



Crl.R.C.(MD)No.165 of 2014

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.03.2023

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THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C.(MD)No.165 of 2014

Umar Bharuk

... Petitioner

Vs.

State through
The Inspector of Police
Arumuganeri Police Station,
Thoothukudi district.

... Respondent

PRAYER : Criminal Revision filed under Section 397 r/w 401 of the Criminal Procedure Code, to call for the records connected with C.A.No. 91 of 2013 on the file of the learned 2nd Additional Sessions Judge, Thoothukudi dated 13.12.2013 in C.C.No.281 of 2008 on the file of the learned Judicial Magistrate, Thiruchendur dated 10.10.2013 and set aside the conviction and sentence imposed against the petitioner in C.C.No. 281 of 2008 by the learned Judicial Magistrate, Thiruchendur, subsequently confirmed by the learned 2nd Additional Sessions Judge in C.A.No.91 of 2013 dated 13.12.2013.



Crl.R.C.(MD)No.165 of 2014

For Petitioner : Mr. R.Alagumani
For R1 : Mr.K.Sanjai Gandhi
Government Advocate (Crl. Side)

ORDER

This Criminal Revision Case has been filed to set aside the conviction and sentence imposed in C.A.No.91 of 2013 on the file of the learned 2nd Additional Sessions Judge, Thoothukudi dated 13.12.2013 confirming the order in C.C.No.281 of 2008 on the file of the learned Judicial Magistrate, Thiruchendur dated 10.10.2013.

2.The case of the prosecution is that on 23.07.2008 at about 09.30 pm., when the victim was in Kayalpattinam beach, the accused persons asked him that did he tease the ladies in their street and abused him in filthy language. Thereafter, they fisted his face and A1 beaten him with wooden log on his head and A2 assaulted the victim with iron chain and caused blood injuries. Thereafter, both the accused threatened the victim



CrI.R.C.(MD)No.165 of 2014

not to disclose the assault to anybody. On the complaint given by the victim, the respondent police registered FIR in Cr.No.243 of 2008 for the offence punishable under Sections 204(b), 323, 324 and 506(ii) IPC. After completion of investigation, the respondent police filed the final report the same has been taken cognizance in C.C.No.281 of 2008 by the learned Judicial Magistrate, Thiruchendur. In order to prove the charges, the prosecution examined P.W.1 to P.W.9 and marked Ex.A.1 to Ex.A7. On the side of the accused, no one was examined and no document was marked. On perusal of oral and documentary evidence, the trial Court found the accused persons guilty for the offence punishable under Sections 323 and 324 IPC and sentenced the first accused to undergo six months rigorous imprisonment and to pay a fine of Rs.500/- in default to undergo two months simple imprisonment for the offence punishable under Section 323 IPC and sentenced him to undergo one year rigorous imprisonment and to pay a fine of Rs.1,000/- in default to undergo three months simple imprisonment for the offence under Section 324 IPC and sentenced the second accused to undergo six months rigorous imprisonment and to pay a fine of Rs.500/- in default to undergo two months simple imprisonment for the offence punishable under Section



323 IPC. Aggrieved over the same, the first accused preferred an appeal before the appellate Court. The second accused in this case died. The appellate Court dismissed the appeal and confirmed the conviction and sentence imposed by the trial Court as against the petitioner herein. Hence, the present revision.

3.The learned counsel appearing for the petitioner would submit that the victim was examined as P.W.3 and other witnesses are hear say witnesses and there is no eye witness to the occurrence. Due to previous motive, a false complaint was foisted as against the petitioner. Even according to the case of the prosecution, the victim lost his tooth, however, it was not found in the wound certificate issued by the Doctor, who was examined as P.W.7. Therefore, the prosecution failed to prove its case beyond any doubt and as such, he prayed for acquittal.

4.Per contra, the learned Government Advocate(Crl.side) appearing for the respondent police would submit that in order to prove the charges, the prosecution examined P.W.1 to P.W.9 and marked Ex.A1 to Ex.A7. The victim was examined as P.W.3 and other witnesses



CrI.R.C.(MD)No.165 of 2014

are hear say witnesses. The Doctor, who examined the victim, was examined as P.W.7 and he corroborated the case of the prosecution. The victim was assaulted and he sustained grievous injuries on his face and other parts of the body. The prosecution categorically proved its case beyond any doubt. Therefore, both the Courts below rightly convicted the accused for the offence punishable under Sections 323 and 324 IPC and as such, the conviction and sentence imposed by both the Courts below does not warrant any interference by this Court. That apart, the petitioner herein involved in another case in Cr.No.10 of 2022, which was related to Coimbatore bomb blast and hence, prayed for dismissal of this petition.

5.Heard both sides and perused the materials available in the record.

6.The petitioner herein arrayed as A1. On 23.01.2008, at about 09.30 pm., the accused persons attacked the victim with wooden log and steel chain, for the reason that the victim eve-teased the girls, who were belonging to their village. In fact, the victim told them that he had come to the said place only one month before and they attacked the wrong



person. Even then, both the accused assaulted him and caused grievous injuries.

7. On perusal of evidence of P.W.3 revealed that A1 attacked him on his head with wooden log and therefore, he lost his conscious and fell down, immediately both the accused started to attack the victim by using steel chain on all over the body. Therefore, the victim sustained grievous injuries on his face, both legs and left hand. In fact, the accused persons threatened the victim not to disclose the occurrence to anybody. After informing the family members and friends, a complaint was lodged and he went to the hospital and he was treated by the P.W.7. On perusal of evidence of P.W.7 revealed that two persons attacked the victim by using wooden log and steel chain and hence, he sustained grievous injuries on his face, both legs and left hand. Therefore, the evidence of Doctor is categorically corroborated with the evidence of P.W.3. Though other witnesses are hear say witnesses, they also corroborated with the evidence of P.W.3. The victim deposed about the occurrence and it is cogent and genuine one. Therefore, both the Courts below rightly



Crl.R.C.(MD)No.165 of 2014

convicted the petitioner for the offence punishable under Sections 323 and 324 IPC. Hence, this Court finds no infirmity or illegality in the orders passed by both the Courts below and accordingly, this criminal revision case is dismissed.

20.03.2023

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

1.The 2nd Additional Sessions Judge,
Thoothukudi.

2.The Judicial Magistrate
Thiruchendur

3.The Inspector of Police,
Arumuganeri Police Station,
Thoothukudi district.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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Crl.R.C.(MD)No.165 of 2014

G.K.ILANTHIRAIYAN,J.

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Crl.R.C.(MD)No.165 of 2014

20.03.2023