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Crl.R.C.No.1254 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2023

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.1254 of 2017

Thangaraj
S/o.Kanthasamy Gounder

... Petitioner/Accused

Versus

State Rep by
The Public Prosecutor,
The Inspector of Police,
Palladam Police Station,
Tiruppur District.
Crime No.37 of 2012

... Respondent/complainant

PRAYER : Criminal Revision Case filed under Sections 397 and 401 of Cr.P.C. to call for the records relating to the order dated 02.03.2015 and set aside the conviction and sentence imposed in C.A.No.18a of 2014 dated 02.03.2015 on the file of the I Additional District and Sessions Judge, Tiruppur, Tiruppur District and modified the order in C.C.No.137 of 2012 dated 17.02.2014 on the file of the Judicial Magistrate Court, Palladam and allow this revision petition.

For Petitioner : Mrs.R.Hemalatha
Legal Aid Counsel

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 conviction and sentence passed by the learned I Additional District and Sessions Judge, Tiruppur in Crl.A.No.18A of 2014 dated 02.03.2015 modifying the sentence and order of conviction passed by the learned Judicial Magistrate, Palladam, in C.C.No.137 of 2012 dated 17.02.2014 and allow the revision petition.

2. The petitioner/accused in C.C.No.137 of 2012 was convicted by the learned Judicial Magistrate, Palladam for offence under Section 326 I.P.C. and sentenced him to undergo two years simple imprisonment and to pay a fine of Rs.3,000/-, in default, to undergo two months simple imprisonment. Thereafter, the petitioner filed an appeal before the learned I Additional District and Sessions Judge, Tiruppur in C.A.No.18A of 2014. The learned Sessions Judge by judgment dated 02.03.2015 modified the conviction from offence under Section 326 I.P.C. to 325 I.P.C. and the sentence from two years to one year, against which, the present revision has been filed.

3. The gist of the case is that the de-facto complainant/P.W.1 along with P.W.2 on 12.01.2012 at about 12.00 noon came in their motor bike and



stopped the bike near Annammar Temple, Goundampalayam and they were talking with each other. At that time, the accused said to have came there and without any reason kicked the bike and pushed down. When the same was questioned by P.W.1, the petitioner bit the index finger of P.W.1 and thereby P.W.1 lost small portion in the tip of the index finger. P.W.2 took P.W.1 to the hospital, thereafter lodged a complaint to P.W.5, who registered the F.I.R. The Inspector of Police conducted investigation, visited scene of occurrence, prepared observation mahazar and rough sketch in the presence of P.W.3, examined witnesses and Doctor, who treated P.W.1, collected medical records and filed final report.

4. During trial, on the side of the prosecution, P.W.1 to P.W.5 examined and marked 5 documents as Exs.P1 to P5. On the side of the defence, no witness or documents marked. On conclusion of the trial, the trial Court convicted the petitioner as stated above.

5. The contention of the learned counsel for the petitioner is that P.W.1 deposed that the occurrence took place near the Annammar Temple at about 12.00 noon. In the complaint/Ex.P1, he mentioned that the occurrence took



place in a turning near Modern Rice Mill at Goundampalayam. Further, in the complaint it is stated that there are five persons present in the scene of occurrence. In this case, except P.W.1 and P.W.2 no other independent witnesses examined. Further, P.W.2 friend of P.W.1 toed the line of P.W.1. He took the injured to the hospital with a delay of nine hours. No reason given for the delay. P.W.5/Special Sub Inspector of Police, who registered the F.I.R. admit that complaint given with a delay of five hours.

6. The specific case of the petitioner is that the petitioner had given Rs.25,000/- for identifying a Plot to P.W.1, who neither identified any plot nor returned the money. Due to which, there was some quarrel, which has been exaggerated and false complaint has been lodged. This fact was not considered by both the Courts below. Further, P.W.1 in his evidence states that he had gone to wine shop thereafter when they came out, the occurrence had taken place. Further, P.W.4/Doctor admits that the injury could be sustained due to accident. The Lower Appellate Court finding that, no x-ray or any medical record produced except the wound certificate/Ex.P3 dated 28.01.2012, modified the conviction and sentence. In this case, there was a considered amount of delay in producing the A.R. copy, x-ray or medical



document. The prosecution had miserably failed to prove the case against the petitioner and hence, prayed for acquittal of the petitioner.

7. Learned Government Advocate (Crl. Side) submitted that the petitioner herein in a drunken state picked up a quarrel with P.W.1, who parked his bike and talking with P.W.2. At that time, the accused bitten the index finger of P.W.1. Thereafter, P.W.1 and P.W.2 went to the hospital, taken treatment with P.W.4 and thereafter lodged a complaint with P.W.5. P.W.5 on registration of the F.I.R. informed the Investigating Officer/Inspector of Police about the case, who took investigation, visited scene of occurrence, prepared observation mahazar in the presence of P.W.3, recorded the statement of witnesses and after collection of documents, filed charge sheet in this case. In the meanwhile, the investigating officer passed away. P.W.5/Special Sub Inspector of Police, who worked under him and part of the investigation team, deposed with regard to the investigation.

8. During trial, P.W.1 clearly state about the injuries sustained due to the biting of accused. Further, P.W.2, the eye witness, corroborate the evidence of P.W.1 as well as evidence of P.W.4/the Doctor, who confirmed



the injury sustained, through Ex.P3/wound certificate. The petitioner raised all the points before the trial Court as well as in Lower Appellate Court. Both the Courts below considered the same and rejected the petitioner's contention. The trial Court in the judgment, clearly recorded that the injury sustained by the petitioner was visible and observed the same. The petitioner had been taking prevaricative stand during the trial. Initially there was an altercation due to P.W.1 not returning the amount of Rs.25,000/-. Further, to the Doctor it is suggested that the injury could have been due to the accident. The petitioner is known person to P.W.1, his identity not disputed. Considering all these aspects the trial Court rightly convicted the petitioner and the Lower Appellate Court confirmed the same. Hence, he prayed that the petition to be dismissed.

9. Considering the submissions and on a perusal of the material it is seen that the occurrence took place when P.W.1 and P.W.2 were talking with each other. The petitioner came to the occurrence place, picked up a quarrel, later bitten the index finger of P.W.1. The petitioner is a known person to P.W.1. Both hail from same village. There is no dispute with regard to the identity of the petitioner. P.W.1 fairly submitted that there is no motive or



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reason for the petitioner to indulge in such act against the injured. It is only due to drunken state, the petitioner picked up quarrel in anger, bit the finger of P.W.1. The incident is corroborated by the evidence of P.W.2, the injury is confirmed by the evidence of P.W.4 and Ex.P3. Immediately after the occurrence, P.W.1 and P.W.2 went to P.W.4 for treatment and thereafter lodged a complaint with P.W.5. The trial Court observed the injury and recorded that the tip portion of the nail in index finger found missing. The Lower Appellate Court rightly modified the conviction from Section 326 I.P.C. to 325 I.P.C.

10. In view of the above facts, this Court is not inclined to interfere with the finding on the conviction of the petitioner under Section 325 I.P.C. Accordingly, the conviction of the Lower Appellate Court for the offence under Section 325 I.P.C. is confirmed. However, from the report of the Superintendent of Prison, Central Prison, Coimbatore, it is seen that the petitioner already undergone the following period of sentence:

	சிறையில் அனுமதிக்கப்பட்ட நாள்	பிணையில் சென்ற நாள்
விசாரணை காலம் Rp.801/12	13.01.2012	24.01.2012 (நீதித்துறை நடுவர், பல்லடம்)



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	சிறையில் அனுமதிக்கப்பட்ட நாள்	பிணையில் சென்ற நாள்
Book No.724		நீதிமன்றம் CMP No.331/12, நாள்.20.01.2017)
தண்டனையில் இருந்த நாட்கள் Ct.20021/12 Book No.705	22.03.2017	28.09.2017 (நீதித்துறை நடுவர், பல்லடம் நீதிமன்றம் CMP No.12188/17, CA.1254/17 நாள்.27.09.2017)

11. Considering the facts and circumstances, on which the offence had taken place and also the petitioner's age and family circumstances, this Court, modifies the sentence to period already undergone.

12. In the result, this Criminal Revision Case is partly allowed.

13. This Court appreciates the strenuous efforts taken by Mrs.R.Hemalatha, learned Legal Aid Counsel appearing for the petitioner/accused.

06.01.2023

Index: Yes/No
Internet: Yes/No
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To

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- 1.The I Additional District and Sessions Judge,
Tiruppur, Tiruppur District.
- 2.The Judicial Magistrate,
Palladam.
- 3.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

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