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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.08.2021

CORAM :

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.R.C. No.690 of 2019

R.Muruganantham,
S/o. Ramadurai

... Petitioner/Defacto Complainant

-Vs-

1. Manoharan,
S/o. Rangasamy

... 1st Respondent/Accused

2. State rep. By
The Inspector of Police,
Kudavasal Police Station,
Thiruvarur Dt.
(Crime No.116 of 2016)

... 2nd Respondent/Complainant

Prayer : Criminal Revision Case filed under Section 397 and 401 of Criminal Procedure Code, praying to set aside the fine of Rs.750/- for the offence under Section 324 I.P.C. imposed in the judgment dated 27.02.2019 made in C.A.No.36 of 2018 on the file of the learned District and Sessions Court, Thiruvarur, modifying the sentence imposed in the judgment dated 09.05.2018 made in C.C.No.134 of 2016 on the file of the learned Judicial Magistrate Court, Thiruvarur and punish the 1st respondent/accused for the offence under Sections 294(b) and 326 I.P.C. by allowing this Criminal Revision Case.

For Petitioner : Mr.N.Manoharan

For Respondents: Mr.Govarthanan,
for M/s. B.Ramamoorthy for R1

Mr.S.Sugendran,
Govt. Advocate (Crl. Side) for R2

O R D E R

(This case has been heard through video conference)

The 2nd respondent police registered a case against the 1st respondent herein in Crime No.134 of 2016 for the offence under



Sections 147, 148, 294(b), 324, 326 and 506(2) I.P.C. After investigation, the 2nd respondent police had laid a charge sheet before the learned Judicial Magistrate, Thiruvarur only for the offence under Section 294(b) and 326 I.P.C.

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2. After completing the formalities, the case was taken on file in C.C.No.134 of 2016 on the file of learned Judicial Magistrate, Thiruvarur and the learned Judicial Magistrate had framed charges for the offence under Section 294(b) and 326 I.P.C., and after trial, found guilty of offence against 1st respondent/accused for offence under Sec.324 I.P.C. and convicted and sentenced to undergo one week simple imprisonment and to pay a fine of Rs.100/- in default, to undergo 7 days simple imprisonment. Challenging the said judgment of conviction and sentence, the de facto complainant filed an appeal before the learned Principal Sessions Judge, Thiruvarur. The learned Principal Sessions Judge had taken the appeal on file in CrI.A. No. 36 of 2018 and after hearing arguments, the appellate court confirmed the guilt of 1st respondent/accused and conviction, but only modified the period of sentence to the period, which he has undergone and enhanced the fine from Rs.100/- to Rs.750/-, in default, to undergo two weeks' simple imprisonment. Challenging the said judgment of appellate court, the de facto complainant has filed the present Criminal Revision Case to set aside both the judgments of Trial Court and the appellate court and punish the 1st respondent/accused for the offence under Sec.294(b) and 326 I.P.C.

3. The learned counsel for petitioner would submit that though the prosecution has proved this case beyond reasonable doubt, the injured witness has clearly deposed about the incident and medical evidence also corroborated the same. The Trial Court though not found the guilt of the 1st respondent/accused for offence under Sec.326, however convicted him under Sec.324 of I.P.C. and the sentence is not proportionate to the offence committed. However, the trial court has erroneously altered the charge from Sec.326 I.P.C. to Sec.324 I.P.C. The appellate court also failed to re-appreciate the evidence and partly allowed the appeal and the period, which the 1st respondent had undergone imprisonment was treated as sentence of imprisonment and only increased the fine amount from Rs.100/- to Rs.750/-, which is also not proportionate to the offence committed by the 1st respondent/accused. Therefore, aggrieved over the same, the de facto complainant has filed the present revision. He would further submit that the injured was examined as P.W.1. He has categorically deposed the offence committed by the 1st respondent. The evidence of P.W.1 was fully corroborated with the evidence of P.W.2 and 3. P.W.5, Doctor, who gave treatment to the injured witness P.W.1 and he noted that the injury



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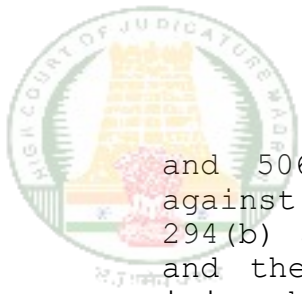
sustained by P.W.1 was grievous in nature and copy of medical certificate and wound certificate were marked as Ex.P2 and P3. The Investigating officer has not conducted a fair investigation and though the commission of offence under Sec. 147, 148, 294(b) and 324 and 506(ii) I.P.C. is made out, they altered the charge for the offence under Sec.294 (b) and 326 I.P.C. The trial court framed the charges and had confirmed the offence committed by the 1st respondent/accused. The injured witness has also spoken about the grievous injury caused by the 1st respondent/accused. His evidence was corroborated by P.W.2 and 5 and both the courts below failed to appreciate the same. Therefore, the judgment of both courts are perverse and are liable to be set aside.

4. The learned counsel for 1st respondent/accused would submit that the trial court rightly appreciated the evidence and considering the facts and circumstances of the case, the trial court imposed the sentence of simple imprisonment and fine. However, the de facto complainant filed an appeal before the Sessions Court and the learned Sessions Judge modified the sentence of imprisonment and fine. The Revision Court cannot re-appreciate the evidence and has no power to interfere with the judgment of courts below, unless there is a perversity in appreciation of evidence and the Revision Court has also no power to enhance the sentence. Therefore, this Criminal Revision Case is liable to be dismissed.

5. The learned Government Advocate (Crl. Side) appearing for 2nd respondent State would submit that the investigating officer after conducting investigation laid the charge sheet for the offence punishable under Sec.294(b) and 324 I.P.C. and while the Trial Court had framed the charges, neither the de facto complainant nor the 1st respondent/accused raised any objection at the time of framing charges while taking the case on file. The trial court has rightly appreciated the evidence and convicted the 1st respondent/accused and the appellate court also confirmed the conviction, however, modified the sentence. The prosecution has done its duty and the sentence of imprisonment and fine have been imposed. Hence, there is no merit in this Criminal Revision Case and the same is liable to be dismissed.

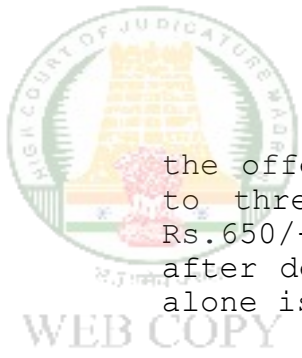
6. Heard and perused the records carefully.

7. The case of prosecution is that on 23.03.2021 at about 09.00 a.m. when the de facto complainant was returning from agricultural field to his home, due to previous enmity, the 1st respondent/accused said to have scolded him in filthy language and attacked him with stone, thereby, he sustained grievous injury. Hence, the petitioner had given a complaint and the same was registered by the 2nd respondent police in Crime No. 116 of 2016 for the offence under Sections 147, 148, 294(b), 324, 326



and 506(ii) I.P.C. The trial court had framed the charges against the 1st respondent/accused for the offence under Sections 294(b) and 326 I.P.C. The injured witness was examined as P.W.1 and the Doctor, who conducted the medical examination on the injured was examined as P.W.5. P.W. 2 to 4 have corroborated the evidence of P.W.1. Though the trial court found the 1st respondent/accused not guilty of the offence under Sec.294(b) and 326 I.P.C., however found him guilty of the offence under Section 324 I.P.C. Challenging the same, the 1st respondent/accused has not filed any appeal against his conviction and sentence. Only the de facto complainant/injured has filed an appeal before the learned Sessions Court and the learned Sessions Court has modified the sentence as stated above and increased the fine amount alone, against which, the present Criminal Revision Case has been filed by the de facto complainant before this court.

8. On a reading of evidence of P.W.1, it is seen that he has clearly narrated the incident and P.W.2 corroborated the same and P.W.5, Doctor, who gave a treatment to the victim has deposed that there is a contusion near the left eye and there is an abrasion in the left hand and also there is an abrasion in the left limb and Ex.P2 would prove that the injuries were caused only due to the attack with stone by the 1st respondent/accused. Subsequently, the petitioner was referred to eye doctor and after examining him, P.W.5 Doctor had given an opinion that the injury sustained by the petitioner are grievous in nature and therefore, he gave a complaint before the 2nd respondent police. The copy of accident register and wound certificate were marked as Ex.P2 and P3. Therefore, from the evidence of P.W.5, the prosecution proved that injured witness sustained grievous injury. But, the trial court considering the facts and circumstances of the case, though it is described that the injury is grievous in nature, and there is a contusion near the left eye, had imposed sentence leniently. However, a perusal of entire evidence, this court finds that the sentence of imprisonment imposed by the trial court is not proportionate to the offence committed by the 1st respondent/accused. The Appellate Court after re-appreciating the evidence as fact finding court confirmed the conviction and sentence imposed by the trial court. However, modified the sentence of imprisonment and fine. Therefore, considering the facts and circumstances of the case, this court, as a revisional court, cannot re-appreciate entire evidence and cannot give an independent finding on facts and as a Revisional Court, this Court can find out as to whether any perversity is found in it. Further, this Court does not find any perversity as far as conviction and sentence are concerned. However, the quantum of sentence of imprisonment is not proportionate to the injury sustained by the petitioner. Therefore, this Court confirms the conviction for



the offence under Sec.324 I.P.C., however, enhances the sentence to three months' simple imprisonment, and to pay a fine of Rs.650/-, in default, to undergo one month simple imprisonment after deducting the amount already paid. Therefore, the sentence alone is modified into three months' simple imprisonment.

9. With the above modification, this Criminal Revision Case is partly allowed.

Sd/-
Assistant Registrar (CS-IX)

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Sub Assistant Registrar

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To

1. The District and Sessions Judge,
Thiruvavarur.
2. The Judicial Magistrate,
Thiruvavarur.
3. Do Through,
The Chief Judicial Magistrate,
Thiruvavarur.
4. The Inspector of Police,
Kudavasal Police Station,
Thiruvavarur District.
(Crime No.116 of 2016)
5. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.Ramamurthy, Advocate, S.R.No.39582

+1cc to Mr.N.Manokaran, Advocate, S.R.No.39197

Cr1.R.C.No. 690 of 2019

MG (CO)
SU(11/03/2022)