

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Order 30.08.2018	Date of pronouncing Order 20.08.2019
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CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Cr1.R.C.No.123 of 2013

Kumar

.. Appellant/Accused

Versus

The State represented by
Sub-Inspector of Police
Mecheri Police Station
Mettur Taluk
Salem District.
(Crime No.501 of 2007)

.. Respondent/Complainant

Appeal filed under Sections 397 r/w. 401 of Cr.P.C. against the Judgment of conviction and sentence passed by the learned I Additional District and Sessions Judge, Salem, in Criminal Appeal No.171 of 2010 dated 08.11.2012 confirming the judgment of conviction and sentence passed by the learned Judicial Magistrate No.II, Mettur, in C.C.No.108 of 2008 dated 29.10.2010.

For Appellant : Mr.N.A.Ravindran

For Respondent : Mr.R.Ravichandran
Government Advocate

O R D E R

The respondent police registered a case against the revision petitioner and others in Crime No.501 of 2007. The respondent police, after investigating the matter laid a charge sheet before the learned Judicial Magistrate No.II, Mettur, Salem District. The learned Judicial Magistrate has taken the charge sheet on file in C.C.No.108 of 2008. After framing the charges and completing the trial, learned Judicial Magistrate, found A1 to A4 not guilty of offence under Sections 448 and 506 (ii) IPC; found A2 not guilty for the offence under Section 324 IPC; found A3 not guilty for the offence under Section 324 read with 114 IPC; found A4 not guilty for the offence under Section 324 (2 counts) of IPC; and had convicted A1 for the offence under Sections 326 and 324 IPC and sentenced him to undergo

three years rigorous imprisonment and to pay fine of Rs.1,000/- and in default to undergo six months simple imprisonment for the offence under Section 326 IPC and further sentenced to undergo two years Rigorous Imprisonment with fine of Rs.500/- and in default, to undergo three months simple imprisonment for the offence under Sections 324 IPC and directed to undergo all the sentences concurrently. Challenging the said judgment of the learned Magistrate, first accused filed Appeal before the learned Principal Sessions Judge, Salem in CrI.A.No.171 of 2010. In Appeals, the learned Principal Sessions Judge, Salem, made over the case to the learned I Additional District & Sessions Judge, Salem, for disposal.

2. The learned I Additional District & Sessions Judge, after hearing arguments advanced on either side, found the appellant guilty for the offence under Sections 324 and 326 IPC and confirmed the conviction and sentence passed by the learned Judicial Magistrate and dismissed the Appeal. Challenging the said judgment of the learned I Additional District & Sessions Judge, Salem in CrI.A.No.171 of 2010, the appellant therein has filed the present Revision before this Court.

3. The learned counsel for the revision petitioner would submit that there is an inordinate delay in registration of First Information Report and the occurrence had taken place on 02.12.2007, whereas the First Information Report was registered only on 05.12.2007 at about 8.50 p.m. and this inordinate delay in registration of First Information Report has not been explained by the prosecution and both the Courts below failed to note that this inordinate delay has been taken advantage of prosecution to embellish the case. The learned counsel would also submit that when four accused have been charged under Sections 324 and 326 IPC and except A1/revision petitioner herein, all the other three accused were acquitted since the prosecution has failed to prove the offence against other accused, the very same benefits would have been extended to the present revision petitioner also. The medical evidence and ocular evidence with respect to types of injuries alleged to have been inflicted on PW.1 and PW.2 are mutually contrary and therefore, the Courts below ought to have considered the same and acquitted the revision petitioner also. Both the Courts below have not appreciated the evidence of Radiologist, the Doctor, who examined the X-ray and the said X-ray has also not been produced before this Court. Non-production of X-rays is also fatal to the case of the prosecution. Therefore, the prosecution has failed to prove its case beyond reasonable doubt, when especially four accused alleged to have involved in this case and three of them were acquitted and no specific overt act has been pointed out by both the Courts below for the revision petitioner, hence the judgments of the Courts below warrant interference.

4. The learned Government Advocate for the respondent/State would submit that four persons alleged to have attacked PW.1 to PW.4, when they were in the house. A1 to A4 came to the house of PW.1 and stood outside the house and called PW.1 to come out of the house. PW.1 and PW.2 came out of the house. Immediately, A1 attacked PW.1 with bill-hook on the left shoulder and PW.1 fell down. Immediately, A2 stabbed PW.1's leg with punching needles on the right ankle. PW.2, wife of PW.1 intervened to stop the assault in PW.1. A1 again attacked PW.2 on the right hand. A3 handed over the stick to A4, to attack them. At that time, PW.3 and PW.4, who are sons of PW.1 came there to stop the assault and A4 assaulted them with stick. Immediately, PW.1 asked his sons to run away from there. Hence, they ran away from the place of occurrence and informed PW.10. PW.10 taken all the injured persons to the hospital and admitted them. PW.9, duty Doctor of Mettur Government Hospital, admitted PW.1 brought by PW.10 and made an entry in the Wound Certificate - Ex.P5 and noted the following injuries :-

- i) A small incised injury of $\frac{1}{2}$ x $\frac{1}{2}$ x $\frac{1}{2}$ cm over left shoulder.
- ii) Abrasion of $\frac{1}{2}$ x $\frac{1}{2}$ cm right foot over medial malleolus
- iii) # upper end of humerus left.

On the same day, PW.9 Doctor examined PW.4 and issued Ex.P7-Accident Register and noted the following injuries:-

- i) Contusion of 2 x 2 cm left arm
- ii) Contusion of 1 x 1 cm right thigh

PW.9 Doctor examined PW.3 and issued Ex.P8-Accident Register in respect of PW.3 and noted the following injuries:-

- i) Abrasion of $\frac{1}{2}$ x $\frac{1}{2}$ cm fore arm
- ii) Pain left knee

PW.9 Doctor examined PW.2 and issued Ex.P9-Accident Register and noted the following injuries:-

- i) Incised wound 2 x $\frac{1}{2}$ cm over right head
- ii) Pain right fore arm.

5. The learned Government Advocate would further submit that the evidence of PW.1, PW.9, PW.10, Accident Registers and Wound Certificate clearly shows that PW.1 and PW.2 sustained injuries, which were caused by A1 and A2 and PW.2 also sustained injuries, which were caused by A1. Though both the Courts below failed to consider the evidence of other witnesses, there is clear overt act against A1 and the prosecution witnesses have corroborated the evidence of PW.1 and supported the case of prosecution and the Courts below rightly convicted A1. Hence, there is no reason to interfere with the judgments of the Courts below.

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

7. Though the prosecution has laid charge sheet against four accused and the trial Court also framed charges against four accused, the trial Court acquitted A2 to A4 and only convicted A1 alone for the offence under Sections 324 and 326 IPC. Against the total acquittal of A2 to A4 and also the acquittal of A1 for other offences, neither the prosecution nor the defacto complainant has filed any appeal and this Court cannot go beyond the scope of the Revision.

8. The learned Magistrate found A1 guilty for the offence under Sections 324 and 326 of IPC based on the evidences given by P.Ws.1 and 2.

9. On reading of the evidence of PW.1, he has clearly narrated the incident on 02.12.2007 and stated that when PW.1 was doing agricultural work in the land of his brother, which is adjacent to his land, during that time, A3 Sampath was grassing his goats in the lands belong to PW.1; Hence, PW.1 objected about the grossing of goats in his land; Due to that, A3 quarreled with PW.1 and threatened and thereafter, gone away from there; On the very same day, at about 10 p.m, P.Ws.1 to 4 were in their house; and at that time, A1 to A4 came to the house of PW.1 and they stood outside the house and called PW.1 to come out of the house; PW.1 and PW.2 came out of the house; immediately A1 attacked PW.1 with billhook. PW.2 is the wife of PW.1, she has corroborated the evidence of PW.1.

10. Though the time of occurrence was at 10 pm infront of the house of PW.1, the presence of PW.1 to PW.4 are natural. Though all the witnesses are interested witnesses and further the injury sustained by other witnesses are not tallied, both the Courts below disbelieved the injury sustained by other witnesses and the prosecution failed to prove the specific overt act against the other accused, however, neither the prosecution nor the defacto complainant has not filed any appeal against the finding of acquittal of other accused. The injury sustained by PW.1 was tallied with the evidence of Doctor - PW.9 and she has clearly stated that when she was on duty on 03.12.2007 at about 12.05 a.m midnight, PW.10 brought PW.1 to the hospital and it was reported to her that on 02.12.2007 at about 10 a.m, PW.1 was assaulted by four known persons, by using knife and stone, and on examination of PW.1, she has noted the following injuries:-

i) A small incised injury of $\frac{1}{2}$ x $\frac{1}{2}$ x $\frac{1}{2}$ cm over left shoulder.

ii) Abrasion of $\frac{1}{2}$ x $\frac{1}{2}$ cm right foot over medial maliolus

iii) # upper end of humerus left.

She has also issued Ex.P5-Wound Certificate, in this regard. Therefore, the evidence of PW.1 and PW.9 and also the wound certificate and copy of the Accident Register, clearly show that A1 caused injury to PW.1 and the prosecution has also examined other witnesses PW.5 and PW.7 regarding the preparation of

Observation Mahazar (Ex.P2), Rough Sketch (Ex.P11) and after investigation, laid the charge sheet.

11. Though the First Information Report was registered two days later, the evidence of prosecution shows that PW.10 came to the spot and took the injured witnesses to the hospital and admitted them on the same day at 12.15 a.m itself and an entry was made in the Accident Register on the very same day that the occurrence took place at about 10 p.m and the injured were admitted at 12.15 a.m itself and the copy of the Accident Register also shows that PW.1 was attacked by four known persons with knife and therefore, subsequently, based on the same, police came to the hospital and recorded the statements of injured witnesses and thereafter, they went to the police station and registered the case. The first available document is the official copy i.e., copy of the Accident Register. Therefore, the prosecution cannot be doubted, since because there is a delay in registering First Information Report. Mere delay in registering the First Information Report is not fatal to the prosecution. In this case, the injured was admitted in the hospital on the same day by PW.10 before PW.9 - Doctor. Therefore, the evidence of PWs.1, 9 and 10 and entry in the Accident Register show that the occurrence has taken place on 02.12.2007 at about 10 p.m and PW.1 was admitted in the hospital at 00.15 a.m and PW.9 - Doctor, who admitted PW.1, and also at that time, had taken X-ray and given treatment and found that the injury sustained by PW.1 is grievous in nature. Therefore, mere non-marking of the X-ray before the Court is not the sole ground to discard the evidence of PW.9 and disbelieved the case of prosecution. Therefore, considering the evidence of P.Ws.1, 9 and 10 and the medical records, this Court is of the view that the prosecution has proved its case beyond reasonable doubt against the revision petitioner for the offence under Sections 324 and 326 of IPC.

12. As the Revisional Court cannot reassess and re-appreciate the entire evidence and cannot exercise the power of appellate Court, this Court while exercising the revisional jurisdiction, has to see as to whether any perversity in appreciating the evidence by both the Courts. On reading of the entire material and judgment of the trial Court and the lower appellate Court, this Court does not find any perversity in appreciating the evidence insofar as against the revision petitioner is concerned. The lower appellate Court, as final court of fact finding, rightly re-appreciated the entire evidence and confirmed the judgment of the trial Court. Though the other accused, who involved in that occurrence, were acquitted, the prosecution has not filed any appeal. Hence, there is no reason to interfere with the judgment of the lower appellate Court and no merit in the Revision and the same is

liable to be dismissed.

13. In the result, the Criminal Revision Case stands dismissed and the conviction and sentence passed by the learned I Additional District and Sessions Judge, Salem, in Criminal Appeal No.171 of 2010 dated 08.11.2012, confirming the judgment of conviction and sentence passed by the learned Judicial Magistrate No.II, Mettur, in C.C.No.108 of 2008 dated 29.10.2010, is hereby confirmed. The period of sentence already undergone, if any, by the revision petitioner / A1 shall be set off under Section 428 Cr.P.C. The trial Court is directed to secure the revision petitioner / A1 to undergo the remaining period of the sentence.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

- 1.I Additional District and Sessions Judge,
Salem.
- 2.The Judicial Magistrate No.II,
Mettur, Salem District.
- 3.The Sub-Inspector of Police
Mecheri Police Station
Mettur Taluk
Salem District.
- 4.The Public Prosecutor,
High Court, Chennai.
- 5.The Section Officer,
Criminal Section
High Court, Madras-104.

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SJ(CO)
CB(01/10/2019)

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