



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated:13.08.2019

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THE HONOURABLE MRS. JUSTICE **T.KRISHNAVALLI**

Crl.RC. (MD)No.502 of 2014

Mahalingam

: Petitioner/Sole Accused

Vs.

State: Represented by
The Inspector of Police,
Taluk Police Station,
Thanjavur.

: Respondent/Complainant

Prayer: Criminal Revision has been filed under Section 397 and 401 of the Code of Criminal Procedure against the judgment passed in C.A.No.59 of 2013 on the file of the II Additional District Sessions Judge, Thanjavur, dated 05.09.2014, confirming the Judgment of the Judicial Magistrate No.II, Thanjavur, dated 23.07.2013, in C.C.No.96 of 2010.

For Appellant : Mr.R.Sivasubramanian

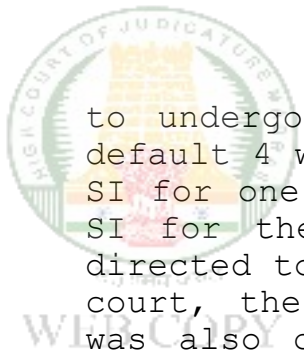
For Respondent : Mr.APG.Ohm Chairma Prabhu
Government Advocate (Crl.side)

J U D G M E N T

This Criminal Revision has been filed against the judgment passed in C.A.No.59 of 2013 on the file of the II Additional District Sessions Judge, Thanjavur, dated 05.09.2014, confirming the Judgment of the Judicial Magistrate No.II, Thanjavur, dated 23.07.2013, in C.C.No.96 of 2010.

2.The case of the prosecution is that due to previous motive, on 25.12.2009 at 16.30 hours, when PW1 and PW2 were going to shop, the accused abused them with filthy language and also attacked PW1 with Aruval, thereby caused injuries. The Inspector of Police attached to Taluk Police Station, Thanjavur has filed a final report against the accused examining the witnesses.

3.In the trial court, 12 witnesses were examined and 14 Exhibits and 2 material object were marked. When the accused was questioned about the incriminating circumstances, he denied the same. On the side of the accused, no witness was examined and no document was marked. The trial court convicted the appellant/accused



to undergo SI for 4 months and to pay a fine of Rs.1,000/-, in default 4 weeks SI for the alleged offence under Section 324 IPC and SI for one year and to pay a fine of Rs.1,000/- in default 4 weeks SI for the offence under Section 326 IPC and the sentences are directed to run concurrently. Aggrieved by the Judgment of the trial court, the petitioner approached the first appellate court, which was also confirmed the findings of the trial court. Hence, the petitioner is before this court.

4. Heard both sides and perused the materials available on record.

5. The main contention raised on the side of the petitioner/accused is that there are major contradictions in the evidence of PW1 and PW2 regarding the occurrence and the injured witnesses are aggressive persons since the place of occurrence is admittedly in front of the house of the accused and hence, the defence case appears more probable than the prosecution case and the injuries sustained by PW1 are bruised injury and the injury sustained by PW2 is cut injury and hence, there is more probability for the defence case and except PW1 and PW2, all other eye witnesses turned hostile and hence, the prosecution failed to prove the case and prays that the revision petition has to be allowed.

6. PW1 is the injured and he gave Ex.P1 complaint. PW1 in his complaint and evidence stated that prior to one and half year in the evening, he proceeded to his house in his bicycle on Kandithampattu road and his brother's son Harish came behind him and when he came near the house of the accused, the accused came and used filthy language and then quarrel arose between him and the accused and then the accused with aruval caused injury on the back side of his scalp and his wife also accompanied with him and then the accused assaulted his wife with aruval and caused injury on her right hand and Ravi, Kumar, Durairaj witnessed the occurrence and he and his wife were taken to the Thanjavur Government Hospital and then the police came and received the complaint statement.

7. PW2 is the wife of PW1. PW2 deposed that prior to one and half year, she was in her house at about 4.00 pm, her husband and his brother's son came in the bicycle and when her husband came before the house of the accused, the accused assaulted her husband and when it was resisted by her and when she proceeded to her house with her husband, the accused took aruval in his roof and caused injury on her right hand palm and then the accused assaulted her husband on the back side of his scalp and Ravi, Durai Raj and some other persons witnessed the occurrence and she and her husband were taken to the Government Hospital, Thanjavur. Hence, the evidence of PW1 is corroborated with the evidence of PW2.

8. PW3 to PW7 were cited as eye witnesses. PW3 deposed that at 4.00 pm, after hearing the noise he went and



saw PW1 sustained injury on the scalp of PW1 and PW2 sustained injury on her right hand and he heard that the accused only caused the injury on PW1 and PW2. PW3 is a hearsay witness. Hence, no much importance can be given to the evidence of PW3.

9.PW4 deposed that prior to one and half years, he and one Durairai stood in front of the tea stall which is situated opposite to the house of the accused and at that time, the accused said தனபாலை வெட்டி போடுவேன் குத்தி போடுவேன் and then assaulted PW1 and PW2 with aruval and caused injury on PW1's scalp and PW2 right hand. PW1 and PW2 also deposed that the accused caused injury on the scalp of PW1 and right hand of PW2. Hence, the evidence of PW1 and PW2 is corroborated with the evidence of PW4.

10.PW5 to PW7 are cited as eye witnesses. But they turned hostile and did not support the case of the prosecution.

11.The Doctor, who gave treatment to PW1 and PW2 was examined as PW8. PW8 deposed that on 28.12.2009 at 5.45 pm, while he was on duty, at that time PW1 and PW2 were taken to the Hospital and he examined PW1 and PW2 and found a cut injury seen on the right hand between the ring finger and little finger on PW2 and he also found contusion on the back side of the head 6 x 2 x 1 cm and contusion wound 7 x 5 x 5 cm seen on the right side forearm of PW1.

12.The Doctor, who took X-ray for PW2 was examined as PW9. PW9 deposed that he took X-ray for PW2 and he found fracture on the right hand and carpal bone. PW10 who has done surgery for the PW2 was examined as PW10. PW10 deposed that on 08.10.2010, he has done surgery for fracture sustained by PW2 on her right hand and after taking treatment, he discharged PW2.

13.The Doctor, who gave treatment for PW1 found injuries on the scalp and right hand of PW1. PW1 and PW2 also deposed that the accused assaulted them with aruval and PW1 sustained injuries on his scalp and PW2 sustained injuries on her right hand. PW9 found fracture on the right hand of PW2. PW10 has done surgery on PW2 on her right hand. Hence, the evidence of PW1 and PW2 is corroborated with the evidence of PW8 to PW10.

14.In this case, the evidence of PW1 and PW2 is corroborated with the medical evidence. Hence, the argument put forth on the side of the petitioner/accused stating that there was contradiction between the evidence of PW1 and PW2 and the medical evidence is not at all acceptable.

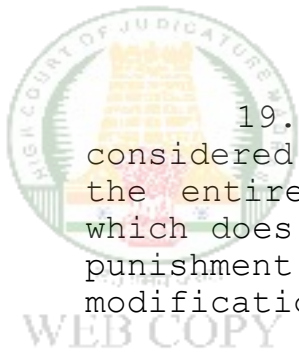
15.The learned counsel appearing for the petitioner/accused argued that the date of occurrence is 25.12.2009, but the case was registered only on 26.12.2009 and hence, there is a delay in giving the complaint to the police and hence, it is fatal to the



16.In this case, as per the prosecution case, the occurrence took place on 25.12.2009 at 4.00 pm, and PW1 and PW2 were taken to Thanjavur Government Hospital and PW2 sustained grievous injury and the occurrence was intimated to the police station and the police came and recorded the statement of PW1 and then only the police registered the case on 26.12.2009 in the morning. PW1 and PW2 sustained grievous injury and hence, at first steps were taken to give treatment to PW1 and PW2. Afterwards, the occurrence was informed to the police and the police came and recorded the statement of PW1. Hence, the reasons for the delay in giving the complaint was properly explained. Hence, it is held that it is not fatal to the prosecution case.

17.On the side of the prosecution, it is argued that already the brother of PW1 eloped with the sister of PW1 and due to it, enmity arose between the accused and PW1 and due to the above enmity, the accused assaulted PW1 and PW2. Hence, motive is proved on the side of the prosecution.

18.In this case, the Investigating Officer was examined as PW12. While cross examining PW12, the Investigating Officer, the learned counsel for the petitioner/accused put a suggestion that the brother of PW1 with the help of PW1 and PW2 eloped the sister of PW1 and for that, the accused gave the complaint before the police, but no action was taken by the police and in order to safe guard them from the above complaint, PW1 falsely gave the complaint and there was no occurrence took place as spoken by PW1 and PW2. But the above suggestion was denied by PW12. While cross examining PW1, the learned counsel appearing for the accused put a question that due to the elope of the sister of the accused with the brother of PW1 to safeguard them for giving the complaint by the accused, PW1 gave the complaint falsely. While cross examining PW12 it was suggested that the accused gave the complaint in respect of elopement of sister of the with the brother of PW1. No contra evidence let in on the side of the accused to prove that the accused gave the complaint as against PW1 and PW2 in respect of elopement of sister of the accused with the brother of PW1. When cross examining PW1 it was suggested that PW1 gave complaint to the police that he came to understand that the accused will give the complaint to the police. It is not properly stated on the side of the accused whether in respect of the elopement of sister of the accused with the brother of PW1, complaint was given or not. No document was filed on the side of the accused to prove that already complaint was given by the accused in respect of elopement of the sister of the accused with the brother of PW1. Hence, on careful perusal of the evidence, it reveals that only due to the elopement of the sister of the accused with the brother of PW1, the accused assaulted PW1 and PW2 and caused injury to them.



19.For all the reasons stated above, this court is of the considered view that the trial court after proper appreciation of the entire materials available on record, has passed the order, which does not call for any interference by this court. However, the punishment imposed on the petitioner under section 326 IPC requires modification.

20.In the result, this Criminal Appeal is **partly allowed**. The punishment imposed on the petitioner for the offence under Section 326 IPC is reduced to 6 months SI. In other aspects, the findings of the trial court is confirmed. The sentences are directed to run concurrently. The period of sentence, if any already undergone by the petitioner shall be given set off under Section 428 of Cr.P.C. The petitioner, after adjusting the period of imprisonment already undergone, shall undergo imprisonment for the remaining period.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

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To,

- 1.The II Additional District and Session Judge, Thanjavur.
- 2.The Judicial Magistrate No.II, Thanjavur.
- 3.The Chief Judicial Magistrate, Thanjavur District at Kumbakonam
- 4.The Inspector of Police, Taluk Police Station,
Thanjavur District.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Copy to:

The Section Officer, (2 Copies)
Criminal Section,
Madurai Bench of Madras High Court, Madurai.

Order made in
Crl.RC.(MD)No.502 of 2014
13.08.2019

JMN(18.12.2019) 5P : 8C

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