



Crl.R.C.(MD)No.258 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 02.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C.(MD)No.258 of 2018

Mohan ... Petitioner/Appellant/Accused

vs.

State of Tamil Nadu,
Through the Inspector of Police,
Boothapandi Police Station,
Kanyakumari District.
Crime No.688 of 2000 ... Respondent/Respondent/ Complainant

PRAYER : This Criminal Revision has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records of the Court of the learned Sessions Judge, Mahila Fast Track, Nagercoil in Criminal Appeal No.135 of 2006 on his file, set aside the same, insofar as the same is against the petitioner.

For Petitioner : Mr.K.N.Thampi

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

ORDER

This Criminal Revision is filed as against the order passed in Criminal Appeal No.135 of 2006, dated 22.10.2016 on the file of the learned Sessions Judge, Mahila Fast Track, Nagercoil.



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2.The case of the prosecution is that on 24.09.2000 at about 08.45 p.m., the petitioner had taken bath in the drinking water pipeline with under garment, belongs to Panchayat, situated at Kesavanputhur School Street in front of the house of the victim. When the victim was questioned about the bath taken by the petitioner in the drinking pipeline, there was a quarrel between them. Thereafter, the petitioner went his house and had taken aruval and attacked the victim. Therefore, he sustained grievous injuries on his hand. Immediately he was taken to the hospital and admitted as inpatient by his wife and son. On the complaint, the respondent registered the First Information Report in Crime No.688 of 2000 for the offences punishable under Sections 326 and 506(2) of IPC. After completion of investigation, the respondent police filed final report and the same has been taken cognizance by the trial Court for the offence punishable under Sections 326 and 506(2) of IPC.

3.On the side of the prosecution, they had examined P.W.1 to P.W.8 and exhibited two documents as Ex.P.1 and Ex.P.2. On the side of the accused, no one was examined and document was marked.

4.On perusal of the oral and documentary evidence, the trial Court found him guilty for the offence punishable under Section 326 of IPC



and sentenced him to undergo 3 years Simple Imprisonment and to pay a fine of Rs.3,000/- in default to undergo 6 months Simple Imprisonment.

Aggrieved by the same, the petitioner filed an appeal in Criminal Appeal No.135 of 2006 before the learned Sessions Judge, Mahila Fast Track, Nagercoil and the learned Sessions Judge confirmed the conviction and modified the sentence alone from 3 years S.I to 3 months S.I. Hence, the present revision.

5.The learned counsel for the petitioner would submit that P.W.2 and P.W.3 were not eye witnesses to the occurrence and they corroborated to the place of occurrence only after the occurrence. Therefore, their evidence cannot be taken into account and they have not supported the case of the prosecution. The other two witnesses, allegedly had seen the occurrence, already turned hostile, who were examined as P.W.3 and P.W.4. P.W.1, P.W.2 and P.W.5 were interested witnesses and as such, the trial Court without considering the same, mechanically convicted the petitioner. He would further submit that now the petitioner is aged about 64 years and he is a bed ridden and there is absolutely no possibility for serving the remaining period of sentence.



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6.Per contra, the learned Government Advocate (Crl. side) would submit that in order to prove the charges, the prosecution had examined P.W.1 to P.W.8. The victim was examined as P.W.1 and his wife was examined as P.W.2. Another eye witness, his son was examined as P.W.5. All the three witnesses had spoken about the specific overt act as against the petitioner and the occurrence. Further, the Doctor (P.W.9), who treated P.W.1, categorically deposed that the victim sustained three injuries and opined that one of the injury is grievous in nature. Though P.W.3 and P.W.4 turned hostile, P.W.5 categorically deposed and corroborated the evidence of P.W.1 and P.W.2. Therefore, the trial Court has rightly convicted the petitioner and it does not require any warrant interference by this Court.

7.Heard. Perused the materials available on record.

8.On 24.09.2000, when the petitioner was taking bath in the drinking water pipeline belongs to Panchayat, situated at Kesavanputhur School Street in front of P.W.1's house, it was questioned by P.W.1. Therefore, there was a quarrel between them. After quarrel, the petitioner went to his house and had taken the aruval and attacked P.W.1. Therefore, he sustained injury on his left hand. He also threatened him with dire



consequences. Immediately, he was taken to the hospital by P.W.2 and P.W.5, who are none other than his own wife and son. They have also eye witnessed to the occurrence.

9.On perusal of the evidence of P.W.1, P.W.2 and P.W.5, all are trust worthy and cogent. The Doctor, who treated P.W.1 was examined as P.W.9. On perusal of the evidence of P.W.9 also corroborated the evidence of P.W.1 and issued the wound certificate, which was marked as Ex.P.5. Ex.P.5 revealed that P.W.1 sustained grievous injuries. Therefore, the prosecution had proved its case beyond any doubt. Hence, both the Courts below have rightly convicted the petitioner for the offence punishable under Section 326 of IPC. Insofar as the sentence is concerned, now the petitioner is bed ridden and aged about 64 years. Therefore, he cannot be able to serve the remaining period of sentence imposed by the Courts below.

10.Considering the above facts and circumstances, this Court is inclined to modify the sentence alone by paying compensation to the victim's family, since the victim died.



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11. Accordingly, the conviction passed by the Courts below for the offence under Section 326 of IPC as against the petitioner is hereby confirmed. The sentence of three months imposed by the First Appellate Court in Criminal Appeal No.135 of 2006, dated 22.10.2016, is modified to the effect that the petitioner shall pay a compensation of Rs.50,000/- to the credit of C.C.No.29 of 2001 on the file of the learned Judicial Magistrate, Boothapandi on or before **03.07.2023**. On such deposit being made, the legal heirs of P.W.1 are permitted to withdraw the same. If the petitioner fails to deposit the said amount, the sentence imposed by the First Appellate Court is hereby restored and the respondent is directed to secure the petitioner for serving the remaining period of sentence.

12. With the above modification and direction, the Criminal Revision Petition is partly allowed.

02.06.2023

sjj

NCC : Yes/No

Index: Yes/No

Internet: Yes/No



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To

- 1.The Sessions Judge, Mahila Fast Track, Nagercoil.
- 2.The Judicial Magistrate Court, Boothapandi.
- 3.The Inspector of Police,
Boothapandi Police Station,
Kanyakumari District.
- 4.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

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G.K.ILANTHIRAIYAN , J.

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