



Crl.RC.No.121 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2022

CORAM:

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

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Kumar

... petitioner

Vs.

State rep. by
The Inspector of Police,
A.Pallipatty Police Station,
Dharmapuri District

... Respondent

PRAYER: Criminal Revision filed under Section 397 r/w 401 of Code of Criminal Procedure, to set aside the judgment passed by the Principal Sessions Judge, Dharmapuri in Crl.A.No.27 of 2017 dated 22.11.2017 and the judgment made in SC.No.111 of 2015 on the file of the Assistant Sessions Judge, Harur dated 17.02.2017 and to allow the criminal revision filed by the petitioner.

For Petitioner : Mr.Durai Gunasekaran

For Respondent : Mr.A.Gopinath,
Government Advocate(crl.side)

ORDER

This criminal revision is filed as against the judgment passed in Crl.A.No.27 of 2017 dated 22.11.2017 by the Principal Sessions Judge, Dharmapuri, thereby modified the conviction and sentence for the offence under



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Section 326 of IPC from 307 of IPC in the judgment passed in SC.No.111 of 2015

on the file of the Assistant Sessions Judge, Harur dated 17.02.2017, thereby convicted the petitioner for the offence punishable under Sections 307 and 341 of IPC.

2. The case of the prosecution is that due to property dispute between the victim's husband and the accused, the accused intended to do away the life of the victim. While being so, on 08.11.2014 when the victim along with her son were going to her sister's house at about 9.00 p.m., the accused attacked with 'koduval'. Therefore, she sustained multiple injuries. Hence, the complaint. On receipt of the said complaint, the respondent registered FIR in crime No.2 of 2015 for the offence punishable under Sections 341 and 307 of IPC. After completion of investigation, the respondent filed final report and the same has been taken cognizance by the trial court.

3. On the side of the prosecution, they examined PW1 to PW18 and marked Ex.P1 to Ex.P8. The prosecution also marked material object i.e. MO.1. On the side of the accused, no one was examined and marked Ex.D1 and Ex.D2. On perusal of oral and documentary evidence, the trial court found him guilty and sentenced him to pay a fine of Rs.100/- for the offence under Section 341 of IPC,



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in default to undergo one week simple imprisonment. He was also sentenced to undergo four years simple imprisonment for the offence under Section 307 of IPC and to pay a fine of Rs.1,000/-, in default to undergo three months simple imprisonment. Aggrieved by the same, the petitioner preferred appeal and the appellate court modified the judgment and convicted under Section 326 of IPC and sentenced to undergo three years simple imprisonment with fine of Rs.1,000/- and also confirmed the conviction under Section 341 of IPC. Aggrieved by the same, the present criminal revision has been filed.

4. Mr.Durai Gunasekaran, the learned counsel for the petitioner would submit that there was no recovery in respect of the material object i.e. MO.1. There was delay in registration of FIR. Only after 18 1/2 hours, it was registered from the time of alleged occurrence. The alleged occurrence said to have been taken place on 08.11.2014 at about 09.00 p.m., whereas the FIR was registered only on 09.11.2014 at about 03.30 p.m. There was no explanation by the prosecution for delay in registration of FIR. There was contradiction between PW1 and PW2. Her son was examined as PW2. Except PW1 and PW2, no other independent witness was examined by the prosecution. All the injuries are lacerated wounds and no such grievous injuries sustained by the victim. Even then, the appellate court convicted the petitioner for the offence under Section 326 of IPC. In fact, the doctor who



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WEB MO.1 treated the victim was not examined by the prosecution. In respect of recovery of MO.1, there was contradiction between the witnesses. Therefore, he prayed for acquittal.

5. Per contra, Mr.A.Gopinath, the learned Government Advocate (crl.side) appearing for the respondent submitted that the prosecution categorically proved its case beyond any doubt. The victim sustained 13 injuries, in which injuries 1,2,3,10,11,12 are grievous in nature. In fact, she lost her finger and had fracture on her left hand. Though the trial court convicted the petitioner for the offence under Section 307 of IPC, the first appellate court modified the sentence for the offence under Section 326 of IPC. Therefore, he prayed for dismissal of the present criminal revision.

6. Heard, Mr.Durai Gunasekaran, the learned counsel for the petitioner and Mr.A.Gopinath, the learned Government Advocate(crl.side) appearing for the respondent / police.

7. The petitioner and the injured are relatives. The petitioner is a brother in law of the injured. There was a property dispute between them in respect of the property owned by the victim's father in law, due to which there was enmity



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between them. While being so, on 21.10.2014, when the victim was working in a sugarcane field, the accused attempted to murder the victim by spade. Fortunately, she escaped and informed to all the elders in the village. Therefore, there was enmity between the petitioner and the victim. While being so, on 08.11.2014 at about 09.30 p.m., when the victim and her son were proceeding to her sister's house, where the petitioner was hiding and thereafter attacked with 'koduval' on her head. When the victim prevented the attack by her left hand and she sustained injuries. In fact, the accused repeatedly attacked the victim by 'koduval'. Therefore, she sustained fracture injury and also two fingers on her left hand were severed. She also sustained injury on her wrist. Therefore, she fainted and thereafter her relatives called '108 ambulance' and immediately she was taken to Dharmapuri Government Hospital. Immediately, the accident register was recorded and the same was marked as Ex.P5. On perusal of Ex.P5, revealed that the victim sustained 14 injuries.

8. The doctor who recorded accident register was examined as PW13. She corroborated the injuries found in the accident register. Thereafter, the victim was referred for higher treatment and she was admitted as in-patient in the Manipal Hospital at Salem. He issued wound certificate which was marked as Ex.P6. Accordingly, the injuries 1 to 3 and 10 to 12 are grievous injuries. The victim was



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examined as PW1 and she categorically deposed that on 21.10.2014, due to property dispute, the accused attempted to murder her. In fact, it was informed to the panchayatars and due to which, there was enmity between them. On 08.11.2014, at about 9.30 p.m., when she was going to her sister's house along with her son, the accused attacked with 'koduval'. Therefore, she sustained multiple injuries. Her minor son was examined as PW2. He also reiterated the same and corroborated the evidence of PW1. Though the information was received at about 10.00 p.m. on 08.11.2014, the next day FIR was registered after recording the statement from the victim. Therefore, there was no delay in registration of FIR.

9. The material object was recovered and marked as MO.1. and the same was clearly identified by the witnesses. Further, the accident register revealed that she was attacked by her own brother in law i.e. the petitioner herein. Therefore, though FIR was registered on the next day, no prejudice would be caused to the accused since the prosecution proved its case beyond any doubt. That apart, the minor contradictions between PW1 and PW2 is not fatal to the case of the prosecution. Though elaborately all the witnesses were cross examined, nothing was elicited from them and the prosecution rightly proved the case beyond any doubt. Hence, this Court finds no infirmity or illegality in the judgment passed by the first appellate court.



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10. Accordingly, the judgment passed by the Principal Sessions Judge, Dharmapuri in CrI.A.No.27 of 2017 dated 22.11.2017 is confirmed and this criminal revision is dismissed.

28.11.2022

Speaking/non-speaking
Index : Yes/No
Internet : Yes
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G.K.ILANTHIRAIYAN, J.

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To

- 1.The learned Principal Sessions Judge,
Dharmapuri
- 2.The learned Assistant Sessions Judge,
Harur
- 3.The Inspector of Police,
A.Pallipatty Police Station,
Dharmapuri District
- 4.The Public Prosecutor,
High Court of Madras

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