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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.08.2015

CORAM:

THE HONOURABLE MRS.JUSTICE **S.VIMALA**

**Criminal Revision Case (MD)No.324 of 2015
and
M.P. (MD)Nos.1 to 3 of 2015**

Rajadurai .. Petitioner/Appellant/Accused

Vs.

State rep. by
The Sub Inspector of Police,
Sikkal Police Station,
In Cr.No.44/11
Ramanathapuram District. .. Respondent/Respondent /Complainant

Revision is filed under Section 397 r/w 401 Cr.P.C. against the Judgement passed in C.A.No.10 of 2014 dated 23.01.2015 by the learned Additional District Judge, Ramanathapuram confirming the Judgment of conviction and sentence passed in C.C.No.120/11 dated 27.03.2014 by the learned Judicial Magistrate, Mudhukulathur and set aside the same and acquit the petitioner/appellant/accused from all the charges levelled against him.

For Petitioner : Mr.R.Venkateswaran
For Respondent : Mr.P.Kandasamy
Government Advocate(Crl.Side)
For Defacto
Complainant : Mr.S.Sivabalan

ORDER

The wife of the defacto complainant is the aunt of the accused. The defacto complainant (P.W.1-Perumal) and his wife were not living together. This was hurting the accused as well as his family members. On 14.04.2011, at about 09.30 in the night, when the complainant was roaming outside his house, the accused questioned him regarding the neglect of his wife and in not living with her. At that point of time, there had been wordy quarrel between both of them and this accused is stated to have bitten a portion of the left ear of Perumal. So alleging, charge was filed by the Sub-Inspector of Police of Sikkal Police Station under Section 294(b) and 306 IPC.

<https://hcservices.ecourts.gov.in/jcservices> 2. The prosecution has examined seven witnesses and marked six documents. Out of those witnesses, P.W.6 is the doctor, who treated the defacto complainant at about 4' clock in the early morning. The



statement of the defacto complainant before the doctor is that he was assaulted by two known persons with wooden log. The doctor certified the injury to be grievous injury. P.Ws.2 to 4 are stated to be the eye witnesses to the occurrence. It would be relevant to point out that none of the witnesses including P.W.1, the victim, has spoken about the use of logs in the occurrence. Nobody has spoken about the presence of anybody else excepting the presence of the accused. Based on this evidence, the trial Court, acquitted the accused under Section 294 (b) IPC and convicted the accused person under Section 326 IPC imposing a sentence of 1 year rigorous imprisonment and a fine of Rs.100/-, in default, to undergo simple imprisonment for a period of one month. Challenging the Judgment of conviction appeal was filed in C.A.No.10 of 2014 on the file of the learned Additional District Judge, Ramanathapuram. The Additional District Judge, dismissed the appeal thereby confirming the conviction and sentence passed by the trial Court under Section 326 IPC.

3.Contending that the findings of both the Courts are perverse and based on no evidence, this Revision Petition has been filed. The main contention of the learned counsel for the accused is that when the prosecution failed to establish the necessary ingredients of Section 326 IPC, the punishment imposed under Section 326 IPC is illegal and therefore, it is liable to be set aside.

4.In order to appreciate this contention, it is necessary to consider the ingredients to be proved in respect of the offence under Section 326 IPC. To bring out the charge under Section 326 IPC, the prosecution has to establish that the accused,

- (a)voluntarily caused a hurt;
- (b)The hurt caused is a grievous hurt; and
- (c)The grievous hurt was caused by dangerous weapons.

5.Section 335 of the Indian Penal Code serves as a proviso to Section 326. The ingredients for the offence under Section 335 IPC are that the accused must have voluntarily caused the grievous hurt; that such grievous hurt has been caused on grave and sudden provocation and the accused did not intend to cause grievous hurt or know it likely to hurt anyone other than the author of provocation. In other words, the intention must be to cause hurt to the author of provocation and none else.

6.The learned counsel for the accused would submit that the prosecution has not at all proved the case and even assuming that it has been proved, what was proved is that the accused must have committed the offence under sudden and grave provocation.

7.The learned counsel for the revision petitioner pointed out that the evidence of P.Ws.2 to 4 are liable to be rejected, as they are admittedly interested witnesses. This contention cannot be accepted, as even if they are interested witnesses, their evidence



did not deserve outright rejection. Their evidence need to be scrutinised with great care and caution.

8. It is pointed out that they are unreliable witnesses, as the evidence adduced by them is not commensurate with the earliest version of the victim himself before the doctor. Even though, this version is correct to certain extent apart from witnesses the injury itself speaks for the occurrence.

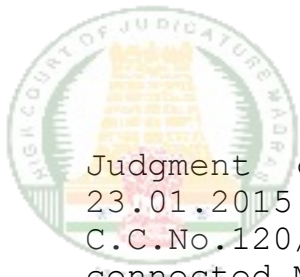
9. The next contention is that the report of Radiologist is not filed. This contention also is incorrect because when there is no occasion to take any X-ray, nobody can expect the report of the Radiologist.

10. The probable cause for the accused person to have entertained a sustained provocation has been explained by the learned counsel for the revision petitioner by putting forward a contention that, when the defacto complainant unreasonably deserted the company of the wife while alleging incorrect and unreasonable reasons for neglecting her, it is natural for the young accused to have suffered the provocation. This contention appears to be correct, as the prosecution has suppressed the genesis of the occurrence. The way in which the occurrence said to have taken place is highly dramatic, in the absence of the genesis of the occurrence. More over, when the log is said to have been used in the occurrence, no weapon has been produced. May be, in order to cover up the lacuna, the prosecution must have invoked the theory of the accused having bitten the ear of the defacto complainant. However, even though the use of weapon is not proved, the injury speaks for itself and the accused would be liable to answer for the injury caused. The evidence adduced before this Court would only prove the ingredients of Section 325 IPC and not the offence under Section 326 IPC.

11. The victim and the defacto complainant have filed a petition seeking permission of this Court to compound this offence, though the offence under Section 326 IPC is not compoundable, the offence under Section 325 IPC is compoundable with the permission of the Court, as contemplated under Section 320 (2) Cr.P.C. When this Court suggested that the accused must be made to compensate the victim (P.W.1) either by paying compensation or atleast by reimbursing the medical expenses, P.W.1 has submitted that he want to forgive the accused and he did not want any compensation or reimbursement.

12. Under such circumstances, considering the compromise entered into between the parties and having regard to the nature of relationship and the nature of offence proved, this Court permits the accused to compound the offence.

13. In the result, this Criminal Revision Petition is allowed and the accused is acquitted of the charge under Section 325 IPC. In view of the compromise entered into between the parties, the



Judgment of the Sessions Court in C.A.No.10 of 2014, dated 23.01.2015 confirming the Judgement of the appellate Court in C.C.No.120/11, dated 27.03.2014 are set aside. Consequently, connected Miscellaneous Petitions are closed.

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Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

- 1.The Additional District and Sessions Judge, Ramanathapuram.
- 2.The Judicial Magistrate, Mudhukulathur.
3. The Chief Judicial Magistrate, Ramanathapuram
- 4.The Sub Inspector of Police,
Sikkal Police Station,
Ramanathapuram District.
5. The Additional Public Prosecutor
Madurai Bench of madras High Court,
Madurai

+1cc to Mr.R.Venkateshwaran,Advocate Sr.No.48014

rj2

AA/27.08.2015/4p-7c

order made in
Crl Revision Case (MD)No.324 of 2015
and
M.P. (MD)Nos.1 to 3 of 2015
20.08.2015