

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.1420 of 2012

R.Bakthavatchalam @ Kumarasamy

..Petitioner/Accused

Vs.

State represented by
The Inspector of Police,
Sivagiri Police Station.
(Cr.No.87 of 2011)

...Respondent

The Criminal Revisions is filed under Sections 397 and 401 of Code of Criminal Procedure to call for the records of the learned District Munsif-cum-Judicial Magistrate, Kodumudi, in C.C.No.95 of 2011 dated 08.06.2012 insofar as convicting the petitioner under Section 326 of IPC and sentence imposed, as confirmed by the learned Principal Sessions Judge, Erode, made in C.A.No.117 of 2012 dated 06.10.2012 and set aside the same by allowing this revision.

For Petitioner : Mr.N.Umapathi

For Respondent : Mr.T.Shanmugarajeswaran

Government Advocate (Crl.Side)

ORDER

This criminal revision case has been filed against the concurrent judgments of conviction made by both the Courts below.

2 The respondent police registered a case against the petitioner for the offence punishable under Section 294(b), 326 and 506(ii) of IPC stating that on 08.06.2010 at about 11.00 a.m. in a public place situated at Polavan Thottam, in front of the house of P.W.2, due to previous enmity, the petitioner abused P.W.2 in a filthy language and beaten him with wooden stick and caused grievous injuries and threatened him with dire consequences. After completing investigation, prosecution has laid a charge sheet before the learned District Munsif-cum-Judicial Magistrate, Kodumudi, and the same was taken on file in C.C.No.95 of 2011. The learned Magistrate, after trial, found the accused not guilty for the offence punishable under Sections 294(b) and 326 IPC, and found the accused guilty for the offence punishable under Section 326 of IPC and by judgment dated 08.06.2012 convicted the petitioner and sentenced him to

undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.500/-, in default, to undergo rigorous imprisonment for a further period of one month. Aggrieved against the same, the petitioner/accused has preferred an appeal in Criminal Appeal No.117 of 2012 before the learned Principal District and Sessions Judge, Erode, and the same was dismissed by judgment dated 06.10.2012, confirming the judgment of conviction made by the trial Court. Challenging the judgment of the lower appellate Court, the petitioner has filed this criminal revision before this Court.

3 According to learned counsel appearing for the revision petitioner even though, charges were framed against the petitioner for the offence under Sections 294(b), 326 and 506 (ii) of IPC, the learned trial Judge, since there is no material to prove the charges under Sections 294(b) and 506(ii) of IPC, has acquitted the petitioner and erroneously convicted the petitioner for the offence under Section 326, for which also there is no material. The respondent police has failed to prove the place of occurrence itself. P.W.1 has sated in the complaint that the accused, after committing offence, ran away from the place with the wooden stick, but, observation and recovery witnesses have deposed that prosecution has recovered the material object from the place of occurrence, which creates doubt in the recovery. Further, prosecution has stated that the injuries sustained by the witness is grievous in nature and CT Scan also taken, but it has failed to mark the CT scan before the Court below. The trial Court has erroneously convicted the petitioner for the offence under Section 326 of IPC without any material and the lower appellate Court has also confirmed the same, which warrants interference of this Court.

4 The learned Government Advocate (Crl.Side) appearing for the respondent police would submit that the revision petitioner thrown poisonous pesticides on the land of P.W.2 in order to kill the chicken and cattle of P.W.2 and when P.W.2 questioned the same, the petitioner attacked him with wooden stick and caused injuries, which are grievous in nature as stated by the Doctor/P.W.6. The evidence of the Doctor/P.W.6, Wound Certificate/Ex.P4 corroborates with the evidence of the injured witness P.W.2. Further, in the Accident Register, it was stated by P.W.2 that he was attacked by known person. The trial Court and the lower appellate Court, by appreciating the evidence in the right manner, had convicted the petitioner, which does not call for any interference of this Court.

5 Heard the learned counsel appearing on either side and perused the materials available on record.

6 It is seen that P.W.1 is an agriculturist and P.W.2 is son of P.W.1. P.W.2 and the petitioner are neighbors and since P.W.2's fowls entered into the farm of the petitioner, one day prior to the occurrence, the petitioner thrown poisonous pesticides in the land of P.W.2 with an intention to kill the fowls and cattle and when P.W.2 questioned the same, the petitioner attacked P.W.2 with wooden stick and caused grievous injuries and hence case was registered against the petitioner, which was ended in conviction. P.W.1 has deposed that on the date of occurrence, while he was walking in front of the place of occurrence, he saw the accused beating his son. P.W.2 also corroborated the evidence of P.W.1 and P.W.2 has stated before the Doctor/P.W.6, that he was attacked by the known person with stick. P.W.6 has noted the contusion and issued a wound certificate, which was marked as Ex.4. P.W.6 has deposed that there was blood clot on the head caused bleeding in the brain and skull was opened and he removed the blood clot through surgery. The evidence of P.W.6, clearly reveal that the injury sustained by P.W.2 is grievous in nature and hence non production of CT Scan report is not fatal to the case of the prosecution. Further, the injured witness/P.W.2, has clearly stated before the Doctor, that known person attacked him with stick and the Doctor has deposed that the injuries sustained by the victim is grievous in nature and hence the contention of the learned counsel that that seizure of Material Object is doubtful is not acceptable. Therefore, from the evidence of P.Ws.1, 2, 6 & 7 and through the medical records, prosecution has clearly proved its case beyond reasonable doubt.

7 The trial Court has rightly appreciated the evidence of prosecution and recorded conviction. The lower appellate Court, being a final Court of fact finding, had re-appreciated entire evidence independently and confirmed the judgment of conviction passed by the trial Court. This Court, while exercising revisional jurisdiction, cannot re-visit the entire evidence and substitute its own views on the finding of the lower appellate Court, unless there exists perversity. This Court does not find any perversity in the judgments of both the Courts below.

8 In the result, the criminal revision case stands dismissed. Trial Court is directed to secure the petitioner/accused to serve remaining period of imprisonment, if any.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Principal District and Sessions Judge, Erode.
2. The District Munsif-cum-Judicial Magistrate, Kodumudi.
3. The Public Prosecutor, High Court of Madras.
4. The Inspector of Police, Sivagiri Police Station.

+1 cc to M/s.N.Umapathi, Advocate Sr.No. 64189

AKM/03.12.19/4P-6C /

Cr1.R.C.No.1420 of 2012



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