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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **11.08.2021**

CORAM:

THE HONOURABLE MR.JUSTICE **R. PONGIAPPAN**
Crl.R.C. (MD)No.891 of 2017

M.Muthukaluvan

: Petitioner/Appellant/
1st Accused

Vs.

The State rep. by its
Sub-Inspector of Police,
Periyakulam,
Thenkarai Police Station,
Theni District.
Crime No.275/2012.

: Respondent/Respondent/
Complainant

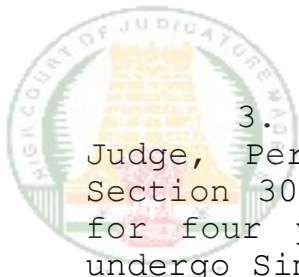
PRAYER: The Criminal Revision Petition is filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the records relating to Judgment passed by the learned Additional District and Sessions Judge, Periyakulam in C.A.No.54 of 2016, dated 08.09.2017 by confirming the judgment made in S.C.No.171 of 2012 on the file of the learned Assistant Sessions Judge, Periyakulam, dated 18.11.2016 and set aside the same.

For Petitioner	: Mr.A.Mithun Chakravarthy
For Respondent	: Mr.M.Muthumanikkam Counsel for Government of Tamil Nadu (Crl.side)

ORDER

Aggrieved over the concurrent findings made in S.C.No.171 of 2012, on the file of the Assistant Sessions Court, Periyakulam, dated 18.11.2016 and Crl.A.No.54 of 2016, on the file of the Additional District and Sessions Court, Theni at Periyakulam, dated 08.09.2017, the revision petitioner is before this Court to check the correctness of those judgments.

2. The revision petitioner is arrayed as first accused in S.C.No.171 of 2012, on the file of the Assistant Sessions Court, Periyakulam. Before the trial Court, he stood charged for the offences punishable under Sections 294(b) and 307 of IPC. He denied the same and opted for trial. Therefore, he was put on trial on the charges.



3. After full-fledged trial, the learned Assistant Sessions Judge, Periyakulam, found the revision petitioner guilty under Section 307 of IPC, and sentenced to undergo Rigorous Imprisonment for four years and to pay a fine of Rs.1,000/-, in default, to undergo Simple Imprisonment for three months.

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4. Challenging the said conviction and sentence, the petitioner/accused preferred an appeal in C.A.No.54 of 2016, before the Additional District and Sessions Court, Theni at Periyakulam. The learned Additional District and Sessions Judge, Theni at Periyakulam, by judgment, dated 08.09.2017 affirmed the findings arrived at by the trial Court and dismissed the appeal. Aggrieved over the said findings, the petitioner is before this Court with the present Criminal Revision Case.

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

(i) P.W.1-Balamurugan is the brother of the revision petitioner. On 05.07.2012 around 6.00 a.m., P.W.1 standing in front of the revision petitioner's house and questioned the petitioner as why you are assaulted his father. After hearing the same, the revision petitioner, abusing P.W.1 with filthy language and by taking the Spade Handle (மண்வெட்டி பிடி) from his house, attacked on his head. The said incident was witnessed by P.W.2-P.Balamurugan and P.W.4- Virumandi. Immediately, after the occurrence, P.W.1-Balamurugan went to the Government Hospital, Periyakulam, wherein, P.W.5-Dr.Kumar, attached with said Hospital examined P.W.1 and found the following injuries:-

"(i) There is a cut injury on the forehead 8x2x1 c.m., size

(ii) There is another cut injury on the head 5x2x1 c.m., size."

After seeing the said injury, P.W.5 advised the P.W.1 to take CT Scan, but the same was refused by P.W.1 and therefore, P.W.5 could not given any opinion in respect to the nature of injuries sustained by P.W.1.

(ii) In the meantime, on 05.07.2012 around 7.45 a.m., P.W.8-Pitchaimani, the then Sub-Inspector of Police received the information from the Government Hospital, Periyakulam and on receipt of the said information, he went to the hospital and recorded the statement from P.W.1.

(iii) After recording the statement from P.W.1, he returned to the Police Station and registered a case against the revision petitioner and against his wife in Cr.No.275 of 2012, for the offences punishable under Section 294(b) and 307 of IPC. The complaint given by P.W.1 and the FIR were marked as Ex.P1 and Ex.P7 respectively. After registration of the case, the copy of the FIR has been handed over to P.W.9-Ilangovan, the then Inspector of

<https://hccourts.courts.gov.in/hccservices> Police for investigation.



(iv) In turn, P.W.9 took up the investigation and on the same day, around 9.20 a.m., he visited the scene of occurrence and in the presence of witnesses, he prepared an Observation Mahazar under Ex.P5. He drawn the Rough Sketch under Ex.P8. From the occurrence place, in the presence of same witnesses, he recovered the Spade Handle, under the cover of Mahazar. He examined the witnesses and recorded their statements. He arrested the accused and sent for remand. On 24.03.2012 he examined P.W.5-Doctor, who had given treatment to P.W.1, and recorded his statement. Ultimately, P.W.9 concluded the investigation and came to the positive conclusion that both the revision petitioner and his wife have committed the offence under Sections 294(b) and 307 of IPC. He filed a final report accordingly.

6. Based on the above materials, the trial Court framed the charge under Sections 294(b) and 307 of IPC. The revision petitioner being the first accused and his wife (A2 now acquitted) denied the charge and opted for trial. Hence, in order to prove their case, on the side of the prosecution, 9 witnesses were examined as P.W.1 to P.W.9 and 8 documents were marked as Ex.P1 to Ex.P8, besides, one material object (M.O.1).

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, he did not chose to examine any witness nor mark any document on his side.

8. Having considered all the above materials and after hearing the arguments advanced by the learned counsel appearing on either side, the learned trial Judge convicted the revision petitioner under Section 307 of IPC and sentenced him as stated above. However, the second accused, who is the wife of the revision petitioner in this case, was acquitted by the trial Court. Further, the conviction and sentence awarded by the trial Court was confirmed by the learned Additional District and Sessions Judge, Theni at Periyakulam in C.A.No.54 of 2016.

9. I have heard Mr.A.Mithun Chakravarthy, learned counsel appearing for the revision petitioner and Mr.M.Muthumanikkam, learned Government Advocate (Crl.side) appearing for the respondent. I have also perused the records carefully.

10. The learned counsel appearing for the revision petitioner would contend that in view of the evidence given by the Doctor, who treated P.W.1/defacto complainant, P.W.1 had sustained only a simple injury. Further, prior to the occurrence, the revision petitioner is not having any intention to kill or cause death on P.W.1. The entire occurrence had happened as a result of wordy quarrel happened between P.W.1 and the revision petitioner. In the circumstances, without considering those aspects, the



Courts below, wrongly came to the conclusion that the revision petitioner found guilty under Section 307 of IPC and the said findings arrived at by the Courts below is nothing but manifest error and cross injustice. After submitting as above, he prayed to allow this Criminal Revision Case.

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11. Per contra, the learned Government Advocate (Crl.side) appearing for the respondent/State would submit that findings arrived at by the Courts below is well within the Parameters of the Law. According to him, interference of this Court in the findings arrived at by the Courts below does not require.

12. Now, considering the said submissions with relevant records, it is true before the trial Court P.W.5-Dr.Kumar, who treated P.W.1, gave evidence as due to the non availability of the CT Scan, he is not in a position to give any opinion in respect to the nature of injuries sustained by P.W.1. Therefore, it is obvious on the part of the Courts below to treat the injuries sustained by P.W.1 is a simple in nature. In otherwise, in respect of the injuries sustained, the evidences given by P.W.1 and P.W.5 are sufficient to hold that during the time of occurrence, the revision petitioner, by using Spade Handle, attacked P.W.1 and caused simple injury on his head.

13. As a general rule, court can and may act on the testimony of a single witness though uncorroborated. Here, it is a case, it is admitted on either side that in the complaint (Ex.P1), the presence of eye witnesses have not been narrated. As rightly pointed out by the learned Government Advocate (Crl.side) that in some occasions, though corroborated piece of evidence is not available, if the sole testimony of single witness is wholly reliable and inspire the confidence of this Court. That would alone is sufficient to award the conviction.

14. Therefore, I am of the opinion that during the relevant point of time, the revision petitioner, by using dangerous weapon, caused simple injury to P.W.1.

15. In this occasion, now on go through the judgment rendered by the Courts below, the revision petitioner was convicted under Section 307 of IPC. In general, for proving the offence under Section 307 of IPC, the prosecution must shown the following ingredients:-

"(i) That the accused did an act;

(ii) That the act was done with intention or knowledge and under such circumstances to cause a bodily injury as the accused knew to be likely to cause death or that such bodily injury was in the ordinary course of nature to cause death, or that the accused attempted to cause such death by doing an act known to him to be so

<https://hcservices.com/sign-in/hcservices/> dangerous that it must in all probability cause



death or such bodily injury as is likely to cause death;
and

(iii) That the accused had no excuse for incurring the risk of causing such death or injury."

16. In the said circumstances, now, on go through the entire story put forth by the prosecution witnesses, it seems while at the time of occurrence, the petitioner is not having an intention to kill P.W.1. The mere fact that the accused causes injuries, by using Spade Handle, will not *ipso facto* treating the case under Section 307 of IPC. In otherwise, to prove the offence under Section 307 of IPC., intention or likely to cause death must be established.

17. In this case, those aspects are missing and accordingly, I am of the opinion that convicting the revision petitioner under Section 307 of IPC is manifest error and the same is nothing but cross injustice. In otherwise, the evidence put forth by the prosecution reveals the fact that while at the time of occurrence, the revision petitioner by using the dangerous weapon caused simple hurt to P.W.1 and thereby, the said circumstances shows, the revision petitioner is found guilty under Section 324 of IPC.

18. Accordingly, in the light of the above discussions, the conviction and sentence awarded to the revision petitioner under Section 307 of IPC is set aside. The revision petitioner is found guilty under Section 324 of IPC and sentenced him to undergo Rigorous Imprisonment for 6 months and shall pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for one month. The period of imprisonment already undergone by the revision petitioner shall be set off under Section 428 of Cr.P.C. The trial Court is directed to take steps to secure the custody of the accused and make him to undergo the remaning period of the sentence.

19. In the result, this Criminal Revision Case is partly allowed.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

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To

1.The Additional District and Sessions Judge,

Periyakulam.

<https://hcservices.ecourts.gov.in/hcservices/>



2.The Assistant Sessions Judge,
Periyakulam.

3.Sub-Inspector of Police,
Periyakulam,
Thenkarai Police Station,
Theni District.

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

CrI.R.C. (MD) No.891 of 2017
11.08.2021

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