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Crl.R.C.No.1449 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.R.C.No.1449 of 2016

Sathish

... Petitioner

vs.

State Represented by
The Inspector of Police
Thiruvarur Taluk Police Station
Thiruvarur District.
(Crime No.554 of 2011)

... Respondent

Prayer: Criminal Revision filed under Sections 397 r/w 401 of the Code of Criminal Procedure to set aside the judgment dated 04.11.2016 made in C.A.No.24 of 2013 before the learned District and Sessions Judge, Thiruvarur confirming the conviction and sentence passed in S.C.No.137 of 2012 dated 12.08.2013 on the file of the learned Chief Judicial Magistrate, Thiruvarur.

For Petitioner : Mr.K.Paramasivadosh

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

ORDER

This Criminal Revision Case has been filed against the judgment and order passed by the learned District and Sessions Judge, Tiruvarur in Crl.A.No.24 of 2013 dated 04.11.2016, dismissing the appeal and confirming the judgment and order passed by the learned Chief Judicial Magistrate, Tiruvarur in S.C.No.137 of 2012, dated



12.08.2013, convicting the petitioner for offence under Section 307 of I.P.C. and sentencing him to undergo five years rigorous imprisonment and to pay a fine of Rs.1000/- and in default to undergo three months simple imprisonment.

2. The case of the prosecution is that the petitioner and Jayanthi (P.W.1) are husband and wife. Through the wedlock a son was born in the year 2009 and a daughter was born in the year 2010. There used to be lot of misunderstanding between the petitioner and P.W.1 and it used to be resolved by the family elders. On one such occasion, there was a dispute and on 04.02.2011 it was brought before panchayat consisting of 20 people and the families of both the petitioner and P.W.1 participated in the same. Some understanding was reached between the parties. Thereafter, the petitioner and P.W.1 went back to their matrimonial home.

3. The further case of the prosecution is that after P.W.1 reached the matrimonial home, the petitioner is said to have attacked P.W.1 with a knife and as a result, P.W.1 sustained injuries below her chest, hip, thigh and knee.

4. The injured P.W.1 was immediately taken in 108 ambulance to the Government Hospital, Tiruvarur and she was treated by the doctor / P.W.9, who identified the following injuries.

- 1) Penetrating wound injury over left costal region 3 x 4 x 7 cm size.
- 2) Penetrating wound injury over back 3 x 2 x 5 cm size



- 3) Lacerated wound over Right thigh 3 x 1 x 1 cm size
- 4) Lacerated wound over Right knee 2 x 1 x 1 cm size

5. X-rays were also taken and they were marked as Exs.P3 and P4. Thereafter, P.W.9 referred P.W.1 to Thanjavur Medical College and Hospital for further treatment. P.W.1 was treated by one Dr.Anbarasan and she also underwent a surgery. The wound certificate that was issued by P.W.9 was marked as Ex.P.2.

6. When P.W.1 was taking treatment at Thanjavur Medical College and Hospital, the information was sent to P.W.12 who was the Sub Inspector of Police at Thiruvavur Taluk Police Station. He went to the hospital and recorded the statement of P.W.1 (marked as Ex.P.1). Based on the same, an FIR (Ex.P5) was registered in Crime No.554 of 2011 on 05.12.2011 at about 6.00 a.m for offence under Section 307 of IPC.

7. The investigation was taken up by P.W.13 who went to the scene of crime and prepared the observation mahazar (marked as Ex.P6) and a rough sketch (marked as Ex.P7). The investigating officer also recorded the statement of P.W.1. The petitioner was arrested on 05.12.2011 at about 3.00 p.m. Based on his confession (admissible portion marked as Ex.P.8), the weapon viz., the knife (M.O.1) was recovered under seizure mahazar marked as Ex.P.9. The investigation officer also recorded the statement of the witnesses under Section 161(3) of Cr.P.C.



8. After the transfer of P.W.13, the investigation was taken up by P.W.14 and he collected the relevant reports and on completion of the investigation, the final report was filed before the Judicial Magistrate, Tiruvarur.

9. Learned Judicial Magistrate served the copies to the petitioner under Section 207 of Cr.P.C., and the case was committed under Section 209 of Cr.P.C., and it was made over to the Chief Judicial Magistrate, Tiruvarur.

10. Even though the final report was filed under Section 498A and 307 of IPC, the charge was framed for offence under Section 307 IPC and when the petitioner was questioned, he denied the same as false.

11. The prosecution examined P.W.1 to P.W.14 and marked Exs.P1 to P10 and identified and marked M.O.1. The incriminating evidence that was collected during the course of trial was put to the petitioner when he was questioned under Section 313(1)(b) of Cr.P.C., and he denied the same as false.

12. The Trial Court on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to a conclusion that the prosecution has proved the case beyond reasonable doubts and accordingly convicted and sentenced the petitioner for offence under Section 307 IPC.



13. Aggrieved by the judgment and order passed by the Trial Court, the petitioner filed an appeal and the same was heard by the learned District and Sessions Judge, Tiruvarur in Crl.A.No.24 of 2013 and the appellate Court confirmed the judgment and order passed by the Trial Court. Aggrieved over the same, the present Criminal Revision Case has been filed before this Court.

14. Heard Mr.K.Paramasivados, learned counsel for the petitioner and Mr.L.Baskaran, Government Advocate (Criminal Side) for the respondent.

15. This Court has carefully considered the submissions made on either side and has perused the materials available on record.

16. The learned counsel for the petitioner submitted that the entire case as projected by the prosecution is doubtful since the incident is said to have taken place after the parties had already reached compromise in a panchayat. It was further submitted that P.W.1 had given an earlier complaint and the same was suppressed and hence the very genesis of the case has been concealed by the prosecution. The evidence of P.W.2 and P.W.3 who are the brother and father of P.W.1 was also questioned on the ground that they could not have witnessed the incident and they are interested witnesses. It was further contended that the treatment undergone by P.W.1 was not established by marking the relevant documents. It was therefore concluded that the findings of both the Courts below suffer from illegality and perversity.



17. In the present case, the evidence of P.W.1 assumes a lot of significance. P.W.1 is the wife of the petitioner. From the available evidence, it is clear that P.W.1 and her husband viz., the petitioner used to have regular matrimonial disputes and it used to be resolved by the family members. Immediately before the incident took place, there was a panchayat meeting that was held on 04.12.2011 and after the panchayat meeting, when P.W.1 reached home, she was attacked by the petitioner with a knife. On carefully going through the evidence of P.W.1, this Court does not find any ground to discard or discredit the evidence of P.W.1. There was no need for P.W.1 to make such a serious allegation against the petitioner and the manner in which P.W.1 has described the incident is corroborated by the evidence of the doctor and the injury certificate that has been marked as Ex.P.2.

18. P.W.2 is the brother of P.W.1. He has also stated that after P.W.1 entered the house, she was attacked by the petitioner with a knife. Even in the cross examination he has reiterated the fact that the petitioner had all of a sudden attacked P.W.1 with knife when she entered the home immediately after attending the panchayat meeting. The evidence of P.W.2 corroborates the evidence of P.W.1.

19. P.W.3 who is the father of P.W.1 has not directly seen the incident but however he speaks about what happened immediately after the incident when he came to the matrimonial home of P.W.1.



20. The next important evidence is that of P.W.5 and P.W.11, who are the witnesses who speak about the panchayat meeting that was held between the petitioner and P.W.1. Their evidence gains lot of significance since the incident had taken place after P.W.1 and the petitioner returned back attending the panchayat meeting.

21. The evidence of P.W.9 who is the doctor perfectly corroborates the manner in which P.W.1 has described the incident. In fact, penetrating wounds have been noted in Ex.P.2 and it has also been spoken to by P.W.9.

22. P.W.10 who is also a doctor, speaks about taking X-rays which were marked as Exs.P3 and P4 which shows that the injuries were sustained by P.W.1 below her chest.

23. Both the Courts below have appreciated the evidence of P.W.1 to P.W.3 and have come to a conclusion that the petitioner had attempted to commit murder of P.W.1 by attacking her with a knife. The learned counsel for the petitioner submitted that going by the injuries sustained by P.W.1, no offence under Section 307 has been made out.

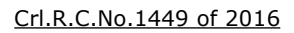
24. To make out an offence under Section 307 of IPC, it is not essential that bodily injury capable of causing death should have been inflicted. To establish the offence under Section 307 of IPC, first there must be an intention to commit murder or



knowledge that the act committed by the accused will cause death. The second is the overt act which includes the type of weapon that is used and the intended injury and the third is that there was an attempt which failed. Hence, the offence under Section 307 is not determined by the nature of injuries caused and what has to be seen by the Court is the incident, coupled with the overt act. The same has been clearly established by the prosecution in the present case and it is evident from the evidence of P.W.1 corroborated by medical evidence.

25. The Courts below have properly appreciated the oral and documentary evidence and have come to the correct conclusion that the prosecution has made out the case for conviction and sentence under Section 307 of IPC. This Court does not find any perversity in the findings of both the Courts below. This Court exercising its revisional jurisdiction cannot undertake re-appreciation of evidence and what has to be seen is as to whether the findings of both the Courts below suffers from perversity. As stated above, this Court does not find any perversity in the findings of both the Courts below and it does not require any interference by this Court.

26. In the light of the above discussion, this Court has absolutely no hesitation to sustain the conviction of the petitioner under Section 307 of IPC. However, considering the facts and circumstances of the case, this Court is inclined to modify the sentence imposed by the Trial Court. Accordingly, the sentence of five years rigorous imprisonment imposed by the Trial Court is reduced to two years. Hence, the petitioner is sentenced to undergo two years rigorous imprisonment and to pay a fine of



27. The petitioner was enlarged on bail during the pendency of this Criminal Revision Case by order dated 28.11.201 in Crl.M.P.No.12603 of 2016. Since the conviction is confirmed and the petitioner has been sentenced to undergo two years rigorous imprisonment, there shall be a direction to the petitioner to surrender before the Trial Court within a period of two weeks from today in order to undergo the remaining sentence. If the petitioner fails to surrender before the Trial Court within the time stipulated by this Court, the Trial Court is directed to immediately take steps to secure the petitioner and make him undergo the remaining sentence.

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N. ANAND VENKATESH, J.

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