

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Criminal Revision No.402 of 2013

Duraisamy .. Petitioner/1st Accused

Vs

State by

The Inspector of Police,
Kanchikoil Police Station,
[Crime No.97 of 2004],
Erode District.

.. Respondent/Complainant

Prayer:- Criminal Revision filed under Sections 397 r/w 401 Cr.P.C., to set aside the judgment of conviction and sentence of rigorous imprisonment for six months for the offence U/s 324 IPC and R.I for one year and fine of Rs.2,000/- in default simple imprisonment for 3 months for the offence under Section 326 IPC, dated 23.04.2012 passed by the learned District Munsif cum Judicial Magistrate, Perundurai in C.C.No.352 of 2004 as confirmed by the learned Principal Sessions Judge, Erode as per the judgment dated 31.07.2012 passed in C.A.No.97 of 2012.

For Petitioner : Mr.N.Manokaran

For Respondent : Mr.R.Ravichandran,
Govt. Advocate (Criminal side)

O R D E R

The present criminal revision has been filed against the order dated 31.07.2012 passed in C.A.No.97 of 2012 by the learned Principal Sessions Judge, Erode.

Totally there are three accused. The accused/A1 stood charged for the offence under Sections 294(b), 506(ii), 326 and 324 IPC., the accused/A2 stood charged for the offence under Section 324 IPC and the accused/A3 stood charged for the offence under Section 323 IPC. The trial Court, by judgment dated 23.04.2012, convicted the petitioner/A1 for the offence under Sections 506(ii), 324 and 326 IPC and sentenced him to undergo rigorous imprisonment for six months for the offence under Section 506(ii) IPC, to undergo rigorous imprisonment for six months for the offence under Section 324 IPC and to undergo rigorous imprisonment for one year and to

pay a fine of Rs.2,000/- in default to undergo simple imprisonment for three months for the offence under Section 326 IPC and ordered to run the sentences concurrently. A.3 is convicted for the offence under Section 323 IPC and to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for one month. Against which, A.1 and A.3 have filed an appeal in Crl.A.No.97 of 2012 on the file of Principal Sessions Court, Erode. The first appellate Court modified the conviction and sentence imposed on A1 for the offence under Section 324 and 326 IPC and on A3 for the offence under Section 323 IPC.

Challenging the above, the present criminal revision has been filed by the petitioner/A1 before this Court.

2.The facts leading to filing of this revision are as follows :-

(i)P.Ws.1 and 2 are husband and wife. P.W.3 is the brother of P.W.1. P.W.4 is the wife of P.W.3. P.Ws.1 to 4 live as joint family and they are cultivating their 1-1/2 acres of land in their village. Prior to the occurrence, due to pathway dispute between them, the accused already attacked P.W.1 twice. While so, on 06.09.2004, at about 4.00 p.m, when P.Ws.1 to 4 have harvested maize in their property, the 1st accused ploughed through his tractor over the lands of P.Ws.1 to 4 and the same was objected by P.W.2, Lakshmiammal. Thereafter, P.Ws.1 to 4 have continued their work. Subsequently, A.1 and A.2 brought sickles and A.3 came with stick and shouted that if they kill the P.W.1's wife, then only the problem will be solved. Suddenly A.1 tried to cut on the neck of P.W.2. When P.W.2 tried to protect herself by her hand, she got severe injuries in her left wrist and in left hand fingers. When P.W.1 tried to prevent the attack, A.1 hit the head of P.W.1 with Aruval three times and also stabbed at his back and on his hand. Subsequently, Palanisamy, P.W.3, who is the brother of P.W.1 came there to rescue P.Ws.1 and 2. At that time, 2nd accused stabbed P.W.3 on chest with aruval. A.3 also attacked P.W.2 by throwing stone. Immediately, P.Ws.1 to 4 informed the said occurrence to one Venkidusamy, son-in-law of P.W.1 and they went to the Kovai Medical Centre Hospital for treatment. P.W.1 gave complaint to P.W.12, which is marked as Ex.P.1. P.W.12, the Sub Inspector of Police, Kanchikoil Police Station came there at 23.00 hours and recorded the statement of P.W.1, wherein, P.W.12 recovered the blood stained dhoti, shirt and towel of P.W.1, which were marked as M.O.1, M.O.2 and M.O.3. P.W.5 is a witness to the occurrence and in his presence, the sickles M.O.6 and M.O.7 were recovered by P.W.12 and registered a case in Cr.No.97 of 2004 under Sections 294(b), 324 and 506(ii) IPC.

(ii)Thereafter, he went to the scene of occurrence on 07.09.2004 and prepared observation mahazar and rough sketch under Exs.P.4 and Ex.P.7 respectively in the presence of

Lingeswaramurthy and Subramaniam. On the same day, at about 5.30 p.m, he arrested A.1, A.2 and A.4. He recorded the statement of P.W.10, Senthil Kumar, the medical officer. A.3 appeared before the trial Court.

(iii) Based on the above materials, the trial Court framed charges as detailed in the first paragraph of the order. The accused denied the same as false. In order to prove the case of prosecution, as many as 12 witnesses were examined and 11 documents were marked as Exs.P.1 to Ex.P.11, besides 10 material objects were marked as M.O.1 to M.O.10.

(iv) After completion of investigation, P.W.12, filed a final report against the accused under Sections 294(b), 326, 324 and 506(ii) IPC.

(v) When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. However, the accused did not choose to examine any witness nor marked any document on their side.

(vi) The learned District Munsif -cum- Judicial Magistrate, Perundurai has taken the charge sheet on file in C.C.No.352 of 2004. The learned Magistrate after perusing the materials available on record and after hearing the arguments advanced by the learned counsel for both sides, convicted and sentenced the accused by the judgment dated 23.04.2012 as stated supra. Aggrieved by the same, the accused 1 and 3 filed an appeal in Criminal Appeal No.97 of 2012 on the file of the learned Principal Sessions Judge, Erode District, Erode. The appellate Court, after perusing the material records and after hearing both sides, partly allowed the appeal by its judgment dated 31.07.2012 by confirming the conviction and sentence imposed on the 1st accused under Sections 324 and 326 IPC and the 3rd accused under Section 323 IPC and acquitted A1 under Section 506(ii).

(vii) Challenging the above conviction and sentence, the petitioner/A1 is before this Court with this Criminal revision petition before this Court.

3. The learned counsel for the petitioner submitted that both the defacto complainant and the accused are the adjacent land owners and they have the previous enmity between them due to the land dispute. With regard to the same, a civil suit is also filed against the accused. Due to the said suit, they have quarrelled with each other. In view of the quarrel, the defacto complainant lodged a complaint against the accused and the same was registered in Cr.No.97 of 2004, whereas the complaint given by the accused was registered in Cr.No.98 of 2004. The prosecution has not investigated the complaint given by the accused against the defacto complainant and only investigated the complaint given by the defacto complainant against the accused. Prosecution further stated that P.Ws.1

to 4 sustained grievous injuries due to the occurrence took place on 06.09.2004 and after completing the investigation, it charged the 1st accused under Sections 294(b), 325, 324 and 506(ii) IPC, 2nd accused under Sections 324 IPC and 3rd accused under Section 323 IPC, whereas the complaint taken on file in Cr.No.98 of 2004 was completely suppressed by the prosecution though the accused sustained injuries in this case.

4.The learned counsel for the petitioner further submitted that the prosecution has not filed the discharge summaries of the victims before the trial Court and they had not proved the fact that the victims sustained injuries and the injuries were grievous in nature. Moreover, the prosecution has not established the prosecution theory and there are serious inconsistency between the evidence of the witnesses with regard to the place of occurrence and Ex.P.1 is not the first statement of P.W.1. The evidence of P.W.1 clearly shows that already information has been given to the police by P.W.8. Therefore, Ex.P.1 cannot be relied upon. Further there is no evidence to bring home the guilt of the accused under Section 326 IPC.

5.Moreover, the learned counsel for the petitioner submitted that P.W.12, himself in his cross examination, admitted that in respect of the complaint given by A1, a case was registered in Cr.No.98 of 2004 and as he was the investigation officer of the said Cr.No.98 of 2004, he has not filed any charge sheet and final report. From the cross examination of P.W.12, it is also proved that the prosecution, instead of filing charge sheet and final report in Cr.No.98 of 2004, conducted investigation and filed charge sheet with regard to the complaint filed in Cr.No.97 of 2004 unilaterally. The above facts reveal that the prosecution has not investigated both the complaints simultaneously and has not come forward to find out the truth.

6.The learned counsel for the petitioner also submitted that the prosecution has produced two X-rays only and the said X-rays have not supported the case of the prosecution. Moreover, the said X-rays have not been taken on the date of admission of the victims and the same have been filed only after two years of the occurrence i.e. on 10.02.2006. Therefore, in the absence of any proof, the conviction and sentence imposed on the petitioner is not in order and the same is unsustainable. The prosecution has not submitted entire facts based on the complaint filed by the accused and they have not come forward to find out the truth. Hence, the learned counsel requested this Court to set aside the conviction and sentence imposed on the petitioner by the learned Principal Sessions Judge, Erode.

7. In support of his submissions, the learned counsel for the petitioner relied on the decision of the Hon'ble Supreme Court in Lakshmi Singh and Others Vs. State of Bihar (1976 [4] SCC 394, wherein, relevant portion from paragraph No.12 reads as follows:

"In these circumstances, therefore, it was the bounden duty of the prosecution to give a reasonable explanation for the injuries sustained by the accused Dasrath Singh in the course of the occurrence. Not only the prosecution has given no explanation, but some of the witness have made a clear statement that they did not see any injuries on the person of the accused. Indeed if the eye witnesses could have given such graphic details regarding the assault on the two deceased and Dasain Singh and yet they deliberately suppressed the injuries on the person of the accused, this is a most important circumstance to discredit the entire prosecution case. It is well settled that fouler the crime, higher the proof, and hence in a murder case where one of the accused is proved to have sustained injuries in the course of the same occurrence, the non-explanation of such injuries by the prosecution is a manifest defect in the prosecution case and shows that the origin and genesis of the occurrence had been deliberately suppressed which leads to the irresistible conclusion that the prosecution has not come out with a true version of the occurrence. This matter was argued before the High Court and we are constrained to observe that the learned Judges without appreciating the ratio of this Court in Mohar Rai v. State of Bihar (1968) 3 SCR 525 : AIR 1968 SC 1281 : 1968 Cri LJ 1479 tried to brush it aside on most untenable grounds. The question whether the Investigating Officer was informed about the injuries is wholly irrelevant to the issue, particularly when the very doctor who examined one of the deceased and the prosecution witnesses is the person who examined the appellant Dasrath Singh also."

8. Finally, the learned counsel for the petitioner submitted that when there are two views possible, one in favour of the accused and the other in favour of the complainant, the view favourable to the accused is to be extended in favour of the accused. Hence, the Courts below should have extended the same to the present petitioner also,

Therefore, the impugned judgment passed by the first appellate Court is liable to be set aside.

9.The learned Government Advocate (Crl.Side) appearing for the respondent submitted that P.Ws.1, 2, 3 and 4 are the eye witnesses to the occurrence and they have clearly spoken about the involvement of the accused and the attack made by A.1 on others. The medical evidence given by the Doctor, P.W.10 also clearly spoken about the injuries sustained by P.Ws.1 to 4, P.W.10, the Doctor also gave wound certificates in respect of the injuries sustained by P.Ws.1 to P.W.4. Moreover, the weapons (Aruval) used by the accused persons were also recovered from them. Further, P.W.1 and P.W.2 have clearly spoken about the occurrence and how they have sustained injuries. From the above, the prosecution has proved the case beyond reasonable doubt. Therefore, he requested this Court to confirm the conviction and sentence imposed on the petitioner by both the Courts below.

10.Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Crl. Side) appearing for the respondent and perused the materials available on record carefully.

11.To prove the case of the prosecution, they have examined 12 witnesses, wherein P.Ws.1, 2 and 3 are the eye witnesses to the occurrence and they have also sustained injuries. P.Ws.1, 2 and 3 have clearly spoken in their evidence that how the accused attacked them. The Doctor, P.W.10, has also stated in his evidence that he has given treatment to P.Ws.1, 2 and 3 and the injuries sustained by them.

12.Though the submission made by the learned counsel for the petitioner that the X-rays, which were taken on the date of admission have not been filed and therefore, the injuries sustained by the victim cannot be admitted, the weapons recovered from the accused proved the case of the prosecution that the accused attacked the victims. The evidence of medical officer has also clearly proved that P.Ws.1 to 3 have sustained injuries and the same is corroborated by the evidence of P.Ws.1 to 3.

13.It is an admitted fact that both the parties are adjacent land owners and P.Ws.1 to 4 alone are the family members and others are only the workers and not the family members of P.Ws.1 to 4. Furthermore, neither the injured P.W.1 to P.W.4, nor the eye witnesses P.W.5 and P.W.6 have clearly spoken about each and every overtact of the accused regarding the offences committed by them.

14.The quantum of witness is not the matter, whereas the quality of the evidence is essential. In this case, P.W.1 to P.W.4 clearly stated about the involvement of the accused and

the injuries sustained by them in the vital parts like, head, neck and other places. Therefore, the trial Court convicted the accused/A1 for the offence under Sections 506(ii), 324 and 326 IPC, the accused/A3 convicted for the offence under Section 323 IPC and acquitted A2. Against which, A1 and A3 filed an appeal in CrI.A.No.97 of 2012 on the file of Principal Sessions Court, Erode. The first appellate Court modified the conviction and sentence imposed on the A1 for the offence under Sections 324 and 326 IPC and on A3 for the offence under Section 323 IPC.

15. Though A.1 and A.3 were convicted for offences as stated above, the petitioner/A1 only filed the present criminal revision petition before this Court.

16. The learned counsel for the petitioner also submitted that the medical evidence could be corroborated with the evidence of witnesses whereas P.W.4 stated in her cross examination that she has not sustained any blood injury and she has sustained only simple injury and further she has not stated before the police that she has sustained blood injury and moreover, P.Ws.1 to 4 have not produced any evidence with regard to the injuries sustained by them and further, the prosecution has not proceeded with the counter case filed by the petitioner.

17. The learned counsel for the petitioner further submitted that though the prosecution has not admitted the fact that the accused sustained injuries, P.W.3, clearly admitted in his cross examination that the accused also sustained injuries. P.W.1 and P.W.2 have also admitted that the accused have sustained injuries. On 09.08.2004 a case was registered and taken on file in Cr.No.98 of 2004 by P.W.12, but, P.W.12 has not filed any charge sheet and has not explained the injury sustained by A.1 to A.3.

18. Though P.Ws.1 to P.W.3 have admitted that the petitioner also sustained injury and P.W.3 has given explanation that after sustaining injury, he fell on the ground, the accused have not stated anywhere, where they have sustained injuries. If the accused sustained injuries due to the attack made by the defacto complainant or by the victims, definitely, they should have admitted in the hospital, for taking treatment. But, the petitioner have not filed any proof that the accused have sustained injuries and admitted them in the hospital.

19. There is no specific proof that the accused have sustained injury. Even there is no medical evidence that the accused have sustained injury and they have not come forward to mark any such documents through investigation officer or the Doctor, who has given treatment to the accused.

20. At the time of remand, had the Magistrate seen the injury on the accused, definitely, he would have sent them to the hospital for taking treatment. But there is no such material available before this Court. Further at the time of 313 proceedings also they have not spoken about the injuries sustained by them and they have not produced any documents for treatment taken by them with regard to the injuries sustained by them.

21. Further, the learned Government Advocate (Crl. side) also submitted that a case in counter was investigated and the same was closed as mistake of fact and there is no record to show that the accused have sustained injury.

22. Hence, in the absence of any material records, this Court need not go into the case filed by the accused. From the above discussions, it is seen that the prosecution has proved the case beyond reasonable doubt. The decision cited supra by the learned counsel for the petitioner is also not applicable to the case on hand because the facts of both the cases are different against each other.

23. In such circumstances, both the Courts below, after considering the entire evidence, have rightly convicted and sentenced the petitioner/A1 and there is no illegality or irregularity or perversity in the judgments passed by both the Courts below.

24. At the concluding stage, the learned counsel for the petitioner requested this Court that the petitioner is a senior citizen and he has crossed the age of sixty and hence, some mercy has to be shown on him.

25. Considering the submission made by the learned counsel for the petitioner, this Court is inclined to modify the sentence imposed on the petitioner. Accordingly, this Court confirmed the conviction given to the petitioner for the offence under Sections 324 and 326 and reduced the sentence from one year into six months Rigorous Imprisonment. The sentence already undergone, if any, by the accused, shall be set off under Section 428 Cr.P.C.

The criminal revision petition is partly allowed.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

To

1. The Principal Sessions Judge,
Erode.

2.The District Munsif -cum- Judicial Magistrate,
Perundurai.

3.The Public Prosecutor,
High Court, Madras.

4. The Inspector of Police,
Kanchikoil Police Station (Crime.97/2004)
Erode District.

+ 1 cc to Mr.N. Manokaran, Advocate Sr.67187

Cr1.R.C.No.402 of 2013

JP(CO)
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