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Crl.R.C.No.893 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2022

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.893 of 2017

Perumal
S/o.Gurumurthy

... Petitioner/Accused

Versus

The State rep by
The Inspector of Police,
Ammappettai Police Station,
Erode District.
(Crime No.279/2010)

... Respondent/complainant

PRAYER : Criminal Revision Case filed under Sections 397 and 401 of Cr.P.C. to set aside the judgment in C.A.No.111/2015 dated 04.03.2017 on the file of the IV Additional District and Sessions Judge, Bhavani confirmed by the Judicial Magistrate in C.C.No.150/2011 dated 14.08.2015 and call for the records and acquit the petitioner.

For Petitioner : Mrs.A.Bakkiyalakshmi

For Respondent : Mr.L.Baskaran
Government Advocate (Crl. Side)



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ORDER

This Criminal Revision Case has been filed to set aside the conviction and sentence passed by the learned IV Additional District and Sessions Judge, Bhavani in C.A.No.111 of 2015 dated 04.03.2017 confirming the sentence and order of conviction passed by the learned Judicial Magistrate, Bhavani, in C.C.No.150 of 2011 dated 14.08.2015 and acquit the petitioner.

2. The petitioner/accused No.1 in C.C.No.150 of 2011 was convicted by the learned Judicial Magistrate, Bhavani for offence under Section 326 I.P.C. and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.6,000/-, in default to undergo four months simple imprisonment. Aggrieved against the same, the petitioner preferred an appeal before the IV Additional District and Sessions Judge, Erode District at Bhavani in C.A.No.111 of 2015. The learned Sessions Judge by judgment dated 04.03.2017, dismissed the appeal confirming the conviction and sentence passed by the trial Court, against which, the present revision has been filed.



3. The back ground of the case is that the de-facto complainant, namely, one Periyathambi is neighbour and related to the petitioner as well as other two named accused. The petitioner is the sister's son of Periyathambi. The second accused is the brother of Periyathambi and third accused, Palanisamy is A-2's son. As per the trial Court, on 20.09.2010 at about 9.45 a.m., the said Periyathambi along with P.W.1 came to the respondent police station and lodged a complaint with P.W.4/then Head Constable. On seeing the injuries sustained by them, they were referred to the Government Hospital, Bhavani along with Medical Memo.

4. The complaint is that on 19.09.2010, P.W.1 was cleaning the bushes in the adjacent poramboke land, which was enjoyed by both the de-facto complainant and the petitioner/accused, the same was objected by the petitioner/accused. The petitioner intended to build a house and settle there. On 20.09.2010, at about 2.00 a.m. when the said Periyathambi and P.W.1 were sleeping in front of their house, all the accused came there and abused them with filthy language. Thereafter, the petitioner/A1 using bamboo stick/M.O.1, hit the de-facto complainant on his left cheek. A-2 and A-3 kicked P.W.1 in the hip and on the left ankle. Hence, a complaint was lodged.



On receipt of the complaint, an F.I.R./Ex.P4 came to be registered. Thereafter, investigation was taken over by P.W.6/Investigating Officer, who visited the scene of occurrence at about 10.30 a.m. In the presence of P.W.3, he prepared observation mahazar, rough sketch, and seized M.O.1/bamboo stick from the scene of occurrence and thereafter examined P.W.1 in the hospital, recorded her statement. P.W.2 is another neighbour and eyewitness to the occurrence. P.W.5 is the Doctor attached to Government Hospital, Bhavani, who issued Accident Register cum wound certificate/Ex.P5. Thereafter, on conclusion of investigation, charge sheet filed before the trial Court. On examination of witnesses P.W.1 to P.W.6, documents Ex.P1 to P8 and M.O.1, the trial Court convicted the petitioner/A-1 alone. A-1 and A-2 were acquitted for charges under Sections 294(b) and 323 of I.P.C. The Lower Appellate Court confirmed the conviction and sentence passed by the trial Court, against which, the present petition has been filed.

5. The primary contention of the petitioner is that the de-facto complainant in this case, namely, Periyathambi died during trial, hence could not be examined as witness. P.W.1 admits in her evidence that she is not aware about what is written in the complaint/Ex.P1. Further submits that in



the Accident Register it is recorded that three male and one female attacked Periyathambi as well as P.W.1, which is also admitted by P.W.6/investigating officer. Further, from the complaint/Ex.P1, though it is projected that P.W.1 and her husband Periyathambi were sleeping in front of the house, at that time they were assaulted, P.W.1 in her 161 statement as well as in her evidence, categorically stated that she was inside the house and after hearing the shout, she came out and at that time, she saw the accused/A1 assaulting her husband Periyathambi. The trial Court disbelieved the presence of P.W.1 and acquitted A-1 and A-2 from charges under Section 294(b) and 323 I.P.C. Once P.W.1's presence is disbelieved and the petitioner and other accused were acquitted for offence under Section 294(b) and 323 of I.P.C., the same benefit ought to be given to the petitioner and acquitted him from offence under Section 326 I.P.C. Further, in this case, an offence has been altered to 307 and later to 326 I.P.C. for the reason that there was a fracture on the left cheek of the Periyathambi.

6. In this case x-ray not produced as well as M.O.1 reached the Court nearly after six months and it is only 63 c.m. bamboo stick, which is commonly available. P.W.5/Doctor admits that the injury sustained by



Periyathambi might be due to self fall. The trial Court convicted the petitioner for offence under Section 326 I.P.C. without confirming with the x-ray. Further, x-ray said to have taken in the Government Hospital, Coimbatore. P.W.5 states that she had only given Accident Register copy. Thereafter, Periyathambi referred to Government Hospital, Erode. Thereafter, they went to Coimbatore and took treatment. No Doctor from Coimbatore hospital examined and no medical records produced. P.W.2 is the neighbour, who states that after the occurrence she came to the scene of occurrence. P.W.3, the another relative, who is a witness for observation mahazar and seizure mahazar, who admit that he is not aware about what is written in the Mahazar. Further, from the village, no independent witness examined in this case. The lower Appellate Court failed to analyse the evidence and materials independently, but mechanically dismissed the appeal confirming the trial Court judgment. Hence, prayed for acquittal of the petitioner.

7. Learned Government Advocate (Crl. Side) appearing for the respondent-Police submits that on 20.09.2010 early morning at about 2 hours, the accused herein assaulted P.W.1 and her husband Periyathambi. The



petitioner/A-1 using bamboo stick caused grievous injuries. Due to the injury, fracture sustained and blood oozed from the mouth of Periyathambi. Since there was no bus service at that time, P.W.1 and her husband reached police station at about 8.45 a.m. next day and lodged a complaint. Thereafter, both of them were referred to the Government Hospital, Bhavani, thereafter to Government Hospital, Coimbatore. P.W.4 is the Head Constable, who received complaint, registered F.I.R. Thereafter, P.W.6 took up further investigation, examined witnesses, visited scene of occurrence, collected documents and on completion of investigation filed charge sheet before the trial Court. During trial, A-3 passed away. The trial Court after recording the evidence of P.W.1 to P.W.6, documents Ex.P1 to Ex.P8 and M.O.1, found that the petitioner is guilty and convicted the petitioner/A-1 and acquitted other accused. The lower Appellate Court independently analysing the evidence and materials, dismissed the appeal. The points raised by the petitioner were earlier raised before the trial Court as well as the Lower Appellate Court. The petitioner caused grievous injury on Periyathambi, husband of P.W.1 and the trial Court sentenced the accused only for the period of one year, which is a lighter punishment. Hence, prayed for dismissal of the above petition.



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8. Considering the submissions and on a perusal of the material, it is seen that the de-facto complainant/Periyathambi, who lodged a complaint, is no more. Even in the F.I.R./Ex.P4, it is recorded that the occurrence took place in front of the house of P.W.1, when P.W.1 and her husband were sleeping. On the contrary, the evidence of P.W.1 is that she was inside the house sleeping along with her children. On hearing the noise, she came out and saw her husband being assaulted. It is admitted that P.W.1 entered into the land and cleared some bushes in the poramboku land, which is occupied by the petitioner/A-1 and thereafter on objection, she left the place. In this case, P.W.2, the neighbour admits that she had came to the scene of occurrence after hearing the sound and assault. P.W.3, who is the witness for the observation mahazar, states that he is not aware about the contents of the mahazar. The trial Court disbelieved the evidence of P.W.1 and acquitted A-1 and A-2 from charges under Section 294(b) and 323 I.P.C. and doubted the presence of P.W.1 in the occurrence place.

9. The trial Court convicted the petitioner on the evidence of P.W.5 and Ex.P5/Accident Register of Periyathambi. The recordings in Ex.P5 is that



there is a swelling in the left cheek and tenderness. With regard to broken teeth and fracture, no x-ray produced and no opinion from the Dentist produced. Further, the x-ray was taken and treatment given in Government Hospital, Coimbatore. No Doctor from Coimbatore Hospital examined. P.W.5 admits that the injury on Periyathambi could have occurred due to self fall. Further, the trial Court inferred that Periyathambi could have informed P.W.5 about the nature of injury he sustained at the hands of the petitioner/A-1. From the evidence of P.W.5, it is seen that there is no such enquiry except recording, that Periyathambi was assaulted by three male persons and one female. Further, it is seen that there is no such disclosure by Periyathambi. This Court finds that the conviction based on Ex.P5, Ex.P6 and evidence of P.W.5, could not be sustained. Added to it, the presence of P.W.1 found to be doubtful. In view of the same, this Court finds that the prosecution failed to prove the case beyond all reasonable doubt. Hence, benefit of doubt is given to the petitioner and the petitioner is acquitted from all charges.

10. In the result, this Criminal Revision Case is allowed. The judgment of conviction and sentence passed by the learned IV Additional District and Sessions Judge, Erode District at Bhavani in Crl.A.No.111 of 2015 dated



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04.03.2017, confirming the order of conviction passed by the learned Judicial Magistrate, Bhavani in C.C.No.150 of 2011 dated 14.08.2015 are set aside and the revision petitioner is acquitted from all the charges.

20.12.2022

Index: Yes/No
Internet: Yes/No
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To

- 1.The Inspector of Police,
Ammapettai Police Station,
Erode District.
- 2.The IV Additional District and Sessions Judge,
Bhavani.
- 3.The Judicial Magistrate,
Bhavani.
- 4.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

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