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Crl.R.C.(MD)No.281 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 22.06.2023

Delivered on : 07.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Crl.R.C.(MD)No.281 of 2023

and

Crl.M.P.(MD)Nos.4929 and 4068 of 2023

Ayyavu

... Petitioner

Vs.

State represented by
The Sub-Inspector of Police,
Musiri Police Station,
Tiruchirappalli District.
Crime No.205 of 2011.

... Respondent

Prayer : This Criminal Revision has been filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the records and set aside the judgment dated 28.04.2018 passed in C.C.No.86 of 2014 on the file of the learned Judicial Magistrate, Musiri, Tiruchirappalli District, wherein the petitioner/A1 was found guilty under Section 294(b) IPC and directed to pay fine of Rs.1,000/- in default to undergo 15 days simple imprisonment under Section 324 IPC sentenced to undergo one year simple imprisonment, the Criminal Appeal is partly allowed and the judgment of conviction and sentence passed against the appellant for the



offence under Section 294(b) IPC is hereby set aside and acquitted thereof and the sentence was confirmed to undergo simple imprisonment for one year for the offence under Section 324 IPC vide judgment dated 23.09.2019 passed in Crl.A.No.109 of 2018 on the file of the learned II Additional District and Sessions Judge, Tiruchirappalli, Tiruchirappalli District and acquit the petitioner/accused herein.

For Petitioner : Mr.R.L.Dilipan Pandian,
for Mr.K.Arunraj.

For Respondent : Mr.R.Meenakshi Sundaram,
Additional Public Prosecutor.

ORDER

This Criminal Revision Petition is directed against the concurrent judgment of conviction passed in Crl.A.No.109 of 2018, dated 23.09.2019 on the file of the II Additional District and Sessions Judge, Tiruchirappalli, confirming the judgment made in C.C.No.86 of 2014, dated 28.04.2018 on the file of the Court of Judicial Magistrate, Musiri, Tiruchirappalli District.

2.The revision petitioner is the first accused/first appellant in C.C.No.86 of 2014 on the file of the Judicial Magistrate Court, Musiri.



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3. The case of the prosecution is that on 12.04.2011 at about 10.00 am, when the defacto complainant was attempting to construct a septic tank in front of his house situated in Melavaduhappatti, Musiri, the accused had restrained the complainant and his wife Chellammal from constructing septic tank and abused them in filthy language; that the first accused had attacked the defacto complainant with Aruval on his head; that the second accused had attacked the witness Chellammal with wooden log on her head; that the accused 3 and 4 had attacked the defacto complainant and the witness Chellammal with hands and sticks and caused simple injuries and that the accused by showing the weapons had threatened that they would kill them.

4. On the basis of the complaint lodged by the complainant Adaikkalam, FIR came to be registered in Crime No.205 of 2011 and after completion of investigation, final report came to be filed against four persons including the revision petitioner herein for the alleged offence under Sections 294(b), 323, 324 and 506(ii) IPC and the case was taken on file in C.C.No.86 of 2014 on the file of the Court of the Judicial Magistrate, Musiri.



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5. During the trial, the prosecution, in order to prove its case, has examined seven witnesses as P.W.1 to P.W.7 and exhibited six documents as Ex.P.1 to Ex.P.6. The defence has adduced neither oral nor documentary evidence. The learned Judicial Magistrate, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed the judgment on 28.04.2018, convicting the first accused for the offence under Section 294(b) IPC and sentenced him to pay a fine of Rs.1,000/- in default to undergo 15 days imprisonment and undergo one year simple imprisonment for the offence under Section 324 IPC;

(ii) convicting the second accused for the offence under Section 294(b) IPC and sentenced him to pay a fine of Rs.1,000/- in default to undergo 15 days simple imprisonment; and sentenced him to pay a sum of Rs.1,000/- in default to undergo two months simple imprisonment for the offence under Section 323 IPC;

(iii) convicting the third and fourth accused for the offence under Section 294(b) IPC and sentenced them to pay a fine of Rs.1,000/- in default to undergo 15 days simple imprisonment and sentenced them to pay a fine of Rs.1,000/- (2 counts) in default to undergo two months simple imprisonment for the offence under Section 323(2 counts) IPC



and acquitted all the accused for the offence under Section 506(ii) IPC.

Aggrieved by the said judgment of conviction and sentence, all the accused have preferred an appeal in Crl.A.No.109 of 2018 and the learned II Additional District and Sessions Judge, Tiruchirappalli, upon considering the materials available on record and on hearing the arguments of both the sides, has passed the impugned judgment, dated 23.09.2019, setting aside the conviction and sentence for the offence under Section 294(b) IPC against all the accused and confirmed the conviction and sentence against the first accused for the offence under Section 324 IPC; against the second accused for the offence under Section 323 IPC and against the third and fourth accused for the offence under Section 323 (2 counts) IPC.

6. It is the specific case of the prosecution that on 12.04.2011 at about 10.00 am the four accused including the revision petitioner had attacked the defacto complainant and his wife and caused simple injuries.

7. It is not in dispute that the accused 2 and 3 are brothers of the defacto complainant; that the first accused is the son of third accused; that the fourth accused is the wife of the third accused and that there existed civil disputes between the defacto complainant and the accused.



According to the prosecution, when the defacto complainant and his wife were attempting to construct septic tank in front of their house, the accused had restrained them and attacked them.

8. The prosecution has examined the defacto complainant and his wife as P.W.1 and P.W.2 respectively. In order to prove the alleged occurrence, the prosecution has also examined one Selvam, mason, who was involved in the construction of septic tank at the time of alleged occurrence. Since the first accused alone has preferred the revision, it is not necessary to consider the overt act alleged against the other accused.

9. The defacto complainant P.W.1 would depose that the revision petitioner/first accused had attacked him with an Aruval over the left eyebrow and caused injury. P.W.2 wife of the defacto complainant would depose that the first accused had assaulted her husband with Aruval over the left eyebrow. P.W.5, who was working as Mason at that time, in his evidence would say that the first accused had attacked P.W.1 with Aruval and caused injury over his head and eye, P.W.6 /Doctor, who has given treatment to P.W.1 and P.W.2, would say that he had noticed lacerated wound over the left eyebrow and elbow and also noticed many small injuries over his right shoulders. Though P.W.1, P.W.2 and P.W.5 were



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subjected to cross examination, nothing was elicited by the defence in their favour and that their evidence with respect to the attack made on P.W.1 and sustaining injuries was not at all shaken. On considering the evidence of the above witnesses, this Court is of the clear view that the evidence are cogent, reliable and trustworthy.

10. As rightly contended by the learned Government Advocate (Criminal Side), P.W.6/Medical Officer has given evidence corroborating the evidence of P.W.1, P.W.2 and P.W.5.

11. The learned counsel for the revision petitioner would submit that the case of the prosecution is that the revision petitioner had assaulted P.W.1 with an Aruval over his head and left eyebrow, but whereas P.W.6/Medical Officer has stated that P.W.1 got injured over the left eyebrow and that therefore, the case of the prosecution stands not corroborated by the medical evidence.

12. The learned counsel for the petitioner would further submit that in view of the nature of injuries allegedly suffered by P.W.1, blood ought to have oozed out and as such, blood stains would have present in the scene of occurrence, but observation mahazar under Ex.P.2 does not say that there were blood stains in the occurrence place. He would further



contend that though the prosecution has alleged that the first accused had used Aruval to attack P.W.1, the said weapon was not at all recovered and is very much fatal to the prosecution.

13. As already pointed out, P.W.1 in his evidence has stated that the first accused had attacked with Aruval above his left eyebrow and his wife P.W.2 in her evidence had reiterated the same. P.W.4, who is an eye witness, has stated that the first accused had attacked P.W.1 with Aruval; that P.W.1 had sustained injuries on his head near his eye. P.W.6 Doctor has stated that P.W.1 was having lacerated wound over the left eyebrow and below the left eye and also some minor injuries over his right shoulders.

14. Considering the above, the contention of the defence that the case of the prosecution was not corroborated by the medical evidence cannot be accepted. As already pointed out, the evidence of P.W.1, P.W.2 and P.W.5 stand corroborated by the medical evidence.

15. It is not the case of the prosecution that the blood oozed out from the injuries suffered by P.W.1 or P.W.2. Hence, the question of finding blood stains in the occurrence place does not arise at all.



Regarding the recovery of weapons, it is necessary to refer the judgment of Hon'ble Supreme Court in ***State through the Inspector of Police, Vs. Laly @ Manikandan and another*** reported in ***2022 Live Law SC 851***, wherein the Hon'ble Apex Court has specifically held that an accused can be convicted, even in the absence of recovery of the crime weapon, if there is a direct evidence in the form of an eye witness and the relevant passage is extracted herein :

“Similarly, assuming that the recovery of the weapon used is not established or proved also cannot be a ground to acquit the accused when there is a direct evidence of the eye witness. Recovery of the weapon used in the commission of the offence is not a sine qua non to convict the accused. If there is a direct evidence in the form of eye witness, even in the absence of recovery of weapon, the accused can be convicted. Similarly, even in the case of some contradictions with respect to timing of lodging the FIR/complaint cannot be a ground to acquit the accused when the prosecution case is based upon the deposition of eye witness.”

16. Even in a murder case, the Hon'ble Apex Court has held that non recovery of weapon cannot be considered as fatal to the prosecution. In the case on hand, as already pointed out that there is an ample direct evidence in the form of injured witnesses P.W.1 and P.W.2 and eye-witness P.W.5.



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17. Considering the above, the finding of the Courts below in convicting the revision petitioner/first accused for the offence under Section 324 IPC cannot be found fault with.

18. The learned counsel for the petitioner submitted that the trial Court itself should have given benefit either under Section 3 or under Section 4 of the Probation of Offenders Act.

19. Considering the close relationship between the complainant and the accused and the civil disputes pending between them, this Court has called for a report from the Probation Officer, Lalgudi, Tiruchirappalli District under Section 4 of Probation of Offenders Act and after enquiry, the Probation Officer submitted a report stating that the accused is not having any previous conviction and he is regretting his conduct; that his family, relatives and also the people residing in that locality have a good opinion about him and that therefore, he has recommended that it is a fit case for invoking Section 4(1) and 4(3) of Probation of Offenders Act. Considering the above, the report of the Probation Officer, Lalgudi, Tiruchirappalli District, is accepted.



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20. As already pointed out, the occurrence was held on 12.04.2011 and the trial Court as well as the appellate Court have passed the judgments in 2018 and 2019 respectively and already 12 years had lapsed, since the date of occurrence.

21. Considering the nature of the offence and taking note of the relationship between the parties and upon considering the unblemished records and good character and conduct of the accused, this Court is inclined to invoke Section 4 of the Probation of Offenders Act.

22. Hence, the conviction passed against the revision petitioner stands confirmed, but instead of sentencing him at once, in exercise of Section 4 of Probation of Offenders Act, the accused is ordered to be released on entering into a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand) with two solvent sureties for a like sum, to appear and receive the sentence and as and when called upon during the period of one year and he shall be under the supervision of the District Probation Officer, Tiruchirappalli during that period. The District Probation Officer, Tiruchirappalli shall sent a periodical report to the trial Court quarterly. The revision petitioner is directed to keep peace and good behavior during that period.



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23. This Criminal Revision Petition is disposed of accordingly.

Consequently, connected Miscellaneous Petitions are closed.

07.08.2023

NCC : Yes/ No
Index : Yes/No
Internet : Yes/No
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To:-

- 1.The Judicial Magistrate, Musiri,
Tiruchirappalli District.
- 2.The II Additional District and Sessions Judge,
Tiruchirappalli, Tiruchirappalli District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR, J .

das

Pre-delivery order made in
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