

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.320 of 2019 and
Crl.M.P.No.4038 of 2019

Marimuthu

...Petitioner

-Vs-

State rep. by
The Sub Inspector of Police,
Karuveppilankurichi Police Station
Thittakudi Taluk.
(Cr.No.180/2012)

...Respondent

This Criminal Revision case is filed under Sections 397 read with Section 401 of Cr.P.C. to set aside the judgment dated 12.02.2019 passed in C.A.No.16 of 2018 on the file of the learned III Additional District and Sessions (Camp) at Vridhachalam, confirming the judgment passed in C.C.No.69 of 2013 dated 14.02.2018 on the file of the learned Judicial Magistrate No.II, Vridhachalam, convicting the petitioner for the offence under Section 326 IPC and acquit the petitioner.

For Petitioner : Mr.A.Saravanan

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

सत्यमेव जयते
O R D E R

This criminal revision has been filed against the judgment dated 12.02.2019 passed in C.A.No.16 of 2018 by the learned III Additional District and Sessions (Camp) at Vridhachalam, confirming the judgment of conviction passed in C.C.No.69 of 2013 dated 14.02.2018 by the learned Judicial Magistrate No.II, Vridhachalam.

2 Case of the prosecution is that on 01.08.2012 at 21.30 hours, 1st accused abused one Thiyaagan at that time, P.W.3 mother of P.W.1/complainant questioned him and the 1st accused abused her also in a filthy language and 2nd accused, the petitioner herein, in order to support A1, has caused grievous

injuries with knife to P.W.2 brother of P.W.1. Therefore, respondent police registered a case against two accused and the petitioner was arrayed as A2 for the offence punishable under Sections 294(b), 323 against A1 and 294(b), 326, 506(ii) against A2 and filed a charge sheet before the learned Judicial Magistrate No.II, Virudhachalam, which was taken on file in C.C.No.69 of 2013 by the learned Judicial Magistrate No.II, Virudhachalam. The learned Judicial Magistrate, after trial, by judgment dated 14.02.2018, found A1 guilty of offence under Section 323 and A2 for the offence under Section 326 of IPC and sentenced A1 to undergo rigorous imprisonment for 1 year and A2 to undergo rigorous imprisonment for 2 years with fine of Rs.1000/-, in default, to undergo simple imprisonment for 3 months. Aggrieved against the said judgment of conviction, both the accused had preferred an appeal in C.A.No.16 of 2018. The learned III Additional District and Sessions Judge, Cuddalore (Camp), Virudhachalam, after hearing both the parties, by judgment dated 12.02.2019 confirmed the conviction and modified the sentence imposed by the trial Court to the extent that the imprisonment of 1 year for A1 was set aside and imposed only fine of Rs.1,000/- and imprisonment of 2 years for A2 was reduced to 1 year and confirmed the fine of Rs.1,000/-. Assailing the judgment of lower appellate Court, A2 is before this Court with the present criminal revision.

3 According to learned counsel for the petitioner/A2, material object i.e. knife said to have been used by the petitioner in the alleged occurrence and caused grievous injuries to P.W.2, has not been recovered by the respondent police, which itself creates doubts in the case of the prosecution. No independent witness has been examined by the prosecution and all the witnesses are only interested witnesses. Further Doctor's evidence has not corroborated the version of the injured witnesses P.W.2 and P.W.3. There is no specific allegation against the petitioner/A2. There is material contradictions between the prosecution witnesses and given contradictory statement with regard to place of occurrence. Therefore, benefits of doubts ought to have been extended to the petitioner by the Courts below. Both the Courts below had failed to consider the above facts and convicted the petitioner, which warrants interference.

4 According to learned Government Advocate (Crl.Side) appearing for the respondent police, the injured witnesses P.W.2 and P.W.3 have clearly narrated the incident and the offence committed by the accused persons. The minor material contradictions pointed out by the learned counsel for the petitioner will not defeat entire case of the prosecution. Doctor has also stated that the injuries sustained by P.W.2 is grievous in nature. Both the Courts below had rightly

appreciated the evidence on record and convicted the petitioner, which does not call for any interference.

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

6 It is seen that originally case was registered against two persons and the petitioner herein was arrayed as A2, both of them were convicted by the trial Court and appeal had been preferred by both the accused and the lower appellate Court, being a fact finding Court, after re-appreciating entire evidence on record, has confirmed the conviction and modified the sentence, against which, A2 has filed this revision.

7 It is contended by the learned counsel for the petitioner that there is materials contradiction and statement of prosecution witnesses has been contradicted from one witness to other witness. On reading of evidences of injured witnesses P.W.2 and P.W.3, it reveal that the accused has committed the offence as held by both the Courts below. When there is minor contradictions between the prosecution witnesses, evidence of injured ocular witnesses will prevail over them and it must be taken into consideration. In criminal cases, injury itself will speak about the case and it should be disproved by the defence against whom allegations has been levelled. In the present case on hand, both the Courts below, had categorically held that the petitioner/A2 has committed offence under Section 326 fo IPC and convicted, in which this Court does not find any perversity.

8 However, in order to meet ends of justice, the sentence of rigorous imprisonment for a period of one year alone modified to six months. With the above modification, this criminal revision case is partly allowed. Consequently, connected miscellaneous petition is closed. The trial Court is directed to secure the petitioner/A2, if he is on bail, to undergo remaining period of imprisonment, if any.

Sd/-

Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

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To

1. The III Additional District and Sessions (Camp) at Vridhachalam.

2. The Judicial Magistrate No.II, Vridhachalam.

3. The The Sub Inspector of Police,
Karuveppilankurichi Police Station, Thittakudi Taluk.

+1cc to Mr.A.Saravanan, Advocate SR.No.34579

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Crl.M.P.No.4038 of 2019

RR(CO)
GMY(26/09/2019)



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