



Crl.R.C.No.1309 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	27.09.2022
Pronounced on	11.10.2022

CORAM

THE HON'BLE Dr.JUSTICE G.JAYACHANDRAN

Crl.R.C.No.1309 of 2016

Saran @ Saranraj

... Petitioner

-Vs.-

State rep by
The Inspector of Police,
Arakkonam Taluk Police Station,
Vellore District,
Crime No.554 of 2011.

.. Respondent

Criminal Revision Petition filed under Section 397 read with 401 of Code of Criminal Procedure to set aside the order made in C.A.No.105 of 2014 dated 21.09.2016 on the file of II Additional District and Sessions Judge, Vellore at Ranipet, Vellore District and confirmed the judgment of the Assistant Sessions Court, Arakkonam made in S.C.No.70 of 2012 dated 09.12.2014.



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Crl.R.C.No.1309 of 2016

For Petitioner :Mr.S.N.Arunkumar
For Respondent :Mr.N.S.Suganthan,
Government Advocate (Criminal side)

ORDER

The petitioner was convicted for the offences under Section 307 IPC and 352 IPC by the trial Court and he was sentenced to undergo three years simple imprisonment with fine of Rs.5,000/-, in default, two months simple imprisonment for the offences under Section 307 IPC and two months simple imprisonment for the offence under Section 352 IPC. On appeal, the judgment of conviction and sentence of the trial Court was confirmed. Hence, this revision petition has been filed.

2. The gist of the prosecution is that:

On 18.11.2011 at about 11.30 a.m., when Vigneshwar/PW1 was proceeding in his two wheeler along with his uncle/Ezhumalai/PW2 towards hospital at Minnal, near EB Office, the accused/petitioner herein, due to previous enmity, attacked PW1 with a penknife on the left side neck, left shoulder, left hand arm, left side stomach and chest and caused



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grievous injury. When PW2 tried to prevent the accused/petitioner herein, he pushed Ezhumalai/PW2 down and thereby committed the offences under Sections 307 and 352 IPC.

3. To prove the case, the prosecution has examined 10 witnesses, marked 9 exhibits and three material objects.

4. According to PW1/injured witness, the accused attacked him with M.O.1/Penknife, indiscriminately, on his neck, shoulder, chest and stomach saying that he should not be alive. Thereafter, PW1 was taken to hospital at Minnal and then referred to Arakonam Government Hospital for further treatment and got admitted at New Hope Hospital, Kilpauk, where he was treated as in-patient for 20 days.

5. The complaint/Ex.P1 was given by PW1 to the Sub-Inspector of Police, Arakonam Taluk. The blood stained short/M.O.2 and T-shirt/M.O.3, which the injured/PW1 was wearing at the time of occurrence, has been recovered by the police and identified by PW1. His evidence is corroborated by PW2/Ezhumalai, who is uncle of PW1. The



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other witnesses to the occurrence is the PW3/Saranraj and PW4/Jayaprakash. The admission of PW1 for treatment at Government Hospital, Arakonam is reflected in the accident report dated 18.11.2011, which is marked as Ex.P3. The following injuries were noted by the Doctor, who is examined as PW7:

- (1) Incised injury of about 2*0.5 cm over the left side abdomen;*
- (2) 2 incised injuries of about 2*0.5 cm over the left side chest region;*
- (3) Laceration of 4*3 cm over the left side of the neck region;*
- (4) Deep laceration of 3*0.5 over the left side forearm region;*
- (5) Laceration of 1*0.5 cm over the left arm region;*

6. Thereafter, he was taken to New Hope Medical Centre, Poonamalle High Road, Chennai and opined that the PW1 has fracture shaft of V metacarpal of right hand, Grade II left renal injury, laceration on left kidney. For his fracture, 'K' wire fixation was done and the Doctor has opined that the injury sustained is of grievous in nature.



Crl.R.C.No.1309 of 2016

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7. The learned counsel appearing for the petitioner has submitted that the Courts below failed to consider the contradiction in the evidence of prosecution. PW1 has stated that the short was stained with blood after the attack and his father gave the blood stained short to the police at the time of investigation, whereas in Seizure Mahazar/Ex.P9, the PW10/Investigating Officer had stated that M.O.1 to M.O.3 were recovered, based on the confession statement of the accused, from bush behind the house of the accused and the Mahazar/M.O.5 was prepared for the said recovery, in the presence of the independent witness/PW8. The Form 95, which was forwarded to the Court along with the property also indicates that the M.O.2 and M.O.3 were recovered from the accused, which was hidden in a bush in the house and they were his short and T-shirt. The very identification of the blood stained short, whether it belongs the accused or PW1 has not been properly proved by the prosecution. Therefore, very allegations of the prosecution, that the accused caused grievous injury to PW1 with intention to cause death, falls to ground.



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8. The learned counsel for the petitioner further submitted that the Courts below has not considered the fact that PW1 admits that his uncle, who accompanied him, did not sustain any injury whereas, PW2/uncle of PW1 had deposed that the accused pushed him down and he sustained lacerated injury on his right leg. Further in his cross examination, PW2 stated that at the time of occurrence, PW1 was wearing short and cement colour T-shirt, whereas what is marked as M.O.3 is a sandal and green colour T-shirt. PW3 had deposed that he witnessed the occurrence, but he could not identify the knife and from where the accused took the knife.

9. It is also contended that according to the PW1 and PW2, the occurrence was happened when PW1 was driving the two wheeler carrying PW2 on the pillion whereas, in the cross examination, PW3 and PW4 had admitted that they did not see two wheeler of PW1. Regarding the dress of PW1, though PW1 has stated that the police has recovered his dress from his father/PW5 and they are marked as M.O.2 and M.O.3, the Mahazar/Ex.P5, Form 95 forwarded to the Court and the evidence of PW10 is contradictory with the version of PW1. Further it is stated by



Crl.R.C.No.1309 of 2016

PW1 that his blood stained short and T-shirt were recovered by the police from his father whereas father, who was examined as PW5, had stated that he is not aware of what happened to his son's dress.

10. The learned counsel submitted that the prosecution miserably failed to prove the charge against this petitioner. However, both the trial Court as well as Lower Appellate Court had failed to consider the material contradictions in this case of the prosecution and further submitted that the incident was occurred, when both the accused and PW1 were young and had some difference of opinion while playing cricket. Now after lapse of 11 years, they have buried the differences and living peacefully and if the Court finds that there is no error in the Judgment of the Courts below, the petitioner may be given the benefit of Section 4 of the Probation of Offenders Act, 1958 [hereinafter "PO Act"] and to be released on probation for good conduct. He also submits that the *de facto* complainant has come forward with the letter of withdrawing the complaint to enable the offences to be compounded.



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11. The learned Government Advocate (Criminal side) appearing for the State submitted that it is a case of unprovoked attack by the petitioner herein, when PW1 and PW2 were proceeding in their two wheeler, towards the Hospital for treatment. The petitioner restrained them from proceeding and attacked PW1 on the neck, shoulder, chest and stomach uttering that he should not be alive. The seat of attack as found in the accident registrar clearly show that he has aimed on the neck and vital parts of the body. Due to the attack, PW1 has sustained Grade II, left renal injury, laceration on left kidney but for the timely intervention under higher medical facility provided by the Private Hospital at Chennai, PW1 would have probably succumbed to the injuries.

12. Heard the learned counsel for the petitioner and the learned Government Advocate (Criminal side) for the State.

13. The incident had been witnessed by PW3, PW4 and particularly PW2, who accompanied PW1. Soon after the incident, the PW3 and PW4 had taken the injured/PW1 to the hospital and hence their evidence



Crl.R.C.No.1309 of 2016

is direct and reliable. PW1/victim has identified the weapon used by the accused to attack. Ex.P3/Accident Register proves the nature of injury and the seat of attack. There is no doubt that the prosecution has miserably failed in identifying the material objects, particularly M.O.2 and M.O.3., but the fact remains that the injuries sustained by PW1, as found in Ex.P3, were caused by this petitioner and the same has been witnessed by PW2 to PW4. There is no evidence to infer that injury sustained by PW1 could have caused otherwise, than in the manner spoken by the prosecution witnesses. Though it is suggested in the cross examination to these witnesses that the injury would have caused by a fall from the two wheeler, the five injuries which has been noted and extracted above could not have happened to a person by a fall from the two wheeler.

14. Therefore, this Court finds no error or legal infirmity in the findings of the Courts below, which has held the accused guilty for the offences under Section 307 and 352 IPC.



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15. Insofar as the sentence is concerned, the learned counsel for the petitioner has pleaded this Court to exercise the power under Section 4 of PO Act. However, on reading Section 4 of the PO Act, this Court finds that the power under Section 4 of PO Act can be exercised only for the offences not punishable with death or imprisonment for life whereas, in this case the offence committed and charged under Section 307 IPC which is punishable with imprisonment for life.

16. Taking note of the fact that the incident took place when the PW1 and the accused were young and the fight was due to the trivial issue and that the petitioner was arrested soon after the incident and released on bail after 21 days and considering the submission that the parties have buried their quarrel and living peacefully, this Court is inclined to modify the sentence to the effect that the petitioner herein shall undergo three months simple imprisonment and to pay a fine of Rs.5,000/-, in default to undergo one month simple imprisonment for the offences under section 307 and one month simple imprisonment for the offences under Section 352 IPC. The period of sentence shall run



Crl.R.C.No.1309 of 2016

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concurrently and the period of sentence already undergone shall be set off under Section 428 Cr.P.C.

17. With the above modification, this Criminal Revision Petition is partly allowed. The lower Court is directed to take necessary steps to execute the sentence.

11.10.2022

Speaking/Non-speaking order

Index: Yes/No

Internet : Yes/No

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To

1.The II Additional District and Sessions Judge,
Vellore, Ranipet,
Vellore District.

2.The Assistant Sessions Court,
Arakkonam.

3.The Inspector of Police,
Arakkonam Taluk Police Station,
Vellore District,
Crime No.554 of 2011.

4.The Public Prosecutor,
High Court, Madras.



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Crl.R.C.No.1309 of 2016

Dr.G.JAYACHANDRAN.J.,

nsa

Crl.R.C.No.1309 of 2016

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