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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2023

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

CRL RC No. 883 of 2014

1.Santhosh Kumar
2.Chandru

...Petitioners

Vs.

The Inspector of Police
Vellore Taluk Police Station,
Vellore.

...Respondent.

Criminal Revision Case filed under Section 397 read with 401 Cr.P.C, to set aside the judgment and sentence pronounced by the first Additional District and Sessions Judge Vellore in Criminal Appeal No.34 of 2010 dated 30.01.2013 in confirming the sentence pronounce by the judicial Magistrate – I, Vellore in C.C No. 393 of 2005 date 22.02.2010 and in convicting the petitioners and allow the criminal appeal and acquit the petitioners.

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



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ORDER

This Criminal Revision Case has been filed to set aside the judgment passed by the first Additional District and Sessions Judge Vellore in Criminal Appeal No.34 of 2010 dated 30.01.2013 in confirming the judgment of the judicial Magistrate – I, Vellore in C.C No. 393 of 2005 dated 22.02.2010.

2. The learned counsel for the petitioners submitted that the Courts below failed to taken into note of the fact that there is no eye witness to the alleged occurrence and the evidence of P.W.4, who is close sister of victims were also not present at that time of alleged occurrence but by relying her evidence the Court below erroneously convicted the petitioners. Furthermore, P.W.1 sustained simple injury in left hand little finger and he was referred to take further treatment but the prosecution charged him under Section 326 of IPC as if grevous injury and the Court below erroneously convicted the petitioners. Hence he prayed to set aside the judgment of the Court below.



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3. By way of reply, the learned Government Advocate (Crl. Side) submitted that on the date of 25.05.2005 at about 8 p.m., these these petitioners with the intention to attack P.W.1 and P.W.2 prevented them and attacked with knife thereby thereby P.W.1 sustained injury in left elbow and P.W.2 sustained injury on his left hand thereafter both were taken to hospital for treatment so they were charged under Section 294(b) and 324, 326 and 506(ii) of IPC to prove the alleged occurrence the prosecution examined P.W.1 to P.W.11 and marked documents Ex.P1 to Ex.P11, based on that oral and documentary evidence the prosecution proved the case beyond reasonable doubt and the Court below rightly appreciate this facts convicted the petitioners which needs no interference.

4. Considering the both side submissions, the fact reveals that on 25.05.2005, at about 8.00 p.m., when Vijayakumar and brother's daughter Tamizharasi was going to Bazaar, she was insulted by petitioners and also scolded by them. Thereafter while discussing about the said matter in the Bajanai Kovil Street, P.W.1 and P.W.2 were attacked by these petitioners, due to which, the P.W.1 sustained injury in



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left wrist and left elbow and P.W.2 sustained injury on his left hand.

Thereafter, they were taken to the hospital where complaint was lodged.

To prove the occurrence eye witnesses P.W.4, P.W. 5, P.W. 6 and P.W. 7 were examined by the prosecution. Admittedly, P.W.4 is sister of the P.W.1, and P.W.2 is one of the victims. As per the evidence of P.W.1 and P.W.2, while they were taking at the Bajaanai Kovil Street, accused/petitioners attacked them and they sustained injuries. On the side of the prosecution as per the evidence of P.W.4, who is sister of P.W.1 was present at that time of occurrence but as per the evidence of P.W.1, P.W. 2 and P.W. 3, who are brothers of P.W.4 have not stated about the presence of their sister at the time of occurrence instead they stated that after hearing their voice P.W.4 came to occurrence place hence the evidence of P.W.4 and P.W.1, P.W.2 and P.W.3 was contradictory with each other therefore as rightly pointed out by the petitioners' counsel the prosecution failed to prove the presence of P.W.4 at the time of alleged occurrence. But the evidence of P.W.4 erroneously appreciated by the Court below with regard to alleged occurrence as such is liable to be set aside. Furthermore evidence of



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P.W.5 and P.W.6 and P.W.7 said to be eye witness of the alleged occurrence but as per the complaint of P.W.1 and P.W.2 who were not stated about the presence of those witnesses at that time of alleged occurrence. But as per the evidence of P.W.1 after alleged occurrence they were admitted to the hospital by their sister and mother and not through any independent witness. Furthermore, at that time of alleged occurrence P.W.1 and P.W.2 said to be injured very much but in their complaint there is no whisper about the presence of their sisters as such is clearly suspicious about the occurrence in the minds of the Court whether they were present at that time of the alleged occurrence or not. Hence the prosecution failed to prove the presence of the eye witnesses at that time of the occurrence. Even as per the complaint of her sister and mother of P.W.1 came to occurrence place after hearing noise but there is no concrete evidence on the side of the prosecution that P.W.4 and P.W.6 were present at that time of occurrence place but the Court failed to taken into consideration and convicted the petitioners.



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5. In view of the above and for the reasons stated above, this Criminal Revision Case is allowed. Consequently, connected miscellaneous petitions are closed.

24.07.2023

Index: Yes/No
Speaking Order/Non Speaking Order
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T.V.THAMILSELVI

pbl

To

- 1.The first Additional District and Sessions Judge Vellore.
- 2.The judicial Magistrate – I, Vellore .
- 3.The Public Prosecutor,
High Court, Madras.

Crl. R.C.No.883 of 2014

24.07.2023