



Crl. R.C.(MD)No.165 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 20.07.2023

Delivered On : 19.09.2023

CORAM

THE HONOURABLE MR. JUSTICE P. DHANABAL

Crl. R.C.(MD)No.165 of 2019

Ganesan

.. Petitioner

Vs.

The State represented by
The Sub Inspector of Police,
Elayirampennai Police Station,
Virudhunagar District.
(Crime No.112 of 2008).

.. Respondent

Prayer : This criminal revision case is filed under Sections 397 r/w. 401 of Cr.P.C., to call for the records pertaining to the judgment passed in Crl.A.No. 70 of 2011 dated 21.12.2018 by the Additional District Sessions Court, Virudhunagar District at Srivilliputhur, wherein confirmed the conviction and sentence under Section 324 of IPC (2 counts) for six months imprisonment, under Section 326 of IPC for one year imprisonment, fine of Rs.500/- and in default to pay fine amount for three months simple imprisonment and under Section 307 of IPC for two years simple imprisonment, fine of Rs.1,000/- in



Crl. R.C.(MD)No.165 of 2019

default to pay fine six months simple imprisonment imposed on the petitioner in S.C.No.159 of 2009 dated 29.04.2011 by the Assistant Sessions Court, Sivakasi, Virudhunagar District and set aside the same.

For Petitioner	: Mr.R.Murugappan
For Respondent	: Mrs.M.Aasha
	Government Advocate (Crl. Side)

ORDER

This petition has been filed by the petitioner to set aside the judgment and conviction passed by the learned Additional District Sessions Judge, Virudhunagar District at Srivilliputhur in Crl.A.No.70 of 2011 on 21.12.2018, in confirming the judgment and conviction passed by the learned Assistant Sessions Judge, Virudhunagar District in S.C.No.159 of 2009 on 29.04.2011.

2.The petitioner herein is accused in S.C.No.159 of 2009 and he was convicted under Section 324 of IPC (2 counts), sentenced to undergo six months simple imprisonment, under Section 326 of IPC, he was sentenced to undergo one year simple imprisonment and to pay a fine of Rs.500/- in default to undergo three months simple imprisonment and under Section 307 of IPC, he was sentenced to undergo two years simple imprisonment and to pay a fine



Crl. R.C.(MD)No.165 of 2019

of Rs.1,000/- in default to undergo six months simple imprisonment.

Aggrieved by the said judgment and conviction, the petitioner herein preferred an appeal in Crl.A.No.70 of 2011 before the Additional District and Sessions Court, Virudhunagar District and the learned Additional District and Sessions Judge also confirmed the judgment and conviction passed in S.C.No.159 of 2009, by dismissing the appeal by a judgment dated 21.12.2018.

3. According to the prosecution case, on 25.12.2008, at about 05.30 a.m., when the defacto complainant Kalpana Devi was proceeding from her mother's house in front of Gurusamy Pulavar's house due to previous enmity, the accused by holding aruval (bill hook) with intent to commit murder assaulted her on backside of the head and again when he attempted to assault, the same was prevented by the defacto complainant and thereby, the defacto complainant sustained injuries on head and right hand. Immediately after seeing aforesaid incident, one Guruvammal P.W.2 came there. At that time, the accused assaulted her also and she sustained injuries on both thumbs and lips and nose. Again when P.W.3 came there, the accused assaulted her also with aruval (bill hook) and thereby, caused injuries on forearm and forehead. Thereafter, the neighbors came there and the victims were taken to



Crl. R.C.(MD)No.165 of 2019

Government hospital through Tata Sumo car by P.W.10. While the defacto complainant and other injured witnesses were taking treatment, P.W.13 Police Officer on 25.12.2008, went to the hospital and obtained complaint, Ex.P1 from the defacto complainant and thereafter, P.W.13 registered FIR, Ex.P11. Thereafter, he examined the witnesses and filed final report as against the accused under Sections 324, 326, 307 of IPC. The case was committed to the Principal Sessions Court, Virudhunagar by the committal Magistrate Court and the learned Principal Sessions Judge made over the case to the Assistant Sessions Court, Virudhunagar. Thereafter, the learned Assistnat Sessions Judge has framed charges under Sections 324 (2 counts), 326, 307 of IPC and read over and explained about the charges and the accused denied the charges.

4.The prosecution had examined P.W.1 to P.W.14 and marked Exs.P.1 to P.17 and marked M.Os.1 to 7 and on the side of the accused, no one was examined and no document was marked. After examination of prosecution witnesses, the accused were examined under Section 313(1)(b) of Cr.P.C., with regard to incriminating circumstances found in the prosecution evidences. The accused denied the evidences.



Crl. R.C.(MD)No.165 of 2019

5. Upon perusing the oral and documentary evidences, the trial Court found the petitioner guilty for the offences punishable under Sections 324 (2 counts), 326, 307 of IPC and sentenced to undergo six months simple imprisonment under Section 324 of IPC (2 counts), he was sentenced to undergo one year simple imprisonment and to pay a fine of Rs.500/- in default to undergo three months simple imprisonment under Section 326 of IPC and under Section 307 of IPC, he was sentenced to undergo two years simple imprisonment and to pay a fine of Rs.1,000/- in default to undergo six months simple imprisonment. Aggrieved by the same, the petitioner preferred an appeal in Crl.A.No.70 of 2011 on the file of the learned Additional District Sessions Judge, Virudhunagar District and the Appellate Court also dismissed the same, by a judgment dated 21.12.2018 and confirmed the conviction and sentence imposed by the trial Court.

6. Aggrieved by the said judgment, the petitioner has filed the present revision case on the following grounds:

The judgment and conviction passed by the appellate Court and trial Court are against law of evidence. The evidences of prosecution witnesses are contradictory each other. But the appellate Court as well as the trial Court



Crl. R.C.(MD)No.165 of 2019

instead of disbelieving them and believed their evidence and convicted the petitioner which was clearly contradictory to the law of evidence. The evidence of Doctor who treated the injured was contrary to the injured witnesses and other independent prosecution witnesses. But without considering this material contradiction both the lower Courts convicted the petitioner. There was huge delay in registering the case, investigating the case and filing the charge sheet, which reveals that the petitioner was falsely implicated in this case. The petitioner was falsely implicated in this case by the informant. As per the informant and other independent prosecution witnesses, there was previous enmity between the petitioner and the informant herein, the petitioner was included in this case. There are lot of contradictions between the Investigating Officer evidence and other prosecution witnesses. But rejecting this point both the lower Courts believed the prosecution witnesses evidence and convicted the petitioner.

7.The learned counsel appearing for the petitioner argued that according to the prosecution case, one day previous to the occurrence, there was quarrel between the accused and the grandfather of P.W.1. The said grandfather of P.W.1 was not examined before the trial Court and the real



Crl. R.C.(MD)No.165 of 2019

motive is previous day occurrence. But there is no evidence to prove the aforesaid occurrence. Further according to the prosecution case, the main motive projected is that the accused's wife was not living with him and these victims are the reason for that, thereby, the accused assaulted the victims. While so, there is no piece of evidence to prove the alleged motive and with regard to that, no witness was examined by the Investigating Officer. Therefore, the motive itself has not been proved by the prosecution. The evidence of prosecution witnesses are highly doubtful and the injuries sustained by the injured witnesses are not tallied with the medical evidence and further the recovery of materials also not proved by the prosecution and the case of prosecution is highly doubtful. The trial Court and the appellate Court have not considered the aforesaid aspects and thereby, the judgment and conviction passed by the trial Court and confirmed by the appellate Court are liable to be set aside, by allowing the revision petition.

8.The learned Additional Public Prosecutor appearing for the respondent would contend that P.W.1 to P.W.3 are injured and eye witnesses and they have categorically deposed about the manner of the occurrence and injuries sustained by them. Apart from that, the other eye witnesses have also



Crl. R.C.(MD)No.165 of 2019

categorycally deposed about that occurrence and the Doctors who treated the victims, have also categorycally deposed about the injuries sustained by the victims. The evidence of P.W.1 to P.W.3 were corroborated by the medical evidence. The Investigating Officer also arrested the accused and based on the confession statement, M.O.1 aruval (bill hook) was recovered. M.Os also identified by the injured witnesses and thereby, the prosecution has proved the charges beyond the reasonable doubt and the trial Court rightly convicted the accused and awarded punishment. The appellate Court also after elaborate discussion, dismissed the appeal and thereby, there is no any infirmity found on the judgment of the trial Court as well as the appellate Court. Therefore, this petition is liable to be dismissed.

9.Upon perusing the documents and evidences adduced on both sides and upon perusing the judgments of lower Courts, the points for determination in this petition is whether the judgment of the learned Additional District Sessions Judge, Virudhunagar District in Crl.A.No.70 of 2011 on 21.12.2018, in confirming the conviction and sentence imposed by the learned Assistant Sessions Judge, Sivakasi, Virudhunagar District, in S.C.No. 159 of 2009 on 29.04.2011 is sustainable according to law and facts.



Crl. R.C.(MD)No.165 of 2019

WEB COPY

10.The prosecution case is that due to previous enmity, on 25.12.2008, at about 05.30 a.m., when P.W.1 was proceeding from her grandmother's house in front of Gurusamy Pulavar's house, the accused came there with aruval (bill hook) and assaulted her on her backside of the head and caused injuries. When the mother of P.W.1 came to rescue P.W.1, the accused assaulted her with aruval (bill hook) and caused injuries to her. On seeing the occurrence, when P.W.3 came to the place of occurrence, the accused assaulted her also and caused injuries. Thereby, the trial Court framed charges under Section 307, 324 (2 counts), 326 of IPC.

11.According to the prosecution case, the accused attempted to commit murder of P.W.1 and caused simple injuries. When the P.W.2 and P.W.3 attempted to prevent the occurrence, the accused assaulted the P.W.2 and caused grievous injuries and caused simple injuries to P.W.3. But the trial Court has framed charges under Section 307 of IPC as against the offence committed towards P.W.1 and the charge under Section 307 was correctly framed. As far as the injuries sustained by P.W.2 is concerned, charge under Section 326 of IPC was correctly framed. As far as the injuries sustained by



Crl. R.C.(MD)No.165 of 2019

P.W.3 is concerned, charge under Section 324 of IPC (2 counts) were framed which is not correct. The trial Court ought to have framed charges under Section 324 of IPC (1 counts). But framed charges under Section 324 of IPC (2 counts) and at the time of awarding punishment also, the trial Court has awarded punishment of six months simple imprisonment for 2 counts. Since the charge under Section 324 of IPC is only for the offence committed as against P.W.3, the charge for Section 324 of IPC (2 counts) and conviction for Section 324 of IPC (2 counts) are unsustainable and thereby, the conviction passed by the trial Court for Section 324 of IPC (2 counts) is liable to be set aside and conviction for Section 324 of IPC (1 count) is to be confirmed.

12.In this case, the main charge as against the accused is Section 307 of IPC for the offence committed as against the defacto complainant P.W.1. The charge under Section 326 of IPC was framed for the offence committed as against P.W.2. The charge under Section 324 of IPC (2 counts) was framed for the offence committed as against the P.W.3. In this case, the prosecution examined P.W.1 to P.W.14 and marked Ex.P1 to Ex.P17 and marked M.Os.1 to 7. But the accused has not examined any witness and marked any documents.



Crl. R.C.(MD)No.165 of 2019

WEB COPY

13.The defacto complainant P.W.1 who is the injured witness, has deposed that on 24.12.2008 at about 05.00 p.m., when her grandfather was standing in front of her house, the accused made quarrel with her grandfather and the same was pacified by them. On 25.12.2008 at about 05.30 a.m., when she was proceeding towards her mother's house, the accused came with aruval (bill hook) and assaulted on her back head by saying that 'செத்து போ'. Thereby, she sustained head injury and again the accused attempted to assault and the same was prevented by her. At that time, she sustained injury on her left hand thumb. Immediately she raised alarm and after hearing alarm, her mother Guruvammal P.W.2 came there and at that time, the accused assaulted her mother and further the accused assaulted the grandmother of the P.W.1 who came to prevent the occurrence. Thereafter, they went to the hospital and while they were taking treatment in hospital, the police obtained complaint statement from her. The aforesaid complaint has been marked as Ex.P1. From evidence of P.W.1, it reveals that the accused assaulted her with aruval (bill hook) and she sustained injuries. Ex.P1 complaint and Ex.P11 FIR also revealed the same. In order to prove the aforesaid injuries, the prosecution has examined P.W.9 Doctor who admitted the victims in the hospital and gave



Crl. R.C.(MD)No.165 of 2019

treatment to them and he categorically deposed about the injuries sustained by P.W.1 to P.W.3 and also he gave Ex.P6 to Ex.P8 Accident Registers. According to the evidence of P.W.9 and Ex.P8, the P.W.1 sustained simple injuries. On careful perusal of evidence of P.W.1 and P.W.9 and Ex.P8, they revealed that P.W.1 sustained simple injuries.

14.P.W.2 who is also the injured witness in her evidence stated that on 25.12.2008 at about 05.30 a.m., when her daughter Kalpana Devi was proceeding towards her house, the accused came with aruval (bill hook) and assaulted on her backside by saying that 'இத்தோடு தொலைந்து போ'. When the same was prevented by her, the accused assaulted her also and she sustained injuries on right hand thumb, thigh and lips. Further her mother Rakkammal also sustained injuries due to the assault made by the accused. Thereafter, she along with her daughter and mother went to Sattur Government Hospital. P.W.9 Doctor who treated P.W.2 also in his evidence deposed about the admission of P.W.2 in the hospital and injuries sustained by her and treatment given by him. According to the evidence of P.W.2 and P.W.9, Ex.P7, the P.W.2 sustained three simple injuries and one grievous injury. Therefore, from the evidence of P.W.2, P.W.9, Ex.P7, the said P.W.2 sustained grievous



Crl. R.C.(MD)No.165 of 2019

injury due to assault made by the accused.

WEB COPY

15.Yet another injured witness P.W.3 also in her evidence stated that on the date of occurrence, at about 05.00 a.m., when her granddaughter went to her mother's house, the accused assaulted her with aruval (bill hook) and the granddaughter sustained injuries on her head and hence, she came to rescue her granddaughter. The accused assaulted her also and she sustained injuries on her finger and thereafter, she along with daughter and granddaughter went to the hospital and P.W.9 who treated the victim also deposed about the injury sustained by P.W.3 and as per evidence of P.W.3 and P.W.9 and Ex.P6, the P.W.3 sustained simple injuries.

16.P.W.10 who had taken the victims to the hospital in a vehicle also deposed before the trial Court that on 25.12.2008, when he was in Elayirampennai car stand one Krishnasamy asked to go to Sattur and he went to occurrence place and taken three injured persons to the Sattur hospital. Therefore, from the aforesaid evidences, it is clear that the accused assaulted P.W.1 to P.W.3 and they sustained injuries. Further the prosecution examined P.W.11 who gave further treatment to P.W.2 and he also deposed before the



Crl. R.C.(MD)No.165 of 2019

trial Court that P.W.2 sustained injuries on right hand, thumb and surgery was done to the left hand, thumb and then he gave a certificate, Ex.P9 wound certificate that the injuries is grievous in nature. Further P.W.12 who treated P.W.1 also deposed about the injuries sustained by the victim P.W.1 and he gave wound certificate, Ex.P10 stating that injuries are simple in nature. The evidence of prosecution witnesses are cogent and nothing elicit anything in favour of the accused during cross examination and the evidence of P.W.1 to P.W.3 cannot be discarded in anyway.

17.From the prosecution witnesses and evidence, it is clear that on the date of occurrence, the accused assaulted the victims, P.W.1 to P.W.3 with aruval (bill hook). The Investigating Officer also deposed that based on the confession statement of accused, M.O.1 aruval was recovered from the accused. The Village Administrative Officer, P.W.13 was examined and he also deposed the recovery of aruval (bill hook), based on the confession statement given by the accused. The victims were also examined and the evidences of P.W.1 to P.W.3 are cogent and they also identified the M.Os. before the Court and evidences of P.W.1 and P.W.3 cannot be discarded in any way and P.W.1 to P.W.3 sustained injuries through aruval (bill hook). The



Crl. R.C.(MD)No.165 of 2019

medical evidence also corroborated the evidences of P.W.1 to P.W.3. Thereby the prosecution has proved that the accused assaulted the victims and caused injury. Now the point is whether the accused has intention to commit murder of P.W.1 and whether the charges under Section 307 of IPC are proved beyond reasonable doubt.

18.The prosecution case is that the accused assaulted the P.W.1 with intent to commit murder and she escaped with injuries but there is no reference in the charge about the words uttered by the accused, while assaulting the victims.

19.According to the evidence of P.W.1, the accused assaulted her by saying that 'செத்து போ'. According to the evidence of P.W.2, the accused assaulted by saying 'இத்தோடு தொலைந்து போ'. According to the evidence of P.W.3, there is no reference about the alleged words uttered by the accused. Therefore, in order to attract the offence under Section 307 of IPC, the available evidence is not sufficient. According to prosecution case, the accused had intention to commit murder of P.W.1 and she escaped but no evidence to constitute the offence under Section 307 of IPC. At the same time, the



Crl. R.C.(MD)No.165 of 2019

evidence shows that the accused caused simply injury to the victim P.W.1 with aruval (bill hook). The aforesaid injuries will not cause death in ordinary course. The offence under Section 307 of IPC would not attract and the prosecution failed to prove the charge under Section 307 of IPC.

20. Though the prosecution has failed to prove the case under Section 307 of IPC, the prosecution has proved that the accused committed offence under Section 324 of IPC as against P.W.1 and the conviction passed by the trial Court under Section 307 of IPC is modified and the accused is convicted for the offence under Section 324 of IPC for the injuries sustained by the P.W.

1. As far as P.W.2 is concerned, the prosecution clearly proved that the accused caused grievous injuries. As far as P.W.3 is concerned, as discussed in previous para, Section 324 of IPC (2 counts) would not attract and since P.W.3 sustained simple injury, Section 324 of IPC alone is made and therefore, the conviction passed by the trial Court for the offence committed against P.W.3 is modified and convicted the accused for the offence under Section 324 of IPC.

21. Therefore, as discussed above, this Court is of the opinion that the accused found guilty for the offence under Section 324 (2 counts) for the



Crl. R.C.(MD)No.165 of 2019

offence committed against P.W.1 and P.W.3 and the accused committed offence under Section 326 of IPC against P.W.2.

22.Now coming to the quantum of punishment, the trial Court has awarded punishment to accused and sentenced to undergo six months simple imprisonment under Section 324 of IPC (2 counts), sentenced to undergo one year simple imprisonment and to pay a fine of Rs.500/- in default to undergo three months simple imprisonment, under Section 326 of IPC and sentenced to undergo two years simple imprisonment and to pay a fine of Rs.1,000/- in default to undergo six months simple imprisonment under Section 307 of IPC. Since this Court has already modified the conviction under Section 307 of IPC to the offence under Section 324 of IPC and Section 324 of IPC (2 counts) was modified into one count, this Court has to pass sentence for the offence under Section 326 of IPC and Section 324 of IPC (two counts) (P.W.1 and P.W.3).

23.Considering the family background of the accused and considering that the accused has no previous antecedents and considering the other aspects, this Court is inclined to award punishment of three months simple imprisonment for the offence under Section 324 of IPC (2 counts) for



Crl. R.C.(MD)No.165 of 2019

each count and imposed sentence for six months simple imprisonment for the offence under Section 326 of IPC and to pay fine of Rs.1,500/- and the fine amount was already paid.

24.In the result, the Criminal Revision Petition is partly allowed and the judgment and the conviction passed as against the petitioner in S.C.No.159 of 2009 dated 29.04.2011 by the learned Assistant Sessions Judge, Sivakasi confirmed in Crl.A.No.70 of 2011 dated 21.12.2018, on the file of the learned Additional District Sessions Judge, Virudhunagar District are modified. The conviction and sentence passed under Section 307 of IPC for the offence committed as against P.W.1 is modified and the petitioner is convicted for the offence under Section 324 of IPC for the injuries caused to P.W.1 and conviction under Section 326 of IPC for the injury caused to P.W.2 is confirmed. The judgment and sentence passed under Section 324 of IPC (2 counts) for the injuries caused to P.W.3 is modified and the accused convicted for the offence under Section 324 of IPC for the injuries caused to P.W.3 and the petitioner is sentenced to undergo three months simple imprisonment for the offence under Section 324 of IPC (2 counts) for each count and sentenced to undergo six months simple imprisonment and to pay a fine of Rs.1,500/-



Crl. R.C.(MD)No.165 of 2019

under Section 326 of IPC and the fine amount was already paid by the accused and the same has to be adjusted. The punishment awarded to the accused shall run concurrently. The sentence already undergone by the accused shall be set off under Section 428 of Cr.P.C.

19.09.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
Mrn

To

- 1.The Additional District Sessions Judge, Srivilliputhur, Virudhunagar District.
- 2.The Assistant Sessions Judge, Sivakasi, Virudhunagar District.
- 3.The Inspector of Police,
Ettaiyapuram Police Station,
Thoothukudi District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



Crl. R.C.(MD)No.165 of 2019

P.DHANABAL, J.

Mrn

Crl. R.C.(MD)No.165 of 2019

19.09.2023