



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	14/02/2023
Date of Pronouncement	10/03/2023

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VANCrl.RC(MD)No.469 of 2022andCrl.MP(MD)Nos.5980 and 5982 of 2022

1.Ganesan

2.Subramainan

3.Pauldurai

: Petitioners/Appellants/
A1 to A3

Vs.

The State rep. by
Inspector of Police,
Manur Police Station,
Tirunelveli District.
(Crime No.71 of 2008): Respondent/Respondent/
Complainant

Prayer: Criminal Revision is filed under Section 397 r/w 401 of the Criminal Procedure Code, against the judgment of conviction, dated 21/03/2022 passed in Crl.A No.22 of 2021 by the I Additional District and Sessions Judge, Tirunelveli, by confirming the order of conviction and sentence passed by the Judicial Magistrate Court No.V, Tirunelveli, in CC No.316 of 2009, dated 11/02/2021 and set aside the same as illegal and acquit the petitioner.

For Petitioners : Mr.T.R.Subramaniam
(Legal Aid Counsel)For Respondent : Mr.R.Suresh Kumar
Government Advocate
(Criminal side)

**O R D E R**

WEB COPY This criminal revision has been filed against the judgment of conviction, dated 21/03/2022 passed in Cr1.A No.22 of 2021 by the I Additional District and Sessions Judge, Tirunelveli, confirming judgment passed by the Judicial Magistrate No.V, Tirunelveli, in CC No.316 of 2009, dated 11/02/2021.

2.The case of the prosecution in brief:-

The de-facto complainant was living in Ukkirankottai and doing carpeting work. The accused are his neighbours. Some 4-1/2 years prior to the occurrence, when he was white washing his daughter's house, at that time, the first accused Ganesan objected and picked up quarrel. Over the above said issue, the accused Ganesan, Subramanian and Pauldurai assaulted him with stick and thereby caused grievous injuries. On the basis of the complaint given by the de-facto complainant, a case was registered in Crime No.71 of 2008 for the offences punishable under sections 294(b), 323 and 506(ii) IPC. After completing the formalities of the investigation, final report was filed in CC No.316 of 2009 before the Judicial Magistrate No.V, Tirunelveli. After completing 207 Cr.P.C proceedings, framed the charges for the offences under sections 294(b), 325 and 506(ii) IPC.



3. During the trial process, on the side of the prosecution, 10 witnesses have been examined and 9 documents marked. On the side of the accused, no oral or documentary evidence was adduced.

4. **The case of the prosecution, as narrated through the prosecution witnesses:-**

PW1 was living in Ukkirankottai and doing Carpeting work. The accused are his neighbours. Some 4-1/2 years prior to the occurrence, he was white washing his daughter's house. At that time, the first accused Ganesan objected and picked up quarrel. Subsequently, he also filed a suit against the above said Ganesan in the Court. So notice was issued to the above said Ganesan. Over the above said issue, in the morning, the accused Ganesan, Subramanian and Pauldurai assaulted him with stick. In the above said attack, he sustained injuries and his right hand fractured.

5. On hearing the noise, PW2 his daughter came to that place and shouted the accused persons. So they ran away from the place occurrence. He was admitted in the hospital.



6.PW6-Medical Officer was working on 30/03/2008 attached to Tirunelveli Government Medical College Hospital, at about 08.40 am, PW1 was brought by his son for treatment. On examination, PW1 told her that he was assaulted on the same day at about 07.30 am by four known persons. On further examination, he found pain on the right forehead. X-ray was taken and it has shown fracture on the ulna bone and fracture in the 4th right hand finger, so also on the left hand 4th finger fracture was found. On intimation from the hospital, the Head Constable attached to Manur Police Station, Tirunelveli District recorded the statement of PW1 and registered a case in Crime No.71 of 2018 for the offences punishable under sections 294(b), 323 and 506(ii) IPC.

7.PW8, who was working as Inspector of Police, attached to Manur Police Station, took up the investigation and recorded the statement of the witnesses, visited the place of occurrence, prepared parvai mahazar and rough sketch. Later, he was transferred.

8.Further investigation was undertaken by PW10. He again re-examined the witnesses. They have also stated the very same things as stated before PW8. In the meantime, the accused persons were released on anticipatory bail. He collected the medical records and after getting the medical



opinion, completed the investigation formalities and filed a final report, on 02/05/2008 for the offences punishable under sections 294(b), 323 IPC @ 294(b), 325 and 506(i) IPC.

9.PW2 as stated above is the daughter of PW1. She corroborated PW1 over the above said occurrence.

10.PW3 is the son-in-law of PW1 and did not support the case of the prosecution. He remained hostile.

11.PW4 is the son of PW1. At that time of occurrence, he was not available in that place. On information, he came to the place of occurrence and took PW1 for medical examination.

12.PW5 was another son of PW1. He also corroborated PW1 over the occurrence.

13.PW7 who stated to have signed in the parvai mahazar and rough sketch, but turned hostile.

14.With the above said evidence, the prosecution evidence was over.



15.The accused were put to section 313 Cr.P.C proceedings. They denied the truth of the facts deposed by the prosecution witnesses.

16.At the conclusion of the trial process, the trial court convicted A1 to A3 for the offence under section 325 IPC and sentenced them to undergo one year simple imprisonment and imposed a fine of Rs.5,000/- with default clause. But all the accused were acquitted from the charges framed under sections 294(b) and 506(ii) IPC.

17.Against the judgment of conviction and sentenced passed under section 325 IPC, A1 to A3 have preferred appeal before the appellate court namely I Additional District and Sessions Judge, Tirunelveli, which was taken in CrI.A No.22 of 2021. Finding that no interference is required in the order of the trial court, it was dismissed, confirming the conviction and sentence.

18.Against which, this criminal revision has been preferred by the petitioners/A1 to A3.

19.Since, this is the revision against the concurrent findings of the trial court as well as the appellate court, the power of this court is very limited. Unless the petitioners are able to establish that the trial



court as well as the appellate court committed irregularity or illegality, either in the process of trial herein or reading or misreading or non-reading of the evidence.

20. Now let us go to the evidence of PW6, the Medical Officer, who examined PW1 regarding the injury. She has stated that on examination by subjecting PW1 to X-ray, she found three grievous injuries namely fracture in the right Ulna bone, fracture in the 4th right hand finger, fracture in the 4th left hand finger. From this, it is seen that PW1 suffered grievous injuries in his right and left hands.

21. At this juncture, defence has been taken by the petitioners that since the X-ray, which was taken during the course of examination, is not produced or marked on the side of the prosecution, it cannot be stated that PW1 suffered grievous injuries.

22. No doubt that the X-ray was neither collected nor marked during the trial process. But the medical evidence is very clear to the effect that when the X-ray was examined, they found the above said three fractures. When she was subjected to cross examination, it was not suggested that without producing the X-ray, her evidence is not reliable.



23.PW9 was working as Civil Surgeon. At the relevant point of time, he was working in the X-ray Department. He examined the X-ray bearing No.1806. At that time, he found the above said fractures. But the X-ray was destroyed. They could not produce the X-ray. But no cross examination was made by the accused on this aspect to him.

24.It is seen that because of non-collection of the X-ray mentioned by the Investigating Officer, the document was found destroyed. Being the Medical Officer is not associated with any of the parties namely either for the accused or with the prosecution, their evidence cannot be disbelieved, simply because the X-ray has not been produced. The explanation offered by PW9 on this aspect is bound to be accepted, since no doubtful circumstance has been brought on record by the accused to doubt the explanation. Now it has been clearly established by the prosecution that PW1 suffered more than one grievous injuries.

25.Now let us go to the occurrence.

26.As stated above, PW1 was very clear in his evidence that he was assaulted by all the accused persons with wooden stick.



27.No doubt that PW1 was not very particular about the place of assault. But he was not subjected to cross examination by the accused in spite of opportunity. Why he was not cross examined is not explained by the accused.

28.PW2 is the daughter of PW1, as mentioned above corroborated the evidence of PW1. She has stated that on the particular date of the occurrence at about 07.00 am, A1 came to their house and abused PW1 with filthy language in a drunken mood. PW1 was assaulted by Pauldurai and Subramanian with stick.

29.PW5 was another son of PW1. He has also corroborated the evidence of PW1 with regard to the occurrence. During his cross examination, no material contradiction has been brought on record. Except stating that before the Investigating Officer, he has not stated that he witnessed the occurrence. So the evidence of PW1 remains unchallenged. So the evidence of PW1, PW2 and PW5 established to the effect that PW1 was assaulted by the accused.

30.The defence has not successfully created any doubt over the veracity of the witnesses. So there is no question of misreading or non-reading of the evidence either by the trial court or the appellate court.



31. During the course of cross examination, it was suggested to PW8 that on the basis of the complaint given by A2, a case was registered against PW1 to PW3. But further particulars are not available. If it is a case and counter case, the defence ought to have raised the proper plea before the appellate court. Whether there was any violation of Police Standing Order 588-A was also not brought on record by the defence.

32. Reading of the trial court as well as the appellate court order shows that PW1 was not cross examined, either on the date of his chief examination or subsequently. A recall application was filed only in 2018 after a lapse of six years. But however, the petition was allowed by the trial court, But PW1 could not be brought before the court for cross examination. There is no explanation either by the trial court or before the appellate court that PW1 was not alive. Now whatever, it may be, now the prosecution has established the occurrence and the injuries through the cogent evidence. Now having failed even to cross examine PW1 and brought on record, the relevant facts, either at the time of trial court or before the appellate court, now this is too late for the petitioners to raise this point before this court. So, I find no merit in this revision.



33. In the result, this criminal revision is dismissed. But however, the sentence alone is modified to 3 months simple imprisonment for the offence under section 325 IPC. In respect of fine amount, same is confirmed. The period of sentence, if any, already undergone by the revision petitioners/accused shall be given set off under Section 428 of Cr.P.C. Consequently, connected Miscellaneous Petitions are closed.

10.03.2023

Index:Yes/No
Internet:Yes/No
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To,

1. The I Additional District & Sessions Judge,
Tirunelveli.
2. The Judicial Magistrate Court No.V,
Tirunelveli.
3. The Inspector of Police,
Manur Police Station,
Tirunelveli District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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G.ILANGOVAN, J

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10/03/2023