



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 13.12.2021

Delivered on : 23.12.2021

CORAM

THE HONOURABLE MRS. JUSTICE R.THARANI

Crl. R.C.(MD)No.691 of 2017 and

Crl.M.P.(MD)No.7866 of 2017

Thirumaran

.. Petitioner/Accused

Vs.

The State rep. By
The Sub Inspector of Police,
R.S.Mangalam Police Station,
Ramanathapuram District.
(Crime No.94/2013)

.. Respondent/Complainant

Prayer : This Revision Case is filed under Section 397 r/w. Section 401 of Cr.P.C., to call for the records pertaining to the judgment and conviction made in Criminal Appeal No.04 of 2016, on the file fo the Additional District and Sessions Judge, Ramanathapuram, dated 24.08.2017, confirming the judgment in S.C.No.131 of 2014, on the file of the Assistant Sessions Judge, Ramanathapuram, dated 03.03.2016 and set aside the same by allowing this Revision.

For Petitioner : Mr.B.Janarthkumar
for Mr.M.Dinesh
For Respondent : Mr.K.Sanjay Gandhi,
Government Advocate

ORDER

This Criminal Revision has been filed to call for the records pertaining to the judgment and conviction made in Criminal Appeal No.04 of 2016, on the file fo the Additional District and Sessions Judge, Ramanathapuram, dated 24.08.2017, confirming the judgment in S.C.No.131 of 2014, on the file of the Assistant Sessions Judge, Ramanathapuram, dated 03.03.2016.

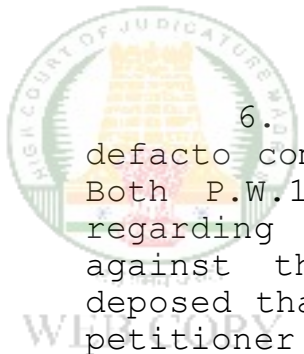
2. The case against the petitioner is that due to previous enmity, on 18.08.2013, at about 10.30 pm., the petitioner attacked the victim with a cricket bat and caused him grievous injuries. A case in Crime No.21 of 2014 under Sections 294(b), 304, 326 and 307 of I.P.C. was registered against the petitioner and the same was taken on file as in S.C.No.131 of 2014, on the file of the Assistant Sessions Judge, Ramanathapuram. The Assistant Sessions Judge found the petitioner guilty under Section 307 of I.P.C and sentenced him to undergo seven years rigorous imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo a further period of six months rigorous imprisonment and acquitted him under Section 294(b) of I.P.C., by its judgment, dated 03.03.2016.



3.As against the said conviction and sentence, the petitioner has preferred an appeal in Criminal Appeal No.4 of 2016 before the Additional District and Sessions Judge, Ramanathapuram. The first appellate Court has partly allowed the Criminal Appeal by reducing the sentence from 7 years rigorous imprisonment to 5 years rigorous imprisonment, and the fine amount of Rs.10,000/- imposed by the trial Court is confirmed, by its judgment, dated 21.08.2017. Aggrieved by the same, the petitioner has preferred this revision.

4. On the side of the revision petitioner, it is stated that independent witnesses did not support the case of the prosecution. P.W.1 is the complainant. P.W.2, who is the husband of the complainant, was the injured. P.W.3 to P.W.6 were cited as eye witnesses. P.W.3 to P.W.6 have deposed that only on hearing the hue and cry, they saw the occurrence. P.W.7 and P.W.8 are mahazer witnesses. P.W.9 and P.W.10 are Doctors. P.W.11 is the Sub Inspector of Police, who registered the F.I.R. P.W.12 is the Inspector of Police, who investigated the case. P.W.13 is the I.O., who filed the charge sheet. The Doctor, who gave treatment to the victim was not examined as a witness in the trial Court. No intention was proved by the prosecution. The weapon used is a cricket bat and hence Section 307 I.P.C is not made out. Since offence under Section 326 I.P.C. is not made out, offence under Section 307 I.P.C. also is not made out. The first appellate Court failed to discuss any material points, but has only repeated the judgment of the trial Court. Obviously, there was no intention to commit murder. Accident Register copy was not marked by the prosecution. If the alleged motive is the information given by the victim against the petitioner before the police, the occurrence ought to have been done much earlier. The alleged immediate motive as narrated by the prosecution is only with regard to a cattle of the petitioner grazing the victim's haystack, which is unbelievable. There is no motive and no intention to commit murder and prayed the petitioner to be acquitted.

5. On the side of the respondent, it is stated that this revision is against the concurrent judgments of the Courts below. The prosecution has examined 13 witnesses and marked 7 documents and 1 material object and has proved the case beyond all reasonable doubts. The victim was having 6 grievous injuries and 3 simple injuries. P.W.1 is an eye witness. P.W.2 is the victim. The evidence of the other witnesses co-relates the evidence of P.W.1 and P.W.2. The evidence of The Doctor - P.W.9 supports the case of the prosecution. P.W.10 has issued the wound certificate. The petitioner was first admitted in Madurai Rajaji Government Hospital and then on the same day, he was admitted in Meenakshi Mission Hospital, Madurai. There is no infirmity either in the investigation or in the judgment and prayed the revision to be dismissed.



6. The previous enmity between the petitioner and the defacto complainant was proved by the evidence of P.W.1 and P.W.2. Both P.W.1 and P.W.2 have deposed that there was prior enmity regarding some information given by P.W.2, before the police against the petitioner, regarding sand theft. P.W.2 has also deposed that fine was imposed by the Revenue Department against the petitioner for sand theft. P.W.1 and P.W.2 have deposed that on the date of occurrence, the petitioner was irritated, since his cow was chased by the victim for grazing straw from the haystack of P.W.2. As discussed above, the motive between the petitioner and P.W.2 was proved by the evidence of P.W.1 and P.W.2.

7. The evidence of P.W.1 and P.W.2 co-relates the evidence of P.W.3, regarding the date and the time of occurrence. The evidence of P.W.5 and P.W.6 reveals that on 18.08.2013, at about 11.30 p.m., there was hue and cry from the house of P.W.2 and that P.W.2 was found with injuries. The date and time of occurrence were proved by the prosecution.

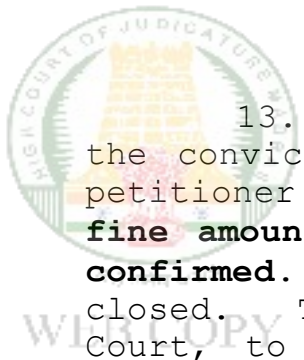
8. On the side of the revision petitioner, it is stated that the Accident Register Copy was not marked on the side of the prosecution. P.W.2 has deposed that immediately, after getting first aid in the Government Hospital, the victim was admitted in Madurai Meenakshi Mission Hospital. From the evidence of P.W.9 - Doctor, it is clear that P.W.2 was shifted from the Government Hospital without the permission of the Doctor. Hence, no Accident Register copy was marked on the side of the prosecution.

9. P.W.10- Doctor has deposed that P.W.2 was having 6 grievous injuries and 3 simple injuries and there was fracture in the left side of the skull. P.W.5 and P.W.6 have deposed that they saw the victim having injuries. The nature of injuries as narrated by P.W.2 co-relates the nature of injuries narrated by P.W.1 and P.W.10. Since the skull of the victim was fractured, there is no doubt regarding the grievous nature of the injuries.

10. The seizure of the weapon was proved by the evidence of P.W.7 and P.W.8. Non seizure of blood strained sand is not a sufficient ground to acquit the petitioner.

11. Since the motive, intention, weapon, place of occurrence, date of occurrence, time of occurrence and nature of injuries were proved by the prosecution beyond all reasonable doubt, there is nothing sufficient enough to interfere in the order of conviction by the courts below.

12. On the side of the petitioner, it is stated that the petitioner is having physical ailments and he requires treatment. He has to maintain his family members. In view of the circumstances as discussed above, this Court is of the opinion that the sentence



13. Hence, his Criminal Revision Case is partly allowed and the conviction is confirmed and sentence imposed on the revision petitioner is reduced to **Three years** rigorous imprisonment. **The fine amount of Rs.10,000/- imposed by the Courts below is hereby confirmed.** Consequently, connected Miscellaneous Petition is closed. The Registry is directed to send a copy to the trial Court, to take steps, to enforce this order and to secure the accused/ petitioner.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Additional District and Sessions Judge,
Ramanathapuram.
2. The Assistant Sessions Judge,
Ramanathapuram.
3. The Sub Inspector of Police,
R.S.Mangalam Police Station,
Ramanathapuram District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Pre-delivery order made in
Crl. R.C.(MD)No.691 of 2017
23.12.2021

USK (03.01.2022) 4P 5C