

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2020

CORAM

THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

Criminal Revision No.6 of 2015
and M.P.No.1 of 2015

Maan @ Suresh Kumar

...Petitioner

.Vs.

State rep. by
The Inspector of Police,
Ariyur Police Station,
Vellore District.
(Crime No.31 of 2012)

...Respondent

PRAYER: The Criminal Revision is filed to call for the records on the file of the learned Principal District and Sessions Judge, Vellore, Vellore District, in Crl.A.No.7 of 2014 dated 24.11.2014 confirming the judgment in S.C.No.200 of 2012 on the file of the learned Chief Judicial Magistrate, Vellore, Vellore District, dated 09.01.2014.

For Petitioner : Mr.E.Kannadasan

For Respondent : Mr.S.Karthikeyan
Additional Public Prosecutor

सत्यमेव जयते

O R D E R

Aggrieved over the concurrent findings made in S.C.No.200 of 2012 on the file of the Chief Judicial Magistrate, Vellore, dated 09.01.2014 and Crl.A.No.7 of 2014 on the file of the learned Principal District and Sessions Judge, Vellore, dated 24.11.2014, the revision petitioner is before this Court to check the correctness of the judgments.

2. The revision petitioner is arrayed as Accused No.2 in S.C.No.200 of 2012. By judgment dated 09.01.2014, the learned Chief Judicial Magistrate, Vellore, convicted the revision

petitioner under Section 307 of I.P.C. and sentenced him to undergo five years of rigorous imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo one month rigorous imprisonment.

3. Aggrieved over the said finding, the petitioner herein preferred an appeal in Crl.A.No.7 of 2014 before the learned Principal District and Sessions Judge, Vellore. By judgment dated 24.11.2014, the Principal District and Sessions Judge, Vellore, dismissed the appeal filed by the revision petitioner and confirmed the conviction and sentence awarded by the learned Chief Judicial Magistrate, Vellore. Challenging the same, the petitioner is before this Court by way of filing the present Criminal Revision.

4. The case of the petitioner before the trial Court in brief is as follows:-

On 12.04.2012 at about 1.00 p.m, when P.W.1, Rajendiran was walking near to the house of P.W.2, Anthony, the first accused, Ravichandran abused the P.W.1 by using filthy language and at the same time, the revision petitioner herein by using a knife, attacked the P.W.1 on his abdomen. The said occurrence was witnessed by P.W.2, Anthony and P.W.5, Muthuraj. Immediately after the said occurrence, P.W.3, Muthu Kumar, through an Auto, which belongs to P.W.4, Magendiran, brought P.W.1 to the Government Hospital. In the mean time, P.W.6, Bhuvaneshwari, who is the wife of P.W.1 heard the news and rushed to the Hospital, wherein P.W.12, Dr.R.Vijayalakshmi attached to the Government Hospital, Adukkamparai, examined P.W.1 and found the following injury:-

"As above the opinion of the Radiologist & Surgeon, I certified that simple injury".

According to her, the injury sustained by the P.W.1 was simple in nature. In this regard, she issued accident register copy under Ex.P7. Further, she issued Wound Certificate under Ex.P8.

5. On information, P.W.9, Baskaran, Special Sub-Inspector of Police, attached to the Ariyur Police Station, Vellore District, met P.W.1 in the Government Hospital and obtained a complaint under Ex.P1. On receipt of the same, he registered an F.I.R in Crime No.31 of 2012 under Section 294 (b), 341, and 307 of I.P.C. Printed F.I.R. marked as Ex.P6. Immediately after registering the case, P.W.9 handed over the case records to P.W.14 S.Govindasamy, Inspector of Police, Bhagayam Police Station, Vellore District, for investigation.

6. P.W.14 took up the F.I.R. for investigation and visited the scene of occurrence. In the presence of P.W.7, Magendiran, he prepared an Observation Mahazar under Ex.P10. He drew the Rough Sketch under Ex.P11. Further, he recovered a knife, soil with blood stains and soil without blood stains. In the presence of the said witness, he arrested both the accused and recorded their confession. In continuation of the investigation, he recovered the dresses which were worn by P.W.1 in the Hospital through Form 95 and the same was sent for chemical examination. Further, he sent a requisition to the Magistrate for sending Material Objects, which were collected during the time of investigation for chemical examination. In turn, the learned Magistrate issued a proceedings and thereupon, P.W.8, Ravisankar, Deputy Director, and P.W.13, Vimala Thiagaraj, Deputy Director, Forensic Science Department, examined the material objects and issued the reports under Ex.P5 and Ex.P9. Finally, P.W.14 concluded the investigation and came to the positive conclusion that both the accused have committed the offence under Sections 294 (b), 341 and 307 of I.P.C. He filed a final report accordingly.

7. Based on the above materials, the trial Court framed the charge against Accused No.1 under Sections 294 (b) and 341 of I.P.C. Further, the charge under Section 307 of I.P.C. alone is framed against Accused No.2/ revision petitioner. Both the accused denied the charge and opted for trial, in order to prove their case, on the side of the prosecution, 14 witnesses were examined as P.W.1 to P.W.14 and 13 documents were marked as Ex.P1 to Ex.P13, besides, five material objects (M.O.1 to M.O.5).

8. Out of the said witnesses, P.W.1 is the victim in this case. He stated before the trial Court that at the time of occurrence, both the accused came to the place of occurrence with the knife and after threatening him by using filthy language, the first accused Ravichandran caught hold of him and thereafter, the revision petitioner attacked him near the right chest (just below the right chest). Immediately after the said attack, both the accused ran away from the scene of occurrence after leaving the knife which is used for attacking P.W.1. He has further stated that immediately after the occurrence, one Muthukumar and Magendiran brought him to the Government Hospital for treatment, wherein, P.W.9, Baskaran, recorded the complaint from him and registered the case against the petitioner.

9. P.W.2 Anthony is a resident of Annanagar, Malaikodi. He speaks about the occurrence that on 12.04.2012 at about 12:45 p.m when he was along with one Muthuraj, P.W.1 Rajendiran came and casually talked with him and at that time, accused Suresh Kumar came there and quarrelled with P.W.1. At that time, when

the first accused and P.W.2 were attempting to make compromise, the revision petitioner, by using the knife, attacked the P.W.1 on his left abdomen and ran away from the scene of occurrence. Immediately by using an Auto, P.W.2 brought the P.W.1 to the Government Hospital, Adukkamparai.

10. P.W.3, who is also a resident of the same place, came to the place of occurrence and found P.W.1 falling down in a pool of blood.

11. P.W.4, Magendiran, an auto driver, deposed before the trial Court as on the day of occurrence, as per the request made by one Muthukumar, he brought P.W.1 to the Government Hospital for giving treatment.

12. P.W.5, Muthuraj, who is also a resident of the same locality, has stated about the occurrence as stated by P.W.4.

13. P.W.6, Bhuvaneshwari, who is the wife of P.W.1, received the phone message at about 1.30 p.m. as the petitioner herein assaulted her husband. Immediately after hearing the same, she rushed to the Government Hospital.

14. P.W.7, Magendiran, spoke about the preparation of Observation Mahazar and Rough Sketch. He has also stated about the seizure of material objects for example: knife, soil with blood stains and soil without blood stains. He has further stated that on the said day, the Investigation Officer arrested the revision petitioner and recorded his confession statement. According to him, he was witness to all the documents which have been prepared by the P.W.14, Investigation Officer.

15. P.W.8, Ravisankar, now working as Deputy Director, Forensic Science Department, Chennai, has stated that on 30.04.2012, he received the knife, soil with blood stains and soil without blood stains. During the examination, he found that there were blood stains found in the knife and along with the same, he examined a shirt and pant, which are as M.O.4 and M.O.5, wherein, he identified that there were blood stains. In this regard, he issued a report in VLR/BIOL/2012, dated 04.05.2012.

16. P.W.9, Baskaran, then Sub-Inspector of Police, stated in his evidence about the receipt of information in respect of the attack made by the revision petitioner. He has further stated that immediately after receipt of the information, he visited the Government Hospital, Adukkamparai, and recorded the statement from P.W.1. In turn, he registered the F.I.R. in Crime No.31 of 2012 under Sections 294 (b), 341 and 307 of I.P.C.

17. P.W.10, Prakash and P.W.11, Saravanan, eye witnesses, spoke about the receipt of the information.

18. P.W.12, Dr.R.Vijayalakshmi, attached to the Government Hospital, speaks about the nature of injuries sustained by P.W.1. According to her, the injuries sustained by P.W.1 are simple in nature. In this regard, he issued Wound Certificate under Ex.P8.

19. P.W.13, who is the Deputy Director, Forensic Science Department, Chennai, speaks about the Serology Certificate after examining the blood stains found in the Material Objects 1, 2, 4 and 5.

20. P.W.14, then Inspector of Police, Bhagayam Police Station, has stated about the preparation of Observation Mahazar, Rough Sketch, seizure of Material Objects, arrest of the accused, examination of witnesses and filing of the final report.

21. From the above incriminating materials, the learned Chief Judicial Magistrate, Vellore, questioned the accused under Section 313 of Cr.P.C. and the same was denied by the accused. However, the accused did not choose to examine any witness nor mark any document on their side. The learned Chief Judicial Magistrate/Assistant Sessions Judge, after perusing all the materials and on considering the arguments advanced by either side, has convicted the revision petitioner and sentenced him as stated supra.

22. Aggrieved over the said conviction and sentence, the revision petitioner is before this Court with the present Criminal Revision.

23. The learned counsel appearing for the petitioner would submit that the evidences given by prosecution witnesses have not proved the alleged occurrence as stated by the prosecution. The evidence given by P.W.2 and P.W.5 is that at the time of occurrence, the revision petitioner attacked P.W.1 only once with knife. But, at the same time, the evidence given by the Doctor is that P.W.1 sustained two incised wound and the same is simple in nature. Therefore, the evidence given by the eye witnesses is contrary and the same is varying from the evidence given by the Doctor, who had given treatment to P.W.1.

24. Per contra, learned Additional Public Prosecutor would contend that since the witnesses were examined after so many years from the date of occurrence, it is natural for them to come out with minor contradictions. In other words, the

evidence given by P.W.1, P.W.2 and P.W.5 is correlated to the evidence of the Doctor, who had given the treatment to P.W.1. Otherwise, it is not at all necessary to go into the minor contradictions which are available in the evidence of P.W.2 and P.W.5.

25. I have heard Mr.E.Kannadasan, learned counsel appearing for the revision petitioner and Mr.S.Karthikeyan, learned Additional Public Prosecutor appearing for the respondent police and perused the materials placed before this Court.

26. From the relevant records, it appears that both the Courts below convicted the accused/revision petitioner for the offence under Section 307 of I.P.C. In this regard, for proving the said occurrence, the ingredients of Section 307 of I.P.C. have to be proved on the side of the prosecution. In this case, over all evidence put forth by the prosecution prove that at the relevant point of time, due to wordy altercation, the revision petitioner along with the first accused had attacked the P.W.1 without any intention. More than that, the evidence given by the Doctor establish that P.W.1 sustained only simple injury. Before convicting the accused for the offence under Section 307 of I.P.C., the prosecution has to necessarily prove that the act committed by the accused must be an act capable of causing death in the natural and ordinary course of things and if the act complained of is not of that description, the accused cannot be convicted under the said Section. But here, the opinion given by the Doctor is very clear that injury sustained by P.W.1 is not fatal. The Courts below, without considering the said aspects, convicted the accused for the offence under Section 307 of I.P.C. which is unwarranted.

27. As already observed, P.W.2 and P.W.5, the alleged eye witnesses to the occurrence have stated in their evidence that during the relevant point of time, the revision petitioner attacked P.W.1 only one time. Therefore, the said evidence given by P.W.2 and P.W.5 does not support the evidence given by the Doctor and also it creates doubt whether the alleged occurrence had happened as stated by P.W.1. Accordingly, though there was a contradiction in respect of the number of attacks made on P.W.1, it is clear that during the time of occurrence, the revision petitioner attacked P.W.1 by using the knife.

28. In the said circumstances, the number of attacks made by the accused is not a material to decide the issue involved in this case. At this juncture, it is relevant to see the judgment of the Hon'ble Apex Court in the case of Mustak Alias Kanio Ahmed Shaikh Vs. State of Gujarat reported in (2020) 7 SCC 237, wherein, the Hon'ble Supreme Court has held as

follows:-

"46. We do not find any such error in the findings of the Sessions Court to warrant interference. When there is a time gap between an occurrence and the trial it is impossible for police/investigating officer to recall minute details. Nor is it possible for a surgeon performing an operation to remove a bullet from the body of a patient to throw light on the chain of custody of the bullet, after it was made over to the attending Nurse. There was sufficient incriminating evidence for conviction of the appellant."

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49. In my considered opinion, minor discrepancies in evidence and inability to recall details of the description of houses, roads and streets after several years, do not vitiate the evidence."

29. So as per the ratio laid down in the above-referred judgment, it would not be necessary to consider the trivial contradictions found in the prosecution side witnesses for deciding the case of the prosecution. More than that, it is not in dispute that the witnesses were examined on the side of the prosecution for giving the evidence before the trial Court after a lapse of considerable period and therefore, it is natural for human beings to give evidence with minor contradictions. Therefore, the submission made by the learned counsel appearing for the revision petitioner is that there were minor contradictions available in the evidence given by the prosecution side witnesses is no way helpful to the case of the revision petitioner. However, the revision petitioner committed the offence without any intention and also injury sustained by P.W.1 is not at all sufficient to cause death.

30. Accordingly, I am of the opinion that during the time of occurrence, the accused herein voluntarily caused simple hurt to P.W.1 and therefore, he has committed the offence under Section 324 of I.P.C. In other words, I am of the considered view that the offence committed by the revision petitioner would not attract Section 307 of I.P.C.

31. Accordingly, the accused is found guilty under Section 324 of I.P.C. and sentenced to undergo 18 months rigorous imprisonment and the period of detention already undergone by the revision petitioner will be set off under Section 428 of Cr.P.C.

In the result, the Criminal Revision is partly allowed.
Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(L.A)

//True Copy//

Sub Assistant Registrar

To

1. The Principal District and Sessions Court,
Vellore District, Vellore.
2. The Chief Judicial Magistrate,
Vellore District, Vellore.
3. The Inspector of Police,
Ariyur Police Station,
Vellore District.
4. The Public Prosecutor,
High Court of Madras,
5. The Superintendent,
Central Prison, Vellore.

+1cc to Mr.E.Kannadasan, Advocate, S.R.No.38524

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and M.P.No.1 of 2015

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