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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.04.2022

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.208 of 2016

Thamaraiselvan ... Petitioner

Vs.

State rep. by,
Sub Inspector of Police,
Keelaiyur Police Station,
Keelaiyur. ... Respondent

PRAYER: Criminal Revision is filed under Section 397 r/w 401 of the Code of Criminal Procedure, to set aside the conviction and the sentence imposed on the petitioner dated 06.10.2015 in C.A.No.5 of 2014 on the file of the District and Sessions Judge, Nagapattinam by confirming the conviction and the sentence imposed on the petitioner dated 10.2.2014 made in C.C.No.5 of 2013 on the file of the Chief Judicial Magistrate, Nagapattinam by allowing the Criminal Revision Case.

For Petitioner : M/s.Y.Kavitha, Legal Aid Counsel

For Respondent : Mr.A.Damodaran,
Additional Public Prosecutor

ORDER

The petitioner was convicted by the learned Chief Judicial Magistrate, Nagapattinam (trial Court), by judgment, dated 10.02.2014 in C.C.No.5 of 2013 and sentenced to undergo Rigorous Imprisonment for five years and to pay a fine of Rs.2,000/-, in default to undergo Rigorous Imprisonment for six months for the offence under Section 326 of IPC. As against the judgment of trial Court, dated 10.02.2014, the petitioner preferred an appeal before the learned District and Sessions Judge, Nagapattinam (lower appellate Court) in C.A.No.5 of 2014. The lower appellate Court, by judgment, dated 06.10.2015, confirmed the judgment of the trial Court and dismissed the appeal, against which the present Criminal Revision.

2.The facts of the case is that on 06.07.2009, at about 04.00 p.m., when the defacto complainant (PW5) along with his

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father Vadivel was engaged in some work in backyard of the house, the petitioner trespassed into the backyard of the defacto complainant (PW5). When PW5 questioned the same, there was wordy quarrel between them and the petitioner took iron rod and assaulted PW5 all over his body and also assaulted the defacto complainant's father Vadivel. Due to which, PW5 and his father sustained injuries. The incident was witnessed by PW1, who is the sister of PW5 and PW2 & PW3, who are his neighbour. Thereafter, the complaint was lodged by PW1 to the PW7, the Sub Inspector of Police, who registered FIR in Crime No.161 of 2009 (Ex.P3), visited the scene of occurrence, prepared Observation Mahazar (Ex.P4), Rough Sketch (Ex.P5) and examined the witnesses and Doctors (PW6 & PW9), who treated PW5. On completion of investigation, charge sheet was filed before the trial Court.

3.During trial, as many as, 9 witnesses were examined as PW1 to PW9 and seven documents were marked as Exs.P1 to P7. On the side of the defence, no witness was examined and no document was marked. After completion of trial, the trial Court convicted the petitioner vide judgment, dated 10.02.2014 and the same was confirmed by the lower appellate Court, vide judgment, dated 06.10.2015 as stated above.

4.The learned counsel for the petitioner submitted that in this case, all the witnesses are interested witnesses. PW1 is the sister of PW5, PW2 and PW3 are neighbours of PW5. The other injured person Vadivel, the father of the defacto complainant (PW5) not examined as witness on the side of the prosecution. When PW5 appeared before the Doctor (PW6), he stated that he was assaulted by two persons. But in the complaint (Ex.P1) or in the evidence of the prosecution witnesses, the other person, who attacked PW5 not mentioned, there is no explanation for the same. He further submitted that in this case, the iron rod, which was used in the attack, not seized during investigation. With regard to weapon used by the petitioner, there is contradiction in the statement of the prosecution witnesses. Further, no X-Ray, CT-scan or any other medical records of PW5 produced to confirm the grievous injuries sustained by him. Except for the Accident Register (Ex.P2), Discharge Summary (Ex.P6), no other medical records produced, which is a serious flaw on the side of the prosecution.

5.The learned counsel further submitted that the trial Court relied on the evidence of PW1, PW2, PW5 and finding that the medical evidence (PW6 & PW9) corroborated the evidence of PW5, convicted the petitioner, failing to look into the fact that already there was dispute between the petitioner and PW5. Prior to the occurrence, PW5 attacked the father of the petitioner, due to which, a case was registered against PW5 and

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the same is pending. PW6 admitted that the injured sustained by PW5 is possible, when there a fall from tree. The specific case of the petitioner is that PW5 fell down from the tree, using the same, a false case lodged against the petitioner. In this case, the respondent Police not conducted proper investigation. PW3, the only independent witness not supported the case of the prosecution. Likewise, PW4 and PW5, the witnesses for Observation Mahazar and Rough Sketch (Exs.P4 & P5) not supported the case of the prosecution. Further, there is no explanation by the prosecution for non production of the iron rod, which is said to have been used by the petitioner to attack PW5. Merely, because there is injury, it will not be a ground to convict the petitioner for the alleged offence. The non production of iron rod is fatal to the case of the prosecution. Thus, the prosecution failed to prove the case beyond all reasonable doubt. The trial Court as well as the lower appellate Court, without any proper evidence and materials, convicted the petitioner. Hence, he prayed for acquittal.

6.In support of his submission, the learned counsel for the petitioner relied on the decision of "Meenakshi Sundaram Versus State, represented by The Inspector of Police, Nagamalai Pudukkottai Police Station, Madurai District in Crl.R.C(MD). No.250 of 2008, dated 04.10.2017", wherein this Court acquitted the accused on the ground of non-production of material objects and other medical records would be fatal to the prosecution case.

7.The learned Additional Public Prosecutor appearing for the respondent Police submitted that PW5 and one Vadivel are injured persons in this case, who were attacked by the petitioner. There was dispute between the the petitioner and PW5 with regard to enjoyment of backyard portion of land. Prior to the occurrence, the petitioner's father is suspected in poisoning the poultry feeds, hence, PW5's hen died, due to which, there was dispute between the petitioner and PW5. The petitioner is said to have keeping this in mind, picked up quarrel with PW5 and his father on the fateful day for using common pathway and assaulted PW5 and Vadivel. The petitioner using the iron rod assaulted PW5 all over his body and also assaulted his father Vadivel, which was witnesses by PW1 to PW3. PW6, Doctor confirmed the injuries sustained by PW5 and issued the Accident Register (Ex.P2). For further treatment, PW5 admitted in the Government Hospital, Thiruvarur, where X-Ray, CT-scan taken and he underwent surgery and survived. PW7, the Sub Inspector of Police, received the complaint (Ex.P1), registered the FIR (Ex.P3), collected the medical records of PW5, examined the witnesses and filed the charge sheet before the trial Court. PW6 and PW9 are Doctors, who gave treatment to

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PW5 confirmed the evidence of the injured witness (PW5) with medical records (Exs.P2 & P6).

8.The learned Additional Public Prosecutor fairly submitted that in this case, the weapon viz., iron rod used for attack by the petitioner was not recovered. Likewise, X-Ray CT-scan and other medical records not collected.

9.This Court considered the rival submissions and perused the materials available on record.

10.In this case, PW5 is the injured witness. Prior to the occurrence, there was dispute between PW5's family and the petitioner's family with regard to usage of backyard portion of land and common pathway. Due to which, PW5 attacked the petitioner and his father and the case is pending against them. On the date of incident, PW5 and his father Vadivel were working in backyard, at that time, the petitioner trespassed into their land, picked up quarrel and said to have assaulted PW5 and his father, which was witnessed by PW1 to PW3. Due to which, they sustained injuries. PW5 had gone to the Government Hospital, Nagapattinam, where the Doctor (PW6) initially gave treatment and for further treatment, he was admitted in the Government Hospital, Thiruvarur, where PW9 gave further treatment. In this case, the evidence of PW5 confirmed the evidence of the Doctors (PW6 & PW9).

11.Admittedly, in this case, the iron rod, which was used by the petitioner to attack PW5 not seized and recovered. With regard to the weapon used by the petitioner to attack PW5 and his father, there is contradiction in the evidence of PW1, PW3 and PW5. Added to it, the weapon not seized. In this case, the Accident Register (Ex.P2) and Discharge Summary (Ex.P6) alone marked during trial. No wound certificate, X-Ray and CT-Scan of PW5 produced or collected. Further, the petitioner and PW5 are neighbours having dispute over common pathway and they were not in cordial relationship. There are cases pending between them. In this case, the medical records confirming the grievous injuries of PW5 are not produced. Considering the serious flaw on the side of the prosecution, the conviction of the trial Court in C.C.No.5 of 2013, dated 10.02.2014, which was confirmed by the lower appellate Court in C.A.No.5 of 2014, dated 06.10.2015 is altered from Section 326 of IPC to Section 324 IPC and the sentence of imprisonment is also modified to the period of incarceration already undergone by the petitioner. The fine amount imposed by the Courts below is confirmed.

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12.With the above modification, this Criminal Revision case is partly-allowed.

13.This Court appreciates M/s.Y.Kavitha, Legal Aid Counsel appeared for the petitioner for meticulous preparation and presentation of the case by relying on relevant citation.

Sd/-
Assistant Registrar(CO)

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Sub Assistant Registrar

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To

1. The District and Sessions Court,
   Nagapattinam.

2. The Chief Judicial Magistrate Court,
   Nagapattinam.

3. The Sub Inspector of Police,
   Keelaiyur Police Station,
   Keelaiyur.

4. The Public Prosecutor,
   High Court, Madras.

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SJ(CO)
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