

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 22.11.2018

PRONOUNCED ON: 05.12.2018

CORAM :

THE HON'BLE MR.JUSTICE P.N. PRAKASH

Crl.R.C. No.80 of 2011

1 G. Nandhakumar

2 S. Vedachalam Revision Petitioners /
Accused 2 and 3.

vs.

State by
the Inspector of Police
J-3 Guindy Police Station
Chennai 600 032
(Crl. No.900 of 2002) Respondent

Criminal Revision Case filed under Sections 397 and 401 of Cr.P.C. against the judgment dated 24.11.2010 passed in C.A. No.272 of 2006 by the V Additional Sessions Judge, Chennai, confirming the judgment dated 30.08.2006 passed in C.C.No.7671 of 2002 by the IX Metropolitan Magistrate, Saidapet, Chennai, convicting the revision petitioners for offences under Section 147,148 and 324 IPC and sentenced to undergo rigorous imprisonment for six months, for the offence under Section 147 IPC to undergo rigorous imprisonment for one year, for the offence under Section 148 IPC, to undergo rigorous imprisonment for six months and to pay a fine of Rs.1,000/-, in default to undergo simple imprisonment for one month, for the offence under Section 324 IPC and for the offence under Section 506(ii) IPC, to undergo rigorous imprisonment for a period of four months.

For revision petitioners Mr. Soundar Vijay Arul Ram

For respondent Mrs. Kritika Kamal, P.
Govt. Advocate (Crl. Side)

ORDER

This Criminal Revision Case has been preferred challenging the judgment dated 24.11.2010 passed by the V Additional Sessions Judge, Chennai, confirming the judgment dated

30.08.2006 passed by the IX Metropolitan Magistrate, Saidapet, Chennai.

2 The facts in brief, leading to the filing of this criminal revision case, are as under:

2.1 On the complaint (Ex.P.1) lodged by Vivekanandan (P.W.1), Devaraj (P.W.9), Sub Inspector of Police, registered a case in Cr. No.900 of 2002 and the investigation of the case was taken over by Raman (P.W.10), Inspector of Police, who, after completing the same, filed a final report in C.C. No.7671 of 2002 before the IX Metropolitan Magistrate, Saidapet, Chennai-15, against Prabhakaran (A1), Nandakumar (A2), Vedachalam (A3), Govindaraj (A4), Nagarajan (A5) and Thyagarajan (A6), for the offences under Sections 147,148,149,323,324,326 and 506(II) IPC.

2.2 On the appearance of the accused, the provisions of Section 207 Cr.P.C. were complied with and the accused were charged as under:

Array of accused	Provisions under which the accused were charged
A1 to A6	Sections 147 and 506(II) IPC
A1	Sections 148 and 326 IPC
A2	Sections 148 and 324 IPC
A3	Sections 148 and 324 IPC
A4	Section 324 r/w Sections 149 and 323 IPC
A5	Section 324 read with Sections 149 and 323 IPC
A6	Section 324 IPC read with Section 149 IPC

2.3 When questioned, the accused denied the charges. To prove the case, the prosecution examined ten witnesses and marked nine exhibits and three material objects. When the accused were questioned under Section 313 Cr.P.C., they denied the incriminating circumstances against them. No witness was examined nor was any document marked on the side of the accused.

2.4 During the pendency of trial, Govindaraj (A4) and Thyagarajan (A6) died. After hearing either side, the Trial Court, by judgment dated 30.08.2006, convicted and sentenced the accused as under:

Prabhakaran (A1)

147 IPC	Six months rigorous imprisonment
148 IPC	One year rigorous imprisonment
326 IPC	One year rigorous imprisonment and a fine of Rs.2,000/- in default to undergo three months rigorous imprisonment
506(II) IPC	Four months rigorous imprisonment

Nandakumar (A2)

147 IPC	Six months rigorous imprisonment
148 IPC	One year rigorous imprisonment
326 IPC	Six months rigorous imprisonment and a fine of Rs.1,000/- in default to undergo one month simple imprisonment
506(II) IPC	Four months rigorous imprisonment

Vedachalam (A3)

147 IPC	Six months rigorous imprisonment
148 IPC	One year rigorous imprisonment
326 IPC	Six months rigorous imprisonment and a fine of Rs.1,000/- in default to undergo one month simple imprisonment
506(II) IPC	Four months rigorous imprisonment

Nagarajan (A5)

147 IPC	Six months rigorous imprisonment
323 IPC	One month simple imprisonment and a fine of Rs.500/-, in default to undergo one month simple imprisonment
506(II) IPC	Four months rigorous imprisonment

The aforesaid sentences were ordered to run concurrently.

2.5 Challenging the conviction and sentence, Prabhakaran (A1), Nandakumar (A2), Vedachalam (A3) and Nagarajan (A5) filed CrI.A.No.272 of 2006 before the V Additional Sessions Court, Chennai. During the pendency of the said appeal, Nagarajan (A5) died. The V Additional District and Sessions Judge, Chennai, by judgment dated 24.11.2010, dismissed CrI.A. No.272 of 2006, confirming the conviction and sentence imposed by the Trial Court. Aggrieved by the said judgment, Nandakumar (A2) and Vedachalam (A3) are before this Court. It is not known whether Prabhakaran (A1) filed any revision petition or not.

3 Heard Mr. Soundar Vijay Arul Ram, learned counsel for the revision petitioners and Mrs. Kritika Kamal P., learned Government Advocate (CrI. Side) appearing for the respondent-State.

4 It is the case of the prosecution that Vivekanandan (P.W.1) and Prabhakaran (A1) were Trustees of a Trust which was running Sri Krishna Engineering College in Ramavaram; on account of some disputes, they parted company; on 20.06.2002, around 9.00 a.m., the accused came to the house of Vivekanandan (P.W.1) and when the latter opened the door, they barged inside and attacked him indiscriminately with iron rod and sticks, resulting in he suffering grievous injuries; on seeing the attack, Rajeswari (P.W.7), the mother of Vivekanandan (P.W.1), aged about 60 years and Karthikeyan (P.W.2), an employee of the Engineering College, who was present in the house of Vivekanandan (P.W.1) at the time of occurrence, intervened. On hearing the hue and cry raised by the inmates, the neighbours rushed to the place and on seeing them, the accused fled.

5 Karthikeyan (P.W.2) took Vivekanandan (P.W.1) and Rajeswari (P.W.7) to Sri Balaji Hospital for treatment. As for Rajeswari, (P.W.7), she was examined by Dr. Sasirekha (P.W.3) and the copy of the accident register was marked as Ex.P.2 and the discharge summary was marked as Ex.P.3. The injuries suffered by Rajeswari (P.W.7) were found to be simple in nature. Coming to Vivekanandan (P.W.1), he was examined by Dr.Thaankeerthi (P.W.4), who admitted him as in patient. The copy of the accident register was marked as Ex.P.4 and the discharge summary was marked as Ex.P.5. The nature of injuries suffered by Vivekanandan (P.W.1) was found to be grievous.

6 Both the Courts below have found, on facts, that the accused had formed into an unlawful assembly and had attacked Vivekanandan (P.W.1).

7 While dealing with a revision petition under Section 397 Cr.P.C., this Court is required to find out if there is any illegality or impropriety in the findings of the Trial Court and the Appellate Court warranting interference and it is not open to this Court to exercise the revisional power as a second appellate forum. In this context, we can profitably allude to the following paragraphs in the judgment of the Supreme Court in State of Maharashtra, etc. vs. Jagmohan Singh Kuldeep Singh Anand and Others, etc.:

"22. The revisional court is empowered to exercise all the powers conferred on the appellate court by virtue of the provisions contained in Section 401 CrPC. Section 401 CrPC is a provision enabling the High Court to exercise all powers of an appellate court, if necessary, in aid of power of superintendence or supervision as a part of power of revision conferred on the High Court or the Sessions Court. Section 397 CrPC confers power on the High Court or Sessions Court, as the case may be,

"for the purpose of satisfying itself or himself 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 such inferior court".

It is for the above purpose, if necessary, the High Court or the Sessions Court can exercise all appellate powers. Section 401 CrPC conferring powers of an appellate court on the revisional court is with the above limited purpose. The provisions contained in Section 395 to Section 401 CrPC, read together, do not indicate that the revisional power of the High Court can be exercised as a second appellate power.

(emphasis supplied)

23. On this aspect, it is sufficient to refer to and rely on the decision of this Court in Duli Chand v. Delhi Admn. [(1975) 4 SCC 649 : 1975 SCC (Cri) 663 : AIR 1975 SC 1960] in which it is observed thus: (SCC p. 651, para 5)

"The High Court in revision was exercising supervisory jurisdiction of a restricted nature and, therefore, it would have been justified in refusing to reappreciate the evidence for the purposes of determining whether the concurrent finding of fact reached by the learned Magistrate and the

learned Additional Sessions Judge was correct. But even so, the High Court reviewed the evidence presumably for the purpose of satisfying itself that there was evidence in support of the finding of fact reached by the two subordinate courts and that the finding of fact was not unreasonable or perverse."

8 In the case at hand, it should be borne in mind that Vivekanandan (P.W.1) and Rajeswari (P.W.7) were injured witnesses and the incident had taken place in the house of Vivekanandan (P.W.1), where, Karthikeyan (P.W.2) was incidentally present.

9 Vivekanandan (P.W.1), in his evidence, has stated that he and Prabhakaran (A1) started Sri Krishna Engineering College in Ramavaram in 2000 and while they were administering the college, it was found that Prabhakaran (A1) failed to maintain proper accounts and so, he was removed from the administration, aggrieved by which, Prabhakaran (A1), along with his henchmen, forcibly entered into the Engineering College on 06.06.2002 and took away certain documents and cash of Rs.2 lakhs, in connection with which, a case was filed in the Court; while so, on 20.06.2002, around 9 a.m., while he was in his house at Balaji Nagar, there was a knock at the door and on opening the same, he found Prabhakaran (A1) armed with an iron rod and others armed with sticks; they barged into the house and after abusing and threatening him, they started assaulting him on his head and back; Prabhakaran (A1) hit him with an iron rod on his head region and the others attacked him with sticks on his back and legs. In his evidence, Vivekanandan (P.W.1) has further stated that Nandakumar (A2) and Vedachalam (A3) were holding casuarina sticks and the other accused, viz., Govindaraj (A4), Nagarajan (A5) and Thyagarajan (A6) were also there. He identified the iron rod used in the attack by Prabhakaran (A1) and it was marked as M.O.1. He also identified the casuarina sticks used by Nandakumar (A2) and Vedachalam (A3) and they were marked as M.Os.2 and 3 respectively. It is his further evidence that when his mother Rajeswari (P.W.7) intervened, Govindaraj (A4) and Nagarajan (A5) slapped her on her face and hit her on her back; Karthikeyan (P.W.2), who was present there, raised a hue and cry, hearing which, the neighbours came there and the accused ran away dropping the weapons; Karthikeyan (P.W.2) took Vivekanandan (P.W.1) and Rajeswari (P.W.7) to the nearby Balaji Hospital, where, Sasirakha (P.W.3) examined Rajeswari (P.W.7) and Dr.Thaankeerthi examined Vivekanandan (P.W.1).

10 On the complaint (Ex.P.1), FIR was registered and the printed FIR was marked as Ex.P.8. Vivekanandan (P.W.1) was not cross-examined on 13.05.2003, i.e., on the day he was examined-in-chief, but, was cross-examined on 23.12.2003. In the cross-examination, he was questioned about the affairs of the Engineering College and it was suggested to him that a false case has been lodged against Prabhakaran (A1) in order to oust him from the administration of the college, which suggestion, he denied.

11 Rajeswari (P.W.7), in her examination-in-chief on 13.01.2004, has stated that while she was there in her house on 20.06.2002, Prabhakaran (A1) and the other accused came there around 9.00 a.m.; her son Vivekanandan (P.W.1) opened the door; Prabhakaran (A1) was armed with an iron rod and Nandakumar (P.W.2) and Vedachalam (P.W.2) were armed with casuraina sticks; Prabhakaran (A1) addressed Vivekanandan (P.W.1) saying "You will come to the college only for life" and started assaulting him on his head and Nandakumar (A2) hit him on his back; Vedachalam (A3) hit him on his head and legs; Govindaraj (A4) and Nagarajan (A5) assaulted her; on hearing their loud cries, the neighbours came there; on seeing them, the accused fled; thereafter, Karthikeyan (P.W.2) and Muthukumaran (not examined), took both of them to the hospital for treatment. She also identified M.Os.1 to 3 and stated that Prabhakaran (A1) was armed with M.O.1 and Nandakumar (A2) and Vedachalam (A3) were armed with M.Os.2 and 3 respectively.

12 On 05.02.2004, she was cross-examined, wherein, she was asked about the details of the attack, for which, she has given cogent answers. Ultimately, it was suggested to her that a false case was foisted on the accused for removing Prabhakaran (A1) from the Trusteeship. Similar is the evidence of Karthikeyan (P.W.2).

13 Mr. Soundar Vijay Arulram, learned counsel for the revision petitioners submitted that the injured were not taken to the Government Hospital, but were treated only in the private hospital and the wound certificate does not show any injury on the back and leg of Vivekanandan (P.W.1). It is not necessary to take the injured only to the Government Hospital. After all, when a person suffers injuries, immediate medical aid is essential, for which, he can be taken to any private hospital also.

14 From a reading of the evidence of Dr. Thankeerthi (P.W.4) and a perusal of the accident register copy (Ex.P.4) and discharge summary (Ex.P.5), it is seen that on 20.06.2002, Vivekanandan (P.W.1) was examined by the doctor at 9.45 a.m. In the Accident Register copy (Ex.P.4), it is shown that he was

approached by one Muthukumaran - friend. Basing his argument on this, the learned counsel for the revision petitioners submitted that the evidence of Karthikeyan (P.W.2) that he had taken Vivekanandan (P.W.1) to the hospital stands belied.

15 In the opinion of this Court, this, by itself, cannot lead to the inference that Karthikeyan (P.W.2) had not accompanied the injured to the hospital. In the accident register copy, the doctor will not make entry of the names of all the persons who accompany the injured. In the instant case, the accident register copy (Ex.P.4) shows that Vivekanandan (P.W.1) was in a state of giddiness and there were four injuries on his head. Intimation was sent by the hospital to J.3 Police Station and only thereafter, the police had come to the hospital and obtained the complaint (Ex.P.1) from Vivekanandan (P.W.1). It is true that all the four injuries which Vivekanandan (P.W.1) suffered are head injuries and there is no visible injury either on the back or the leg. Be it noted that absence of visible injuries cannot lead to the inference that Vivekanandan (P.W.1) was not at all assaulted by Nandakumar (A2) and Vedachalam (A3) on the back and leg by ignoring the overwhelming materials in the form of the evidence of Vivekanandan (P.W.1) himself, Karthikeyan (P.W.2) and Rajeswari (P.W.7). The presence of such injury on the back and leg would have corroborated their evidence, but, the absence of such injury cannot have the effect of impeaching their testimony. Moreover, it is the prosecution case that Nandakumar (A2) and Vedachalam (A3) used sticks to attack Vivekanandan (P.W.1) and not any sharp weapon like knife that would cause injury. Further, discharge summary (Ex.P.5) shows that Vivekanandan (P.W.1) was an in-patient from 20.06.2002 to 11.07.2002 for the injuries suffered by him on his head. The evidence of Dr. Thaankeerthi (P.W.4) and the accident register copy (Ex.P.4) show that the nature of the injuries sustained by Vivekanandan (P.W.1) is grievous. However, the evidence of Dr. Sasirekha (P.W.3) who treated Rajeswari (P.W.7) shows that the nature of injury suffered by the latter is simple. In the light of such overwhelming evidence, it cannot be stated that no such attack had ever taken place at all on 20.06.2002.

16 In view of the aforesaid discussion, this Court does not find any perversity in the findings arrived at by the Trial Court and the first Appellate Court warranting interference. The sentence imposed by the Courts below also do not deserve any interference in the light of the brazen manner in which the accused had barged into the house of Vivekanandan (P.W.1) in broad day light and had assaulted him and his mother Rajeswari (P.W.7).

In the result, this Criminal Revision Case fails and is accordingly dismissed. The Trial Court is directed to secure the presence of the accused so that they can undergo the remaining period of sentence.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

cad

To

- 1 The IX Metropolitan Magistrate
Saidapet
Chennai 600 015
- 2 - do - Through The Chief Metropolitan Magistrate,
Egmore, Chennai - 600 008.
- 3 The V Additional Sessions Judge
Chennai
- 4 - do - Through The Principal Sessions Judge, Chennai
- 5 The Inspector of Police
J-3 Guindy Police Station
Chennai 600 032
- 6 The Public Prosecutor
High Court
Madras

copy to: The Section Officer,
Criminal Section,
High Court, Madras - 104.

+1 cc to M/s.R.C.Paul Kanagaraj, Advocate SR No.83910

Cr1.R.C. No.80 of 2011

sv(co)
ssm(20/12/18)