

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.01.2020

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.R.C.No.1087 of 2013

Kaveri

.. Petitioner/Accused

Vs

State by

The Inspector of Police

Bargur Police Station

Krishnagiri District

Cr.No.442/07

.. Respondent/Complainant

Criminal Revision preferred under Section 397 and 401 Cr.P.C. to set aside the judgment and order dated 06.03.2013 passed by the Principal District and Sessions Judge, Krishnagiri in C.A.No.86 of 2008 confirming the judgment and order dated 15.12.2008 passed by the Assistant Sessions Judge, Krishnagiri in S.C.No.68 of 2008.

For Petitioner : Mr.K.Thiruvengadam

For Respondent : Mr.R.Surya Prakash

Govt. Advocate

O R D E R

This Criminal Revision has been preferred challenging the judgment and order dated 06.03.2013 passed by the Principal District and Sessions Judge, Krishnagiri in C.A.No.86 of 2008 confirming the judgment and order dated 15.12.2008 passed by the Assistant Sessions Judge, Krishnagiri in S.C.No.68 of 2008.

2.The prosecution case is as follows :

2.1.Kaveri (A1) had borrowed Rs.15,000/- from Mani (P.W.1) for purchasing cattle and had not returned the amount. Hence, there was bitterness between the two.

2.2.Mani (P.W.1) took this matter to the local panchayat for settlement, but in vain. This further infuriated Kaveri (A1). On 25.07.2007, around 8.00 p.m., while Mani (P.W.1) was returning home from Bargur, in his motorcycle with Govindasamy (P.W.2), he dropped Govindasamy (P.W.2) in his house and was proceeding to his (Mani-P.W.1) house, he was waylaid by Kaveri

(A1) and Govindaraj (A2) and was indiscriminately attacked by Kaveri (A1) with a billhook (M.O.1). Mani (P.W.1) hollored and on hearing it, his father Chennaiyan (P.W.3) and others came to his rescue. On seeing them, Kaveri (A1) and Govindaraj (A2) decamped.

3. Mani (P.W.1) was rushed to the Government Hospital, Bargur, where he was examined by Dr. Paramasivam (P.W.11), who in his evidence as well in the Accident Register copy (Ex.P3), has noted the following injuries :

"1. Deep laceration on the right half of the face and head from right ankle of mouth to mid line posterior head with hemisection of right ear 35cm X 5cm X bone depth

2. Laceration 6cm X 1cm X bone depth - right posterior scalp

3. Contusion 5cm X 5cm - occipital scalp

4. Diffuse 15cm X 10cm - contusion right upper one-third of arm

5. Two lacerations 4cm X 2cm X 2cm - right upper arm

6. Cut injury 4cm X 2cm X 2cm - right forearm upper one-third

7. Cut injury 3cm X 2cm X 2cm - right hand dorsum"

4. Dr. Paramasivam (P.W.11) gave him first aid and referred him to St. John's Medical College and Hospital, Bangalore for further treatment. The discharge summary shows that Mani (P.W.1) had suffered fracture. Based on that, Dr. Paramasivam (P.W.11) had opined that the injury was grievous. While Mani (P.W.1) was taking treatment in the Government Hospital, Bangalore, the police received an intimation.

5. On receipt of intimation from the Government Hospital, Bangalore, the police went there and recorded the statement (Ex.P1) of Mani (P.W.1) and registered a case in Bargur police station crime No.442 of 2007 on 23.07.2007 at 05.00 hours under Sections 341 and 307 IPC against Kaveri (A1) and an unknown person aged about 30 years. The complaint statement (Ex.P1) and the F.I.R. (Ex.P7) reached the jurisdictional Magistrate at 11.30 a.m. on 23.07.2007.

6. The Investigating Officer went to the place of occurrence and prepared the rough sketch (Ex.P8) and observation mahazar (Ex.P2). Kaveri (A1) was arrested and the billhook (M.O.1) used by him was recovered. After completing the investigation, the police filed a final report in P.R.C.No.38 of 2007 before the Judicial Magistrate, Krishnagiri under Section 341 and 307 IPC against Kaveri (A1) and Govindaraj (A2).

7. On appearance of the accused, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session in S.C.No.68 of 2008 and was made over to the Court of Session, Krishnagiri, for trial. The trial Court framed charges under Sections 341 and 307 IPC against Kaveri (A1) and Govindaraj (A2). When questioned, they pleaded "not guilty".

8. To prove the case, the prosecution examined 16 witnesses, marked 8 exhibits and one material object. When the accused were questioned under Section 313 Cr.P.C on the incriminating circumstances appearing against them, they denied the same. No witness was examined on the side of the accused nor any document marked.

9. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 15.12.2008 in S.C.No.68 of 2008, acquitted Govindaraj (A2), but convicted and sentenced Kaveri (A1) as under :

Provision under which convicted	Sentence
Section 341 IPC	1 month rigorous imprisonment
Section 307 IPC	5 years rigorous imprisonment and fine of Rs.1,000/-, in default to undergo 3 months rigorous imprisonment

The aforesaid sentences were ordered to run concurrently. The appeal in C.A.No.86 of 2008 that was filed by Kaveri (A1) was dismissed by the Principal District and Sessions Judge, Krishnagiri on 06.03.2013. Aggrieved by the concurrent findings of the Courts below, the petitioner has filed the present criminal revision under Section 397 read with 401 Cr.P.C.

10. Heard Mr.K.Thiruvengadam, learned counsel for the petitioner and Mr.R.Surya Prakash, learned Government Advocate appearing for the respondent State.

11. It is trite that while exercising revisional jurisdiction in a case involving concurrent findings of fact arrived at by two Courts below, the High Court cannot act as a second appellate Court [See State of Maharashtra vs. Jagmohan Singh Kuldeep Singh Anand and Others, etc. (2004) 7 SCC 659]. Very recently, in Bir Singh vs. Mukesh Kumar [(2019) 4 SCC 197], the Supreme Court has held as under:

"17.As held by this Court in Southern Sales & Services v. Sauermilch Design and Handels GmbH [Southern Sales & Services v. Sauermilch Design and Handels GmbH, (2008) 14 SCC 457], it is a well-established principle of law that the Revisional Court will not interfere even if a wrong order is passed by a court having jurisdiction, in the absence of a jurisdictional error. "

(emphasis supplied)

12.Mr.K.Thiruvengadam contended that the evidence of Mani (P.W.1) was rejected by the trial Court qua Govindaraj (A2) and therefore, it should not be believed qua Kaveri (A1).

13.Per contra, learned Government Advocate refuted the contentions put forth by the learned counsel for the petitioner.

14. This Court carefully perused the evidence of Mani (P.W.1) and Chennaiyan (P.W.3). Mani (P.W.1) was examined in-chief on 08.05.2008 and in his evidence, he has stated that, he had given Rs.15,000/- as loan to Kaveri; Kaveri did not return the amount; so, he approached the village panchayat, but, nothing happened; on 25.07.2007, around 08.00 p.m., he returned home from Bargur in his motorcycle with Govindasamy in the pillion; he dropped Govindasamy in his house and was proceeding to his house; when he neared his house, Kaveri and Govindaraj waylaid him and Kaveri attacked him with a billhook on his right side of face and neck, two cuts on the head (one near the eye due to which, he has impaired vision), right shoulder (where he suffered fracture due to which, rod has been implanted), on hearing his shouts, Chennaiyan (P.W.3) and Madhappan (P.W.4) came there and on seeing them, the accused ran away; he was carried to the Government Hospital by an auto rickshaw, where the police came and enquired him and he affixed his left thumb impression in the statement recorded by the police; from Krishnagiri hospital, he was taken to Bangalore hospital, where x-ray of the head was taken and he was under treatment for 20 days. He was not cross-examined on the same day, but was recalled on 22.09.2008. The defence was not able to make any serious dent in his testimony.

15.In the cross-examination, Mani (P.W.1) has stated that, he lost three teeth also. Evidence has been generally corroborated by Chennaiyan, who has stated that, he went to the place of occurrence, after hearing the cry for help of Mani and found Kaveri and Govindaraj escaped. In the cross-examination, he specifically stated that there was sufficient light in the place of occurrence. The injuries suffered by Mani has been

noted by Dr.Paramasivam in the Accident Register copy (Ex.P3). Thus, the medical evidence amply corroborates the testimony of the victim, Mani (P.W.1).

16.As regards the acquittal of Govindaraj (A2), the trial Court had found that Mani (P.W.1) had not given the name of Govindaraj (A2) in his statement (Ex.P1) and has only stated that, an unknown person aged about 30 years was with Kaveri (A1) during the attack. The prosecution has failed to conduct test identification parade to fix Govindaraj (A2) as the other assailant. Only in those circumstances, Govindaraj (A2) was acquitted. It cannot be said to be improper. The principle falsus in uno falsus in omnibus does not apply in India and therefore, the entire evidence of Mani (P.W.1) cannot be rejected in toto.

17.In fine, this Court does not find any infirmity in the findings of fact arrived at by the Courts below warranting interference. Mr.Thiruvengadam submitted that this Court may show some leniency in the sentence of imprisonment. The fact remains that Mani (P.W.1) escaped death by a whisker. Mani (P.W.1) had suffered serious injuries on his head and his vision is impaired. Keeping this in mind, interests of justice will be served, if the substantive sentence of imprisonment imposed on the petitioner under Section 307 IPC is reduced to three years rigorous imprisonment.

As a result, this appeal is partly allowed. The conviction and sentence imposed on the petitioner for the charge under Section 341 IPC is confirmed. As regards the charge under Section 307 IPC is concerned, the conviction imposed therefor is confirmed, however, the sentence of rigorous imprisonment of five years imposed by the trial Court is reduced to three years rigorous imprisonment. The sentence of fine and default sentence stand unaltered. The trial Court is directed to secure the petitioner and commit him to prison to undergo the remaining period of sentence, if any. The Registry is directed to transmit the original records to the respective Courts forthwith.

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

gya

To

1.Principal District and Sessions Judge
Krishnagiri

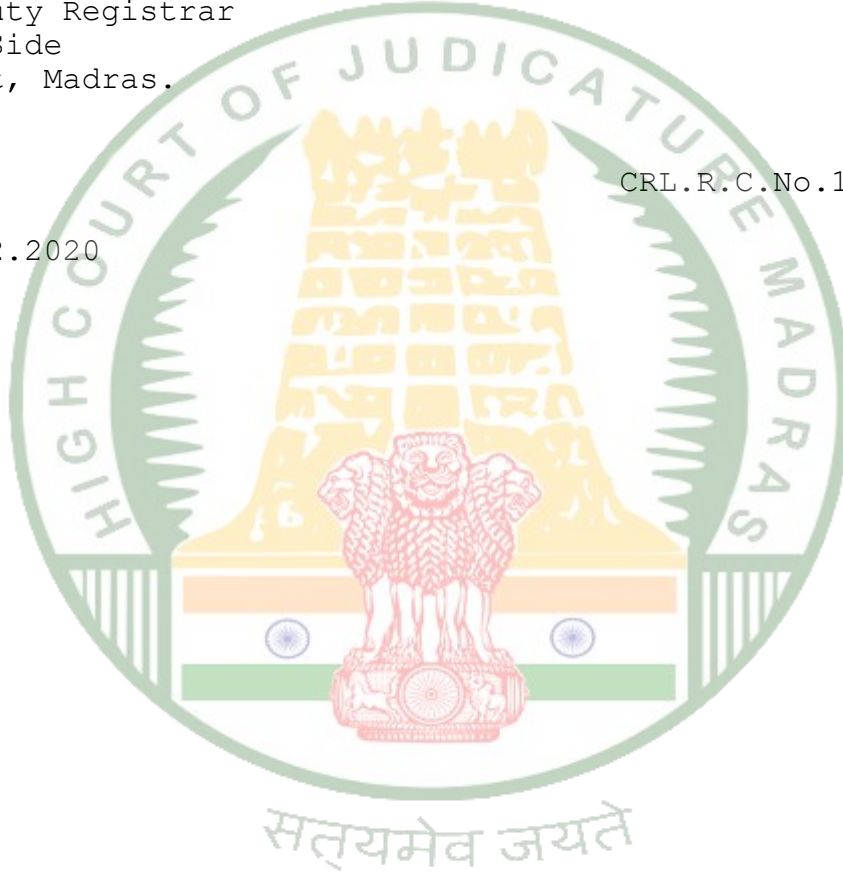
2.Assistant Sessions Judge
Krishnagiri

3.The Inspector of Police
Bargur Police Station
Krishnagiri District

4.The Deputy Registrar
Criminal Side
High Court, Madras.

CRL.R.C.No.1087 of 2013

RR(CO)
CSR: 20.02.2020



WEB COPY