



Crl.RC.No.379 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2023

Coram:

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

Criminal Revision Case No.379 of 2020 and

Crl.M.P.Nos.2756 and 2757 of 2020

C.Sivakumar

... Petitioner

Vs.

State by

The Inspector of Police

Poolampatti Police Station

Poolampatti

Salem District

... Respondent

Prayer: Criminal Revision filed under Section 397 and 401 of Criminal Procedure Code, praying to call for the records and set aside the order dated 21.10.2019 made in C.A.No.157 of 2019 on the file of the 3rd Additional District Judge, Salem, by confirming the order dated 20.06.2019 made in C.C.No.97 of 2011 on the file of the Judicial Magistrate No.I, Sankari by allowing this Criminal Revision and acquit the petitioner.

For Petitioner : S.Lakshmanasamy

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



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ORDER

This Criminal Revision Petition has been filed seeking to set aside the order dated 21.10.2019 made in C.A.No.157 of 2019 on the file of the III Additional District Judge, Salem, by confirming the order dated 20.06.2019 made in C.C.No.97 of 2011 on the file of the Judicial Magistrate No.I, Sankari

2. The cause of action of this case arose on 07.03.2011. One way or other, the case has been pending from the year 2011 to till today. Though the trial Court took up to the case even in the year 2011 in C.C.No.97 of 2011, it was disposed of only in the year 2019 i.e. on 20.06.2019. Thereafter, the accused/revision petitioner filed appeal in Crl.A.No157 of 2019 on the file of the III Additional District and Sessions Judge, Salem and the same was disposed of on 21.10.2019. Subsequently, the present revision has been filed before this Court in the year 2020 and the same is pending for more than 3 years since then. Despite given sufficient opportunities, the counsel for the petitioner is not



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ready to argue the revision. Since it is only revision against the concurrent judgements of the trial Court and appellate Court for the offence under Section 326 IPC, this Court is inclined to dispose of the revision on merits.

3.The respondent police registered the case against the revision petitioner and others in Crime No.52 of 2010 for the offences under Sections 147, 148, 323, 324 IPC subsequently altered into Sections 323, 324, 326, 506(2) IPC and after investigation, laid charge sheet before the Judicial Magistrate No.1, Sankari. The learned Magistrate taken the charge sheet on file in C.C.No.97 of 2011 and after completing the formalities under Section 207 Cr.P.C., framed charges against A1 for the offence under Sections 324 (2 counts) and 506(2) IPC; as against A2/the revision petitioner for the offences under Sections 323, 326 and 506(2) IPC; as against A3 for the offence under Section 323 IPC. In order to substantiate the charges framed against the accused, on the side of the prosecution, totally 11 witnesses were examined as P.W.1 to P.W.11 and



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12 documents were marked as Ex.P.1 to Ex.P.12 and no material object was exhibited. On the side of the defence, two witnesses were examined as D.W.1 and D.W.2 and 3 documents were marked as Ex.D.1 to Ex.D3.

4. During pendency of the case, A1 and A3 died and therefore, the charges against A1 and A3 were abated. The learned Magistrate after trial, found A2/the revision petitioner not guilty for the charges under Sections 323 and 506(2) IPC and thereby acquitted him from the said charges. However, found him guilty for the offence under Section 326 IPC and convicted and sentenced him to undergo two years of rigorous imprisonment and to pay fine of Rs.500/- in default to undergo simple imprisonment for a further period of three months by order dated 20.06.2019. Aggrieved over the said Judgment of conviction and sentence, A2 filed appeal before the Principal District and Sessions Judge, Salem, in Crl.A.No.157 of 2019 and the same was made over to the III Additional District and Sessions Judge for disposal. The III Additional District and Sessions Judge after hearing the arguments on either side and



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considering the materials, dismissed the appeal and confirmed the conviction and sentence passed by the trial Court by Judgment dated 21.10.2019. Aggrieved over the same, A2 has filed the present revision before this Court.

5. The case of the prosecution is that on 07.03.2010 at about 7.00 p.m., the revision petitioner/A2 assaulted the defacto complainant with Aruval on the head of the defacto complainant near his house due to which, the left ear of the defacto complainant severed separately and A1 assaulted the defacto complainant with wooden log and that A1 and A2 caused criminal intimidation to the defacto complainant. Further, the other accused/A2 and A3 attacked the son, wife and sister of the defacto complainant with wooden log and hands. Hence, the case.

6. In order to substantiate the charges framed against the accused, on the side of the prosecution, totally 11 witnesses were examined as P.W.1 to P.W.11. Out of the 11 witnesses, the defacto complainant who is the injured witness was examined as P.W.1 and he has clearly narrated



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the incident.

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7. P.W.2 and P.W.3 are the son and wife of P.W.1 and they are also injured eyewitnesses to the occurrence and they have also clearly narrated the incident and corroborated the evidence of P.W.1.

8. Apart from P.W.2 and P.W.3, P.W.7 to P.W.9 are also stated to be eyewitnesses to the occurrence and they have also narrated the incident.

9. The doctor one who admitted and gave first aid to P.W.1, was examined as P.W.6 and he has deposed that on 07.03.2010 at about 8.15 p.m., when he was on duty at Edappadi Government Hospital, P.W.1 was brought for treatment during which, he told him that 6 known persons assaulted him by using knife, wooden log, stone at about 7.00 p.m. on the same day and the left ear of P.W.1 was fully damaged. Further, abrasions were found over the right fore head, nose, right knee and also over the



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forehead. Subsequently he was referred to Salem Government Hospital for further treatment wherein Scan was taken on the head and fore arm of P.W.1 and found no fractures. Based on the certificate issued by the Plastic Surgeon, Salem Government Hospital that the injuries sustained by P.W.1 were grievous in nature, P.W.6/doctor who gave first aid to P.W.1, issued the wound certificate/Ex.P.5 stating that the injuries sustained by P.W.1 are grievous in nature.

10. The main defence taken by the revision petitioner is that the deadly weapon alleged to have been used for the commission of offence was not recovered. The non recovery of the said weapon is fatal to the case of the prosecution. Unless the weapon is recovered and identified by either mahazar witness or injured witness and shown before the doctor to confirm as to whether the injuries mentioned in the wound certificate could have been caused through the recovered weapon, the accused cannot be convicted. Though the trial Court acquitted the revision petitioner from the other charges, based on the evidence of the intersted



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witnesses, wrongly came to the conclusion that the revision petitioner has committed the offence under Section 326 IPC and convicted him.

11. As per the prosecution, the revision petitioner is the one who caused injuries to the defacto complainant by using deadly weapon namely Aruval (sickle). As already stated, P.W.1 is the injured witness and he is the one who lodged the complaint. Though the eyewitness viz., P.W.2, P.W.3 and P.W.7 are the son, wife and sister of P.W.1, the evidence of the doctor/P.W.6 and the evidence of the independent witnesses viz., P.W.8 and P.W.9 and also the medical evidence are corroborated the evidence of P.W.1 as to how he sustained injuries. Therefore, from the evidence of P.W.1 to P.W.3 and P.W.6 to P.W.9, this Court finds no perversity in the appreciation of evidence by the Courts below. Further, mere non recovery of material objects may not be a sole ground to disbelieve the case of the defacto complainant and mere defect in the investigation also may not be a sole ground to the accused to get acquittal based on the defect in the investigation.



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12. As a revisional Court, this Court cannot exercise its power beyond its scope by re-appreciating the evidence and by giving independent findings. As a revisional Court, it has to see as to whether there is any perversity in the appreciation and re-appreciation of evidence by the Courts below. Unless the revisional Court finds any perversity in appreciation or re-appreciation of evidence, the revisional Court will not interfere with the Judgment of conviction and sentence. More so over, it is a concurrent judgment and both the trial Court as well as the appellate Court have found the guilt of the revision petitioner for the offence under Section 326 IPC. While going through the entire materials, this Court does not find any perversity in the appreciation and re-appreciation of evidence by the Courts below.

13. As stated above, in this case, the eyewitness have clearly spoken about the incident and stated that the revision petitioner is the one who caused the injuries to the defaco complainant and the same was also



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corroborated with medical evidence. Under these circumstances, this Court does not find any merit in the revision and the revision is liable to be dismissed.

14. Accordingly, this Criminal Revision Case is dismissed.
Consequently, connected Miscellaneous Petitions are closed.

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Index: Yes/No



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1. The III Additional District and Sessions Judge,
Salem
2. The Judicial Magistrate No.I, Sankari
3. The Inspector of Police
Poolampatti Police Station
Poolampatti
Salem District
4. The Public Prosecutor
High Court, Madras



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P.VELMURUGAN

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