



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.12.2018

CORAM :

THE HONOURABLE MR.JUSTICE **P.VELMURUGAN**

Crl.R.C. (MD) No.642 of 2018

and

Crl.M.P. (MD) No.9950 of 2018

Charles ... Petitioner/1st Respondent/Accused No.1

vs.

1.State represented by
The Inspector of Police,
Kaliyakkavilai Police Station,
Kanyakumari District.
Crime No.137 of 2009 ...1st Respondent/Respondent/Complainant

2.Justin Raj ... 2nd Respondent/Appellant/PW-3

Prayer:- This Criminal Revision Case filed under Section 397(1) r/w 401 of the Code of Criminal Procedure, to set aside the judgment dated 15.02.2018 passed in Crl.A.No.23 of 2014 on the file of the learned Sessions Judge, Kanyakumari Division at Nagercoil, reversing the judgment dated 25.02.2013 passed in C.C.No.312 of 2009 on the file of the learned Judicial Magistrate No.I, Kuzhithurai, Kanyakumari District.

For Petitioner : Mr.A.Thiruvadikumar

For R1 : Mr.APG.OHM.Chairma Prabhu
Government Advocate (Crl.Side)

ORDER

This criminal revision case has been filed to set aside the judgment dated 15.02.2018 passed in Crl.A.No.23 of 2014 on the file of the learned Sessions Judge, Kanyakumari Division at Nagercoil.

2.The case of the prosecution is that on 04.04.2009 at about 09.00 p.m., in the auto stand while the injured one Libin was standing, the petitioner along with another cut Libin of his head by using a Mottukathi. Hence, the respondent police have registered a case in Crime No.137 of 2009. After completing the investigation, the respondent police filed a charge sheet and the same has been



taken on file in C.C.No.312 of 2009 by the learned Judicial Magistrate, Kuzhithurai. After trial, the learned Magistrate found that the prosecution has not proved its case beyond reasonable doubt and therefore, acquitted the petitioner along with other accused. Thereafter, the accused, A2, Thiyagarajan and A3, Stella Bai, died.

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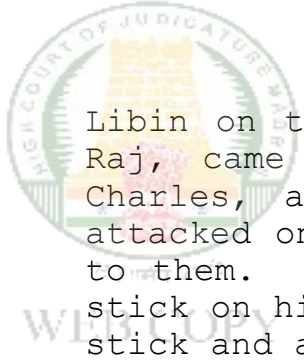
3. Thereafter, the State has filed an appeal in CrI.A.No.23 of 2014 before the learned Sessions Judge, Kanyakumari. After hearing the arguments and perused the records, the learned Judge found the petitioner guilty for the offence under Section 324 and 326 IPC and set aside the order dated 25.02.2013 passed in C.C.No.312 of 2009 on the file of the learned Judicial Magistrate No.I, Kuzhithurai, Kanyakumari District and remanded back to the learned Magistrate to the question of sentence. Feeling against the judgment of the learned Sessions Judge, Kanyakumari and conviction, the petitioner, A1, has preferred the present revision case before this Court.

4. The learned counsel for the petitioner would submit that the petitioner, A1, has not committed any offence and he has not used any deadly weapon during the time of occurrence. Though the FIR the respondent police has stated that only three persons have involved in this case, subsequently, an affidavit filed before this Court has stated that some other persons have also involved and the petitioner, A1, has not used any deadly weapon and he used only stick during the time of occurrence. The trial Court has appreciated the documents of Exs.D1, D2 and D3 statement given by the victim and based on the same acquitted the accused, whereas, the appellate Court has not appreciated the documents Exs.D1, D2 and D3 statement given by the victim, which warrants interference of this Court.

5. The learned Government Advocate (CrI.Side) would submit that the petitioner, A1, has used the deadly weapon. P.W1, who sustained grievous injury, has clearly stated that the petitioner used the knife and by using the same he caused injury to him and the Doctor evidence corroborated the same. The evidence of the victim and the witness of the Doctor had corroborated the victim sustained grievous injuries and therefore, Section 326 IPC will attract against the petitioner. Therefore, the appellate Court has rightly found the petitioner guilty for the offence under Sections 324 and 326 IPC and remanded back to the question of sentence.

6. Heard the arguments advanced by the learned counsel on either side and perused the records carefully.

7. The case of the prosecution is that the first accused namely, Charles, second accused namely, Thiyagarajan and third accused namely, Stella Bai had prior enmity regarding parking autos in front of their house. On 04.04.2009 at about 09.00 p.m., in the auto stand while the injured Libin was standing, the first accused, Charles, with Vettukathi cut the Libin on his head and the second accused, Thiyagarajan, with a stick (உருடுகம்பு) attacked the said



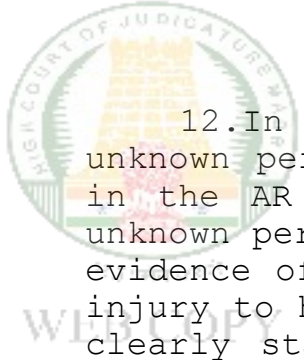
Libin on the backside and on his right side. His brother, Justin Raj, came to rescue his brother, Libin, and the first accused, Charles, attacked him with knife on the palm of Justin Raj and attacked on the back of the Justin Raj and caused grievous injuries to them. The second accused, Thiyaagarajan, also attacked him with stick on his head. The third accused, Stella Bai, attacked him with stick and all the three accused intimidated these injured and others with dire consequences and left the place.

8.The trial Court framed the offence under Sections 324, 326 and 506(ii) IPC against the first accused, under Section 323 (2 counts) and 506(i) IPC against the deceased second accused and under Section 323 and 506(i) IPC against the deceased third accused. After trial, the trial Court came to a conclusion that the prosecution had not proved its case beyond reasonable doubt and acquitted all the three accused, against which, the State has filed an appeal in___Crl.A.No.23 of 2018 on the file of the learned Sessions Judge, Kanyakumari Division at Nagercoil. As against the order dated 15.02.2018, passed by the learned Sessions Judge, Kanyakumari Division at Nagercoil, the petitioner has filed this present revision case.

9.After 2009 amendment, the revision was not maintainable before this Court directly. Therefore, this Court sent the matter back to the learned Sessions Judge, Kanyakumari, to dispose the appeal. After hearing the arguments and perused the records, the prosecution was able to prove that the petitioner caused injury to P.W1 with knife, namely, deadly weapon. From the evidence of Doctor, AR copy and also the wound certificate, it is seen that the victim sustained grievous injury. Though the learned counsel for the petitioner has stated in the affidavit filed before the appellate Court that the petitioner has not used any deadly weapon, the same had not taken into consideration by the learned Sessions Judge, Kanyakumari.

10.On a reading of the entire evidence given by P.W1 and P.W2, the petitioner used knife, namely, deadly weapon and caused injury to two other persons, one, the victim, P.W2 and another, P.W3, Justin Raj. Though P.W3 has given a statement that the petitioner did not attack him with knife, P.W2 has stated that the petitioner attacked him with knife. Only P.W3, Justin Raj, has given a statement that the petitioner has not attacked P.W2, Libin.

11.In this case, P.W2, Libin, has not given any statement either before the Court or before the Investigating Officer. From the evidence of P.W3, it is seen that the petitioner has not attacked him with knife. Therefore, the finding given by the trial Court is not correct and the finding given by the appellate Court based on the statement given by P.W3, Justin Raj, is correct and the acquittal of the accused is also not correct.



12. In the complaint, it is seen that two known persons and one unknown person attacked the victim with knife along with stick and in the AR copy, it is also seen that two known persons and one unknown person attacked the victim with knife along with stick. The evidence of P.W2 has clearly stated that the petitioner, A1, caused injury to him with knife and also the evidence of Doctor, P.W7, has clearly stated that the injury sustained by P.W3 is the grievous injury and also he has given a statement that D1 and D2 is not in admissible evidence. From the evidence of P.W7, P.W10 and P.W12 and also the wound certificate, the injuries sustained are the grievous injuries. On a reading of the entire evidence, the prosecution has proved its case beyond any reasonable doubt and the petitioner has committed for the offence under Sections 324 and 326 IPC.

13. On a perusal of the evidence of P.W7, P.W10, P.W12, Ex.P1, the complaint, Ex.P2 and Ex.P3, the wound certificates, Ex.P4 and Ex.P5, X-ray reports, M.O1, X-ray series, it is seen that the petitioner caused injury to P.W2 and P.W3 and the injury sustained by P.W3 is grievous in nature. Therefore, the finding given by the trial Court has no adverse.

14. In this case, this Court need not sit in the armchair of the appellate Court and revisit and reappraise the entire evidence. However, this Court has to see that there is any perversity in the appreciation of the evidence in deciding the case.

15. On reading of the entire materials placed before this Court, the judgments pronounced by both the Courts below and also from the evidence of P.W2, P.W3, P.W7, P.W10, P.W12, Ex.P1, Ex.P2 and Ex.D1, the trial Court has failed to appreciate the evidence and also the appellate Court rightly appreciated the evidence. Since the appellate Court is the final court of fact finding, this Court cannot interfere with the findings unless the finding is perverse.

16. On reading of the judgment of the appellate Court, the learned Sessions Judge, Kanyakumari Division at Nagercoil, has independently looked into the matter and rightly appreciated the oral and documentary evidence and has given a finding that the petitioner has committed the offence punishable under Sections 324 and 326 IPC and set aside the order of the trial Court. Since it is the reverse judgment, the petitioner / A1 has to be given an opportunity to the question of sentence.

17. Under these circumstances, this Court does not find any perversity and there is no sound reason to interfere with the judgment of the appellate Court and hence, the judgment dated 15.02.2018 passed in CrI.A.No.23 of 2014 on the file of the learned



Sessions Judge, Kanyakumari Division at Nagercoil, is hereby confirmed and the criminal revision case is dismissed. The petitioner / A1 is directed to appear before the learned Judicial Magistrate No.I, Kuzhithurai, Kanyakumari District, for question of sentence. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (P&A)

/ True Copy /

Sub Assistant Registrar (CS-)

To

- 1.The Sessions Judge,
Kanyakumari Division,
Nagercoil.
- 2.The Judicial Magistrate No.I,
Kazhithurai,
Kanyakumari District.

Copy To:

The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai. **(2 Copies)**

+1 CC to M/s.A. THRUVADI KUMAR, Advocate, SR.No.98397

Crl.R.C. (MD) No.642 of 2018
03.12.2018.

ES/04.07.2019/5P/6C