

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2016

CORAM

THE HON'BLE DR.JUSTICE P.DEVADASS

CrI.R.C.No.176 of 2011

Mariappan

..

Petitioner/Accused No.1

Vs.

State rep. by

The Inspector of Police,
Vennandur Police Station,
Namakkal District.

... Respondent/Complainant

(Cr.No.528/2006)

This Criminal revision is filed under Section 379 & 401 of Cr.P.C., against the judgment made in C.A.No.76 of 2009 dated 7.1.2011 on the file of Principal Sessions Judge, Namakkal confirming the conviction under section 326 I.P.C. and sentence for a period of 3 years R.I. with fine of Rs.1000/- in default 3 months R.I. in S.C.No.86 of 2007 on the file of Assistant Sessions Judge, Rasipuram, dated 16.9.2009.

For Petitioner : Mr.Sankara subbu

For Respondent : Mr.R.Sekar, G.A.(CrI.side)

O R D E R

A-1 in the Sessions case in S.C.No.86 of 2007 on the file of the learned Assistant Sessions Judge, Rasipuram, Namakkal District is the revision petitioner.

2. Noticing the following factual matrix in brief is sufficient to dispose of this Criminal revision:

A-1 and A-3 are spouses. A-1's mother is A-2. All belongs to Minnalkkal village in Namakkal District. Already there is property dispute between both sides. On 23.8.2006, at noon, when P.W.1, servant of P.W.2 was planting small plants on the small channel near the house of A-2, A-2 prevented it. Wordy altercation took place between P.W.2 and A-2. A-1 came there. He had assaulted P.W.2 on her head with M.O.1 firewood. P.W.3 husband of P.W.2, P.Ws.4 and 5 brothers of P.W.2 came there.

Ex.P1 complaint was lodged by P.W.1 with Vannandhur police. A case in Cr.No.528/2006 was registered. After completing the investigation, P.W.16 Investigation Officer filed final report for offences under section 307, 323 and 307 r/w 34 I.P.C. before the committal Magistrate. The committal Magistrate committed the case to the Court of Principal Sessions Judge, Namakkal who made over the case to the Assistant Sessions Judge, Rasipuram for trial. Charges were framed. A-1 to A-3 pleaded not guilty. To substantiate the charges, prosecution examined P.Ws.1 to 18, marked Ex.P1 to 8 and exhibited M.O.1.

3. Appreciating the said evidence, the trial Court while acquitting A-2 and A-3, convicted A-1 under section 326 I.P.C. and sentenced him to 3 years rigorous imprisonment and fined him Rs.1000/- in default to undergo 3 months simple imprisonment. The accused paid the fine amount.

4. Aggrieved, A-1 preferred CrI.A.No.76 of 2009. The learned Principal Sessions Judge, Namakkal after hearing both sides dismissed the Criminal appeal and confirmed the conviction and sentence imposed by the trial Court.

5. The learned counsel for the revision petitioner would contend that prosecution has thoroughly failed to establish the offence under section 326 I.P.C. Already, there was property dispute between P.W.2 and A-1's family. Near the place of occurrence, there is a pond. Even as per the prosecution version, there was quarrel between P.W.2 and A-2. In the circumstances, P.W.2 rolled down and fell into the said pond. However, nurturing ill-will, through her servant, P.W.2 has implicated A-1 also in this case. However, while appreciating the evidence this aspect has been overlooked by both the Courts below.

6. The learned counsel for the revision petitioner further contended that Section 27 Evidence Act recovery of M.O.1 firewood through A-2 is false. Further, the trial Court refused to believe the prosecution evidence with regard to A-2. A-2 has been acquitted. Further, when the Section 27 Evidence Act recovery of M.O.1 is not proved, the prosecution version with regard to the weapon goes away. Further, there is no acceptable evidence describing the nature of the weapon alleged to have been used in their commission of the offence.

7. The learned counsel for the revision petitioner further contended that both the Courts were carried away by the medical evidence of P.W.14 and they have not referred to M.O.1 and the nature of the injury. P.W.2 did not suffer grievous hurt. In this case, section 326 I.P.C. is not attracted.

8. On the other hand, the learned Govt. Advocate (Crl.side) submitted that P.W.2 having sustained head injury at the hands of A-1 has been spoken to by P.W.2/victim, and that has also been corroborated by P.W.1, the eye witness. Their oral evidence has been corroborated by the medical evidence of P.W.14. The defence suggestion that P.W.2 had rolled down and fell into the nearby pond remained only a suggestion and it was rejected by P.Ws.1 and 2. In the circumstances, in appreciation of the evidence let in, the trial Court and the Appellate Court have rightly convicted and sentenced A-1.

9. I have anxiously considered the rival submissions, perused the impugned judgments and the entire materials on record.

10. This Court is not sitting in Appeal over the judgments of the trial Court and the Appellate Court. This is a revision filed under section 397 Cr.P.C. This Court exercises revisional power vide section 401 Cr.P.C.

11. In exercise of the revisional jurisdiction, this Court has to see whether the finding recorded by the inferior criminal Court suffers from any legality, propriety, regularity or it was recorded as against the provisions of law or established principles of law or in violation of principles of natural justice. In such an event, this Court is required to intervene.

12. Although under section 397 Cr.P.C., the Court is not expected to reappraise the evidence like an Appellate Court however to find out whether the judgment suffers from any legality it can refer to the evidence adduced.

13. At the time of occurrence, P.W.1 having been present at the scene of crime is very clear from the evidence of P.Ws.1 and 2. Although the other alleged eye witnesses could not speak about the manner of actual occurrence, they have also stated about P.Ws.1 and 2 having been found at the place of occurrence. The evidence of P.W.2 is very crystal clear that she was assaulted by A-1 with M.O.1 firewood. P.W.2 has also been corroborated by the eye witness P.W.1.

14. In this case, the medical evidence has been adduced through the Doctor/P.W.14. P.W.16 issued Ex.P6 Wound certificate. He had noticed the following injuries on the person of P.W.2.

1. 5 cm laceration over frontal region.
2. 12 cm laceration over parietal region.
3. 6 cm laceration over occipital region.

4. contusion/abrasion over right buttocks.

15. On the basis of the above evidence the trial Court as well as the Appellate Court recorded finding of guilty under section 326 I.P.C. as against A-1. Both the Courts have right in believing that A-1 has assaulted P.W.2 with M.O.1 firewood on her head.

16. Punishment for 'hurt' depends upon the nature of injury and the nature of weapon used. Chapter 16 of Indian Penal Code deals with offences against human body. As per its Section 319 I.P.C. 'hurt' is described as under:

'Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt'.

17. Vide Section 320 I.P.C. 'hurt' will become 'grievous' under any one of the following categories:

'First. - Emasculation.

Secondly. - Permanent privation of the sight of either eye.

Thirdly- Permanent privation of the hearing of either ear.

Fourthly. - Privation of any member or joint.

Fifthly. - Destruction or permanent impairing of the powers of any member or joint.

Sixthly. - Permanent disfiguration of the head or face.

Seventhly. - Fracture or dislocation of a bone or tooth.

Eighthly. - Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.'

18. 'Hurt' is commonly known as 'simple hurt/injury'. It is punishable under section 323 I.P.C. However, when the said hurt was caused by a dangerous weapon or means then it is punishable under section 324 I.P.C. and if the hurt is grievous

as defined in Section 320 I.P.C. then it is punishable under section 325 I.P.C. When such 'grievous' hurt has been caused by a dangerous weapon further higher punishment is provided in section 326 I.P.C.

19. From the above, what emerges is that whether the injury/hurt is 'simple' or 'grievous' does not depend on the Doctor's evidence, medical opinion. But it is based on the nature of the injury, as given in section 319, 320 I.P.C., as the case may be. However, in this respect, medical evidence assists the Court to classify the injury. Thus, nature of injury in the legal sense and the nature of the injury in the medical sense are different. What the Court has to do in a hurt case is to classify the hurt as simple or grievous as defined in section 319 or in Section 320 I.P.C.

20. In this case, evidence of P.W.14 will not bring the injury suffered by P.W.2 under section 320 I.P.C. as it did not fall under any of the category of injury listed in the said section.

21. In a hurt case, for the purpose of deciding the severity or gravity of the offence committed, the nature/type of weapon also assumes signal importance. If it is an ordinary, simple weapon, it is different. If the weapon is dangerous, lethal, then the punishment will be more. Therefore, the prosecution has to establish the nature of the injury, type of weapon used, whether it is blunt weapon, etc. then only the Court can give higher punishment based on the nature of weapon used.

22. In this case, M.O.1 is a firewood. The seizure of M.O.1 is based on the disclosure alleged to have been made by A-2, which has not been established. That apart, size, width, length and other details of M.O.1 has not been furnished by the prosecution. Thus, there is dearth of material to hold whether M.O.1 is a dangerous weapon.

23. In the circumstances, as against A-1, only an offence under section 324 I.P.C. is made out.

24. Thus, the finding recorded by the trial Court as well as by the Appellate Court under section 326 I.P.C. suffers from legality.

25. In view of the foregoing, ordered as under:

(1) This revision is allowed in part.

(2) Conviction recorded and the punishment awarded under section 326 I.P.C. by both the Courts are set aside. Instead, the revision petitioner/A-1 is convicted under section 324 I.P.C. and he is sentenced to the period already undergone viz., 30 days R.I. The fine amount is maintained.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

- 1 The Principal Sessions Judge, Namakkal.
- 2 The Assistant Sessions Judge, Rasipuram, Namakkal District.
3. The Government Advocate, Crl. Side, High Court, Madras.
4. The Superintendent, Central Prison, Salem.
5. The Inspector of Police, Vennandur Police Station, Namakkal District.

6. The Chief Judicial Magistrate
Namakkal

7. The Superintendent Central Prison
Coimbatore

8. The Section Officer
Criminal Section
High Court Madras

+1 cc to Mr.R.Sankarasubbu Advocate vide sr 61164

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