

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2019

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.646 of 2013

Sekaran

... Petitioner

- Vs -

State Rep. by
Inspector of Police,
Soolagiri Police Station,
Soolagiri, Krishnagiri District.

... Respondent

Criminal Revision Case filed under Sections 397 and 401 Cr.P.C., praying to call for the entire records in respect of the judgment rendered by learned District and Sessions Judge, Krishnagiri District in C.A.No.23/2010 dated 18.02.2013, confirming the judgment dated 30.03.2010 made in SC.No.188 of 2006 passed by the learned Assistant Sessions Judge, Hosur.

For Petitioner : Ms.T.Sreelekha

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

O R D E R

This Criminal Revision Case has been filed to set aside the judgment dated 18.02.2013 passed in Crl.A.No.23 of 2010 by the learned Additional District and Session Judge, Krishnagiri, confirming the judgment dated 30.03.2010 passed in SC.No.188 of 2006 by the learned Assistant Sessions Judge, Hosur.

2. The respondent police registered a case in Crime No.816 of 2005 against the revision petitioner and two others for the offences under Sections 307, 387 r/w 511, 498A and 506(ii) of IPC and after investigation, laid a charge sheet before the jurisdictional Magistrate in PRC No.07 of 2006. Since the offences are triable by the Court of Sessions, the learned Magistrate committed the case to the learned Principal Sessions Judge, Hosur. The learned Principal Sessions Judge taken the case on file in SC.No.180 of 2006 and made over the case to the learned Assistant Sessions Judge, Krishnagiri. After trial, the learned Sessions Judge, while acquitting the accused 2 and 3, convicted the revision petitioner/A1 for the offences under

Sections 498A, 387 r/w 511, 307 and 506(ii) of IPC and sentenced him to undergo 3 years Rigorous Imprisonment and fine of Rs.100/-, in default, 3 months Rigorous Imprisonment for the offence under Section 498A of IPC and 3 years Rigorous Imprisonment and fine of Rs.100/-, in default, 3 months Rigorous Imprisonment for the offence under Section 387 r/w 511 of IPC and 7 years Rigorous Imprisonment and fine of Rs.300/-, in default, 6 months Rigorous Imprisonment for the offence under Section 307 of IPC and one year Rigorous Imprisonment for the offence under Section 506(ii) of IPC, by judgment dated 30.03.2010. The Trial Court directed the sentences to run concurrently. Challenging the said conviction, the convict filed an appeal before the learned Principal Sessions Judge, Hosur. The learned Sessions Judge, after taking the appeal on file in Crl.A.No.23 of 2010, made over the case to the learned Additional District and Sessions Judge, Krishnagiri for disposal. After hearing arguments advanced on either side, the learned Sessions Judge dismissed the appeal by confirming the conviction and sentence for the offences under Sections 498A, 387 r/w 511 and 506(ii) of IPC and acquitted the accused from the offence under Section 307 of IPC and convicted him for the offence under Section 325 of IPC and sentenced him to undergo 7 years Rigorous Imprisonment and fine of Rs.300/-, in default, one month Simple Imprisonment and also modified the default sentence imposed by the Trial Court to Simple Imprisonment instead of Rigorous Imprisonment, by judgement dated 18.02.2013. There against the accused preferred the present revision before this Court.

3. The learned counsel for the revision petitioner would submit that there was a delay in filing the FIR and also sending the same to the Court. PWs-1 to 3 have stated that the occurrence taken place on 02.07.2005 in the early morning, soon after the occurrence, they went to the police station and informed orally and went to the Government Hospital for treatment, whereas, the FIR was registered only on 03.07.2005. There was no explanation given for the inordinate delay of one day in registering the case. The said fact was not considered either by the trial Court or by the Appellate Court, which warrants interference of this Court. PWs-1 to 3 are only interested witnesses and their evidences are not trustworthy. PWs-2 and 3 are the parents of PW-1, due to misunderstanding between PW-1 and the revision petitioner, she foisted a false case against him and his family members. The injuries were not tallied with the medical evidences and there is no independent witness in this case. Both the Courts below failed to consider the oral and documentary evidence as well as the legal position. Though the Appellate Court modified the offence, it has not modified the sentence, which shows that the Court below are not applied the mind and on sympathy, convicted and sentenced the

revision petitioner. Since the prosecution has not proved its case beyond reasonable doubts, the benefit of doubt extended to A2 and A3 and the same may be extended to the revision petitioner/A1 also. They have not given any reason as to why the Court has found that the prosecution has not established its case against the two accused and established the case against this revision petitioner/A1, which warrants interference.

4. The learned Government Advocate (Crl. Side) would submit that though the occurrence took place on 02.07.2005, due to injury sustained by the victim child, they went to the hospital and admitted the child. The intimation was given to the police from the hospital and after receiving the intimation, the police recorded the statement of PW-1 and registering the FIR. The delay in registering the FIR has been properly explained. Therefore, the delay in sending the FIR is not fatal to the case of the prosecution. The victim was admitted in the hospital on 02.07.2005 itself and PW-8/Doctor, who attended the victim, has made an entry in the accident register on the same day. Therefore, the evidence of PW-8 shows that on 02.07.2005 itself PW-1 intimated to PW-8 about the occurrence, subsequently, the Doctor, who was on duty, gave the intimation to the jurisdictional police station, thereafter, jurisdictional police officials came to the hospital and recorded the statement of the mother of the victim/PW-1 and registered the case. Mere delay in registering the case is not the reason for disbelieving the evidence of prosecution. Both the Courts also clearly discussed and convicted the accused, which warrants no interference. PW-1 is the wife of the revision petitioner. The revision petitioner and other accused have forced PW-1 to get signature from her in a blank paper. Since she refused to do the same, the petitioner tried to kill their child. Therefore, PW-1 has no other option except went for treatment to hospital and intimated the reason for injury. The evidence of PWs-2, 3 and 8 and the medical records corroborated the evidence of PW-1. PW-7/Village Administrative Officer spoken about the confession statement given by the the petitioner and also the recovery proved by the prosecution. Therefore, the prosecution has established its case beyond reasonable doubts. Both the Courts below rightly found that there was lack of evidence against A2 and A3, but specific overt act against the revision petitioner/A1. The eye witnesses have also clearly spoken about the involvement of the revision petitioner. There is no need to interfere with the judgments of the Courts below.

5. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl. Side) for the respondent and also perused the entire materials available on record.

6. The case of the prosecution is that the revision

petitioner along with two other accused are alleged to have attempted to murder the child and threatened the defacto complainant with dire consequences, for getting signature for divorce. PW-1 is none other than the wife of the revision petitioner, PW-2 and PW-3 are the parents of PW-1. PW-1 has clearly narrated the occurrence and the evidence of PWs-2 and 3 corroborated the same. PW-8 /Doctor stated that on 02.07.2005 he made an entry in the accident register and he has given the wound certificate-Ex.P6, which shows that on 02.07.2005 the victim was admitted in the hospital. From the evidence of PWs-3 and 8 and Ex.P6-wound certificate and Ex.P8-Printed FIR, it is seen that the victim sustained injuries. PW-7-Village Administrative Officer, who has deposed about the arrest and recovery and also the confession statement given by the revision petitioner/A1. Therefore, the prosecution has proved its case beyond reasonable doubts. Both the Courts appreciated the evidences of prosecution, acquitted A2 and A3 and convicted the revision petitioner/A1.

7. On a reading of entire oral and documentary evidence, it is seen that the Trial Court has rightly convicted the revision petitioner/accused. The Appellate Court, being the final Court of fact finding, has rightly re-appreciated the entire evidence of prosecution and given the independent finding. This Court, while exercising the revisional jurisdiction, cannot exercise the power of the Appellate Court and reassess the entire evidence, when there is no perversity in the appreciation of the evidence. Admittedly, in this case there is no reason to interfere with the judgment of Appellate Court and there is no merit in this revision and the same is liable to be dismissed. However, considering the facts and circumstances of the case, this Court is inclined to reduce the sentence imposed on the petitioner. Accordingly, the sentence imposed on the petitioner/A1 is reduced to 5 years instead of 7 years. The other conditions imposed by the Courts below remains unaltered. The trial Court is directed to secure the custody of the petitioner to undergo the remaining period of sentence.

8. This Criminal Revision Case is dismissed with the above modification.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

KMI

To

1. The District and Sessions Judge,
Krishnagiri.
2. The Assistant Sessions Judge,
Hosur.
3. The Inspector of Police,
Soolagiri Police Station,
Soolagiri, Krishnagiri District.
4. The Public Prosecutor,
High Court of Madras,
Chennai-104.

+1cc to Mr.D.Rajagopal, Advocate, S.R.No.69079

Cr1.R.C.No.646 of 2013

GP(CO)
GN(15/10/2019)