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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.08.2018

PRONOUNCED ON : 27.11.2018

CORAM :

THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

CRL.R.C.No.134 of 2011

1.Velumani
2.Ramadoss
3.Chinnaival
4.Raman
5.Vijayan
6.Aristotle
7.Vediappan

... Petitioners / Appellants /
Accused

-Vs-

State by
The Inspector of Police,
Morappur Police Station,
Harur Taluk, Dharmapuri District.
(In Crime No.86 of 2001)

... Respondent / Respondent /
Complainant

PRAYER: Criminal Revision Case is filed under Section 397 r/w 401 of Cr.P.C., praying to call for the records pertaining to the judgment rendered by the learned Principal District Judge, Dharmapuri in Crl.A.No.4 of 2010 dated 23.11.2010, confirming the judgment rendered by the learned Judicial Magistrate, Harur, Dharmapuri District in C.C.No.263 of 2001 dated 26.02.2010, set aside the same and allow the above revision petition.

For Petitioners: Mr.R.Thirugnanam,
For Mr.C.H.Pandian.

For Respondent : Ms.V.Saratha Devi,
Government Advocate (Crl.Side).

ORDER

The convicted accused are the revision petitioners herein. They have filed this Criminal Revision case to set aside the judgment rendered by the learned Principal District Judge, Dharmapuri in Crl.A.No.4 of 2010, dated 23.11.2010, confirming the judgment rendered by the learned Judicial Magistrate, Harur, Dharmapuri District in C.C.No.263 of 2001, dated 26.02.2010.



2.The respondent police filed charge sheet against the accused persons for offences punishable under Sections 147, 148, 325, 324 and 323 IPC, alleging that on 22.02.2001 at about 11.30 A.M., nearby the house of P.W.1, the accused herein have assembled unlawfully with an intention to assault the prosecution witnesses by means. A1 has assaulted P.W.1 on his left shoulder back side. A2 has assaulted P.W.2, Kala and pushed her down. Due to such act of A2, the victim Kala P.W.2's teeth was broken and she was assaulted by means of koduval on her left hand. A3 has assaulted witness Santha P.W.6 on her head by means of Thadi. Then A3 has assaulted the witness Chinnammal P.W.3 on her backside. A5 has assaulted P.W.3 on her chest by means of Thadi. A5 has assaulted victim Palani P.W.5 on his right hand by means of koduval. A6 has assaulted P.W.4 Rani, on her head by means of Thadi, and, A7 has assaulted P.W.4 on her backside by means of Thadi, by saying such acts constitute the offences punishable under Sections 147, 148, 323, 324 and 325 IPC.

3.The trial Court, after trial, has convicted all the accused and sentenced them as follows:-

Sl.No.	Charge	Conviction
First Accused	Sections 147, 325 and 323 IPC	Section 147-Fine Rs.200/- in default two weeks simple imprisonment and Section 323-Fine Rs.500/- in default two months imprisonment Section-325-Acquitted.
Second Accused	Sections 147, 148, 325, 324 and 323 IPC	Section 147-Fine Rs.200/- in default two weeks simple imprisonment, Section 148-Fine Rs.300/- in default three weeks imprisonment, Section 325-two years imprisonment and Fine of Rs.500/- in default one month imprisonment, Section 324-Fine of Rs.1000/- in default two months imprisonment and Section 323-Fine Rs.500/- in default two months imprisonment.
Third Accused	Sections 147 and 323 IPC	Section 147-Fine Rs.200/- and Section 325 imprisonment for two years and Fine of Rs.500/- in default one month imprisonment.



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Fourth Accused	Sections 147 and 323 IPC	Section 147-Fine Rs.200/- in default two weeks simple imprisonment and Section 323-Fine Rs.500/- in default two months simple imprisonment.
Fifth Accused	Sections 147, 148, 324 and 323 IPC	Section 147-Fine Rs.200/- in default two weeks simple imprisonment, Section 148-Fine Rs.300/- in default three weeks imprisonment, Section 324-Fine Rs.1000/- in default two months imprisonment and Section 323-Fine Rs.500/- in default two months imprisonment.
Sixth Accused	Sections 147 and 323 IPC	Section 147-Fine Rs.200/- in default two weeks imprisonment and Section 323-Fine Rs.500/- in default two months imprisonment.
Seventh Accused	Sections 147 and 323 IPC	Section 147-Fine Rs.200/- in default two weeks simple imprisonment and Section 323-Fine Rs.500/- in default two months imprisonment.

4.On appeal, the learned Principal District Judge, Dharmapuri, by judgment dated 23.11.2010, in Crl.A.No.4 of 2010, confirmed the conviction and sentence passed by the trial Court.

5.Aggrrieved by the same, the accused persons have approached this Court by filing this Criminal Revision Case.

6.The learned counsel appearing for the revision petitioners contended that when there is no charge under Section 325 IPC, the Court below has laid conviction against the accused 2 and 3 in respect of Section 325 IPC and also contended that the case and counter case have not been dealt with in the manner as to be dealt with as per the decisions of this Court. There is a delay in filing the First Information Report and the police has suppressed the earlier intimation memo given by P.W.1 at the time of his treatment in the first hospital and hence, they seek to set aside the conviction and sentence passed by the Courts below.



7. Heard the learned counsel appearing for the revision petitioners herein and the learned Government Advocate (Crl.Side) appearing for the respondent police and perused the materials available on record carefully.

8. After hearing the rival submissions put forth by both the parties and after perusing the oral evidence of P.W.1 to P.W.14 and documentary evidence of Exs.P.1 to P.14, it is seen that except the accused 2 and 3, the other accused viz., the first accused was convicted for the offences under Sections 147 and 323 IPC and awarded fine. However, he was acquitted under Section 325 IPC. While the fourth accused was convicted for the offences under Sections 147 and 323 IPC, awarded fine amount, the fifth accused was convicted under Sections 147, 148, 324 and 323 IPC and awarded fine. The sixth accused was convicted under Section 147 and 323 IPC and awarded fine. The 7th accused was convicted under Sections 147 and 323 IPC and awarded fine and thus only, in respect of the second accused, who was convicted for the offences under Sections 147, 148, 325, 324 and 323 IPC, except for the offence under Section 325 IPC, he was awarded only fine amount under other Sections and in respect of the third accused, he was awarded only fine amount for the offence under Section 147 IPC, subsequently, imprisonment was awarded under Section 325 IPC.

9. On perusal of the charges framed by the trial Court, I find that a specific charge under Section 325 IPC was framed against the accused 2 and 3, as noted in the judgment passed by the trial Court at Paragraph No.2. However, it appears that typographical error seems to be crept in the preamble portion of the judgment given by the Lower Appellate Court viz., the learned Principal District Judge, Dharmapuri.

10. From the evidence of the injured, it is seen that the medical evidence of the Doctor, who has given treatment to the injured witness, was not originally filed before the Court below and thereafter, it appears that the application under Section 91 Cr.P.C., has been filed and those documents have been called for and Doctor M.Natarajan was examined as P.W.13, who had given X-ray of P.W.2 and one Doctor A.C.Natarajan was examined as P.W.14. P.W.13 has stated that in respect of injury on P.W.2 Kala, on further examination, he found that missing of teeth on the right side in the lower jaw and has found cavity thereafter, is a new one and other two teeth have been shaking. The connected case records have been marked as Ex.P.11 and x-ray was marked as Ex.P.12. P.W.14 Doctor A.C.Natarajan had given treatment to P.W.6 Shantha, who deposed that he found injury in the head of P.W.6 and also found a fracture on the right side leg of P.W.1 Veerasamy and the connected X-ray have been marked as Exs.P.13 and P.14.



11. It remains to be stated that P.W.1 has not whispered as to who has caused injury, which lost corresponding injury and accordingly, the trial Court has taken note of all the evidence and not convicted any of the accused, it seems that with regard to P.W.6, Shantha, she has not stated about the head injury in her evidence. But, it appears that based upon the medical evidence, the trial Court has convicted the third accused for the offence under Section 325 IPC.

12. This Court finds that in the absence of any positive evidence, linking or corroborating the injury with the act of the accused, the said finding given by the trial Court is unsustainable in law. Accordingly, the said finding of the trial Court as confirmed by the Appellate Court is not legally acceptable and accordingly, the same is hereby set aside. Furthermore, the trial Court has also convicted the second accused for the charge under Section 325 IPC for loss of teeth in respect of P.W.2. However, it appears that another doctor, who has initially given treatment, has not noticed any of the alleged loss of teeth. Therefore, this Court is of the considered view that the conviction under Section 325 IPC, while sustained however, the sentence of two years imprisonment has been modified into the period already undergone by the second accused at the time of the trial is hereby given set off and hence, the sentence awarded for offence under Section 325 IPC against the second accused is reduced to the sentence already undergone. With regard to other conviction and sentence of fine as against the accused 1, 4, 5 and 6 7, I do not find any merit in the judgment of conviction passed by the Court below and hence, the conviction and sentence of fine awarded as against those accused is confirmed.

13. In this view of the matter, this Criminal Revision Case is partly allowed and the conviction and sentence passed against the accused 2 and 3 in respect of charge under Section 325 alone is set aside and for the other charges as against the accused 2 and 3 are confirmed, however, the sentence has been reduced from two years rigorous imprisonment to the period already undergone and in respect of all other convictions and sentence imposed on all other the accused, is hereby confirmed.

Myr

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar



To

1.The Principal District Judge,
Dharmapuri.

2.The Judicial Magistrate,
Harur, Dharmapuri.

3.-Do- Thro: The Chief Judicial Magistrate,
Dharmapuri.

4.The Inspector of Police,
Morappur Police Station,
Harur Taluk,
Dharmapuri District.

4.The Additional Public Prosecutor,
Madras High Court, Madras.

+1cc to Mr.C.H.Pandian, Advocate, S.R.No.81518.

CRL.R.C.No.134 of 2011

VD(CO)
KAK(02/01/2019)