



WEB COPY



CrI.RC.No.369 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CrI.R.C.No.369 of 2017

Balaji

... Petitioner/Accused/Appellant

vs.

State Rep.by
The Station House Officer (SHO)
Vadalur Police Station
Cuddalore District.
Cr.No.438 of 2012

... Respondent/Complainant/Respondent

Criminal Revision filed under Sections 397 and 401 of the Code of Criminal Procedure, against the order of conviction modification of judgment passed by the Additional Assistant Sessions Judge, (ASJ No.II), Cuddalore, Cuddalore District in S.C.No.11 of 2013 dated 13.08.2014. The above said judgment was modified by the learned Principal Sessions Judge, Court of Sessions, Cuddalore Division, Cuddalore, Cuddalore District in C.A.No.35 of 2014, dated 03.01.2017.

For Petitioner Mr.D.Padmanabhan

For Respondent Mr.L.Baskaran
Government Advocate (CrI Side)



ORDER

This Criminal Revision has been filed against the judgment and order passed by the learned Principal Sessions Judge, Cuddalore, in Crl.A.No.35 of 2014, dated 03.01.2017, partly modifying the judgment and order passed by the II Additional Assistant Sessions Judge, Cuddalore in S.C.No.11 of 2013, dated 13.08.2014.

2.The case of the prosecution is that on 01.08.2011 at about 7.00 pm., the injured Mathi @ Mathiyazhagan was riding his two-wheeler towards Vadalur at Vadalur to Panruti Road. The petitioner who came in his two wheeler is said to have intercepted PW-2 and abused in filthy language and attacked him with a sickle. PW-2 defended himself and as a result, he sustained cut injuries in both the hands. Thereafter, the petitioner had fled from the scene of occurrence. The injured Mathiyazhagan was taken to the hospital by PW-1 and PW-3 at Kurinjipadi. From there, they were directed to take further treatment at Government Hospital, Cuddalore. PW-2 was treated by PW-5 Doctor and the Accident Register that was marked through PW-5 as Ex.P-4 revealed the following injuries:

- 1.Lacerated 8x1x0.5 cm over left distal forearm (exposing vessels, bones, tissues).
- 2.Cut injury (hanging of 2nd & 4th fingers of right hand).



WEB COPY

3.The certificate issued by Kannan Hospital, Cuddalore, which was marked as Ex.P-5 shows that the injured was treated and ultimately his index finger was amputated and he was discharged from the Hospital on 10.08.2011.

4.When the injured (PW.2) was taking treatment at Kannan Hospital, Cuddalore, the news was sent to the Vadalur Police Station and PW-6 went to the Hospital on 02.08.2011 at about 6.00 am. He recorded the statement given by PW-1, who was present in the Hospital along with PW-2 and PW-2 was not able to give any statement since he was in an unconscious state. Based on the statement recorded from PW-1, the same was reduced into complaint (Ex.P.1) and an FIR came to be registered in Crime No.438 of 2012, dt. 02.08.2011 at about 8.30 am. The FIR was marked as Ex.P-6.

5.PW-6 thereafter took up the investigation and went to the scene of occurrence and prepared the Observation Mahazar marked as Ex.P-2 and the Rough Sketch marked as Ex.P-7 in the presence of PW-4 and one Sudakar.

6.The investigation was thereafter taken over by PW-7. He recorded the statement of witnesses under Section 161(3) Cr.PC., and collected the relevant



records and the investigation was completed and a final report was filed before the Judicial Magistrate No.III, Cuddalore.

7.The committal Court issued the copies to the petitioner under Section 207 Cr.PC., and the case was committed and made over to the II Additional Assistant Sessions Judge, Cuddalore. The trial Court framed charges against the petitioner for offences under Sections 341, 294(b), 326 and 307 IPC.

8.The prosecution examined PW-1 to PW-7 and marked Exs.P-1 to P-7 and identified and marked MO.1. The incriminating materials that were collected against the petitioner in the course of the trial was put to him while questioning under Section 313(1)(b) of Cr.PC and the petitioner denied the same as false.

9.The trial Court on considering the facts and circumstances and on appreciation of the oral and documentary evidence, came to a conclusion that the prosecution has established the case against the petitioner beyond reasonable doubts for offences under Sections 341, 326 and 307 IPC and through judgment and order dated 13.08.2014, convicted and sentenced the petitioner in the following manner:



WEB COPY

Sl. No.	Offence under which convicted	Sentence
1.	Section 341 IPC	One month rigorous imprisonment and to pay a fine of Rs.500/-
2.	Section 326 IPC	Three years rigorous imprisonment and to pay a fine of Rs.5000/-.
3	Section 307 IPC	Five years rigorous imprisonment and to pay a fine of Rs.10,000/-.
		In default of payment of fine amount, the petitioner had to further undergo three months simple imprisonment.
		The sentences were directed to run concurrently.

10. Aggrieved by the judgment of the Trial Court, the petitioner filed an appeal before the Principal Sessions Judge, Cuddalore in Crl.A.No.35 of 2014. The Appellate Court on reappreciation of evidence and after considering the judgment and order passed by the Trial Court, partly allowed the appeal by modifying the conviction and sentence in the following manner:

Sl. No.	Offences under Section	Offence under which convicted/modified
1.	Section 326 IPC	Appellate Court acquitted the petitioner for this offence.
2.	Section 341 IPC	The sentence was sustained.
3.	Section 307 IPC	The sentence was modified as three years rigorous imprisonment and to pay a fine of Rs.15,000/- in default to undergo three months simple imprisonment.



11. Aggrieved by the above judgment and order passed by the Appellate Court, the present Criminal Revision has been filed before this Court.

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

13. Both the Courts below have proceeded to convict and sentence the petitioner based on the evidence of PW-1 to PW-3. PW-2 is the injured witness in this case. The evidence of PW-1 and PW-3 reads as if, they saw the petitioner attacking the injured witness PW-2 with a sickle and they took the injured witness to the hospital. This evidence of PW-1 and PW-3 cannot be relied upon for the simple reason that PW-5 doctor, who treated PW-2 has clearly deposed in his evidence as well as recorded in the Accident Register that PW-2 was brought to the hospital by his relative named Iyyappan and that PW-1 was attacked by four known persons with knife and iron rod. This evidence given by PW-5 read along with the Accident Register, which was marked as Ex.P-4, completely makes the evidence of PW-1 and PW-3 doubtful.

14. It is quite curious that the Investigation Officer did not even examine the said Iyyappan, who is said to have taken PW-2 to the hospital. On carefully



reading the evidence of PW-2, it is seen that he has also stated as if it is the petitioner, who had attacked him with sickle. PW-2 was not in a conscious state and even the complaint was taken only from PW-1 by PW-6. PW-2 has merely denied the fact that he does not know, who Iyyappan is and that he never stated to the doctor that four known persons attacked him.

15. There is yet another important fact that has to be taken into consideration by this Court. The incident had taken place on 01.08.2011 at about 7.00 pm. The FIR was registered on 02.08.2011 at about 8.30 am. However, the FIR has reached the Court only on 05.08.2011 at about 4.05 pm. There is absolutely no explanation as to why it took such a long time for the FIR to reach the Court.

16. The above factor assumes significance since the prosecution is not projecting the case in the manner in which it has actually happened. In the instance case, Iyyappan, should have been the star witness. Section 60 of the Evidence Act, makes it very clear that best evidence must always be put forth before the Court. Hence, the best evidence in this case is that of Iyyappan, who had taken PW-2 to the hospital and had also informed the doctor PW-5 that PW-2 was attacked by four known persons. If this evidence is burked, the significance



will be that the prosecution is trying to conceal the very genesis of the case. It is under these circumstance, the exorbitant delay in the FIR reaching the Court assumes significance.

17. There is yet another curious factor in this case. Till the end, the so called sickle with which PW-2 was attacked by the petitioner was not even recovered by the Police. The earliest version before the doctor PW-5 was that the injured was attacked with knife and iron rod. The attack was made by four known persons. When that is so, the very fact that PW-2 sustained serious injuries which ultimately led to one of his finger being amputated, by itself cannot raise a presumption that it is only the appellant, who attacked PW-2. Unfortunately, the prosecution has come up with a false case and this important fact was not properly dealt with by both the Courts below and they were swayed by the evidence of PW-1 to PW-3. PW-1 and PW-3 are interested witnesses and PW-2 is the injured witness and in the absence of examining Iyyappan, who took PW-2 to the hospital, the version given by PW-1 to PW-3 regarding the incident becomes highly doubtful. In view of the same, the findings rendered by both the Courts below, as if the prosecution has proved the case beyond reasonable doubts suffers from perversity. The benefit of doubt has to necessarily go in favour of the petitioner. The evidence of PW-5 read along with Ex.P-4 Accident Register shows that four



Crl.RC.No.369 of 2017

known persons were involved in the attack. Hence, this Court is not able to ascertain as to who actually attacked PW-2 and caused such serious injuries to PW-2.

18.In the light of the above discussion, the judgment and order passed by both the Courts below are hereby set aside and the petitioner is acquitted from all charges. The petitioner was enlarged on bail by this Court by an order dated 10.03.2017, pending disposal of the criminal revision case. Hence, the bail bond shall stand cancelled and the fine amount, if any, paid by the petitioner shall be refunded to the petitioner.

19.In the result, this Criminal Revision stands allowed.

28.02.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
kp



Crl.RC.No.369 of 2017

N. ANAND VENKATESH, J.

kp

To

1. Principal Sessions Judge,
Court of Sessions,
Cuddalore Division,
Cuddalore, Cuddalore District.
2. Additional Assistant Sessions Judge,
(ASJ No.II), Cuddalore,
Cuddalore District.
3. Judicial Magistrate No.III
Cuddalore, Cuddalore District.
3. The Station House Officer (SHO)
Vadalur Police Station
Cuddalore District.
4. The Public Prosecutor
High Court, Madras.

Crl.R.C.No.369 of 2017

28.02.2023