

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	25.06.2019
Date of Judgment	27.09.2019

WEB COPY

CORAM

THE HONOURABLE MRS. JUSTICE T. KRISHNAVALLICr1.R.C(MD)No.70 of 2014

1. Paulpandian

2. Thayammal @ Seema

: Revision Petitioners/
Appellants/Respondents

Vs.

State through

The Sub Inspector of Police,
South Police Station,
Thoothukudi.

(Crime No.825 of 2003)

: Respondent/Complainant

Prayer: Criminal Revision has been filed under Section 397 r/w 401 of Criminal Procedure Code, against the judgment passed by the II Additional Sessions Judge, Tuticorin, in C.A.No.71 of 2013, dated 21.10.2013 modifying the sentence passed by the Judicial Magistrate No.1, Tuticorin, in C.C.No.277 of 2004, dated 13.08.2013.

For Revision Petitioners : Mr. Antony S Prabhakar

For Respondent : Mr. APG Ohm Chairma Prabhu
Government Advocate
(Criminal side)**J U D G M E N T**

This Criminal Revision is directed against the judgment passed by the II Additional Sessions Judge, Tuticorin, in C.A.No.71 of 2013, dated 21.10.2013 modifying the sentence passed by the Judicial Magistrate No.1, Tutocorin, in C.C.No.277 of 2004, dated 13.08.2012.

2. The case of the prosecution is that on 29.11.2003 at 9.00 am at Anna Nagar Housing Board Quarters, Thoothukudi, due to previous enmity, when PW1/the complainant was cleaning his two wheeler in front of his house, the petitioners came there and 1st petitioner attacked PW1 with stick on his left neck and the 2nd petitioner bite PW1 on his left wrist, causing simple injuries to him and abused PW1 with filthy language and also threatened him with dire consequences. The Sub Inspector of Police attached to South Police Station, Thoothukudi has filed a final report against the accused examining the witnesses.



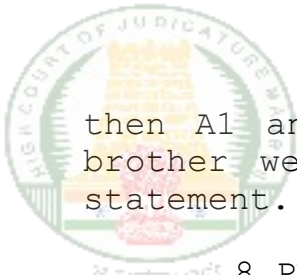
3. In the trial court, 12 witnesses were examined and 5 Exhibits were marked. When the accused were questioned about the incriminating circumstances, they denied the same. On the side of the accused, one witness was examined and three documents were marked. The trial court convicted the revision petitioners and sentenced them to pay a fine of Rs.500/- each, in default to undergo SI for three months each for the offence under Section 323 IPC and to pay a fine of Rs.250/- each, in default to undergo 3 months SI for the offence under Section 294(b) IPC and to pay a fine of Rs.500/-, each, in default to undergo 3 months SI for the offence under Section 506(i) IPC. Aggrieved by the conviction and sentence passed by the trial court, the revision petitioners filed an appeal in C.A.No.71 of 2013, which was heard by the II Additional Sessions Judge, Thoothukudi. The first appellate Court has modified the sentences, by confirming the offence under Section 323 IPC and set aside the offence under Sections 294(b) and 506(i) IPC. Aggrieved by the judgment of the first appellate court, the petitioners are before this court.

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

5. The main contention raised on the side of the petitioners/accused is that at the time of occurrence, A1 is working as Superintendent in the Tamil Nadu Special Police, Chennai and there was contradiction between the oral evidence of the eye witness and the medical evidence and the occurrence witnesses are interested witnesses and further, there was contradiction in the evidence of witnesses in respect of the occurrence and prays that the criminal revision has to be allowed.

6. In this case, PW1 and PW2 are husband and wife. PW1 gave Ex.P1 complaint to the police. PW1 in his complaint and evidence stated that A1 was transferred to Chennai, but he has not vacated the Housing Board house and hence, he sent a complaint to the concerned officials and due to it, there was enmity arose between him and A1 and on 29.11.2003 at 9.00 am, when he was cleaning his two wheeler, at that time, A1 and A2 came and A1 said that “என் மீது மனு கொடுத்து என்னடா செய்வாய்” and assaulted him with stick and when he resisted it, at the time, A2 came and bite in his left wrist and then A1 with stick assaulted on his left side of the neck and when he shouted, neighbours came and A1 and A2 used filthy language and threatened and then, they went away and he went to the Government Hospital and gave Ex.P1 complaint statement. Hence, the evidence of PW1 is corroborated with the contents found in Ex.P1 complaint statement.

7. PW2 to PW5 are cited as eye witnesses. PW2 is the neighbour of PW1. But she turned hostile and did not support the case of the prosecution. PW3 is the sister of PW1. PW3 deposed that on 29.11.2003 at 9.00 am, her brother was cleaning his two wheeler, at that time, A1 came and assaulted her brother on his left neck with stick and A2 bite on the left wrist of her brother and



then A1 and A2 used filthy language and threatened and then, her brother went to the Government Hospital and gave Ex.P1 complaint statement.

8.PW4 is the wife of PW1. PW4 deposed that on 29.11.2003 at 9.00 when her husband cleaning his two wheeler, at that time, A1 came and said that “ஓயாமல் என்மீது பெட்டிசன் கொடுத்து கொண்டு இருக்கிறாய்” and assaulted her husband and further, A2 came and bite on her husband's left wrist and then, her husband went to the Government Hospital for taking treatment.

9.PW4 during her chief examination stated that she saw the occurrence. But during her cross examination, she has stated that :-

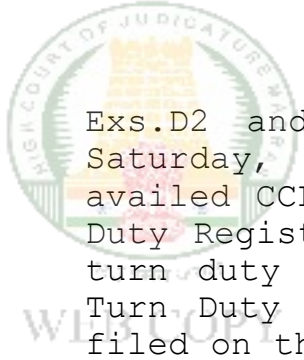
“சம்பந்தி பார்த்து சொன்னவுடன் நான் கீழே இறங்கி வந்தேன் நான் கீழே வந்து பார்த்தபோது என் கணவருக்கு காயம் இருந்தது.”

10.On careful perusal of the evidence of PW4, it reveals that she has not seen the occurrence. But it reveals that there was enmity between her husband and A1, since PW1 sent complaints to the concerned officials in respect of PW1.

11.PW5 is the neighbour of PW1. PW5 deposed that on 29.11.2007, while PW1 was cleaning his two wheeler, at that time, A1 came and said “ஆறுமுக நயினாரிடம் என் மீது புகார் மனுவை எழுதியுள்ளாயே நீ என்ன செய்ய முடியும்” and assaulted him with stick on the left side of his neck and A2 came and bite on the left wrist of PW1 and further, A1 and A2 threatened PW1 and he took PW1 to the Hospital. Hence, the evidence of PW1 is corroborated with the evidence of PW2 and PW5.

12.The Doctor, who gave treatment to PW1 was examined as PW8. PW8 deposed that on 29.11.2007 at 10.30 am, when he was on duty, PW1 came and told that he was assaulted by two persons with hands and wooden log and he found a swelling on the left side neck and bite mark in the left wrist. PW1 deposed that A1 assaulted him with stick on his left side of the neck and PW2 bite his left wrist. PW8 deposed that he found a swelling on the left side of the neck of PW1 and bite mark on the left wrist of PW1. Hence, the evidence of PW1 is corroborated with the evidence of PW8.

13.It is vehemently argued by the learned counsel appearing for the petitioners that on the date of the occurrence i.e., on 29.11.2003, the first accused was on special duty at I.G. Office, Chennai and in that respect, DW1 gave evidence and filed the relevant copies of the Registers (Exs.D2 and D3), which is not at all considered by the trial court and when once the accused pleaded alibi, it is for the accused side to prove the same by positive evidence. DW1 deposed that on 29.11.2003, he was on duty as Judicial Assistant at I.G. Office, Keelpauk, Chennai. On the same day, the Services to Courts and Judicial Services was also on special duty and for that, he availed compensatory casual leave on 28.05.2004 and the copies of the CCL Register extract and the Attendance Register extract were marked as



Exs.D2 and D3 and in Ex.D2, it is stated that on 29.11.2003, Saturday, the first accused was on special duty for which, he availed CCL on 28.05.2004 and Ex.D2 is not the extract of the Turn Duty Register and in Government Office, when a staff was placed on turn duty during the holidays, his name should be entered in the Turn Duty Register under his signature. But no such extract was filed on the side of the petitioners/accused. Further, if the staff on turn or special duty on holidays can avail CCL for attending turn duty in the same calendar year. On that basis, if Ex.D2 is taken into consideration, the first accused availed CCL on 28.05.2004 for attending special duty on 29.11.2003 is not at all acceptable. Further, the accused has not produced any Rule or Standing Order in that office to grant CCL for the turn duty attended in the previous year. As per Ex.D3, DW1 attended turn duty on 29.11.2003. But in that Turn Duty Register Extract, the first accused's name did not find place, which shows that A1 was on neither turn duty nor special duty on 29.11.2003. Hence, it is held that alibi was not proved on the side of the petitioners/accused.

14.For all the reasons stated, this court is of the considered view that the charge under Section 323 IPC against the petitioners/A1 and A2 is proved and hence, the findings of the first appellate court is confirmed.

15.Accordingly, this court would confirm the findings of conviction and sentence of the first appellate court as against the first revision petitioner/A1, but invoke provision 4 of the Probation of Offenders Act. Consequently, this court directs the first revision petitioner/A1 be released on probation of good conduct, on his executing a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties in a like sum to the satisfaction of the trial court, viz., Judicial Magistrate No.1, Thoothukudi, within one month from the date of receipt of this order, undertaking to appear and receive sentence when called upon to do so, during a period of one year of the date of the bond and in the mean time to keep peace and good behaviour. It is made clear that in keeping with Section 12 of the Probation of Offenders Act, the first revision petitioner shall not suffer disqualification, attaching to this conviction.

16.In respect of the 2nd revision petitioner/A2, the punishment imposed by the first appellate court is confirmed.

17.Accordingly, the criminal revision is **disposed of** as indicated above.

Sd/-

Assistant Registrar ()

// True Copy //



To, சென்னை

WEB COPY

- 1.The II Additional Sessions Judge,
Tuticorin.
- 2.The Judicial Magistrate No.1, Tuticorin.
3. The Sub Inspector of Police,
South Police Station,
Thoothukudi.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai

Cr1.RC(MD)No.70 of 2014
27.09.2019

VB(04.11.2019) 5P 5C