

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.09.2019

PRONOUNCED ON : 17.09.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.R.C.No.497 of 2014
and M.P.No.1 of 2014

Ayothi .. Petitioner/Accused/Appellant

Vs

The State rep. by
Inspector of Police,
Chengam Police Station,
Chengam, Tiruvannamalai District.

... Respondent/Complainant/Respondent

Criminal Revision preferred under Section 397 read with 401 Cr.P.C. challenging the judgment and order dated 19.02.2014 passed by the Court of Session, Tiruvannamalai in C.A.No.2 of 2008 confirming the conviction and sentence dated 03.01.2008 passed by the Additional Assistant Sessions Court, Tiruvannamalai in S.C.No.63 of 2007.

For Petitioner : Mr.B.Jawahar

For Respondent : Mrs.P.Kritika Kamal,
Govt. Advocate (Crl. Side)

सतयमेव जयते
O R D E R

This Criminal Revision has been preferred challenging the judgment and order dated 19.02.2014 passed by the Court of Session, Tiruvannamalai in C.A.No.2 of 2008 confirming the conviction and sentence dated 03.01.2008 passed by the Additional Assistant Sessions Court, Tiruvannamalai in S.C.No.63 of 2007.

2.The long and short of the prosecution case is as under :

Sivagami (P.W.1) and her husband Annamalai (P.W.2) had engaged the services of the petitioner as a farm hand in their farm and on 07.01.2003, around 09.30 a.m., they sent him on an

errand to buy manure. Thereafter, Annamalai (P.W.2) proceeded to his farm and Sivagami (P.W.1) was alone at home. After ascertaining that Annamalai (P.W.2) had left, the petitioner returned and molested Sivagami (P.W.1). Sivagami (P.W.1) hit the petitioner with a broom and in retaliation, the petitioner attacked her with a knife indiscriminately and caused serious injuries to her. Sivagami (P.W.1) raised an alarm, hearing which, Thanickachalam (P.W.3), their neighbour rushed to Sivagami's house and found her with multiple injuries. Information was relayed to Annamalai (P.W.2), who rushed home and took Sivagami (P.W.1) to the hospital for treatment. Dr.Mahadevan (P.W.7) admitted Sivagami (P.W.1) as inpatient, since her condition was serious. The following injuries were noted :

"O/E Pt. conscious, able to speak

Injuries : 1) Incised wound anterior aspect of neck, at the level of Thyroid cartilage extending laterally on both sides neck up to mastoid process, (L) side sternomastoid and strap muscles cut, on right side opening in the thyrohyoid membrane 4 cm in length transversely.

2) Incised wound with ragged edges below wound No.1 in the neck 10cm x 1cm x 1cm.

3) Incised wound (R) side neck 9cm x 1cm x 1 cm.

4) Three incised wound (L) hypochondrium 1.5cmx 1cm x ½cm size.

5) Penetrating wound umbilical region (R) side of abdomen 1.5cm x 1cm, depth - peritoneum appears opened.

6) Incised wound (R) wrist 3cm x 1.5cm x 1cm.

7) Incised wound first web space (R) hand 1.5cm x 1cm x ½cm.

8) Incised wound (L) hand first web space 7.5cm x 1cm x ½cm extending to medical four fingers.

9) Incised wound right cheek 10 x 1 x 1cm.

10) Incised wound left cheek 8 x 1 x 1 cm."

2.1. Requisition was made by the hospital authorities to the Judicial Magistrate for recording Sivagami's dying declaration. Accordingly, Tmt.Arivoli (P.W.6), the Judicial Magistrate rushed to the hospital and recorded the statement of Sivagami (P.W.1), which was marked as Ex.P6. On the statement given by Sivagami (P.W.1) to the police, a case in Crime No.26 of 2003 was registered for the offences under Sections 376 r/w 511 and 307 IPC and investigation was taken up by the police. Luckily, Sivagami (P.W.1) survived the attack. The petitioner was arrested and the knife (M.O.1) used by him was recovered.

2.2. After completing the investigation, the police filed final report in P.R.C.No.9 of 2004 in the Court of Judicial Magistrate, Chengam for the offences under Sections 354, 307, 376 r/w 511 IPC. The case was committed to the Court of Session in S.C.No.63 of 2007 and was made over to the Additional Assistant Sessions Court, Tiruvannamalai for trial. Charges for the aforesaid offences were framed and when questioned, the petitioner pleaded "not guilty".

3. To prove the case, the prosecution examined 9 witnesses, marked 14 exhibits and 3 material objects.

4. When the petitioner was questioned under Section 313 Cr.P.C., about the incriminating circumstances appearing against him, he denied the same. On behalf of the petitioner, D.W.1 to D.W.3 were examined.

5. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 03.01.2008 in S.C.No.63 of 2007, convicted and sentenced the petitioner as under :

Provision under which convicted	Sentence
Section 307 IPC	7 years rigorous imprisonment and fine of Rs.2,000/-, in default to undergo 3 months simple imprisonment
Section 354 IPC	2 years rigorous imprisonment

The aforesaid sentences were ordered to run concurrently and the petitioner was acquitted of the offences under Sections 376 r/w 511 IPC. Challenging the conviction and sentence, the petitioner filed C.A.No.2 of 2008 filed before the Sessions Court, Tiruvannamalai, which was dismissed on 19.02.2014. Challenging the concurrent findings of fact of the two Courts below, the petitioner has filed this petition under Section 397 r/w 401 Cr.P.C.

6. Heard Mr.B.Jawahar, learned counsel for the petitioner and Mrs.P.Kritika Kamal, learned Government Advocate (Crl. Side) appearing for the respondent State.

7. Before advertng to the rival submissions, it may be necessary to state here that, a three Judge Bench of the Supreme Court in Girish Kumar Suneja Vs. CBI [(2017) 14 SCC 809], has held that revisional jurisdiction is a discretionary one and can be exercised only if the High Court finds that there is an error apparent on the face of the record and for better appreciation,

the relevant portion of the order is extracted hereunder :

"27. Our conclusion on this subject is that while the appellants might have an entitlement (not a right) to file a revision petition in the High Court but that entitlement can be taken away and in any event, the High Court is under no obligation to entertain a revision petition - such a petition can be rejected at the threshold. If the High Court is inclined to accept the revision petition it can do so only against a final order or an intermediate order, namely, an order which if set aside would result in the culmination of the proceedings. As we see it, there appear to be only two such eventualities of a revisable order and in any case only one such eventuality is before us. Consequently the result of paragraph 10 of the order passed by this Court is that the entitlement of the appellants to file a revision petition in the High Court is taken away and thereby the High Court is deprived of exercising its extraordinary discretionary power available under Section 397 Cr.P.C."

7.1. 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 659]:

"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."

7.2. This legal principle has been reiterated very recently by the Supreme Court in *Bir Singh Vs Mukesh Kumar* [(2019) 4 SCC 197], wherein, the following question of law was formulated :

"(i) whether a Revisional Court can, in exercise of its discretionary jurisdiction, interfere with an order of conviction in the absence of any jurisdictional error or error of law"

The answer of the Supreme Court to the aforesaid question is as under :

"19. It is well settled that in exercise of revisional jurisdiction under Section 482 of the Criminal Procedure Code, the High Court does not, in the absence of perversity, upset concurrent factual findings. It is not for the Revisional Court to re-analyse and re-interpret the evidence on record.

20. As held by this Court in *Southern Sales & Services v. Sauermilch Design and Handels GmbH* [(2008) 14 SCC 457], it is a well-established principle of law

that the Revisional Court will not interfere even if a wrong order is passed by a court having jurisdiction, in the absence of a jurisdictional error. The answer to the first question is therefore, in the negative."

8. Mr.Jawahar, learned counsel for the petitioner submitted that Thanickachalam (P.W.3) would not have been present near the place of occurrence, since his lands were far away.

9. This Court carefully perused the evidence of Thanickachalam (P.W.3). Thanickachalam (P.W.3) was examined in-chief on 08.10.2007 and he was not cross-examined on the same day. He was recalled under Section 311 Cr.P.C. and was cross-examined on 29.10.2007. Thanickachalam (P.W.3), has stated that, while he was cutting firewood, he saw the petitioner running hurriedly through his land and he also heard the cries from the house of Sivagami (P.W.1); when he went and saw her, she was soaked in blood. In the cross-examination, he has clearly stated as to where he was cutting firewood and stated that the petitioner ran through his land. He has further stated that the petitioner and Annamalai (P.W.2) are his uncles.

10. That apart, the evidence of Sivagami (P.W.1) is very cogent and clear. She has stated that, on 07.01.2003 around 09.30 in the morning, her husband gave Rs.3,000/- to the petitioner and asked him to buy manure and thereafter, he left for his farm. Soon thereafter, the petitioner returned, entered the house, locked the door and hugged her, she resisted him but, he pulled her saree and so, she took a broom and thrashed him. Immediately, the petitioner attacked her with a knife all over her body and when she started shouting for help, he ran away.

11. Sivagami (P.W.1) was examined in-chief on 08.10.2007 and was not cross-examined on the same day. She was recalled and cross-examined on 29.10.2007 and the defence was not able to make any serious dent in her testimony. Her previous statement to the Magistrate and to the police cannot be used as dying declarations but, they adequately corroborate her testimony.

12. Mr.Jawahar submitted that the petitioner had examined three witnesses, who have stated that, the petitioner was having an affair with Sivagami (P.W.1) and on coming to know of it, Annamalai (P.W.2) had attacked her. The trial Court has given very cogent reasons for disbelieving the testimony in paragraph 11 of the judgment.

13. That apart, the evidence of Thanickachalam (P.W.3), who saw the petitioner running away from the place of occurrence and only thereafter, Annamalai (P.W.2) rushed home adequately shows the falsity in the defence case. If Annamalai (P.W.2) had

seen his wife and petitioner together in a compromising position, it is not known as to why, he would have attacked only his wife and left the petitioner. For this, Mr.Jahawar submitted that at the time of the incident, the petitioner was not there and that is why, Annamalai (P.W.2) attacked his wife.

14. This submission deserves to be rejected outrightly because, the evidence on record adduced by the prosecution clearly shows otherwise. That apart, when the petitioner was examined under Section 313 Cr.P.C. with regard to the evidence of Sivagami (P.W.1) and Annamalai (P.W.2), he had not given any such explanation. It is easy to cast such aspersions on the character of a lady and subject her to humiliation. This Court does not find any infirmity in the findings of fact arrived at by the two Courts below warranting interference.

In the result, this Criminal Revision is dismissed as being devoid of merits. The trial Court is directed to take steps to secure the petitioner and commit him to prison for undergoing the remaining period of sentence, if any. Registry is directed to send the original records to the Courts below forthwith. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

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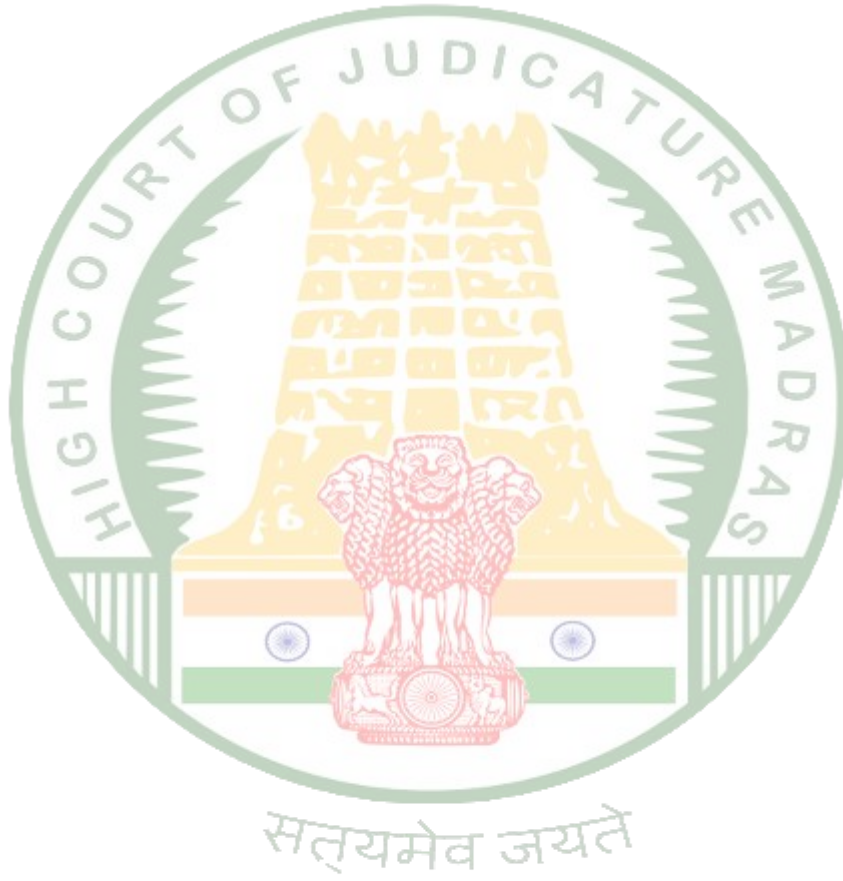
To

- 1.The Additional Assistant Sessions Judge,
Tiruvannamalai.
- 2.The Sessions Court,
Tiruvannamalai.
- 3.The Inspector of Police,
Chengam Police Station,
Chengam, Tiruvannamalai District.
- 4.The Public Prosecutor,
High Court, Madras.
- 5.The Judicial Magistrate,
Chengam.

CC:The Section Officer,
Criminal section, High Court, Madras-104.

CRL.R.C.No.497 of 2014

PVS (CO)
CB(07/11/2019)



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