



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.06.2015

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Crl.R.C.(MD)NO.225 of 2015

and

M.P.No.1 of 2015

T.Kannappan

.. Revision Petitioner/Appellant/3rd Accused

Vs.

State of Tamil Nadu

Represented by the Sub Inspector of Police,

Suchindram

Through the Public Prosecutor

Nagercoil

.. Respondent/Respondent/Complainant

Prayer: Criminal Revision Petition filed under Section 397(1) r/w 401 Cr.P.C., against the judgment in C.C.No.38 of 2007 on the file of the Judicial Magistrate, No.III, Nagercoil, dated 06.08.2008 confirmed by the Sessions Judge, (Fast Track Court), Kanyakumari at Nagercoil in C.A.No.118 of 2008 dated 28.04.2015.

For Petitioner

:: Mr.G.Prabhu Rajadurai

For Respondent

:: Mr.P.Kannithevan

Government Advocate (Crl. Side)

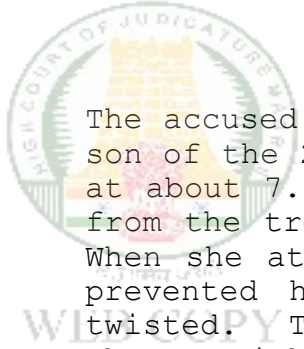
ORDER

The petitioner is the third accused in C.C.No.38 of 2007 on the file of the learned Judicial Magistrate, No.III, Nagercoil. Altogether there were three accused in the case. The 2nd accused is his father and the first accused is the brother of the 2nd accused. The accused 1 and 2 stood charged for offences under Sections 341 and 325 read with Section 34 IPC and the third accused under Sections 341 and 325 IPC. By judgment dated 06.08.2008, the trial Court acquitted the accused 1 and 2, however, convicted the third accused/petitioner herein for offence under Section 325 IPC alone. The trial Court acquitted the petitioner from the charge under Section 341 IPC. The trial Court imposed a sentence of rigorous imprisonment for one year and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for one month for the offence under Section 325 IPC. As against the same, he filed an appeal in CA No.118 of 2008. The Mahila Court (Fast Track Court), Nagercoil, by judgment dated 28.04.2015 dismissed the appeal thereby confirming the conviction and sentence imposed on the petitioner. Challenging the same, he is before this Court with this revision.

2. The case of the prosecution in brief is as follows:

<https://hcservices.ecourts.gov.in/hcservices/>

P.W.1 is the sister of accused Nos.1 and 2. There is a coconut grove in Soorangudi Village, over which, P.W.1 claims to have some right.



The accused 1 and 2 were resisting the same. The third accused being the son of the 2nd accused also joined them. It is alleged that on 21.04.2007 at about 7.15 a.m., the accused 1 to 3 were engaged in plucking coconuts from the trees. On hearing the same, P.W.1 rushed to the coconut grove. When she attempted to enter into the coconut grove, the accused 1 and 2 prevented her from entering. The third accused pulled her hand and twisted. Then, P.W.1 returned without entering into the coconut grove. She straight away went to the Government Hospital at Asaripallam, at Kanyakumari District. P.W.8 Dr.Abdul Azeez examined her and found a contusion measuring 3 x 3 cm on the right hand wrist. The X-ray taken revealed that there was corresponding fracture of the bone. Ex.P4 is the Accident Register.

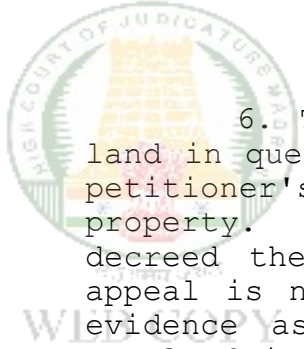
2.1. While she was in the hospital, P.W.7 on intimation from the hospital rushed to the Hospital and recorded the statement of P.W.1. On returning to the police station, at 9.00 p.m., he registered a case in Crime No.175 of 2007 under Sections 341 and 323 IPC. He forwarded the complaint and the FIR to the Court and handed over the investigation to the Sub Inspector of Police for investigation. Ex.P1 is the complaint and Ex.P3 is the FIR.

2.2. P.W.9 took up the case for investigation, proceeded to the place of occurrence, prepared an observation mahazar and a rough sketch showing the place of occurrence in the presence of witnesses. He examined P.Ws.1 to 6 and recorded their statements. He collected the medical records and examined P.W.8 and finally laid the charge sheet against all the three accused.

3. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this order. The accused denied the same. In order to prove the case, on the side of the prosecution, 9 witnesses were examined and 5 documents were exhibited. Out of the said witnesses, P.W.1, the injured in the occurrence, has spoken about the entire occurrence. P.W.2 is an eye witness, who claims to have accompanied P.W.1 to the place of occurrence. He has also spoken to the fact that the petitioner twisted the right hand of P.W.1. P.W.3 claims to have been present at the time of occurrence and according to him, he found the third accused twisting the right hand of P.W.1. P.W.4 has also stated about the same as an eye witness. P.W.5 has spoken about the observation mahazar prepared by P.W.8. P.W.6 has also spoken about the same. P.W.8 Doctor Abdul Azeez has spoken about the injury found on P.W.1. P.Ws.7 and 9 have spoken about the registration of the case and investigation.

4. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, on the side of the accused, no witnesses were examined and no documents were marked. Having considered all the above, the trial Court found the accused guilty under Section 325 IPC and accordingly punished him. The appeal filed by him also was dismissed by the lower appellate Court. That is how, he is before this Court with this Cr.P.C.

5. I have heard the learned counsel for the petitioner and the learned Government Advocate (Crl, side) for the respondent and I have also perused the records carefully.



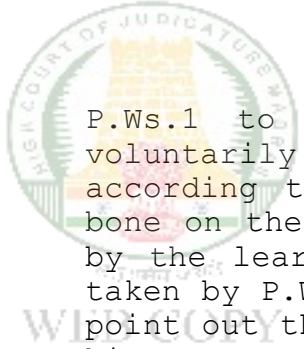
6. The learned counsel for the petitioner would submit that the land in question was the subject matter of the civil dispute between the petitioner's family and P.W.1. P.W.1 was claiming only a right in the property. He would further submit that subsequently, the civil Court decreed the suit in favour of the accused. As against the same, an appeal is now pending. He would further submit that there is no clear evidence as to whether the petitioner twisted the right hand, which resulted in fracture or she fell down on the push made by A1 and A2, in which, she suffered fracture. The learned counsel would further submit that the trial Court has gone by the evidence of P.W.8 to hold that there was fracture of the bone. This, according to the learned counsel, is not correct. Because the primary evidence is only the X-ray, in the absence of the proof of X-ray, the oral evidence of P.W.8 cannot be accepted to hold that P.W.1 had suffered a grievous hurt, he contended. Thus, according to the learned counsel, the prosecution has failed to prove the case against the petitioner.

7. The learned Government Advocate (Crl. Side) would, however, oppose this revision. According to him, the evidence of P.Ws.1 to 4 are cogent and convincing, wherein, they have stated in one voice that the petitioner alone twisted the right hand of P.W.1, which resulted in the fracture. According to him, there are no reasons to reject the evidences of P.Ws.1 to 4. He would further submit that though the X-ray was not marked, the evidence of P.W.8 would be suffice to hold that there was fracture and thus, there is proof that the petitioner had voluntarily caused grievous hurt. The learned Government Advocate would further submit that though it is true that a civil dispute was pending, it was not a license for the petitioner to cause such an injury. Thus, according to the learned Government Advocate, the prosecution has proved the case beyond all reasonable doubt and therefore, the conviction and sentence imposed by the Courts below is liable to be confirmed.

8. I have considered the above submissions.

9. Admittedly, there is a civil dispute, regarding the coconut grove in question. It is also admitted now before this Court that the civil dispute has gone in favour of the accused. Therefore, the plucking of coconuts by the accused cannot be stated to be illegal. They had collected coconuts only in exercise of certain rights, which they had been all along claiming. Similarly, P.W.1 has also been claiming some right over the coconut trees. Therefore, she was also right in trying to prevent the accused party from plucking the coconuts. But P.W.1, instead of physically preventing these accused, would have gone to the police seeking a help. Instead, she had physically attempted to prevent them from plucking the coconuts. This quite naturally resulted in a scuffle. It is in evidence that in the scuffle the petitioner twisted the right hand with a view to pull her out of the land. It is also in evidence that she fell down on the spot on the push made by the accused 1 and 2. Any how, in the said process, it appears that she has sustained injury on the right wrist.

10. In my considered view, this occurrence was not a premeditated one. It was out of a sudden quarrel. But, at the same time, the petitioner could have prevented P.W.1 from entering into the land in a gentle manner, instead of twisting her hand. Thus, the twisting of hand amounts to voluntarily causing hurt in terms of the Indian Penal Code. To this extent, in my considered view, there is clear evidence by way of



P.Ws.1 to 4. Now, the next question is whether the hurt caused voluntarily by the petitioner is a grievous hurt. In this case, according to the prosecution, since P.W.1 had suffered fracture of the bone on the right wrist, the injury is grievous. But, as rightly pointed by the learned counsel for the petitioner, the X-ray said to have been taken by P.W.8 had not been marked in evidence at all. It is needless to point out that the opinion of P.W.8 that there was fracture is not out of his own examination, but out of what was revealed by the X-ray. Therefore, the X-ray is a primary evidence and the oral evidence of P.W.8 based on the X-ray is only a secondary evidence. In the absence of the production of the primary evidence, the secondary evidence is inadmissible, as there is no explanation offered for non production of the primary evidence. Therefore, the opinion of P.W.8 that the injury found on P.W.1 was grievous, being the secondary evidence, cannot be acted upon for want of primary evidence. Therefore, I hold that the injury sustained by P.W.1 has not been proved to be a grievous one. In such view of the matter, the petitioner could be convicted only under Section 323 IPC alone. For the offence under Section 323 IPC, the maximum substantive sentence of imprisonment, which could be imposed, is one year and the maximum fine is Rs.1,000/-.

11. In my considered opinion, since the occurrence was not a premeditated one, since there was no weapon used and since the whole occurrence was out of a sudden quarrel, which arose out of a genuine civil dispute and considering the fact that the petitioner is aged hardly 32 years and the parties are closely related and by striking a balance between the aggravating and mitigating circumstances, I am inclined to impose a sentence of imprisonment till rising of Court and to pay a sum of Rs.5,000/- as compensation to P.W.1. The fine of Rs.1,000/- already imposed by the trial Court is hereby set aside. The petitioner shall deposit the compensation amount before the trial Court and the trial Court shall pay the same to P.W.1 without reference to this Court. The petitioner, who is present in Court shall remain in Court to undergo the sentence till rising of Court till 04.45 p.m. today.

12. In the result, the criminal Revision Petition is partly allowed in the following terms:

(i) The conviction of the petitioner under Section 325 IPC and the sentence imposed thereon are set aside and instead, he is convicted under Section 323 IPC imposing a sentence of imprisonment on the petitioner till rising of Court till 4.45 p.m. today.

(ii) The petitioner is directed to pay a sum of Rs.5,000/- (Rupees five thousand only) as compensation and the same shall be deposited before the lower Court and the lower Court shall pay the same to P.W.1 without further reference to this Court. The time for deposit of Rs.5,000/- is seven days from the date of receipt of a copy of this order.

(iii) Fine amount, if any paid by the petitioner shall be refunded to him.

Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AS)

/True Copy/



To

- 1.The Sessions Judge, (Fast Track Court),
Kanyakumari at Nagercoil
- 2.The Judicial Magistrate, No.III,
Nagercoil, Kanyakumari District.
3. -Do- Through The Chief Judicial Magistrate,
Kanyakumari at Nagercoil.
- 4.The Sub Inspector of Police,
Suchindram, Kanyakumari District.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1cc to MR.G.PRABHU RAJADURAI, Advocate in SR.No. 35266

RR

SR : 23.07.2015 : 5p/7c

Cr1.R.C.(MD)NO.225 of 2015
30.06.2015