

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.12.2019

PRONOUNCED ON : 12.12.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.R.C.No.1325 of 2012

N.Karthick

..Petitioner/Appellant/Accused

Vs.

State rep. by

The Inspector of Police

B-9 Saravanampatti Police Station

Coimbatore District

..Respondent/Respondent/Complainant

Criminal Revision preferred under Section 397 and 401 Cr.P.C. to set aside the judgment and order dated 29.06.2012 passed by the I Additional District and Sessions Judge, Coimbatore in C.A.No.270 of 2011 confirming the judgment and order dated 30.11.2011 passed by the IV Additional Assistant Sessions Judge, Coimbatore in S.C.No.33 of 2008.

For Petitioner : Mr.B.Kumarasamy

For Respondent : Mrs.P.Kritika Kamal
Govt. Advocate (Crl. Side)

O R D E R

This Criminal Revision has been preferred challenging the judgment and order dated 29.06.2012 passed by the I Additional District and Sessions Judge, Coimbatore in C.A.No.270 of 2011 confirming the judgment and order dated 30.11.2011 passed by the IV Additional Assistant Sessions Judge, Coimbatore in S.C.No.33 of 2008.

2.The prosecution story runs thus :

2.1.Mani (P.W.1) and his wife were migrant labourers from the neighbouring state of Andhra and had come to Coimbatore in search of employment. Mani (P.W.1) and Karthik (accused) are masons. Mani's (P.W.1) wife was also a construction labourer. Once Mani (P.W.1) saw the accused and his wife talking to each other very intimately and so, he upbraided his wife and assaulted the accused. After this incident, Mani (P.W.1) believed that the accused had forgotten and forgiven him.

However, the accused was nursing a grievance and was wanting to settle his scores with Mani (P.W.1).

2.2.It is alleged that on 16.06.2007, the accused told Mani (P.W.1) that someone has to give him Rs.5,000/-, to collect which, he called Mani (P.W.1) to accompany him. Unsuspectingly, Mani (P.W.1) accompanied him. En route, the accused purchased liquor and together, they went to a desolate location and consumed liquor, after dusk. After treating Mani (P.W.1) with liquor, the accused is said to have indiscriminately attacked him with a chisel (M.O.5), resulting in serious injuries to Mani (P.W.1). When Mani (P.W.1) made a hue and cry, two persons going by a motorcycle, came to his rescue. On seeing them, the accused fled.

2.3.Police was informed and Mani (P.W.1) was taken to the Government Hospital, Coimbatore, where he was examined by Dr.Marikannan (P.W.13) on 17.06.2007 at 00:45 hrs (12.45 a.m.) and found the following injuries :

- i. 10 x 3 x 3 cms cut injury on the right side stomach
- ii. 5 x 3 x 3 cms cut injury on the right hip
- iii. several cut injuries in the chest and stomach area
- iv. 10 x 3 x 1 cms cut injury on the left forearm
- v. 5 x 2 x 1 cms cut injury on the back
- vi. 5 x 3 x 2 cms cut injury on the right side back
- vii. 4 x 3 x 2 cms cut injury on the left side back
- viii. 4 x 3 x 2 cms cut injury on the front side of the right thigh
- ix. 10 x 4 x 2 cms cut injury on the front side of the left thigh

2.4.On the complaint (Ex.P1) lodged by Mani (P.W.1), the police registered a case in Crime No.554 of 2007 and after completing the investigation, filed a final report in P.R.C.No.8 of 2008 before the Judicial Magistrate No.II, Coimbatore under Sections 506(i), 341 and 307 IPC.

2.5.On appearance of the accused, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session in S.C.No.33 of 2008 and was made over to the IV Additional Assistant Sessions Court, for trial. The trial Court framed charges under Sections 506(i), 341 and 307 IPC against the accused. When questioned, the accused pleaded "not guilty".

2.6.To prove the case, the prosecution examined 16 witnesses, marked Exs.P1 to P15 and M.O.s 1 to 9.

2.7. When the accused was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same. No witness was examined on behalf of the accused nor any document marked.

2.8. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 30.11.2011 in S.C.No.33 of 2008, acquitted the accused of the offence under Sections 341 and 506(i) IPC, but convicted him of the offence under Section 307 IPC and sentenced him to undergo five years rigorous imprisonment and pay a fine of Rs.20,000/-, in default to undergo one year rigorous imprisonment. The appeal in C.A.No.270 of 2011 that was filed by the accused was dismissed by the I Additional District and Sessions Court, Coimbatore on 29.06.2012. Aggrieved by the concurrent findings of the Courts below, the accused has filed the present criminal revision under Section 397 read with 401 Cr.P.C.

3. Heard Mr.B.Kumarasamy, learned counsel for the petitioner and Mrs.P.Kritika Kamal, learned Government Advocate (Crl. Side) appearing for the respondent State.

4. It is trite that while exercising revisional jurisdiction in a case involving concurrent findings of fact arrived at by two Courts below, the High Court cannot act as a second appellate Court [See State of Maharashtra vs. Jagmohan Singh Kuldip Singh Anand and Others, etc. (2004) 7 SCC 659]. Very recently, in Bir Singh vs. Mukesh Kumar [(2019) 4 SCC 197], the Supreme Court has held as under:

"17. As held by this Court in Southern Sales & Services v. Sauermilch Design and Handels GmbH [Southern Sales & Services v. Sauermilch Design and Handels GmbH, (2008) 14 SCC 457], it is a well-established principle of law that the Revisional Court will not interfere even if a wrong order is passed by a court having jurisdiction, in the absence of a jurisdictional error."

(emphasis supplied)

5. Mr.Kumarasamy contended that, in the accident register copy, it is mentioned that alleged to have been assaulted by known persons. Based on this entry, learned counsel contended that more than one person had attacked Mani (P.W.1) and not the accused.

6. Normally, in the accident register copy, the number of persons, who had attacked the victim as disclosed by the victim, would be mentioned. Whereas, in the accident register copy at

hand, there is no reference to the number of persons who had allegedly attacked Mani (P.W.1). Just because, the word person has been given in plural, we cannot discard the testimony of Mani (P.W.1) and infer that more than one person had attacked him. That apart, much significance cannot be attached to the entry in the accident register copy, in the light of the judgment of the Supreme Court in P.Babu and others Vs. State of Andhra Pradesh 1994 SCC (Cr1.) 424, wherein, it was held as follows :

"6. It is a matter of common knowledge that such entry in the injury certificate does not necessarily amount to a statement. At that stage the doctor was required to fill up that column in a normal manner and it was not the duty of the doctor to enquire from the injured patient about the actual assailants and that the inquiry would be confined as to how he received the injuries namely the weapons used etc. "

7.It is the case of the prosecution that, while Mani (P.W.1) was standing near the shop of Kumar (P.W.11), the petitioner came there, in his motorcycle, picked up Mani (P.W.1) and later attacked him, after treating him with liquor.

8.Mr.Kumarasamy contended that Kumar (P.W.11) has not supported the prosecution version, inasmuch as he has stated that on 16.06.2007, he saw one person taking Mani (P.W.1) and going and that person, is not the accused.

9.The Public Prosecutor, in charge of the case should have declared him hostile. But, for reasons best known, that was not done. However, in the cross-examination of Kumar (P.W.11) by the defence, he has stated that four persons came and took Mani (P.W.1) with them and that, the petitioner was not one of them. Kumar (P.W.11), has further stated that, the petitioner is his friend. Thus, Kumar (P.W.11) contradicts himself, by saying in the chief-examination that, one person took Mani (P.W.1) and went and saying in the cross-examination that four persons took Mani (P.W.1) and went. Therefore, both the Courts have not attached any significance to Kumar's (P.W.11) testimony, because of his prevarication.

10.The evidence of Mani (P.W.1) is very candid and cogent. He has stated about his friendship with the accused, he seeing his wife and the accused intimately talking to each other, he abusing his wife and assaulting the accused. He has clearly stated that, on 16.06.2007, the accused requested him to accompany him to get back money from another person and on the way, the accused purchased liquor and together they had liquor, after which, the accused taken out a chisel and attacked him

indiscriminately. The motorcycle in which, the accused took Mani (P.W.1), was recovered and marked as M.O.6. The blood stained shirt (M.O.1), pant (M.O.4), hawai chappals (M.O.7) were also marked through Mani (P.W.1).

11.Mr.Kumarasamy submitted that Dr.Marikannan (P.W.13), has stated in the cross-examination that, a chisel is not likely to cause the injuries found on Mani (P.W.1). Based on this, he submitted that the prosecution case becomes suspect. The evidence of Dr.Marikannan (P.W.13), is only an opinion of an expert, relevant under Section 45 of the Evidence Act, 1872. In the chief-examination, Dr.Marikannan (P.W.13) has stated that, the injuries inflicted on Mani (P.W.1), could have occurred at the time and manner said by him (Mani-P.W.1). Dr.Marikannan (P.W.13), has stated that, the third injury is grievous in nature.

12.Mr.Kumarasamy contended that the F.I.R. in this case has reached the jurisdictional Magistrate very late and therefore, the prosecution case should be discarded. Delay in the F.I.R. reaching the Court is not fatal, in all cases. The fact remains that Mani (P.W.1) escaped death by a whisker and has survived to tell the story to the Court and that has been believed by the two Courts below. This Court does not find any infirmity in the findings of fact arrived at by the two Courts below warranting interference.

13.Mr.Kumarasamy pleaded for leniency in sentence of imprisonment imposed on the petitioner, that the incident was of the year 2007 and that, there was no other case against the petitioner. Accepting his submission, this Court is of the view that interests of justice will be served, if sentence of rigorous imprisonment imposed by the trial Court is reduced from five years to three years.

In the result, this Criminal Revision is partly allowed by reducing the sentence imposed on the petitioner by the trial Court and the appellate Court to three years rigorous imprisonment. The sentence of fine and the default sentence stands unaltered. The trial Court is directed to secure the petitioner and commit him in prison to undergo the remaining period of sentence, if any. The Registry is directed to transmit the original records if any, to the respective Courts forthwith.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1.The I Additional District and Sessions Judge,
Coimbatore.

2.The IV Additional Assistant Sessions Judge,
Coimbatore.

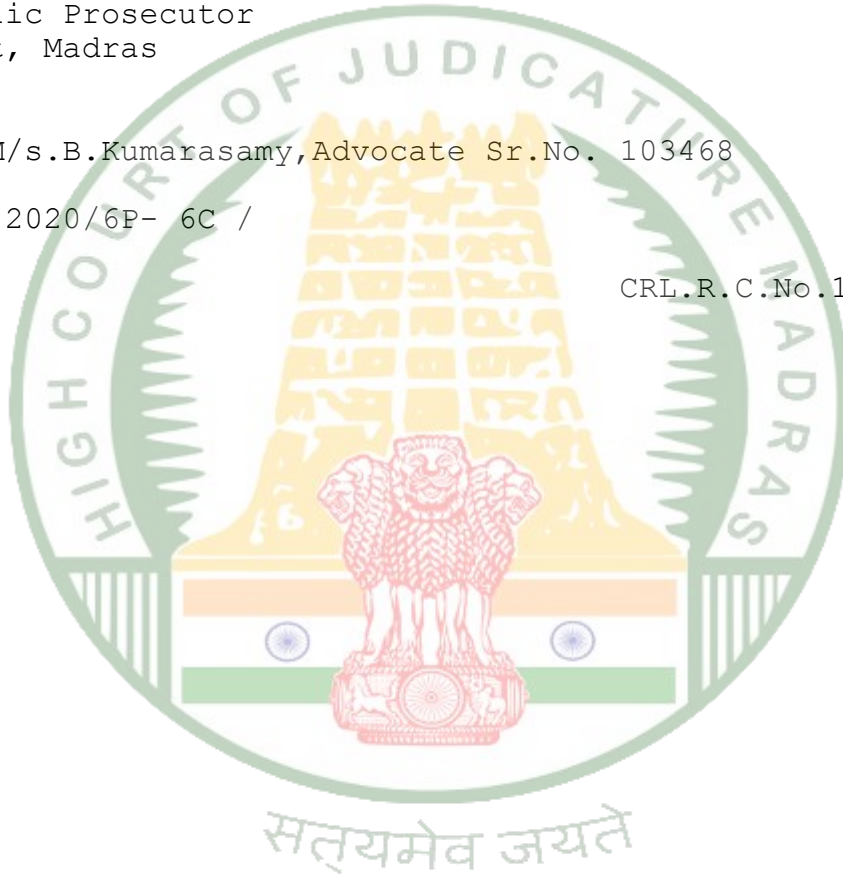
3.The Inspector of Police
B-9 Saravanampatti Police Station
Coimbatore District

4.The Public Prosecutor
High Court, Madras

+1 cc to M/s.B.Kumarasamy, Advocate Sr.No. 103468

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