



Crl.R.C.No.1387 of 2019

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2023

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.R.C.No.1387 of 2019

1. Viswanathan
2. Chinnammal
3. Muralisankar
4. Balakrishnan

.. Petitioners/Accused 1 to 4

Vs.

State by Sub-Inspector of Police,
Veeranam Police Station,
Salem District.
[Crime No.263/2015]

.. Respondent / Complainant

PRAYER : This Criminal Revision Case is filed under Section 397 read with Section 401 of Cr.P.C., to set aside the Judgment made in C.A.No.168/2018 dated 22.10.2019 on the file of the learned III Additional District Judge, Salem by confirming the conviction and sentence passed vide judgment in CC.No.56/2016 dated 10.10.2018 on the file of the learned Judicial Magistrate No.IV, Salem and to allow the Criminal Revision.

For Petitioners : Mr.R.Nalliyappan
For Respondent : Mr.V.J.Priyadarsana
Government Advocate (Crl. Side)



WEB COPY



Crl.R.C.No.1387 of 2019

ORDER

Convicted Accused 1 to 4 are the revision petitioners herein.

2. The respondent police registered the case under Section 294(b), 324 and 506 (ii) IPC. Subsequent to that the respondent filed charge sheet and the same was taken into file in C.C.No.56 of 2016 on the file of the learned Judicial Magistrate No.IV, Salem under Sections 323, 324, 326 and 506 (ii) of IPC. The learned Judicial Magistrate vide judgment dated 10.10.2018 convicted the petitioners/accused 1 to 4 as hereunder.

Sl.No.	Accused No.	For Offence under Section	Sentence
1	A1	294(b) IPC 324 IPC	To pay fine of Rs.500/-, in default to undergo one week simple imprisonment. To pay fine of Rs.750/-, in default to undergo one week simple imprisonment.
2	A2	294(b) IPC	To pay fine of Rs.500/-, in default to undergo one week simple imprisonment.
3	A3	324 IPC (2 counts)	To pay fine of Rs.750/-, for each count and in default to undergo one week simple imprisonment.
4	A4	326 IPC	To undergo six months simple



Crl.R.C.No.1387 of 2019

WEB COPY

Sl.No.	Accused No.	For Offence under Section	Sentence
		506(ii) (2 counts)	imprisonment and to pay fine of Rs.2,000/-, in default to undergo one month simple imprisonment. To pay fine of Rs.1000/-, for each count in default to undergo one week simple imprisonment.

3. Against the judgment of the trial Court, all the accused/petitioners herein preferred an appeal before the learned III Additional District Judge, Salem in C.A.No.168 of 2018 and the lower appellate Court vide judgment dated 22.10.2019, dismissed the appeal. Hence, the revision.

4. As stated supra, this revision is filed by all the accused. The trial Court has convicted all the accused, however, except A4, all others i.e., A1, A2 and A3, have been sentenced to pay fine amounts of Rs.1250/-, 500/- and 1500/- respectively and A4 alone is sentenced to under go simple imprisonment for six months along with fine of Rs.4,000/-. All the accused paid the fine and preferred criminal appeal and the same was dismissed and



Crl.R.C.No.1387 of 2019

WEB COPY

hence, all the accused have preferred this revision.

5. There was a case and counter case wherein on the complaint of the 2nd petitioner herein, the respondent has registered a case in Cr.No.264 of 2015 against the defacto complainant in the above case and others with respect of the disputes regarding same occurrence. Later, the respondent herein filed charge sheet in both case and counter case before the learned Judicial Magistrate and the learned Judicial Magistrate has also taken both the cases into file in CC.No.56 of 2016 and CC No.57 of 2016. The trial Court tried the above said cases separately and passed two judgments dated 10.10.2018 and 14.06.2018. The trial Court convicted the petitioners/accused in C.C.No.56 of 2016 and acquitted the accused in C.C.No.57 of 2016 on benefit of doubt.

6. Learned counsel for the revision petitioners could contend that though this a case and counter case, the procedure contemplated under



Crl.R.C.No.1387 of 2019

WEB COPY

Orders 588-A of the Madras Police Standing Orders, has not been properly followed. Ex.P4-Wound Certificate issued by PW9 cannot be the sole basis for conviction under Section 326 of IPC.

7. The learned Government Advocate (Crl. Side) made submissions in support of the judgment of the trial Court.

8. After hearing the rival submissions and also after perusing the orders passed by the trial Court, I find that

(a) on 24.11.2015 at about 5.00pm, when the witness No.1 Elavarasan walking nearer to the house of Viswanathan at Pallipatty Amman Kovil Street, the A1 and A2 due to civil dispute scolded him using indecent words and thereby, A1 and A2 committed offence punishable under Section 294(b) IPC and in continuation of the above said occurrence, A1 and A2 assaulted witness No.1 on his shoulder and back side by using wooden log and caused simple injuries and thereby, A1 and A2 committed offence punishable under Section 324 IPC. Further, in continuation of



Crl.R.C.No.1387 of 2019

WEB COPY

above occurrence, A3 assaulted witness No.1 by using iron rod on his head and at the same time, A3 assaulted witness No.2 Silambarasan also by using same iron rod and caused simple injuries and thereby, A3 committed offence punishable under Section 324(2 counts) IPC.

(b) In continuation of the above said occurrence, A4 assaulted witness No.1, by using wooden log over his shoulder and when it was resisted by witness No.1, the above said assault caused grievous injuries on the left thumb and at the same time he gave a kick to witness No.5, Kaliyammal and thereby, A4 committed offence punishable under Section 323 and 326 of IPC. Further, A4 caused criminal intimidation to witness Nos.1 ad 2 and thereby committed offence punishable under Section 506 (ii) (2 counts) IPC.

(c) Records further reveals that PW9-Dr.Pugazhenthhi had admitted PW1-Elavarasan on 24.11.2015 and issued a Ex.P4-wound certificate and as per the said certificate, PW1 sustained grievous injury. The PW9 further



Crl.R.C.No.1387 of 2019

WEB COPY

treated PW2 Silambarasan and issued a certificate as per Ex.P5 as the injuries sustained by PW2 are simple in nature. The PW10-Dr.Muthusamy admitted PW5-Kaliyammal for treatment on 25.11.2015 at Government Hospital, Salem. The PW9 also admitted the above said witness at Government Hospital, Salem. Since PW5 was absconding from the treatment, no final opinion was given for PW5-Kaliyammal by PW10. The wound certificate of Kaliyammal is Ex.P6.

9. In view of the above, in respect of accused 1, 2 and 3, against whom fine alone is imposed, I do not find any reason to interfere with the conviction and sentence passed by the trial Court and ***hence, the revision petition in respect of accused 1, 2 and 3, stands dismissed.***

10. In respect of the conviction of A4 for the alleged offence under Section 326 of IPC, the learned Government Advocate (Crl.Side) drew my attention to the evidence of PW9-Dr.Pugazhenth, who had given treatment to PW1 and issued Ex.P4-Wound Certificate wherein, he had stated that



Crl.R.C.No.1387 of 2019

WEB COPY

injury sustained by PW1 viz., injury into the left thumb is grievous in nature.

11. This Court has given its anxious consideration to the said submissions of the learned Government Advocate (Crl.Side) and the documentary evidence.

12. In *Mayandi and Sankar @ JeySankar Vs.The State of Tamil Nadu , represented by its Inspector of Police* [Crl.A.(MD)No.206 of 2008 dated 14.08.2019], I had an occasion to consider a very similar issue wherein when the charges for the offence under Section 326 of IPC is laid and the Doctor has issued a Wound Certificate classifying the injury as a grievous in nature. Having relied upon x-ray, copy of the x-ray has to be necessarily marked. If copy of the x-ray is not marked, the accused is deprived of his opportunity to cross examine PW1 as to the nature of injury, whether it is simple or grievous and the said decision is followed by me in *Arumugam & six others vs. The State, Rep. By the Inspector of Police*



Crl.R.C.No.1387 of 2019

WEB COPY

[Crl.R.C.No.899 of 2016 dated 05.06.2023].

13. In the instant case, as referred in Ex.P4-Wound Certificate, PW9-Dr.Pugazhenthir, appears to have relied upon two x-rays of PW1 bearing Nos.27562 and 27595, both dated 25.11.2015, with regard to hand fracture and the opinion was given by the Ward Medical Doctor and not by PW9, assumes significance.

14. Therefore, I find that the conviction laid by the learned Judicial Magistrate No.IV, Salem, for the offence under Section 326 IPC against A4 is unsustainable. However, taking note of the injuries sustained by PW1, the charge under Section 326 IPC is hereby modified and scaled down to Section 324 IPC and accordingly, A4 is convicted under Section 324 IPC and sentenced to pay a sum of Rs.7,500/- as compensation and on such payment, the said amount, shall be disbursed to the injured PW1 by moving appropriate application before the trial Court. Except the said modification, the conviction and sentence passed vide judgment in



Crl.R.C.No.1387 of 2019

WEB COPY

CC.No.56/2016 dated 10.10.2018 on the file of the learned Judicial Magistrate No.IV, Salem, remains intact.

15. In the result, the criminal revision in respect of Accused 1, 2 and 3, is dismissed and the criminal revision in respect of A4, is partly-allowed, as indicated above. The fine amount already paid, if any by A4 shall be adjusted against the sentence now awarded.

13.06.2023

Index: Yes / No
Speaking/Non-Speaking order
Neutral Citation: Yes/No.
ars



WEB COPY



Crl.R.C.No.1387 of 2019

To

1. The III Additional District Judge,
Salem.
2. The Judicial Magistrate No.IV,
Salem.
3. The Sub-Inspector of Police,
Veeranam Police Station,
Salem District.
4. The Public Prosecutor,
High Court, Madras.



WEB COPY



Crl.R.C.No.1387 of 2019

RMT.TEEKAA RAMAN,J.,

ars

Crl.R.C.No.1387 of 2019

13.06.2023