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Crl.R.C.No.1078 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2022

CORAM

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.R.C.No.1078 of 2018

and Crl.M.P.No.12490 of 2018

J.Senthilnathan

... Petitioner

Vs.

State by,
The Inspector of Police,
N-3, Muthialpet Police Station,
Chennai 600 001.

... Respondent

PRAYER: Criminal Revision case has been filed under Section 397 r/w 401 of Cr.P.C to call for the records and to set aside the Judgment of conviction, sentence and fine passed in C.C.No.925 of 2010 by the learned XVI Metropolitan Magistrate Court, GT, Chennai, which conviction was confirmed by the learned V Additional Sessions Judge, Chennai by modifying the sentence and awarding the compensation in lieu of fine in C.A.No.69 of 2016 by judgment dated 07.09.2018.

For Petitioner : Mr.J.Karunanithi

For Respondent : Mr.A.Gopinath

Government Advocate (Crl.Side)



Crl.R.C.No.1078 of 2018

WEB COPY

ORDER

This Criminal Revision case has been filed as against the Judgment passed in Crl.A.No.69 of 2016 dated 07.09.2018 by the V Additional Sessions Judge at Chennai, thereby confirmed the Judgment passed in C.C.No.925 of 2010 dated 22.02.2016, on the file of XVI Metropolitan Magistrate Court, George Town, Chennai, thereby convicted the petitioner for the offence punishable under Section 325 of IPC.

2. The case of the prosecution is that on 02.09.2009, at about 23.30 p.m, the complainant's son was standing in front of his house. At that juncture, the accused persons came there and wantonly created problems with him. When the complainant tried to protect her son, all the accused persons, with a common intention, attacked her. A1 pulled her hand and all the accused persons repeatedly gave severed punches on her face, due to which, she sustained bleeding injury on her face and sustained lacerated injury on her lower lip. She was admitted at Stanley hospital. Hence, the complaint.



Crl.R.C.No.1078 of 2018

WEB COPY

3. On receipt of the complaint, the respondent registered an FIR in Crime No.466 of 2009 for the offence punishable under Section 341, 325 r/w 34 of IPC. After completion of investigation, the respondent filed a final report and the same has been taken cognizance by the Trial Court in C.C.No.925 of 2010.

4. In order to bring home the charges, the prosecution had examined P.W.1 to P.W.11 and marked Exs.P1 to P5. On the side of the accused, no one was examined and no document was marked. On a perusal of oral and documentary evidence, the Trial Court found A1 alone guilty for the offence under Section 325 of IPC and sentenced him to undergo two years simple imprisonment and also imposed fine of Rs.1000/-, in default to undergo three months simple imprisonment. A2 and A3 were acquitted by the Trial Court. Aggrieved by the same, the petitioner preferred an appeal and the appellate Court confirmed the conviction imposed under Section 325 of IPC and modified the sentence to three months and instead of fine, ordered compensation of Rs.30,000/- payable to the victim. Aggrieved by the same, this present revision.



Crl.R.C.No.1078 of 2018

WEB COPY

5. The learned counsel for the petitioner would submit that the first counsel on record already died and he could not able to trace out the bundle and that he had no instructions from the petitioner. Therefore, this Court is inclined to pass orders on merits.

6. The petitioner raised grounds that the alleged occurrence had occurred on 02.09.2009 at about 23.30 hrs. Whereas, the FIR was registered only on 04.09.2009. There was unexplained delay of two days in lodging the complaint which creates a grave doubt in the case of the prosecution. The prosecution failed to prove the time of occurrence and the manner in which the occurrence said to have occurred and the participation of the petitioner. Therefore, both the Courts below without considering these aspects, mechanically convicted the petitioner herein. When A2 and A3 were acquitted by the Trial Court, the petitioner is also standing in the same footing and the same benefits would have been given to the petitioner.



Crl.R.C.No.1078 of 2018

WEB COPY

7. Per contra, the learned Government Advocate (Crl.Side) appearing for the respondent would submit that in order to prove the charges, the prosecution had examined P.W.1 to P.W.11 and marked Exs.P1 to P5. The victim was examined as P.W.2. She categorically deposed the specific overt-act as against the accused. Due to the attack, she lost her 3 teeth. Immediately, she was taken to the hospital and she was treated by P.W.9. The Accident Register was recorded by P.W.8 which was marked as Ex.P2. Therefore, the prosecution proved its case beyond any doubt and the Courts below rightly convicted the petitioner for the offence under Section 325 of IPC.

8. Heard, Mr.J.Karunanithi, learned counsel appearing for the petitioner and Mr.A.Gopinath, learned Government Advocate (Crl.Side) appearing for the respondent.

9. Admittedly, on 02.09.2009, when the son of P.W.1 was sitting in front of his house, A1 to A3 came there and had a quarrel with him. When P.W.1 attempted to protect her son, A1 to A3 attacked her by their



Crl.R.C.No.1078 of 2018

hands. She deposed that when P.W.3 intercepted and tried to pacify the accused, A1 gave punches on her face, due to which, 3 teeth on her lower jaw had fallen. The Doctors, who treated P.W.1 were examined as P.W.8 to P.W.11. P.W.11 deposed that 3 teeth were broken i.e., 31, 41, 42 in her lower jaw and also she suffered fracture on her 42nd teeth canal. It was certified by P.W.9 as grievous injury. That apart, the injured sustained injuries on her lower jaw and she had fainted. Therefore, she could not give any statement. Hence, the prosecution properly explained the delay in registration of FIR. That apart, the delay in registration of FIR would not cause any prejudice to the petitioner as well as it would not affect the case of the prosecution. Hence, the Courts below rightly convicted the petitioner for the offence punishable under Section 325 of IPC. Hence, this Court finds no infirmity or illegality in the sentence imposed on the accused to undergo three months simple imprisonment with a compensation of Rs.30,000/- as ordered by the First Appellate Court and this revision is liable to be dismissed.



Crl.R.C.No.1078 of 2018

WEB COPY

10. Accordingly, this Criminal Revision case stands dismissed.

Consequently, connected Miscellaneous Petition is closed.

09.11.2022

Index: Yes/No

Internet: Yes/No

Speaking/Non-Speaking order

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To

1. The V Additional Sessions Judge, Chennai.

2. The XVI Metropolitan Magistrate Court, GT, Chennai.



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Crl.R.C.No.1078 of 2018

G.K.ILANTHIRAIYAN, J

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Crl.R.C.No.1078 of 2018



WEB COPY



Crl.R.C.No.1078 of 2018

09.11.2022