



Crl.R.C.(MD) No.184 of 2019

IN THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 25.09.2023

PRONOUNCED ON : 17.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE P.DHANABAL

Crl. R.C. (MD) No.184 of 2019

and

Crl. M.P. (MD) Nos.2807 & 2564 of 2019 and 2826 of 2021

Sudalaimani

... Petitioner /sole accused

Vs.

State rep. by
The Inspector of Police,
Thenkasi Police Station,
Tirunelveli District.
Crime No.729 of 2008

... Respondent

PRAYER: Criminal Revision case has been filed under Section 397 r/w 401 of Criminal Procedure Code, praying to call for the records and set aside the order passed by the Additional District and Sessions Court (FTC), Thenkasi, Tirunelveli District in C.A.No.31 of 2016 dated 05.01.2019 by confirming the judgment passed by Additional Assistant Sessions Judge, Thenkasi, Tirunelveli District in S.C.No.521 of 2008 dated 15.03.2016.



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For Petitioner

: Mr. V. Kathirvelu
Senior Counsel for
Mr. K. Prabhu

For Respondent

: Mr. M. Sakthi Kumar
Government Advocate (criminal side)

ORDER

This Criminal Revision Petition in Crl.R.C.(MD) No.184 of 2019 has been preferred by the petitioner/accused as against the Judgment passed in C.A.No.31 of 2016 on the file of the the Additional District and Sessions Court (FTC), Thenkasi, Tirunelveli District dated 05.01.2019 by confirming the judgment and conviction passed by the learned Additional Assistant Sessions Judge, Thenkasi, Tirunelveli District in S.C.No.521 of 2008 dated 15.03.2016, whereby the trial Court convicted the accused for the offence under sections 341 and 307 of IPC and sentenced to undergo 5 years of rigorous imprisonment and to pay fine of Rs.1,000/- in default to undergo 2 months simple imprisonment for the offence under section 307 of IPC and imposed fine of Rs.250 in default to undergo one week simple imprisonment for the offence under section 341 of IPC.

2. The prosecution case is that the accused is husband of P.W.2 and



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due to misunderstanding between them in their family life, they got divorce

on 12.7.2002. P.W.2 was working as Teacher in the Government School. In

spite of the divorce granted by the Court, the accused compelled P.W.2 to

live with him along with his son, but P.W.2 refused for the same. Due to

that dispute, there was a enmity between P.W.2 and the accused. while so,

on 25.7.2008, the accused left his son in the School, where, P.W.2 was

working and then P.W.2 gave a complaint and the same was enquired by the

police and the son of the accused was sent along with him. Thereby also,

there was a enmity between the accused and P.W.2. On 29.7.2008 at about

8.55 hours, when P.W.2 along with her colleagues went to school, the

accused near Thenkasi Government Hospital, waylaid P.W.2 and assaulted

her with a billhook by saying that "என்னோடு சேர்ந்து வாழாத நீ உயிரோடு

இருக்கக்கூடாது, இத்தோடு செத்துப்போ" repeatedly the accused assaulted

the victim all over the body. Thereafter, Ex.P1 complaint was given before

the concerned police station and based on the complaint, FIR/Ex.P16 was

registered for the offence under sections 341 and 307 of IPC. Thereafter, the

case was investigated by the investigation officer/P.W.17 and then filed

final report as against the accused. Thereafter, the copies of records relied

on by the prosecution side were furnished to the accused under section 207



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of Cr.P.C and then, the case was committed to the Principal District Sessions Court. The Principal District Sessions Court has made over the case to Additional Assistant Sessions Judge, Thenkasi, Tirunelveli District in S.C.No.521 of 2008. The trial Court after hearing both sides and perusing the records, framed the charges under sections 341 and 307 of IPC as against the accused. The charges were read over and explained to the accused, but he denied the said charges. The trial Court examined P.W.1 to 18 and marked Ex.P1 to 21 and also marked EXs. M.O.1 to 9. On the side of the accused, no witness was examined but Ex.D1 and D2 were marked. After completion of prosecution side evidences, the accused was examined under section 313 (1) (b) of Cr.P.C, with regard to the incriminating circumstances found against him and the same was also denied by the accused as false.

3. After evaluating oral and documentary evidences adduced on either side, the trial Court found the accused guilty of the offence under sections 341 and 307 of IPC and sentenced him to undergo imprisonment as mentioned above. As against the same, the accused preferred appeal before the Principal District and Sessions Judge, in C.A.No.31 of 2016. The Principal Sessions Judge has made over the case to Additional District



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Judge, Thenkasi and after hearing the case, the appellate Court has also dismissed the appeal by confirming the conviction and judgment of the trial Court through its judgement dated 05.01.2019.

4. Aggrieved over the above said judgment, the accused preferred this revision petition on the following grounds:

1.The judgment of the lower Courts have to be set aside since according to the case of the prosecution after get down from the bus near Thenkasi new bus stand in front of the Thenkasi Government Hospital in the presence of P.W.1, 3 4 & 18 this occurrence was happened and though the occurrence was happened in busy locality but none of the independent witnesses were examined in this case. Non examination of the independent witnesses is fatal to the case of the prosecution.

2.The judgment of the lower Courts has to be set aside since the lower Court disposed the appeal with short circuited method without hearing the appellant.

3.The judgment of the lower Courts has to be set aside since according to the P.W.10 out of 15 injury 14th injury alone is grievous injury but the doctor did not certify the size of the injury and further police intimation Ex.P.2 disclosed that P.W.2 was attacked with knife alone.



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4. The judgment of the lower courts have to be set aside since all the eye witnesses speak about the occurrence with minute details that witnesses are interested witnesses.

5. The learned counsel appearing for the appellant would contend that the accused is none other than the husband of P.W.2/victim. Due to misunderstanding between the husband and wife, the wife filed divorce petition as against the accused and the same was also allowed. Thereafter, the son of the accused was residing along with him. On account of birthday of his son, he wanted to be with his mother and thereby, he left his son with the victim for celebrating the birthday of his son. For that, the victim gave a complaint and then, the boy was sent along with the accused. After two days, the victim had given complaint as against the accused alleging that he assaulted the victim with billhook and caused so many injuries and thereby, she was admitted in the hospital and then lodged the complaint. In fact, the accused did not involve in the occurrence and the prosecution has examined P.W.1 to to 18 and marked Ex.P1 to 21 and also marked EX.M.O.1 to 9. On the side of the accused no witnesses were examined but marked Ex.D1 and D2. The evidences of prosecution witness are not cogent and highly



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doubtful. But the trial Court without considering the major discrepancies erroneously convicted the accused. As against the judgement and conviction, the petitioner/accused has preferred an appeal before the Sessions Court and Sessions Court also without considering the discrepancies of the prosecution case, erroneously confirmed the judgment of the trial Court. Therefore, the judgment of the trial Court as well as appellate Court are liable to be set aside by allowing this appeal.

6. The learned Government Advocate (Crl.side) appearing for the respondent would contend that the accused is husband of the victim and there was a family dispute pending between them and already divorce was granted to them by the competent Court. Despite that, the accused harassed the victim and on the date of occurrence, the accused assaulted the victim with billhook and caused serious injuries. Thereby, FIR has been registered for the offence under sections 341 and 307 of IPC and thereafter, prosecution examined P.W.1 to P.W.18 and the witnesses have categorically deposed about the manner of occurrence and the doctor also corroborated the injuries sustained by the victim. The injuries sustained by the victim are serious in nature and thereby, the prosecution has proved the charge levelled



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against the accused and the trial Court after elaborate discussion correctly convicted the accused. Further, the appellate Court also after giving adequate reasons dismissed the appeal filed by the accused and thereby, the present revision petition is liable to be dismissed.

7. This Court heard both sides and perused the records. Upon hearing both sides and perusing the documents, the judgement of Courts below and grounds, the point for determination in this petition is whether the judgment passed in C.A.No.31 of 2016 on the file of the Additional District and Sessions Court (FTC), Thenkasi, Tirunelveli District dated 05.01.2019 by confirming the judgement in S.C.No.521 of 2008 dated 15.03.2016 on the file of the Additional Assistant Sessions Judge, Thenkasi, Tirunelveli District is sustainable in law and on facts.

8. Points: The prosecution case is that the accused is husband of P.W. 2 and due to misunderstanding between them in their family life, they got divorce on 12.7.2002. P.W.2 was working as teacher in the Government School and even after the divorce granted by the Court, the accused



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compelled P.W.2 to live with him along with his son. But P.W.2 refused for the same. Due to that dispute, there was a enmity between P.W.2 and the accused. While so, on 25.7.2008, the accused left his son in the school where P.W.2 was working and then P.W.2 gave a complaint to that regard and the same was enquired by the police and the son of the accused was sent along with him. Thereby also there was a enmity between the accused and P.W.2. On 29.7.2008 at about 8.55 hours when P.W.2 along with her colleagues went to school, at that time, the accused near Government Hospital Thenkasi, waylaid P.W.2 and assaulted her with billhook by saying that "என்னோடு சேர்ந்து வாழாத நீ உயிரோடு இருக்கக்கூடாது, இத்தோடு செத்துப்போ" . repeatedly the accused assaulted the victim all over the body. Thereafter, Ex.P1 complaint was given before the concerned police station and based on the complaint, FIR/Ex.P16 was registered for the offence under section 341 and 307 of IPC. Thereafter, the case was investigated by the investigation officer/P.W.17 and then filed final report as against the accused.

9. In order to prove the case of the prosecution before the trial Court, P.W.1 to to 18 were examined and marked Exs.P1 to 21 and also marked



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EXs.M.O.1 to 9. On the side of the accused no witness was examined but marked Ex.D1 and D2.

10. In this case, P.W.1 is the defacto complainant and eye witness of the occurrence. Based on the complaint given by her, the police have registered the case. P.W.2 is the victim and injured witness. P.W.1 has deposed about the lodging of complaint and the scene of occurrence. P.W.2 in her evidence has deposed about the assault made by the accused with billhook and the injuries sustained by her. P.W.10 who treated the victim in the Government Hospital, Thenkasi, has deposed about the injuries sustained by the victim and the treatment given to her. Further, P.W.16 also deposed about the treatment given to the victim in the Government Hospital, Tirunelveli. P.W.15 has deposed about the registration of FIR and P.W.17 has deposed about the investigation done by him. Further, P.W.16 has deposed about the recovery of material objects. On perusal of evidence of P.W.1, 2, 10, 16 and 17, they reveal that the accused assaulted the victim with billhook and she sustained injuries, all over the body. Particularly, she sustained injuries on her head, which is vital part of the body and the prosecution also marked Ex.P7 and P8. On careful perusal of Ex.P7 and P8,



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they revealed that the victim sustained so many injuries and the evidence of P.W.2 has not been shaken through cross examination of the accused and the evidence of P.W.2 is cogent and cannot be discarded in any way. As far as offence under section 341 of IPC is concerned, the evidence of P.W.1 and 2 reveals that the accused waylaid the victim and thereby, wrongfully restrained her. As far as the offence under section 307 of IPC is concerned, the evidence of P.W.2 clearly shows that the accused, due to previous enmity, assaulted with billhook with intent to commit murder of the victim. The injury No.14 caused on the head of the victim is sufficient to cause the death in ordinary course. Therefore, the prosecution has amply proved the charges levelled against the accused, for the offence under sections 341 and 307 of IPC. The evidence of P.W.1 also corroborated by the medical evidence, therefore, the prosecution has proved the charges levelled against the accused. The trial Court also after elaborate discussion, correctly analysed the evidences adduced on either side and correctly convicted the accused. The appellate Court also after giving adequate reasons confirmed the judgement of trial court and thereby, there is no perversity or infirmity found on the judgment of Courts below.



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11. The learned counsel appearing for the petitioner relied on the judgement in Marimuthu Vs.State reported in (2019) 2 LW (Crl) 840. On careful perusal of the judgement, it will not be applicable to the present facts of the case, since it is related to offence under section 302 of IPC.

12. In view of the above said discussion, this Court is of the considered view that the prosecution has proved the charges levelled against the accused and thereby, the judgment and conviction passed by the trial Court and confirmed by the appellate Court are liable to be confirmed. Accordingly, the judgement and conviction are confirmed.

13. As far as the quantum of punishment is concerned, the trial trial Court sentenced the accused for the offence under section 307 of IPC to undergo 5 years of rigorous imprisonment and to pay fine of Rs.1,000/- in default to undergo 2 months simple imprisonment and sentenced the accused under section 341 of IPC, imposed fine of Rs.250 in default to undergo one week simple imprisonment.

14. The trial Court awarded reasonable punishment so far as the offence under section 341 of IPC is concerned. As far as punishment for the



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offence under section 307 of IPC is concerned, the trial Court awarded sentence of 5 years. The accused is none other than the husband of the victim and due to family dispute, already divorce was granted. According to the prosecution case, even after the divorce, he was ready to live with the victim but she refused. The accused also having tender age male child and the child is under the custody of the accused. The accused has no previous case and thereby, considering the age, family circumstances of the accused, this Court is inclined to reduce the sentence and thereby, it is appropriate to award a punishment of six months rigorous imprisonment to the accused for the offence under section 307 of IPC and to pay fine of Rs.1000/- and the fine amount was already paid.

15. In the result, Criminal Revision Petition is partly allowed and the judgement and conviction passed by the trial Court are confirmed. Sentence imposed on the accused for the offence under section 307 of IPC alone is modified to the effect that the accused is sentenced to undergo six months rigorous imprisonment and to pay fine of Rs.1000/-. The fine amount already paid. Sentence already undergone by the accused is set off in terms of section 428 of Cr.P.C. Bail bond if any executed by the accused shall stands cancelled. The trial Court is directed to secure the accused as per law.



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Consequently, the connected miscellaneous petitions are closed.

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Index : Yes / No

Internet : Yes / No

Neutral Citation Case :Yes/No

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To

1. The Additional District and Sessions Court (FTC), Thenkasi, Tirunelveli District.

2. The Additional Assistant Sessions Judge, Thenkasi, Tirunelveli District.



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pre-delivery order in
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