



Crl.R.C.No.252 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 03.11.2022

Pronounced on : 10.11.2022

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Crl.R.C.No.252 of 2017

Desingu @ Jayasingam

.. Petitioner

/versus/

State rep by
The Inspector of Police,
Sirkali Police Station,
Nagapattinam District.
(Crime No.608 of 2010)

.. Respondent

Prayer: Criminal Revision Case has been filed under Section 397 r/w 401 of Cr.P.C., to set aside the conviction and sentence made in Criminal Appeal No.25 of 2013 dated 08.12.2015 on the file of the District & Sessions Judge, Nagapattinam in confirming the judgment made in confirming the judgment made in S.C.No.111 of 2011, dated 21.03.2013 on the file of the Assistant Sessions Judge cum Chief Judicial Magistrate at Nagapattinam and thus allow the criminal revision.

For Petitioner	:Mr.Swami Subramanian for Mr.J.Jawahar
For Respondent	:Mr.N.S.Suganthan Govt.Advocate (Crl.Side)



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ORDER

On 07/08/2010, the respondent police registered First Information Report in Crime No.608/2010 against the revision petitioner herein on the information given by PW-1, who was taking treatment at Muthaiah Medical College Hospital, Annamalai Nagar, Chidambaram. According to his information, 4 days prior to the incident, the revision petitioner, who is known to him and a friend, requested a loan of Rs.200/-. He refused to give him money, since the revision petitioner has not repaid the hand loan borrowed earlier. The revision petitioner got infuriated and left. On 06/08/2010, while he along with his brother and friends were walking near Munishwarar Temple, the revision petitioner came and demanded money, again the defacto complainant refused. The revision petitioner started abusing him in vulgar words and attacked him with billhook (aruval) saying get lost. (“இத்தோடு ஒழிந்துபோடா”). The defacto complainant to avoid the attack aimed at his neck, prevented it with his left hand. The attack fell on his left wrist and severed the hand.



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2. The respondent police, on completion of investigation, filed Final Report. The Learned Judicial Magistrate, having *prima facie* satisfied that the offences are triable exclusively by the Court of Sessions, committed the case to Court of Sessions, Nagapattinam. The Assistant Sessions Judge (Chief Judicial Magistrate, Nagapattinam), framed charges under Sections 294(b) and 307 IPC and tried the accused/revision petitioner herein.

3. The prosecution, apart from the injured PW-1, examined 9 more Witnesses, marked 8 Exhibits and one Material Object. After appreciating the evidence and the submissions of the accused in defence, the trial Court held the accused/revision petitioner guilty of offence under Section 326 of IPC and sentenced the accused to undergo 4 years RI and fine of Rs.1000/- in default, to undergo 3 months RI.

4. Against the above judgement passed in S.C.No.111/2011, the accused/revision petitioner preferred Criminal Appeal before the District and Sessions Court at Nagapattinam. The said appeal C.A.No.25/2013 ended in



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dismissal. The Lower Appellate Court concluded that PW-2 and PW-9 were present and witnessed the occurrence when the accused attacked PW-1. The Doctor, who treated PW-1 had deposed about the gravity and nature of the injury sustained by PW-1. Their testimony proves the prosecution case that the injury sustained by PW-1 was caused by the accused. The severance of wrist is a grievous injury caused by using dangerous weapon. Though the prosecution has not proved that the accused attacked PW-1 with intention to kill him or the injury is likely to cause death, the proven fact that PW-1 left wrist was severed due the attack by the accused using M.O.1, satisfies the ingredient required to convict the accused under Section 326 of IPC.

5. The present revision petition filed against the concurrent finding of the courts below on the ground that the prosecution has not proved the case through proper corroboration of eye witnesses. The evidence of PW-1 is not corroborated either by oral or documentary evidence. The failure of the prosecution to produce the X-ray report of the victim is fatal to the case of the prosecution. It creates doubt whether the injury really caused or whether it is



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grievous or simple. The failure of the prosecution to recover the blood stained dress of the victim, blood stained soil from the alleged Scene of Crime adds more doubt about the prosecution case. The incident even according to PW-1 version, it is not a premeditated but due to provocation on refusal of lending loan. The victim and the accused are friends and known to each other. The unexpected refusal to help had provoked the accused. Hence, the period of 4 years RI for the said offence is excessive.

6. The Learned Government Advocate for the respondent submitted that the attack on PW.1 is not a sudden provocation, but a pre-planned attempt to murder. The injured / victim had specifically deposed that immediately after refusal to part with money, the accused attacked him with Aruval [M.O.1]. To avoid the attack on the neck, PW.1 protected with left hand thereby his left hand wrist got severed and fell on the ground. The presence of the accused at the scene of occurrence and fleeing away from the scene has been deposed by the eye-witnesses. Though PW.2, PW.3 and PW.9 had not specifically stated that they have witnessed the accused causing



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cut injury, they had deposed that while walking along with PW.1 with pool of blood lying down and left hand wrist severed. PW.1 was brought to the hospital by PW.2 for treatment. The severed hand was put in plastic bag and reported to PW.8, the Medical Officer. The patient was referred to Raja Muthaiah Medical College Hospital, Annamalai Nagar, Chidambaram for higher treatment. The attempt to join the severed hand was not fructified. The trial Court has seen the witnesses and the injured person with severed left hand wrist, has identified the accused as the person who caused the injury. Therefore, the learned Government Advocate (Crl.Side) would submit that the Courts below has rightly convicted the accused.

7. The learned counsel for the petitioner would submit that since the Courts below had expressed its doubt about the prosecution case in respect of Sections 294(b) and 307 I.P.C., for which, the accused was tried and having acquitted from these two charges and convicting him for offence under Section 326 I.P.C., is an error apparent in law. The evidences of PW.2, PW.3 and PW9 are not the reliable witnesses, since they have not seen the



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occurrence.

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8. The Courts below had considered primarily the fact that PW.8 the doctor, who treated the injured PW.1, has given Ex.P6-Accident Register, that he saw PW.1 found with severed hand and has stated that the injury sustained by the victim falls under the definition of grievous hurt. Based on the intimation received from the hospital, PW.6-Thiru Pakirisamy had gone to the hospital, recorded the information from the victim [PW.1], registered a case and proceeded with the investigation. Having proved the fact that the injury sustained by PW.1 was due to deadly attack with dangerous weapon and the weapon [M.O.1] has been recovered based on the confession given by the accused, there can be no doubt about the identity of the assailant. The victim himself has identified the accused as the assailant and he was seen running with Aruval from the Scene of Occurrence after the attack. This had been deposed by PW.2, PW.3 and PW.9, which is a sufficient proof that the grievous injury sustained by PW.1 was caused by the accused/petitioner herein.



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9. The learned counsel for the petitioner/accused pointing out that the charge was framed for the offences under Sections 294(b) and 307 I.P.C., whereas the trial Court, after acquitting the accused from both the charges framed, had convicted him under Section 326 I.P.C., for an offence, for which the charge was not at all framed.

10. It is a settled principle of law that there is no error in convicting a person for a minor offence, though he is tried for major offence, the only test to validate such conviction is whether the major offence for which charge was framed is a cognate offence of the minor offence for which conviction is imposed. Section 222 of Cr.P.C., authorized conviction for a minor offence though the charge was not framed. Specifically in this case, charge is framed for 307 I.P.C.(Attempt to commit murder), which is a major offence, Section 326 I.P.C.,(Voluntarily causing grievous hurt by dangerous weapon) is a minor offence. For better appreciation of legal position, the provision of Section 222 is extracted below:-



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222. When offence proved included in offence charged.

(1) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence though he was not charged with it.

(2) When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence, although he is not charged with it.

(3) When a person is charged with an offence, he may be convicted of an attempt to commit such offence although the attempt is not separately charged.

(4) Nothing in this section shall be deemed to authorise a conviction of any minor offence



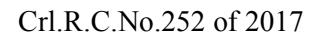
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where the conditions requisite for the initiation of proceedings in respect of that minor offence have not been satisfied.

Since Section 222(2) of Cr.P.C., enable the Court to convict for minor offence though charge was not framed, this Court finds no error in the judgment of the lower Court.

11. In view of the above reasons, there is no error in the findings of the Courts below. In terms of appreciation of evidence and the sentence, which is proportionate to the crime committed, the Criminal Revision Case is devoid of merit.

12. Accordingly, this Criminal Revision Case is dismissed. The conviction of trial Court is confirmed. The learned Judicial Magistrate shall take steps to secure the accused and commit him to prison to undergo the remaining period of imprisonment.



10.11.2022

To :

- 1.The District Sessions Judge, Nagapattinam.
- 2.The Assistant Sessions Judge cum Chief Judicial Magistrate, Nagapattinam.
- 3.The Inspector of Police, Sirkali Police Station, Nagapattinam District.
- 4.The Public Prosecutor, High Court, Madras.

DR.G.JAYACHANDRAN,J.

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Pre-Delivery Order made in
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