

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 10.07.2018	Delivered on 13.07.2018
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CORAM:

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CRL.R.C.1715 of 2011
and MP No.1 of 2011

Appukutti @ Palanisamy ... Petitioner/Appellant /Accused

.Vs.

The State by Inspector of Police,
Chennimalai Police Station,
Crime No.489 of 2004
Erode District.

... Respondent/Respondent/Complainant

Criminal Revision case filed under Section 401 of Cr.P.C. R/w Section 397 of Cr.P.C. to call for the records relating to the conviction imposed in the Judgment dated 14.07.2011 made in C.A.No.44 of 2011 on the file of Additional District Sessions Court / Fast Track Court No.I, Erode partly confirming the conviction imposed in the judgment dated 18.03.2011 made in C.C.No.403 of 2004 on the file of the District Munsif cum Judicial Magistrate Court, Perundurai and set aside the same by allowing this Criminal Revision Petition.

For Petitioner : Mr.N.Manokaran

For Respondent : Mrs.N.Thankira
Government Advocate (Crl. Side)

O R D E R

This Criminal Revision Petition has been filed against the order made in Crl.A.No.44 of 2011 by the Additional District Sessions Court / Fast Track Court No.I, Erode, confirming the order of conviction and modifying the sentence passed by the District Munsif cum Judicial Magistrate, Perundurai, by an order dated 18.03.2011, wherein the petitioner was convicted for an offence under Section 326 of IPC and imposed a sentence of 3 years Rigorous Imprisonment and to pay a fine of Rs.1,000/- in default to undergo 3 months simple imprisonment.

2. The case of the prosecution is that PW.2 and the petitioner were married in the year 1997. There were several disputes between the petitioner, his wife and PW.1 - Father-in-law, which had resulted in several Court cases. On 15.10.2004, PW.3 who is the wife of PW.1 called over phone PW.1 and informed him that the petitioner and PW.2 are quarrelling on a daily basis with regard to a land which was given by the petitioner to PW.1 for the purpose of getting a loan. On receipt of the phone call, PW.1 reached the place of the petitioner at about 12'o clock in the afternoon and questioned the petitioner about the quarrel made by him with his daughter PW.2. Thereafter, PW.1 arranged for a rental car with PW.4, in order to take along with him PW.2 and PW.3 to their house. At about 1.00pm after the car reached the house of the petitioner, the petitioner resisted PW.1 from taking away his wife PW.2 and the children and in the course of events, he took an Aruval (MO.1) and attacked PW.1, as a result of which PW.1 sustained grievous injuries.

3. PW.3 immediately called her son PW.5 over phone, who inturn brought a car and took PW.1 to the Government Hospital at Erode and since the injuries were serious, PW.1 was taken for treatment to Kovai Ganga Hospital. PW.7 - Doctor assessed the injuries of PW.1 and performed the plastic surgery immediately. PW.7- Doctor also gave a wound certificate (Ex.P4) and also photographs were taken on the injuries sustained by PW.1, which were marked as MO.2. On 16.10.2004, on the basis of information received from Kovai Ganga Hospital, PW.8 who is the Inspector of Police of Chennimalai Police Station reached the hospital at about 5.00pm and took a statement of PW.1 and reduced it into a complaint (Ex.P1) and registered a FIR in Cr.No.489 of 2004 for an offence under Section 294(b), 324 and 506(ii) IPC (Ex.P5). The FIR was also sent to the Jurisdictional Magistrate Court on 18.10.2004. Thereafter, the case was investigated by PW.9-Sub Inspector of Police who in the presence of PW.6, went to the scene of occurrence and prepared the Observation Mahazaar (Ex.P2) and a Rough Sketch (Ex.P6). He also seized MO.1 - Aruval from the place of occurrence under Seizure Mahazaar (Ex.P3) in the presence of the same witness. The Investigating Officer took the statement of the witnesses and filed a final report before the Trial Court for offences under Section 294(b), 326 and 506 (ii) IPC. The Trial Court took cognizance of the final report and framed charges against the petitioner for the said offence. The prosecution examined PWs.1 to 9 and also marked Exs.P1 to P7 and also marked MO.1 and MO.2, in order to substantiate its case.

4. The incriminating evidence was put to the petitioner by questioning under Section 313 of Cr.P.C and the petitioner denied his involvement in the offences.

5. The Trial Court on appreciation of oral and documentary evidence, found that the petitioner is guilty for an offence under Section 326 IPC and acquitted the petitioner from the other two offences under Sections 294 (b) and 506 (ii) IPC and for the offence under Section 326 of IPC, the Trial Court sentenced the petitioner for three years Rigorous Imprisonment and imposed a fine of Rs.1,000/- and in default to undergo three months simple imprisonment. Aggrieved by the same, the petitioner filed an appeal in Crl.A.No.44 of 2011 and the Appellate Court, on appreciation of the evidence available on record and also the submissions made on either side, concurred with the finding of the Trial Court with regard to the conviction of the petitioner under Section 326 of IPC. However, taking into consideration the facts and circumstances of the case, the Appellate Court modified the sentence from three years Rigorous imprisonment to one year Rigorous imprisonment. Aggrieved by the same, the present Criminal Revision Petition has been filed.

6. The learned counsel appearing for the petitioner would submit that PW.1 and the petitioner had a long standing dispute, which resulted in various proceedings. The evidence of PW.1 will clearly demonstrate the said fact. The learned counsel further submitted that on the date of incident, the petitioner was not in his house and only PWs.1 to 3 were present in the house and a group of robbers entered the house and tried to snatch the Mangal Sutra from PW.2 which was resisted by PW.1, as a result of which, he was attacked by the robbers and he sustained injuries. Due to the previous enmity, PW.1 has developed a story as if the attack was made by the petitioner.

7. The learned counsel appearing for the petitioner further contented that there was enormous delay in giving the complaint. The incident is said to have taken place on 15.10.2004 at about 1.30 pm and the complaint was given only on the next day at about 5.00pm in the evening. There was also a delay in sending the FIR to the Court and it was sent only on 18.10.2004. The learned counsel further contented that the Investigating Officer has not even taken sample blood stained earth or the blood stained clothes from the scene of occurrence. The learned counsel appearing for the petitioner further contended that the nature of the injury was determined to be a grievous injury, even without taking the X-ray, in order to establish the nature of injury. The learned counsel appearing for the petitioner further contended that the photographs MO.2 was taken in evidence, when the same is inadmissible, due to the fact that it was not marked through the person who took photographs or through the person at whose instance it was taken.

8. The learned counsel appearing for the petitioner has relied on the following Judgments :-

- (Nallasingam and others Vs. State) reported in 1993 (1) MLJ (Cr1) 6.
- (Rama Srinivasa Rao Vs. Dr.N.Ragavan) reported in 2006 (2) CTC 43.
- (Lakshmi Singh and others Vs. State of Bihar) reported in 1976 (4) Supreme Court Cases 394.

9. Per contra, Mrs.S.Thankira, learned Government Advocate (Criminal Side) contended that PW.1 has clearly spoken about the incident. PW.2, in fact, in her chief examination, has specifically spoken about the incident. The previous enmity between the parties is irrelevant in a case where the injured witness himself has categorically spoken about the incident. The learned counsel would further contend that the delay in filing the complaint was caused only due to the fact that PW.1 has sustained grievous injuries, which required immediate surgery and therefore, after giving treatment to PW.1, the complaint has been lodged. Therefore, the delay has been properly explained by the prosecution.

10. The learned Government Advocate would further submit that both the Courts below have properly appreciated the evidence available on record and there is no ground to interfere with the findings of both the Courts below in this Criminal Revision Petition.

11. This Court has carefully considered the submissions made by the learned counsel appearing on either side. From the evidence available on record, there is no dispute with regard to the incident which took place on 15.10.2004 at about 1.00 pm in the house of the petitioner. PW.1 who is the father-in-law of the petitioner has cogently deposed the incident and the injury sustained by him and the petitioner was not able to extract any major contradictions in the evidence of PW1 even during the cross-examination. It is true that there were long standing disputes between the petitioner and PW.1. However, these disputes are irrelevant for the purpose of deciding this case and what needs to be seen by this Court is whether the incident as alleged by PW.1 took place on 15.10.2004 and the assailant was the petitioner.

12. PW.2 who was the wife of the petitioner in her chief examination has categorically stated about the attack made by the petitioner with Aruval on PW.1 and the injuries sustained by

PW.1. Surprisingly, in this case, PW.2 was cross examined after a period of four years, at which point of time, she give a completely different version supporting the petitioner.

13. The Hon'ble Supreme Court of India and this Court has deprecated the practice of cross-examination of witness after long interval from the date of chief examination. Considering the relationship of the petitioner and PW.2 who were husband and wife, it is clear that she has been won over by the petitioner and therefore, the evidence given by PW.2 in the cross-examination can be safely disregarded / eschewed. Useful reference can be made to the Judgments in (Dharmaraj Vs. Inspector of Police) reported in 2015 2 LW CrL.458 and (Rasu Kannu and others Vs. State) reported in 2018 (1) MLJ CrL.306 in this regard.

14. PW.3 who is the mother of PW.2 and wife of PW.1, has also categorically spoken about the incident that took place on 15.10.2004 in her evidence. The evidence of PW.7 also becomes very material in this case. PW.7 is the doctor who has given treatment to PW.1 at Kovai Gangal Hospital. PW.1 has spoken about the incident to PW.7 and PW.7 at the time of treating PW.1 has found the following injuries which forms part of the wound certificate (Ex.P4) :

1. There is a partial (near total) guillotine amputation through the thumb web, sparing thumb, index through MP head, aid finger through MP head and PPX base and ring finger through PPX. All 3 fingers hanging attached to the dorsal skin with dorsal web skin present. There is a laceration at TP region of little finger. The index middle and ring are out of cascade, pale, cold clamay and insensate without any active ROM. The skeleton is cut obliquely through the head of MC in index, head of MC and base of PPX in aid and PPX shaft in ring finger.
2. There are recently sutured wound over the right pinna and neck on right side measuring about 7cm.
3. There is a skin deep incised wound over left shoulder region about 2 cm.

15. PW.7 was the Doctor who conducted the plastic surgery on PW.1 in order to restore the two fingers which were cut off during the incident. Even though, he speaks about the X-ray that was taken at the time when he gave treatment to PW.1, no X-ray was marked in this case. The evidence of PW.7 and the wound certificate clearly established the seriousness of the injury sustained by PW.1. The non-marking of the X-ray in the considered opinion of this Court, will not in any way minimise the value of the medical opinion given by PW.7. Therefore, non-

marking of the X-ray will be of no consequence and does not in any way affect the case of the prosecution.

16. Even if, the photographs (MO.2) are to be eschewed since it was not properly marked, the evidence of PW.7 and the wound certificate marked as Ex.P.4 clearly establishes the grievous injuries sustained by PW.1.

17. The defence that was projected on the side of the petitioner as if a group of robbers attacked PW.1 as a result of which, he sustained injuries and the petitioner was falsely implicated in the case, is too far fetched and there is absolutely no material for this Court to accept the defence as projected on the side of the petitioner.

18. The contention raised by the learned counsel for the petitioner that the Investigation Officer has not taken even the blood stained earth from the scene of occurrence and was not sent to the chemical examiner, will not in any way affect the case of the prosecution in view of the categorical evidence of the injured witness PW.1, which is supported by the chief examination of PW.2 and the evidence of PW.3. Every mistake committed by the Investigating Officer, in the course of investigation, cannot discredit the case of the prosecution unless the mistake is so fatal, that it casts doubt in the mind of the Court about the case projected by the prosecution.

19. The evidence of PW.7 and the wound certificate marked as Ex.P4 clearly brings the present case into Clause 4 to Section 320 of IPC. In order to satisfy the explanation to Section 322, the prosecution must establish that the offender intended or knows himself to be likely to cause grievous hurt. In the present case, the weapon used is an Aruval and the petitioner clearly knew the consequences of his attack on PW.1. The facts of this case clearly falls within "Grievous hurt" as provided under Section 320 of IPC and it satisfies the requirements of Section 322 of IPC and is punishable under Section 326 of IPC.

20. Both the Courts below have thoroughly examined the evidence available on record and also the facts and circumstances of the case and have come to the correct conclusion that the petitioner has committed an offence under Section 326 of IPC. This Court cannot in exercise of its revisional jurisdiction re-appreciate the evidence in the absence of any manifest illegality in the findings of the courts below. Therefore, this Court does not find any ground to interfere with the findings of the Courts below with regard to conviction of the petitioner under Section 326 of IPC.

21. With regard to the question of sentence, having regard to the relationship between the parties and the passage of time, this Court deems it fit to modify the sentence from one year Rigorous Imprisonment to six months Rigorous Imprisonment.

22. This Criminal Revision Petition is allowed in part by modifying the sentence to the extent indicated above. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS V)

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Sub Assistant Registrar

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To

1.The Additional District Sessions Court/
Fast Track Court No.I, Erode

2.The District Munsif cum Judicial Magistrate,
Perundurai.

3.The Inspector of Police,
Erode

4.Public Prosecutor,
High Court, Madras.

+1cc to Mr.N.Manokaran, Advocate SR.No.46347

SPD(CO)
GN(02/08/2018)

सत्यमेव जयते

Cr1.R.C.No.1715 of 2011

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