



Crl.R.C(MD)No.45 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.06.2023

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C(MD)No.45 of 2019

1.P.Kamaraj
2.K.Karthick

... Petitioners/Appellants/
Accused Nos.1 and 2

Vs.

State represented by,
The Inspector of Police,
Ponmalai Police Station,
Trichy District.
(Crime No.192 of 2015).

... Respondent/
Respondent/Complainant

PRAYER: Criminal Revision Case filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the records and set aside the Judgment passed by the learned Principal Sessions Judge, Trichy, dated 31.07.2018 in C.A.No.69 of 2017, confirming the Judgment dated 24.07.2017 in C.C.No.77 of 2016 on the file of the learned Judicial Magistrate No.V, Trichy and acquit the petitioner.

For Petitioners : Mr.T.J.Ebenezer Charles

For Respondent : Mr.K.Sanjai Gandhi
Government Advocate (Crl. Side)



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ORDER

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This revision has been filed to set aside the Judgment made in C.A.No.69 of 2017, dated 31.07.2018 on the file of the learned Principal Sessions Judge, Trichy, confirming the Judgment made in C.C.No.77 of 2016 dated 24.07.2017 on the file of the learned Judicial Magistrate No.V, Trichy.

2.The case of the prosecution is that on 30.04.2015 at about 05.30 p.m., when Accused Nos.1 and 2 were cutting the thorn plants, one of the victims questioned the same, since the particular place is under dispute before the trial Court. Therefore, the first and second accused scolded the victim with filthy language and assaulted him on his head with an iron rod and also a wooden log. They also assaulted his father, who rushed to the place of occurrence, after hearing the noise. At that time, Accused Nos.3 and 4 came to the scene of crime, and they also assaulted the victim with a wooden log. Thereafter, they also threatened him with dire consequences and flood away from the scene of crime.



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3.On the complaint lodged by the victim/P.W.1, the respondent registered the F.I.R in Crime No.192 of 2015 for the offences under Sections 294(b), 324 and 506(ii) of I.P.C. After completion of the investigation, the respondent filed a final report and the same has been taken cognizance by the trial Court in C.C.No.77 of 2016 on the file of the learned Judicial Magistrate No.V, Trichy.

4.On the side of the prosecution, they had examined P.W.1 to P.W.10 and marked Ex.P.1 to Ex.P.12. The prosecution also marked material objects M.O.1 and M.O.2 and on the side of the accused, no one was examined and no documents were produced.

5.On perusal of the oral and documentary evidence, the trial Court found the first accused guilty for the offence under Section 294(b) of I.P.C and found the second accused guilty for the offences under Section 294(b) and 324 of I.P.C and Accused Nos.3 and 4 were acquitted from all the charges and sentenced Accused Nos.1 and 2 to undergo three months Simple Imprisonment each



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and to pay a fine of Rs.1,000/- each, in default to undergo 15 days Simple Imprisonment each for the offence punishable under Section 294(b) of I.P.C. The second accused was sentenced to undergo two years Simple Imprisonment and to pay a fine of Rs.4,000/-, in default to undergo six months Simple Imprisonment. In respect of the second accused, both sentences shall run concurrently. Aggrieved by the same, Accused Nos.1 and 2 have preferred C.A.No.69 of 2017 on the file of the learned Principal Sessions Judge, Trichy. The Appellate Court dismissed the appeal and confirmed the conviction and sentence imposed by the trial Court. Hence, the present revision.

6.Pending the revision, the first accused died on 22.05.2021 and the Death Certificate was also produced before this Court. Hence, the entire charges are abated as against the first petitioner.

7.The learned counsel appearing for the petitioners would submit that no witness had spoken about the place of the alleged crime committed by the accused. The Doctor, who treated



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P.W.1 and P.W.2, was examined as P.W.9. The evidence of the Doctor is completely contradictory to the evidence of P.W.1 and P.W.

2. Further, as far as the overt act is concerned, there is absolutely no specific overt act as against the second accused and as such, the prosecution miserably failed to prove its case beyond any doubt. The learned counsel further submitted that when the trial Court found Accused Nos.3 and 4 not guilty, the second accused also stood on the very same footing and as such, he is also acquitted for the same benefit as that of Accused Nos.3 and 4.

8.Per contra, the learned Government Advocate (Criminal Side) appearing for the respondent would submit that both the Courts below concurrently held that the second petitioner was found guilty for the offences punishable under Sections 294(b) and 324 of I.P.C. He also endorsed the fact that the first accused died on 22.05.2021. Insofar as Accused Nos.3 and 4 are concerned, they were acquitted by the trial Court and the prosecution did not file any appeal as against the order of acquittal.

9.Heard the learned counsel appearing on either side and perused the materials available on record.



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10.It is seen from the records that on 30.04.2015 at about 05.30 p.m., when Accused Nos.1 and 2 were cutting thorn plants in the place which is under civil dispute between both the family members, it was questioned by P.W.1. Immediately, they scolded him with filthy language and also attacked him on his head with an iron rod and wooden log. After hearing the noise, P.W.2 came to the place of occurrence and he was also attacked by them with an iron rod and wooden log. After their noise, Accused Nos.3 and 4 also came to the place of occurrence and they also attacked the victims P.W.1 and P.W.2 with a wooden rod. According to P.W.1, Accused Nos.2 and 3 attacked him with an iron rod on his head. Therefore, he sustained injury on his head. Immediately, after occurrence P.W.1 and P.W.2 were taken to hospital and P.W.9 treated them.

11.On perusal of the evidence of P.W.9 categorically deposed that P.W.1 sustained injuries at his wrist and right knee. She further deposed that P.W.1 did not sustain any fractures or injuries and the sustained by him opined as simple injuries. P.W.2 another victim was also treated by her and stated that he sustained



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injuries on his chest and right knee and both the injuries are also opined as simple injuries. The wound certificates were marked as Ex.P.7 and Ex.P.8. Therefore, the injuries sustained by P.W.1 and P.W.2 are not corroborated by P.W.9. That apart, P.W.1 categorically deposed that he was attacked by Accused Nos.2 and 3 by iron rod and wooden log on his head. However, the trial Court acquitted Accused No.3 for the reason that he had no specific overt act. As rightly pointed out by the learned counsel appearing for the petitioners, no witnesses had spoken about the place of occurrence. All the witnesses had spoken that the place of occurrence is under civil dispute between the families. In this regard, it is relevant to extract the provision under Section 294(b) of IPC, which reads as under:

"294. Obscene acts and songs —Whoever, to the annoyance of others—

(a) does any obscene act in any public place, or

(b) sings, recites or utters any obscene song, ballad or words, in or near any public place, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both."



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Admittedly, Section 294(b) of I.P.C is not attracted as against the second petitioner.

12.It is relevant to rely upon the judgment of this Court reported in **1996(1) CTC 470** in the case of **K.Jeyaramanuju Vs. Janakaraj & anr.**, which held as follows :-

"To prove the offence under Section 294 of IPC mere utterance of obscence words are not sufficient but there must be a further proof to establish that it was to the annoyance of others, which is lacking in the case."

The above judgment is squarely applicable to the present case and the allegations are frivolous in nature and the petitioner need not go for the ordeal of trial.

13.Further, the prosecution also failed to prove the offence under Section 324 of I.P.C as against the second petitioner. Therefore, the prosecution failed to bring the charges under Section 294(b) and 324 of I.P.C to home as against the second accused. Unfortunately, the appellate Court, without even going through the



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depositions, mechanically confirmed the conviction and sentence imposed by the trial Court. Therefore, both Judgments are liable to be interfered with and the second petitioner is acquitted from all the charges.

14. Accordingly, the Criminal Revision Case is allowed and the Judgment made in C.A.No.69 of 2017, dated 31.07.2018 on the file of the learned Principal Sessions Judge, Trichy, confirming the Judgment made in C.C.No.77 of 2016 dated 24.07.2017 on the file of the learned Judicial Magistrate No.V, Trichy, are set aside. The second petitioner is acquitted. Bail bond if any executed by the second petitioner shall stand cancelled and a fine amount if paid is ordered to be refunded to the second petitioner forthwith.

12.06.2023

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

- 1.The Principal Sessions Judge,
Trichy.
- 2.The Judicial Magistrate No.V,
Trichy.
- 3.The Inspector of Police,
Ponmalai Police Station,
Trichy District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.K.ILANTHIRAIYAN, J.

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Order made in
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