

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.361 of 2019

and

Crl.M.P.No.5190 of 2019

M.Iyappan

...Petitioner

Vs.

The Station House Officer,
Kallakurichi Police Station,
Kallakurichi.
Cr.No.542 of 2013.

...Respondent

The Criminal Revision filed under Section 397 read with 401 of Code of Criminal Procedure, to set aside the conviction and sentence passed by the learned III Additional District and Sessions Judge, Kallakurichi in C.A.No.63 of 2017 dated 19.03.2019 and by confirming the sentence and order of conviction by the learned Judicial Magistrate-I, Kallakurichi in C.C.No.160 of 2014 dated 11.09.2017.

For Petitioners : Mr.B.Ramprabu

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

ORDER

The present criminal revision case has been filed to set aside the judgment passed by the learned III Additional District and Sessions Judge, Kallakurichi in C.A.No.63 of 2017 dated 19.03.2019 confirming the judgment passed by the learned Judicial Magistrate-I, Kallakurichi in C.C.No.160 of 2014 dated 11.09.2017.

2. The case of the prosecution is that the revision petitioner and the victim are belongs to Kallakurichi Police Jurisdiction. On 30.09.2013 at about 5'0 clock, when P.W.2 was working in his agricultural land, the revision petitioner/A3 and other accused went there and attacked him. When P.W.2 asked

about the incident to the accused persons, the revision petitioner has bitten the right side index finger of P.W.1 and caused injuries to him. The victim admitted in the Government Hospital at Kallakurichi and P.W.3/Doctor treated him and deposed that P.W.1/victim came to hospital and reported that one known person has bitten his right side index finger and the portion of that finger has also been missed. P.W.3 has given wound certificate/Ex.P2 stated as grievous in nature. Based on the complaint, the respondent police registered a case against the revision petitioner and others. After investigation, the respondent police filed the charge sheet against the revision petitioner for offence under Section 147, 148, 294(b), 324 and 506(ii) IPC and the same was taken on file before the learned Judicial Magistrate-I, Kallakurichi in C.C.No.160 of 2014. During the trial, the prosecution has examined as many as 8 witnesses viz., P.W.1 to P.W.8, marked 6 documents viz., Ex.P1 to Ex.P6. On the side of the defence, no witness was examined and marked Ex.R1. After considering the materials, the learned Magistrate acquitted A1, A2, A4, A5, A6 and A7 and found the A3 guilty and convicted for the offence punishable under Section 326 IPC and sentenced to undergo simple imprisonment for a period of six months and to pay a fine of Rs.5000/-

3. Challenging the judgment of conviction made by the learned Magistrate I Kallakurichi, the revision petitioner/A3 has filed an appeal before the learned Principal District and Sessions Judge, Villupuram in C.A.No.63 of 2017. The learned III Additional Sessions Judge, Kallakurichi, after hearing bothsides, dismissed the appeal. Conviction and sentence passed by the learned Magistrate in C.C.No.160 of 2014 dated 11.09.2017 was confirmed. As against the judgment dated 19.03.2019 passed by the learned III Additional Sessions Judge, Kallakurichi, the revision petitioner has preferred the present revision before this Court.

4. The learned counsel appearing for the revision petitioner would submit that there is a material contradiction in the prosecution witnesses. P.W.1 stated that the occurrence took place on 15.10.2013. But whereas P.W.2 stated in his evidence that the occurrence had taken place only on 30.09.2013. The prosecution has not produced any materials in which the accused attacked and the prosecution has not explained as to how the accused sustained injury, which also fatal to the prosecution case. Though learned Magistrate decided that the prosecution has not proved its case beyond reasonable doubt and acquitted the other accused except the revision petitioner. The very same benefit of doubt should have been extended to this revision petitioner/accused also. The learned Sessions Judge has failed to consider the material contradiction between the witnesses and

dismissed the appeal filed by A3/revision petitioner, which warrants interference.

5. The learned Government Advocate (Criminal Side) appearing for the State would strongly object the contention raised by the learned counsel for the petitioner. P.W.1 who is an injured eye witness has clearly spoken about the injury caused by the revision petitioner. The revision petitioner alone has caused injury to the witness not other accused. Doctor/P.W.3 corroborated the same and the wound certificate also supported the case of the prosecution and the investigating officer has clarified the same. Hence, there is no need to interfere with the judgment of the Court below.

6. Heard the rival submissions made by the learned counsel appearing for the petitioner as well as the learned Government Advocate(Crl. Side) and perused the materials placed on record.

7. Admittedly the case was registered by the respondent police against the revision petitioner and six other accused for the offence under Section 147, 148, 294(b), 324, 326 and 506(ii) IPC. After trial, the learned Magistrate found that the prosecution has failed to establish the case against the other accused except the revision petitioner/A3. The learned Magistrate acquitted the other accused for the alleged offences. But whereas the learned Magistrate convicted the present revision petitioner/A3 for the offence punishable under Section 326 IPC alone and imposed Rs.5,000/- as fine and sentenced to undergo six months simple imprisonment. The Appellate Court has also confirmed the judgment of conviction passed by the learned Magistrate.

8. On a reading of the records, it could be seen that the victim was examined as P.W.1, except the date, he has narrated the entire facts and the same was corroborated by the Doctor, one who treated the victim in the Government Hospital and also issued wound Certificate. The investigating officer clarified the same. Based on the evidence on record, came to the conclusion that the prosecution has proved the case against the revision petitioner for the offence under Section 326 IPC alone and acquitted for the other offence. Therefore, the appellate Court is the final Court of fact finding re-appreciated the entire evidence independently and came to the conclusion that the revision petitioner has committed the offence under Section 326 IPC. Against which the petitioner has preferred the present revision.

9. This Court being a revisional Court, while exercising the revisional jurisdiction, the scope of revision is very limited. While deciding a revision, this Court has to see as to

whether there is any perversity in appreciating the evidence by the Courts below. On a reading of the entire materials, it is seen that the revision petitioner has committed the offence under Section 326 IPC and P.W.1 and P.W.3 have also proved the same. A.R.Copy and Wound Certificate also corroborated the same. All the other witnesses have spoken about the occurrence. Therefore, this Court cannot re-appreciated the evidence and does not find any compelled reason to take a different view in the present case on hand.

10. In this regard, it is pertinent to refer the judgment of the Hon'ble Apex Court in the case of State of Kerala Vs. Putthumana Illath Jathavedn Namboodri, reported in AIR 1999 SC 981 held as follows:

".... In its revisional jurisdiction, the High court can call for and examined the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of Supervisory Jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of Second Appellate Jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to re-appreciate the evidence and come to its own conclusion on the same when the evidence has already be appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of Justice..."

Both the Courts below have gone through the evidence in detail and that the petitioner was at fault and found him guilty. The prosecution has proved its case with cogent and reliable evidence. Both the Courts below have given reason for conviction. Hence, this Court cannot substitute its own view and interfere with the judgments. However, in order to meet ends of justice, the sentence alone is modified from six months to three months.

11. In the result, the revision is partly allowed. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar

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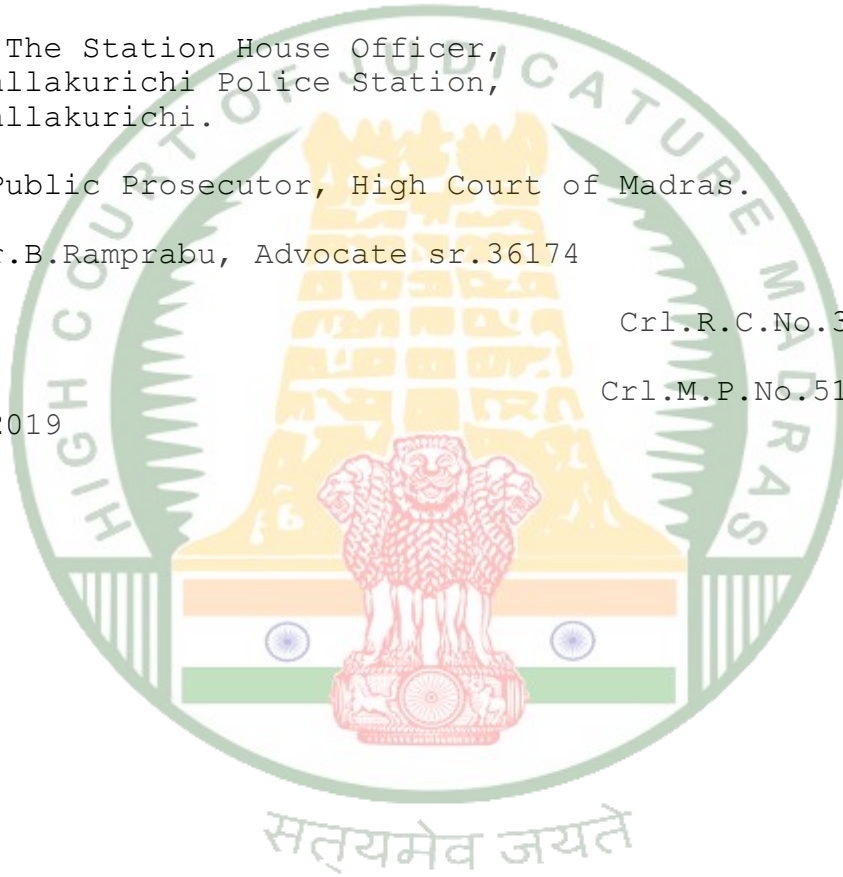
To

1. The III Additional District and Sessions Judge,
Kallakurichi
2. The Judicial Magistrate-I, Kallakurichi.
3. The Chief Judicial Magistrate,
Villupuram.
4. The The Station House Officer,
Kallakurichi Police Station,
Kallakurichi.
5. The Public Prosecutor, High Court of Madras.

+1cc to Mr.B.Ramprabu, Advocate sr.36174

nr 04/06/2019

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