

BAIL SLIP

The Appellant/Accused namely Devi W/o Selvaraj was released on bail date 09/01/18 in CrI.Mp.84/18 in CrI.Rc.20/18

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 14.12.2020

PRONOUNCED ON :30.12.2020

CORAM

THE HONOURABLE MR. JUSTICE G. CHANDRASEKHARAN

CrI.RC.No.20 of 2018

Devi

...Petitioner

..Vs..

State by Inspector of Police,
Hudco Police Station,
Hosur,
Krishnagiri District.

...Respondent

Prayer: Criminal revision filed under section 397(1) read with Section 401 of Cr.P.C to set aside the judgment dated 06.11.2017 made in C.A.No.30 of 2017 on the file of the learned Principal Sessions Court, krishnagiri confirming the Judgment dated 12.05.2017 made in C.C.No.187 of 2013 on the file of the learned Judicial Magistrate-II, Hosur.

For Petitioner : Mr.T.Sathiya Moorthy

For Respondent : Mr.K.Madhan

Government Advocate (CrI. Side)

सत्यमेव जयते
ORDER

(This case has been taken up for hearing through Video conferencing)

This criminal revision is preferred against the Judgment of the learned Principal Sessions Court, Krishnagiri in C.A.No.30 of 2017 dated 06.11.2017 which confirmed the Judgment of the learned Judicial magistrate No.II, Hosur in C.C.No.187 of 2013 dated 12.05.2017.

2. The case of the prosecution is that on 06.07.2011 at about 9.15 a.m., when PW1, Periyasamy was in his cabin at Anand Electronics Company situated at Krishnagiri-Bangalore Highways,

which is within the jurisdiction limits of Hudco Police Station, the petitioner/accused came to his cabin and questioned PW1 as to why her probation period is extended and started to quarrel with him. PW1 directed her to meet the higher officials. The accused took chilly powder from the mundhanai part of her saree and threw on the face of PW1 and also beaten him with her chappal on his back and criminally intimidated him. PW1 suffered simple injury in the said incident. The act of the accused is punishable under Section 324, 355 & 506(ii) IPC.

3. After the accused entered appearance, she was furnished the copies of the documents relied on by the prosecution. She was questioned with regard to the offence alleged against her. Since there was sufficient materials to frame charges against the accused under section 355, 324 & 506(ii) IPC, charges have been framed under these sections and when the accused was questioned with regard to charges framed against her, she denied the charges and claimed to be tried.

4. The prosecution examined six witnesses, namely PW1 to PW6 and marked eight documents Ex.P1 to Ex.P8 and produced MO1 chilly powder and MO2 black colour ladies chappal in support of the case of prosecution.

5. The prosecution case as discerned from the evidence of prosecution witnesses, in brief, is as follows:

PW1 was working as a deputy manager in Anand Electronics, Hosur. When he was performing his duty in his cabin on 06.07.2011, the accused came to his cabin at 9.15 a.m and showed a letter to him and asked him who is the signatory of this letter. He told her the Managing Director of the Company had signed this letter. Then she asked him as to why her probation was extended. In response to that, he told her that she has to approach the higher officials of the company. Thereafter, the accused asked to settle her accounts and PW1 told her to approach the higher officials. At that point of time, the accused took a chilly powder packet from the mundhanai part of her saree and threw on his face and neck. Since the chilli powder caused burning irritation to his eyes, he came out of his cabin. The accused hit him on his back and shoulder with her chappal and told him that if she did not get her promotion because of him and she would finish him. With the help of his friends, PW1 took treatment at Government Hospital, Hosur. The Hudco Police came there and enquired him and he gave Ex.P.1 complaint.

6. PW2, Chandran was working in Marketing section of the said Anand Electronics Company. On hearing about the occurrence, he

had visited PW1 and found that his eyes were reddish in colour. PW1 informed him that the accused had thrown chilly powder on his eyes and neck and also beaten him with chappal. PW2 took him to Hosur Government Hospital.

7. PW3 was working in the said Anand Electronics Company spoke about the preparation of Rough Sketch and attesting the Observation Mahazar (Ex.P2) and Seizure Mahazar (Ex.P4). The signature of PW3 in Observation Mahazar was marked as Ex.P3. PW4 was also working in the said Anand Electronics Company. He spoke about the preparation of Rough Sketch and attesting the Observation Mahazar (Ex.P2) and Seizure Mahazar (Ex.P4).

8. PW5, Dr. Lakshmi Sree in her evidence stated that she was on duty at Hosur Government Hospital on 06.07.2011. On that date, at about 10.00 a.m. one Periyasami aged 45 years was brought for treatment by his friend Chandran. Periyasami informed her that a known woman had thrown the chilly powder on his eyes and beaten him with her chappal. On examination, she found 1. Both the eyes congested and red in colour; He informed her that he has burning sensation in both eyes 2. He also informed her that he has pain in his back. PW5 opined that both the injuries are simple in nature and she gave Ex.P5 wound certificate. She is of the view that the injury could have happened at the place and the manner stated by Periyasami.

9. PW6 is the Investigation Officer in this case. On receiving the intimation from Hosur Government Hospital, he visited Government Hospital and received the complaint given by PW1 and registered Ex.P.6 FIR in Crime No.291 of 2011 under Section 324, 355 & 506(i) IPC. He visited the scene of occurrence at 14.35 hours on the same day and prepared Ex.P.2 Observation Mahazar, Ex.P.4 Seizure Mahazar, Ex.P.7 Rough Sketch and he recovered the MO1 left over chilly powder and MO2 right leg black colour ladies chappal from the scene of occurrence. After completing the investigation, he filed final report against the accused under sections 324, 355 & 506(i) IPC.

10. On considering the oral and documentary evidence produced in the case, the learned Judicial Magistrate found that the charge under section 506(i) IPC has not been proved and acquitted the accused from this charge. However, the Court found that accused guilty under section 323 and 355 IPC and sentenced the accused to undergo simple imprisonment for one year and fine of Rs.500/- under section 323 IPC. In default to pay the fine, she will have to undergo simple imprisonment for one month. The learned Trial Judge has also convicted and sentenced the accused to undergo simple imprisonment for one year and a fine of Rs.500/- under section 355 IPC. In default to pay the fine she will have to undergo simple imprisonment of one month. Both the

sentences are ordered to run concurrently and the period of imprisonment during the trial is ordered to be set off under section 428 Cr.P.C. Against the said judgment, the accused preferred C.A.No.30 of 2017 before the learned Principal Sessions Judge, Krishnagiri. On reappraisal of the evidence, the learned Principal Sessions Judge, Krishnagiri found no reason to interfere with the Judgment of the learned Judicial Magistrate No.II, Hosur and confirmed the conviction and sentence imposed. Against the said Judgment, this Criminal Revision is filed by the accused as a petitioner in this case.

11. Learned counsel for the petitioner submitted that there is no independent witness examined in this case except the alleged victim and interested witness PW1. There is material contradiction in the evidence of PW1 and other evidence with regard to the manner in which the alleged occurrence had happened. The perusal of the Observation Mahazar shows that the traces of chilly powder was not found in the cabin. If really the accused had thrown the chilly powder, it might have been splattered all over the place in the PW1's cabin at the time of the alleged occurrence. The fact that no trace of chilly powder was found and noted in the Observation Mahazar shows that the alleged attack with the chilly powder is nothing but false and figment of imagination by PW1. The material object has not reached the Court immediately after the occurrence and reached the Court after two years from the date of occurrence. This also creates a strong suspicion in the case of prosecution and possibility of creating the properties for the purpose of the case cannot be ruled out.

12. With regard to the injuries found on PW1 and the treatment, the learned counsel for the petitioner submitted that PW5 stated that the redness (congestion) was caused due to chemical and she has not specifically stated that redness was caused due to chili powder. Doctor had also said that redness could have been caused by coming in contact with the fly while traveling in a two wheeler. Doctor did not say that PW1 informed her that he was beaten with a chappal by the petitioner.

13. It is also submitted by the Learned Counsel for the Petitioner that PW5 Doctor stated that PW1 took treatment in a private hospital before coming to the government hospital, but PW1 and PW2 did not say that PW1 took treatment in a private hospital before coming to the government hospital. No evidence has been produced to show that PW1 took treatment in private hospital before coming for treatment at government hospital. It creates a serious doubt in the case of prosecution with regard

to the treatment taken by PW1 and the cause for such treatment. These contradictions in the evidence of PW1, PW2 and PW5 show that PW1 and PW2 are not speaking truth and they are suppressing the facts and therefore, their evidence could not be believed.

14. It is further submitted by the learned counsel for the petitioner that the chili powder was not sent for chemical analysis. Except the evidence of PW1, there is no evidence to show that the petitioner (accused) was seen in the factory on the date of occurrence. No attendance register was produced to show that the petitioner had attended duty on the date of occurrence. The witness, who said to have identified the petitioner has not been examined as a witness. The accident register was not produced. No reason has been stated as to why the accident register was not produced. Had it been produced, it would have given authenticity to the wound certificate. In the absence of the accident register copy, the entries made in wound certificate, cannot be accepted. In support for his submissions, the learned counsel for the petitioner produced the judgement of the Division Bench of this Court in Criminal Appeal No.47 of 2018 in the case of Thangarasu vs. State rep. by the Inspector of Police

"On a perusal, what was marked before the trial court is only a certified copy of the accident register. The original accident register was not produced. For nonproduction of the original accident register also caused serious doubt as to the earliest version said to have been given to the doctor, which goes to the root of the issue to disbelieve the prosecution case"

and the judgement of this Court in Criminal Appeal No.69 of 2005 in the case of Balasubramaniam and another vs. State rep. by the Inspector of Police.

" Another disturbing feature in the case of the prosecution is the absence of accident register recorded in the Government Hospital, Tiruppur. There is no explanation from the investigation officer for his lapse to get the medical certificate from Tiruppur Government Hospital. If it is available, the court could have got an opportunity to know the information submitted by P.W.1 immediately after the occurrence, as to the occurrence. Since the said document is not available, the court is at a loss to rule out the state of affairs. These circumstances would lead the court to lay suspicion over the prosecution case".

15.The sum and substance of the argument of learned counsel for the petitioner is that the prosecution has miserably failed to prove the charges against the accused. However the courts below without considering these material lapses, omissions and contradictions in the case of the prosecution wrongly convicted and sentenced the petitioner. Therefore, the learned counsel for the petitioner prays for setting aside the judgments of the courts below and acquittal of the accused by allowing this revision petition.

16.In response to the submission made by the learned counsel for the petitioner, the learned Public Prosecutor submitted that the occurrence had happened within the cabin of PW1. There is no one else present in the cabin except the petitioner and PW1 at the time of occurrence. The alleged contradictions in the case of prosecution are only minor contradictions and those contradictions would noway affect the case of the prosecution and therefore, he prayed for confirming the Judgment of the Courts below and for dismissal of this petition.

17.Point for consideration in this petition is, whether the Judgments of the courts below suffer from any incorrectness, illegality and impropriety?

18.It is seen from the materials available in this case, one undisputed fact is that, PW1, the de facto complainant in this case was working as Deputy Manager in Anand Electronics Company, Hosur and the petitioner was an employee in this company. It is seen from the evidence of PW5, Dr. Lakshmi sri that on 6.7.2011 when she was on duty at Hosur Government Hospital, PW1 Periasamy was brought for treatment by his friend Chandran. On examination, she found (1) Both the eyes congested and red in colour; PW1 informed her that he has burning sensation in both the eyes and (2) He informed her that he has pain in his back. He told her that a known woman thrown chili Powder on his eyes and had beaten him with hands in his office on the same morning. Before coming to government hospital, he took treatment in a private hospital. According to the opinion of the Doctor, both the injuries are simple injuries and she gave Ex.P.5 wound certificate.

19.It is true that PW1 and PW2 have not stated anything about taking treatment in the private hospital by PW1. Only the Doctor PW5 has stated that PW1 informed her that before coming to treatment at Government Hospital, he took treatment in the private hospital. Whether non production of treatment record from the private hospital and failure to mention about the treatment taken at private hospital would affect this case is to be considered. It is also true that the chilly powder was not sent for chemical analysis. Ex.P5 wound certificate shows that

chemical substance caused the redness in the eyes. When asked about the chemical substance and the presence of smell of chilly powder, PW5 elaborated that she mentioned in Ex.P5 that redness in the eyes of PW.1 was the result of chemical substance and when chilly powder is thrown on a person, the smell of chilly powder would be present. She continued to state that when PW1 came for treatment, there was smell of chilly powder on him and she mentioned that the redness was the result of chilly powder being thrown on his eyes and she referred that was due to chemical substance i.e., Chilli Powder. Therefore, it is clear from the evidence of PW5 that the burning sensation and congestion (redness) in the eyes of PW1 was the result of chilly powder thrown on his eyes. Though she stated that congestion could have been caused when hit by fly while riding a two wheeler, the other evidence available in this case points to the fact that congestion in PW1's eyes was the direct result of chilly powder.

20.PW5 stated that PW1 had informed her about the treatment taken at private hospital. She had also noted this aspect in Ex.P5 wound certificate. PW1 and PW2 have not stated about the fact of PW1 taking treatment at a private hospital. It may be true that PW1 might have taken treatment at private hospital before coming for treatment at the Government Hospital. However, non production of treatment record of the private hospital and omission of mention about the treatment taken at a private hospital will no way affect the case of the prosecution, when other evidence supports the case of the prosecution. When the wound certificate contains all the details, the non production of accident register copy would no way discredit the genuineness, truthfulness and reliability of Ex.P5 wound certificate. In this view of the matter, this Court finds that the judgments relied on by the learned counsel for the petitioner are not applicable to the facts and circumstances of this case.

21.It is settled in proposition of law that the evidence of an injured witness is entitled to a greater weight and the testimony of such a witness is considered to be beyond reproach. Firm, cogent and convincing ground is required to discard the evidence of an injured witness. When considering the weightage of evidence attached to the injured witness, the Hon'ble Supreme Court in Abdul Sayeed Vs State of Madhya Pradesh in Criminal Appeal No.1243 of 2007 dated 14.09.2010 held that:

"the question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been

injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. "Convicting evidence is required to discredit an injured witness".

22.P.W.1 has clearly stated in his evidence as to the manner in which he was attacked by the petitioner on 06.07.2011 at about 9:15 a.m. Of course, there is no other witness examined to speak about the occurrence. The fact that PW1 and the petitioner had been working in Anand Electronics at Hosur is not disputed by the petitioner. It is true that the prosecution has not produced the attendance certificate or examined the watchman or any other witness to show that the petitioner had attended the duty on the date of occurrence. If really someone else had thrown chilly powder on him, there is no reason for PW1 to falsely implicate the petitioner. Though PW1 was cross examined at length, nothing incriminating was elicited from him to discredit or disbelieve his evidence.

23.PW4 had admitted his attesting Observation Mahazar and Seizure Mahazar. Chilly powder and Black Colour ladies Chappal has been marked as M.O.1 and M.O.2. Here also, nothing incriminating was elicited from him in cross examination to discredit or disbelieve his evidence. It is true that properties were produced before the court with a delay of two years. The delay was the result of in-action on the part of the police. For the acts of omission and commission by the police, the guilty person should not go unpunished, especially when there is a strong evidence available with regard to his/her complicity in the crime. Therefore, this Court is of the considered view that delay in the production of property before the court would no way affect the case of the prosecution.

24.The anxious and careful consideration of oral and documentary evidence produced in this case, clearly establishes that the petitioner had thrown chilly powder on the face of PW1 and beaten him with her chappal and caused injury. The Courts below have properly analysed and appreciated the evidence and rightly came to the conclusion that the petitioner had committed the offences punishable under section 323 & 355 IPC. This court finds no reason to interfere with the findings of the courts below. However, considering the fact that the petitioner is a woman and has been facing this case from the year 2013, this

Court is of the considered view that the sentence may be modified and lesser sentence could be ordered. Accordingly, while confirming the conviction ordered under section 323 & 355 IPC against the petitioner, this court modifies the sentence from simple imprisonment for one year each to simple imprisonment for three months each under sections 323 and 355 IPC and fine imposed under both the sections is retained.

25. In the result, this Criminal Revision Petition is partly allowed and this Court confirms the conviction recorded by the learned Principal Sessions Court, Krishnagiri and modifies the sentence as follows:

"Conviction recorded under sections 323 & 355 IPC against the petitioner is confirmed and the sentence of simple imprisonment for one year each under sections 323 & 355 IPC is modified to that of simple imprisonment of three months each and the fine of Rs.500/- imposed under both the sections is retained. The substantive sentences are ordered to run concurrently. Period of sentence, if any, undergone by the petitioner during trial is ordered to be set off under section 428 of Cr.P.C".

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Sessions Court,
Krishnagiri.

2. The Judicial Magistrate No.II,
Hosur.

3. The Chief Judicial Magistrate,
Krishnagiri.

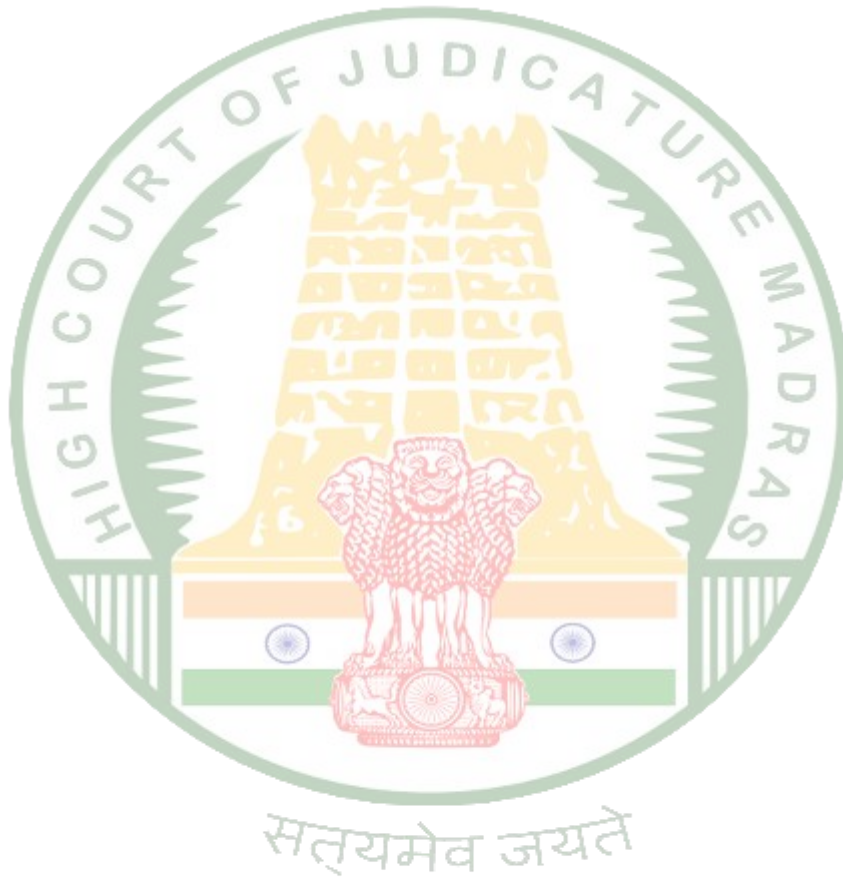
4. The Inspector of Police,
Hudco Police Station,
Hosur,
Krishnagiri District.

5.The Public Prosecutor,
High Court, Madras.

+2ccs to M/s.T.Sathiyamoorthy, Advocate, S.R.No.43094

Pre-delivery order in
Crl.RC.No.20 of 2018

KV(CO)
KKV/22/02/2021



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