

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On: 08.12.2020
Pronounced On: 16.12.2020

CORAM

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

CrI. R.C.No.21 of 2018

Manivasagam

.. Petitioner

Vs.

State Rep by
The Sub Inspector of Police,
Chidambaram Taluk Police Station,
Chidambaram,
Cuddalore District.
(Crime No.287 of 2012)

.. Respondent

Prayer: This Criminal Revision petition is filed U/s 397 and 401 of Cr.P.C to call for the records pertaining to the Judgment dated 23.11.2017 passed in C.A.No.29 of 2017 on the file of the learned II Additional District and Sessions Judge, Chidambaram confirming the Judgment dated 07.03.2017 passed in C.C.No.07 of 2013 on the file of the Judicial Magistrate No.2, Chidambaram and set aside the same by allowing the above Revision.

For Petitioner : Mr.Om Sai Ram
For Respondent : Mr. K. Madhan
Government Advocate(CrI side)

ORDER

This Criminal Revision is directed against the Conviction and sentence passed by the learned II Additional District and Sessions Judge, Chidambaram in C.A.No.29 of 2017 on 23.11.2017 by confirming the conviction and sentence passed by the learned Judicial Magistrate No. II Chidambaram, in C.C.No.07 of 2013 on 07.03.2017 under Section 324 of I.P.C directing the petitioner to undergo rigorous imprisonment for a period of 3 months and to pay a fine of Rs.1,000/- in default of payment of fine to undergo 1 month simple imprisonment.

2. The prosecution version is that on 07.10.2012 at 7.00 pm the petitioner /accused scolded the defacto complainant i.e Vijayalakshmi in a filthy language and had beaten her with hands. When the defacto complainant asked him why he was beating her, he responded by saying that he would do what he did, went inside his house, came back with an Aruval and attacked the defacto complainant. When the defacto complainant blocked, she suffered injury on her left forearm. The investigating Officer filed a final report against the petitioner under Section 294(b) and 326 of I.P.C.

3. After the petitioner entered appearance and furnishing copies U/s 207 of Cr.P.C, the trial Court has framed charges against the petitioner under Section 294(b) and 326 of I.P.C and the trial was commenced. The prosecution examined P.Ws.1 to 8 witnesses, marked Ex.P.1 to Ex.P.8 documents.

4. The case of the prosecution as discerned from the evidence of prosecution witness in brief is as follows: P.W.1 is the defacto complainant and victim in this case. P.W.3 is the husband of the defacto complainant. P.W.2 and 4 are the eyewitness. P.W.4 has not supported the case of the prosecution. P.W.3 has not seen the occurrence. We are left to the evidence of P.W.1 and P.W.2 with regard to the occurrence. It is seen from the evidence of P.W.1 and P.W.2 that on 07.10.2012 at about 7.00 p.m the accused scolded P.W.1 in filthy language and hit her with his hand, pushed her and attacked her with Aruval. Immediately after the occurrence P.W.1 was taken to Hospital. P.W.7 Dr. Karunanidhi who was on duty at 8:30. p.m on 07.10.2012 in Annamalai University Emergency ward examined P.W.1. She informed him that she was attacked by an known person with Aruval. The Doctor found: 1) 8 x 6 cm lacerated injury on the left forum 2) median nerve was found

severed. Doctor opined that this injury is a grievous injury and gave Ex.P.4 Wound Certificate.

5. P.W.8 the sub Inspector of Police, Taluka Police Station visited P.W.1 on the intimation received from the Raja Muthia medical College Hospital, P.W.1 was taking treatment in the Hospital and he recorded Ex.P.1 statement and registered Ex.P.5 F.I.R in Crime No.287 of 2012 U/s 294(b), 323 and 324 of I.P.C. He visited the scene of occurrence and prepared Ex.P.6 Observation Magazaar in the presence of P.W.5 and P.W.6. He also prepared Ex.P.7 rough sketch. After completing the investigation and on the basis of medical evidence he altered the section from 294(b),323 and 324 of I.P.C to 294(b) and 326 of I.P.C and filed the final report.

6. Petitioner was questioned with regard to the incriminating evidence available against him and he denied the evidence as false. Petitioner has not produced any evidence.

7. On perusing the evidence produced before the Court, the learned Magistrate found the petitioner guilty U/s 324 of I.P.C and convicted and sentenced him to undergo Rigorous imprisonment for 3 months and to pay a

fine of Rs.1,000/- in default of payment of fine to undergo simple imprisonment for one month. Against that Judgment the accused who is the revision petitioner before this Court filed a Criminal Appeal in C.A.No. 29 of 2017 on the file of the II Additional District and Sessions Judge, Chidambaram. The learned Judge confirmed the Judgment of the learned Trial Magistrate and the conviction and sentence imposed thereon. Against which this Criminal Revision is preferred.

8. The learned counsel appearing for the petitioner submitted that prosecution has not proved the charges against the accused and submitted following grounds in support of his argument. The prosecution failed to prove the genesis of occurrence through P.W.4 and P.W.1's daughter; the weapon alleged to have been used in the occurrence has not been recovered by the investigation officer and therefore it is fatal to the case of the prosecution; conviction recorded U/s 324 of I.P.C without recovering the weapon cannot be sustained; the non examination of P.W.1's daughter is fatal to the prosecution case. The sentence and fine imposed on the petitioner is excessive; it is seen from the evidence of P.W.7 that the injury found in P.W.1 can be caused even by a scratch with a Bamboo Stick; infact P.Ws.1 and 2

were the quarreling with each other and in the course of the quarrel, P.W.1 suffered the injury; there was previous enmity between the petitioner and the defacto complainant. So saying, the learned counsel for the petitioner submitted that since there was previous enmity between the petitioner and the defacto complainant, taking advantage of the injuries suffered in a scuffle between P.W.1 and P.W.2, this case is foisted falsely against the petitioner. Therefore, the learned counsel for the petitioner prayed for allowing the Revision petition by setting aside the Judgments of the Lower Courts.

9. Per Contra, the learned public prosecutor submitted that even if it is admitted that there is previous enmity between the petitioner and the defacto complainant, that enmity could have been the reason for the occurrence; there is no necessity for P.W.1 to falsely implicate the petitioner, if there was really a scuffle between the P.W.1 and P.W. 2 and she suffered injury in the scuffle. Infact P.W.1 suffered grievous injury in her left hand during the attack by the petitioner with an Aruval, which resulted in lacerated injury and severance of median nerve. Since, the X-ray was not produced the petitioner was convicted under Section 324 of I.P.C instead of 325 or 326 of I.P.C. The non recovery of weapon used in the commission of offence is not fatal to the case of the prosecution. Due to the omission and commission of investigating officer the

guilty should not go unpunished. The learned public prosecutor prayed for confirming the Judgments of the Lower Courts and for the dismissal of this Criminal Revision petition.

10. The point for consideration in this petition is whether the impugned order suffers from any incorrectness, illegality or impropriety.

11. Some of the undisputed facts found in this case are that lacerated injury measuring 8 x 6 cm was found on the left arm of the petitioner. Ex.P.4 Wound Certificate and the evidence of P.W.7 Dr. Karunanidhi shows that P.W.1 had this injury at the time of admission in Annamalai Hospital Research Center Medical research Hospital on 07.10.2012 at about 8:30 p.m. This injury resulted in the severance of Median nerve and that was treated with surgical procedure. Though P.W.7 stated during the cross examination that there is a possibility of suffering this injury when hit against a Bamboo stick, this Court is of the view that however fast you hit against the Bamboo stick this kind of lacerated injury is not possible. Therefore the learned counsel for the petitioner cannot take advantage of this particular evidence of P.W.7 Doctor.

12. With regard to the injury suffered by P.W.1, she had clearly stated that accused scolded her in filthy language and attacked her with Aruval. It is true that she admitted that she was not in talking terms with the petitioner and there is previous enmity between them. Further she denied the suggestion that she and P.W.2 fought with each other and she suffered injury by falling in a Bamboo tree and also denied the suggestion that this case was falsely foisted against the petitioner because of previous enmity. P.W.2 had also sufficiently corroborated the evidence of P.W.1 with regard to the occurrence and the role of petitioner in causing injury to P.W.1.

13. It is also possible that previous enmity was the main reason for the occurrence. Admittedly there was previous enmity between the petitioner and the defacto complainant. They were not in talking terms. One more submission by the learned counsel for the petitioner is that the non examination of the P.W.1's daughter is fatal to the case of the prosecution. It is seen from the complainant that P.W1's daughter pushed the cycle which was kept in front of the entrance. When she scolded her daughter the petitioner misunderstood that P.W.1 was scolding him and he started scolding and attacking her.

14. It is desirable that the daughter of P.W.1 could have been examined. However, the claim that the failure to examine the daughter of P.W.1 is fatal to the case of prosecution is too tall a claim. In the facts and circumstances of this case, where P.W.1 and P.W.2 had clinchingly proved the case of the prosecution, this Court is of the considered view that the non-examination of P.W.1's daughter is not fatal to the case of the prosecution.

15. Admittedly, P.W.1 suffered grievous injury and that injury was caused by the petitioner. There is no reason for P.W.1 to screen the real offender, if the injury had been caused by some one else.

16. 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". (Vide Ramlagan Singh & Ors. v. State of Bihar, AIR 1972 SC 2593; Malkhan Singh & Anr. v. State of Uttar Pradesh, AIR 1975 SC 12; Machhi Singh & Ors. v. State of Punjab, AIR 1983 SC 957; Appabhai & Anr. v. State of Gujarat, AIR 1988 SC 696; Bonkya alias Bharat Shivaji Mane & Ors. v. State of Maharashtra, (1995) 6 SCC 447; Bhag Singh & Ors. (supra); Mohar & Anr. v. State of Uttar Pradesh, (2002) 7 SCC 606; Dinesh Kumar v. State of Rajasthan, (2008) 8 SCC 270; Vishnu & Ors. v. State of Rajasthan, (2009) 10 SCC 477; Annareddy Sambasiva Reddy & Ors. v. State of Andhra Pradesh, AIR 2009 SC 2261; Balraje alias Trimbak v. State of Maharashtra, (2010) 6 SCC 673).

17. It is clearly and categorically proved by the evidence of prosecution witnesses. P.Ws.1, 2 and 7 that the petitioner caused the injury found in Ex.P.4 to P.W.1. There is nothing to discredit the evidence of P.W.1 who is an

injured witness. This injury could have been caused by Aruval. When there is clear and categorical evidence to prove the manner in which P.W.1 suffered injury and the act of the petitioner in causing the injury, this Court is of the considered view that the failure to recover the weapon used for the commission of the offence is not fatal to the case of the prosecution.

18. As rightly pointed out by the learned Public Prosecutor that the guilty should not go unpunished for the acts of commission or omission by the investigating officer. The Trial Court and the Appellate Court gave cogent and convincing reasons for recording the conviction U/s 324 of I.P.C than U/s 326 of I.P.C. The reason is non production of X-ray and the weapon. Infact the Court below extended some allowance to the petitioner, for the omission on the part of the investigating office to recover the weapon and for failure to produce the X-ray. Under the circumstances, this Court is of the considered view that the conviction recorded against the petitioner U/s 324 of I.P.C and sentence imposed thereon by the Courts do not suffer from any factual or legal error and does not call for any interference.

19. In this view of the matter, the Judgment of the learned II Additional Sessions District and Sessions Judge, Chidambaram, in C.A.No.29 of 2017

confirming the Judgment of learned Judicial Magistrate No.2, Chidambaram in C.C.No.07 Of 2013 is confirmed and this Criminal Revision petition is dismissed. The Trial Court is directed to issue warrant against the petitioner for undergoing the sentence.

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Index : Yes /No

Internet : Yes/No

Speaking order/ Non Speaking order

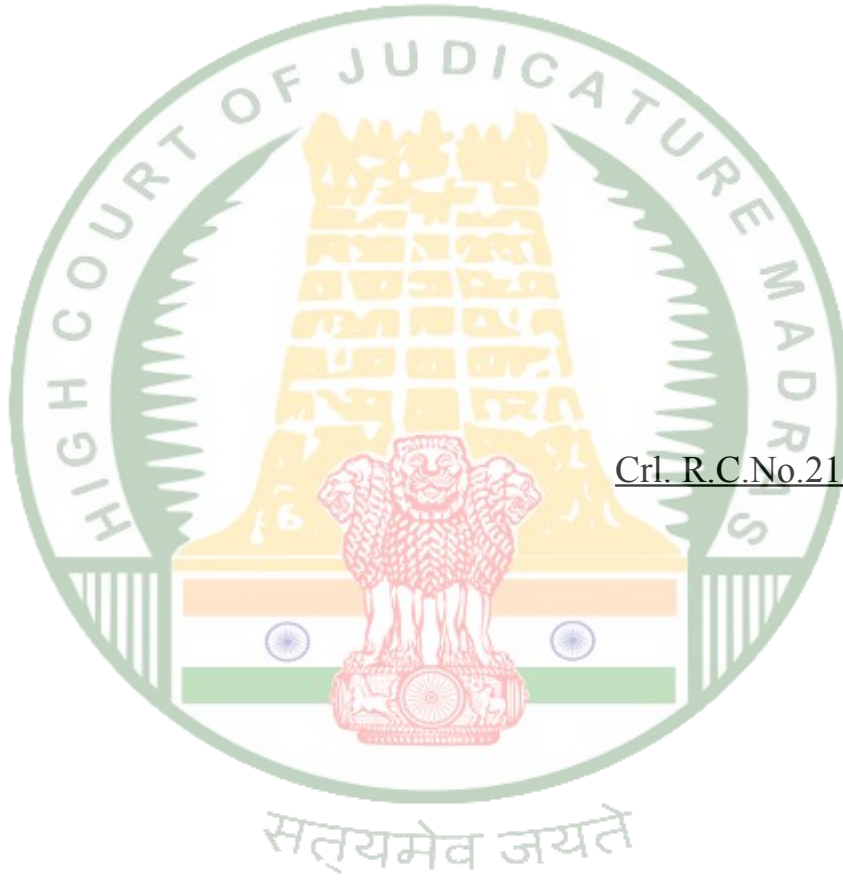
To

The learned II Additional District and Sessions Judge, Chidambaram

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G.CHANDRASEKHARAN

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