



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on 01.10.2020	Delivered on 23.12.2020
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The Honourable **Mr. JUSTICE B.PUGALENDHI****Crl.R.C. (MD)No.218 of 2016**

S.Nagapandian ... Petitioner / Appellant / Accused No.1

Vs.

State Rep. by
The Sub-Inspector of Police,
M.Kallupatti Police Station,
Madurai.

[Crime No.43/2006] ... Respondent / Respondent / Complainant

Prayer : This Criminal Revision Case is filed under Section 397 r/w. Section 401 Cr.P.C., against the conviction and sentence imposed in C.C.No.388 of 2006, dated 10.01.2012, on the file of the District Munsif-cum-Judicial Magistrate Court No.I, Usilampatti, as modified in Crl.A.No.9 of 2012, dated 21.12.2015, on the file of the I Additional District and Sessions Court, Madurai.

For Petitioner : Mr.E.Somasundaram

For Respondent : Mr.A.Robinson
Government Advocate (Criminal side)**ORDER**

This Criminal Revision Case is filed by the Accused No.1 in C.C.No.388 of 2006, on the file of the Judicial Magistrate Court No.I, Usilampatti, as against the conviction and sentence imposed by the trial Court and the appellate Court.

2.This revision petitioner and his wife one Thangamani tried before the District Munsif-cum-Judicial Magistrate Court No.I, Usilampatti, in C.C.No.388 of 2006, for the offence punishable under Sections 324 I.P.C. and 323 I.P.C., respectively. In conclusion of the trial, the Trial Court, by its judgment dated 10.01.2012, found this revision petitioner / A1 guilty for the offence under Section 324 I.P.C. [on 2 counts] and convicted and sentenced him to undergo six months rigorous imprisonment with a fine of Rs.500/- on each count, in default of payment of the fine amount, to undergo rigorous imprisonment for three months on each count. Both the sentences are ordered to run concurrently. The trial Court has



also found the second accused guilty for the offence under Section 323 I.P.C. and convicted and sentenced her to undergo three months simple imprisonment with a fine of Rs.500/-, in default of payment of the fine amount, to undergo one month simple imprisonment.

3.As against the conviction and sentence imposed by the trial Court, the revision petitioner / A1 and his wife / A2 preferred an appeal before the I Additional District and Sessions Court, Madurai, and the same was taken up on file by the learned I Additional District and Sessions Judge, Madurai, in Crl.A.No.9 of 2012.

4.The appellate Court, by its judgment dated 21.12.2015, partly allowed the appeal and the conviction and sentence imposed as against the second accused Thangamani was set aside and she was acquitted on benefit of doubt and the conviction and sentence imposed on the revision petitioner was modified from the offence under Section 324 I.P.C. [on 2 counts] to Sections 323 and 334 I.P.C. The revision petitioner was convicted and sentenced to undergo one month rigorous imprisonment with a fine of Rs.500/-, in default of payment of the fine amount, the revision petitioner was directed to undergo two weeks simple imprisonment for the offence under Section 323 I.P.C. A similar sentence was also imposed for the offence under Section 334 I.P.C. Both the sentences were ordered to run concurrently. The period of sentence already undergone by the revision petitioner was also ordered to be given set off as per Section 428 Cr.P.C.

5.Aggrieved over the same, the present Criminal Revision Case has been filed by petitioner / A1.

6.Mr.E.Somasundaram, learned counsel appearing for the revision petitioner would submit that except P.W.1 and P.W.2, there is no other independent witnesses for the alleged occurrence and the statements of these witnesses are also contradictory in each other and the medical evidence is also contrary to the oral evidence. When there is a difference between the medical evidence and the ocular evidence, the Courts below ought not to have relied upon the evidence of P.W.1 and P.W.2 to sustain the conviction as against this revision petitioner. He would further submit that P.W.8 Doctor, who examined the injured witness, has stated the possibility of the injuries even while falling down, but the prosecution has projected the case that the victims were attacked by this revision petitioner with a Suri Knife. However, the weapon Suri Knife was not recovered and from P.W.8 Doctor, it is not elicited by the prosecution, the possibility of the injuries sustained by P.W.1 and P.W.2 through the weapon Suri Knife. They also referred about the contradictions in the evidence of P.W.2 that P.W.2 de-facto complainant was hit by the revision petitioner / A1 with a brick upon her left ear, whereas, P.W.1 would say that the revision petitioner had mutilated her ear with a Suri Knife.



7. By referring those contractions, the learned counsel appearing for the revision petitioner relied upon the judgment of the Hon'ble Supreme Court in **Sunil Kumar Sambhudayal Gupta Vs. State of Maharashtra** reported in **2010 (13) SCC 657**, wherein the Hon'ble Supreme Court has held that while appreciating the evidence, the Court has to take into consideration whether the contractions/omissions had been of such magnitude that they may materially affect the trial.

8. The learned counsel appearing for the revision petitioner has also relied upon the following judgments:

(i) **Rai Sandeep alias Deepu Vs. State (NCT of Delhi)** reported in **2012 (8) SCC 21**.

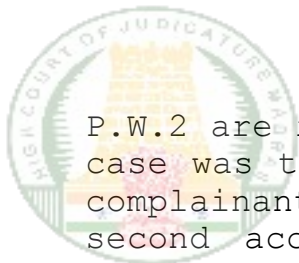
(ii) **Raju and others vs. State of Madhya Pradesh** reported in **2008 (15) SCC 133**, wherein it has been held as follows:-

'When the conviction is based on the sole testimony of the prosecutrix and the material evidence does not support the case of the prosecution/prosecutrix and the deposition of the prosecutrix is full of material contradictions and that there was already a dispute between the accused and the family members of the prosecutrix and no independent witnesses have been examined, it is not safe to convict the accused solely on such testimony of the prosecutrix.'

9. Mr. A. Robinson, learned Government Advocate (Crl. Side) representing the State would submit that in this case, the occurrence was taken place on 07.07.2006 at 05.30 a.m. when P.W.1 de-facto complainant was cleaning the front area of her house. P.W.1 and P.W.2 are injured witnesses in this case. P.W.1 has sustained an injury in her left ear and P.W.2 has sustained 2 cut injuries and they have also been examined by P.W.8 Doctor and the evidence of P.W.1, P.W.2 and P.W.8 support the case of the prosecution. Independent witnesses were also examined in this case, but they did not support the case of the prosecution. However, the evidence of P.W.1 and P.W.2, injured witnesses are very cogent, trustworthy and reliable and the trial Court as well as the appellate Court have rightly considered the evidence and there is no reason to interfere with the findings of the Courts below.

10. This Court paid its anxious consideration to the rival submissions made.

11. The revision petitioner / A1 was found guilty by the trial Court as well as by the appellate Court and convicted and sentenced as stated supra. The scope of the revision is very limited. The main contention of the learned counsel appearing for the revision petitioner is that there is no independent witness and the trial Court as well as the appellate Court wholly relied on the evidence of P.W.1 and P.W.2, for sustaining the conviction and P.W.1 and



P.W.2 are interested and inimical witnesses. The occurrence in this case was taken place on 07.07.2006 at 5.30 a.m. when P.W.1 de-facto complainant was cleaning in front of her house and at that time, the second accused started wordy altercation, which resulted in the occurrence. This revision petitioner / A1, husband of the second accused on seeing the quarrel between with his wife and P.W.1, by questioning how dares she could fight with his wife, went inside the house, brought back with Suri Knife, attacked P.W.1 de-facto complainant, which was resisted by P.W.2 - Rajapandi, her son and P.W.2 has also sustained injuries on his left thumb finger and ring finger. The revision petitioner / A1 also said to have attacked P.W.1 de-facto complainant with brick stone on her right ear. The victims P.W.1 and P.W.2 were taken to a Government Hospital, where P.W.8 Doctor has examined them and also issued a wound certificate. The Courts below considering the evidence, found the revision petitioner guilty and merely because, the independent witnesses, who were examined in this case, turned hostile, the benefit cannot be extended to the revision petitioner.

12.The another contention raised by the learned counsel appearing for the revision petitioner is that the Suri Knife used by the revision petitioner, has not been recovered by the prosecution agency and P.W.8 Doctor, who examined the victim, has not stated about the possibility of the injury with the weapon Suri Knife. However, he has not ruled out the possibility of those injuries while felling down.

13.Though the revision petitioner was arrested, the weapon Suri Knife used for the commission of offence has not been recovered in this case. The non-recovery of weapon is not a fatal to the case of prosecution. The appellate Court by relying upon the decision of the Hon'ble Supreme Court in the case of **State of Rajasthan vs. Arjun Singh and others** reported in **2011 (9) SCC 115**, has held that though the weapon was not recovered, P.W.1 and P.W.2 have stated about the occurrence in a clinching manner and therefore, it does not affect the case of the prosecution. The revision petitioner has not made out any case to interfere with the judgment of the appellate Court and the appellate Court, by giving sufficient reasons, modified the sentence imposed by the trial Court with a lenient punishment and therefore, this Court is not inclined to interfere with the judgments of the Courts below. Accordingly, this Criminal Revision Case is dismissed.

Sd/-

Assistant Registrar(CS-II)

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/ /2021

Sub Assistant Registrar(CS)



- 1.The I Additional District and Sessions Judge,
Madurai.
- 2.The District Munsif-cum-Judicial Magistrate No.I,
Usilampatti.
- 3.The Sub-Inspector of Police,
M.Kallupatti Police Station,
Madurai.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
5. The Section Officer,Criminal Section,
Madurai Bench of Madras High Court, Madurai.(2 copies)

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