



Crl. R.C.(MD)No.315 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 11.07.2023

Delivered On : 20.07.2023

CORAM

THE HONOURABLE MR. JUSTICE P. DHANABAL

Crl. R.C.(MD)No.315 of 2019

1.Periyasamy

2.Vigneshwaran

.. Petitioners

Vs.

State rep. by
The Special Sub Inspector of Police,
Thuraiyur Police Station,
Thuraiyur,
Tiruchirappalli District.
(Crime No.561 of 2010).

.. Respondent

Prayer : This criminal revision case is filed under Sections 397 and 401 of Cr.P.C., to call for the records and set aside the judgment dated 19.01.2019 in Crl.A.No.106 of 2018 on the file of the learned Principal Sessions Judge, Tiruchirappalli, Tiruchirappalli District, confirming the conviction and sentence imposed upon the petitioners in C.C.No.61 of 2011 on the file of the learned Judicial Magistrate, Thuraiyur, Tiruchirappalli District dated 06.08.2018 and acquit the petitioners.

For Petitioners
For Respondent

: Mr.K.Prakash
: Mr.M.Sakthi Kumar
Government Advocate (Crl. Side)



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ORDER

This petition has been filed by the petitioners to set aside the judgment and conviction passed by the learned Principal Sessions Judge, Tiruchirappalli, Tiruchirappalli District in Crl.A.No.106 of 2018 on 19.01.2019, in confirming the judgment and conviction passed by the learned Judicial Magistrate, Thuraiyur, Tiruchirappalli District in C.C.No.61 of 2011 on 06.08.2018.

2.The prosecution case is that on 22.12.2010. at about 07.30 a.m., the defacto complainant Kangaraj went to his field and saw that branches of his neem trees were cut and the same was asked to one Periyasamy for that he stated that we only cut the trees and do what you can and abused him in filthy language and also assaulted with neem stick. Thereby, P.W.1 Kangaraj sustained injuries in hand and his left hand little finger was got fractured. The second petitioner/A2 also abused in filthy language and also assaulted with neem stick on his left shoulder, head and caused simple injuries. Further the petitioners/A1 and A2 caused criminal intimidation and thereby, the defacto complainant gave compliant as against the petitioners/A1 and A2 before the respondent police and the police registered FIR in Crime No.294(b), 323, 506(i) of IPC and thereafter, the Investigation Officer, PW.8 investigated the case and examined witnesses and collected documents and



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thereafter, filed a final report before the learned Judicial Magistrate, Thuraiyur, for the offence under Sections 294(b), 325, 506(i) of IPC as against the first petitioner/A1 and for the offence under Sections 294(b), 323, 506(i) of IPC as against the second petitioner/A2 and the learned Magistrate had taken cognizance for the offence under Sections 294(b), 325, 506(i) of IPC against the first petitioner/A1 and for the offence under Sections 294(b), 323, 506(i) of IPC against the second petitioner/A2 and furnished copies under Section 207 of Cr.P.C. Thereafter, charges were framed as against the first petitioner/A1 under Sections 294(b), 325, 506(i) of IPC and as against the second petitioner/A2 under Sections 294(b), 323 and 506(i) of IPC and the said charges were read over and explained to the accused and they denied the charges.

3.The prosecution had examined P.W.1 to P.W.8 and marked Exs.P.1 to P.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. During pending, trial charges under Section 324 of IPC was also framed against the accused and read over the charges and explained to the accused and they denied the charges.



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4. Upon perusing the oral and documentary evidence, the trial Court found the petitioners/A1 and A2 guilty for the offence punishable under Section 324 of IPC and sentenced them to undergo six months simple imprisonment each and to pay a fine of Rs.1,000/- each in default to undergo one month simple imprisonment by a judgment, dated 06.08.2018. The trial Court acquitted the first petitioner/A1 from charges under Sections 294(b), 325 and 506(i) of IPC and second petitioner/A2 from charges under Sections 294(b), 323 and 506(i) of IPC.

5. Aggrieved by the same, the petitioners/A1 and A2 preferred an appeal in Crl.A.No.106 of 2018 on the file of the learned Principal Sessions Judge, Tiruchirappalli District and the Appellate Court also dismissed the same, by a judgment dated 19.01.2019 and confirmed the conviction and sentence imposed by the trial Court.

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

The trial Court has erroneously appreciated the deposition of P.W.1, P.W. 2, P.W.7 who are the interested witness. The lower Court failed to consider that the copy of the accident register was not produced before the trial Court. There are so many contradictions and discrepancies in the prosecution case and thereby, the case



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of prosecution is highly doubtful and benefit of doubt has to be given to the petitioners/A1 and A2. But without considering the same, the trial Court convicted the petitioners/A1 and A2 and the appellate Court also without considering the same confirmed the judgment of conviction and sentence imposed by the trial Court.

7.The learned counsel appearing for the petitioners has argued that the lower Court has acquitted the first petitioner/A1 for the offences under Sections 294(b) and 506(i) of IPC and there is a finding that Section 325 of IPC has not been proved by the prosecution and as against the second petitioner/A2, the Courts below acquitted for the offences under Sections 294(b) and 506(i) of IPC and there is a finding that Section 323 of IPC has not been proved by the prosecution. However, the Courts below convicted the petitioners/A1 and A2 under Section 324 of IPC and sentenced them to undergo six months simple imprisonment each and imposed a fine of Rs.1,000/- each. Therefore the judgment and conviction passed by trial Court and confirmation by the appellate Court are liable to be set aside by allowing this revision petition.

8.The learned Additional Public Prosecutor has argued that there is a dispute between the parties with regard to cutting of neem trees branches and at the time, there was wordy altercation between them and thereby, both the petitioners/A1



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and A2 assaulted the victim with neem sticks and caused grievous injury. Thereby, the trial Court has correctly convicted the petitioners/A1 and A2 and imposed a punishment of six months simple imprisonment each and a fine of Rs.1,000/- each. As per wound certificate, Ex.P4, the injuries found in the left hand fourth finger of the victim is grievous in nature but unfortunately the prosecution failed to produce the X ray taken to victim while he was in treatment in Trichy hospital and thereby, the trial Court has convicted for the offence under Section 324 of IPC. Hence, the appeal 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 Principal Sessions Judge, Tiruchirappalli, Tiruchirappalli District in Crl.A.No.106 of 2018 on 19.01.2019, in confirming the conviction and sentence imposed by the learned Judicial Magistrate, Thuraiyur, Tiruchirappalli District in C.C.No.61 of 2011 on 06.08.2018 is sustainable according to law and facts.

10.In this case, according to the prosecution, on 22.12.2010 at about 07.30 a.m., when the defacto complainant was in his fields, he noticed cutting of neem trees. At that time, he asked the first petitioner/A1, that who cut the trees and for that



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there was wordy quarrel between them. At that time, both the petitioners/A1 and A2 abused in filthy language and assaulted the victim P.W.1 with neem sticks and thereby, the victim P.W.1 sustained injuries. The specific charge as against the first petitioner/A1 are that Sections 294(b), 325, 506(i) of IPC and as against the second petitioner/A2 are that Sections 294(b), 323, 506(i) of IPC. During pending trial, additional charges under Section 324 of IPC was also framed against both accused. In order to prove the case of prosecution, the prosecution has chosen to examine P.W.1 to P.W.8 and marked Ex.P1 to Ex.P7. In this case, P.W.1 is victim and he deposed that on 22.12.2010, at about 07.30 a.m., he went to his fields. At that time, he noticed that his neem trees was cut by somebody. Immediately, he asked the adjacent landlord Periyasamy, first petitioner/A1 about the cut of neem trees. For that the said Periyasamy, first petitioner/A1 stated that he had cut the trees and abused the victim P.W.1 in filthy language and there was some wordy altercation between them. Further the said Periyasamy, first petitioner/A1 assaulted the victim P.W.1 with stick and due to that, the left hand finger was fractured and damaged. Thereafter, the second petitioner/A2 Vigneshwaran assaulted him with stick on his left shoulder and head. Further they caused criminal intimidation.

11.From the evidence of P.W.1, it reveals that the first petitioner/A1 assaulted him with neem stick on his left hand and sustained injury on his left hand



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finger and the second petitioner/A2 assaulted him with stick on his left shoulder and the head.

12.Further, in order to prove the above said injuries, on the side of the prosecution, P.W.7, Doctor who treated the victim was also examined and he deposed that when he was working in the hospital at Thuraiyur Government Hospital at about 09.20 a.m., the victim came for treatment. At the time, the victim P.W.1 told that two known persons assaulted him and the Doctor had admitted him as 'in patient' and gave treatment. On examination, the Doctor found injuries on his left hand little finger and left hip. For taking X ray, he was referred to Government Hospital, Trichy and the Doctor, who treated Government Hospital, Trichy has given wound certificate stating that fracture in left hand fourth finger and the same is grievous. Unfortunately the prosecution has failed to produce X ray. The evidence of P.W.2 has also corroborated the evidence of P.W.1 with regard to the assault made by the petitioners/A1 and A2. The P.W.2 also stated that the first petitioner/A1 assaulted his brother on his left hand and shoulder and the second petitioner/A2 assaulted defacto complainant in head and left shoulder. Therefore, from the evidence of P.W.1, P.W.2 and P.W.7, it revealed that the petitioners/A1 and A2 assaulted the victim and caused injuries to him.



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13.As per evidence of P.W.1, the first petitioner/A1 assaulted with stick on his left hand finger and arm. The second petitioner/A2 assaulted with stick on left shoulder and head. As per evidence of P.W.7, the victim sustained injuries on his left hip and the left hand 4th finger was got fractured. Therefore the evidence of P.W.1 is not tallied with the Doctor evidence with regard to the injuries sustained by him. Further victim P.W.1 stated that A1 assaulted with stick on his left arm and left hand finger but not specifically stated about which finger. According to Ex.P4, wound certificate, it is seen that there are little finger laceration, contusion on left hip and contusion on left arm. According to the complaint, Ex.P1, the victim got injury on his left hand finger. Therefore, there are major discrepancies between the evidence of P.W.1 and medical evidence Ex.P4 with regard to injuries sustained by the P.W.1. However, the Ex.P4 and evidence of P.W.1 is cogent in respect of injuries on the left hand finger and arm. The Investigation Officer, P.W.8 deposed about the proper investigation conducted by him and other Mahazer witnesses. P.W.4 turned hostile and P.W.6 deposed about the preparation of observation mahazer and rough sketch of the Investigation Officer. The other witnesses also deposed about the prosecution case.

14.The main witness is victim P.W.1 and his evidence is cogent with regard to the A1 and injury sustained by him on his left hand finger. The trial Court



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has acquitted the petitioners/A1 and A2 for the offence under 294(b), 506(i) of IPC and came to the conclusion that the offence against the first petitioner/A1 under Section 325 of IPC has not been proved and the offence against the second petitioner/A2 under Section 323 of IPC has not been proved. Since the X ray was not produced before the trial Court, the trial Court came to the conclusion that the offence under Section 325 of IPC was not proved. Therefore, during trial, the trial Court has framed the charges under Section 324 of IPC and the same was explained to the petitioners/A1 and A2 and the petitioners/A1 and A2 denied the charges. Thereafter, the trial Court has convicted the petitioners/A1 and A2 under Section 324 of IPC. As far as the charges framed against the A1 and A2 are concerned, the trial Court acquitted them from all the charges framed against them except under Section 324 of IPC.

15.As far as Section 324 of IPC is concerned, the injured victim himself stated that the first petitioner/A1 assaulted him with stick on his left arm and left hand finger and that the second petitioner/A2 assaulted him with stick on his left shoulder and head. But P.W.7 has stated in Ex.P4 as follows:

- “(i)little finger laceration.*
- (ii)contusion on left hip.*
- (iii)contusion on left arm.”*



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16.As per X ray taken in Government Hospital, Trichy, the injury is grievous but the said X ray has not been produced before the trial Court and also not examined the Doctor who took X ray to the victim. Therefore, from the evidence of victim P.W.1 and P.W.7, it is clear that the victim P.W.1 sustained injuries only on left little finger, left hip and left arm and no evidence with regard to the assault on shoulder and head. As per evidence of the victim P.W.1, the first petitioner/A1 assaulted him with stick on left hand and the second petitioner/A2 assaulted with stick on his left shoulder and head but the evidence of Ex.P7 and Ex.P4 reveals no injury was found on the left shoulder and head of the P.W.1. Therefore, the offence under Section 324 of IPC as against the second petitioner/A2 is highly doubtful. The charges under Section 324 of IPC is with regard to injuries caused on the victim P.W.1 on his little finger and his left shoulder. But there is no reference in the wound certificate, Ex.P4 with regard to injury on the left shoulder and head of the victim. Therefore, the offence under Section 324 as against the second petitioner/A2 has not been proved by the prosecution. Had the A2 assaulted the P.W.1 on his left shoulder and head with stick, then he would have got injury on his head and left shoulder, but as per evidence of Doctor P.W.7 and wound certificate Ex.P4, there is no any reference about the injuries on the head and left shoulder and not even mentioned about the pain over the head and left shoulder. Therefore, the available evidences are not sufficient to prove the charge under Section 324 of IPC as against A2. The



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prosecution also failed to seize the alleged stick used for the occurrence. Hence, it is unsafe to convict the accused no.2 with available evidence and he is entitled for acquittal. But the trial Court without analyzing the same, convicted for the offence under Section 324 of IPC as against the second petitioner/A2. The appellate Court also failed to notice the said discrepancy which affect the core of prosecution. Hence, the conviction as against A2 is not sustainable.

17.As far as the first petitioner/A1 is concerned, the evidence of P.W.1 does not disclose the specific finger in which he sustained injury, but Ex.P1 complaint and wound certificate, Ex.P4 have revealed that his little finger was damaged. Though the P.W.1 specifically did not state about which finger was fractured, and as per Doctor report from Trichy reveals that the fourth finger was fractured, these are all minor discrepancies and no way affect the case of prosecution. The complaint, Ex.P1 is the first information and immediately the victim went to Government Hospital, Thuraiyur and admitted as 'inpatient' through Ex.P4, the said two records clearly shows that the little finger of left hand of victim was injured but not produced the X ray. The victim also stated that his left finger got injured due to the assault made by A2 with neem stick and thereby, the offence under Section 324 of IPC as against the first petitioner/A1 has been proved by the prosecution. The trial Court also convicted the petitioners/A1 and A2 for the



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offences under Section 324 of IPC and the conviction as against the first petitioner/A1 under Section 324 of IPC is confirmed. The conviction as against the second petitioner/A2 for the offence under Section 324 of IPC has not been proved. Thereby conviction as against A2 is not sustainable and the judgment and conviction as against A2 are liable to be set aside and the second petitioner/A2 is entitled for acquittal.

18.Now coming to the quantum of the sentence, the trial Court convicted the the first petitioner/A1 and imposed sentence of six months simple imprisonment each and fine of Rs.1,000/- each. As per Section 324 of IPC, the punishment is up to three years or with fine or both. The Ist accused is aged about 60 years and no other previous cases is pending against him.

19.Considering the nature of offence and age of the petitioner, this Court is inclined to award lesser punishment and punishment awarded by trial Court is too high. The first petitioner/A1 was already undergone custody for seven days during trial and the said period of seven days undergone by the first petitioner/A1 can be awarded as sentence to him and also to pay a fine of Rs.1,000/- and the fine amount was already paid. Thus the point is answered



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20. In the result, the Criminal Revision Petition is partly allowed and the judgment and the conviction passed as against the second petitioner/A2 in C.C.No.61 of 2011 by the learned Judicial Magistrate, Thuraiyur, Tiruchirappalli District confirmed in Crl.A.No.106 of 2018 on the file of the Principal Sessions Judge, Tiruchirappalli District are set aside and the A2 is acquitted from the charge under Section 324 of IPC and he be set at liberty subject to other cases if any and the judgment and conviction passed as against the first petitioner/A1 is confirmed and sentence passed by the trial Court is modified to the effect that first petitioner/A1 is sentenced to undergo seven days imprisonment and to pay a fine of Rs.1,000/- for the offence under Section 324 of IPC. The fine amount was already paid and the period of incarceration already undergone by the first petitioner/A1 is to set off under Section 428 of Cr.P.C. The bail bond if any executed by the petitioners/A1 and A2 shall stand cancelled. The fine amount if any paid by the second petitioner/A2 shall be refunded to him as per law.

20.07.2023

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

- 1.The Principal Sessions Judge, Tiruchirappalli, Tiruchirappalli District.
- 2.The Judicial Magistrate, Thuraiyur, Tiruchirappalli District.
- 3.The Superintendent of Prison,
Central Prison,
Tiruchirappalli.
- 4.The Special Sub Inspector of Police,
Thuraiyur Police Station,
Thuraiyur,
Tiruchirappalli District.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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P.DHANABAL, J.

Mrn

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