



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2021

CORAM:

THE HON'BLE Ms.JUSTICE R.N.MANJULA

Crl.R.C.No.410 of 2016

Kuchikumar

... Petitioner/Appellant/Accused
Vs.

The State rep. by its
The Inspector of Police,
Velankanni Police Station,
Nagappattinam District.

... Respondent/ Respondent/ Complainant

Criminal Revision filed under Sections 397 and 401 Cr.P.C praying to revise the judgment dated 17.02.2016 in C.A.No.37 of 2015 passed by the learned District and Sessions Judge, Nagappattinam confirming the Judgment dated 11.08.2015 in C.C.No.206 of 2012 on the file of the Judicial Magistrate No.1, Nagappattinam.

For Petitioner : Mr.W.Camyles Gandhi

For Respondent : Mr.A.Gopinath

Government Advocate (Crl.Side)

O R D E R

This Criminal Revision case has been preferred challenging the judgment of the learned District and Sessions Judge, Nagappattinam dated 17.02.2016 made in C.A.No.37 of 2015.

2. The case of the prosecution is that the de facto complainant [PW1] and the accused are friends. During Madha festival at Velanganni, the accused was working in a chicken stall belonging to one Mustafa. During that time, the de facto complainant went there and took a chicken pakoda and ate. The accused, who was working in the chicken stall scolded him for taking the chicken. In view of that, PW1 went to the house of the accused on 12.09.2012 at about 4.30.p.m and asked him why he scolded him. The accused got enraged and he abused PW1 in filthy language and beaten PW1 with iron rod over the left hand and caused simple injuries. He also threatened that if he fetches conversation with him, he would kill him.

3. On the complaint-statement given by PW1 on 22.09.2012, PW2 registered an FIR in Crime No.320 of 2012 under Sections



294(b), 324 and 506(ii) IPC. She took up the case for investigation, went to the place of occurrence and prepared observation mahazar (Ex.P6) and rough sketch(Ex.P7) in the presence of the witnesses. She also arrested the accused at about 4.00.p.m on 22.09.2012 and thereafter, sent him for remand. On 06.10.2012, she enquired the doctor, who treated the injured (PW1) and got wound certificate. After concluding the investigation, she filed the charge sheet against the accused under Sections 294(b), 324 and 506(ii) IPC. After the case was taken on file, after furnishing copies and completing all legal mandates and pursuant to the prima facie materials, charges have been framed against the accused under Sections 294(b), 324 and 506(ii) IPC. Since the accused denied the charges and claimed to be tried, trial was conducted.

4. During the course of the trial, on the side of the prosecution, nine witnesses have been examined as PW1 to PW9 and seven documents were marked as Exs.P1 to P7. On the side of the defence, no witness has been examined and no document was marked.

5. At the conclusion of the trial and on considering all the evidence available on record, the learned Trial Judge found the accused guilty for the offence under Section 326 IPC alone and convicted and sentenced him to undergo two years Simple Imprisonment and imposed a fine of Rs.1,000/- in default to undergo six months Simple Imprisonment. The appeal preferred by the accused in C.A.No.37 of 2015 was also dismissed by confirming the trial Court judgment. Aggrieved over that, the accused has preferred the present revision.

6. Heard the learned counsel for the revision petitioner and the learned Government Advocate (Crl.side) appearing for the respondent and perused the materials available on record.

7. The learned counsel for the petitioner submitted that the complaint-statement itself has been given after ten days of the occurrence and the evidence of PW1 is in complete contradictions to the complaint given by PW1. He further invited the attention of this Court to the entries made in Ex.P4-Accident Register and Wound Certificate, wherein the doctor has recorded the time as 1.30.p.m and the date as 12.09.2012; but he has recorded the history that the occurrence is said to have taken place at 5.30.p.m as understood from the statement of PW1; the Courts below have not properly appreciated the above contradictions and failed to give benefit of doubt to the accused. He has also submitted that PWs2, 3, 4, 6 and 7 have turned hostile and they have not supported the prosecution.

8. The learned Government Advocate (Crl.side) appearing for the respondent submitted that the injured witness itself has deposed evidence about the occurrence and the manner in which he sustained injuries at the hands of the accused. The



doctor certificate and his evidence also corroborates the evidence of PW1 and the prosecution case has been proved beyond reasonable doubt. Hence, the judgement of the Court below does not warrant any interference.

9. Point for consideration:

Whether the conviction and sentence of the accused for the offence under Section 326 IPC by the learned Sessions Judge based on the materials available on record is fair and proper?

10. It is seen from Ex.P1-complaint that PW1 has alleged that the occurrence had taken place on 12.09.2012. According to his complaint-statement, the accused had been to the chicken pakoda stall, run by one Mustafa, where the accused was working. He took advantage of the friendship with the accused and took a pakoda piece and ate. This was objected by the accused and he scolded the complainant(PW1). Having got hurt about this incident, the complainant went to the house of the accused on 12.09.2012 at about 4.30.pm and asked him why was he rude to him. That had irritated further and he abused the de facto complainant/PW1 in filthy language and assaulted with iron rod, in which PW1 sustained injuries. He also warned PW1/complainant that if he continued to be like that, he would kill him. But the evidence of PW1 does not state the occurrence in the above manner. He has stated in his evidence that when he went to the chicken stall and took the chicken piece, he was scolded by the stall owner Mustafa. On the next day, the accused himself came in the vicinity of PW1; At that time only PW1 enquired the accused about the incident, for which the accused abused him; again on the next day, he went to Uthalamman temple and the accused also arrived there in a motorbike and met PW1 and abused him. When PW1 returned from the temple along with his wife, the accused intercepted him and took a iron rod and stabbed on his stomach. When PW1 prevented it, it fell on his left hand and caused cut injury. He has stated that because of that he had lost the functionality of the four fingers of his left hand. The evidence of PW1 as to the manner in which the occurrence had taken place is totally different from the case of the prosecution; some of the material contradictions in the evidence of PW1 were culled out during his cross examination. In the cross examination, PW1 stated that he has been to the police station immediately after the occurrence and gave the complaint-statement. But in reality, the complaint-statement is said to have been given only on 22.09.2012. It creates doubt whether his immediate compliant statement was given soon after the occurrence was suppressed.

11. PW1 was confronted during the cross examination that it was he who went to the house of the accused and fetched a quarrel with him. In fact, the case of the prosecution is also that it was PW1 who had been to the house of the accused in order to enquire him about the previous day occurrence.



12. The evidence of PW1 is in total contradiction to the events that were alleged to have followed the occurrence. It is also surprising to note that the accident register (Ex.P4) was registered at 1.30 pm for the occurrence had taken place at 5.30.p.m. The doctor, who was examined as PW8 has stated in his evidence that he saw the accused only at 6.30.p.m on 12.09.2012; but he was not confronted during his cross examination why the time has been entered as 1.30.p.m in the accident register (Ex.P4).

13. With regard to the complaint, different versions have been given by the complainant/PW1 and the Investigation Officer-PW9. When PW1 has stated that he had been to the police station immediately after the occurrence to lodge the complaint, PW9 has stated that she got information from the hospital and went there, but she could not find PW1 in the hospital.

14. Despite there are injuries on the body of PW1, those injuries were not properly correlated to the occurrence. So the involvement of the accused in the occurrence is not established through the evidence of the prosecution. The delay in registering the FIR was not properly explained. Since the evidence of PW1 has got lot of contradictions and not consistent about the occurrence, it can be seen whether the evidence of other witnesses atleast is supportive to the case of the prosecution. In this case, excepting PW1, other eye witnesses have not supported the case of the prosecution and they have turned hostile.

15. The Courts below have omitted to appreciate the material contradictions and other circumstances which would create doubt in the case of the prosecution. Since the facts, circumstances and other attendant circumstances create doubt in the case of the prosecution, the Courts below ought to have given the benefit of doubt in favour of the accused. Hence, the judgement of the Court below warrants interference.

16. In the result, this Criminal Revision case is allowed and the judgment of the learned District and Sessions Judge, Nagappattinam made in C.A.No.37 of 2015 is hereby set aside and the petitioner/accused is acquitted from all charges. Fine amount, if any, paid shall be refunded. Bail bond, if any executed shall be cancelled.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1.The District and Sessions Judge,
Nagappattinam.

2.The Judicial Magistrate No.1,
Nagappattinam.

3.The Inspector of Police,
Velankanni Police Station,
Nagappattinam District.

4.The Public Prosecutor,
High Court of Madras,
Chennai-600 104.

+1 cc to Mr.W.Camylen Gandhi, Advocate Sr.NO. 63581
Crl.R.C.No.410 of 2016

nr(CO)

A.SK(24.02.2022)