

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.08.2018

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.7 of 2013

1. N.Vellingiri

2. V.Jayaraj

...Petitioners/Accused

Vs.

State rep. by

The Inspector of Police,
Anai Malai Police Station,
Coimbatore District.

(Crime No.335/2008)

... Respondent/Complainant

Prayer: The Criminal Revision filed under Section 397 read with 401 of Code of Criminal Procedure against the order of learned Principal District and Sessions Judge, Coimbatore District in CA.No.262 of 2012 by its order dated 23.11.2012 modifying the conviction and sentence, imposed in the judgment of learned Judicial Magistrate I, Pollachi, in C.C.No.464 of 2008 by its order dated 21.08.2012.

For Petitioners : Mr.C.D.Johnson

For Respondent : Mr.Hari Hara Arun Soma Sankar
Government Advocate (Crl.Side)

ORDER

This criminal revision has been filed against the judgment of the learned Principal District and Sessions Judge, Coimbatore District, made in CA.No.262 of 2012 by order dated 23.11.2012 modifying the conviction and sentence, imposed in the judgment of learned Judicial Magistrate I, Pollachi, in C.C.No.464 of 2008 by its order dated 21.08.2012.

2 Based on the complaint given by P.W.1, a case was registered in Crime No.335 of 2008 against the petitioners/accused. The respondent police had charged the accused punishable under Sections 326, 323 & 506 (ii) IPC and was forwarded the same to the learned Judicial Magistrate I, Pollachi, which was taken on file in C.C.No.464 of 2008.

3 Before the trial Court, Prosecution has examined P.W.1 to P.W.7 and marked Ex.P1 to P6. On the side of the accused none of the witness was examined and no document was marked. The trial Court, after completion of trial and evidence, since the petitioners found guilty under Section 326 IPC, had convicted the petitioners and sentenced them to undergo 1 year rigorous imprisonment each and fine of Rs.2000/- each, in default, further simple imprisonment of 2 months each, by judgment dated 21.08.2012. Aggrieved against the same, the petitioners/accused have preferred an appeal in C.A.No.464 of 2008 before the learned Principal District and Sessions Judge, Coimbatore. The lower appellate Court, after hearing both sides, had convicted the appellant under Section 325 IPC and modified the sentence imposed by the trial Court, by judgment dated 23.11.2012, against which present appeal has been preferred.

4 The learned counsel for the appellant would submit that there is a dispute between the petitioners and family of defacto complainant/P.W.1 in connection with pathway. The petitioners filed a civil suit and got decree in their favour and against the defacto complainant. Hence in order to wreck vengeance, P.W.1 has given false complaint against the petitioners. The Investigating Officer/P.W.7 without investigating the matter properly, had filed a charge sheet under Sections 326, 323 & 506 (ii) IPC against the petitioners. Further, even though the material alleged to have been used in the occurrence was recovered, the Investigating Officer had failed to produce the same before the Magistrate. The prosecution has stated that P.W.2 & P.W.3 had sustained grievous injuries, but, medical records was not produced to corroborate the same. Even the occurrence took place at 10.00 a.m., whereas FIR has been registered at 4.30 p.m. only, prosecution had not explained the delay in registering FIR, which are all fatal to case of the prosecution. When the origin of registering FIR itself is suspected, then the entire case of the prosecution is vitiated. Prosecution has failed to prove the case beyond reasonable doubts. In support of his contentions, the learned counsel appearing for the petitioner has relied on decision rendered by Hon'ble Supreme Court reported in AIR 1980 SC 638. Both the Courts below have failed to consider the above facts and erroneously convicted the petitioners, which warrants interference of this Court.

5 Mr.Hari Hara Arun Soma Sankar, learned Government Advocate (Crl.Side) appearing for respondent police would submit that, if the petitioners were convicted under Section 326 then question of production of material object would arise. In the present case though the trial Court had convicted the petitioners under Section 326, the lower appellate Court had convicted the petitioners under Section 325 IPC only, wherein

production of material objection is not at all necessary to convict the petitioners. From the evidence of P.W.6/Medical Officer coupled with wound certificate Ex.P3, shows that P.W.2 & P.W.3 sustained grievous injuries. Though prosecution had not proved its case under Section 326, where material object is required, but proved the case under Section 325 and hence the lower appellate Court convicted the petitioners. Since it is a revision, this Court cannot re-appreciate entire evidence, it can only see whether any perversity in the order passed by the Court below. The petitioners have not able to point out any error or perversity in the judgment of the lower appellate Court and hence they are not entitled for acquittal.

6 Heard the learned counsel appearing for the petitioners and the learned Government Advocate (Crl.Side) appearing for respondent pollice and perused the materials available on record.

7 On a perusal of judgments of both the Courts below, it reveals that as rightly pointed out by the learned Government Advocate (Crl.Side) though the trial Court had convicted the petitioners under Section 326 IPC, where materials object is required, the lower appellate Court had convicted the petitioners under Section 325 IPC, mere non-production of material objects will not vitiate the case of the prosecution. Further the learned counsel for petitioners contended that the prosecution has not explained the delay in registering FIR. Once witness sustained injuries, it cannot be expected that instead of going to hospital for treatment, they should straight away go to police station for lodging complaint. Even though there was any flaws on the part of the Investigating Officer, it is not a sole ground to acquit the accused.

8 From the records and evidence of P.W.1 to P.W.3 & P.W.6 coupled with Ex.P.3 wound certificate, it is clear that the prosecution has established its case and the lower appellate Court has rightly convicted the petitioners under Section 325 IPC, in which this Court does not find any illegality or perversity.

9 In the result, the criminal revision is dismissed. Trial Court is directed to secure the accused to undergo remaining period of imprisonment, if any.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal District and Sessions Judge,
Coimbatore District.
2. The Judicial Magistrate I,
Pollachi.
3. The Public Prosecutor,
High Court of Madras.
4. The Inspector of Police,
Anaimalai Police Station,
Coimbatore.

+1cc to M/S.C.D.Johnson, Advocate Sr.58076

Cr1.R.C.No.7 of 2013

sj[col]
srg 18/09/2018



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