



Crl.R.C.No.1297 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.11.2022

CORAM :

THE HONOURABLE Dr. JUSTICE **G.JAYACHANDRAN**

Crl.R.C.No.1297 of 2017
and Crl.M.P.No.12572 of 2017

Alagumalai

.. Petitioner

Vs.

State rep.by
The Inspector of Police,
Namakkal Police Station,
Namakkal.
Crime No.740 of 2013

..Respondent

PRAYER : Criminal Revision Case has been filed under sections 397 read with 401 of Criminal Procedure Code to call for the entire records relating to judgment dated 16.09.2017 made in C.A.No.21 of 2015 on the file of the Court of Sessions (Fast Track Mahila) Judge, Namakkal convicting under Section 326 I.P.C., sentencing to undergo 3 years RI with fine of Rs.2,000/- in default to undergo 2 months SI modifying the compensation to sum of Rs.1,00,000/- confirming the conviction and sentence passed by judgment dated 24.04.2015 made in S.C.No.21 of 2014 on the file of the Court of Additional Assistant Sessions Judge (Trainee District Judge), Namakkal and set aside the same and thereby



Crl.R.C.No.1297 of 2017

acquit the petitioner/accused.

For Petitioner : Ms.K.Ramani
For Limba Rubini

For Respondent : Mr.N.S.Suganthan
Government Advocate(Crl.Side)

ORDER

This Criminal Revision Case is filed challenging the concurrent findings of the Courts below holding the revision petitioner guilty of offence under Section 326 I.P.C., and sentenced him to undergo 3 years Rigorous Imprisonment, to pay a fine of Rs.2,000/-, in default 4 weeks Simple Imprisonment and also directed the accused to pay a sum of Rs.2,50,000/- as compensation under Section 357(3) Cr.P.C to PW.2 [Natarajan], in default, the petitioner has to suffer 18 months Simple Imprisonment.

2. Aggrieved by the said conviction and sentence passed in Sessions Case No.21 of 2014 dated 24.04.2015, the petitioner herein preferred an appeal before the Court of Sessions, Namakkal. The said appeal filed in C.A.No.21 of 2014 was considered by the Fast Track Mahila Court and the compensation amount of Rs.2,50,000/- has been



modified to Rs.1,00,000/- but the other part of the sentence was confirmed.

3. Being aggrieved, the present revision case is filed stating that the Courts below have erred in not properly appreciating the evidence. Particularly, it is contended that the injured witness PW.2 admitted that he gave a complaint earlier and the same has been taken as First Information Report based on the complaint given by PW.1. Therefore, the F.I.R., registered based on the subsequent information ignoring the earlier information. This is fatal to the case of the prosecution, since the complaint is premature, improper and proof have to be taken up for investigation.

4. The learned counsel for the petitioner/accused further submits that according to the prosecution, immediately after the incident, the injured PW.2 was taken to the hospital by his friend namely Sellamuthu. The said Sellamuthu neither cited by the prosecution as witness nor examined as witness, which creates doubt in the case of the



prosecution. The evidence on the side of the prosecution indicates that even before going to the hospital, the matter was informed to the police but the said fact has not been properly appreciated by the Courts below and the presence of PW.1 in the alleged scene of occurrence is highly doubtful and unreliable. PW.1, PW3 and PW.4 are interested witnesses and PW.5, the Mahazar witness have not supported the case of prosecution M.O.1 for the alleged offence.

5. According to the prosecution, the incident occurred on 23.07.2013 at about 12.30 p.m., F.I.R., came to be registered at 3.00 p.m., and no plausible reason given for the delay. Apart from the interested witnesses, PW.7 and PW.8 have turned hostile and the said hostility of the witnesses have no bearing in the case of the prosecution, but ignored by the Court. The alleged weapon M.O.1 used in the crime has not been properly identified even by the victim/PW.2. The recovery of the material object not supported by the independent witnesses. The Investigating Officer failed to collect the blood stain soil or to prove the incident and fix the scene of occurrence. Therefore, non corroborative of the prosecution case, the independent witness, who alleged to have prepared the



Crl.R.C.No.1297 of 2017

observation mahazar is failed.

6. The point for consideration which has been over looked by the Courts below solely based on the evidence of PW.2 untrustworthy witnesses who had enmity with the accused/petitioner regarding flying auto ought to have been looked suspicion.

7. The learned Government Advocate (Crl.Side) for the State would submit that it is a case where due to previous enmity, the petitioner herein came to the auto stand near town bus stand and attacked the victim Natarajan /PW.2 with veech aruval saying that "நீ உயிரோடு இருந்தா தானே பகார் கொடுப்ப இத்தோடு ஒழிந்து போ" the provocation for the proved attack is that the victim PW.1 has given a complaint to R.T.O., regarding the flying auto with excess passenger and causing loss to the business of the accused. In the said brutal attack, PW.1 lost his left wrist and was amputated. PW.9-the doctor, who treated the victim had sprucely deposed that the injury sustained by PW.1 and the nature of the injury. Soon after the incident, the victim was taken to the hospital and seen by



PW.10 doctor Jeyanthi. The wound certificate has been recorded by her and the Accident Register is marked as Ex.P6.

8. The learned Government Advocate (Crl.Side) would further submit that while the injured person has identified the accused who is known to him and the enmity has been spoken by him, there is no necessity to any other witnesses to corroborate the facts. The prosecution has let in evidence regarding the assailants, the injury caused by the assailants to the victim. The minor omission on the part of the prosecution is not fatal for the case of the prosecution to prove the guilt of the accused. Therefore, the Courts below have rightly considered the seat of attack and nature of the injury, convicted the accused for the offence under Section 326 I.P.C.

9. This Court, after coming to the anxious consideration and rival submissions, finds that on 23.07.2013, PW.2/ Natarajan has been brought to the Government hospital with severed left hand and bleeding injury that has been witnessed by doctor Jeyanthi who was a duty doctor



at that time. She has been observed the following injury on PW.1 to PW.3 and recorded in the Accident Register. Since the injured wants to get better treatment in a private hospital, she refused to put admission in the hospital, though he was advised to get admitted as in-patient. From the testimony of PW.9 Doctor Madhu Periyasamy, plastic surgeon attached to the Ganga hospital, Coimbatore, the prosecution has proved that PW.2 along with his wife had visited on 23.07.2013 at about 3.14 p.m., and had disclosed the way he sustained injury on observing that the left arm was cut and including the palm. PW.9 has started giving treatment and after conducting surgery, the amputated hand got replaced. Thereafter on 07.08.2013 PW.1 got discharged. The wound certificate is marked as Ex.P5 which indicates as below:-

“1.The left hand is completely amputated at the proximal palwal level with the amputated part consistency of all digits enbloc.

2.There is a clean cut wound also as the ulnar side of the distal 1/3rd of the left forearm with pulsatile and exposed ends of cut tenders.”

10. Though the learned counsel for the petitioner states that there is discrepancy and contradiction regarding the nature of weapon used



Crl.R.C.No.1297 of 2017

and the identity of M.O.1 as well as the recovery of M.O.1 is highly doubtful, considering the oral evidence of PW.1, the victim and the medical evidence as spoken by PW.9 and PW.10 and the wound certificates [Ex.P5 and Ex.P6] marked, this Court finds that there is no error in appreciation of evidence by the Courts below. Legally there is nothing available for interference, which warrants exercising the power under the revision jurisdictional. Hence this Court holds that the conviction and sentence including the compensation is reasonable and warrants no interference.

11. In the result, this Criminal Revision Case is dismissed.

Consequently, the connected Crl.M.P., is also dismissed.

09.11.2022

Internet : Yes/No

Index: Yes/No

rpl



CrI.R.C.No.1297 of 2017

To
WEB COPY

- 1.The Court of Sessions (Fast Track Mahila) Judge, Namakkal.
2. The Additional Assistant Sessions Judge (Trainee District Judge),
Namakkal.
- 3.The Inspector of Police,
Namakkal Police Station,
Namakkal.
- 4.The Public Prosecutor,
High Court of Madras,
Chennai.



WEB COPY



Crl.R.C.No.1297 of 2017

Dr.G.JAYACHANDRAN, J.

rpl

Crl.R.C.No.1297 of 2017

09.11.2022