



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.12.2018

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CORAM:

THE HONOURABLE Mr.JUSTICE P.VELMURUGAN

Cr1 RC(MD)No.492 of 2018

Raja Mohamed

...Petitioner/Appellant/Accused

Vs.

State represented by
The Inspector of Police,
Natham Police Station,
Dindigul District.
[Crime No.416 of 2009]

...Respondent/Respondent/Complainant

Prayer: Criminal Revision case has been filed under Section 397 r/w 401 of the Criminal Procedure Code, to call for the records to set aside the order passed in CA No.4 of 2017 dated 19.07.2018 on the file of the Additional District and Sessions Judge, Dindigul confirming the order passed in SC No.176 of 2011 on the file of the Additional Assistant Sessions Judge, Dindigul.

For Petitioner : Mr.M.Sasi

For Respondent : Mr.APG. Ohm Chairma Prabhu,
Government Advocate (Cr1side)

J U D G M E N T

These Criminal Revision case has been filed seeking to set aside the judgment dated 19.07.2018 rendered in CA No. 4 of 2017 by the Additional District and Sessions Judge, Dindigul.

2.The case of the prosecution is that on 02.10.2009 the de facto complainant has preferred a complaint before the respondent Police that on 02.10.2009 at about 10.00am, the accused had stabbed PW.2 on his neck with knife and he was initially taken to Government Hospital, Dindigul and subsequently, was shifted to Government Rajaji Hospital, Madurai. Hence, based on the complaint, a case was registered under Section 307 of IPC and a charge sheet was laid before the Judicial Magistrate, Natham, who in turn committed the case to the Sessions Judge, Dindigul, since it was triable by the Court of Sessions Judge, Dindigul.

<https://hcservices.ecourts.gov.in/hcservices/>

3.In order to prove the case, on the side of the prosecution 10 witnesses were examined as PW.1 to PW.10 and



documents were marked as Ex.P1 to Ex.P8 and one material object was exhibited as MO.1. After completion of the prosecution evidence, the incriminating materials culled out from the prosecution witness have been put before the accused and the accused denied them as false and on his side no oral and documentary evidence was let in.

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4.The Additional Assistant Sessions Judge, after completion of the trial, hearing the arguments on either side and considering the materials placed on record, found the revision petitioner guilty and convicted and sentenced to undergo five years simple imprisonment and to pay a fine of Rs.1,000/- in de fault, to undergo three months simple imprisonment having committed offence under Section 307 of IPC.

5.Aggrieved against the judgment, the convict preferred an appeal before the Sessions Judge, Dindigul, who in turn made over the same to Additional District and Sessions Judge, Dindigul and the same was taken on file in CA No.4 of 2017.

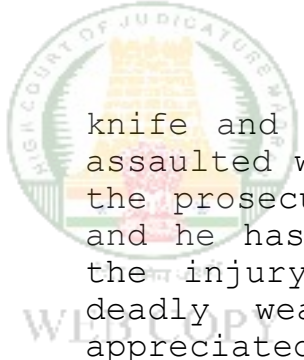
6.The Additional Sessions Judge, after hearing the arguments and considering the materials placed on record, dismissed the appeal and confirmed the order passed by the Judicial Magistrate.

7.Against the order of the appellate Court, the revision petitioner has filed the present revision before this Court.

8.Heard the learned Counsel for the revision petitioner and the learned Government Advocate (crl side) appearing for the respondent and perused the materials placed on record.

9.The learned Counsel for the revision petitioner would submit that there is doubt in filing of the complaint itself. PW.1 could not be an eye witness. Due to previous motive only he had given a false complaint against the revision petitioner. PW.2, injured witness has not given any evidence. Police also has not registered any case based on the statement recorded from PW.2 - injured witness. Therefore, out of personal motive against the revision petitioner a false case has been foisted against the revision petitioner. Police station and the place of occurrence are in the same town. But, the FIR reached the Court only on the next day, when the offence is under Section 307 of IPC, which also created doubt. The occurrence had not taken place as projected by the prosecution. Moreover, on the alleged day of occurrence, the revision petitioner was not in the town. In the evidence it is stated that at the time of occurrence blood splashed over the accused. But his shirt was not sent for Forensic Laboratory, which also creates doubt. These aspects have not been considered by the Courts below.

10.The learned Government Advocate (crl side) appearing for the State would submit that PW.1 to PW.3 have clearly stated about the occurrence that the revision petitioner has assaulted PW.2 with



knife and caused injury. AR copy also shows that one known person assaulted with knife on 02.10.2009 at about 11.00am. The evidence of the prosecution also corroborated the same. PW.2 sustained injury and he has taken treatment for 10 days in Government Hospital and the injury is grievous in nature. The revision petitioner used deadly weapon namely knife. Therefore, both the Courts have appreciated the oral and documentary evidence rightly and there is no reason to interfere with the judgment of the Courts below.

11. Heard the learned Counsel on either side and perused the materials placed on record.

12. It is seen that PW.1 and PW.2 are eye witnesses and PW.2 is an injured witness also. The available documents clearly show that PW.2 was assaulted by one known person. The evidence of PW.2 injured witness shows that on 02.10.2009 at about 10.00 clock, the revision petitioner assaulted him with knife and the evidence of PW.1 has corroborated the same. PW.8 the Doctor has also spoken about the first aid given to the injured. The entries made in the AR copy Ex.P.5 also corroborates that one known person attacked him with knife.

13. 2nd day of October is Gandhi Jeyandhi, which is the occurrence day, which is also a public holiday. Therefore, the FIR was sent to the Court on the next day. Hence, it cannot be said that there was delay in sending the FIR when the delay is properly explained and it is not fatal to the case of the prosecution.

14. This Court while exercising the revisional jurisdiction need not revisit and re-appreciate the entire evidence and this Court has to see is there any perversity in appreciation of evidence while deciding the case.

15. This Court has already observed that the PW.2 is injured witness as well eye witness, he has clearly spoke about the name of the accused and also the weapon used by the accused. The entry made in the accident register also shows that one known person attacked with knife and injury sustained by the injured is grievous in nature

16. On a perusal of the entire records and also the judgment of the Courts below, this Court does not find any perversity in appreciation of evidence, while deciding the case and both the Courts below have rightly appreciated the evidence.

17. Under such circumstances, there is no reason to interfere with the judgment of the appellate Court. There is no merit in this revision case. The judgment of the appellate Court dated 19.07.2018 rendered in CA No.04 of 2017 is hereby confirmed.

18. Considering the age of the revision petitioner, this Court modifies the sentence of imprisonment from five years to three



years, which will meet the ends of justice.

19. With the above modification, the criminal revision is partly allowed.

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Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar (CS)

To

1. The Additional District and Sessions Judge,
Dindigul.

2. The Additional Assistant Sessions Judge,
Dindigul.

3. The Inspector of Police, Natham Police Station, Dindigul District.

4. The Superintendent, Central Prison, Madurai.

5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to:

The Record Keeper (2copies)

VR Section,

Madurai Bench of Madras High Court, Madurai.

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DS/ /SAR- (30.04.2019) 4P 8C