



Crl.R.C.No.41 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2022

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Criminal Revision Case No.41 of 2020

1.Andhaimuli Baheer @ Basheer Ahamed

2.Noor Ayesha

3.Syed Ali

4.Ukkas

5.Mohamed Ayub

6.Mohamed Kajali

... Petitioners

Versus

State represented by

The Inspector of Police,

Portonovo Police Station,

Chidambaram District,

Crime No.97 of 2006.

... Respondent

Criminal Revision Case filed under Sections 397 (1) r/w 401 of Criminal Procedure Code to call for the records and set aside the order of conviction and sentence passed by the learned Assistant Sessions Judge, Chidambaram in S.C.No.236 of 2009 dated 29.10.2018 confirmed in C.A.No.118 of 2018 on the file of the learned II Additional District Sessions Judge, Chidambaram dated 18.10.2019 and allow this revision and acquit the revision petition from the charges levelled against him.

For Petitioners : Mr.M.Govindarajan
for Mr.T.Padmanabhan

For Respondent : Mr.R.Murthi
Government Advocate (Crl.Side)



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ORDER

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The Criminal Revision Case has been preferred against the judgment dated 18.10.2019 passed in C.A.No.118 of 2018 by the learned II Additional District and Sessions Judge, Chidambaram, confirming the judgment dated 29.10.2018 passed in S.C.No.236 of 2009 by the learned Assistant Sessions Judge, Chidambaram.

2. The case of the prosecution is that on 06.06.2008 at about 11.00 p.m all the accused had trespassed into the house of the *de-facto* complainant with knife and wooden logs and that all of them causing riot have obstructed the *de-facto* complainant and abused him in filthy language and that A1 attacked the *de-facto* complainant with an iron pipe on his head and body by stating that go to hell with it and caused simple injuries and also threatened him with dire consequences. A2 attacked the *de-facto* complainant and his wife and son with hands and threatened them and A3 and A4 with logs and wooden sticks damaged the window, glass doors and iron gate of the house of the *de-facto* complainant which could be valued upto Rs.5,000/- and that A5 attacked the witness Sadiq Basha with knife on



his head and forehead causing simple injuries and that A6 and A7 attacked Sadiq Basha with wooden logs causing simple injuries. A1 and A2 had attacked the *de-facto* complainant with an intention to cause death and that the other accused shared the common intention.

3. On the complaint given by the *de-facto* complainant, the respondent/Police registered a case in Crime No.97 of 2006 for the offences punishable under Sections 148, 452, 341, 307, 427, 324, 323 and 307 r/w 149 IPC. After investigation, the respondent/Police filed a charge sheet before the learned District Munsif-cum-Judicial Magistrate, Portonovo and the same was taken on file in P.R.C.No.24 of 2008. After completing the formalities under Section 207 Cr.P.C., the learned Magistrate committed the case for trial before the learned Principal District and Sessions Judge, Cuddalore, since the offences involved in this case are exclusively triable by the Court of Session. The learned Principal District and Sessions Judge, Cuddalore taken the case on file in S.C.No.236 of 2009 and made over the case to the learned Assistant Sessions Judge, Chidambaram.

4. In order to prove its case before the trial Court, on the side of the



prosecution, as many as 10 witnesses were examined as P.W.1 to P.W.10 and 9 documents were marked as Exs.P1 to P9 and three material objects were marked as M.O.1 to M.O.3. On the side of the defence, no oral evidence was adduced and one document was marked as Ex.D1.

5.1 The trial Court, after hearing the arguments advanced on either side and also considering the materials available on record found that the first accused is guilty for the offences under Sections 148, 452, 341 and 324 IPC and he was convicted and sentenced as follows :

(i) A1 was convicted for the offence under Section 148 IPC and sentenced to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs.200/-, in default, to undergo simple imprisonment for a period of two weeks;

(ii) A1 was convicted for the offence under Section 452 IPC and sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.500/-, in default, to undergo simple imprisonment for a period of four weeks;

(iii) A1 was convicted for the offence under Section 341 IPC and to



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pay a fine of Rs.300/-, in default, to undergo simple imprisonment for a period of two weeks;

(vi) A1 was convicted for the offence under Section 324 IPC and sentenced to undergo rigorous imprisonment for a period of two years.

5.2 The second accused is guilty for the offences under Sections 147, 452, 341 and 324 r/w 149 IPC and she was convicted and sentenced as follows :

(i) A2 was convicted for the offence under Section 147 IPC and sentenced to pay a fine of Rs.200/-, in default, to undergo simple imprisonment for a period of two weeks;

(ii) A2 was convicted for the offence under Section 452 IPC and sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.500/-, in default, to undergo simple imprisonment for a period of four weeks;

(iii) A2 was convicted for the offence under Section 341 IPC and sentenced to pay a fine of Rs.300/-, in default, to undergo simple imprisonment for a period of two weeks;



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(iv) A2 was convicted for the offence under Section 324 r/w 149 IPC and sentenced to undergo rigorous imprisonment for a period of one year.

5.3 A3, A4, A6 and A7 are guilty for the offences under Sections 148, 452, 341 and 324 r/w 149 IPC and they were convicted and sentenced as follows :

(i) A3, A4, A6 and A7 were convicted for the offence under Section 148 IPC and each of them sentenced to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs.200/- each, in default, to undergo simple imprisonment for a period of two weeks;

(ii) A3, A4, A6 and A7 were convicted for the offence under Section 452 IPC and each of them sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.500/- each, in default, to undergo simple imprisonment for a period of four weeks;

(iii) A3, A4, A6 and A7 were convicted for the offence under Section 341 IPC and sentenced to pay a fine of Rs.300/-, each in default, to undergo simple imprisonment for a period of two weeks;

(vi) A3, A4, A6 and A7 were convicted for the offence under Section



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324 r/w 149 IPC and each of them sentenced to undergo rigorous imprisonment for a period of one year.

(v) the trial Court ordered that the sentences imposed on the accused persons to run concurrently.

5.4 Further, A1 and A2 are found not guilty for the offence under Section 307 IPC and A3, A4, A6 and A7 are found not guilty for the offence under Section 307 r/w 149 IPC and they are acquitted from the said charges.

5.5 As far as A5/Malick Mohammed is concerned, the case has been split up in S.C.No.256 of 2018.

6. Challenging the said conviction and sentences, the petitioners herein/A1, A2, A3, A4, A6 and A7 preferred an appeal in Crl.A.No.118 of 2018 before the learned II Additional District and Sessions Judge, Chidambaram. The lower Appellate Court, as a final Court of fact finding re-appreciated the entire materials and dismissed the appeal and confirmed the conviction and sentence passed by the trial Court.

7. Challenging the said dismissal of appeal, the petitioners have filed



the present revision before this Court.

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8. On a careful perusal of the entire materials, it is seen that the trial Court after appreciating the entire materials convicted and sentenced the petitioners herein/accused as stated above. On the side of the prosecution, totally 10 witnesses were examined, out of which, the injured witnesses were examined as P.W.1 and P.W.6.

9. P.W.1 is a friend of the *de-facto* complainant. P.W.2 is the daughter of the *de-facto* complainant. P.W.7 is the wife of the *de-facto* complainant. P.W.6 is the *de-facto* complainant and he gave complaint against the accused persons and on the complaint the law was set in motion. P.W.1, P.W.2, P.W.6 and P.W.6 are eye witnesses to the said occurrence.

10. P.W.1 and P.W.6 in their evidence have stated that on the date of occurrence the petitioners herein and yet another trespassed into the house of the *de-facto* complainant/P.W.6 and attacked them with deadly weapons and also threatened them with dire consequences. To corroborate their evidence, the Doctor one who gave treatment to P.W.6 and P.W.1 was



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examined as P.W.9 and the Accident Register attached with wound certificate of P.W.1 was marked as Ex.P4 and the Accident Register attached with wound certificate of P.W.6 was marked as Ex.P5. Further, the evidence of P.W.6 is corroborated with the evidence of P.W.1, P.W.2 and P.W.7.

11. P.W.8, who is the mahazar witness has stated that on 07.08.2008 at about 11.00 a.m in the Parangipettai Police Station, A5 confessed the crime and upon the statement given by A5, the knife, iron pipe and wooden logs were recovered by the Inspector of Police which were marked as material objects M.O.1 to M.O.3 (Ex.P3/seizure mahazar). Though A5 had confessed the crime and disclosed the material objects, the confession statement is not admissible in evidence, however, the statement which is leading to the recovery of material objects are admissible in evidence. Further the evidence of the Doctor/P.W.9 has proved that P.W.1 and P.W.6 sustained injuries and he has also issued Accident Registers attached with wound certificates.

12. On a combined reading of the evidence of P.W.1, 2, 6, 7, 8 and 9 and also medical records clearly reveal that the prosecution has proved its



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case as stated above and the trial Court has rightly appreciated the evidence and convicted and sentenced the petitioners herein as stated above. The appellate Court as a final Court of fact finding re-appreciated the entire evidence and confirmed the findings of the trial Court and dismissed the appeal. In the case on hand, the injured witnesses P.W.1 and P.W.6 are the injured as well as eye witnesses and their evidence are corroborated with the evidence of other eye witnesses P.W.2 and P.W.7 and also corroborated with the medical evidence.

13. The main contention raised by the learned counsel for the revision petitioners is that there was a delay in filing the complaint and there was no independent witnesses to the alleged occurrence. In the present case, soon after the occurrence, the injured witnesses were admitted in the hospital and the medical records also clearly shows that the occurrence had taken place on 06.06.2008 at about 11.00 p.m and the injured witnesses were admitted in the hospital immediately after the occurrence. Therefore, the first available documents are the Accident Registers/Ex.P4 and Ex.P5 and based on the information given by the Doctor, the respondent/Police went to the



hospital and obtained statements from the injured witnesses and registered the case. Therefore, delay in filing the complaint is not fatal to the case of the prosecution. Since the injured witnesses have clearly spoken about the injuries sustained by them, which was corroborated with the medical evidence, non-examination of the independent witnesses is not a ground to discard the evidence of the prosecution witnesses.

14. The scope of revision is very limited. The Trial Court and the Lower Appellate Court had already appreciated and re-appreciated the entire evidence and also given findings and while exercising the revisional jurisdiction, this Court cannot sit in the arm chair of the Appellate Court and re-appreciate the evidence. However, this Court has to see whether there is any perversity or infirmity in the judgments of the Courts below.

15. Taking into consideration the evidence of P.W.1 and P.W.6, who are injured eye witnesses and whose evidence are corroborated with the medical evidence, this Court does not find any substantive reasons or any perversity in the appreciation of evidence, illegality or infirmity in the judgment of the both the Courts below and there is no merit in the revision



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and the same is liable to be dismissed.

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16. In view of the above, this Criminal Revision Case is dismissed and judgment dated 18.10.2019 passed in C.A.No.118 of 2018 by the learned II Additional District and Sessions Judge, Chidambaram, confirming the judgment dated 29.10.2018 passed in S.C.No.236 of 2009 by the learned Assistant Sessions Judge, Chidambaram is confirmed. The trial Court is directed to take steps to secure the custody of the accused persons to undergo the remaining period of sentence, if any, and sentences were already undergone by the petitioners shall be set-off under Section 428 Cr.P.C.

22.12.2022

Index : Yes/No
Speaking Order/Non Speaking Order
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To

- 1.The Assistant Sessions Judge,
Chidambaram.
- 2.The II Additional District Sessions Judge,
Chidambaram.
- 3.The Public Prosecutor,
High Court, Madras.
- 4.The Inspector of Police,
Portonovo Police Station,
Chidambaram District.



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P.VELMURUGAN, J.

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