

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :25.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.584 of 2013
& M.P.Nos.1 and 2 of 2013

1. Perumalsamy
2. Rangasamy
3. Ramakrishnan ...Petitioners

Vs.

State by
Sub Inspector of Police
Kinathukadavu Police Station
Coimbatore District.
Crime No.375/2008

...Respondent

Prayer: This Criminal Revision Case filed under Section 397 read with 401 of Code of Criminal Procedure to set aside the judgment and conviction dated 30.11.2012 made in C.A.No.272/2012 on the file of I Additional District and Sessions Judge, Coimbatore confirming the judgment and conviction dated 03.09.2012 made in C.C.No.52/2009 on the file of Judicial Magistrate No.I, Pollachi.

For Petitioners : Mr.M.N.Balakrishnan

For Respondent: Mr.R.Ravichandran
Government Advocate(Crl. Side)

ORDER

The Criminal Revision Case has been filed by the revision petitioners to set aside the judgment and conviction dated 30.11.2012 made in C.A.No.272/2012, on the file of I Additional District and Sessions Judge, Coimbatore, confirming the judgment and conviction dated 03.09.2012 made in C.C.No.52/2009 on the file of Judicial Magistrate No.I, Pollachi.

2. The case of the prosecution is that on 09.12.2008, at about 07.00 am, the revision petitioners had came to the place of occurrence, where P.W.2 was residing and attacked her with wooden log. P.W.1 who is the son of P.W.2, questioned the same. The revision petitioners/accused had also assaulted P.W.1 with the wooden log. P.Ws.1 and 2 were taken to the hospital and they were given treatment as inpatient. P.W.3 is the Doctor, who gave treatment to P.Ws.1 and 2. A Head Constable, who is attached with the respondent police registered a case under Ex.P.5, FIR. Subsequently, he placed the same for investigation before P.W.5, who is the investigating Officer. P.W.5, took up the investigation and went to the place of occurrence. He prepared

Ex.P.4 - Observation Mahazar and Ex.P.5 - Rough Sketch, in front of the witness P.W.4. Investigating Officer enquired P.W.3 and received Exs.P.2 and P.3 Wound Certificate from him. P.W.5, after completion of investigation filed a final report under Sections 294(B), 324, 326, 506(ii) IPC, and the same was taken on file by the learned Judicial Magistrate No.I, Pollachi in C.C.No.52 of 2009.

3. Incriminating evidences were put before the revision petitioners/accused and they denied the same as false. Though they said, they have evidence to produce to support their case, no oral evidence was let in and no documentary evidence was marked on the side of the revision petitioners/accused.

4. After giving due opportunity to both sides, the learned Judicial Magistrate No.I, Pollachi found that the revision petitioners are guilty for the offence under Section 324 (2 counts) IPC and sentenced them to undergo imprisonment for a period of 6 months Rigorous Imprisonment with a fine of Rs.2,000/- each, in default they shall undergo imprisonment of another one month Simple Imprisonment. A2 alone is

convicted under Section 326 IPC and sentenced him to undergo imprisonment for a period of one year Rigorous Imprisonment with a fine of Rs.3,000/- in default to undergo another one month.

5. Aggrieved against the judgment of the learned Judicial Magistrate No.I, Pollachi in C.C.No.52 of 2009 dated 03.09.2012, the revision petitioners preferred a Criminal Appeal before the learned Sessions Judge, Coimbatore in C.A.No.272 of 2012, in fact, the Principle Sessions Judge made over the appeal to the learned I Additional District and Sessions Judge, Coimbatore and the same was confirmed to A1 and A3 and modified the conviction of A2 to one under Section 324 IPC to six months Simple Imprisonment and a fine of Rs.2,000/- in default to undergo simple imprisonment of one month. Against the Judgment of I Additional District and Sessions Judge, Coimbatore in C.A.No.272 of 2012 dated 30.11.2012, the revision petitioners are here with this present Criminal Revision Case.

6. The learned counsel for the revision petitioners would submit that P.Ws.1 and 2 on one side and all the revision petitioners on the

other side are close relatives, but they do not share a cordial relationship. There were property disputes between them and the enmity that it brewed has resulted in a false criminal case being filed against the revision petitioners. In support of his contention, the learned counsel for the petitioners placed relevance on the Judgments of the Hon'ble Supreme Court in **Mohd. Hashim Vs. State of Uttar Pradesh [Criminal Appeal No. 1218 of 2016 arising out of S.L.P. (CRL) No. 6104 of 2014]** and in **Rattan Lal Vs. State of Punjab (LAWS(SC)-1964-4-43)**.

7. The learned Government Advocate (Criminal Side) appearing for the respondent would submit that all the revision petitioners herein had assaulted P.Ws.1 and 2 with wooden log and caused simple and grievous injuries on them, thereby they have committed offences under Sections 324 and 326 IPC. Further, the names of all the accused were mentioned in the complaint, which is marked as Ex.P.1. P.W.1 in his evidence, has categorically deposed that all the accused had assaulted P.W.2 with wooden log on her head, right shoulder and her hip. When P.W.2 attempted to prevent the accused, they have attacked him also with

wooden log on his head and hand. P.W.2 also deposed that all the three accused had assaulted her and her son namely P.W.1. From the evidences of P.Ws.1 and 2, it is clear that they have cogently deposed that all the accused had assaulted them with wooden log. Further, P.W.3 - the Doctor, who gave treatment to P.Ws.1 and 2 deposed in his evidence that P.Ws.1 and 2 have informed him that three known persons have attacked them on 09.12.2008 at about 7.00 am in their land. He further issued Wound Certificate on P.Ws.1 and 2. In Ex.P.2, the Doctor stated that P.W.1 was suffered with injuries on his head, right shoulder, a contusion injuries on right and left hand and a fracture injury on his right hand. P.W.2 was suffered with injuries on her head, right shoulder. Therefore, from the oral and documentary evidences, it is clear that the accused had assaulted P.Ws.1 and 2 with wooden log. Hence, according to the learned Government Advocate, the order passed by the learned I Additional District and Sessions Judge, Coimbatore, dated 30.11.2012 in C.A.No.272/2012 needs to be confirmed by this Court.

8. Heard both sides and perused the materials available on record.

9. Admittedly, P.Ws.1 and 2 were assaulted by the revision

petitioners/accused. P.W.1, in her evidence has deposed that all the accused had assaulted her on her head and hand. The Doctor who gave treatment to P.W.1 opined that there was a fracture injury on the right hand of P.W.1 and the same is grievous in nature. In Ex.P.1 - complaint, it was specifically mentioned that the 2nd accused namely Rangasamy, had assaulted P.W.1 on her right hand. The Doctor who gave treatment to P.W.1 deposed that the injury found on the right hand is grievous in nature. So, it is clear that on the basis of the assault made by the 2nd accused alone, P.W.1 was suffered with grievous injury. Considering these circumstances, there is a continuous quarrel between the revision petitioners/accused and P.Ws.1 and 2, on which, the revision petitioners have gone to the extent of assaulting them with wooden log and caused grievous injuries. Therefore, this Court is not inclined to invoke the Probation of Offenders Act, 1958. Further, this Court does not find it a fit case to release the revision petitioners under the Probation of Offenders Act. If the revision petitioners are acquitted from this case, it may lead to other offence. Hence, this Court finds that the prosecution has proved the case beyond reasonable doubt and the Judgment passed by the learned I Additional District and Sessions Judge, Coimbatore in

C.A.No.272 of 2012 dated 30.11.2012 is in order.

10. At this juncture, the learned counsel for the revision petitioners seeks to modify the sentence imposed on the revision petitioners. On a perusal of the Judgment in C.A.No.272 of 2012 dated 30.11.2012, it is made clear that the Appellate Judge already showed his leniency and modified the sentence imposed on the 2nd accused. Therefore, no leniency could be given in modifying the sentence imposed on the accused/revision petitioners, since, P.Ws.1 and 2 were sustained with grievous injuries and also admitted in the hospital as inpatient for some days.

11. Further, on a perusal of the Judgment of both the Courts below, this Court finds no perversity. It is a well settled proposition of law that the revision Court need not sit in the armchair of the appellate Court and re-appreciate the entire evidences. Both the Courts below have given cogent reasons for conviction and sentence of the revision petitioners/accused and on going through entire materials on records, this Court does not find any perversity in the Judgment passed by the learned I Additional District and Sessions Judge, Coimbatore in

C.A.No.272 of 2012 dated 30.11.2012.

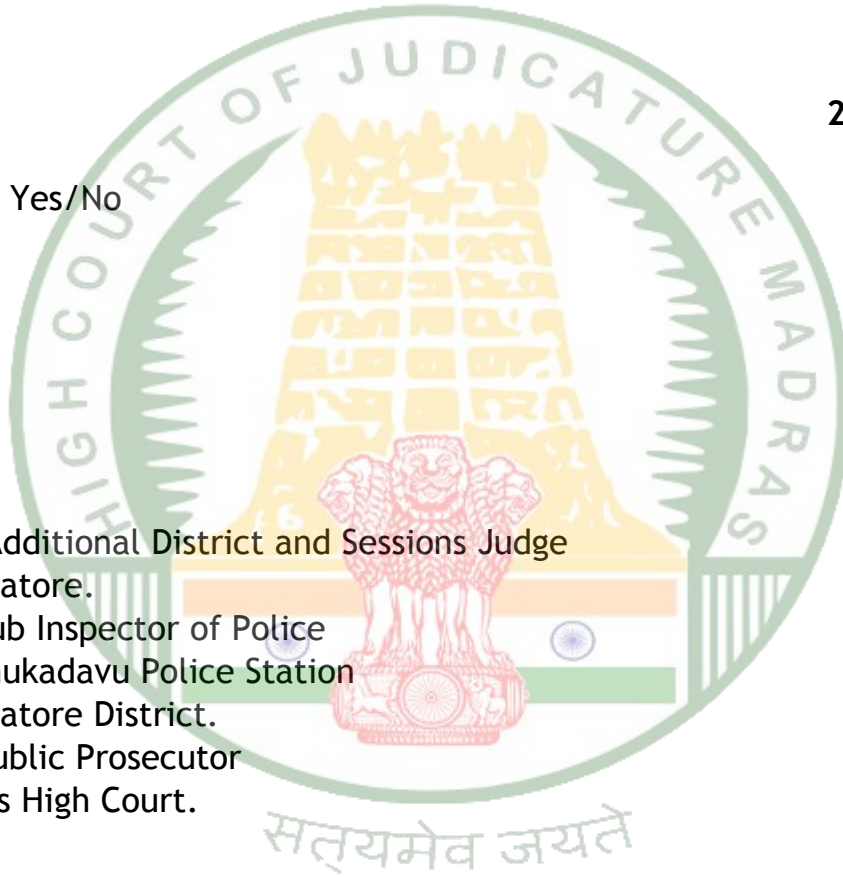
12. Accordingly, the Criminal Revision Case is dismissed.
Consequently connected miscellaneous petitions are closed.

25.09.2018

Index : Yes/No
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To

1. First Additional District and Sessions Judge
Coimbatore.
2. The Sub Inspector of Police
Kinathukadavu Police Station
Coimbatore District.
3. The Public Prosecutor
Madras High Court.



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P.VELMURUGAN, J.,
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