



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.R.C(MD)No.205 of 2016

M.Kullan @ Palanisamy

... Petitioner

Vs

State Rep. by
The Inspector of Police,
Velliyanai Police Station,
Karur District.
(Crime No.33 of 2011)

... Respondent

PRAYER: Petition filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the records pertaining to the Judgment passed in C.A.No.15 of 2012, dated 27.01.2016 on the file of the Session Judge and Fast Track Court, Mahalir Neethimandram, Karur confirming the Judgment passed in C.C.No.77 of 2011, dated 16.02.2012 on the file of the Judicial Magistrate No.2, Karur and set aside the same .

For Petitioner : Mr.G.Karuppasamy Pandiyan

For Respondent : Mr.A.Robinson

Government Advocate (Crl.side)

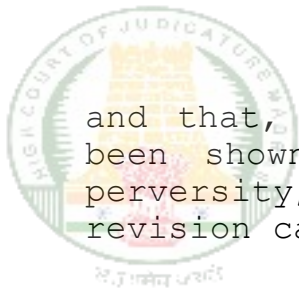
ORDER

Heard the learned counsel for the revision petitioner and the learned Government Advocate (Crl.side) for the respondent.

2.The petitioner herein was prosecuted for the offences under Sections 394 r/w 397 of IPC in S.C.No.77 of 2011 on the file of the Judicial Magistrate No.2, Karur. The prosecution examined as many as 12 witnesses and marked Ex.P1 to Ex.P8. M.O.1 and M.O.2 were also marked. The petitioner was found guilty of the offence, with which, he was charged and sentenced to seven years rigorous imprisonment. Questioning the same, the petitioner filed C.A.No.15 of 2012 before the Sessions Judge and Fast Track Court, Mahalir Neethimandram, Karur. By Judgment dated 27.01.2016, the appeal was dismissed and the order passed by the trial Court was confirmed. Challenging the same, this revision case came to be filed.

3.The learned counsel appearing for the petitioner reiterated all the contentions set out in the memorandum of grounds and wanted this Court to set aside the impugned Judgment and allow the revision and acquit the petitioner.

4.Per contra, the learned Government Advocate (Crl.side) submitted that this Court is only exercising revisional jurisdiction



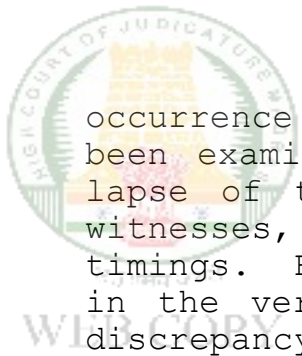
and that, therefore, the Judgments of the Court below having not been shown to be suffering from any material irregularity or perversity, need not be disturbed. He called for dismissal of the revision case.

5.I carefully considered the rival contentions and went through the evidence on record.

6.The case of the prosecution is that on 10.02.2011 at about 7.45 p.m., the defacto complainant Balamani was having food in her house, when the revision petitioner herein trespassed into the house, threatened her by brandishing knife-M.O.2 and snatched away the gold chain weighing about 6 ½ sovereigns from her person. When the defacto complainant resisted, the petitioner caused her grievous injuries and escaped with the gold chain. In this regard, Crime No.33 of 2011 was registered on the file of the Velliyanai Police Station. FIR has been marked as Ex.P5 through P.W.9. It is seen therefrom that it was registered on 10.02.2011 at about 10.30 p.m. It is the specific case of the prosecution that the respondent police received intimation from the Government Hospital, karur, where, the injured witness was taking treatment and that, thereafter, the Head Constable Thangasamy went to the Hospital and recorded her statement and based on the same, FIR was registered.

7.As rightly pointed out by the learned counsel appearing for the revision petitioner, Balamani-P.W.1 as well as her husband Ambikapathy-P.W.2 have clearly deposed that after the occurrence took place, they straight away went to the Velliyanai Police Station. The Police had sent them to the Government Hospital, Karur. But the prosecution would claim that the local Police Station received an intimation from the Hospital and based on the same, one of the police personnel went to the Hospital and obtained information. The two clearly do not go together. There is considerable merit in the contention of the petitioner's counsel that the prosecution has not placed all the facts before the Court. There is no reason as to why, the initial complaint lodged by the injured witness has been suppressed. It is possible that the injured witness made only a oral complaint and she did not give any written complaint. But then, this could have been clearly disclosed by the prosecution.

8.I can unhesitatingly come to the conclusion that the prosecution for best reasons known to them have suppressed the actual sequence of events. The prosecution case is that the occurrence took place at 7.45 p.m., on 10.02.2011 and that, FIR was registered on 10.30 p.m. But then, more than one witness including P.W.3 would state that the Police had come to the spot at 8.30 p.m, itself. This again causes considerable doubt on the prosecution case. The prosecution has not explained as to how the police could be present in the spot at 8.30 p.m., itself even before the



occurrence had taken place on 10.02.2011 and these witnesses had been examined in December 2011 itself. If there is substantial lapse of time between the occurrence and the examination of the witnesses, there is bound to be some confusion regarding the timings. But in this case, the material witnesses had been examined in the very same year within about ten months. Therefore, this discrepancy in the prosecution case cannot be taken lightly.

9.The prosecution would claim that on 26.02.2011, the accused was arrested and that, pursuant to his confession, the robbed gold chain M.O.1 was recovered. The learned Government Advocate (Crl.side) would state that this Court ought not to brush aside the factum of recovery.

10.I am not persuaded by the prosecution version. As already pointed out by the petitioner's counsel, the arrest and recovery did not take place immediately. While the occurrence was on 10.02.2011, the arrest and recovery was only on 26.02.2011. But the jewellery has been claimed to have been recovered from the house of the accused himself. I find it to be highly improbable. That apart, it is not as if, the petitioner is an utter stranger. The petitioner and the defacto complainant are neighbours. They were known to each other for more than ten years. The occurrence had taken place in an ordinary village. I, therefore, find it impossible to believe that a neighbour having a knife in his hand would commit a crime of this nature in a typical village.

11.The learned counsel for the petitioner would state that there is a dispute between the two families regarding the grazing of cattle. The learned counsel would state that a minor scuffle had taken place. But then, even according to the doctor's evidence, only simple injuries were caused to P.W.1-Balamani. Even the injuries found on the person of Balamani did not tally with what has been set out in the FIR which alleged that she was stabbed in the chest and that, there were injuries on the neck. The Doctor did not find any stab injury in the chest or any injury on the neck. I find that a case of minor scuffle has been given a different twist. I wanted the revision petitioner to appear before this Court through web hearing. The revision petitioner M.Kullan @ Palanisamy admitted that a very minor scuffle alone took place and that has been blown out of proportion. He stated that he had since got married and he is now having two years' old female child.

12.For attracting Section 397 of IPC, according to the petitioner's counsel, the victim should have suffered grievous hurt. As rightly pointed out by the learned Government Advocate (Crl.side), this contention is misconceived. Section 397 of IPC is as follows:-

397. Robbery, or dacoity, with attempt to cause death or grievous hurt –

<https://hcservices.ecourts.gov.in/hcservices/>



If, at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years.

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13.If the offender uses deadly weapon, that alone is sufficient. Likewise, even a mere attempt to cause grievous injury is also sufficient. I, therefore, sustain the contention of the learned Government Advocate (Crl.side) and reject the contention of the petitioner's counsel.

14.I am of the view that the petitioner cannot be fastened with liability for the offences under Sections 394 r/w 397 of IPC. All that happened was causing of simple hurt to P.W.1-Balamani by using M.O.2 knife. However, the petitioner deserves to be convicted for the offence under Section 324 of IPC. It is also stated that the petitioner was in custody for about sixty days at the investigation stage. Therefore, taking note of the other mitigating circumstances pleaded by the petitioner's counsel, the impugned Judgments are set aside and the petitioner is found guilty for the lesser offence under Section 324 of IPC and is sentenced to the period already undergone.

15.With this modification, this Criminal Revision Case is partly allowed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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Note:In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Sessions Judge, Fast Track Court,
Mahalir Neethimandram, Karur.

2.The Judicial Magistrate No.2, Karur.

<https://hcservices.ecourts.gov.in/hcservices/>



3.The Inspector of Police,
Velliyanai Police Station,
Karur District.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.G.KARUPPASAMY PANDIAN, Advocate (SR-24171[F] dated
07/12/2020)

Crl.R.C(MD)No.205 of 2016

07.12.2020

KUN (CO)
NR (29/12/2020) 5P : 6C