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Crl.R.C.No.741 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.11.2022

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

Crl.R.C.No.741 of 2018

Palaniappan

... Petitioner

Vs.

The State by
The Sub Inspector of Police,
Namagiripettai Police Station,
Namagiripettai, Namakkal District.
(Crime No.818 of 2008)

... Respondent

PRAYER: Criminal Revision case has been filed under Section 397 r/w 401 of Cr.P.C to call for the entire records in so far relates to order passed by Principal Sessions Judge, Namakkal in C.A.No.39 of 2015, dated 26.04.2018 whereby confirming the order passed in C.C.No.147 of 2009, dated 20.08.2015 on the file of Judicial Magistrate, Rasipuram, Namakkal District and set aside the same.

For Petitioner : Mr.C.Prakasam

For Respondent : Mr.A.Gopinath

Government Advocate (Crl.Side)



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ORDER

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This Criminal Revision case has been filed as against the Judgment passed in C.A.No.39 of 2015 dated 26.04.2018 passed by the Principal Sessions Judge, Namakkal, confirming the Judgment passed in C.C.No.147 of 2009, dated 20.08.2015 on the file of Judicial Magistrate, Rasipuram, Namakkal District, thereby convicted the petitioner for the offence punishable under Sections 326 of IPC.

2. The case of the prosecution is that on 24.12.2008, the accused attacked the complainant/victim, by an iron rod, on his cheek and right leg, due to which, the defacto complainant lost his two teeth and also sustained injury on his right leg. Hence, the complaint.

3. On receipt of the complaint, the respondent registered an FIR for the offences punishable under Sections 294(b) and 326 of IPC, in Crime No.818 of 2008. After completion of investigation, the respondent filed a final report and the same has been taken cognizance in C.C.No.147 of 2009 on the file of the learned Judicial Magistrate, Rasipuram, Namakkal District.



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4. In order to bring home the charges, the prosecution had examined P.W.1 to P.W.9 and marked Exs.P1 to P5. On the side of the petitioner, no one was examined and no document was marked. On a perusal of oral and documentary evidence, the Trial Court found the accused guilty for the offence punishable under Section 326 of IPC and sentenced him to undergo two years simple imprisonment with a fine of Rs.2000/-, in default to undergo three months imprisonment. Aggrieved by the same, the petitioner preferred an appeal and the same was dismissed confirming the Judgment passed by the Trial Court. Hence, this revision.

5. The learned counsel for the revision petitioner would submit that there were contradictions between the prosecution witness and as such the prosecution failed to prove its case beyond any doubt. P.W.2, who happened to be the witness, did not support the case of the prosecution. There was contradiction to whether the victim lost one tooth or 2 teeth. There is no evidence to prove that the petitioner caused injury on the victim. In fact, the victim was examined as P.W.1. He stated that he was assaulted by three known persons before P.W.7 who had treated him. Whereas, the respondent registered a case as against two accused persons. He would also submit that the



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Investigating Officer had not seized the weapons used in the alleged occurrence.

Therefore, he prayed for acquittal from all the charges.

6. Per contra, the learned Government Advocate (Crl.Side) would submit that the victim was examined as P.W.1, whose evidence was supported by P.W.3 and P.W.4. The Doctor, who examined the victim was examined as P.W.7. She issued wound certificate, which was marked as Ex.P3. Therefore, the prosecution clearly proved its case and the Trial Court rightly convicted the petitioner.

7. Heard, Mr.C.Prakasam, learned counsel appearing for the petitioner and Mr.A.Gopinath, learned Government Advocate (Crl.Side) appearing for the respondent.

8. The defacto complainant is the son born to his father through his first wife. The accused are the son and daughter of complainant's father through his second wife. There was a property dispute between them. While being so, on the date of occurrence at about 07.00 p.m, when the victim was sleeping inside his house, the accused persons went to the house and scolded him that why did he go to Court?. Thereafter, A1 attacked the victim, by an iron rod, on his cheek



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and right leg. Immediately, he was taken to Government Hospital, Rasipuram.

On recording his statement, the FIR was registered for the offence under Section 294(b) and 326 of IPC. The FIR was marked as Ex.P5. The victim was examined as P.W.1. He deposed that A1 attacked him on his cheek and right leg, due to which, he had sustained injuries. Immediately, he was taken to the Government Hospital, Rasipuram, where he was treated by P.W.7.

9. A perusal of deposition of P.W.7 revealed that the victim was assaulted by three known persons. She supported the case of P.W.1 and issued wound certificate, which was marked as Ex.P3. It also corroborated the evidence of P.W.1. The ground urged by the accused as to the number of teeth lost by the victim and the non seizure of weapons used for the occurrence is not fatal to the case of the prosecution, since it is not the case of defence that the occurrence itself had not taken place and the injuries sustained by the victim did not occur due to the assault.

10. These are all the minor contradictions which cannot be said to be fatal to the case of the prosecution. Hence, both the Courts below rightly convicted the petitioner and this Court finds no reason to interfere.



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11. However, the learned counsel for the petitioner would submit that considering the age of the petitioner, the sentence imposed on the petitioner may be reduced. Considering the submission, the conviction as against the petitioner for the offence under Section 326 of IPC is hereby confirmed and the sentence imposed on the petitioner alone is reduced from two years to one year.

12. Accordingly, this Criminal Revision case is partly allowed.

10.11.2022

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
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To

1. The Principal Sessions Judge, Namakkal.
2. The Judicial Magistrate, Rasipuram, Namakkal District.
3. The Sub Inspector of Police,
Namagiripettai Police Station,
Namagiripettai, Namakkal District.
4. The Public Prosecutor,
High Court, Madras.

G.K.ILANTHIRAIYAN, J

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