Crime No.384/2004)

... Respondent/Respondent/
Respondent

Prayer: Revision filed under Sections 397 & 401 of Cr.P.C against the judgment dated 13.01.2015 in Crl.A.No.109 of 2013 passed by the learned I Additional District & Session Judge, Salem, modifying the judgment passed by the learned Assistant Sessions Judge, Attur dated 27.09.2013 in S.C.No.266 of 2010.

For Petitioner : Mr.G.Anabayachozhan

For Respondent : Mr.V.Arul, Government Advocate

ORDER

The Criminal Revision Case has been filed by the petitioner/A1 challenging the judgment in Crl.A.No.109 of 2013 dated 13.01.2015 passed by the learned I Additional District & Sessions Judge, Salem, modifying the judgment passed by the learned Assistant Sessions Judge, Attur in S.C.No.266 of 2010 dated 27.09.2013.

2. There are totally five accused in this case and the petitioner herein is the 1st accused. The accused persons and the victim are close relatives and there was land dispute between them. Due to such land dispute, on 24.11.2004 at about 6.00 am, while P.W.1 to P.W.3 were walking on the common path way, which belongs to their family, all the accused persons formed an unlawful assembly and waylaid P.W.1. At that time, the accused 4 & 5 caught hold of P.W.1 and 1st accused-petitioner herein attacked P.W.1 with sickle. The 2nd accused attacked P.W.1 with crow-bar and the 3rd accused attacked him with stick and caused injuries to him. Immediately, P.W.2 & 3 intervened and rescued P.W.1. Thereafter, PW-2 had taken P.W.1 to the Attur Government Hospital, where P.W.12-Doctor treated him. On the advise of the Doctor, P.W.1 was taken to Salem Government Mohan Kumaramangalam College Hospital for further

treatment. On the basis of the complaint given by P.W.1, a case was registered in Cr.No.384/2004 against the accused persons under Sections 147, 148, 341, 326 and 307 IPC. On completion of investigation, P.W.15-Inspector of Police had filed the charge-sheet before the Trial Court.

3. Before the Trial Court, on the side of the prosecution, sixteen witnesses were examined, eleven documents were marked and five materials objects were produced. On the side of the accused persons, two witnesses were examined and four documents were marked. By judgment dated 27.09.2013 in S.C.No.266 of 2012, the trial Court, after considering the evidence produced on either side, convicted the accused 1 & 2 under Sections 148 and 307 r/w 149 and 352 IPC and sentenced them to undergo rigorous imprisonment for three months and to pay a fine of Rs.1,000/- each, in default to undergo simple imprisonment for one week for the offence under Section 148 IPC; to undergo RI for 5 years and to pay a fine a Rs.10,000/- each, in default to undergo SI for one month for the offence under Section 307 r/w 149 IPC; to undergo RI for 3 months each for the offence under Section 352 IPC. The Trial Court convicted the accused 3 & 4 under Sections 307 and 149 IPC and sentenced them to undergo RI for 5 years and to pay a fine of Rs.10,000/- each, in default to undergo SI for one month for the offence under Section 307 read with 149 IPC. The Trial Court has acquitted the 5th accused from the charges levelled against him.

4. Aggrieved by the judgment of conviction and sentence passed by the Trial Court, the accused 1 to 4 preferred an appeal in CrI.A.No.109 of 2013 before the learned I Additional District & Sessions Judge, Salem. The first appellant Court, after considering the evidence on record, has allowed the appeal in part, and modified the conviction imposed on the 1st accused/petitioner from Section 307 read with 149 IPC and Section 352 IPC into Section 307 IPC and confirmed the sentenced imposed on him. However, the first appellate Court has acquitted the accused 2 to 4 from all the charges levelled against them. Aggrieved over the conviction imposed on the 1st accused/petitioner herein, the present revision has been filed by him.

5. The learned counsel appearing for the petitioner/A1 would mainly contend that injuries sustained by the victim/P.W.1 are not such that it would attract the ingredients of the offence under Section 307 IPC. There was no intention on the part of the petitioner/A1, as alleged by the prosecution, to kill the injured victim/P.W.1. It is only in the spur of the moment, P.W.1 was attacked by the petitioner/A1. Therefore, the finding of the trial Court that there is a specific overtact attributed against the petitioner/A1 is not correct. Further, the learned counsel for the petitioner submitted that subsequently there is development of cordial relationship between the parties and now, a compromise has been arrived at between the parties and to that effect, he has also produced the affidavit given by the injured/P.W.1 before this Court. The learned counsel for the petitioner would further submit that the petitioner has been convicted and sentenced only under Section 307 IPC. The petitioner was in jail in two spells for almost forty days. Thus, the learned counsel for the petitioner submit that in

view of the subsequent developments, a lenient view may be taken on the petitioner.

6. The learned Government Advocate (Crl.Side) submitted that the offence under Section 307 IPC is not a compoundable offence. In this case, the injuries are such that they would have caused the murder of the victim and therefore, the petitioner was rightly convicted under Section 307 IPC. The learned Government Advocate (Crl.Side) would further submit that the compromise entered into between the accused persons and the victim cannot be a reason for acquitting the Petitioner from the charges.

7. Heard the submissions made on either side and perused the materials available on record. No doubt, offence under Section 307 IPC is not a compoundable offence. It is the case of the prosecution that the accused 4 & 5 caught hold of the right hand of P.W.1/victim and at that time, the 1st accused/petitioner herein caused cut injury on the left hand of P.W.1 with sickle. The 2nd accused attacked him with crow-bar on his right shoulder and also caused abrasion injury on his stomach. It is pointed out by the learned counsel for the petitioner that the Doctor-P.W.12, who had treated P.W.1/victim at Attur Government Hospital, has noted down only three injuries on the body of P.W.1/victim, which is contrary to the evidence of P.W.13, Medical Officer attached to Mohan Kumaramangalam Hospital at Salem. P.W.13-Doctor in his evidence has stated that he found five injuries on the body of P.W.1. As per the evidence of P.W.13, there was a cut injury on the right-eyebrow of P.W.1/victim and another cut injury on the forehead; but, those injuries were not noted down by the Doctor-P.W.12. There are contradictions in the evidence adduced by the Doctors viz., P.W.12 and P.W.13, even in respect of the injuries said to have been sustained by the victim. Admittedly there are injuries on the body of the victim/P.W.1. However, the injuries are not deep and they are not to the extent of causing death. In fact, P.W.12-Doctor has stated in his evidence that only one injury is grievous in nature.

8. It is stated that now a compromise has been arrived at between the petitioner and the victim. Such subsequent development in the form of a compromise can be looked into inasmuch as it would only lead to a better relationship between the parties. It is also stated that the parties are neighbours and therefore also the compromise can assume importance in this case and it can also be taken into consideration.

9. The next important question for consideration is whether the injuries caused with an intention to kill the victim or it would have led to his death. Even as per the evidence of the Doctor, as mentioned above, there are three injuries in the body. As stated supra, there are contradictions with respect to the injuries sustained by the victim in the evidence of Doctors. The Doctors, however, have categorically stated that the injuries are not deep and they are not to the extent of causing the death of the victim. In fact, there is a cut injury in the right eye brow and another injury in the shoulder, but these two injuries have not been noted by PW12, Doctor. As stated above, the injuries caused to PW1 are not such that they would have caused his death or there is no

evidence to show that the accused have attacked the victim with a view to cause his death. In other words, the injuries sustained are not deep in nature. Therefore, I hold that the Appellate Court is right in convicting and sentencing the petitioner for the offence under Section 324 of IPC as the ingredients of the offence under Section 307 of IPC are not attracted in this case. Therefore, the argument of the learned counsel for the petitioner is well founded that the offence under Section 307 IPC is not made out in this case. Further more, the incident had occurred only at the spur of the moment. Moreover, the accused persons and the victim are neighbours and adjacent land owners, that can also be taken into consideration. In this regard, a reference could be made to the judgment of the Hon'ble Supreme Court in the case of (2014)6 SCC 466 (Narinder Singh and others Vs. State of Panjab and another) wherein it has been held as follows:-

"16. What follows from the discussion behind the purpose of sentencing is that if a particular crime is to be treated as crime against the society and/or heinous crime, then the deterrence theory as a rationale for punishing the offender becomes more relevant, to be applied in such cases. Therefore, in respect of such offences which are treated against the society, it becomes the duty of the State to punish the offender. Thus, even when there is a settlement between the offender and the victim, their will would not prevail as in such cases the matter is in public domain. Society demands that the individual offender should be punished in order to deter other effectively as it amounts to greatest good of the greatest number of persons in a society. It is in this context that we have to understand the scheme/philosophy behind Section 307 of the Code.

17. We would like to expand this principle in some more detail. We find, in practice and in reality, after recording the conviction and while awarding the sentence/punishment the Court is generally governed by any or all or combination of the aforesaid factors. Sometimes, it is the deterrence theory which prevails in the minds of the Court, particularly in those cases where the crimes committed are heinous in nature or depicts depravity, or lack of morality. At times it is to satisfy the element of "emotion" in law and retribution/ vengeance becomes the guiding factor. In any case, it cannot be denied that the purpose of punishment by law is deterrence, constrained by considerations of justice. What, then, is the role of mercy, forgiveness and compassion in law? These are by no means comfortable questions and even the answers may not be comforting. There may be certain cases which are too obvious namely cases involving heinous crime with element of criminality against the society and not parties inter-se. In such cases, the deterrence as purpose of punishment becomes paramount and even if the victim or his relatives

have shown the virtue and gentility, agreeing to forgive the culprit, compassion of that private party would not move the court in accepting the same as larger and more important public policy of showing the iron hand of law to the wrongdoers, to reduce the commission of such offences, is more important. Cases of murder, rape, or other sexual offences etc. would clearly fall in this category. After all, justice requires long term vision. On the other hand, there may be, offences falling in the category where "correctional" objective of criminal law would have to be given more weightage in contrast with "deterrence" philosophy. Punishment, whatever else may be, must be fair and conducive to good rather than further evil. If in a particular case the Court is of the opinion that the settlement between the parties would lead to more good; better relations between them; would prevent further occurrence of such encounters between the parties, it may hold settlement to be on a better pedestal. It is a delicate balance between the two inflicting interests which is to be achieved by the Court after examining all these parameters and then deciding as to which course of action it should take in a particular case."

10. In the instant case, though it is stated that a compromise has been arrived at between the parties, the compromise cannot be a ground for setting aside the conviction imposed on the petitioner but such compromise can also be taken into consideration. Therefore, I am of the opinion that the petitioner herein/A1 can be charged under Section 324 IPC instead of Section 307 IPC. Hence, the conviction of the petitioner/A1 under Section 307 IPC made by the Courts below is hereby modified and the petitioner is convicted under Section 324 IPC. It is stated that the petitioner/A1 was in jail for forty days. Hence, the sentence is also modified to the period already undergone by the petitioner/A1.

11. In the result, the Criminal Revision Case is partly allowed and the conviction imposed on the petitioner/A1 is modified from Section 307 IPC to Section 324 IPC and sentence is modified to the period already undergone by him. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1. The District Sessions Judge, Salem.
 - 2.The Assistant Sessions Judge, Athur.
 - 3.The I Additional District & Session Judge, Salem.
 4. The Inspector of Police, Thalavasal Police Station,
Salem District (Crl.No.384/2004)
 5. The Public Prosecutor, High Court, Madras.
- + 2 ccs to Mr.G. Anabayachozhan, Advocate SR.42533

Crl.R.C.No.143 of 2015

BVR(CO)
EU 30.09.15



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