

IN THE HIGH COURT OF JUDICATURE AT MADRAS  
Dated : 06.03.2019

CORAM:  
THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.1533 of 2018

Soundar @ Soundarajan ...Petitioner/Appellant/Accused-1

-Vs-

The State rep. by  
The Inspector of Police,  
E-3 Saravanampatty Police Station,  
Coimbatore. (Cr.No.376 of 2011). ...Respondent/Respondent/  
Complainant

(At the time of filing FIR Police Station name was  
ranked as B-3 subsequent to that on reorganization  
of police limits the police station ranked as E-3).

This Criminal Revision Case is filed under Sections 397  
read with Section 401 of Cr.P.C. to call for records pertaining  
to judgment in C.A.No.344 of 2018 dated 25.10.2018 on the file  
of the learned IV Additional District Sessions Judge,  
Coimbatore, confirming the conviction passed in S.C.No.136 of  
2015 by the learned II Additional Assistant Sessions Judge,  
Coimbatore, dated 25.07.2018.

For Petitioner : Mr.R.Ganesh Babu

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

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O R D E R

The criminal revision has been filed against the judgment  
of conviction dated 25.10.2018 made in C.A.No.344 of 2018 by the  
learned IV Additional District and Sessions Judge, Coimbatore,  
confirming the judgment of conviction dated 25.07.2018 made in  
S.C.No.138 of 2015 by the learned II Additional Assistant  
Sessions Judge, Coimbatore.

2 The petitioner along with one Karthik were charged for  
the offence under Section 307 r/w 34 IPC and after  
investigation, the respondent police had filed a charge sheet,  
which was taken on file in S.C.No.136 of 2015. The petitioner  
has been arrayed as A1 and other one has been arrayed as A2. The  
learned II Additional Assistant Sessions Judge, after trial,  
found both the accused guilty for the offence under Section 307

r/w 34 of IPC and hence by judgment dated 25.07.2018 convicted and sentenced them to undergo rigorous imprisonment for a period of 7 years each. Aggrieved against the judgment of conviction both the accused had filed appeals separately before the learned IV Additional District and Sessions Judge, Coimbatore, which was taken on file in C.A.Nos.344 and 341 of 2018 respectively. The lower appellate Court, by a common judgment dated 25.10.2018, had dismissed the appeal in C.A.No.344 of 2018 filed by the petitioner/A1 by confirming the judgment of conviction passed by the trial Court dated 25.07.2018, however, modified the sentence from 7 years to 5 years. The lower Appellate Court allowed the appeal filed by A2 in C.A.No.341 of 2018 and acquitted him stating that prosecution had failed to prove its case against A2.

3 Aggrieved against the judgment dated 25.10.2018 made by the lower Appellate Court in C.A.No.344 of 2018, the petitioner is before this Court with the present criminal revision case.

4 The learned counsel for the petitioner would submit that the informant, who gave the complaint, had not examined by the prosecution. AR copy was also not marked before the trial Court, which itself is fatal to the case of the prosecution. Further there is almost 24.00 hrs delay in sending the FIR to the Magistrate concerned, which was not properly explained by the prosecution. If P.W.1 had sustained grievous injuries, prosecution should have marked X-Ray report to prove the fact, but, in this case, no medical evidence was marked. If the occurrence said to have happened by the prosecution, the proposition should have recovered blood stained cloth, but the prosecution failed to do the same. Further more, the lower appellate Court had acquitted A2 and convicted the petitioner/A1 alone under Section 307 r/w 34 of IPC, which is not proper, since Section 34 of IPC would attract when the common intention proved.

5 The learned Government Advocate (Cr1.Side) appearing for the respondent police would submit that P.W.1, who is injured witness, in his evidence, had clearly deposed the incident and about the involvement of the petitioner in the occurrence. Statements under Section 161 of Cr.P.C were also recorded from both P.W.1 and his friend one Mariyappan, who have written the complaint. Hence non examination of author of the complaint is not fatal to the case of the prosecution. The knife, which was used in the occurrence, had been recovered and produced before the Court. Therefore prosecution has proved its case beyond reasonable doubt.

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

7 Both the accused in S.C.No.136 of 2015 were charged and convicted by the trial Court for the offence under Section 307 r/w 34 of IPC. The lower appellate Court had acquitted A2 and convicted A1 alone for the offence under Section 307 r/w 34 of IPC. This Court is of the view that when Section 34 of IPC is not proved against A2, naturally the lower Appellate Court should have acquitted A1 also, since Section 34 would come into play, when common intention of two or more persons has been proved. The lower Appellate Court, as a fact finding Court had re-appreciated entire evidence and found the petitioner/A1 guilty of offence charged against him. This Court does not find any perversity in confirming the conviction, but not for the offence under Section 307 r/w 34 of IPC, only under Section 307 alone. Hence this Court is inclined to modify the sentence imposed by the lower Appellate Court.

8 Accordingly, the criminal revision is partly allowed and the period of imprisonment alone modified from 5 years to 3 years.

Sd/-  
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

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To

1. The IV Additional District Sessions Judge,  
Coimbatore.
2. The II Additional Assistant Sessions Judge,  
Coimbatore.
3. Public Prosecutor,  
High Court of Madras.
4. The Inspector of Police,  
E3, Saravanampatty Police,  
Coimbatore.

+1cc to Mr.R.Ganesh Babu, Advocate, S.R.No.21985

Cr1.R.C.No.1533 of 2018

SSI (CO)

RRS (07/05/2019)