

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.07.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.Nos.1166, 1466 & 1696 of 2011

1.Sankar

2.Raja ...Petitioners in Crl.R.C.No.1166 of 2011

Tinker Ravi @ Ravikumar ...Petitioner in Crl.RC.No.1466 of 2011

Kattaiyan ...Petitioner in Crl.R.C.No.1696 of 2011

Vs

The State,
Rep by the Inspector of Police,
Thirupapuliyur Police Station.
Crime No.363 of 2006 ... Respondent in all Crl.Rcs.

PRAYER in Crl.R.C.No.1166 of 2011: Criminal Revision case filed under Section 397 r/w 401 of Criminal Procedure Code, to set aside the order passed by the learned Additional District and Sessions Judge, Fast Track Court No.2, Cuddalore dated 30.05.2011 in C.A.No.25 of 2008.

PRAYER in Crl.R.C.No.1696 of 2011: Criminal Revision case filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the records and set aside the Judgment made in C.A.No.25 of 2008 dated 30.05.2011 by the learned Additional District Judge (Fast Track Court No.II), Cuddalore confirming the Judgment made in S.C.No.252 of 2007 dated 06.03.2008 passed by the learned Assistant Sessions Judge, Cuddalore.

PRAYER in Crl.R.C.No.1466 of 2011: Criminal Revision case filed under Section 397 r/w 401 of Criminal Procedure Code, to re-appreciate the evidence available on record and may be set aside the conviction given by the Court below and may be acquitted the accused and allow the revision petition.

For Petitioners : Mr.A.Arasu Ganesan (in all cases)

For Respondent : Mr.T.Shanmugarajeshwaran
Government Advocate (Criminal Side)
in all (cases)

C O M M O N O R D E R

The respondent police registered a case against these revision petitioners for the offence under Sections 341, 323, 326, 506(ii) r/w34 IPC After investigation the respondent police laid a charge sheet before the learned Judicial Magistrate No.1, Cuddalore.

2. The learned Judicial Magistrate No.1 has taken the charge sheet on file in P.R.C.No.23 of 2006 and since the offence is triable by the Court of sessions, the learned Judicial Magistrate No.1, committed the case to the Principal District and Sessions Court, which was taken on file in S.C.No.252 of 2007. The learned Principal District and Sessions Judge, Cuddalore made over the case to the Assistant Sessions Judge (Chief Judicial Magistrate) for trial. The learned Assistant and Sessions Judge (Chief Judicial Magistrate) after trial, found guilty of the accused for the offences and convicted them as follows:

Sl.No	Accused	Offences	Conviction
1	A1 to A4	U/S.341 IPC	To undergo one month Rigorous Imprisonment
2	A1 to A4	Under Section 326 IPC	To undergo three years Rigorous Imprisonment and to pay a fine of Rs.1,000/- in default to undergo three months Rigorous Imprisonment
3	A1 to A4	Under Section 506(ii) IPC	To undergo three years Rigorous Imprisonment
4	A3 and A4	Under Section 323 IPC	To undergo one year Rigorous Imprisonment

3 Challenging the said judgment, the convicts had filled an appeal before the Principal District and Sessions Court. After hearing arguments jointly, the learned Principal District and Sessions Judge taken the appeal on file in CrI.A.No.25 of 2008 and made over the case to the learned Additional District and Sessions Judge Fast Track Court No.II, Cuddalore, the learned Judge after hearing the arguments dismissed the appeal and modified the sentence alone against accused 3 and 4 and confirmed the sentence passed by the Chief Judicial Magistrate, Cuddalore. Challenging the said judgment the convicts have preferred these revisions.

4. Since all the revisions are arising out of the judgment in C.A.No.25 of 2008, on the file of the learned Additional District and Sessions Judge, (Fast Track Court No-II) Cuddalore.

Therefore all the revisions are heard together and decided commonly.

5. The learned counsel for the revision petitioners would submit that there is a material contradictions between the evidence of the prosecution witnesses. Both the Courts have failed to consider the said fact. Though, the prosecution has stated that A1 attempted to attack P.W.1 using knife, the Pugazhendhi evade from the attack and he sustained injuries in the check and from left arm. In this case, the said alleged knife was not recovered by the prosecution. Therefore, the non recovery of the alleged weapon is not fatal to the prosecution case. The other accused stated to have attacked with wooden logs, there is a injury not tallied with the prosecution only the injuries caused by the first accused alone. Therefore, the conviction of the other accused assuming that the injury sustained by the first accused was established by the prosecution. Though, the prosecution has established that the injuries caused by the second accused and fourth accused. There is no specific allegations against the fourth accused. The prosecution has stated that the first accused used knife, but, whereas, only two wooden logs were seized and produced before the Court. P.W.2, P.W.3, P.W.4 and P.W.5 are the relatives and the occurrence alleged to have taken place near by the temple in front of the Sivakolunthu's house, but no independent witness have been examined by the prosecution, all the witnesses have been examined by the prosecution are only an interested witnesses. Therefore, the non examination of the independent witnesses is also fatal to the case of the prosecution. The injuries sustained by the victim is not tallied with the medical evidence. Therefore the benefit of doubt should have been extended to the revision petitioners. Even the learned counsel for the revision petitioner 1 to 4 have clearly stated that even though there is some allegations and evidence against A1. But, there is no materials against the A4. Therefore, the benefit of doubt ought to have been extended to A4. The second revision petitioner is the A4, the prosecution has failed to prove its case beyond reasonable doubt. Both the courts below have failed to consider the facts and recorded the conviction, which warrants interference by this Court.

6. The learned counsel for the respondent would submitted that though P.W.1 is the victim, P.W.2, P.W.3, P.W.4 and P.W.5 are the eye witnesses they have clearly, jointly and independently have spoken about the occurrence, P.W.2 to P.W.5 have corroborated the evidence of P.W.1 and also the P.W.7 the Doctor one who have examined the injured also have clearly spoken about the three injuries also made AR copy which is marked Ex.P4. Ex.P4 also clearly shows that four persons were attacked and caused injuries. The evidence of P.W.1 to P.W.5 are coupled with the evidence of P.W.7/Doctor and medical evidence

clearly shows that the prosecution has proved its case beyond reasonable doubt. Both the Courts below have rightly found the appellant guilty for the offences as mentioned above, which does not warrants any interference by this Court.

7. Heard the learned counsel for the revision petitioners and the learned Government Advocate (Criminal Side) for the respondent and perused the materials available on record.

8. The case of the prosecution is that P.W.1 Pugazhendhi knew the petitioners and he is running a juice shop at Thirupapuliyur bus stand and residing at S.N.Chavadi. Both the petitioners and P.W.1 belong to the same place and there is a previous enmity between the petitioners and P.W.1, in respect of collecting money for conducting temple festival. On 21.07.2006 at about 23.30 hours, when P.W.1 was standing in front of Sivakozhundu's house at Mettu theru, S.N.Chavadi with P.W.2 Jambulingam, P.W.3 Saravanan, P.W.4 Rathinavel, P.W.5 Kandeegan, A1 to A4 came there with "Veecharuval" and M.O.2 wooden log and way laided P.W.1 and A1 attempted to cut P.W.1 with "Veecharuval" on his left side of the head but since he turned his head he sustained injury on his cheek. Once again A1 attempted to attack P.W.1 and also threatened P.W.1 if he continues to interfere in their matter, they would murder him. P.W.5 took P.W.1 to Government Hospital, Cuddalore where he took treatment. He had given oral complaint /Ex.P1, to the then Inspector of Police, Thirupapuliyur. P.W.1 had seen the accused in the temple light which was burning for festival.

9. The respondent police registered the case against the revision petitioners. After investigation, the respondent police framed the charges against these revision petitioners for the offence under Sections 341, 323, 506(ii) 326 r/w 34 IPC respectively.

10. In order to prove the case of the prosecution on the side of the prosecution the victim was examined as P.W.1. On reading of the evidence of P.W.1 she has clearly narrated the occurrence. P.W.2 to P.W.5 have been stated as eye witnesses by the prosecution and they have been examined before the Court and they have categorically stated that on 21.07.2006 at about 02.30 hours P.W.1 was standing in front of the house of Sivakolunthu that P.W.2, P.W.3, P.W.4 and P.W.5 and A2 to A4 came with vettuaruval and wooden logs. A1 attempted to attack with aruval on his left side of the hand and since the victim turned her head, she sustained injuries on his cheek. A1 attacked the victim uttering the word die. Hence, P.W.9 Inspector of Police registered the case.

11. On reading of the evidence of P.W.6 who treated the victim P.W.1 and he pointed out three injuries and made entry in the Accident Register. P.W.8 the doctor has opined from the X-ray the injury sustained by the victim P.W.1 is grievous in

nature and from the evidence of P.W.1 to P.W.7 the prosecution has proved its case beyond reasonable doubt.

12. On reading of the evidence of P.W.1/victim and the evidence of P.W.2 to P.W.4 eye witnesses they have also corroborated the evidence of P.W.1. P.W.5 who had taken P.W.1 to the hospital and admitted in the Government Hospital. P.W.7 has given the permission to the victim. Therefore, on reading of the entire evidence the prosecution has proved its case beyond reasonable doubt. Since the appellate Court is a final Court of fact finding and it can re-appreciate the entire evidence of prosecution witnesses and also the documents produced by the prosecution and found that all the accused have committed the offence under Sections 341, 323, 506(ii) 326 r/w 34 IPC and he has given findings against A3 and A4. The scope of the revision is very limited and the power of the revisional Court is also very limited and it cannot exercise the power of the appellate Court and re appreciate the entire evidence and it can only see there is any perversity in appreciation of the evidence by the appellate Court. Unless, if any perversity in appreciation of the evidence it cannot interfere with the judgment of the appellate Court and give its own reason.

13. On reading of the entire evidence of prosecution witnesses P.W.1 to P.W.4 and also the evidence of P.W.7 and P.W.8 prosecution has proved its case beyond reasonable doubt. This Court does not find any perversity in appreciation of evidence by the lower appellate Court and finds no reason to interfere with the judgment of both the Courts below. Hence, the revision is liable to be dismissed.

14. As far as, the sentences imposed against the petitioners are concerned, since all the persons assembled with a common intention to threatened P.W.1. Since P.W.1 is the injured witnesses P.W.2 to P.W.4 are the eye witnesses, the non recovery of the weapons from the scene of occurrence is not the fatal to the case of the prosecution. This Court find that there is no merit in the Criminal Revision Cases. Accordingly all these Criminal Revisions are dismissed.

15. However, the sentence of A2 to A4 is alone modified from three years to two years Rigorous Imprisonment for the offence under Sections 326, 506(ii) IPC, which will meet the ends of justice.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

sbn

To

1.The learned Chief Judicial Magistrate,
Cuddalore.

2.The learned Additional District and Sessions Judge,
Fast Tract Court No II,
Cuddalore.

3.Inspector of Police,
Thirupapuliyur Police Station.

4.Public Prosecutor,
High Court, Chennai.

5.The Principal Sessions Judge,
Cuddalore.

+1cc to Mr.K.Gandhi Kumar, Advocate, S.R.No. 64582

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VSN II(CO)
GN(17/02/2020)



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