

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2020

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

Crl RC.No.388 of 2014

A.Marialasar

...Petitioner

Vs.

State represented by
The Sub-Inspector of Police
Tirupattur Taluk Police Station,
Tirupattur,
Vellore District

...Respondent

Prayer:

Criminal Revision filed under Section 397 read with Section 401 of the Criminal Procedure Code against the order of conviction passed in Criminal Appeal No.21 of 2013, dated 28.03.2014 on the file of Additional District and Sessions Judge, Tirupattur, Vellore District against the order of conviction passed in C.C.No.85 of 2013, dated 13.09.2013 on the file of Judicial Magistrate Court No.II, Tirupattur, Vellore District.

For Petitioner : Mr. PA. Sudesh Kumar

For Respondent : Ms. S. Thankira
Government Advocate (Crl. Side)

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ORDER

The respondent police has laid the final report against the Revision Petitioner/accused under Section 325 of IPC.

2. Briefly stated, according to the prosecution, land dispute existed between the accused and his brother Varaprasadam (P.W.2) and resultantly they have been inimical towards each

other and in connection with the land dispute, local panchayat was convened. However, the accused was not satisfied with the verdict of the panchayat and therefore, instead of complying with the decision of the panchayat, it is put forth that the accused, with an intentional motive of attacking his brother, threw a broken brick piece on him. However, the brick fell on the daughter of P.W.2, namely, Archana Flora (P.W.1) and caused grievous injury on her head and thus according to the prosecution, the accused has committed the offence punishable under Section 325 of IPC.

3. To sustain the prosecution case, P.Ws.1 to 10 were examined and Exs.P1 to P11 were marked. M.O.1 was also marked. After the conclusion of the prosecution evidence, the accused was examined under Section 313 of Cr.PC, qua the incriminating evidence tendered against him by the prosecution witnesses and the accused had denied the same. On the side of the accused no oral and documentary evidence and no M.O. was marked.

4. The Judicial Magistrate Court No.II, Tirupattur, Vellore District, who conducted the trial, on an appreciation of the materials on record, both oral and documentary, convicted the accused for the offence under Section 325 of IPC and sentenced him to undergo simple imprisonment for two years and also to pay a fine of Rs.2,000/-, in default, to undergo simple imprisonment for three months.

5. The accused, challenged the abovesaid conviction and sentence imposed on him by the trial court before the appellate court. The Appellate Court, on an appreciation of the materials available on record, concurred with the determination of the trial court in holding that the accused is guilty under Section 325 of IPC, however, modified the sentence imposed on him and sentenced him to undergo simple imprisonment for a period of three months and to pay a fine of Rs.2,000/-, in default, to undergo simple imprisonment for one month. Challenging the same, this Criminal Revision Petition has been preferred.

6. As above pointed out, a land dispute existed between the accused and his brother (P.W.2). Though the panchayat had been convened to mediate the land dispute between them, it is found that the accused was dis-satisfied with the decision of the panchayat and with that anger, developed the motive to attack his brother P.W.2 and threw a broken brick piece on him. However, the thrown brick piece fell on the head of P.W.2's daughter (P.W.1) and caused her grievous injury.

7. With reference to the abovesaid case of the prosecution, it is found that P.Ws.1 and 2 have clearly spoken about the land dispute, which existed between the parties and also the

convening of the panchayat on the date of occurrence and the presence of the accused in the panchayat as well as the accused not being satisfied with the verdict of the panchayat and accordingly, it is found from the evidence of P.Ws.1 and 2, the accused, in a mood of fit of anger, decided to attack P.W.2 and with that motive, threw the brick piece on him. However, the brick piece fell on the head of P.W.2's daughter and thereby, she sustained grievous injury. The evidence of P.Ws.1 and 2 are clear and reliable with reference to the abovesaid attack inflicted by the accused upon P.W.1 and therefore, it is seen that the courts below had rightly believed the evidence of P.Ws.1 and 2 and the other prosecution witness in coming to the conclusion that the accused had an intention and motive to cause injury to P.W.2, however, P.W.1 became the victim.

8. That P.W.1 had sustained grievous injury due to the attack committed by the accused could be gathered from the evidence of the medical officer examined as P.W.5 as well as the wound certificate marked as Ex.P2. It is thus found that the first injury sustained by P.W.1 is a grievous injury and the other injury is a simple injury.

9. The accused would contend that there is a delay in registering the FIR. However, the abovesaid contention does not merit acceptance. From the materials available on record, it is found that the courts below had discussed about the same and noted that immediately after the incident, the injured person, namely P.W.1, was taken to hospital for treatment and the same could be gathered from the wound certificate marked as Ex.P2 and even the doctor has recorded that the injured was attacked by a known person and after receiving intimation from the hospital, the police had rushed to the hospital and obtained statement from P.W.1, who was an inpatient at that point of time. Though there is some delay in the registration of FIR, as rightly observed by the courts below, the delay in the registration of FIR would not raise any doubt upon the credibility of the complaint given by the complainant P.W.1 and when as above pointed out, the accused and the family of P.Ws.1 and 2 are not in good terms on account of the land dispute and the accused also being dis-satisfied with the decision of the panchayat, instead of complying with the said decision, with a motive and intention to attack P.W.2, threw a broken brick piece on P.W.2, however, P.W.1 became victim to the attack of the accused.

10. In the light of the abovesaid factors, it is seen that the courts below had rightly analysed the evidence placed on record and came to the conclusion that the accused has committed the offence punishable under Section 325 of IPC.

11. During the course of arguments, the counsel for the

accused would contend that inasmuch as the accused had no intention to attack P.W.1 and the attack was also committed due to grave and sudden provocation, the offence falls under Section 334 IPC. However, the abovesaid contention does not merit acceptance. By no stretch of imagination could it be held that the attack perpetrated by the accused was due to grave and sudden provocation. On the other hand, as above pointed out, the accused had the intention and developed the motive to attack P.W.2 on account of the panchayat decision going against him and with that motive and intention to cause injury to P.W.2, threw the broken brick piece on him. Thus, as noted by the courts below, when the accused lifted the brick stone and threw the same against P.W.2, he is well aware that the same would cause P.W.2 a grievous hurt, however, the brick piece thrown by the accused, instead of falling on P.W.2, fell on the head of P.W.2 and caused her grievous injury. Therefore, the abovesaid act committed by the accused cannot be held to be due to grave and sudden provocation on the part of P.Ws.1 and 2 and merely because the target has missed and P.W.1 became the victim, it cannot be held that the accused had only committed the offence attributed against him due to grave and sudden provocation. In such view of the matter, the argument of the counsel for the Revision Petitioner that the accused act would only fall within the purview of Section 334 IPC and not under Section 325 IPC, as such, cannot be accepted. The abovesaid aspects of the matter, had been rightly analysed in the proper perspective in accordance with law by the courts below. As above pointed out, the appellate court has also modified the sentence imposed on the accused by the trial court. In such view of the matter, no further leniency is required to be shown in favour of the accused by reducing the quantum of sentence imposed on him by the appellate court.

12. In the light of the abovesaid discussions, the Criminal Revision petition fails and is accordingly dismissed. The trial court is directed to secure the presence of the accused to undergo the sentence of imprisonment imposed on him as per law.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

bga

To

1. The Additional District and Sessions Judge,
Tirupattur,
Vellore District.

2. The Judicial Magistrate Court No.II,
Tirupattur,
Vellore District.

+1 cc to M/s. P.A.Sudesh Kumar, Advocate, S.R.No.19015/20

Crl RC.No.388 of 2014

GP(CO)
RN(20/05/2020)



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