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Crl.R.C.No.372 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.12.2022

PRONOUNCED ON : 23.12.2022

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.R.C.No.372 of 2021

Subramani

... Petitioner

Vs.

The State by
Station House Officer,
Valathi Police Station,
Crime No.167 of 2013

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 397 r/w.401 of Cr.P.C. to set-aside the judgment passed in C.A.No.5 of 2020, dated 20.01.2021 convicting the petitioner by the learned Principal Sessions Judge, Villupuram filed against the judgment passed in S.C.No.579 of 2013, dated 13.01.2020 by the learned Assistant Sessions Judge at Gingee U/s. 324 IPC and to acquit him by setting aside the said conviction and sentence.

For Petitioner : Mr. M.G. Udayashankar

For Respondent : Mr.V. Meganathan
Gov. Advocate (Crl.Side)



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ORDER

Totally, there are 4 accused and the petitioner herein is arrayed as A1 in S.C.No.579 of 2013. A1 stood charged for the offences under Sections 294(b), 324, & 307 IPC. A2, A3 & A4 stood charged for the offences under Sections 294(b), 352 IPC. The trial Court, acquitted A1 from the offences under sections 294(b) & 307 IPC and also acquitted A2 to A4 from the offences under Sections 294(b) & 352 of IPC and convicted the revision petitioner/A1 for the offence under section 324 of IPC and sentenced him to undergo simple imprisonment for two years and also imposed a fine of Rs.2000/-, in default, to undergo simple imprisonment for one month. Aggrieved over the same, revision petitioner/A1 filed appeal in C.A.No.5 of 2020 on the file of Principal Sessions Court, Villupuram. The appellate Court also confirmed the conviction and sentence passed by the trial court and dismissed the appeal. Challenging the same, the present revision has been filed.



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2. Based on the complaint given by the defacto complainant, initially, the respondent police registered a case against the revision petitioner and 3 others in Crime No.167 of 2013 for the offences under Sections 294(b), 342, 323 and 324 of IPC. After investigation, prosecuted the revision petitioner along with 3 others for having committed the offences punishable under Sections 294(B0, 342, 352, 324 & 307 r/w.34 of IPC.

3. The case of the prosecution is that due to previous enmity with regard to house property, on 14.04.2013, at about 6.30 a.m., when the defacto complainant Bakiyalakshmi cleaning in front of her house, the accused persons came there and Gowri(A3), Sankari(A4) scolded her with filthy language and also assaulted the defacto complainant with hands. On hearing the alarm sound of the defacto complainant, one Sakthivel, who is her brother, came out of the house. On seeing him, Subramani(A1) scolded him with filthy language and stabbed on his chest and right thigh by using knife and Vijay Anadh(A2) also abused the defacto complainant's brother and assaulted him with wooden log and thereby caused injuries to



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him. Thereafter, he was taken to the Government Hospital, Gingee and thereafter, shifted to Government Hospital, Mundiambakkam for further treatment. On receipt of the complaint, the respondent police registered the case in Crime No.167 of 2013 as against the revision petitioner and 3 others and after completion of investigation filed a final report before the Judicial magistrate, Gingee, which was been taken on file as PRC No.50 of 2013 and the same has been committed to the Sessions Court, Gingee and numbered as S.C.No.579 of 2013.

4. Based on the materials, the trial Court framed charges as against the accused as mentioned in the first paragraph of this order. In order to prove the case, on the side of the prosecution, 11 witnesses were examined as P.W.1 to PW.11 and 13 documents were exhibited as Ex.P.1 to Ex.P.13, besides 3 materials objects were marked as M.O.1 to M.O.3.

5. Having considered all the evidence produced by the prosecution, the Trial Court, by judgment dated 13.10.2020 convicted the revision



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petitioner/A1 only for the offence under section 324 IPC as stated in the first paragraph of the order. Challenging the said conviction and sentence, the revision petitioner/A1 preferred appeal in C.A.No.5 of 2020 before the Principal Sessions Judge, Villupuram. The appellate Court has also dismissed the appeal on 20.01.2021 confirming the conviction and sentence passed by the trial Court. Aggrieved over the same, the present revision has been filed.

6. The learned counsel for the revision petitioner submitted that the findings of the Trial Court and the Appellate Court is contrary to the evidence on record. The Trial Court not properly considered the evidence of injured witness, P.W.2, Sakthivel and also not properly considered the evidence of P.W.1, Bakiyalakshmi and P.W.3, Prakash. The recovery of M.O.1 Soori Kathi is doubtful and not supported by any prosecution witnesses and there is inconsistency between the evidence of P.W.1, P.W.2 and P.W.3. Further, the alleged eye-witness Kalamegam, P.W.10, has not supported the prosecution case and another witness Parvin Kumar, P.W.7



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has also not supported the prosecution case. The Doctor, who gave treatment to the injured(P.W.2) was not examined and some other Doctor was examined. There is no evidence to prove the charge and the sentence awarded is excessive and disproportionate to the nature of the offence and thus, pleaded to acquit the accused and to allow the revision petition.

7. The learned Government Advocate (crl.side) appearing for the respondent submitted that in this case, prosecution examined 11 witnesses and marked 13 documents and 3 material objects. Bakiyalakshmi(P.W.1) is the complainant, Sakthivel(P.W.2) is the injured person and Prakash(P.W.3) is the eye-witness to the occurrence. All these three witnesses consistently deposed with regard to the occurrence and the injuries sustained by Sakthivel(P.W.2). The Investigating Officer, seized the weapon used by the accused, which was marked as M.O.1 and blood stained dresses of the injured, which were marked as M.O.2 and M.O.3. The seizure also proved through the Investigating Officer. Hence, the prosecution established its charges against the accused persons and there is no reason to disbelieve the



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evidence of Sakthivel, P.W.2 which is corroborated by the medical evidence and the Accident Register, Ex.P.6. Under these circumstances, there is no reason to interfere with the finding of the Trial Court as well as the Appellate Court and prayed for dismissal of the revision.

8. I have considered the submission made by the learned counsel for the parties and also perused the prosecution evidence available on records.

9. This revision petitioner is arrayed as A1 in S.C.No579 of 2013 on the file of the Assistant Sessions Court, Gingee. The respondent police prosecuted the revision petitioner along with 3 other accused for having committed the offences punishable under Sections 294(b), 342, 352, 324, 307 r/w. 34 IPC. Before the trial Court, the prosecution examined 11 witnesses (P.Ws.1 to 11), marked 13 documents (Ex.P.1 to Ex.P.13) besides 3 material Objects (M.O.1 to M.O.3). Among the 11 witnesses, Bakiyalakshmi(P.W.1) is the defacto complainant, Sakthivel(P.W.2) is the injured witness and Prakash (P.W.3) is an eye-witness to the occurrence.



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Chandrasekar(P.W.4) is the witness to the Observation Mahazar(Ex.P.8) and Rough Sketch (Ex.P.9). Kasi(P.W.5) is the father of the defacto complainant Bakiyalakshmi and the injured Sakthivel. Karunakaran(P.W.6) is a hearsay witness. Pravinkumar (P.W.7), who is the witness to the Observation Mahazar and Seizure mahazar, turned hostile and not supported the prosecution case. Dr. Kavin(P.W.8), who gave treatment to Sakthivel (P.W.2), issued Accident register, Ex.P5. Manokaran,(P.W.9) S.I.of police, registered First Information Report, Ex.P.7 on the complaint given by the defacto complainant. He visited the place of occurrence, prepared observation mahazar and Rough Sketch Ex.P.8 and Ex.P.9 respectively and also recorded the statement of the injured person and the witnesses and seized soorikathi (M.O.1) from the place of occurrence in the presence of the witnesses Chandrasekar(P.W.4) and Praveenkumar(.P.W.7) by Seizure Mahazar(Ex.P.10). Then, forwarded the M.O.1 Soorikathi through Form-95, (Ex.P.11) to the Court. Kalamegam (P.W.10) not supported the case of the prosecution and hence, he was treated as hostile witness by the prosecution. Mr.Raja, (P.W.11) Deputy Superintendent of Police, has filed



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the Final Report in this case. Bakiyalakshmi(P.W.1), Sakthivel(P.W.2), and Prakash(P.W.3) clearly deposed that the revision petitioner/A1 had assaulted P.W.2 Sakthivel with M.O.1 soorikathi, which is corroborated by other two witnesses. Further M.O.1 Soorikathi was seized by the Sub Inspector of Police from the place of the occurrence in the presence of the Witness Chandrasekar(P.W.4) and the same was corroborated by P.W.3, eye-witness. Hence, the evidence of the Sub Inspector of Police(P.W.9) was corroborated by the evidence of the eye-witness P.W.3 and P.W.1 & P.W.2. Under these circumstances, there is no valid reason to disbelieve the evidence of P.W.1 to 3 and P.W.9.

10. Further the evidence of Sakthivel(P.W.2) is corroborated by the medical evidence, Dr.Kavin(P.W.8), who gave treatment to Sakthivel (P.W.2), and it is reflected in the Accident Register(Ex.P.6). Thus, the evidence of Sakthivel(P.W.2) injured person is fully corroborated with the evidence of the Doctor, P.W.8. Under these circumstances, there is no reason to disbelieve the evidence of Sakthivel,P.W.2.



11. It is settled law that some minor discrepancies in the evidence will not hit the prosecution case. The Hon'ble Supreme Court in the case of ***Jagdish /vs/ State of Madhya Pradesh reported in AIR 1981 SC 1167*** held as follows :-

"5. Learned counsel for the appellant has vehemently argued that both the courts below erred in accepting the testimony of the three eye-witnesses. According to him that testimony was full of discrepancies and in fact indicated that three different versions were put forward by the prosecution from time to time. This aspect of the matter fully engaged the attention of the trial Court and High Court and we find ourselves in agreement with them in the view that the discrepancies pointed out are comparatively of a minor character which do not go to the root of the prosecution story and need not be given undue importance. We are specifically impressed by the testimony of Faku(P.W.10), about whose presence at the time and place of the occurrence we do not entertain any doubt. For that reason,



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we need not advert to the depositions of Budhiya (P.W.11) and Gulab(P.W.12) although that does not mean that we find their word to be unreliable."

Therefore, the discrepancies in the evidence of Bakiyalakshmi(P.W.1), Prakash (P.W.3) would not affect the prosecution case.

12. The test is whether the prosecution evidence has a ring of truth, is cogent, credible and trustworthy or otherwise. In the present case, the evidence of Sakthivel,(P.W.2), who is injured person, has ring of truth, which is corroborated by the evidence of Bakiyalakshmi(P.W.1) and Prakash(P.W.3) , besides Dr.Kavin(P.W.8). Thus, basic facts, on which, the prosecution raised, are proved.

13. The trial Court have recorded the finding of guilt of the accused based on the proper appreciation of the evidence led by the prosecution in this case. In view of the aforesaid discussion, I do not find any justified and



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justifiable ground to interfere with the conviction and sentence imposed by the Trial Court and confirmed by the Appellate Court. Therefore, the appeal is liable to be dismissed.

14. At this stage, I have considered the submission of the learned counsel for the revision petitioner that revision petitioner/A1 is aged about 60 and the sentence of two years imposed on the petitioner for the offence under Section 324 is excessive.

15. Perusal of the records reveal that before the Trial Court while questioned about the conviction under Section 235(2) Cr.P.C. the revision petitioner/A1 pleaded that fine alone may be imposed. Any how, the Trial Court without considering his request imposed a sentence of two years Simple Imprisonment with a fine of Rs.2000/-.



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16. I have considered the request of the petitioner before the trial Court with regard to the punishment and also considered the submission made by the counsel for the petitioner before this Court. Admittedly, the petitioner is aged about 60 years. Section 324 of IPC is punishable with imprisonment of either description for a term which may extend to three years, or with fine, or with both. Therefore, considering the age of the accused, and the origin of the offence was due to previous civil dispute with regard to the house property, imprisonment is not warranted and he may be punished with fine alone. Therefore, I am inclined to modify the punishment and imposing of fine alone will meet the ends of justice. Therefore, the punishment of 2 years Simple Imprisonment imposed by the Trial Court and confirmed by the first appellate court is hereby set-aside and the fine amount of Rs.2000/- is hereby raised to Rs.5000/-, in default, he has to under go simple imprisonment for 6 months.



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17. In the result, the Criminal Revision is dismissed. However, the punishment of 2 years Simple Imprisonment alone is set aside and the fine amount of Rs.2000/- is raised to Rs.5000/-, in default, to undergo Simple Imprisonment for 6 months, petitioner is directed to pay the fine amount before the Trial Court within two weeks from the receipt of the copy of this order.

23.12.2022

mrp

To

1. The Principal Sessions Judge ,
Principal Sessions Court,
Villupuram.
2. The Assistant Sessions Judge,
Assistant Sessions Court,
Gingee.
3. The Station House Officer,
Valathi Police Station.
4. The Public Prosecutor,
High Court of Madras, Chennai.

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V.SIVAGNANAM, J.,

mrp

Pre-delivery order

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