

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2017

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

Crl.R.C.No.1326 of 2017

1. Ramamurthy
2. Sathish

... Revision Petitioners

Versus

State of Tamil Nadu
Rep. By the Inspector of Police
S.H.O. Kumaratchi Police Station,
Cuddalore District.
(Cr.No.150 of 2012)

... Respondent

Criminal Revision Case filed under Sections 397 and 401 Cr.P.C. against the order dated 04.10.2017 made in C.A.No.15 of 2017 on the file of the II Additional District and Sessions Judge, Chidambaram, confirmed the Judgment dated 24.01.2017, made in C.C.No.70 of 2013 on the file of Judicial Magistrate No.II, Chidambaram.

For Revision Petitioners	:	Mr.S.P.Sudalaiyandi
For Respondent	:	Mr.V.Arul, Additional Public Prosecutor

ORDER

The first petitioner Ramamurthy has been found guilty under Section 325 IPC and he has been convicted and sentenced to undergo three months rigorous imprisonment and to pay a fine of Rs.2,000/-, in default, to undergo one month simple imprisonment, by the learned Judicial Magistrate No.II, Chidambaram in C.C.No.70 of 2013.

1.1. The second petitioner has been found guilty under Section 324 IPC and he has been ordered to pay a fine of Rs.2,000/-, in default, to undergo one month simple imprisonment, by the learned Judicial Magistrate No.II, Chidambaram in C.C.No.70 of 2013.

1.2. The conviction, sentence and fine imposed by the learned Magistrate has been confirmed by the Second Additional District and Sessions Judge, Chidambaram, by the Judgment dated 04.10.2017. Challenging the same, this revision petition has been filed by both the petitioners.

2. The purpose of revision is to enable the revisional court to satisfy itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed and as to the regularity of any proceedings of the subordinate criminal court.

The brief facts:

3. The injured Velkumar participated in the cremation ceremony of his mother-in-law and he wanted to pay last respects by garlanding the deadbody and that point of time, the accused persons objected the same and after criminally intimidating the injured, used abusive language against him and caused injuries. The specific allegation is that the second accused used knife and caused injury over backside of the head and the first accused used woodenlog and caused injury over the right hand.

3.1. These injuries were corroborated by the evidence of Doctor, P.W.9-Mythili. P.W.9, in her evidence, has stated that she gave treatment to the injured one Velkumar and that Velkumar was having two injuries, one on the right front hand 5 x 2 x 1 c.m. and another injury on the left side of the head (at the back side) 4 x 1 x 1 c.m. (lacerated injury).

4. The only question is, whether it is proved that those injuries were caused only by the petitioners 1 and 2 herein?

5. Even though the case has been registered under Sections 294 (b), 323, 324, 325 and 506(ii) IPC, final report has been filed only under Sections 324, 325, 294(b) and 506(ii) IPC against three accused persons. The trial Court has acquitted the third accused completely and has acquitted the petitioners under Section 294(b) and 506(ii) IPC. Only on specified offences as stated supra, the accused 1 and 2 has been found guilty.

6. The learned counsel for the revision petitioners submitted that the finding of the Court below is based on no evidence and therefore, those findings are perverse and it is liable to be set aside.

7. Before embarking upon the perversity or otherwise of the evidence, it is necessary to find out the ingredients to be proved in order to substantiate the offence under Sections 324 and 325 IPC.

Section 324 in The Indian Penal Code

324. Voluntarily causing hurt by dangerous weapons or means.—Whoever, except in the case provided for by section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either

description for a term which may extend to three years, or with fine, or with both.

To bring home an offence punishable under Section 324, the prosecution is to prove: (a) that the accused caused hurt i.e. caused bodily pain or disease or infirmity (vide Section 319 IPC) to another; (b) that it has been caused voluntarily i.e. with knowledge or intention to cause; (c) that it has been caused by any instrument for shooting or stabbing or cutting, or by any instruments which qua weapon of offence is likely to cause death or by means of fire or any heated substance or by means of any poison or any corrosive substance or by means of any explosive substance or by means of any substance which is deleterious to the human body to inhale to swallow or to receive into blood or by means of any animal, and (d) that the offence does not attract Section 334 IPC.

Section 325 in The Indian Penal Code

325. Punishment for voluntarily causing grievous hurt.—Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

To bring home an offence under Section 325 IPC, the prosecution is to prove that (a) that the accused has caused bodily pain, disease or infirmity to the victim; (b) this hurt has been caused voluntarily; (c) and this hurt has been caused without being provoked by any one, (d) that the hurt has been caused answers any of the hurts described in Section 320 IPC.

8. In respect of proof of offence under Section 324/325 IPC, the victim who survives the injury would be the best witness and as the victim is unlikely to screen the real offender, weight is given to the evidence adduced by the injured. This would be the position under normal circumstances. But, here is a case where the earliest

version of the injured before the Doctor is that some unknown persons caused injury to him. It is not necessary that the injured must know the names of the assailants. There may be circumstances, where, the injured later could have made enquires and to find out who was responsible for the occurrence. Then, it is for the injured to explain the circumstances, under which he was able to gather the information regarding the details of assailants. But, in this case, there is no explanation as to how the injured was able to say the names of the accused persons and how they were able to identify the accused persons before the Court. The earliest version by the injured before the Doctor assumes much importance as at that point of time, the version would be pure without contamination.

9. Yet another question for consideration is, whether the injured can be believed, when there are material contradictions in the evidence and the other circumstances do not support the case of the injured.

10. It is in the evidence of the Doctor and Investigating Officer that the version of the injured before them was, he was attacked by knife. But, before the Court, the injured has stated that he was attacked by A1 with kazhi and he was attacked by A2 by knife. There is no cut injury, but, only lacerated injury. No weapon has been recovered.

11. In this case, when the prosecution claims that there is a grievous injury, it should have produced documentary evidence. Neither X-ray report nor X-rays have been produced. Therefore, in the absence of the doubt regarding the weapon used,

nature of injury caused apart from the motive for the occurrence, it is doubtful whether the case of injured can be true.

12. The origin of occurrence as spoken to by prosecution creates suspicion regarding genuineness of the prosecution case.

13. The Evidence Act speaks of three set of proof: i.e. Cases proved, not proved and disproved. Here is a case where the involvement of the accused persons in the occurrence itself is not made clear on account of the cloud raised by the prosecution by adducing mutually contradictory evidence.

14. When the case of the prosecution is abundant in contradictions than in consistency, then, the prosecution case cannot be accepted. The conviction and sentence passed is based on no legally acceptable evidence. When the evidence produced do not establish the ingredients necessary to be proved as extracted above, then, the findings are perverse. When the findings are shown to be perverse, the conviction and sentence are liable to be set aside.

15. The first accused is acquitted of the charge under Section 325 IPC and the second accused is acquitted of the charge under Section 324 IPC. The acquittal of both the accused under Sections 294(b) and 506(ii) IPC are confirmed.

16. In the result, the Criminal Revision Case stands allowed. Fine amount, if any, paid by the appellants, shall be refunded to them. Bail bonds, if any, shall stand discharged.

17. It is represented that because of the conviction originally ordered, both the petitioners have been dismissed from service and that in the event of this Court finding the accused not guilty, there must be a direction for re-consideration of the dismissal order.

18. The contention raised has to be considered, even though dismissal order is not under challenge, in order to avoid multiplicity of proceedings and to avoid further waste of time. In fitness of things, it is appropriate, instead of driving them to a separate litigation, there is a direction to the appointing authority to re-consider the decision, in the light of the Judgment of this Court.

.12.2017

ogy

To

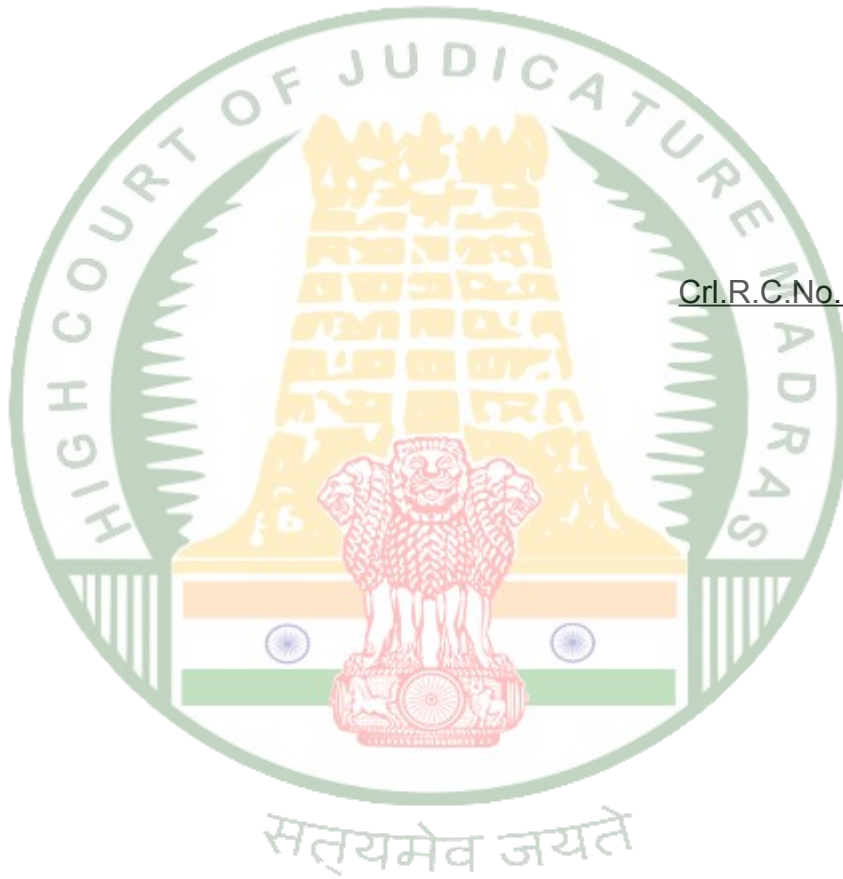
1. Learned Second Additional District and Sessions Judge, Chidambaram
2. Learned Judicial Magistrate No.II, Chidambaram.

सत्यमेव जयते

WEB COPY

Dr.S.VIMALA, J.

Ogy



Crl.R.C.No.1326 of 2017

21.12.2017

WEB COPY