

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.09.2018

Pronounced on : 22.08.2019

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.641 of 2013

1. Sivakumar
2. Vijayakumar ..Petitioners/Accused 1 & 3
Vs.

State by the Inspector of Police,
Tirupathur Taluk Police Station,
Vellore District.
(Crime No.922 of 2009) ... Respondent/Complainant

This Criminal Revision Case is filed under Sections 397 read with Section 401 of Cr.P.C. praying to call for the records relating to conviction imposed in the judgment dated 28.03.2013 made in C.A.No.27 of 2012 on the file of the learned III Additional Sessions Judge, Vellore at Tirupathur, confirming the conviction imposed in the judgment dated 11.09.2012 made in C.C.No.57 of 2010 on the file of the learned Judicial Magistrate No.III, Tirupathur, and set aside the same by allowing this revision.

For Petitioners: Mr.N.Manokaran
For Respondent : Mr.R.Ravichandran
Government Advocate (Crl.Side)

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ORDER

This criminal revision case has been filed seeking to set aside the concurrent judgment of conviction made by both the Courts below.

2 The respondent police registered a case against the revision petitioners and seven others in Crime No.922 of 2009 for the offence punishable under Sections 148, 326, 324 294(b), 506(ii), 326 r/w 149 and 324 r/w 149 of IPC. After investigation, laid a charge sheet before the learned Judicial Magistrate II, Thiruppur, which was taken on file in C.C.No.57

of 2010 and the learned Magistrate, after trial, by judgment dated 11.09.2012 acquitted the first petitioner/A1 for the offence under Sections 148, 324 & 294(b), A2 for all the offences charged against him, A3 for the offence under Sections 148, 294(b) & 506(ii) and A4 to A9 were acquitted for all the offences charged against them. The learned Magistrate convicted these revision petitioners alone, who are arrayed as A1 and A3 and the first petitioner/A1 was convicted for the offence under Sections 326 & 323 of IPC and the second petitioner/A3 was convicted for the offence under Section 324 of IPC and accordingly the first petitioner/A1 was imposed sentence to undergo rigorous imprisonment for a period of six months with fine of Rs.1500/-, in default, to undergo simple imprisonment for a further period of one month for the offence under Section 326 and to pay a fine of Rs.500/-, in default, to undergo simple imprisonment for a period of one month for the offence under Section 323 of IPC and the second petitioner/A3 was convicted for the offence under Section 324 of IPC and was imposed sentence to pay fine of Rs.1000/-, in default, to undergo simple imprisonment for a period of one month.

3 Aggrieved against the said judgment of conviction, the petitioners had filed an appeal in C.A.No.27 of 2012 before the learned Principal District and Sessions Judge, Vellore. The learned II Additional District and Sessions Judge, Vellore @ Tirupathur, after hearing both the counsel and after perusing the records, by judgment dated 28.03.2013 dismissed the appeal and confirmed the judgement of conviction made by the trial Court. Assailing the concurrent judgments of conviction of both the Courts below, the petitioners are now before this Court with the present criminal revision case.

4 According to learned counsel appearing for the petitioners, the occurrence alleged to have taken place in the midnight around 12.15 a.m. and therefore there might not have been any eye witness and even assuming that after hearing sound the witnesses came, they could not have seen the occurrence and hence their evidence is not trustworthy. There are material contradictions between the evidence of prosecution witnesses and even the trial Court acquitted the other accused by extending benefits of doubt and the same should have been extended to these petitioners also. Admittedly there is civil dispute between the parties and in order to get over from the same, false case has been foisted against the petitioners and further some of the accused also sustained injuries and prosecution has failed to offer any explanation on the same and the case in counter was also filed and the same is pending. The above facts has not been considered and the case in counter was also not

taken for trial along with the present case, which also fatal to the case of the prosecution. Further, one Murugan, who alleged to have been stated as eye witness to the occurrence, has not been examined by the prosecution. Even though, the trial Court acquitted all the accused, but, convicted these revision petitioners. It is alleged by the prosecution all the accused gathered unlawfully, but it has failed to prove the unlawful assembly of the accused and hence once the unlawful assembly of the petitioners is not proved, the question of conviction of these petitioners under Sections 323, 324 and 326 would not arise. Even though, the trial Court has disbelieved the evidence of prosecution regarding unlawful assembly of the accused with deadly weapon and acquitted all other accused from all the charges, but convicted these revision petitioners alone and imposed sentence, which warrants interference of this Court.

5 The learned Government Advocate (Crl.Side) appearing for the respondent police would submit that charges were framed against all the accused. P.W.1 & 2 are injured eye witnesses and their presence in the place of occurrence cannot be doubted. Even though, against the other accused prosecution has not proved its case, P.Ws.1 & 2, who are injured eye witnesses, had clearly stated about the specific overtact against these petitioners/A1 & A3. The Doctor/P.W.8, one who treated the injured witnesses, had clearly spoken about the injuries sustained by both the witnesses and the same has been corroborated with the evidence of the injured witnesses P.Ws.1 & 2. Therefore, the present petitioners cannot be treated par with other accused, who were acquitted by the trial Court. The contradictions pointed out by the learned counsel for the petitioners are only minor contradictions, which will not go to the root of the case, especially, when the injuries sustained by both the injured eye witnesses have clearly spoken about the involvement of the present petitioners. There is no valid reason to interfere with the concurrent judgment of conviction of both the Courts below and the revision is liable to be dismissed.

6 Heard the learned counsel appearing on either side and perused the original records.

7 Case of the prosecution is that on 05.11.2009 at about 12.15 a.m. at C.K.Ashramam, the defacto complainant was speaking with her sons in her house and at that time, due to civil dispute, the petitioners herein along with other accused came there and uttered filthy language and A1 assaulted her with knife on her right index finger and caused grievous injury and bite P.W.2 and A2 assaulted P.W.6 on his head by using crow bar and caused simple injury, A3 assaulted P.W.2 with knife on his

left hand fingers and caused simple injuries and threatened witnesses with dire consequences. Therefore case was registered against all the accused and after trial, acquitted all other accused and convicted these petitioners, against which appeal also filed by the petitioners and the same was also dismissed, confirming the judgment of conviction recorded by the Trial Court.

8 P.Ws.1 & 2 are injured eye witnesses. P.W.1 is defacto complainant and P.Ws.3, 4 & 7 are sons of P.W.1, P.Ws.5 & 6 are witnesses for Mahazar, P.W.8 is Doctor, who examined the injured eye witnesses. Even though, as stated by the learned counsel for the petitioners, since the occurrence has taken place at night hours, there could not be any eye witness, however, the evidence of P.Ws.1 & 2 injured eye witnesses cannot be simply brushed aside. Soon after the occurrence, the injured witnesses were taken to Hospital and P.W.8, the Doctor, ho treated them, had clearly spoken about the injuries and made entry in the Accident Register and noted the injuries sustained by the witnesses. P.W.1, who is defacto complainant being a head of the family has clearly deposed that she lodged a complaint Ex.P1 stating that on the date of occurrence all the accused came and attacked the witnesses. Evidence of P.Ws.3, 6 & 7 corroborates with the evidence of P.Ws.1 & 2. P.Ws.4 & 5 are witness for mahazar and they have spoken about the investigation done by the Investigating Officer. P.W.8, the Doctor, has also clearly spoken about the injuries sustained by the witnesses and stated that at the time of admitting the injured witnesses, they have stated that four men and two women attacked and P.W.8 has also issued Exs.P3 & 4 wound certificates of P.W.1 & P.W.2, which shows that P.W.1 sustained grievous injuries and P.W.2 sustained simple injuries. The evidence of P.Ws.1 & 2 with regard to the injuries sustained by them has been tallied with the medical records. On reading of the evidence, it reveal that even though, all the offences alleged by the prosecution against all the accused have not been proved beyond reasonable doubt, since the occurrence took place at night hours and more than one person involved, the witnesses could not point out the overtact against the accused, but, however, P.Ws.1 & 2 had clearly stated that this revision petitioners attacked with knife and caused injuries, which was tallied with the medical records and evidence of Doctor/P.W.8. The trial Court had found that prosecution has established its case against these petitioners and convicted them and the lower appellate Court, being a final Court of fact finding, had re-appreciated entire evidence and confirmed the conviction recorded by the trial Court.

9 It is settled proposition of law that while exercising revisional jurisdiction, this Court cannot sit in armchair of the appellate Court and re-visit entire evidence and this Court has to see whether there is any perversity in the judgment of Courts below in appreciating the evidence while deciding the case. This Court does not find any perversity in the judgments of both the Courts below and hence the same does not call for any interference.

10 In the result, the criminal revision case is dismissed as devoid of merit and substance. Trial Court is directed to secure the petitioners/accused to undergo remaining period of sentence, if any.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The III Additional Sessions Judge, Vellore at Tirupathur.
2. The Principal Sessions Judge, Vellore.
3. The Judicial Magistrate No.II, Tirupathur.
4. The Chief Judicial Magistrate, Vellore.
5. The Inspector of Police, Tirupathur Taluk Police Station, Vellore District.
6. The Public Prosecutor, High Court of Madras.

+1 cc to M/s.N.Manokaran, Advocate Sr.No. 72302

AKM/26.09.19/6P- 8C /

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Order in
Cr1.R.C.No.641 of 2013

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