

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2017

CORAM:

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Cr1.R.C.No.647 of 2013

1.Meena @ Rathinavathi

2.Selvam

3.Manga

4.Ambika

5.Revathi ... Petitioners/Accused

//vs//

State rep. by
Sub-Inspector of Police,
Manali New Town Police Station
(Crime No.306 of 2004)

... Respondent/Complainant

Prayer : Criminal Revision filed under sections 397 and 401 of Criminal Procedure Code to set aside the order dated 22.04.2013 passed by the learned IV Additional District Sessions Judge, Ponneri in C.A.No.25 of 2011 confirming the order of conviction dated 11.05.2011 passed by learned Judicial Magistrate No.II, Ponneri in C.C.No.240 of 2005.

For Petitioners : Mr.R.Karthikeyan
for M/s.Madhuri Donti Reddy

For Respondent : Mr.R.Sekar
Government Advocate

ORDER

A1 and A4 to A7 in C.C.No.240 of 2005, on the file of the Judicial Magistrate No.II, Ponneri, are the appellants herein. Totally there are 7 accused. Originally there are only two accused and A1 stood charged for an offence under Section 323 IPC and A2 stood charged for the offences under Sections 323 and 325 IPC. Pending trial, on an application filed under Section 319 Cr.P.C., the trial added the remaining accused namely A3 to A7. Thereafter, as A3 was absconding, the case

against A3 was split up as C.C.No.17 of 2011 and a fresh charge has been framed. A4 to A7 stood charged for the offences under Sections 147 and 148 IPC and A1 stood charged for the offences under Sections 147, 148, 323 IPC and A2 stood charged for the offences under Sections 147, 148, 324 and 325 IPC. By judgment, dated 11.05.2011, trial court, convicted A2 and A4 under Section 148 IPC and sentenced them to undergo rigorous imprisonment for one year and convicted A1, A5 to A7 under Section 147 IPC and sentenced them to undergo simple imprisonment for one year and convicted A1 under Section 323 IPC and sentenced him to undergo simple imprisonment for one month and A2 convicted under Section 324 IPC and sentenced him to undergo simple imprisonment for two months. Challenging the above said conviction and sentence, the appellants/A1, A2 and A4 to A7 preferred an appeal before the IV Additional District and Sessions Court, Ponneri. Pending appeal, A2 died. The lower appellate Court confirmed the conviction and sentence against A1 and A4 to A7 and dismissed the appeal against A2 as abated. Now, challenging the above said conviction and sentence A1, A4 to A7 filed the present criminal revision.

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

P.W.1 is the injured witness in this case, there was a previous enmity between P.W.1 and the accused, and the accused used to abuse him with filthy language and quarrel with him frequently. On 01.12.2004, at about 4.00 p.m., there was a quarrel between P.W.1 and A1 while taking water in the common pipe line, and P.W.1 wanted to give a complaint, so she met her advocate, while returning back, at about 9.45 p.m., A3 attacked her with a wooden log and A7 also attacked her with a wooden log on her neck. While she raised alarm, P.W.3, her daughter also came out of the house, at that time A4 attacked her with an iron rod and caused injury to her and also threatened her to withdraw the complaint. Since P.W.1 refused to withdraw to the same, he attacked her with knife. and A1 dragged her by pulling her leg. Thereafter, she went to the Government Hospital, Ponneri and she was admitted by P.W.4 Doctor,. On receipt of the intimation from the hospital, P.W.5, Sub Inspector of Police, proceeded to the hospital and recorded the statement of P.W.1 and registered a case in Crime No.306 of 2004 and also prepared First Information Report (Ex.P.3). Then he proceeded to the scene of occurrence, where he prepared an observation mahazar and Rough Sketch and also obtained a wound certificate from P.W.4, Doctor on 16.02.2005. Based on the investigation, he altered the case into Section 323 and 325 IPC(Ex.P.4) and after the completion of investigation, he filed a final report.

3. Considering the above materials, the trial court framed charges as mentioned in paragraph 1 of the judgment and the accused denied the same. In order to prove its case, on the side of the prosecution, as many as 5 witnesses were examined and 4 documents were exhibited.

4. Out of the witnesses examined, P.W.1 is the injured witness. According to him, there was a previous enmity between her and the accused family members and they were constantly abusing her and also indulged in outraging her modesty. Earlier on 01.12.2014, at about 4.00 p.m, there was a quarrel between P.W.1 and A1 in the common water pipe line and A1 has broken her pot. Subsequently, she went to consult her advocate to file a complaint and while she was returning back at about 9.45 p.m., all the accused waylaid her and A3 attacked her with a wooden log on her back. A7 attacked her on her leg and also threw Chilly powder on her face. On hearing the quarrel, P.W.3, daughter of P.W.1, came out of their house and A4 also attacked her with an iron rod and caused injury. Then, A1 attacked her by pulling her leg and thereafter she went to the Government Hospital, Ponneri and then she lodged a complaint. Based on the said complaint, the case has been registered.

5. P.W.2 is the neighbour of P.W.1. In his evidence, he has stated that he did not see the occurrence, but somebody told him that there was a quarrel between P.W.1 and the accused family in the bus stop. P.W.3 is the daughter of P.W.1. At the time of occurrence, on hearing the quarrel, she came out of the house and at that time, A1 to 3 and A7 pulled her mother and criminally intimidated her and they have also attacked her with an iron rod on her face. A3 attacked her with an iron rod and P.W.3 took her mother inside their house. Then, on the next day morning, she took her mother to the hospital and after 2 days Sub Inspector of police recorded the statement of her mother. P.W.4 is the Doctor, who had given treatment to P.W.1 and according to her on 02.12.2004, she examined P.W.1 and found abrasion in the right elbow and found a lacerated injury. Thereafter, on 16.02.2005, P.W.1 met her and produced X-Ray and based on the X-Ray, she has given the Accident Register (Ex.P.1) as the injuries are grievous in nature. P.W.5, Sub Inspector of Police, who registered the complaint and conducted investigation and recorded statement of the witnesses and after completion of investigation, he laid the final report.

6. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. However, they did not choose to examine any witness or mark any documents. Considering all these materials, the trial Court convicted the petitioners/ A1, A4 to A7 as mentioned in the first paragraph of this judgment. Now, challenging the said

conviction and sentence, the petitioners/A1, A4 to A7 are before this Court with this Criminal Appeal.

7. I have heard, Mr. R.Karthikeyan for M/s.Madhuri Donti Reddy, learned counsel appearing for the petitioners and Mr.Sekar, learned Government Advocate appearing for the respondent and also perused the records carefully.

8. The learned counsel appearing for the petitioners would submit that there are lot of contradictions in the evidence of P.W.1 and P.W.3. Even though, P.W.1 said that A3, A4 and A7 attacked her with a wooden log and A4 also attacked P.W.3 on the face and A1 dragged her by pulling her leg, P.W.3 only said that A1 to A3 and A7 only pushed P.W.1 down and criminally intimidated her and P.W.2, who is said to have taken P.W.1 inside the house, did not say anything supporting the prosecution case. P.W.4, Doctor, also found only lacerated injury on the right elbow, which is also sutured, and she has also admitted that on 16.02.2005, based on the x-ray given by P.W.1, she has issued the accident register that the injuries are grievous in nature and she has also admitted that she has given the accident Register based on the Xray submitted by P.W.1, after 14 days of the occurrence. Apart from that, P.W.5, Investigation officer, has also admitted in his cross examination that during the enquiry, he found that only A1 and A2 alone are involved in the occurrence. But, without considering all these material contradictions, the Court below erroneously convicted the accused and from the evidence, the presence of other accused is highly doubtful. In view of the above contradictions, the interested testimony of P.W.1 and P.W.2 cannot be believed. Hence, the petitioners are entitled for acquittal.

9. Per contra, learned Public Prosecutor would contend that P.W.1 and P.W.3 are the eye witnesses to the occurrence. P.W.1 is the injured witness. She has categorically stated that only A1, A3, A4 and A7 attacked her and the medical evidence has also corroborated the evidence of P.W.1. Even though, P.W.2 did not support the prosecution, P.W.3, who is the daughter of P.W.1, has spoken about involvement of the accused. Considering all these materials, both the Courts have rightly convicted the petitioners and there is no reason to interfere with the well considered judgment of the Courts below.

10. I have considered the rival submissions and perused the materials available on record carefully.

11. P.W.1 is the injured witness in this case. According to her, there is previous enmity between P.W.1 and the accused family and on the date of occurrence, at about 9.45

p.m., while she was returning from the police station, A3 waylaid her and attacked her with a wooden log on the back side. A1's sister, namely A5 had taken the same wooden log and attacked her on the leg. Thereafter, P.W.3, who is the daughter of P.W.1, came out of their house and A4 attacked her with iron rod and A1 dragged her by pulling her leg. Thus, she implicated A1, A3, A4 and A7 only. But, P.W.3, daughter of P.W.1, who is also an eye witness to the occurrence, in her evidence, has stated that at the time of occurrence, A1, A2, A3 and A7 pushed P.W.1 down and they have criminally intimidated her and asked her to withdraw the complaint, apart from that they have also attacked her with an iron road and A3 attacked her with a wooden log. Then P.W.2 took her inside the house and on the next day, they were admitted in the hospital by her brother. P.W.2, who is said to have been present in the scene of occurrence and also took P.W.1 inside the house, did not support the case of the prosecution. P.W.4, Doctor, who admitted P.W.1 in the Government Hospital, Ponneri, on 02.12.2004, has only found sutured lacerated wound on the right elbow and P.W.1 only complained that she had some body pain and according to P.W.4, on 16.02.2005, P.W.1 came with a X-ray and based on the X-ray brought by P.W.1, she has given an Accident Register (Ex.P.1) stating that the injuries are grievous in nature. In the cross examination, she has also admitted that only based on the X-ray produced by P.W.1, she has given an opinion that the injuries are grievous in nature. Even though P.W.3 was also said to have been attacked by the accused, there is no other evidence available to corroborate her evidence. Apart from that the weapon used in the occurrence namely, wooden log and iron road was also not seized.

12. From the evidence of P.Ws.1 and 3, it could be seen there are lot of contradictions. P.W.1 says, A3, A4 and A7 attacked her and A4 also dragged her by pulling her leg, and A4 also attacked her with knife. But, P.W.3, the daughter of P.W.1, only says that A1, A2, A3 and A7 pushed her down and criminally intimidated her, and she did not speak about the other accused attacking her and causing injuries. Even though, P.W.3 has stated that she had suffered some injuries, she was not given any treatment and no Accident Register was marked and the weapon used in the occurrence was also not seized by the police. As stated earlier P.W.2, who was an independent witness and who said to have taken P.W.1 inside the house, also did not corroborated the evidence of P.W.1 and P.W.3. P.W.4, Doctor, initially found a sutured lacerated injury on the hand, but subsequently Accident Register has been given based on the X-ray submitted by P.W.1, after 14 days of the occurrence and based on that Accident Register alone First Information Report has been altered into Sections 323 and 325 IPC. That apart, P.W.5, Investigating Officer also in the cross examination has stated

that during the investigation, he came to know that except A1 and A2 none of the other accused have been involved in this case.

13. In view of the above contradictions in the evidences P.W.1 and P.W.3, the interested witnesses, it is highly unsafe and convict the accused without any corroboration by any independent witness. The Courts below without considering all these contradictions convicted the accused. Hence, the judgment of the Courts below are liable to be interfered with. Considering all these materials, I am of the considered view that the prosecution has failed to prove the charges against the accused beyond any reasonable doubt. Hence, petitioners are entitled for acquittal.

14. In the result, the Criminal Revision is allowed and the conviction and sentence imposed on the petitioners by the Courts below are set aside and the the petitioners are acquitted from all the charges. Bail bond, if any, executed by the appellants, shall stand cancelled. Fine amount, if any paid by them, shall be refunded to them.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

dh/mrp
To

1. The Judicial Magistrate No.II,
Ponneri.
 2. The IV Additional District and Sessions Judge,
Ponneri.
 3. The Public Prosecutor,
High Court, Chennai.
 4. The Sub Inspector of Police,
Manali New Town Police Station.
- Copy to: The Section Officer, CrI.Section,
High Court, Madras.

CrI.R.C.No.647 of 2013

(CCC)
EU(20/02/2018)