



Crl.R.C(MD)No.641 of 2016

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.641 of 2016

and

Crl.M.P.(MD)No.8603 of 2016

1.R.Rajesh

2.R.Rajarajan

... Petitioners/Appellants/A1 & A2

Vs.

State Rep. by

The Inspector of Police,

Boothapandi Police Station,

Kanyakumari District.

... 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 made in C.A.No.81 of 2011 dated 19.07.2016 on the file of Principal District and Sessions Court, Kanyakumari District at Nagercoil reversing the judgment made in S.C.No.13 of 2010 on the file of the learned Assistant Sessions Judge cum Chief Judicial Magistrate, Nagercoil, dated 07.09.2011.

For Petitioners : Mr.C.Muthusaravanan

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



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ORDER

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This Criminal Revision Petition has been filed to set aside the Judgment passed in Criminal Appeal No.81 of 2011, dated 19.07.2016, on the file of the learned Principal District and Sessions Court, Kanyakumari District at Nagercoil, reversing the judgment made in S.C.No.13 of 2010 on the file of the learned Assistant Sessions Judge cum Chief Judicial Magistrate, Nagercoil, dated 07.09.2011.

2.The case of the prosecution is that on 26.10.2008 at about 07.30 p.m., when the victim along with his brother was proceeding in their motorcycle bearing Reg. No.TN-74-J-8831, received phone call and as such, they stopped their bike near Kesavanputhur Junction at Balamoor Road and attended the phone call. While he was attending the phone call, due to previous enmity, all the accused persons came there with aruval and iron rod and they attacked him by aruval. The first accused attacked him with aruval and partially amputated the index finger and the second accused attacked him with another aruval and caused a fracture on the eye lid and the other accused attacked him on his back with iron rod. Immediately, he was taken to hospital and on the complaint, the respondent police registered the First Information Report in Crime No.



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450 of 2008 for the offences punishable under Section 307 IPC r/w 34
IPC.

3.After taking cognizance by the trial Court, the prosecution had examined 11 witnesses as P.W.1 to P.W.11 and exhibited 12 documents as Ex.P.1 to Ex.P.12 and also produced five material objects as M.O.1 to M.O.5. On the side of the accused, no one was examined and no document was marked.

4.On perusal of the oral and documentary evidence, the trial Court found the petitioners guilty for the offence under Section 326 IPC and they were sentenced to undergo five years Rigorous Imprisonment and imposed a fine of Rs.3,000/- in default to undergo six months Rigorous Imprisonment. Aggrieved by the same, the petitioners preferred an appeal in C.A.No.81 of 2011 on the file of the learned Principal District and Sessions Court, Kanyakumari District at Nagercoil and the Appellate Court also confirmed the conviction for the offence under Section 326 IPC and reduced the sentence from 5 years R.I to 2 years R.I. Hence, the present revision.



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5.The learned counsel for the revision petitioners would submit that there are contradictions between P.W.5 to P.W.7. The victim was examined as P.W.6 and his brother was examined as P.W.5. Another eye witness was examined as P.W.7. All are interested witnesses and except P.W.5 to P.W.7, no one has spoken about the occurrence. P.W.1 to P.W.3 happened to be witnesses, they were turned hostile and failed to support the case of the prosecution. That apart, while pending the revision, it was referred for the mediation and they afforded some compensation to the victim. However, they did not agree for the same. Now, the petitioners are also ready and willing to pay some compensation instead of surviving the remaining period of sentence. So far, the petitioners had undergone imprisonment for more than three months.

6.The learned Government Advocate (Crl. side) would submit that in order to prove the case of the prosecution, he had examined 11 witnesses as P.W.1 to P.W.11. Though P.W.1 to P.W.4 turned hostile. P.W. 5 to P.W.7 categorically deposed and proved the case of the prosecution. The Doctor, who treated P.W.6 was examined as P.W.9. He also issued wound certificate. It was marked as Ex.P.4. In fact, P.W.5 sustained grievous injuries on his right index finger and as such, the Courts below



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rightly convicted and sentenced the petitioners for the offence under Section 326 IPC. Therefore, it does not warrant any interference by this Court and prayed for dismissal of the revision.

7.Heard the learned counsel on either side and perused the materials placed on record.

8.On 26.10.2008, at about 07.30 p.m., when P.W.5 and P.W.6 were proceeding in their motorcycle, P.W.6 received a phone call. Therefore, he stopped the vehicle to attend the phone. At that time, the accused persons came there and attacked them. This is unbelievable story of the prosecution, since P.W.5 and P.W.6 stopped their motorcycle in order to attend the phone call. According to P.W.5, the accused persons were standing there and immediately due to previous enmity, they started attacking P.W.5 by aruval and iron rod. Further case of the prosecution is that there are four accused standing there in the place of the occurrence. However, P.W.7, who happens to be the witness to the occurrence, deposed that all the accused persons came from two motorcycles and stopped there and attacked P.W.6. It is not the case of the prosecution that the accused persons had chased the victim in order to do away his life.



Even the case of the prosecution is true, they had come there with two motorcycles with deadly weapons and they did not know that P.W.5 stopped his motorcycle at the place of crime to attend the phone call. Therefore, the entire story of the prosecution is not believable one. However, P.W.5 was attacked on his right index finger and partially amputated and it is turned as grievous one. Immediately, he was taken to hospital and he was treated by the Doctor. However, the Doctor who had treated P.W.6 was not there and as such, the Doctor who was in-charge, examined as P.W.9. Further, P.W.5 and P.W.6 did not even whisper that the accused persons came there by their motorcycles. However, two motorcycles were seized from the accused and marked as M.O.4 and M.O.5 herein. Admittedly, P.W.6 was acquitted in criminal case and he came out from the prison. The previous enmity was that when the sister of P.W.5 was taking bath, the three accused namely, one of the brother of the petitioners herein, had seen that bathing. It is also not believable that they had previous enmity. If at all they had previous enmity, the scene of crime and the way in which, they drafted FIR is not believable one.

9.Considering the above facts and circumstances of the incriminating evidence, though this Court is not inclined to set aside the



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conviction, this Court is inclined to reduce the sentence as offered by the learned counsel for the petitioners.

10. Accordingly, the sentence imposed on the petitioners for the offence under Section 326 IPC in C.A.No.81 of 2011 passed by the learned Principal District and Sessions Court, Kanyakumari District at Nagercoil, dated 19.07.2016, is hereby confirmed and on condition that the petitioners shall pay a sum of Rs.15,000/- each (totally Rs.30,000/-) as compensation to the victim/P.W.6 by way of Demand Draft. If the victim/P.W.6 refuses to receive the same, the petitioners shall deposit the said sum to the credit of S.C.No.13 of 2010 on the file of the learned Assistant Sessions Judge cum Chief Judicial Magistrate, Nagercoil, on or before **28.04.2023**.

11. On such deposit, the victim/P.W.6 is permitted to withdraw the same. If the petitioners fail to comply with the condition, the sentence imposed on them for the offence under Section 326 IPC is hereby restored without any further reference to this Court and the respondent shall secure the petitioners to survive the remaining period of sentence as imposed by the Courts below.



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12. Accordingly, this Criminal Revision Case is partly allowed.

Consequently, connected miscellaneous petition is closed.

27.03.2023

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

- 1.The Assistant Sessions Judge cum Chief Judicial Magistrate,
Nagercoil.
- 2.The Principal District and Sessions Court,
Kanyakumari District at Nagercoil.
- 3.The Inspector of Police,
Boothapandi Police Station,
Kanyakumari District
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.K.ILANTHIRAIYAN, J.

sjj

Order made in
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