



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.R.C.NO.156 OF 2015

Manjini

... Petitioner

Vs.

State by
The Station House Officer,
Orleanpet Police Station,
Puducherry,
[Crime No.434 of 2008]

... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 and 401 of Criminal Procedure Code, to call for the records and set aside the judgment dated 23.01.2015 made in C.A.No.10 of 2014 on the file of the Principal Sessions Judge, Puducherry passed against the judgment dated 18.02.2014 made in C.C.No.134 of 2009 on the file of the Judicial Magistrate No.2, Puducherry.

For Petitioner : Mr.S.Ganesh Kumar

For Respondent : Mr.V.Balamurugane
Public Prosecutor [Puducherry]

ORDER

The petitioner/A1 in C.C.No.134 of 2009 convicted by the learned Judicial Magistrate No.II, Puducherry by judgment dated 18.02.2014 and sentenced the petitioner/A1 to undergo one year simple imprisonment and to pay a fine of Rs.2000/- in default to undergo two months simple imprisonment for the offence under Section 325 IPC, A2 to A4 were sentenced to pay a fine of Rs.500/- under Section 323 IPC and A1 to A4 were sentenced to pay a fine of Rs.500/- in default to undergo one month simple imprisonment for the offence under Section 448 IPC. Aggrieved against the same, all the accused preferred an appeal in C.A.No.10 of 2014 before the learned Principal Sessions Judge,



Puducherry, who by his judgment dated 23.01.2015 dismissed the appeal in respect of A2 to A4 and confirmed their sentence. As regards the petitioner/A1, the conviction and sentence imposed for the offence under Section 325 was modified to six months simple imprisonment instead of one year and to pay a fine of Rs.1,000/- instead of Rs.2,000/-. Further, the conviction and sentenced upon the petitioner/A1 for the offence under Section 448 IPC is confirmed. Against which, the present revision petition is filed.

2.The gist of the case is that on 11.10.2008 at about 2.45 p.m., P.W.5/Head Constable attached to Orleanpet Police Station received a complaint from P.W.1/defacto complainant, who was working as a clerk in Jipmer Library, after his work went to his house at about 2.00 p.m, at that time, some sewage work was going on in the house of Annamalai/A3, the debris were dumped in front of the defacto complainant's house, when that was questioned there was a wordy altercation, thereafter on the intervention of others both left the place. After 15 minutes, i.e. at about 2.30 p.m. A1 to A4 trespassed into the house of P.W.1, abused him and assaulted him. A1 assaulted the defacto complainant on his mouth using a brick, A2 on the right hand, A3 and A4 assaulted him with their hands. P.W.2 and P.W.3 who are the neighbours came there and thereafter, the accused persons left the place. Due to the assault, one tooth fell down and the defacto complainant also sustained injuries in other teeth also. Thereafter, the defacto complainant went to the Police Station, lodged a complaint, accompanied by a Police Constable went to the Rajiv Gandhi Government Hospital where P.W.4/Doctor treated him, issued Accident Register and Wound Certificate. On registration of FIR, the same was placed before P.W.6/Investigating Officer, who visited the scene of occurrence, prepared observation mahazar, rough sketch, enquired the witnesses present there and thereafter, on completion of investigation, filed the charge sheet. During trial, P.W.1 to P.W.6 were examined, Ex.P1 to Ex.P5 and M.O.1 were marked. On completion of trial, the Trial Court convicted the petitioner which was confirmed with modification by the Lower Appellate Court as stated above.

3.The contention of the petitioner is that P..W.1 and A3 were neighbours, P.W.1 in his complaint states that debris were dumped opposite to his house but in his evidence he states that the same were dumped in front of his house. P.W.1 though states that he was attacked with bricks on his face whereby he lost his tooth and some of the teeth got damaged, P.W.1 as well as P.W.6 admit that it is natural if such injury is caused blood will flow but in this case, blood stained shirt was not produced, also in M.O.1/brick there was no blood stains. Further, P.W.1



states that he produced the fallen tooth but the Police refused to receive the same, on the other hand, P.W.5 states that P.W.1 lodged a complaint, produced two bricks and nothing more. The presence of P.W.2 and P.W.3 is also highly doubtful, P.W.2 is the adjacent resident of P.W.1 and P.W.3 is the partner of P.W.2. Though P.W.2 and P.W.3 state that they went to the Police Station along with P.W.1 wherein their statement was recorded, on the other hand P.W.6 states that he had gone to the scene of occurrence, the statements of P.W.2 and P.W.3 recorded. Added to it, it is the specific case that the wife and mother-in-law of P.W.1, also sustained injuries, eye witnesses, but not examined as witnesses, further there is no medical record for their injuries. From the above, it is seen that it is the case of exaggeration, to brook the vengeance, a dispute between the neighbours is blown out of proportion and petitioner was falsely implicated.

4.It is further submitted that P.W.4/Casualty Doctor issued the wound certificate/Ex.P3, in his evidence he states that the damage to the teeth were not proximate, as regards the fallen tooth, it appears to be fresh. But in this case, the Dentist who treated P.W.1 not examined. On the other hand, P.W.4 states that based on the Dentist report, he gave his opinion and no Dentist report produced. P.W.1 further clarifies that it was Dr.Saritha, attached to PIMS, further treated him but Dr.Saritha not examined and no corresponding medical records produced. P.W.4 further admits that there is no external injuries, such as bruises or laceration on the chin and outer part of the mouth. He further accepts that the injuries found on P.W.1 may be due to fall. The case of the defence is that P.W.1 sustained injury long back in Chennai, the same is magnified and used to implicate the petitioner in the above case. The presence of P.W.2 and P.W.3 are highly doubtful, and they are giving contradictory versions. The Trial Court failed to consider all these facts and convicted the accused. The Lower Appellate Court failed to consider the evidence and materials independently, mechanically dismissed the appeal. Hence he prayed for acquittal.

5.The learned Public Prosecutor [Puducherry] submitted that P.W.1 is the neighbour of A3, on 11.10.2008 he came home after his work at about 2.00 p.m, at that time, he saw drainage debris being dumped in front of his house, he questioned the same, there arose a wordy altercation, thereafter, at the intervention of neighbours, A3 and P.W.1 went to their respective houses, 15 minutes thereafter A3 along with his son-in-law and others entered into the house of P.W.1, A1 and A2 assaulted P.W.1 with the brick on his face, A3 and A4 attacked P.W.1 using their hands. P.W.2 and P.W.3 who had come earlier were present at the



time of attack, at their intervention and others they got separated, P.W.1 and A2 and thereafter, the accused persons left the scene of occurrence. P.W.1 immediately went to the Police Station, lodged a complaint, P.W.5 registered FIR and sent the same to P.W.6/Investigating Officer. In the meanwhile, P.W.1 was sent to the Hospital along with the Police Constable, P.W.4/Casualty Doctor examined P.W.1, recorded injuries sustained by him and issued wound certificate/Ex.P3. Further, the brick/M.O.1 produced by P.W.1 was seized through Form 95/Ex.P5. P.W.6/Investigating Officer took up investigation, visited the scene of occurrence, prepared observation mahazar and rough sketch, recorded the statement of Doctor, perused the records and statements on the initial investigation conducted by P.W.5 and thereafter, filed a final report. The Courts below on the evidence of P.W.1 to P.W.3, medical evidence of P.W.4 and the materials produced, had rightly convicted the petitioner and other accused. It is further submitted that the other accused preferred an appeal and after dismissal of the same, A2 to A4 have not preferred any revision. Hence, he prayed for dismissal of the revision petition.

6.Considering the submissions made and on perusal of the materials placed before this Court, it is seen that P.W.1 is the injured victim, who is a neighbour of A3, there was some dispute with regard to dumping of debris, due to which there was wordy quarrel and thereafter, they left the place. The presence of P.W.2 and P.W.3 appears to be doubtful, further their evidence is highly contradictory. The only witness is that of P.W.1, who went to the Police Station along with two broken bricks which was used in attack. P.W.1 admits that blood was oozing from his mouth and no blood stained clothes was seized. Further, in the brick/M.O.1, there is no blood stains. P.W.5 admits that when he visited the scene of occurrence, there was no blood stains found in the floor or anywhere in the scene of occurrence. P.W.4/Casualty Doctor who treated P.W.1 states that four teeth were broken, one tooth had fallen down, the injuries not proximate, the age of the injury not proved, added to it no Dentist examined as witness through recording of some fresh injuries were found. P.W.4 admits that such injury in Ex.P3 could have been due to a fall. Further, there is no corresponding external bruises or laceration which ought to be there when such injuries occur. P.W.4 gives opinion based on the report given by the Dentist. In this case neither the Dentist was examined nor any Dentist report produced. P.W.1 further states that he went to PIMS and taken treatment with one Dr.Saritha. Apparently, the said Doctor was not examined and no medical records produced. In the absence of examination of Dentist, the report of P.W.4, namely, Ex.P3 cannot be held conclusive. Further, in this case the other accused were given



fine sentence and they have already paid the fine. As regards this petitioner/A1, for the offence under Section 325 IPC, since there is no conclusive evidence this Court alters the conviction of the petitioner from Section 325 IPC to Section 324 IPC and set aside the conviction of six months imprisonment. The fine of Rs.1,000/- alone is imposed.

7. In the result, the judgment, dated 18.02.2014 in C.C.No.134 of 2009, passed by the learned Judicial Magistrate No.2, Puducherry which was modified by the judgment dated 23.01.2015 passed by the learned Principal Sessions Judge, Puducherry in C.A.No.10 of 2014 is hereby modified by altering the Sentence from one under Section 325 IPC to Section 324 IPC and accordingly, the sentence of imprisonment imposed on the petitioner is set aside. The fine of Rs.1,000/- alone imposed which the petitioner already paid. Accordingly, this Criminal Revision Petition stands partly allowed.

Sd/-

Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

cse

To

1. The Principal Sessions Judge,
Puducherry.
2. The Judicial Magistrate No.II,
Puducherry.
3. The Chief Judicial Magistrate,
Puducherry.
4. The Station House Officer,
Orleanpet Police Station,
Puducherry.
5. The Public Prosecutor,
High Court, Madras.

+2ccs to Mr.S.Ganesh Kumar, Advocate, S.R.No.16648, 16594

Cr1.R.C.No.156 of 2015

MT(CO)

RLP(27/04/2022)