

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.03.2021

PRONOUNCED ON : 21.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

Crl.RC.No.474 of 2014

(Through Video Conferencing)

D.Inbaraj

... Petitioner

Vs

State by Sub Inspector of Police
B5, Police Station (L&O),
Coimbatore.

... Respondent

Prayer:- This Criminal Revision Case has been filed, against the judgement of conviction and sentence, dated 26.08.2013, passed in CA.No.70 of 2013, Coimbatore, by the Principal Sessions Judge, Coimbatore, modifying the judgement of conviction and sentence, dated 22.05.2013, passed in CC.No.59 of 2008, by the Judicial Magistrate III, Coimbatore.

For Petitioner : Mr.Kingsly Solomon

For Respondent : Mr.G.Ramar, GA

ORDER

1.This Criminal Revision Case has been filed, against the judgement of conviction and sentence, dated 26.08.2013, passed in CA.No.70 of 2013, Coimbatore, by the Principal Sessions Judge, Coimbatore, modifying the judgement of conviction and sentence, dated 22.05.2013, passed in CC.No.59 of 2008, by the Judicial Magistrate III, Coimbatore.

2.The Petitioner/Accused was charge sheeted for the offences under Sections 75(1)(c) of the TNCP Act and Sections 324, 326 and 506(ii) of IPC, in respect of the occurrence took place on 27.09.2007 at 6.30 p.m, alleging that there was previous enmity between PW.1, Muthupandi and the Petitioner/ Accused, who are brothers, in respect of a landed property, regarding which, there were negotiations held between them and that at the

relevant point of time, the Petitioner/Accused went to the residence of PW.1 and abused him in a filthy language in the public place and when PW.2, father in law, intervened, the Petitioner/Accused had stabbed him on his stomach with a knife and also intimidated PW.1.

- 3.The case was taken on file in CC.No.59 of 2008, by the Judicial Magistrate II, Coimbatore and necessary charges were framed. The accused had denied the charges and sought for trial. In order to prove the charges against the accused, the Prosecution had examined PW.1 to PW.11 and also marked Exs.P1 to P6 and MO.1. On completion of the evidence on the side of the Prosecution, the accused was questioned under Section 313 Cr.PC as to the incriminating circumstances found in the evidence of prosecution witnesses and the accused had come with the version of total denial and stated that he had been falsely implicated in this case. On the side of the defence, neither any document was marked nor any witness was examined.
- 4.The Trial Court, after hearing the arguments advanced on either side and also looking into the materials available on record, found the Petitioner/ Accused guilty for the offences under Sections 324 and 326 of IPC and convicted and sentenced the accused for the offence under Section 324 to undergo Simple Imprisonment for one year and for the offence under Section 326 of IPC to undergo Simple Imprisonment for three years and to pay a fine of Rs.5,000/-, in default, to undergo Simple Imprisonment for three months and ordering the sentences to run concurrently. On the appeal, the lower appellate court had modified the judgement of conviction and sentence of the Trial Court and convicted and sentenced the accused for the offence under Section 324 of IPC, to undergo Simple Imprisonment for one year and to pay a fine of Rs.3,000/-, in default, to undergo Simple Imprisonment for one month. Aggrieved over the same, this Criminal Revision Case has been filed.
- 5.This court heard the submissions of the learned counsel on either side.
- 6.The learned counsel for the Petitioner would submit that the lower appellate court failed to appreciate the evidence, which is in favour of the Petitioner and that the evidence of PW.1 and PW.2, who are the interested witnesses, has not been corroborated by any other witnesses and that the Petitioner had disproved the case of the Prosecution, at the time of cross examination and that there are material discrepancies in the statement of the witnesses and the deposition of the witnesses,

particularly in the evidence of PW.8, Doctor and PW.9 and that due to a land dispute, there was motive for the defacto complainant for foisting a false case against the Petitioner. The learned counsel would further submit that the delay of five hours in registering the First Information Report is fatal to the case of the Prosecution and that there is also a material discrepancy in regard to the time of occurrence, namely, as per the wound certificate, it is 5.30 p.m. and according to the statement of the witnesses, it is 6.30 p.m. and that the victim sustained injuries due to falling on the iron rod stored in the shop and not due to stab by the knife by the Petitioner and that though the occurrence was said to have taken place in a public place, no independent witness was produced and that there is no corroborative evidence let in by the Prosecution to prove its case and that recovery of MO.1 knife was made after 14 hours and that no blood stained clothes were recovered and even no blood stains were found in the knife, MO.1 and that chemical analysis report was not obtained and in such circumstances and discrepancies, the Petitioner is to be acquitted, by allowing this Criminal Revision Case.

7. On the other hand, the learned Government Advocate for the Respondent would submit that the Prosecution has proved its case, namely, the incident, the injuries sustained by the victim and also the involvement of the accused in the crime, beyond all reasonable doubts, by adducing valid and cogent evidence and that the lower appellate court had considered the evidence both oral and documentary and convicted and sentenced the accused as stated above and there is no valid ground for acquitting the accused and hence, this Criminal Revision Case is liable to be dismissed.

8. I have given my careful and anxious consideration to the rival contentions put forward by either side and thoroughly scanned through the entire evidence available on record and also perused the impugned judgement.

9. Though the Petitioner/Accused was charge sheeted for the offences under Section 75(1)(c) of the TNCP Act and Sections 324, 326 and 506(ii) of IPC, he was convicted for the offences under Sections 324 and 326 of IPC by the Trial Court and awarded punishments as stated above. However, on the appeal, the judgement of conviction and sentence was modified, convicting the accused for the offence under Section 324 of IPC and sentencing him to undergo Simple Imprisonment for one year and to pay a fine of Rs.3,000/- in default, to undergo Simple Imprisonment for one month.

10. Now, in this Criminal Revision Case, the question that arises for consideration is as to whether the lower appellate court is

justified in convicting the Petitioner/Accused for the offence under Section 324 of IPC, based on reliable evidence or whether the Petitioner/Accused is entitled for acquittal for the reasons stated in the grounds of revision.

11.PW.1 and the Petitioner/Accused are brothers. PW.2 and PW.3 are father in law and brother in law respectively of PW.1. It is alleged that there was no cordial relationship between the parties, as there was a dispute between them regarding a property and that at the relevant point of time of occurrence, the Petitioner/Accused went to the residence of PW.1 and abused him in a filthy language and when PW.2 intervened, the Petitioner/ Accused had stabbed him on his stomach with a knife, MO.1 in addition to intimidating PW.1.

12.PW.2 was given first aid treatment in the Roselet Hospital at Sowripalayam and then, he was admitted in the Ramakrishna Hospital, where PW.8 Dr.Krishnaraj, gave first aid treatment to him.

13.Ex.P1 is the complaint given by PW.1 and PW.11 is the Head Constable, who registered the case in Cr.No.895 of 2007. PW.10 is the Sub Inspector of Police, who took up the case for investigation, visited the scene of occurrence and prepared Ex.P2 observation mahazar and Ex.P6 rough sketch in the presence of PW.7 and another and also seized MO.1 knife from the scene of occurrence under Ex.P3 mahazar and after completing the investigation, he had filed the final report.

14.PW.1, who is an eye witness to the occurrence, has deposed that the Petitioner/Accused came to his house and shouted at him in a filthy language and when the Petitioner/Accused attempted to stab PW.1 with a knife, PW.2 prevented the same and the Petitioner/Accused had stabbed him with the knife and intestine parts came out and that initially, the PW.2 was admitted in the Roselet Hospital, where first aid treatment was given and thereafter, he was admitted in the Ramakrishna Hospital and that at 11.00 a.m. he identified the MO.1 knife shown to him by the Police as the weapon used by the Petitioner/Accused for stabbing PW.2 and that Ex.P1 is the complaint given by him. He had also admitted about the previous enmity in respect of the landed property between them.

15.PW.2, who is the injured witness, has deposed that three days prior to the date of occurrence, the Petitioner/Accused had threatened PW.1 in the Temple Festival and that at the relevant point of time, the Petitioner/Accused came to his house and shouting in a filthy language, attempted to stab PW.1 with a knife and when he attempted to prevent the same, the

Petitioner/Accused stabbed him on his stomach, with the knife, due to which he fell down unconsciously and intestine came out and that the knife was marked as MO.1.

16.PW.3, who is the son of the victim, while speaking about the previous enmity regarding the property between the parties, has deposed that due to such previous enmity, the Petitioner/Accused had earlier threatened PW.1 and that there were talks between them regarding such dispute and that on information received over phone, he went to the hospital and saw the victim in an unconscious stage.

17.PW.4, who is a resident, has deposed that there were frequent disputes and quarrels between the parties regarding a property dispute and that when he went to the house of PW.1 and talking with PW.1, the incident had happened and in his cross, he had deposed that there were blood stains in his clothes and the Petitioner/Accused, after stabbing PW.2, ran away from the scene of occurrence.

18.Though PW.5 and PW.6, who are not the eye witness to the occurrence, they have deposed about the previous enmity between the parties and the negotiations held between them regarding the dispute.

19.PW.7 is the mahazar witness and he had deposed that the Petitioner/ Accused stabbed PW.2 with a knife, which is black in colour, with plastic handle.

20.PW.8, Doctor attached to the Roselet Hospital, where the victim was initially admitted for first aid treatment, has deposed that on the day of occurrence, he gave first aid treatment to the victim and found 4 cm cut injury on his stomach and found intestine came out and sent him to Ramakrishna Hospital for further treatment.

21.PW.9, Doctor attached to the Ramakrishna Hospital, had deposed that the injured was admitted in his hospital and he examined him and found two cut injuries on his stomach, viz. one is grievous injury and another is simple injury and issued Ex.P4 wound certificate and in cross, stated that the injures are not fatal injuries and found no intestine came out and found only some outer tissue parts of intestine came out.

22.The evidence on record would reveal that admittedly there was a dispute between the parties regarding a property. It is also proved from the testimony of ocular witnesses that at the relevant point of time and at the relevant place, the occurrence took place, in which the Petitioner/Accused had

stabbed him and PW.2 sustained injuries, as alleged by the Prosecution.

23.The evidence of PW.1, PW.2 and PW.4, coupled with the medical evidence of PW.9 and Ex.P4 wound certificate, are cogent, consistent and convincing. Hence, it can be safely concluded that in the light of the evidence of the eye witnesses, PW.1, PW.2 and PW.4, which are in unequivocal terms, coupled with the medical evidence of PW.9 and Ex.P4 wound certificate, the lower appellate court is justified in holding that the Petitioner/Accused, raising sound at PW.1 and attempted to stab him and when PW.2 intervened, he stabbed him and the victim sustained stab injuries, which are simple hurts and accordingly, convicting and sentencing him, as stated above.

24.In this case, after the occurrence on the day of occurrence, the injured was initially admitted in the Roselet Hospital by the witness and thereafter, he was admitted in the Ramakrishna Hospital for further treatment. As per the evidence of PW.10, Sub Inspector of Police, on receipt of information from the Ramakrishna Hospital, he went to the Hospital and after receiving the complaint from PW.1 in the hospital, he came to the Police Station and registered the First Information Report.

25.The discrepancies pointed out by the learned counsel for the Petitioner/Accused, in the opinion of this Court, would not affect the veracity of the case of the Prosecution and the evidence available on record are sufficient to base conviction on the Petitioner/Accused, as imposed by the lower appellate court.

26.On an overall analysis of the entire materials placed before this Court, this Court is of the view that the evidence available on record are sufficient to point out the guilt of the Petitioner/Accused and that since the injuries sustained by the victim are proved, the Petitioner/Accused was rightly convicted for the offence under Section 324 of IPC, by the lower appellate court, modifying the judgement of conviction and sentence of the Trial Court, by the impugned judgement, as stated above and there is no illegality of perversity in the findings of the lower appellate court. However, in so far as the sentence of imprisonment is concerned, considering the age of the Petitioner/Accused, the nature of the injuries and taking into consideration the totality of the circumstances of the case, it needs to be modified.

27.In the result, this Criminal Revision Case is allowed in part, confirming the conviction imposed on the Petitioner/Accused by the lower appellate court and the sentence of fine and modifying the sentence of imprisonment alone to the effect that the Petitioner/Accused shall undergo six months Rigorous Imprisonment. No costs.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Sub Inspector of Police, B5, Police Station (L&O), Coimbatore.
- 2.The Principal Sessions Judge, Coimbatore.
- 3.The Judicial Magistrate II, Coimbatore.
- 4.The Public Prosecutor, Madras High Court, Madras.

+1cc to M/s.Kingsly Solomon, Advocate Sr.24327

Crl.RC.No.474 of 2014

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srg 09/06/2021

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