

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.7.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No.654 of 2015

Katturaja

.. Petitioner

Versus

State, rep .by Inspector of Police,
Maranda Halli Police Station,
Palacode Circle, Dharmapuri

.. Respondent

Criminal Revision Petition filed under Section 397 and 401 of Cr.P.C., against the order dated 12.3.2015 passed in Crl.A.No.32 of 2014 by the learned Principal District and Sessions Court, Dharmapuri, whereby confirming the judgment dated 09.6.2014 for the learned Judicial Magistrate, Palacode passed in C.C.No.171 of 2013 under Section 341, 294 (b), 324 and 506(ii) IPC, imposing the petitioner to pay a fine of Rs.500/- in default to undergo 3 months rigorous imprisonment for the offence under Section 324 IPC.

For Petitioner : Mr.C.Anandaramani

For Respondent : Mr.V.Arul
Government Advocate (Crl.side)

ORDER

The revision petitioner herein, who is the accused in C.C.No.171 of 2013 on the file of Judicial Magistrate, Palacode, was convicted for the offence under Section 324 IPC and sentenced to pay a fine of Rs.500/-, in default, to undergo Rigorous Imprisonment of 3 months. The order of conviction against the revision petitioner was confirmed by the learned Principal District and Sessions Judge, Dharmapuri in C.A.No.32 of 2014. Aggrieved by the said conviction, the petitioner/accused has preferred this criminal revision.

2. The case of the prosecution is that there was some dispute in respect of lands between the defacto complainant and the accused,

in which accused, assaulted the defacto complainant/ P.W.1, by name, Kubendran, with knife and thereby inflicted simple injury with deadly weapon. Therefore, the petitioner/accused committed offence punishable under Section 324 IPC.

3. On the side of the prosecution, eight witnesses were examined apart from marking Exs.P1 to P6. On the side of the defence, no witness was examined and no exhibit was marked. On considering the oral and documentary evidence, the Trial Court, found the accused guilty of the offences as aforesaid and punished him accordingly. The Appellate Court confirmed the conviction and sentence imposed by the Trial Court, against which the petitioner is before this Court.

4. The learned counsel appearing for the revision petitioner submitted that there is a contradiction in FIR and evidences let in by P.W.1/defacto complainant and all other witness with regard to place, time and circumstances of the alleged occurrence. In the FIR, time has been mentioned that on 07.6.2013 at 1.00 p.m, the complainant was attacked by Lingammal but in evidence, the complainant states that at 1.00 p.m he was attacked by the petitioner. The learned counsel further submitted that there is a discrepancy in the place of occurrence also. P.W.2 stated that the incident had occurred near Muthuvadi Kottai and he has not mentioned the time of occurrence. But in the FIR, the place of occurrence was mentioned as complainant's home and Thirumalvadai Kottai. Though P.W.2 and P.W.3 alleged to be the eye witness to the occurrence, who are the close relatives of the defacto complainant/P.W.1, in the cross examination, they have stated that they have not seen the accused assaulting the complainant.

5. The learned counsel for the petitioner pointed out that both the Courts below have failed to take into consideration that the material object, namely, Knife, allegedly used, has not been recovered by the prosecution. The learned counsel for the revision petitioner specifically pointed out that non production of the knife itself is fatal to the case. It is submitted that there is no explanation on the side of the Investigating Officer for the said non production of the material object. The learned counsel for the revision petitioner also submitted that there is an in ordinate delay in preferring the complaint. Under those circumstances, in the absence of any material evidence to show that the petitioner had committed the offence, the orders of the Courts below cannot be legally sustained and he prayed for allowing this Criminal Revision Case.

6. On the other hand, the learned Government Advocate would contend that Pws 1 to 8 have given cogent and natural evidence in support of the case of the prosecution. Though the learned counsel for the petitioner pointed out that there are some discrepancy in the evidence, since such discrepancies are curable, the Courts below have rightly convicted the accused and no interference is warranted.

7. I heard the counsel for both sides and perused the materials placed on record.

8. It is the contention of the learned counsel for the petitioner that P.W.2 and P.W.3 are the close relatives of P.W.1/defacto complainant and that they have stated that they have not witnessed the occurrence of the said incident. It is also the contention of the counsel for the petitioner that there is a total contradiction in the evidence with regard to the time and place of the occurrence. It is submitted that alleged knife has not been recovered. It is also submitted that there is an inordinate delay in preferring FIR.

9. In this connection, the evidence of the prosecution witnesses has to be looked into. P.W.2 and P.W.3 are close relatives and they have stated in the cross examination that they have not seen the occurrence. As far as the place of occurrence is concerned, there is a total contradiction in the evidence as different places have been stated by P.W.2 and P.W.3. Further, in the FIR, the place of occurrence was mentioned as "in the complainant's home" whereas P.W.2 in his evidence has stated that the incident occurred near Muthuvadi Kottai and that he has not mentioned the time of occurrence. Therefore, it is very clear that contradictory statement has been given by the P.W.1 and P.W.2.

10. Even though P.W.2 and P.W.3 are stated to be the eye witnesses, none of them have seen the occurrence. In the cross examination, P.W.2 has clearly stated that he has not seen the occurrence. Further, in the FIR, it is stated that on 07.6.2013, 1.00 p.m, he was attacked by Lingammal but in the evidence, he has stated he was attacked by the petitioner herein. P.W.3 in his evidence has stated that he has not witnessed the occurrence of said incident. He alleges that he seen the accused with the kinfe. Thus, both P.W. 2 and 3, who were projected as eye witnesses on behalf of the prosecution, have not deposed about the identity of the accused at the time of the occurrence. Further, place and time of occurrence is also not clear from the evidence of P.W.2 and P.W.3. There is also no evidence available to show as to how the petitioner was identified by the prosecution witnesses and, therefore, the evidence of Pws 1 to 3 cannot be relied on to base an order of conviction against the petitioner.

11. Insofar as the delay in preferring FIR is concerned, it is stated by the prosecution that the occurrence took place on 07.6.2013 at about 1.00 p.m. However, FIR has been registered only after four days from the date of occurrence. The delay in FIR was not explained by the prosecution, which is fatal to the case of the prosecution and therefore, the Courts below ought to have given the benefit of doubt to the petitioner.

12. In view of the above, it has to be concluded that the prosecution has not proved the guilt against the revision petitioner/accused beyond reasonable doubt and, therefore the revision petitioner/accused is entitled to benefit of doubt.

13. Accordingly, the conviction and sentence imposed on the petitioner by the courts below are set aside. The Criminal Revision Case is allowed. The surety bond, if any, executed by the petitioner/accused shall stand cancelled. Fine amount, if any, paid by the petitioner/accused is ordered to be refunded.

-s/d-

Assistant Registrar

True copy

Sub-Assistant Registrar

To

1. The Judicial Magistrate, Palacode

2.-Do-Thro the Chief Judicial Magistrate, Dharmapuri

3. The Principal District and Sessions Judge, Dharmapuri

+1 cc to Mr.C.Ananda Ramani Advocate sr.35325

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