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Crl.RC.No.267 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.10.2022

CORAM:

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

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1.Chinnappa
2.Krishnappa

... Petitioners

Versus

State Represented by its
Inspector of Police,
Kelamangalam Police Station,
Krishnagiri
crime No.5 of 2008

... Respondent

PRAYER:

Criminal Revision has been filed under Section 397 r/w 401 of the Code of Criminal Procedure to call for the records in CC.No.130 of 2008 dated 23.08.2017 on the file of the District Munsif cum Judicial Magistrate Court, Denkanikottai and confirmed the order in Crl.A.No.42 of 2017 dated 12.01.2018 on the file of the learned Principal Sessions Judge, Krishnagiri and to set aside the said conviction and sentence.

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For Petitioners : Ms.K.Akshaya
for Dr.S.Manoharan

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

ORDER

This criminal revision is filed challenging the orders passed in Crl.A.No.42 of 2017 dated 12.01.2018 on the file of the learned Principal Sessions Judge, Krishnagiri, thereby confirmed the orders passed in CC.No.130 of 2008 dated 23.08.2017 on the file of the learned District Munsif cum Judicial Magistrate Court, Denkanikottai, thereby convicted the petitioners for the offence under Sections 294(b) and 324 of IPC.

2. The case of the prosecution is that the victim is an agriculturist and he owned the property comprised in survey Nos.37 & 38 in Jekkeri and survey Nos.620 and 621 in Podichipalli. While being so, the accused persons encroached the Government lands and they had put up fence on the way, in which the victim entered into their land. In this regard, he already



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lodged complaint before the revenue authorities and on enquiry, the accused were directed to remove the fence. However, it was not removed. On 05.01.2008, when the victim and his brother had been to their land and they found stones and thorny bushes in their way to land. When they cleared the same, the accused scolded him with filthy languages and pushed him on the stones and took stones and attacked him on his back and also on his whole body. Therefore, he sustained injuries and immediately admitted into hospital. On his complaint, FIR was registered in crime No.5 of 2008 for the offence under Sections 294(b) and 323 of IPC. After completion of investigation, the respondent filed final report and the same has been taken cognizance by the trial court in CC.No.130 of 2008.

3. In order to prove the case of the prosecution, examined PW1 to PW7 and marked Ex.P1 to Ex.P6. On the side of the accused, no one was examined and no documents were marked. On perusal of oral and documentary evidence, the trial court found the petitioners guilty for the offence under Sections 294(b) and 324 of IPC and ordered to pay a sum of Rs.1,000/-(each) for the offence under Section 294(b) of IPC and sentenced



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to undergo six months rigorous imprisonment for the offence under Section 324 of IPC. Aggrieved by the same, the petitioners preferred appeal and the same was also dismissed and confirmed the conviction passed by the trial court.

4. The learned counsel for the petitioner would submit that there are contradictions between the evidence of PW1 and other witnesses. Therefore, the prosecution failed to prove the case beyond any doubt. The occurrence took place on 05.01.2008, whereas the complaint was lodged only on 08.01.2008. In fact on the injury sustained by the victim, he was admitted into hospital on 05.01.2008 and he was discharged from the hospital on 07.01.2008 itself. Even then, the victim failed to lodge complaint immediately. The prosecution failed to explain the delay in lodgment of complaint. It shows that the victim lodged false complaint as against the petitioners due to previous enmity.

4.1 She further submitted that even according to the victim, he alleged that the petitioners only pushed him down on the stones. Therefore,



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he fell down on the stones and sustained injury, whereas he stated before the doctor that known male persons attacked him with stick and hands. Therefore, he sustained injuries. Further, the victim was brought to the hospital by one Sarathbabu, whereas PW1 deposed that he was taken to the hospital by his brother one, Saudappa who was examined as PW2. In fact, PW2 deposed that PW1 was attacked by the accused persons, who pushed his brother and attacked with hands, thereby he sustained injuries. Therefore, there were full of contradictions and there was delay in lodgment of complaint. As such, the prosecution failed to prove the case beyond any doubt.

5. Per contra, the learned Government Advocate(crl.side) appearing for the respondent / police submitted that in order to bring the charge to home, the prosecution examined PW1 to PW7 and marked Ex.P1 to Ex.P6. The injured was examined as PW1 and the eye witness to the occurrence was examined as PW2. The doctor who treated PW1 was examined as PW6. On receipt of complaint, FIR was registered by PW7. The delay in lodgment of complaint would not cause any prejudice to the



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petitioners. Immediately after the occurrence, he was admitted into hospital and he was treated for three days as in-patient. Therefore, PW1 could not able to lodge complaint immediately. After discharge from the hospital, he lodged complaint on 08.01.2008. Therefore, the said delay is not fatal to the case of the prosecution. Small contradictions between PW1 and PW2 are also not fatal to the case of the prosecution. Only on the date of occurrence i.e. 05.01.2008, the petitioners attacked the injured i.e. PW1, due to which he sustained injuries. The doctor, who treated PW1, was examined as PW6. She categorically deposed that PW1 sustained injury due to the attack by the accused persons. Therefore, both the courts below rightly convicted the petitioners for the offence under Sections 294(b) and 324 of IPC.

6. Heard, the learned counsel for the petitioners and the learned Government Advocate(crl.side) appearing for the respondent / police.

7. Admittedly, there was enmity between the petitioners and the victim and his brother with regards to usage of common way. According to PW1, he owned property and adjacent to the said property, there is a



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Government property which was encroached by the accused persons. They also put up fence obstructing the common pathway to enter into the victim's property. When it was questioned by them, the accused persons pushed him down and also attacked him, due to which he sustained injuries and he was admitted into hospital on 05.01.2008. The doctor who treated him was examined as PW6. On perusal of evidence of PW6, she categorically deposed that known male persons attacked him with stick and stones, due to which he sustained six injuries. Thereafter, he was discharged on 07.01.2008 and the complaint was lodged on 08.01.2008. Therefore, PW1 could not able to lodge complaint immediately after the occurrence. That apart, the said delay would not cause any prejudice to the petitioners and it would not affect the case of the prosecution. There is no dispute that PW1 sustained injuries and he was admitted into the hospital and had taken treatment for three days. Insofar as the contradictions between PW1 and PW2, those are all very trivial in nature and it would not affect the case of the prosecution.



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8. The victim was examined as PW1 and PW2 is the eye witness to the occurrence. Both categorically deposed that the petitioners attacked PW1 and due to which, he sustained injuries and immediately, he was admitted into hospital. Therefore, the courts below rightly convicted the petitioners for the offence under Sections 294(b) and 324 of IPC. However, insofar as the sentence, considering the age of the petitioner, this Court is inclined to reduce the same.

9. As such, the judgment in Crl.A.No.42 of 2017 dated 12.01.2018 passed by the learned Principal Sessions Judge, Krishnagiri confirming the judgment passed in CC.No.130 of 2008 dated 23.08.2017 by the District Munsif cum Judicial Magistrate Court, Denkanikottai is modified as follows:

- (i) The conviction rendered for the offences under Sections 294(b) and 324 of IPC is confirmed.
- (ii) The sentence of imprisonment imposed by the courts below is reduced to the period already undergone by the petitioners on condition that each of the petitioners shall pay a sum of Rs.15,000/- (Rupees Fifteen Thousand only)



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directly to the victim i.e. PW1 by way of demand draft as compensation within a period of four weeks from today and shall produce the acknowledgment receipt before the trial court. If the petitioners fail to pay the compensation, the sentence imposed by the courts below shall stand automatically restored and the respondent is directed to secure the petitioners for serving their remaining period of sentence.

- (iii) The fine imposed by the courts below for the offence under Section 294(b) of IPC is hereby confirmed.
- (iv) On payment of Rs.15,000/-(each), the petitioners are directed to be set at liberty forthwith, unless their custody are required in connection with any other case and the bail bond, if any executed by the petitioners, shall stand cancelled.

10. Accordingly, this criminal revision is partly allowed.

19.10.2022

Internet:Yes
Index:Yes/No
Speaking/Non speaking order
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G.K.ILANTHIRAIYAN. J,

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To

- 1.The learned Principal Sessions Judge,
Krishnagiri
- 2.The District Munsif cum Judicial Magistrate Court,
Denkanikottai

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