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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.08.2021

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.1336 of 2019

Gurusamy

...Petitioner/Accused

Vs.

Stated represented by
The Inspector of Police,
Velanganni Police Station
(Crime No.148/2009)

...Respondent/Complainant

The Criminal Revision filed under Section 397 read with 401 of Code of Criminal Procedure seeking to call for records on the file of the learned Sessions Judge, Fast Track Mahila Court, Nagapattinam, in Crl.Appeal No.11 of 2012 allow the revision filed by the petitioner by setting aside the judgment dated 05.03.2012 passed by the learned Assistant Sessions Judge and Chief Judicial Magistrate, Nagapattinam, in S.C.No.156 of 2010, confirmed by the learned Sessions Judge Fast Track Mahila Court, Nagapattinam, in C.A.No.11 of 2012 by judgment dated 07.09.2019.

For Petitioner : Mr.T.Dharani for
M/s.M.K.Subramanian

For Respondent : Mr.S.Sugendran
Government Advocate (Crl.Side)

ORDER

This criminal revision is preferred against the concurrent judgment of Courts below made in S.C.No.156 of 2010 by the learned Assistant Sessions Judge & Chief Judicial Magistrate, Nagapattinam, dated 05.03.2012 as confirmed by the learned Sessions Judge, Fast Track Mahila Court, Nagapattinam, in Criminal Appeal NO.11 of 2012 dated 07.09.2019.



2 Case of the prosecution is that P.W.1 and the petitioner/accused are residents of Vadugacheri Village Nagapattinam Taluk and they are neighbours and close friends. Due to their friendship, P.W.1 was also close with the wife of the petitioner/accused and the petitioner/accused suspected the relationship between P.W.1 and his wife. While so, on 20.04.2009 by 07.30 a.m. P.W.1 smiled at wife of the petitioner and on seeing this the petitioner got angry with P.W.1. On the same day, when P.W.1 was on his way to his office in his Motor Cycle bearing Reg.No.TN-51-C-7651, the petitioner wrongfully restrained P.W.1 with billhook (Aruval) at Vadugachery Road, Government Cement Floor and by saying that P.W.1 should die, the petitioner assaulted P.W.1 on his neck. When P.W.1 tried to prevent the same with his right hand, the blow fell on his right wrist and he sustained grievous injury. The accused gave several blows to P.W.1 on his left hand middle finger, left hand wrist, left side of the shoulder, left elbow, on the back side of his neck, causing grievous hurt, with such intention and such circumstances that if he had caused death to P.W.1, he would be guilty of offence of murder. Therefore the petitioner/accused was charge sheeted by the respondent police for the offence punishable under Sections 341 of 307 of IPC.

3 After completing investigation, the respondent police laid a charge sheet and the same was taken on file in PRC No.4 of 2010 by the learned Judicial Magistrate No.I, Nagapattinam and since the offence charged against the petitioner is exclusively trial by the Court of Session, the learned Magistrate committed the case to the learned Principal District and Sessions Judge, Nagapattinam. The learned Sessions Judge taken the case on file on S.C.No.156 of 2010 and made over the same to the Assistant Sessions Court (Sub Court) Nagapattinam for disposal. The learned Assistant Sessions Judge, after trial and hearing of arguments advanced on either side, by judgment dated 05.03.2012 convicted the petitioner and sentenced to pay fine of Rs.500/-, in default, to undergo rigorous imprisonment for a period of one month for the offence under Section 341 of IPC and sentenced to undergo rigorous imprisonment for a period of 7 years with fine of Rs.1000/-, in default, to undergo rigorous imprisonment for a further period of one month for the offence under Section 307 of IPC.

4 Assailing the above judgment of conviction and sentence, the petitioner/accused preferred an appeal before the learned Principal District and Sessions Judge, Salem, and same was taken on file in C.A.No.11 of 2012 and made over the appeal to the learned Sessions Judge, Fast Track Mahila Court, Nagapattinam. The learned Sessions Judge, after hearing both the parties, by judgment dated 07.09.2019, dismissed the appeal and confirmed the judgment of conviction and sentence passed by the



trial Court.

5 Aggrieved over the concurrent judgment of conviction and sentence made by both the Courts below, the petitioner is now before this Court with the present criminal revision case.

6 When the matter is taken up for hearing the learned counsel appearing for the petitioner sought time, which this Court is not inclined to grant, since the present revision is against the concurrent judgment of conviction and the same is pending for two years without any progress and hence accordingly this court inclined to pass orders on merits based on the records available.

7 According to learned counsel for the petitioner, as per the grounds of revision, there are material contradictions between the evidence of prosecution witnesses. There was delay in sending the reports to the Court, which creates reasonable doubt in the case of the prosecution. To support this contention, a reliance was placed on the judgment reported in 1974 LW (Crl.) 190). Evidence of P.Ws.2 & 3 are not trustworthy and based on their evidence conviction cannot be recorded against the petitioner. There are many contradictions in the evidence of P.W.1 injured witness and the medical reports does not corroborate with the evidence of injured witness. There are improvements in the evidence of P.Ws.1& 2 in stage by stage. Further, the blood stained materials recovered by the prosecution have not been sent for chemical analysis. Both the Courts below have failed to consider the above facts and erroneously convicted the petitioner/accused, which warrants interference of this Court.

8 The learned Government Advocate (Crl.Side) appearing for the respondent police would submit There is no material contradiction. P.W.1 is an injured witness and he has clearly deposed the manner in which the offence was committed by the petitioner accused. Since there was illegal relationship between the wife of the petitioner/accused and P.W.1, the petitioner/accused has gone to the extent of causing death to P.W.1 by attacking with deadly weapon. The doctors have also stated that the injuries sustained by P.W.1 is grievous in nature and issued wound certificate, which corroborates the evidence of the injured witness. The trial had rightly appreciated the evidence on record and convicted the petitioner and the lower appellate Court had also confirmed the same, which does not call for any interference of this Court and the revision is liable to be dismissed.

9 Heard the learned Government Advocate (Crl.Side) appearing for the respondent police and perused the materials



available on record.

10 This Court, while exercising revisional jurisdiction, cannot exercise power of the Appellate Court and this Court, being a revisional Court, cannot sit in the arm chair of appellate Court and it has no power to re-assess the evidence and substitute its views on findings of fact. Further, while deciding the revision, it can only see whether there is any perversity in appreciation of evidence by the Courts below.

11 On a perusal of the records, it reveal that P.W.1 is an injured witness and he has clearly spoken about the offence committed by the petitioner/accused. The petitioner/accused attacked P.W.1 with deadly weapon with an intend to cause death to P.W.1 and due to the act of the petitioner/accused, P.W.1 sustained grievous injuries. P.W.12 is the Doctor, who has spoken about the injuries sustained by P.W.1. The contradictions pointed out by the learned counsel for the petitioner/accused are not material contradictions and the same will not go to the root of the case.

12 A combined reading of evidence of P.Ws.1, 12 and 13 and Ex.P6, the wound certificate and Ex.P7 the Accident Register and the material objects 1 & 2, this Court finds that there is no perversity in appreciation of evidence by the Courts below. After perusing the entire documents available on record, this Court is of the view that the prosecution had proved its case beyond all reasonable doubts. The lower appellate Court, as a final Court of fact finding, had re-appreciated entire evidences on record and come to the conclusion, that the petitioner/accused committed the offence and hence confirmed the conviction recorded by the trial Court, in which this Court does not find any reason to take a different view.

13 In the result, the conviction and sentence made by both the Courts below are hereby confirmed and the criminal revision case is dismissed. Trial Court is directed to secure the petitioner/accused to undergo remaining period of imprisonment, if any.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

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1. The Sessions Judge,
Fast Track Mahila Court,
Nagapattinam.
2. The Assistant Sessions Judge and Chief Judicial
Magistrate, Nagapattinam.
3. The Chief Judicial Magistrate,
Nagapattinam.
4. The Inspector of Police,
Velanganni Police Station.
(Crime No.148/2009)
5. The Superintendent,
Central Prison,
Cuddalore.
6. The Public Prosecutor,
High Court of Madras.
7. The Section Officer,
Criminal Section,
High Court, Madras.

Crl.R.C.No.1336 of 2019

EV(CO)
SU(27/10/2021)