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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CRIMINAL REVISION CASE NO.598 OF 2019

AND

CRL.M.P.NO.8116 OF 2019

Indirani

..Petitioner/Appellant/Defacto Complainant

Vs.

1. Lavanya
2. Pushpa
3. Thiagarajan
4. Tamil Selvan

...Respondents/Respondents/Accused

- 5.The Sub Inspector of Police
Adhiyamankottai Police Station
Dharmapuri District
(Crime No.180 of 2011)

...Respondent/Respondent/Complainant

Prayer : Criminal Revision filed under Section 397 read with 401 of Criminal Procedure Code, praying to set aside the Judgment dated 06.02.2019 passed in C.A.No.12 of 2017 by the learned Principal District and Sessions Judge, Dharmapuri confirming the Judgment dated 07.03.2017 passed in C.C.No.1 of 2012 by the learned Judicial Magistrate No.II, Dharmapuri.

For Petitioner : Mr.M.Karthik
for Mr.Annagandhi V.R.

For Respondent-5 : Mr.S.Sugendran
Government Advocate
(Cr1.Side)



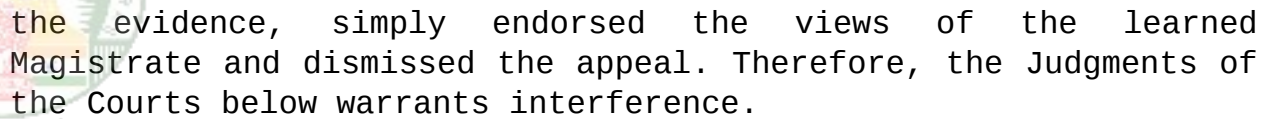
ORDER

(The case has been heard through video conference)

This Criminal Revision has been filed against the Judgment dated 06.02.2019 passed in C.A.No.12 of 2017 by the learned Principal District and Sessions Judge, Dharmapuri, confirming the Judgment dated 07.03.2017 passed in C.C.No.1 of 2012 by the learned Judicial Magistrate No.II, Dharmapuri.

2. Based on the complaint given by the petitioner herein, the 5th respondent police registered the case in Crime No.180 of 2011 as against the respondents 1,2,4 for the offences punishable under Sections 294(b) and 323 IPC and as against the respondent 3 for the offences under Sections 294(b), 323 and 506(i) IPC. After completing the investigation, the respondent police laid the charge sheet and the learned Judicial Magistrate-II, Dharmapuri, taken the charge sheet on file in C.C.No.1 of 2012. After completing the formalities, framed charges as against the respondents 1,2,4 for the offences punishable under Sections 294(b) and 323 IPC and as against the respondent 3 for the offences under Sections 294(b), 323 and 506(i) IPC. On conclusion of trial, the learned Magistrate found the respondents 1 to 4 not guilty and acquitted them. Challenging the said Judgment of acquittal, the petitioner herein filed an appeal before the Principal District and Sessions Judge, Dharmapuri and the same was taken on file in C.A.No.12 of 2017. The learned Sessions Judge, after hearing the arguments and re-appreciating the evidence, found no merit in the appeal and dismissed the same. Challenging the said Judgment of dismissal of appeal, the defacto complainant has filed the present revision before this Court.

3. The learned Counsel for the petitioner would submit that P.W.1 is the injured witness and she has spoken about the incident. P.W.7 is the doctor who treated the injured witness and the doctor has clearly stated that he had treated the injured witness and the wound certificate/Ex.P.3 says it is a simple injury which clearly shows, that P.W.1 has been assaulted. Further, the evidence of P.W.2 and P.W.3 corroborated the evidence of P.W.1 whereas, the learned Magistrate failed to appreciate the same and acquitted the respondents 1 to 4. Therefore, the petitioner approached the appellate Court whereas, the appellate Judge, without properly re-appreciating



4. The learned Government (CrI. Side) appearing for the respondent police would submit that P.W.1 has stated that she sustained injury. But the doctor who treated P.W.1 has stated that there was no external injury. However, since P.W.1 complained about pain in the right hand shoulder, X-ray was taken and found no fracture or internal injury. Further, P.W.2 and P.W.3 are not eye witnesses to this case and P.W.1 has not stated that P.W.2 and P.W.3 witnessed the incident. Further, P.W.4 is the husband of P.W.1 and that he was not present at the time of alleged occurrence and only after the incident, when he came home, P.W.1 informed him about the incident. Both the trial Court as well as the appellate Court extended the benefit of doubt to the respondents 1 to 4 and acquitted them. This Court can take a different view especially when the appeal or revision is against acquittal, if compelled circumstances warrant otherwise not. The learned Government Advocate (CrI. Side) would submit that the prosecution proved its case however, both the Courts not convinced with the evidence of the prosecution. Therefore, both the Courts failed to appreciate the evidence.

6. The case of the prosecution is that on 13.11.2011 at about 4.30 p.m. the accused persons abused P.W.1 in filthy language and assaulted her with stones and also threatened her with dire consequences. Hence, the case.

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8. A reading of the evidence of P.W.1 to P.W.4 and also P.W.7/doctor and the wound certificate/Ex.P.3, it is clear that there is no external injury and there is contradictions between the evidence of P.W.2 and P.W.3. As stated by the trial Judge as well as the appellate Judge, P.W.1 has not stated that at the time of occurrence, P.W.2 and P.W.3 were present. Therefore, in the absence of the same, the trial Court rightly appreciated the evidence of P.W.2 and P.W.3 which cannot be taken or given effect to, since, P.W.1 has not stated anything about the presence of P.W.2 and P.W.3. Further, from the evidence of the doctor/P.W.7 and the wound certificate/Ex.P.3, it is clear that there is no internal or external injury and there was only complaints of pain and the doctor opined that possibility of severe pain. Therefore, under these circumstances when two views are possible, the benefits should go to the accused. If the trial Court acquitted the accused and the appellate Court confirmed the acquittal, the High Court in revision, cannot not re-examine and re-appreciate the evidence to come to a contrary conclusion. The revision court cannot substitute own reasons and its views on findings of fact by both the courts below. Unless there is perversity in appreciation of evidence by both the courts below, the Revisional court will not interfere with the findings of the courts below. A reading of the averments in the complaint and the material evidence produced before the trial court and the findings of the trial court show that the trial court has rightly appreciated the evidence and come to the conclusion and acquitted the petitioner. Unless compelled circumstances warrants, revision against acquittal cannot be interfered. Therefore, under these circumstances, this Court does not find any merit in the revision petition and there is no compelled circumstances to interfere with the findings of the Courts below.

9. Accordingly, the Criminal Revision Case is dismissed. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(L.A)

// True Copy //

Sub Assistant Registrar

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1. The Principal District and Sessions Judge,
Dharmapuri.

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Criminal Revision Case No.598 of 2019

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