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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.01.2022

CORAM:

THE HON'BLE Ms.JUSTICE R.N.MANJULA

Crl.R.C.No.411 of 2016

Vinayagam

... Petitioner

Vs.

State by:
Inspector of Police,
Avalurpettai Police Station,
Gingee.
(Crime No.94 of 2011)

... Respondent

Criminal Revision filed under Sections 397 and 401 Cr.P.C praying to set aside the order passed by the learned II Additional District and Sessions Judge, Tindivanam dismissing the appeal in C.A.No.53 of 2015 dated 12.12.015 against C.C.No.329 of 2012 in Crime No.94 of 2011 dated 07.10.2015 confirming the judgment and sentence of the learned Judicial Magistrate, Gingee, Trial Court convicting the petitioner for an offence under Section 325 IPC and sentenced to undergo 24 months simple imprisonment and to pay a fine of Rs.500/- i/d to undergo 2 weeks of S.I.

For Petitioner : Mr.K.Selvakumaraswami

For Respondent : Mr.A.Gopinath
Government Advocate (Crl. Side)

O R D E R

This Criminal Revision has been preferred challenging the judgment of the learned II Additional District and Sessions Judge, Tindivanam dated 12.12.2015 made in C.A.No.53 of 2015 which confirmed the judgment of the learned Judicial Magistrate, Gingee dated 07.10.2015 made in C.C.No.329 of 2012.



2. The revision petitioner is the first accused before the trial Court. The case of the prosecution is that on 29.03.2015 at about 12.45 hours, when PW2 was standing near the water tank of one Devaraja's land, the first accused, who held a previous motive, came along with A2 to A4 to the place of occurrence and abused PW2 in filthy language; the first accused attacked PW2 with knife on the left knee of PW2 and threatened him that he would kill him. The second accused attacked PW2 with stick on his left shoulder and caused simple injuries. The third and fourth accused attacked PW2 on his back and caused simple injuries. The injuries inflicted by the accused found to be grievous, the accused have been charged for the offence under Sections 294(b), 325, 323 and 506(ii) IPC.

3. On the complaint given by the sister of the injured/PW1-Mariammal on 29.03.2011, PW9/Manivannan, Special Sub Inspector of Police registered a case in Crime No.94 of 2011 under Section 294(b), 323, 324 and 506(ii) IPC and prepared the FIR. He took up the case for investigation, went to the place of occurrence inspected the spot and prepared the Observation Mahazar and rough sketch in the presence of witnesses. He also enquired the witnesses and recorded their statements. The further investigation was done by PW10-Inspector of Police. He also once again examined the witnesses, but he did not record their statements. He enquired the doctor/PW7, who treated the injured and got wound certificate(Ex.P3) and thereafter, he prepared the alteration memo for altering the charges from 324 IPC to 325 IPC and submitted the alteration report. After concluding the investigation, he filed the charge sheet against the first accused for the offence under Sections 294(b), 325 and 506(ii) IPC and as against the accused 2 to 4 for the offence under Sections 294(b) and 323 IPC. On being satisfied with the materials available on record, the learned trial Judge framed charges against the first accused under Sections 294(b), 325 and 506(ii) IPC and as against the accused 2 to 4 under Sections 294(b) and 323 IPC. When the accused were questioned under Section 313 Cr.P.C, they pleaded innocence and claimed to be tried.

4. During the course of trial, on the side of the prosecution, 10 witnesses were examined as PW1 to PW10 and 6 documents were marked as Exs.P1 to P6. On the side of the defence, no witness was examined but one document was marked as Ex.D1.

5. At the conclusion of the trial and on considering the evidence available on record, the learned Trial Judge found the first accused guilty for the offence under Section 325 IPC and convicted and sentenced him to undergo Simple Imprisonment for two years and also imposed a fine of Rs.500/- in default to undergo Simple Imprisonment for two weeks. The accused 2 to 4 were found not guilty and they were acquitted. The



appeal filed by the first accused in C.A.No.53 of 2015 was also dismissed on 12.12.2015 by confirming the judgment of the trial Court. Aggrieved over that, the first accused preferred the present revision.

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6. Heard the learned counsel for the Revision petitioner and the learned Government Advocate (Crl. Side) appearing on behalf of the respondent. Perused the entire materials available on record.

7. The learned counsel for the revision petitioner submitted that the origin and genesis of the case has not been properly investigated and the first accused has been falsely implicated in this case; Ex.D1 would show that the second accused was attacked by PW2; despite the same, no case was registered based on the statement of the second accused; the investigation agency has acted in a biased manner and filed the charge sheet against the accused; the alleged weapon used for the occurrence was also not recovered; there are contradictions in the evidence of the prosecution witnesses and that has been over looked by the Courts below; hence, this revision should be allowed.

8. The learned Government Advocate (Crl.Side) appearing for the respondent submitted that the evidence of the injured witness and the medical evidence would show that the first accused had caused the injury on PW2 as stated by the prosecution; there are no material contradictions found in the evidence of the prosecution witnesses and the Courts below have rightly appreciated the evidence and found the first accused guilty for the offence under Section 325 IPC and hence, it does not require any interference.

9. Point for consideration:-

Whether the conviction and sentence imposed on the first accused for the offence under Section 325 IPC by the learned Sessions Judge based on the materials available on record is fair and proper?

10. The de facto complainant is the sister of the injured Settu, who was examined as PW2. The occurrence is said to have been witnessed by PW3/Revathi, wife of PW2 and one Kamaraj/PW4. PW6/Renuka had accompanied PW2 when he was taken to the hospital for treatment. PW1 came to know about the occurrence after she rushed to the hospital where PW2 was taken treatment and thereafter, she gave the complaint(Ex.P1). The evidence of PW1 would reveal the above facts and I find no reason to suspect the evidence of PW1.

11. The injured was examined as PW2 and he has also stated that how he was attacked by the first accused. PW2 has stated that at the time of occurrence, the first accused had inflicted a cut injury on the left knee of PW2. When his wife



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came for his rescue and tried to prevent the accused, the first accused attempted to attack her. Despite PW1 has stated that he was attacked by the first accused, he has not stated about the weapon used by the first accused at the time of occurrence. The Investigation Officer has not seized the weapon used for the occurrence.

12. It is seen from Ex.D1/wound certificate that on the same day, the second accused was also injured. When the second accused was seen by the doctor/PW7 on the same day, he told the doctor that he was attacked by Settu/PW2. Even then, no case has been registered by the police on the statement of the second accused. In the cases of this nature, it is the duty of the Investigation Officer to register the case in counter and file a report by finding out who is the aggressor or file two charge sheets. Only then it will enable the Court to conduct simultaneous trial and find out who is the aggressor. But in this case, it is seen that a single case alone was registered based on the complaint given by PW1. Since much water has flown under the bridge, the case cannot be once again opened up for further investigation.

13. When the doctor was examined as PW7, he has also admitted that on the same day the second accused had come for treatment to the hospital by alleging that he was attacked by one Settu/PW2. It is submitted by the learned counsel for the revision petitioner that when PW2 attacked and ran away after attacking the second accused, he fell down and sustained injuries. The learned trial Judge has observed that if PW2 had fallen down, such injuries could be found on the front side of his knee only.

14. The injury was found on the back side of the knee of PW2. That would only prove that the injury was sustained by PW2 only during the occurrence. But the fact remains that the investigation is incomplete as to who is the aggressor at the time when both parties attacked each other. The prosecution records does not show that a case has been registered on the basis of the complaint given by the second accused and later it was closed as mistake of fact or otherwise. It is seen that no case has been registered for the injuries sustained by the second accused on one and the same day. Since many facts relating to the occurrence were not unearthed by conducting a full-fledged investigation in a proper manner, that would cause suspicion on the case of the prosecution. In the circumstances of the case, though it might be true that PW2 had sustained injuries, it cannot be confirmed that it was the first accused who attacked PW2. Because PW2 had also actively participated in attacking the second accused. But the Courts below have omitted to highlight the above investigation and failed to give the benefit of doubt to the accused.

15. For the aforementioned reasons, I feel that the judgment of the Court below is liable to be reversed.



In the result, this Criminal Revision is allowed. The judgment of the learned II Additional Sessions Judge, Tindivanam made in C.A.No.53 of 2015 dated 12.12.015 is hereby set aside. The Petitioner/first accused is acquitted from all charges. Fine, if any, paid shall be refunded. Bail bonds, if any, executed shall stand cancelled.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

kmi

To

- 1.The II Additional Sessions Judge,
Tindivanam.
- 2.The Judicial Magistrate,
Gingee.
- 3.The Inspector of Police,
Avalurpettai Police Station,
Gingee.
- 4.The Public Prosecutor,
High Court of Madras,
Chennai-104.

Copy to:

The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.K.Selvakumaraswami, Advocate SR. No.4084

Cr1.R.C.No.411 of 2016

NK (CO)
PR (23/02/2022)