



Crl.R.C.No.53 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2022

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Criminal Revision Case No.53 of 2020

Mayandi

... Petitioner

Versus

State by
The Inspector of Police,
Vellipalayam Police Station,
Crime No.54 of 2011.

... Respondent

Criminal Revision Case filed under Sections 397 r/w 401 of Criminal Procedure Code to call for the records on the file of the Sessions Judge, Fast Track Mahila Court, Nagapattinam in C.A.No.3 of 2012 and to allow the revision filed by the petitioner by setting aside the judgment dated 07.02.2012 passed by the learned Assistant Sessions Judge and Chief Judicial Magistrate, Nagapattinam in S.C.No.97 of 2011 confirmed by the Sessions Judge, Fast Track Mahila Court, Nagapattinam in C.A.No.3 of 2012 by judgment dated 18.09.2019.

For Petitioner : Ms.T.Dharani
for Mr.M.K.Subramanian
For Respondent : Mr.R.Murthi
Government Advocate (Crl.Side)

ORDER



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The Criminal Revision Case arises out of the concurrent findings passed in S.C.No.97 of 2011 confirmed in C.A.No.3 of 2023 on the file of the learned Sessions Judge (Fast Track Mahila Court) Nagapattinam.

2. The case of the prosecution is that on 17.01.2011 at about 9.00 a.m. the first accused one Mariyappan @ Mari came to the flower shop of P.W.9 along with his wife and bought flowers for Rs.10/-. At that time, P.W.1, who is working in the flower shop of P.W.9 made a comment on the first accused saying that "என்ன இன்று ஜாலி தானே வாட்சக்கா" and due to the said comment, the first accused felt offended and quarrelled with P.W.1 and attempted to beat P.W.1. Due to the intervention of people nearby, the quarrel was stopped. Even after the said occurrence, the first accused used to threaten P.W.1 saying that he would murder him. On 21.01.2011 at about 11.30 p.m, when P.W.1 was selling flowers in the flower shop, A1 and A2 came there in a motor cycle, the second accused caught hold of P.W.1 and the first accused assaulted him with "Veechu Aruval" and the *de-facto* complainant sustained injuries on the head and both sides of his shoulders. Thereby, the first accused committed an offence punishable under Section 307 IPC and the



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second respondent committed an offence punishable under Section 307 r/w 109 IPC.

3. On the complaint given by the *de-facto* complainant, the respondent/Police registered a case in Crime No.54 of 2011 for the offences punishable under Sections 342, 307 r/w 109 IPC against the accused. After investigation, the respondent/Police filed a charge sheet before the learned Judicial Magistrate No.II, Nagapattinam and the same was taken on file in P.R.C.No.8 of 2011. After completing the formalities under Section 207 Cr.P.C., the learned Magistrate committed the case for trial before the learned Principal District and Sessions Judge, Nagapattinam, since the offence involved is under Section 307 IPC which is exclusively triable by the Court of Session. The learned Principal District and Sessions Judge, Nagapattinam made over the case to the learned Assistant Sessions Judge, Nagapattinam and the case was taken on file in S.C.No.97 of 2011.

4. In order to prove its case before the trial Court, on the side of the prosecution, as many as 13 witnesses were examined as P.W.1 to P.W.13 and



12 documents were marked as Exs.P1 to P12 and two material objects were marked as M.O.1 and M.O.2. On the side of the defence, no oral evidence was adduced and no documentary evidence was produced.

5. The trial Court, after hearing the arguments advanced on either side and also considering the materials available on record found that A1 and A2 are guilty for the charged offences and they were convicted and sentenced as follows :

(i) the first accused was convicted for the offence under Section 307 IPC and sentenced to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for a period of one month;

(ii) the petitioner herein/second accused was convicted for the offence under Section 342 IPC and sentenced to undergo rigorous imprisonment for a period of six month and for the offence under Section 307 r/w 109 IPC he was sentenced to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for a period of one month;



6. Challenging the said conviction and sentences, A1 and A2 preferred an appeal in Crl.A.No.3 of 2012 before the learned Sessions Judge, Fast Track Mahila Court, Nagapattinam. The lower Appellate Court, as a final Court of fact finding re-appreciated the entire materials and dismissed the appeal against the petitioner herein/A2 and confirmed the conviction and sentence passed by the trial Court. Since the first accused died during the pendency of the appeal, appeal against A1 was dismissed as abated. Challenging the dismissal order, the petitioner herein/A2 filed the present revision before this Court.

7. P.W.1 is the injured eye witness and he has categorically stated about the specific overt act of each of the accused. P.W.4, who is a brother of P.W.1 in her evidence has deposed that on 21.01.2011 at about 11.30 p.m while he was in the house, he received a message through phone by P.W.5 that his brother/P.W.1 was assaulted by the accused persons, thereafter, P.W.4 went to the place of occurrence, took the injured and admitted in the Government Hospital, Nagapattinam for treatment. P.W.4 evidence clearly



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reveals that the injured sustained injuries by the accused persons. P.W.11/Doctor, who gave treatment to the injured issued Ex.P8/ Accident Register which reveals that the injured sustained grievous injuries and he recommended the injured for further treatment. The evidence of P.W.1 is corroborated by the evidence of P.W.3 who is an independent eye witness to the said occurrence.

8. On a combined reading of the evidence of P.W.1/injured witness, P.W.11/Doctor, Ex.P8/Accident Register attached with Wound Certificate and M.O.1 recovery weapon clearly show that the petitioner herein/A2 caught hold the injured witness to assist the first accused to attack the injured witness with deadly weapons. Since A1 and A2 used deadly weapons and chosen the place to cause injuries, which clearly reveal that they made attempt to take away the life of the injured witness. Therefore, the trial Court convicted and sentenced the first accused for the offence under Section 307 IPC. Since the second accused/petitioner herein assisted the first accused to cause injuries to P.W1 thereby, he was convicted and



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sentenced for the offence under Sections 342, 307 r/w 109 IPC. The trial Court rightly convicted and sentenced as stated above. The lower appellate Court re-appreciated the entire evidence and give an independent finding that the petitioner herein and the other accused caused injuries to the *de-facto* complainant /P.W.1 with deadly weapons and confirmed the judgment of the Court below.

9. Considering the facts and circumstances and also considering the injuries sustained by P.W.1, there is no mitigating circumstances to reduce the sentence against the petitioner. The scope of revision is very limited. The Trial Court and the Appellate Court had already appreciated and re-appreciated the entire evidence and also given findings and while exercising the revisional jurisdiction, this Court cannot sit in the arm chair of the Appellate Court and re-appreciate the evidence. However, this Court has to see whether there is any perversity or infirmity in the judgments of the Courts below.



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10. Taking into consideration the evidence of P.W.1, who is injured eye witness and whose evidence was corroborated with the medical evidence, this Court does not find any substantive reasons or any perversity in appreciation of evidence, illegality or infirmity in the judgment of the both the Courts below and there is no merit in the revision and the same is liable to be dismissed.

11. In view of the above, this Criminal Revision Case is dismissed and the judgment dated 18.09.2019 passed in C.A.No.3 of 2023 by the learned Sessions Judge (Fast Track Mahila Court) Nagapattinam, confirming the conviction and sentence passed by the learned Assistant Sessions Judge, Nagapattinam in S.C.No.97 of 2011 dated 07.02.2012 is confirmed. The trial Court is directed to take steps to secure the custody of the accused to undergo the remaining period of sentence, if any and the same shall be set-off under Section 428 Cr.P.C.

22.12.2022



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Index : Yes/No
Speaking Order/Non Speaking Order

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To

- 1.The Sessions Judge,
Fast Track Mahila Court,
Nagapattinam.
- 2.The Assistant Sessions Judge and
Chief Judicial Magistrate,
Nagapattinam.
- 3.The Inspector of Police,
Vellipalayam Police Station.
- 4.The Public Prosecutor,
High Court, Madras.



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P.VELMURUGAN, J.

ms

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