



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.RC (MD)No.73 of 2017

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1.Yesudhason

2.Sahariyas

: Petitioners/Appellants/Accused 1 & 2

Vs.

The State represented by its
The Sub-Inspector of Police,
Thiruvattar Police Station,
Kanyakumari District.

(in Crime No.286 of 1996) : Respondent/Respondent/Complainant

PRAYER: The Criminal Revision case is filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the records relating to judgment passed by the learned Mahila Fast Track Court/Sessions Judge, Nagercoil dated 11.11.2016 in C.A.No.252 of 2004 confirming/modifying the judgment passed by the learned Judicial Magistrate, Padmanabhapuram in C.C.No.236 of 1996 dated 18.10.2004 and set aside the same and thus allow this revision petition.

For Petitioners : Mr.N.Dilip Kumar

For Respondent : Mr.M.Muthumanikkam

Counsel for Government of
Tamil Nadu (Criminal Side)

ORDER

This Criminal Revision Case has been filed to set aside the judgment dated 11.11.2016 made in C.A.No.252 of 2004 on the file of the learned Mahila Fast Track Court/Sessions Judge, Nagercoil, confirming/modifying the judgment passed by the learned Judicial Magistrate, Padmanabhapuram in C.C.No.236 of 1996 dated 18.10.2004.

2.The revision petitioners herein are arrayed as accused Nos.1 and 2 in C.C.No.236 of 1996 on the file of the learned Judicial Magistrate, Padmanabhapuram. The respondent lodged the complaint against them alleging that the petitioners had committed the offence punishable under Sections 341, 326, 326 r/w 34 of I.P.C. By judgment dated 18.10.2004, the trial Court convicted the first petitioner under Section 341 of I.P.C and sentenced to undergo one month simple imprisonment and further convicted him under Section 326 of I.P.C and sentenced to undergo two years rigorous imprisonment and to pay a fine of Rs.500/- in default to undergo one month simple imprisonment. Similarly, the trial Court convicted the second



petitioner under Section 341 of I.P.C and sentenced him to undergo one month simple imprisonment and further convicted him under Section 326 r/w 34 of I.P.C and sentenced to undergo two years rigorous imprisonment and to pay a fine of Rs.500/- in default to undergo one month simple imprisonment. Challenging the said conviction and sentence, the petitioners herein preferred an appeal in Crl.A.No.252 of 2004 on the file of the learned Mahila Fast Track Court/Sessions Judge, Nagercoil. By judgment dated 11.11.2016, the First Appellate Court partly allowed the appeal and modified the sentence. While at the time of modifying the judgment rendered by the trial Court, the first Appellate Court has held that both the revision petitioners were guilty under Section 341 of I.P.C and ordered to pay a fine of Rs.100/- in default to undergo one week simple imprisonment. Further held that the first and second petitioners were guilty under Section 325 and 325 r/w 34 of I.P.C respectively and sentenced them to undergo two weeks simple imprisonment and to pay a fine of Rs.500/-. Challenging the above conviction and sentence, the petitioner has come before this Court with this revision case.

3. The case of the prosecution in brief is as follows:-

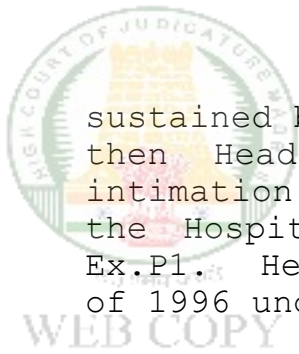
(i) PW.1 and the accused are residing in the same village. On 17.05.1996, while PW1 was returned from Sengodi junction nearer to the house of the first accused, both the accused waylaid him and by using iron rod, the first accused attacked PW1 on his left thigh and as a result of which, PW1 sustained fracture. In the course of same transaction, by using the same iron rod, the first accused attacked PW1 on his head and left cheek. While such time, after hearing the hue and cry of PW1, PW3-Thopias along with one Kuttinadar came there and gave first aid to PW1. After hearing the same, the father-in-law of PW1 came there and made arrangements for admitting PW1 in Government Hospital, Kottarai. In the hospital, PW5-Dr.John Titus, on 17.05.1995 around 9.35 p.m examined PW1 and found the following injuries:-

1.A laceration of size 2" X 0.5" over the frontal region (Linear) bone depth.

2. A laceration of size 2" X 0.5" over the distal part of the right leg, Abrurmal moreover and present at that region.

3. A laceration of size 2cm x 1cm over the left cheek.

(ii) Thereafter, in view of the advise given by PW5, PW-8-Dr.Meena (Radiologist) took X-Ray on the injured portion and issued the report stating that there was a fracture found in the left leg of PW1. On receipt of the report, PW5 and PW8 issued wound certificate under Ex.P3 stating that the nature of the injury



sustained by PW1 is grievous. In the meantime, PW6-Gangadharan the then Head Constable, Thiruvattar Police Station received the intimation from the Hospital. After receipt of the intimation from the Hospital, he examined PW1 and recorded his statement under Ex.P1. He registered the case against the accused in Crime No.286 of 1996 under Sections 341, 324 and 326 of I.P.C.

(iii) After registration of FIR, PW7-Gurumoorthy the then Sub Inspector of Police took up the case for investigation. He visited the scene of occurrence and prepared an Observation Mahazar under Ex.P3. He drawn the Rough Sketch under Ex.P4. He examined the witnesses and recorded their statements. After receipt of the Wound Certificate from the Doctor, he came to the positive conclusion that both the accused are punishable under Sections 341 and 326 of I.P.C and filed the final report accordingly.

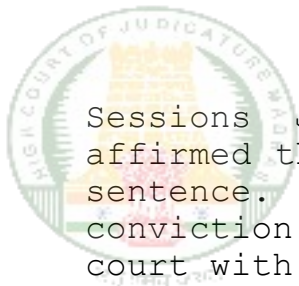
4. Based on the above materials, the trial Court framed the charges against the first accused under Section 341 and 326 of IPC and against the second accused under Sections 341 and 326 r/w 34 of I.P.C. Both the accused denied the charges and opted for trial. Therefore, both the accused was put on trial.

5. During the course of trial proceedings, in order to prove their case, on the side of the prosecution, as many as 8 witnesses were examined as PW1 to PW8 and 6 documents were exhibited as Ex.P1 to Ex.P6, besides, two Material Objects [M.O.1 and M.O.2].

6. Out of the above-said witnesses, P.W.1-Alphones is the victim. He speaks about the attack made by the accused and about the complaint lodged before the Police Officer. PW2-Thangavel claims that during the time of occurrence, both the accused waylaid PW1 and thereafter, by using iron rod the first accused attacked PW1 on his right leg. PW3-Thopias, who is also the occurrence witness, claims that during the time of occurrence both the accused waylaid PW1 and thereafter, the first accused attacked PW1 by using iron rod. PW4 is the witness attested in the Observation Mahazar. PW-5 and PW-8, who are the Doctors attached with Kottarai Government Hospital, speak about the treatment given to PW1. They further stated about the nature of injury sustained to PW1. PW6 and PW7 are the Police Officers speak about the receipt of the complaint, registration of the case, examination of the witness and filing of final report.

7. When the above incriminating materials were put to the accused under Section 313 Cr.P.C. the accused denied the same as false. However, they did not chose to examine any witness nor mark any document on their side.

8. Having considered all the above materials, the learned Judicial Magistrate, Padmanabhapuram, found the accused guilty under Sections 341, 326, 326 r/w 34 I.P.C and sentenced them as stated in the appeal preferred by the accused, the learned



Sessions Judge, Mahila Fast Track Court, Nagercoil, has also affirmed the finding arrived at by the trial Court and modified the sentence. In the said circumstances, aggrieved by the said conviction and sentence, the revision petitioners are before this court with this revision case.

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9. I have heard Mr.N.Dharmar, learned counsel for the petitioners and Mr.M.Muthumanikkam, learned Counsel for Government of Tamilnadu (Crl.side) appearing for the state and also perused the records carefully.

10. The learned counsel for the petitioners after filing the written arguments, would contend that in the judgement rendered by the Court below the place of occurrence has not been proved. Further there was a delay in registering the case. In otherwise, the witnesses examined on the side of the prosecution as eye witness are not relied upon. He would further contend that the story put forth by the prosecution does not reveal the motive and intention having by the petitioners and also the Investigation Officer has not recovered the weapon. According to him, so many defects are found available in the judgment rendered by the court below and therefore, it is necessary to acquit the accused from the charges.

11.Per contra, the learned Government Advocate (Crl.side) would contend that the evidence given by PW1, PW2 and the Doctor, who gave treatment to PW1 would clearly prove when at the time of occurrence by using iron rod the first accused attacked PW1 and thereby PW1 sustained grievous injury. Further the same was witnessed by PW2 and therefore, it is not necessary to look into the other issue, which are all unnecessary to decide the issue raised in this revision case.

12.I have considered the rival submissions made by the learned counsel appearing on either side.

13.The close reading of the evidence given by PW1/injured and PW2 would go to show that during the time of occurrence, the accused herein waylaid PW1 and consequentially, by using the iron rod attacked on the right leg of PW1. In this aspect, the evidence given by PW1 and PW2 is narrow and inspired the confidence of this Court. In order to corroborate the said evidence, PW5 and PW8, who treated PW1, gave categorical evidence as PW1 sustained grievous injury in his right leg. Further the nature of injury had identified by means of taking X-Ray. Therefore, I am of the view that the evidence given by PW1 and PW2 in respect to the occurrence was corroborated through Medical Officer.

14.Further since the charge has been framed under Sections 341 and 326 of IPC, it is not necessary for the prosecution to show the motivation and intention having by the petitioners. However, in

<https://hdservices.ecourts.gov.in/cases/PW3/>



occurrence on 16.05.1996 there was a quarrel between her daughter Fareena and one Jeyanthi, who is the wife of first accused. So it is probable due to the said enmity on the next date the accused herein attempted to assault PW1.

15. In respect to the registration of case, PW1 gave evidence as after admitting as inpatient, the police attached with Thiruvattar Police station came on the next day around 8.00 a.m and registered his statement. To corroborate the same, PW6, the then Head Constable gave evidence as on 18.05.1996 around 8.00 a.m he received the intimation from the hospital and thereafter, on the same date around 9.15 a.m he visited the hospital and recorded the statement of PW1 and there was no delay in registering the case.

16. The another submission made by the petitioner's counsel is that during the time of investigation, the weapon used by the accused and the bloodstained materials were not collected and therefore, the said lapse found in the investigation would go to show that the investigation in this case is the defective one. It is true that during the time of occurrence, the iron rod which is used for the commission of offence has not been recovered either from the occurrence place or through the accused. In this regard, only after considering the same, the First Appellate Court while at the time of disposing the appeal altered the penal provision from 326 to 325 of I.P.C. Therefore, the non-recovery of iron rod, is not in the way of aiding the revision petitioners. It is the settled law that if the ocular evidence given by the victim stands corroborated by the medical evidence and the independence witnesses, the order of conviction is proper. Thereby, I am of the view that there was no perverse or manifest error found in the judgments rendered by the Court below.

17. In fine, this Criminal Revision Case is dismissed confirming the Judgment dated 11.11.2016 passed in C.A.No.252 of 2004 on the file of the Mahila Fast Track Court/Sessions Judge, Nagercoil. The trial Court is directed to secure the revision petitioners and commit them to prison to undergo the remaining period of sentence. Bail bonds, if any, executed by them shall stand cancelled.

Sd/-

Assistant Registrar (CS-III)

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/ /2021

Sub Assistant Registrar (CS)



To:-

1.The Mahila Fast Track Court/Sessions Judge,
Nagercoil.

2.The Judicial Magistrate, Padmanabhapuram.

3.The Sub-Inspector of Police,
Thiruvattar Police Station,
Kanyakumari District.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

5.The Section Officer,
Criminal Section records,
Madurai Bench of Madras High Court,
Madurai.(2 Copies)

+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-26313[F] dated 13/08/2021)

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GC/25.08.2021/6P/8C