

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.04.2017

CORAM:

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Cr1.R.C.No.311 of 2014

Selvam

... Petitioner/A1

Vs

State by Sub Inspector of Police,
Ariyalur Police Station,
Ariyalur
Crime No.587/2009

... Respondent/Complainant

Prayer:- This Criminal revision petition is filed under Section 397 r/w 401 of Cr.P.C., praying to set aside the judgment of C.A.No.17/2012 dated 14.02.2014 on the file of the Principal Sessions Judge, Ariyalur by confirming the judgment passed in C.C.No.41/2012 dated 19.10.2012 on the file of Judicial Magistrate, Ariyalur and to allow the above Criminal Revision.

For Petitioner : Mr.R.Nalliyappan
For Respondent : Mr.R.Ravichandran,
Govt. Advocate (Cr1 side)

O R D E R

This revision is filed seeking to set aside the judgment of C.A.No.17/2012 dated 14.02.2014 on the file of the Principal Sessions Judge, Ariyalur by confirming the judgment passed in C.C.No.41/2012 dated 19.10.2012 on the file of Judicial Magistrate, Ariyalur.

2. The petitioner is the first accused in C.C.No.41 of 2012 on the file of Judicial Magistrate, Ariyalur and stood charged for the offences under Section 324, 354, 294(b) & 506(i) of IPC. The trial Court found him guilty and convicted the petitioner and sentenced to undergo simple imprisonment for six months under Section 324 IPC and also convicted under Section 354 IPC and sentenced to undergo simple imprisonment for 3 months. He was acquitted from the charges under Section 294(b) and 506(i) IPC. Aggrieved by the conviction and sentence of the trial Court, the petitioner preferred C.A.17/2012 on the file of the Principal Sessions Judge, Ariyalur and the lower Appellate Court

dismissed the appeal and confirmed the conviction and sentence imposed on him. Challenging the same, the present criminal revision has been filed.

3. The case of the prosecution is as follows:-

The defacto complainant one Vasuki is residing at Kamarajar Nagar, Ariyalur in the third floor of her house. On 21.07.2009 at about 11.00 p.m., on hearing some noise from the ground floor, PW1 came down to the ground floor, at that time petitioner/first accused broke the window in the ground floor house. When PW1 questioned the first accused, he dragged PW1 to the main road by pulling her hair and removed her nighty and attacked her with a wooden reaper and caused injuries on her right knee, shoulder and hip. The second accused, wife of the first accused also beaten PW1's brother one Sakthivel. Thereafter the tenant residing in the ground floor of PW1's house gave PW1 a bedsheet to cover her body. Thereafter PW1 was taken to the Government Hospital, Ariyalur, where PW9 Doctor, admitted PW1 as inpatient and gave her treatment also issued accident register, which was marked as Ex.P3. On receipt of the memo from the hospital, PW11 Special Inspector of Police in the respondent police station proceeded to the Government hospital and obtained the statement from PW1. Based on the complaint given by PW1, PW12 Inspector of Police in the respondent police station registered the First Information Report (Ex.P.4) and proceeded to the scene of occurrence and prepared observation mahazar (Ex.P.5) and rough sketch (Ex.P.6) and recorded the statement of witnesses and after completing the investigation he had filed the charge sheet.

4. Considering the oral and documentary evidence, the trial Court framed the charges as mentioned above. The accused denied the same. In order to prove its case, the prosecution examined twelve witnesses and marked six documents. Out of the witnesses examined, PW1 was the injured witness in this case. According to her, she is residing at Ariyalur, Kamarajar Nagar in the third floor and the ground floor was let out to a North Indian family. First accused used to quarrel with the lady in the ground floor. On the date of occurrence, at 11:00 p.m. PW1 heard some noise from the ground floor, immediately she came down to the ground floor and saw the petitioner/first accused broke open the window glass. When she questioned the first accused, he pulled PW1's hair and dragged her to the main road and removed her nighty and attacked her with a wooden reaper.

5. PW2 is one of the tenants in PW1's house, who is also an eye witness to the occurrence. He also deposed that the petitioner/first accused attacked PW1. PW3 is also one of the tenants in PW1's house. She also spoke about the scene of occurrence. She is also an eye witness to the occurrence. PW4

brother of PW1 is also an eye witness to the occurrence. According to him, the petitioner/first accused attacked PW1 with a wooden reaper and caused injuries and removed nighty of PW1. PW5 is a Mason also a tenant. He also spoke about the occurrence and he is also an eye witness to the occurrence. According to him, when PW1 questioned the petitioner/first accused, he dragged her to the road and tore the nighty and also attacked her with a wooden reaper. The tenant in the ground floor gave a bedsheet to cover her body. PW6 came to the scene of occurrence and saw the incident, he is also an eye witness. PW7 is only a heresay witness turned hostile. PW8 is the witness to the observation mahazar, also turned hostile. PW9 Doctor who admitted PW1 in Government Hospital as an inpatient gave treatment and issued Accident Register which is marked as Ex.P.3. P.W.10, daughter of PW1 is also an eye witness to the occurrence. She also spoke about the occurrence. PW11 Special Inspector of Police in the respondent police station went to the Government hospital and obtained the statement from PW1. PW12 Inspector of Police in the respondent police station registered the First Information Report and proceeded to the scene of occurrence and prepared observation mahazar and rough sketch and recorded the statement of witnesses and after completing the investigation, he has filed the charge sheet.

6. When the accused was questioned on the above incriminating circumstances under Section 313 Cr.P.C., they denied the same. The accused have not examined any witness. Considering all the above materials, the trial Court convicted the petitioner/first accused as stated above and acquitted the second accused. Challenging the conviction and sentence imposed on the first accused, the petitioner filed an appeal in CrI.A.No.17 of 2012 on the file of the learned Principal Sessions Judge, Ariyalur and the lower Appellate Court confirmed the conviction and sentence and dismissed the appeal. Challenging the same the present revision has been filed.

7. The learned counsel for the petitioner submitted that there was a long delay of more than two days in filing the FIR. Apart from that, there was a delay in sending the FIR to the Court, which was not properly explained by the prosecution in this case. He also submitted that all the eye witnesses are interested witnesses and the Court below relied on the evidence of the interested witnesses, convicted the first accused. Even in the evidence of the alleged eye witnesses, there are lot of contradictions which creates a doubt in the prosecution of the case.

8. Per contra the learned Government Advocate for the respondent submitted that all the eye witnesses are residing nearby the scene of occurrence. On hearing the noise, the

witnesses rushed there and seen the occurrence. The eye witnesses have also spoken about the overtact of the first accused. Apart from that, the evidence of the eye witnesses residing near the occurrence place is very much natural and there is no contradiction. So far as the delay in lodging FIR is concerned, PW11 after receiving the memo from the hospital, went to the hospital and obtained statement from PW1 and thereafter PW12 registered the FIR and the delay was explained by the prosecution.

9. I have considered rival submissions and perused the records carefully. PW1 is the injured witness in this case and she has stated that at the time of occurrence petitioner/first accused broke open the window in the ground floor of her house and when she questioned the same, the petitioner/first accused attacked her, thereafter, she was immediately taken to the Government Hospital and was admitted as inpatient. PW9 Doctor gave treatment to PW1 and issued Accident Register. All the eye witnesses corroborate the evidence of PW1 and all of them are residing in the same house and also near by to the scene of occurrence. Hence their presence in the scene of occurrence is natural and they are independent witnesses and they have no axe to grind against the accused. Apart from that the medical evidence also corroborates the evidence of PW1 and in the above circumstances there is no reason to disbelieve their evidence.

10. So far as the contention of the learned counsel for the petitioner that there is a delay of more than two days in giving the complaint, after the occurrence the PW1 was taken to the hospital and admitted as inpatient and on receipt of the memo sent to the police station from hospital, PW11 Special Inspector of Police came to the hospital and recorded the statement of PW1. Thereafter complaint was registered, hence the delay and it was properly explained by the prosecution, and the delay does not create any doubt in the prosecution case.

11. Considering the materials, the Courts below held that the prosecution has clearly established the guilt of first accused and convicted the first accused. In my view, the said findings of the Court below warrants no interference.

12. As far as the quantum of sentence is concerned, the learned counsel for the petitioner submitted that in view of efflux of time, the period already undergone by the first accused may be treated as the period of sentence. Considering the facts and the mitigating circumstances the sentence is modified to the period of sentence already undergone would meet the ends of justice.

13. In the result the Criminal Revision Petition is partly allowed. Conviction of the petitioner is confirmed and sentence alone is modified to the extent that the petitioner is sentenced to the period already undergone.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

dpq
To

1. The Principal Sessions Judge,
Ariyalur.
2. The Judicial Magistrate,
Ariyalur.
3. The Sub Inspector of Police,
Ariyalur Police Station,
Ariyalur.
4. The Public Prosecutor
High Court, Madras.

+1cc to Mr.R.Nalliyappan, Advocate Sr.23993

Cr1.R.C.No.311 of 2014

ad[co]
srg 5/06/2017

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