



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2023

Coram:

THE HONOURABLE **MR. JUSTICE P.VELMURUGAN**

Criminal Revision Case.434 of 2020

and

Crl.M.P.No.3454 of 2020

1.Iqbal

2.Mohamad Yunas @ Yunas

... Petitioners

Vs.

The State represented by
The Inspector of Police,
B-1, Sivakanchi Police Station,
Kancheepuram District.
(Crime No.244 of 2011)

... Respondent

Prayer: Criminal Revision filed under Section 397 and 401 of Criminal Procedure Code, praying to set aside the conviction and sentence passed by the learned Additional Sessions Judge (Fast Track), Kancheepuram in C.A.No.05 of 2018 dated 17.07.2019 modify the Judgement of the learned Subordinate Judge, Kancheepuram in S.C.No.21 of 2012 dated 27.04.2018 and allow this Criminal Revision Petition.

For Petitioners : Mr.J.Pranklin

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



ORDER

This Criminal Revision Case has been filed seeking to set aside the conviction and sentence passed by the learned Additional Sessions Judge (Fast Track), Kancheepuram in C.A.No.05 of 2018 dated 17.07.2019 modifying the Judgement of the learned Subordinate Judge, Kancheepuram in S.C.No.21 of 2012 dated 27.04.2018 by allowing this Criminal Revision Petition.

2. The respondent police registered the case in Crime No.244 of 2011 for the offence under Sections 341, 307 read with 34 of IPC against the petitioners and one another. The petitioners were arrayed as A1 and A3. After completing the investigation, the respondent police filed charge sheet before the learned Judicial Magistrate No.1, Kancheepuram. The learned Magistrate taken cognizance of the charge sheet on file in P.R.C.No.17 of 2011 and after completing the formalities framed the charge against all the accused for the offence punishable under Sections 207 and 209 IPC and committed the case to learned Principal Sessions Judge, Kancheepuram, since offences are exclusively triable by the Court of Session. The learned Principal Sessions Judge taken the case on file in S.C.No.21 of 2012 and



made over the same to the learned Assistant Sessions Judge, Kancheepuram for disposal.

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3. The learned Assistant Sessions Judge, after completing the formalities, framed the charges against the accused for the offence under Sections 341 and 307 read with 34 of IPC.

4. On completion of trial, hearing the arguments advanced on either side and considering the materials, the trial court not found all the accused guilty for the offence punishable under Section 341 of IPC and the accused were acquitted from the said charge. However, the trial Court found guilt of all the accused for the offence punishable under Section 307 read with 34 of IPC and the petitioners/A1 and A3 were convicted and sentenced to undergo 3 years of rigorous imprisonment and to pay fine of Rs.1,000/- each in default to undergo further period of 6 months simple imprisonment for the said offence. Aggrieved over the same, all the convicts have preferred criminal appeal in C.A.No.05 of 2018 before the learned Additional Sessions Judge (Fast Track), Kancheepuram. The learned Additional Sessions Judge (Fast Track), Kancheepuram, after hearing both the parties,



by judgment dated 17.07.2019 confirmed the conviction and modified the sentence alone from three years rigorous imprisonment to two years simple imprisonment.

5. Challenging the said concurrent judgment of conviction passed by both the Courts below, A1 and A3 have filed the present revision.

6. The learned counsel for the revision petitioners would submit that the defacto complainant is the aggressor, who had only first beaten the mother of the revision petitioners and a case was also registered against them and the same is pending. In order to escape from the clutches of law, they foisted a false case against the petitioners. Unfortunately, the trial Court failed to appreciate the same and also failed to consider the fact that there is a previous motive and erroneously convicted the revision petitioners. Further, he would submit that the injuries sustained by the defacto complainant is only simple injuries and even the Doctor who gave treatment to the defacto complainant has also stated that the injuries sustained by him is only simple in nature. Even though from the very same material and evidence, the trial Court found the petitioners not guilty for the offence under Section 341 of IPC and acquitted from the said charges,



however, erroneously convicted the revision petitioners for the offence under Section 307 r/w 34 of IPC. It is the case of the petitioners that the defacto complainant had beaten the mother of the petitioners and the petitioners have not committed any offence. There is no independent witness in this case and the prosecution has not proved its case. Therefore, the Judgment of the trial Court as well as appellate Court are liable to be set aside and this revision has to be allowed.

7. The learned Additional Public Prosecutor would submit that the petitioners attacked the defacto complainant with knife and caused injuries. Since, the weapon used by the petitioners are deadly weapons and caused injuries the petitioners were charged for the offence under Section 307 r/w 34 of IPC. The Doctor also corroborated with the evidence of the defacto complainant regarding the injuries. Therefore, the trial Court rightly appreciated the evidence and convicted the revision petitioners. Further, he would submit that the knife was recovered through recovery mahazer and Exhibit P7, which is the observation mahazer. The prosecution has proved its case beyond reasonable doubt and therefore this revision is liable to be dismissed.



8. Heard the learned counsel for both sides and perused the materials.

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9. On 02.03.2011, there was a wordy quarrel between the brother-in-law of the defacto complainant and the 1st petitioner/A1 and at that time, the revision petitioners threatened the defacto complainant and left the place. Subsequently, on 22.03.2011, while the defacto complainant and her son along with PW2 proceeding through Kullapar street, after completing prayer at Kanchipuram Darga, the petitioners/A1 and A3 along with A2, restrained PW2, A2 and A3 attacked PW2 with hands and A1 stabbed PW2 with knife at his neck and caused injuries. Therefore, a case was registered against the accused. In order to substantiate the case of the prosecution, on the side of the prosecution totally 9 witnesses were examined and 11 documents were marked, besides, one material object was exhibited. Out of 9 witnesses, PW2 is the injured witness. The defacto complainant was examined as PW1 who has spoken about the previous enmity and the incident. The injured witness was examined as PW2 who has also clearly spoken about the injury sustained and by whom it was caused and also the weapon used by the first petitioner/A1. The Doctor who gave treatment to the injured witness was examined as PW4 and he has deposed that there was 10 x 4 cm injury in left



back side of the neck. Though the learned counsel for the petitioners would submit that it is a simple injury, however, the evidence shows that the injury in the neck was caused by knife. There is possibility of cutting head of the injured witness since the petitioners used the knife, which would have lead to grievous injury.

10. Therefore, considering the facts and evidence of PW1, 2 and 4 and also the medical records viz wound certificate, it is proved that the injury sustained by the victim at the vital part, which was caused by the petitioner using a deadly weapon i.e., knife. Therefore, considering the facts and evidence and the way in which the revision petitioners caused injury to the victim even though it is only a simple injury, the trial Court found the guilt of the revision petitioners for the offence under Section 307 r/w 34 of IPC and imposed a sentence of only 3 years rigorous imprisonment, however, the appellate Court modified the same into 2 years simple imprisonment.

11. The scope of the revision is very limited. The revision Court cannot sit in the Arm chair of the appellate Court and cannot re-appreciate or re-assess the entire evidence and substitute its views on the findings of



the lower Court. As a revision Court, this Court while exercising its power, has to find out whether there is any perversity in the appreciation of evidence in the Judgments passed by the Courts below. Unless there is a perversity, the revision Court cannot interfere with the Judgments of the Courts below.

12. Considering the facts and circumstances of this case and since the injured witness sustained injury at his neck, which is a vital part and the weapon used is a deadly weapon, this Court does not find any perversity in the appreciation of the evidence by the lower Courts. There is no merit in this revision and same is liable to be dismissed.

13. Therefore, the Judgment of learned Additional Sessions Judge (Fast Track), Kancheepuram in C.A.No.05 of 2018 dated 17.07.2019 is confirmed and this revision is dismissed. Consequently, the connected Miscellaneous Petition is closed.

02.01.2023

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To

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1.The Additional Sessions Judge (Fast Track),
Kancheepuram.

2.The Subordinate Judge,
Kancheepuram.

3.The Inspector of Police,
B-1, Sivakanchi Police Station,
Kancheepuram District.

P.VELMURUGAN,J.

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