

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Revision No.26 of 2014

Murugan

.. Petitioner

Vs

1.Manoharan

2. Sub-Inspector of Police,
Kotagiri Police Station,
Kotagiri,
Nilgiris 643 217

.. Respondents

Prayer:- Criminal Revision filed under Sections 397 and 401 of Cr.P.C., to set aside the against the judgment passed in C.C.No.36 of 2008 dated 13.07.2009 by the learned Judicial Magistrate, Kotagiri.

For Appellant : Mr.A.Bobbie

For Respondents : Mr. K.V.Sridharan,
for R1

: Mr.R.Ravichandran,
Gov. Adv. (Crl. Side)
for R2

ORDER

Challenging the order of acquittal passed by the Judicial Magistrate, Kotagiri in C.C.NO.36 of 2008 dated 13.07.2009, the present revision has been filed by the victim/P.W.1. The first respondent/accused stood charged for an offence under Section 326 IPC and the trial Court after trial acquitted the first respondent and challenging the above order of acquittal, the present revision has been filed.

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

On 12.04.2008, at about 9.00 a.m., due to some enmity between the petitioner and the first respondent regarding putting up of some construction, the first respondent attacked the petitioner/defacto complainant by using an iron rod on his head and left leg. Then, the petitioner/P.W.1 was taken to Government Hospital, Kothagiri and on intimation received from the hospital, P.W.11, Head Constable, working in the second respondent police station proceeded to the hospital and recorded his statement, based on the same, he registered a case in Crime No.122 of 2008 for an offence under Section 324 IPC.

3. P.W.12 Sub-Inspector of Police, on receipt of the First Information Report (Ex.P.6), commenced investigation and proceeded to the scene of occurrence, where he prepared an Observation Mahazar (Ex.P.3) and drew a rough sketch (Ex.P.7) in the presence of P.W.7 and P.W.8. Then, he recorded the statements of the petitioner and other witnesses. Thereafter, he recovered Iron Rod (M.O.1) in the presence of the witnesses based on the disclosure statement of the first accused. Then, he recorded the statement of the Doctor, who treated the petitioner/defacto complainant, and based on the investigation, he altered the case into section 326 IPC, the alteration report is Ex.P.9, then he arrested the accused and after completion of investigation, he laid the final report against the accused.

4. Based on the above materials, the trial Court framed charge under Section 326 IPC and the accused denied the same. In order to prove its case , on the side of the prosecution, as many as 12 witnesses were examined and 9 documents were exhibited, besides one material object was marked.

5. Out of the witnesses examined, P.W.1 is the injured witness. According to him, due to previous enmity, on the date of occurrence, on 12.04.2008, at about 9.00 a.m., near Selakorai Temple, the first accused attacked him with iron rode on his head and

legs and on his way to hospital, he had given a complaint before the respondent police and also handed over the iron rod(M.O.1). P.W.2 is the wife of P.W.1 and P.W.3 is the brother of P.W.1. P.Ws.4 and 5 took P.W.1 to the Government Hospital, Kothagiri. P.W.6 is the Doctor, working in the Government Hospital, Kothagiri. According to him, P.W.1 was referred from Government Hospital, Koonoor and he examined him and there was a fracture on his leg and he issued an Accident Register(Ex.P2). P.W.7 is a witness to the Observation mahazar. P.W.8, who is also a witness to the Observation mahazar, turned hostile. P.W.9 is a witness to the recovery of Iron Rode(M.O.1.).

6. P.W.10, is a Doctor, working in the Bethel Hospital, Coimbatore. According to him, on 12.04.2009, at about 3.00 p.m., P.W.2 brought P.W.1 to Hospital and he examined him, and found fracture in both his legs and issued an Accident Register, Ex.P.5. P.W.11, Head Constable has spoken about the registration of the case. P.W.12, Sub-Inspector of Police, conducted investigation and recorded the statements of the witnesses and after completion of investigation, he laid the charge sheet against the accused.

7. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he did not choose to examine any witness or mark any documents on his side.

8. Having considered all the above materials, the trial Court acquitted the accused. Challenging the same, the petitioner/defacto complainant has filed the present revision.

9. P.W.1 is the injured witness. According to him, immediately, after the occurrence he was taken to a hospital and on the way to hospital, he has given a complaint to the second respondent police, and also handed over the Iron Rod (M.O.1) before the respondent police. But, according to P.W.11, after the receipt of the memo from the hospital, he went to the Government Hospital, Kothagiri, where he recorded the statement of P.W.1 and based on his statement, P.W.11 registered the case. Hence, the first complaint given by P.W.1 has been suppressed by the prosecution.

10. Apart from that according to P.W.1, P.W.6, Doctor, working in the Government Hospital, Kothagiri, P.W.1 was first taken to Government Hospital, Koonoor, from there he was referred to Government Hospital , Kothagiri. But, P.W.4 and 5 have stated that

P.W.1 was directly taken to the Government Hospital, Kothagiri and then another witness, P.W.10, Doctor, working in a Hospital at Coimbatore, has stated that on 12.04.2009 at about 3.00 p.m., P.W.1 was taken to Coimbatore Hospital, where he treated him and issued an Accident Register, Ex.P.5. Apart from that even though P.Ws.2 and 3, wife and brother of P.W.1 have stated that they have seen the occurrence, in the cross examination they have stated that they went to the scene only after the occurrence. Hence, they cannot be an eye-witnesses to the occurrence. Considering all the above discrepancies the trial court came to a conclusion that the prosecution has failed to prove the offence against the first respondent and acquitted him.

11. It is settled law that in a case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to him. Every person shall be presumed to be an innocent, unless his guilt is proved by a competent Court. Secondly, if the accused has secured an order of acquittal, the presumption of his innocence is reaffirmed and strengthened by the trial Court. Even if two reasonable conclusions are possible, on the basis of the evidence on record, the appellate Court should not disturb the finding and the acquittal recorded by the trial Court. In the instant case, the trial Court, after considering the entire evidence, has acquitted the accused. In the facts and circumstances,

I find no illegality or irregularity or perversity in the order passed by the court below.

12. In the result, the Criminal Revision Case is dismissed.

03.04.2017

mrp

Index: yes/no

Internet : yes/no

Speaking order/non speaking order

To

1. The Judicial Magistrate,
Kotagiri.

2.The Public Prosecutor,
High Court, Madras.

V.BHARATHIDASAN.J.,

mrp

Crl.R.C.No.26 of 2014

03.04.2017
<http://www.judis.nic.in>