



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.04.2021

PRONOUNCED ON : 22.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRL.R.C.NO.217 OF 2015

Raja @ Sengodan

... Petitioner/Accused

Vs.

State represented by
The Inspector of Police,
Thevur Police Station,
Salem District.
(Crime No.298 of 2008)

... Respondent/Complainant

Prayer:

This Criminal Revision Case has been filed under Section 397 read with Section 401 of Cr.P.C., against the order of conviction passed in C.A.No.131 of 2012 on the file of the learned III Additional District and Sessions Judge, Salem, dated 17.02.2015 modifying the order of sentence passed in C.C.No.92 of 2009 on the file of the learned Judicial Magistrate Court No.I, Sankagiri, dated 29.11.2012 for an offence under Section 326 of IPC and convicted the petitioner and sentenced him to undergo simple imprisonment for a period of six months.

For Petitioner : Mr.V.Sairam

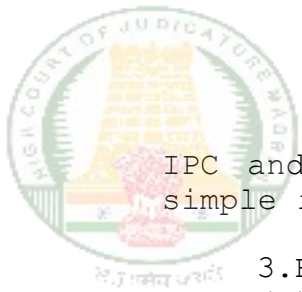
For Respondent : Mr.R.Surya Prakash
Government Advocate

JUDGMENT

(The case has been heard through Video Conference)

The convicted sole accused is the revision petitioner herein.

2.This Criminal Revision Case has been filed against the order of conviction passed by the learned III Additional District and Sessions Judge, Salem, in C.A.No.131 of 2012, dated 17.02.2015, modifying the order of sentence passed by the learned Judicial Magistrate Court No.I, Sankagiri, in C.C.No.92 of 2009, dated 29.11.2012, for an offence under Section 326 of



IPC and convicted the petitioner and sentenced him to undergo simple imprisonment for a period of six months.

3. Brief facts of the case:

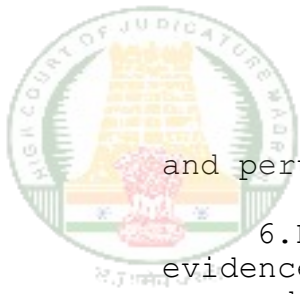
(a) The respondent police has filed a final report in Crime No. 298 of 2008 before the learned Judicial Magistrate No. I, Sankagiri, alleging that on 25.09.2008 at about 9 pm, within the jurisdiction of respondent police station when PW1/Selvi & PW2/Ramar @ Rama Krishnar were chatting at PW1's house, the revision petitioner on suspicion had attacked PW2 with machete on different parts of the body and caused grievous injuries and also caused injury to the defacto complainant viz., Selvi (wife of the revision petitioner) on her right wrist, right shoulder, left wrist, left shoulder, left knee and back and caused grievous injuries and criminally intimidated them. Accordingly, the accused is alleged to have committed the offence under Section 326 (two counts), 506(ii) of IPC.

(b) During the course of trial, on behalf of the prosecution, PW1 to PW15 were examined and marked Exs. P1 to P11; on behalf of the defence, the accused himself had entered into the witness box and marked Ex. R1/FIR in the Crime No. 95/2006, Ex. R2/wound certificate for the injuries sustained by the father of the accused and Ex. P3 is the judgment copy.

(c) The Trial Court has held that the charges were proved against the accused and accordingly laid the conviction and sentenced him as stated supra. Thereafter, the accused had preferred an appeal in C.A. No. 131 of 2012, before the learned III Additional District and Sessions Judge, Salem, and the learned Judge has confirmed conviction, however reduced the sentence to six months as described in detail in the preceding paragraph. Aggrieved against the same, the accused has preferred the Criminal Revision Case, before this Court.

4. The learned counsel for the revision petitioner would contend that even according to the prosecution PW1 (wife of the accused/revision petitioner) was having illicit intimacy with PW2 and as such ought to have rejected their evidence as interested in as much as PW1 was caught red handed while in an intimate position with PW2. He would submit that the prosecution has not explained the injuries found on the accused and as such on that score has to have acquitted the petitioner. Further, he would submit that there was a counter complaint by the accused/revision petitioner and a case has also been registered, but however Rule 588-A of Criminal Rules of Practice was not followed, which vitiates the entire case.

5. Heard the learned counsel for the revision petitioner and the learned Government Advocate, appearing for the respondent



and perused the materials placed on record.

6. From the documents filed before this Court and also oral evidence adduced before this Court, it is seen that the accused/revision petitioner is the husband; PW1 is the wife of the revision petitioner; PW2 is the paramour of PW1; the scene of the crime is the house of the accused/revision petitioner.

7. The case of the prosecution as spoken to by PW1 & PW2, are to the effect that while PW1 and PW2 were in compromising position, the accused had entered into his house, with the use of machete, he has attacked PW1 & PW2 and PW2 had also attacked the accused and caused injuries on the accused. From the documents produced before this Court, this Court finds that there is a case and counter case viz., the case given by PW1/wife of the accused was registered in Crime No.19 of 2008, the case given by the accused was registered in Crime No.95 of 2006. In view of the fight between PW1 and the revision petitioner/accused, village people have come to the scene of the crime, as it could be seen from the number of prosecution witnesses. Admittedly, PW6 & PW7 have categorically stated that when they had entered into the house of the accused, PW2/paramour of the PW1, was without any dress and he was taken to hospital; PW10/Arumugam has also stated that after hearing hue and cry, he had entered into the house of the accused at the end of the crime and found PW1/wife of the accused was without any dress; PW13/Vasanatha has deposed in her cross-examination that when she had entered into the house of the accused, PW1 was without any dress. Hence, the suggestive case of the defence is that when the accused had entered into his house namely scene of crime, PW1 and PW2 were found in compromise position, without any dress and appears to have been probablised from the cross examination of PW6, PW7, PW10 & PW13.

8. Hence, this Court finds that both Courts below have not properly appreciated the evidence that what made the revision petitioner herein/accused to attack PW1 and PW2. PW1 in her complaint has not stated as to the presence of PW2 in the house of the accused and she has also not stated that the accused had attacked PW2 especially when she could speak that the accused/revision petitioner was having suspicion that PW2 is having intimacy with his wife namely PW1. There was no reason assigned by PW2 for his presence in the accused house. The scene of crime is the house of the accused and both PW1 & PW2 viz., wife of the accused and her paramour, had been without dress as could be witnessed from the evidence of PW6, PW7, PW10 & PW13, which would go to show that the revision petitioner/accused was subjected to sudden provocation, being the husband of PW1 seeing his wife in a naked body with PW2 (paramour of PW1) also in naked body inside his house. Hence, this Court finds that the



act of the accused on PW1 and PW2, appears to be out of the sudden provocation made by PW1 and PW2 as narrated above. Admittedly, the prosecution has not marked X-ray or the report of the X-ray.

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9. This Court had an occasion to deal with the similar situation reported in 2017 SCC online Madras 19618 (Crl.R.C.No.892 of 2010) Raj Vs. State and 2019 SCC online Madras 30722 (Crl.R.C.No.1232 of 2011) Mahendiran and another Vs. State.

10. Hence, in the absence of X-ray report to show that the injuries sustained on the body of PW1 and PW2 are grievous injuries as defined under Section 325 of IPC, it is a trait in law that X-ray taken by the radiologist to ascertain the nature of the injury to be produced before the Court of law and evidence given by the radiologist as to the nature and gravity of the injury has to be prescribed as laid down under Section 320 of IPC and when the prosecution has not made any attempt to examine the X-ray or the report of the Radiologist, it is fatal to the prosecution and hence, the conviction under Section 326 of IPC cannot be laid.

11. Accordingly, the conviction laid by both the Courts below under Section 326 of IPC is hereby set aside for the reasons stated in the preceding paragraphs as to the fact that the revision petitioner/accused was subjected to sudden provocation on seeing the compromised position of his wife/PW1 with her paramour PW2 inside his own house and both of them were without any dress and hence, he was subjected to sudden provocation and thereby, the conviction for the charge under Section 326 IPC (2 counts) is hereby modified into one under Section 338 of IPC (two counts). The period already undergone by the accused during the investigation and pending trial are converted as a punishment and the fine is confirmed by this Court viz., Rs.5,000/-

12. With the above observations, this Criminal Revision Case is hereby partly allowed to the limited extent as indicated above.

Sd/-

Assistant Registrar(CS III)

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Sub Assistant Registrar

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To:

1. The III Additional District and Sessions Judge,
Salem.
2. The Judicial Magistrate Court No.I,
Sankagiri.
3. Do Through Chief Judicial Magistrate,
Salem.
4. The Inspector of Police,
Thevur Police Station,
Salem District.
5. The Public Prosecutor,
High Court, Madras.

Cr1.R.C.No.217 of 2015

NMI (CO)
CS/19/08/2021