



Crl.R.C(MD)No.2 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.03.2023

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C(MD)No.2 of 2018

M.Sampamoorthy

... Revision Petitioner/
Appellant/Accused

Vs.

The State of Tamil Nadu,
Represented by the Inspector of Police,
Bhudalur Police Station,
Thanjavur District.
(Crime No.167 of 2010).

... Respondent/
Respondent/Complainant

PRAYER: Criminal Revision Case filed under Section 397 & 401 of the Code of Criminal Procedure, to call for the records relating to the Judgment dated 23.06.2017 made in C.A.No.48 of 2016 on the file of the Principal District Court, Thanjavur District, modifying the Judgment dated 15.09.2016 made in S.C.No.269 of 2012 on the file of the Additional Assistant Sessions Court, Thanjavur District and set aside the same and acquit the revision petitioner/accused from all charges levelled against him.

For Petitioner : Mr.R.Suresh Kumar

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



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ORDER

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The revision has been filed to set aside the Judgment made in C.A.No.48 of 2016, dated 23.06.2017, on the file of the Principal District Court, Thanjavur District, modifying the Judgment made in S.C.No.269 of 2012, dated 15.09.2016, on the file of the Additional Assistant Sessions Court, Thanjavur District.

2.The case of the prosecution is that on 28.09.2010 at about 09.15 p.m., when the accused was taking tiffin at Thalapathi Tiffin centre, there was a quarrel and as such, it was informed to P.W.1. Thereafter, he went to the mess and questioned about the same. At that time, the petitioner abused P.W.1 with filthy language and attacked him with Dosa Tawa on his head. Therefore, P.W.1 sustained injuries. Immediately, he was taken to the Hospital, where, the accident register was recorded and referred to the Government Hospital, Tanjore. After recording his statement, F.I.R has been registered as against the petitioner for the offences under Sections 294(b), 332, 307 and 506(i) 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.



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

4.On perusal of the oral and documentary evidence, the trial Court found the petitioner guilty for the offences under Sections 294(b), 332 and 324 of I.P.C and for the offence under Section 294(b) of I.P.C is concerned, he was sentenced to undergo one month Simple Imprisonment and imposed a fine of Rs.500/- and in default, he shall undergo 12 days Simple Imprisonment, for the offence under Section 332 of I.P.C is concerned, he was sentenced to undergo two years Simple Imprisonment and imposed a fine of Rs.1,000/- and in default, he shall undergo three months Simple Imprisonment and for the offence under Section 324 of I.P.C is concerned, he was sentenced to undergo three years Simple Imprisonment and also imposed a fine of Rs.2,000/- and in default, he shall undergo four months Simple Imprisonment and acquitted him for the offence under Sections 307 and 506(i) of I.P.C. Aggrieved by the same, the petitioner preferred an appeal in C.A.No.48 of 2016 on the file of the Principal District Court, Thanjavur District and in the appeal, the Appellate Court confirmed



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the sentence for the offence under Section 294(b) of I.P.C and reduced the sentence for the offence under Section 324 of I.P.C from three years Simple Imprisonment to six months Simple Imprisonment and increased the fine amount from Rs.2,000/- to Rs. 3,000/-. In so far as the conviction under Section 332 of I.P.C, the Appellate Court acquitted him. Aggrieved by the same, the present Revision.

5.The learned counsel appearing for the petitioner would submit that there are contradictions between the prosecution witnesses and, as such, the respondent failed to prove its case beyond any doubt. The victim was examined as P.W.1, and he deposed that he received a phone call from Thalapathi Tiffin centre and thereafter, he went to Thalapathi Tiffin centre. He also questioned the accused why do you quarrel with others, for which, the petitioner attacked him with Dosa Tawa. Therefore, he sustained injuries on his head. Whereas no one was spoken that who informed him about the quarrel. Admittedly, P.W.1 was the driver in the police department and as such, he was not all engaged to enquire about the complaint received by phone. That apart, in the accident register, he said that he was attacked by a known person. Though the occurrence had taken place on 28.09.2010 at about 09.15 p.m.,



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F.I.R was registered only on the next day, that too only at 03.00 p.m. The accident register was recorded on 28.09.2010 at about 09.15 p.m itself. In fact, it was duly informed to the respondent Police and even then, the respondent did not register any F.I.R.

6.The learned counsel appearing for the petitioner would further submit that it is not at all possible to hit P.W.1 by Dosa Tawa, and it is normally weighing more than 3 to 4 kgs and as such, a false case has been foisted as against the petitioner due to previous motive. P.W.1 to P.W.4 are completely contradictory to each other, and it creates doubt over the entire case of the prosecution. Though the Doctor recorded the accident register on 28.09.2010 itself, no F.I.R was registered on that day. It was registered only on 29.09.2010 at about 03.00 p.m. The prosecution failed to explain the delay in registering the F.I.R. even after receiving information from the Hospital as alleged by P.W.5, who had brought the victim to the Hospital.

7.Per contra, the learned Government Advocate (Criminal Side) appearing for the respondent would submit that P.W.1, while working as a Head Constable/driver in the police station, received a phone call and immediately, he went to



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Thalapathy Tiffin Centre. He had seen that the petitioner quarrelled with other customers. When it was questioned by P.W.1, he abused him with filthy language and attacked him with Dosa Tawa, due to which, he sustained grievous injury on his head. Immediately, P.W.5 had taken him to the Hospital, and he was given first aid thereafter, he was referred to the Government Hospital, Tanjore. Though the injury sustained by him was small in nature, the petitioner had committed an assault on the victim, who was the Head Constable at the time of the crime. Therefore, the trial Court rightly convicted the petitioner for the offences under Section 294(b), 332 and 324 of I.P.C, however, the Appellate Court modified the same and as such, it does not require any interference by this Court.

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

9.On 28.09.2010, at about 09.15 p.m., when P.W.1 came to Thalpathi Tiffin Centre, where the petitioner was quarrelling with other customers, he questioned him about the quarrel. The petitioner immediately had taken Dosa Tawa and hit P.W.1 on his head. Due to which, he sustained an injury, and was immediately taken to the Hospital by P.W.5. P.W.7, who had treated



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the victim and recorded the accident register, which was marked as Ex.P.4.

10.On perusal of Ex.P.4, P.W.1 stated that he was attacked by one known person, while he was coming out from Thalapathi Tiffin Centre. It was recorded at about 09.15 p.m on 28.09.2010. P.W.1 was brought to the Hospital by P.W.5, who was also taking tiffin in Thalapathi Tiffin Centre at the time of occurrence. However, he did not even whisper that the petitioner quarrelled with other customers in Thalapathi Tiffin Centre. According to P.W.1, he had received a phone call from Thalapathi Tiffin Centre and thereafter, he went to the Police Station for enquiry.

11.Admittedly, P.W.1 was working as a driver with the same police station and if at all any phone call was received for the untoward incident, P.W.1, who was a driver at that juncture, would not have been allotted duty to conduct enquiry. That apart, if at all any quarrel in Thalapathi Tiffin Centre with another person, the prosecution witnesses deposed that there was a quarrel between the petitioner and other customers. There is no iota of evidence produced by the prosecution that already the petitioner quarrelled



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with another customer and the same was informed to the respondent police station and on receipt of a such phone call, P.W.1 was engaged to conduct enquiry. In fact, the owner of Thalapathi Tiffin Centre was examined as P.W.2. He deposed that at the time of taking tiffin by the petitioner, P.W.1 came to the Tiffin Centre and there was a quarrel between the petitioner and P.W.1. Due to the said quarrel, he had sustained injury on his head and immediately, he was taken to the Hospital by P.W.5. It seems that there was no quarrel between the petitioner and any one of the customers. P.W.1 being the driver, went to Thalapathi Tiffin Centre for taking Tiffin. At that juncture, there was a quarrel between them and as such, the petitioner had beaten him with Dosa Tawa and as such, he sustained injury on his head. It is also seen that though P.W.7 had recorded the accident register and reached the police station on the same day, the respondent failed to register any F.I.R on the same day. It was registered only on the next day, ie., on 29.09.2010 at about 03.00 p.m. However, the wound certificate, which was marked as Ex.P.7 revealed that the injuries sustained by P.W.1 were simple in nature.



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12.Considering the above facts and circumstances, though this Court does not incline to set aside the conviction, inclined to reduce the sentence.

13.In view of the above, the conviction imposed by the Appellate Court for the offences under Sections 294(b) and 324 is hereby confirmed. Insofar as the sentence imposed by the Appellate Court is hereby modified to the period which was already undergone by the petitioner. Accordingly, this Criminal Revision Case is partly allowed.

27.03.2023

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

- 1.The Principal District Court,
Thanjavur District.
- 2.The Additional Assistant Sessions Court,
Thanjavur District.
- 3.The Inspector of Police,
Bhudalur Police Station,
Thanjavur District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.K.ILANTHIRAIYAN, J.

ps

Order made in
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