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Crl.R.C.No.358 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2023

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Criminal Revision Case No.358 of 2020

and

Crl.M.P.Nos.2660, 2662 & 2664 of 2020

Mohan

... Petitioner

Versus

The State Represented by
Sub-Inspector of Police,
Pattabiram Police Station,
Chennai,
Crime No.790 of 2012.

... Respondent

Criminal Revision Case filed under Sections 397 and 401 of Criminal Procedure Code to set aside the judgment passed by the learned Principal Sessions Judge, Tiruvallur in Crl.A.No.167 of 2017 dated 17.12.2019 by confirming the conviction and sentence imposed on the petitioner herein in C.C.No.284 of 2012 dated 27.10.2017 by the learned Judicial Magistrate No.II, Thiruvallur.

For Petitioner	:	Mr.M.Rajkumar for Mr.T.Muruganatham
For Respondent	:	Mr.R.Murthi Government Advocate (Crl.Side)



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ORDER

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2. The case of the prosecution is that on 17.6.2012 at 1.30 p.m when the accused took the sand, which was kept in front of the house of the *de-facto* complainant, the same was questioned by him, for which the accused abused the *de-facto* complainant with filthy language and assaulted him with black stone over the right side eye. The *de-facto* complainant sustained grievous injuries. The accused also criminally intimidated him. Thereby, the accused has committed the offences under Sections 294(b), 326 and 506(ii) IPC.

3. On the complaint given by the *de-facto* complainant, the respondent/Police registered a case in Crime No.790 of 2012 for the offences under Sections 294(b), 326 and 506(ii) IPC against the petitioner.



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After investigation, the respondent/Police filed a charge sheet before the learned Judicial Magistrate No.II, Tiruvallur and the same was taken on file in C.C.No.284 of 2012.

4. In order to prove its case before the trial Court, on the side of the prosecution, as many as 6 witnesses were examined as P.W.1 to P.W.6 and 9 documents were marked as Exs.P1 to P9 and one material object was marked as M.O.1. On the side of the defence, one witness was examined as D.W.1 and no document was marked.

5. The trial Court, after hearing the arguments advanced on either side and also considering the materials available on record found the petitioner guilty for the offence under Section 326 IPC. He was convicted and sentenced to undergo rigorous imprisonment for a period of three months and to pay a fine of Rs.3,000/-, in default, to undergo simple imprisonment for a period of two weeks. The petitioner was acquitted for the offences under Sections 294(b) and 506(ii) IPC.

6. Challenging the said conviction and sentence, the petitioner preferred an appeal in Crl.A.No.167 of 2017 before the learned Principal



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Sessions Judge, Tiruvallur. The 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. Aggrieved by the same, the petitioner has filed the present revision before this Court.

7. The learned counsel for the petitioner submitted that no such occurrence was taken place on the date of occurrence as projected by the prosecution. The *de-facto* complainant has an election motive with the petitioner and in order to take wreak vengeance, a false case has been foisted against the petitioner. He further submitted that the *de-facto* complainant, fell down on the floor and sustained injuries on his right eye on himself. There are material contradictions between the prosecution witnesses. The *de-facto* complainant has stated that he himself handed over the stone, which was used for causing injury to him to the investigating officer. However, as per the version of P.W.6/Investigating Officer, the stone was recovered from the place of occurrence in the presence of witnesses and immediately he sent the same to the Court.



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8. The learned counsel further submitted that a stone can be collected from any where, but the prosecution has concocted a story that the revision petitioner attacked the *de-facto* complainant with a stone, caused injuries. There is no independent eye witness to the said occurrence. The complainant has stated that after the occurrence, he immediately went to the police station and lodged a complaint and thereafter, he went to the hospital for taking treatment. If that be the case, that the investigating officer would have collected the materials, immediately soon after the occurrence, whereas the case of the prosecution is that the stone was taken by the defence, which was kept in a seclude hidden place and with the knowledge of the revision petitioner the same was recovered on confession. According to the *de-facto* complainant, he handed over the stone to the police, but according to the prosecution, P.W.6/Investigating Officer recovered the stone under Ex.P7/seizure mahazar and sent the same to the Court under Form 91/Ex.P8. Unfortunately, both the Courts below failed to appreciate the evidence and the previous motive between the revision petitioner and the *de-facto* complainant and erroneously convicted and sentenced the



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petitioner. He further submitted that the injured witness has already recovered from the injuries and hence, the conviction under Section 326 IPC would not attract. Hence, the judgments of both the Courts below may be liable to be set aside.

9. The learned Government Advocate (Crl.Side) appearing for the respondent submitted that P.W.1, who is the injured witness, has clearly spoken about the said incident. Further, the injuries sustained by P.W.1 was grievous in nature and the same was clearly proved through the evidence of the Doctor/P.W.5. He further submitted that the petitioner herein attacked the *de-facto* complainant with black stone over his right eye and caused grievous injury. Further, the evidence of P.W.1 is corroborated with the evidence of P.W.2, P.W.3 and P.W.5. Both the Courts below rightly appreciated the entire evidence and convicted and sentenced the petitioner. Hence, there is no merit in the revision and the same is liable to be dismissed.

10. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl.Side) appearing for the respondent and also



perused the materials available on record.

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11. In order to prove the case, on the side of the prosecution, totally six witnesses were examined as P.W.1 to P.W.6, out of which, the *de-facto* complainant was examined as P.W.1.

12. P.W.1 has clearly deposed that the accused is a known person to him and on the date of occurrence, the accused took the sand, which was kept in front of his house. When the same was questioned by him, the accused assaulted him with black stone over his right eye and caused grievous injury. After the occurrence, the *de-facto* complainant lodged a complaint against the petitioner and thereafter, went to the hospital and took treatment for the injuries sustained. The evidence of P.W.1 is corroborated with the evidence of P.W.2/wife of the *de-facto* complainant and P.W.3/neighbour of the victim. During identification parade, P.W.1 identified the accused in the Court.

13. The Doctor, who gave treatment to the injured witness was examined as P.W.5 and she has clearly narrated the injuries sustained by the



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de-facto complainant. Further, Ex.P3/copy of the accident register and Ex.P4/X-Ray clearly show the injuries sustained by the *de-facto* complainant which are grievous in nature.

14. The main contention raised by the revision petitioner is that there is no independent eye witness to the alleged occurrence. It is settled proposition of law that based on the evidence of the injured witness and the Doctor, who gave treatment to the injured and gave his opinion about the injuries, the Court can convict the accused. Even, if there is no independent corroborative evidence, the trial Court cannot say that the prosecution has not proved its case. In the case on hand, the injured witness was examined as P.W.1 and he has clearly spoken about the injuries sustained by him, which was corroborated by the evidence of P.W.5/Doctor, who gave treatment to the injured witness.

15. The scope of revision is very limited. The Trial Court already appreciated the entire evidence and convicted and sentenced the petitioners, which was also confirmed by the lower Appellate Court and therefore, while



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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.

16. On a combined reading of the evidence of P.W.1, P.W.2 and P.W.5 and Ex.P3 and Ex.P4, this Court finds that the revision petitioner has committed the charged offences and the prosecution has proved its case beyond reasonable doubt. Both the Courts below have rightly convicted and sentenced the petitioner. There is no perversity in the judgments of both the Courts below. Since the *de-facto* complainant sustained injury on his right eye, which is grievous in nature and there is no mitigating circumstances to reduce the sentence as there is no merit in the revision, the same is liable to be dismissed.

17. In view of the above, this Criminal Revision Case is dismissed and the judgments of both the Courts below are confirmed. The trial Court



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is directed to take steps to secure the custody of the accused to undergo the remaining period of sentence, if any, and the same shall be set-off under Section 428 Cr.P.C. Consequently, connected miscellaneous petitions are closed.

02.01.2023

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation Case : Yes/No
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To

- 1.The Principal Sessions Judge,
Tiruvallur.
- 2.The Judicial Magistrate No.II,
Thiruvallur.
- 3.The Public Prosecutor,
High Court, Madras.
- 4.The Sub-Inspector of Police,
Pattabiram Police Station,
Chennai.



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