

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.08.2019

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.RC.No.643 of 2013

and

Crl.M.P.Nos. 1,2 and 3 of 2013

K.Palanisamy

... Petitioner

vs

The State, rep by
The Inspector of Police,
Jedarpalayam Police Station,
Namakkal District.

... Respondent

(Crime No. 89 of 2010)

Prayer Criminal Revision filed under Section 397 r/w 401 of Code of Criminal Procedure, against the order of the learned Principal District and Sessions Judge, Namakkal District in C.A.No.2 of 2013 by its order dated 02.04.2013 against the judgment of the learned Assistant Sessions Judge and Chief Judicial Magistrate, Namakkal District in S.C.No.22 of 2012 by its order dated 21.12.2012.

For Petitioner : Mr.C.D.Johnson

For Respondent : Mr.T.Shanmugarajeshwaran

Government Advocate (Criminal Side)

ORDER

The respondent police registered a case against the revision petitioner for the offence under Sections 341, 326 and 307 IPC, in Crime No.89 of 2010. After investigating into the matter, the respondent police laid a charge sheet for the offence under Section 341 and 307 IPC before the learned District Munsif-Cum-Judicial Magistrate, Paramathy. The learned Judicial Magistrate has taken the charge sheet on file in P.R.C.No.18 of 2011. Since the offences are triable by the Court of Sessions, after completing the formalities, the learned Magistrate committed the case to the learned Principal District and Sessions Judge, Namakkal. The learned Principal District and Sessions Judge, has taken the case on file in S.C.No.22 of 2012 and made over the case to the learned Assistant Sessions Judge, Namakkal.

2 After framing the charges and completing the trial the

learned Assistant Sessions Judge, found the accused not guilty for the offences under Section 341 and 307 IPC and acquitted from the charges. Since, the accused found guilty for the offence under Section 326 IPC, convicted and sentenced him to undergo 6 months Rigorous Imprisonment and to pay a fine of Rs.5,000/- in default to undergo period of six months simple imprisonment.

3 Challenging the said judgement of the learned Assistant Sessions Judge, in S.C.No.22 of 2012, the petitioner herein has preferred the appeal before the learned Principal District and Session Judge, Namakkal, in C.A.No.02 of 2013. The learned Principal District and Session Judge, Namakkal after hearing the arguments advanced by both the counsel and also considering the facts and circumstances of the case, confirmed the conviction. Challenging the said judgement, the appellant therein has filed the present revision case before this court.

4 The learned counsel for the petitioner would submit that the offences alleged to have taken place on 11.02.2010 at about 11.30 P.M, further there is no eye witness in this case. Neither complainant nor the injured witnesses have identified the accused and there is no light at that time in the occurrence place, which creates suspicion that whether the revision petitioner could have committed the alleged offence. Further he would submit that even the accident register itself stated that he was tied to the TVS 50 and dragged him on the road. P.W.1 and P.W.2 has not stated anything about the same. The petitioner submitted that the injured in this case was hospitalized on 11.02.2010 immediately after the occurrence. The hospital authorities also made entry in Accident Register and intimation sent to Police Station. Therefore it is clear that already the police received the intimation; FIR not registered immediately. After much discussions and deliberations, police registered FIR belatedly. In this case, there is a delay in registering the FIR. There was a previous enmity between the petitioner and the defacto complainant and injured witness. P.W.1 foisted a false case against him. P.W.1 has stated that she brought the victim / P.W.2 to the hospital by P.W.7. At the time of admission in the hospital, he was not in a position to say anything. Further, there are material contradictions between the eye witnesses. Even the mahazar witness has not supported the case of the prosecution. P.W.7 also stated that the police has not examined during the investigation which is not challenged by the prosecution. Therefore, there is a material contradiction between the prosecution witnesses and the delay in registering the case that has not been properly explained by the prosecution, which warrants interference by this Court.

5 The learned Government Advocate (Criminal Side) appearing for the respondent would submit that P.W.1 is the wife of the injured witness, P.W.2 is the injured witness. There is a

civil dispute between the petitioner and the defacto complainant and the accused and due to that motive, the occurrence had happened on 11.02.2010 at about 11.30 P.M. Admittedly, both are close relatives and also they are living in the same place. The accused constructed a house in the land belongs to P.W.2, therefore, he is a known person and can be easily identified. There is entry in the Accident Register regarding the identification of the accused. After the occurrence, at about 01.00 'o clock, the injured was admitted in the hospital and therefore, he brought to the Government hospital, thereafter the Doctor intimated to the respondent police. The respondent police after receiving the intimation from the hospital, went to the hospital and recorded the statement, thereafter, came to the police station and registered the case. There is no delay in registering the FIR, which does not warrant any interference by this Court.

6 The case of the prosecution is that the defacto complainant witness Saraswathi is the wife of the witness Ganesan. Ganesan, Kumaravel, Murugesan and Tamilarasi all belong to one family, having a common undivided land at Pulliangadu. Tamilarasi was married to the accused Palanisamy about 25 years back and they left the native and were residing at Perambalur. Since then Ganesan and Kumaravel were cultivating the lands. Witness Ganesan and Saraswathi are residing at 2/37, Sockkankadu main road, Jamil Elampalli. About 7 years prior to 11.02.2010, the accused and his wife Tamilarasi came back to Pulliangadu and they were allowed by Ganesan and Kumaravel to reside in a small portion of their land. But the accused Palanisamy constructed a permanent terraced building for which Ganesan was objecting. Since then, there was dispute between witness Ganesan and the accused. So, the accused developed enmity with witness Ganesan and decided to kill him/ in the above state of affairs. Due to such enmity, on 11.02.2010 at about 11.30 P.M., in front of the house of witness Sakthivel at Pulliangadu, Jamin Elampalli Village within Jedarpalayam PS limits, the accused wrongfully restrained witness Ganesan and the accused, with an intention to cause death of witness Ganesan and cut him with an Aruval on the left side of his forehead and also cut him on the right arm, left arm with the same Aruval and pushed the witness Ganesan on the metal gravel road and dragged him on the said road and caused injuries on the left upper eye lid on the back side of head, over right eyebrow over right side rib, right elbow, right thigh, left knee and back of the chest and the accused did the above said acts with an intention and knowledge. Under such circumstances, the accused might have caused death of witness Ganesan, then he would have been guilty of murder. But the accused had caused simple and grievous hurts on the witness Ganesan. Hence, the Inspector of police, Jedarpalayam P.S., has laid the charge sheet against the accused for the offence under

Section 341 and 307 IPC.

7 P.W.2, the injured witness has clearly spoken about the occurrence and also the Doctor, who treated the injured and the witnesses also reveals the same. There is no material contradiction, though there are some contradictions, the same is not fatal to the case of the prosecution, which is only minor contradiction. The injured witness himself stated that they permitted the accused to stay in the small portion, but the accused put up a permanent construction. While questioning the action of the accused, the said occurrence had taken place. Considering the nature of the injuries, the trial Court held that the revision petitioner committed the offence under Section 326 and imposed a sentence of a period of six months rigorous Imprisonment and to pay a fine of Rs.5,000/- in default to undergo further period of six months simple imprisonment.

8 The first appellate Court had also found that the prosecution has proved its case beyond reasonable doubt. The appellate Court found that the accused had committed the offence under Section 324 IPC and though the trial Court has not charged the accused for offence under Section 326 IPC, the learned trial Court has rightly altered the Section alone. With reference to the period of imprisonment is concerned, offence under Sections 324 and 326 IPC carries similar sentence and holding so, dismissed the appeal filed by the revision petitioner.

9 This Court is a revisional Court, while exercising the revisional jurisdiction, need not sit in the armchair of the appellate Court and revisit the entire evidence. However, this Court has to see as to whether there is any perversity in re-appreciation of evidence, while deciding the case on hand. On reading of entire evidence, this Court finds that the Courts below have properly appreciated the evidence and does not find any perversity in appreciation of evidence.

10 Under these circumstances, this Court finds that there is no perversity in the judgment of the appellate Court, and this Court does not find any merit in this revision case. Accordingly, this present Criminal Revision Case is dismissed. Consequently, connected Criminal Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Principal District and Sessions Court,
Namakkal.
2. The Assistant Sessions Judge
(Chief Judicial Magistrate Court),
Namakkal.
- 3.The Inspector of Police,
Jedarpalayam Police Station,
Namakkal District.
- 4.The Public Prosecutor,
High Court, Madras.

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GN(31/01/2020)



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