

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 24.06.2019

DELIVERED ON: 02.07.2019

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl.R.C. No.116 of 2016

K. Amirthalingam

..Petitioner

Vs.

The State represented by the
Inspector of Police
Pudupattinam Police Station
Sirkali
Nagapattinam District

...Respondent

Criminal Revision filed under Section 397 read with Section 401 Cr.P.C. seeking to set aside the judgment dated 29.10.2015 passed in Crl.A.No.40 of 2014 on the file of the District and Sessions Judge, Nagapattinam, confirming the judgment dated 25.06.2014 passed in C.C.No.156 of 2011 on the file of the Judicial Magistrate Court, Sirkali.

For petitioner : Mr. B. Thirumalai

For respondent : Mr. G. Ramar
Govt. Advocate (Crl. Side)

ORDER

This criminal revision has been preferred seeking to set aside the judgment and order dated 29.10.2015 passed in Crl.A. No.40 of 2014 on the file of the District and Sessions Court, Nagapattinam, confirming the judgment and order dated 25.06.2014 passed in C.C. No.156 of 2011 on the file of the Judicial Magistrate Court, Sirkali.

2 For the sake of convenience, the petitioner in this case is referred to by his name.

3 The facts in brief leading to the institution of this criminal revision are as under:

3.1 Selvam (P.W.1) had a land dispute with the family of Amirthalingam (A1), the petitioner herein, due to which, on 13.04.2010, around 8 p.m., Amirthalingam (A1) and his family members, viz., Mariammal (A2-wife of Amirthalingam), Kaliyaperumal (A3-father of Amirthalingam) and Mariappan (A4-son

of Amirthalingam), abused Selvam (P.W.1) and belaboured him with sticks. During the course of the attack, Amirthalingam (A1) severed the right earlobe of Selvam (P.W.1) by biting, resulting in grievous injury to Selvam (P.W.1). Hence, Selvam (P.W.1) was taken to the hospital and was treated by Dr. Arun Rajkumar (P.W.7).

3.2 On the complaint given by Selvam (P.W.1), the respondent police registered a case in Cr. No.154 of 2010 and after completing the investigation, filed final report in C.C. No.156 of 2011 before the Judicial Magistrate, Sirkali for the offences under Sections 294(b), 323, 325 and 506(I) IPC @ Sections 294(b), 323, 324 and 506(I) IPC against Amirthalingam (A1), Mariammal (A2), Kaliyaperumal (A3) and Mariappan (A4).

3.3 On the appearance of the four accused, the provisions of Section 207 Cr.P.C. were complied with and charges were framed against them for the aforesaid offences. When questioned, they pleaded "not guilty".

3.4 To prove its case, the prosecution examined 10 witnesses and marked 6 exhibits.

3.5 When the accused were questioned under Section 313 Cr.P.C. about the incriminating circumstances appearing against them, they denied the same. On the side of the accused, no witness was examined nor any document marked.

3.6 After considering the evidence on record and hearing either side, the Trial Court, vide the judgment and order dated 25.06.2014 passed in C.C. No.156 of 2011, acquitted Mariammal (A2) of the sole charge against her under Section 294(b) IPC and convicted and sentenced Amirthalingam (A1), Kaliyaperumal (A3) and Mariappan (A4) as under:

Name of accused	Provision of law under which convicted	Sentence
Amirthalingam (A1)	294(b) IPC	Fine of Rs.200/-, in default to undergo one week simple imprisonment.
	323 IPC	-do-
	325 IPC	2 years simple imprisonment and fine of Rs.200/-, in default to undergo one week simple imprisonment
	506(I) IPC	2 years simple imprisonment

Name of accused	Provision of law under which convicted	Sentence
Kaliyaperumal (A3)	323 IPC 506(I) IPC	Fine of Rs.200/-, in default to undergo one week simple imprisonment -do-
Mariappan (A4)	323 IPC	Fine of Rs.200/-, in default to undergo one week simple imprisonment

3.7 Since Kaliyaperumal (A3) and Mariappan (A4) were slapped only with sentence of fine, they did not choose to file any appeal challenging their conviction and sentence. However, Amirthalingam (A1) preferred Crl.A. No.40 of 2014 which was heard by the District and Sessions Judge, Nagapattinam and the same was dismissed on 29.10.2015, challenging which, Amirthalingam (A1) is before this Court.

4 After the dismissal of Crl.A. No.40 of 2014, Amirthalingam (A1) was not taken into custody since this Court suspended the sentence and released him on bail in Crl.M.P. No.826 of 2016 vide order dated 27.01.2016.

5 Heard Mr. B. Thirumalai, learned counsel for Amirthalingam (A1) and Mr. G. Ramar, learned Government Advocate (Crl. Side) appearing for the respondent/State.

6 The learned counsel for Amirthalingam (A1) submitted that the prosecution has failed to prove the case beyond doubt, inasmuch as there was no independent witness to corroborate the evidence of Selvam (P.W.1).

7 Per contra, the learned Government Advocate (Crl. Side) refuted the contentions put forth by the learned counsel for Amirthalingam (A1).

8 This Court gave its anxious consideration to the rival submissions.

9 Before advertng to the rival submissions, it may be necessary to state here that, while exercising revisional powers under Section 397 r/w 401 Cr.P.C., this Court is required to find out, if there is any illegality or impropriety in the findings of the trial Court and the appellate Court warranting interference and it is not open to this Court to exercise the revisional power as a second appellate forum. In this context, it is profitable to allude to the following paragraphs in the

judgment of the Supreme Court in State of Maharashtra Vs. Jagmohan Singh Kuldip Singh Anand and Others, etc.(2004)7 SCC 659¹:

"22.The revisional court is empowered to exercise all the powers conferred on the appellate court by virtue of the provisions contained in Section 401 CrPC. Section 401 CrPC is a provision enabling the High Court to exercise all powers of an appellate court, if necessary, in aid of power of superintendence or supervision as a part of power of revision conferred on the High Court or the Sessions Court. Section 397 CrPC confers power on the High Court or Sessions Court, as the case may be,

"for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court".

It is for the above purpose, if necessary, the High Court or the Sessions Court can exercise all appellate powers. Section 401 CrPC conferring powers of an appellate court on the revisional court is with the above limited purpose. The provisions contained in Section 395 to Section 401 CrPC, read together, do not indicate that the revisional power of the High Court can be exercised as a second appellate power.

(emphasis supplied)

23.On this aspect, it is sufficient to refer to and rely on the decision of this Court in Duli Chand v. Delhi Admn. [(1975) 4 SCC 649 : 1975 SCC (Cri) 663 : AIR 1975 SC 1960] in which it is observed thus: (SCC p. 651, para 5)

"The High Court in revision was exercising supervisory jurisdiction of a restricted nature and, therefore, it would have been justified in refusing to reappreciate the evidence for the purposes of determining whether the concurrent finding of fact reached by the learned Magistrate and the learned Additional Sessions Judge was correct. But even so, the High Court reviewed the evidence presumably for the purpose of satisfying itself that there was evidence in support of the finding of fact reached by the two subordinate courts and that the finding of fact was not unreasonable or perverse."

10 This Court carefully perused the evidence of the prosecution witnesses. Selvam (P.W.1), in his evidence, has stated that he had a land dispute with the accused for over ten years; while so, when he was working in the field on 13.04.2010, the four accused came there and abused and intimidated him;

1 (2004)7 SCC 659

Amirthalingam (A1) took a stick and hit him on his right shoulder and bit his right earlobe, causing it to sever. His evidence is corroborated by the evidence of Ramesh (P.W.5).

11 At this juncture, it may be relevant to discuss the evidence of Dr.Arun Rajkumar (P.W.7), who, in his evidence, has stated that while he was on duty at the Government Hospital, Sirkali on 13.04.2010, around 10.30 p.m., one Selvam, aged 25 years, was brought for treatment with police memo; when enquired, he said that around 6.00 p.m., he was attacked by known persons with sticks and his ear was bitten and it got severed because of the bite; on examination, he found contusion on the right shoulder and the right earlobe was missing; he admitted him as inpatient and issued the copy of the accident register (Ex.P.3) stating that injury no.2 (severance of earlobe) was grievous in nature.

12 The defence was unable to make any serious dent in the cross-examination of Selvam (P.W.1), Ramesh (P.W.5) and Dr. Arun Rajkumar (P.W.7). Therefore, this Court has no reason to disbelieve the evidence of the injured witness Selvam (P.W.1), which has been adequately corroborated by medical evidence and testimony of Ramesh (P.W.5).

13 In view of the foregoing discussion, this Court holds that there is no illegality, impropriety or infirmity in the judgment and order of conviction passed by the Trial Court and confirmed by the appellate Court. However, to subserve the interests of justice, the sentences of simple imprisonment of two years slapped on Amirthalingam (A1) for the offences under Section 325 and 506(I) IPC are reduced to simple imprisonment for a period of 18 months for each of the offences to run concurrently. Amirthalingam (A1) will be entitled to set off under Section 428 Cr.P.C.

With the above modification in sentence, this criminal revision stands dismissed. The Trial Court is directed to secure the presence of Amirthalingam (A1) and commit him to prison to undergo the sentence.

Sd/-

Assistant Registrar (CS VIII)

//True Copy//

Sub Assistant Registrar

cad

To

1 The Inspector of Police
Pudupattinam Police Station
Sirkali, Nagapattinam District.

2 The District and Sessions Judge
Nagapattinam

3 The Judicial Magistrate Court
Sirkali

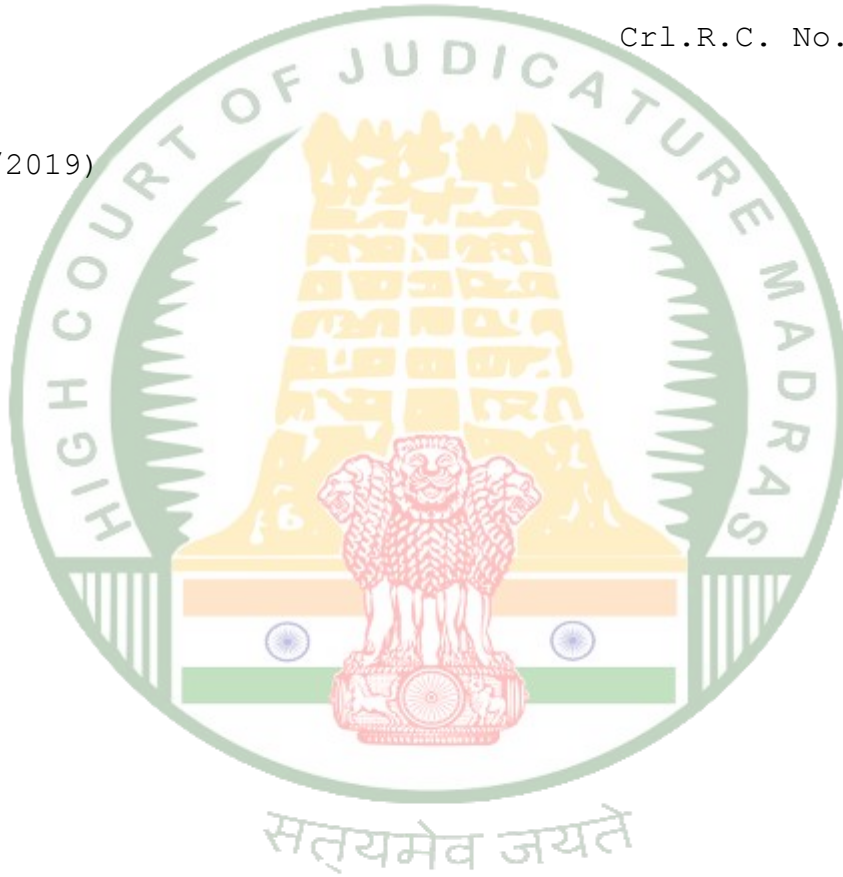
4 The Public Prosecutor
High Court of Madras
Chennai 600 104.

+lcc to Mr.B.Thirumalai, Advocate, S.R.No.51927

Cr1.R.C. No.116 of 2016

BS (CO)

RRS (07/08/2019)



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