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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.06.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.893 of 2012

1. Balakrishnan
2. Arivazhagan

...Petitioners/Accused

-Vs-

State represented by,
The Station House Officer,
Pudupettai Police Station,
Cuddalore District.
Cr.No.175 of 2005

...Respondent/Complainant

This Criminal Revision case is filed under Section 397 read with Section 401 of Cr.P.C. praying to set aside the judgment dated 08.11.2011 made in C.A.No.8 of 2010 on the file of the Court of Sessions, Cuddalore Division, Cuddalore in modifying the conviction made in judgment dated 03.02.2010 made in C.C.No.617 of 2009 on the file of the Court of Judicial Magistrate No.II, Panruti.

For Petitioner : Ms.E.Bharathi for
Mr.D.Senthil Kumar

For Respondent : Mr.T.Shanmugarajeswaran
Government Advocate (Crl.Side)

O R D E R

This criminal revision case has been filed against the judgment of conviction dated 08.11.2011 made in C.A.No.8 of 2010 by the learned Principal Sessions Judge, Cuddalore Division, Cuddalore, in modifying the conviction made in judgment dated 03.02.2010 in C.C.No.617 of 2009 by the learned Judicial Magistrate No.II, Panruti.

2 When the matter was taken up for hearing on 10.06.2019, at request of the learned counsel for the petitioners only the matter was adjourned to today i.e. 25.06.2019. Even today also the learned counsel is not ready to argue the matter on merit. Even though, the revision is pending for more than seven years, the learned counsel for the petitioners has not come forward to dispose of the case on merit, even after giving sufficient opportunities and hence this Court is inclined to dispose of the



revision.

3 Heard the learned Government Advocate (Crl.Side) appearing for the respondent police and carefully perused the entire records.

4 The respondent police has registered a case in Crime No.175 of 2005 against the petitioners for the offence punishable under Sections 294, 352, 324 and 506 (II) of IPC and after investigation laid a charge sheet before the learned Judicial Magistrate II, Panruti. The learned Magistrate after taking cognizance of the charge sheet has taken the same on file in C.C.No.617 of 2009. During trial, on the side of the prosecution, P.W.1 to P.W.6 were examined and Ex.P1 to Ex.P8 were marked. On the side of the defence no one was examined and no document was marked. The learned Magistrate, after trial found the first petitioner/A1 guilty for the offence under Sections 294, 352, 506(ii) of IPC and the second petitioner/A2 for the offence under Section 324 of IPC and therefore by judgment dated 03.02.2010 convicted the petitioners/accused and sentenced the first petitioner/1st accused to undergo simple imprisonment for a period of one month for each offence under Section 294, 352 and 506(ii) IPC and sentenced the second petitioner/2nd accused to undergo simple imprisonment for a period of three months for the offence under Section 324 of IPC. Against the said judgment of conviction, the petitioners/accused had preferred appeal before the learned Principal Sessions Judge, Cuddalore Division, Cuddalore, in Criminal Appeal No.8 of 2010. The learned Principal Sessions Judge, after hearing both the parties and after perusing the records, by judgment dated 08.11.2011 confirmed the conviction and modified the sentence by imposing only fine of Rs.2000/- for each of the offence under Sections 294(b) and 506(ii), and Rs.500/- for the offence under Section 352 of IPC and in default, to undergo simple imprisonment for a period of one month for each of the default against A1 and imposed only fine of Rs.2000/-, in default, to undergo simple imprisonment for a period of one month for the offence under Section 324 of IPC against A2. Being not satisfied with the judgment made by the lower appellate Court, the petitioners/accused preferred this criminal revision.

5 It is seen that case of the prosecution is that defacto complainant was residing at Ponankuppam Village. His father mani has two brothers namely Arumugam and Balakrishnan/A1 and A2 is son of A1 and all the brothers were occupying the three adjacent portions of the same house and each portion has walls commonly dividing each portions. On 19.05.2005 at about 12.00 noon, the accused have started to demolish their portion, due to which, the wall of the complainant's portion got damaged and hence the defacto complainant and his father and mother went



and told them not to damage their wall. At that time, A1 shouted and attacked complainant's mother on her head and when the complainant's father tried to prevent the same, A2 attacked him with stick on his head and the complainant and one Krishnamurthy tried to intervene, A1 threatened them with crowbar with dire consequences. Thereafter, the complainant took his injured parents to the Government Hospital, Panruti, for treatment and on next day i.e. on 20.06.2005, he made complaint before the respondent police and after investigation the respondent police filed charge sheet and the case was taken on file. The learned Magistrate, relied on the evidence of P.Ws.1 to 3 and also other documentary evidence and also the evidence of Doctor/P.W.5 and the wound certificates issued by him for the conviction made against the petitioners/accused. P.W.4 is independent witness and his evidence has also supported the case of the prosecution. The lower appellate Court has also confirmed the conviction made by the trial Court and modified the sentence by imposing only fine and no imprisonment.

6 On a careful reading of the evidences on record, it reveal that the dispute is between the family members, who are all residing in the adjacent houses and each portion is divided by wall. P.W.1 the defacto complainant is eye witness and P.Ws.2 & 3 are injured eye witnesses. Even though, defence was taken by the accused that there was delay in lodging the complaint and there was discrepancies with regard to injuries and weapon alleged to have been used in the occurrence, the fact remains that P.W.1, the defacto complainant has clearly stated that after the occurrence he took his injured parents P.Ws.2 & 3 to the Hospital and on the next day he lodged complaint and it is also stated by P.W.1 that the accused had taken away the weapon and the Investigating Officer P.W.6 has also expressed his inability in tracing the weapon. There is no reason to discord the evidence of P.Ws.1 to 3. Further, the lower appellate Court, being a fact finding Court, after re-appreciating entire evidence on record, had reduced the sentence from imprisonment to fine. This Court does not find any perversity in appreciating the evidence by the lower appellate Court and there is no sound reason or ground to interfere with the judgment. In this regard, it is useful to refer the decision of the Hon'ble Supreme Court reported in AIR 1999 SC 981 (State of Kerala Vs. Putthumana Illath Jathavedan Namboodiri), wherein the Hon'ble Supreme Court held as follows:

"... In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of Supervisory Jurisdiction exercised by the High Court for



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correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an Appellate Court nor can it be treated even as a second Appellate Jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to re-appreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice."

7 There is no perversity in the judgment of conviction recorded by the learned Magistrate and the learned Sessions Judge. There is no merit in the revision and there is no sound ground to interfere with the judgment of both the Courts below.

8 In the result, the criminal revision case is dismissed. The petitioners/accused are directed to pay the fine amount as imposed by the lower appellate Court by judgment dated 08.11.2011 immediately without fail, failing which, the Magistrate is directed to take steps to collect the fine in accordance with law.

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Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Principal Sessions Judge,
Cuddalore Division, Cuddalore.

2. The Judicial Magistrate No.II,
Panruti.

Copy to:-

The Section Officer,
Criminal Section,
High Court, Madras - 104.

+1cc to Mr.D.Senthil Kumar, Advocate, SR.No.52919

Cr1.R.C.No.893 of 2012

Kak(08/08/2019)