



Crl.R.C(MD)No.416 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 18.04.2023

PRONOUNCED ON : 21.04.2023

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C(MD)No.416 of 2018

Kannan

... Petitioner/
Appellant/Sole Accused

Vs.

The Deputy Superintendent of Police,
Paramakudi Town,
Nainarkovil Police Station,
Ramanathapuram District.
In Crime No.140 of 2007.

... 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 order passed by the learned Principal District and Sessions Court, Ramanathapuram in C.A.No.5 of 2018, dated 28.06.2018, modifying the order of conviction in C.C.No.139 of 2009, dated 05.03.2018 passed by the learned Judicial Magistrate No.II, Ramanathapuram.

For Petitioner

: Mr.M.Subash Babu
Senior Counsel
for Mr.C.Susikumar

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.5 of 2018, dated 28.06.2018, on the file of the learned Principal District and Sessions Judge, Ramanathapuram, modifying the order of conviction in C.C.No.139 of 2009, dated 05.03.2018 on the file of the learned Judicial Magistrate No.II, Ramanathapuram.

2.The case of the prosecution is that on 19.12.2005, a theft complaint has been lodged by one Jeyarani against the victim. On receipt of the said complaint, P.W.10/the Sub-Inspector of Police had registered the F.I.R in Crime No.186 of 2007 for the offences under Sections 454 and 380 of I.P.C. During the course of enquiring about the victim, one Car Selvam, Chandrasekaran, Selvam and Rasu said to have been forcibly taken to the Police Station for enquiry. Thereafter, they were released from the Police Station. On the next day i.e., on 20.12.2005, the accused again had taken the victim to the Police Station and tied his hands and legs. Thereafter, he was assaulted with a lathe and also kicked with boots. The other police officers also assaulted him due to which he sustained injury.



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He was taken to Nainarkovil Paisool Karunai Hospital and he was given first aid. Thereafter, he was taken to Sujatha Clinic at Paramakudi and subsequently, he was admitted in Government Hospital, Paramakudi and for better treatment, again he was shifted to Madurai Rajaji Hospital. On 29.12.2015, he sent a complaint to the Superintendent of Police for proper action. Since no action was taken, the petitioner filed a petition in Crl.O.P.No.2668 of 2006 and this Court ordered for enquiry by the Revenue Divisional Officer. Thereafter, the F.I.R has been registered as against the accused in Crime No.140 of 2007 for the offences under Sections 330, 343, 348, 352, 506(ii) and 307 of I.P.C. After completion of the investigation, the respondent filed a final report and the same has been taken cognizance in C.C.No.139 of 2009 on the file of the learned Judicial Magistrate No.II, Ramanathapuram.

3.In order to bring the charges to home, the prosecution had examined P.W.1 to P.W.12 and marked Ex.P.1 to Ex.P.5 and on the side of the petitioner, no one was examined and no documents were marked.



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4. On perusal of the oral and documentary evidence, the trial Court found the accused guilty for the offence punishable under Section 330 of I.P.C and sentenced him to undergo one year Simple Imprisonment and also imposed a fine of Rs.10,000/-, in default, he shall undergo one month Simple Imprisonment. In respect of the fine amount of Rs.10,000/- is concerned, Rs.5,000/- has to be given to the victim as compensation and the remaining Rs.5,000/- has to be given to the Government under Section 357(1)(b) of Cr.P.C. Aggrieved by the same, the petitioner preferred an appeal in C.A.No.5 of 2018 on the file of the learned Principal District and Sessions Judge, Ramanathapuram and the Appellate Court partly allowed the appeal, thereby reduced the sentence alone from one year to six months and imposed a fine of Rs.20,000/-. In respect to the fine amount of Rs.20,000/- is concerned, Rs.10,000/- has to be given to the victim as compensation and the remaining Rs.10,000/- has to be given to the Government. Hence, the present Revision.

5. The learned Senior Counsel appearing for the petitioner would submit that the entire case of the prosecution is vitiated since the respondent failed to obtain any sanction as contemplated under Section 197 of Cr.P.C in order to prosecute the



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petitioner while he was discharging his official duty, the alleged complaint has been lodged as against him. There were contradictions between the prosecution witnesses, and it is fatal to the case of the prosecution. P.W.2 and P.W.3 are hearsay witnesses, and their evidence also did not corroborate the evidence of P.W.1. During the investigation, though the prosecution seized a general diary, personal search register and para book, they were not produced before the trial Court. At the time of the alleged occurrence, the petitioner was not at all in the station and as such, the prosecution wantonly failed to produce the general diary and other ledgers which were seized during the investigation. The injuries sustained by P.W.1 are not corroborated by the evidence of the Doctors, who treated him. The Doctors were examined as P.W.8 and P.W.9. Even according to the case of the prosecution, along with P.W.1, four persons were taken to Police Station, however, the prosecution failed to examine them in order to support its case. Except the evidence of P.W.1, no one has spoken in order to corroborate the evidence of P.W.1. Therefore, the prosecution miserably failed to prove its case beyond any doubt. As per the case of the prosecution, P.W.1 had taken treatment in Thiruvadanai Hospital and Sujatha Clinic, Paramakudi, there is absolutely no evidence or documents to substantiate the said theory. The Doctors,



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who treated the victim, were not examined by the prosecution.

Though the prosecution recorded the statement of one Latha, who was working as a Nurse in Sujatha Clinic, she was not examined by the prosecution. There are contradictions with regard to injuries sustained by P.W.1.

6.The learned Senior Counsel appearing for the petitioner would further submit that there was a delay in the lodgment of the complaint. Even according to P.W.1, he was assaulted by the petitioner on 20.12.2005, whereas the complaint was lodged only on 29.12.2005. There is no proper explanation for the delay in the lodgment of the complaint. The Revenue Divisional Officer conducted enquiry and filed a report. However, it was not marked by the prosecution and the Revenue Divisional Officer was not examined by the prosecution. It is fatal to the case of the prosecution. In order to substantiate his contention, he relied upon the following Judgments:-

***"(i) D.Devaraja Vs. Owasis Sabeer
Hussain reported in CDJ 2020 SC 586.***



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***(ii) Sudhakar @ Sudharasan Vs. State
represented by the Inspector of Police, Trichy
reported in CDJ 2018 SC 255 and***

***(iii) Md. Jabbar Ali and others Vs. The
State of Assam reported in CDJ 2022 SC
1167.”***

7.Per contra, the learned Government Advocate (Criminal Side) appearing for the respondent would submit that it is a case of custodial torture. On receipt of the complaint from P.W.6, P.W.10 registered the F.I.R in Crime No.186 of 2007 for the offences under Sections 454 and 380 of I.P.C. During the course of enquiry, the victim and others had taken to Police Station for enquiry. Though they were released from the police station, on the next day, namely on 20.12.2005, again the victim was taken to the police station and the petitioner brutally assaulted the victim, due to which, the victim sustained injury and thereafter, he was taken to the Hospital and was given treatment. In fact, the petitioner lodged the complaint immediately and the same was not taken into consideration. Hence, the victim was constrained to file a direction petition before this Court in Crl.O.P.No.2668 of 2006, in which, this Court ordered enquiry by the Revenue Divisional Officer. Only



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thereafter, the respondent registered the F.I.R in Crime No.140 of 2007 as against the petitioner. Therefore, there was no delay in the lodgment of the complaint on the side of the victim.

8.P.W.1 categorically deposed about the assault made by the petitioner herein. Therefore, he sustained injuries and was immediately admitted to the Hospital. Though there were small contradictions about the injuries sustained by him, they would be not fatal to the case of the prosecution. That apart, the prosecution need not obtain any sanction as contemplated under Section 197 of Cr.P.C, since the occurrence happened while the petitioner was discharging his official duty. Admittedly, P.W.10 registered the F.I.R on the complaint lodged by P.W.6. Therefore, the petitioner is in no way connected with the said investigation. The Doctors, who treated the petitioner, were examined, and they also categorically deposed and corroborated the evidence of P.W.1. Therefore, both the Courts below rightly and concurrently convicted the petitioner for the offence punishable under Section 330 of I.P.C and prayed for dismissal of this revision.



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

10.P.W.6 lodged a complaint alleging that the victim is her neighbour. On 18.12.2005, her sister visited her house and when her sister found that the chain was missing in the neck of P.W. 6, she would have thought that she had kept the chain in the bureau. However, on verification, found that the chain was missing. On receipt of the said complaint, P.W.10-the Sub-Inspector of Police, registered the F.I.R in Crime No.186 of 2007 for the offence under Sections 454 and 380 of I.P.C. In this regard, P.W.1-victim was taken to Police Station along with four persons on 20.12.2005. In the Police Station, he was directed to wait till the arrival of the petitioner. The petitioner came to the Police Station at about 10.00 a.m on 20.12.2005. When he enquired, the petitioner assaulted him by his boots and legs. Thereafter, P.W.1 was dragged into the room and the petitioner removed his dress. He also tied his hands and legs. After inserting the lathe, assaulted him with the lathe. He also compelled him to admit the theft of jewels belonging to P.W.6. Again, after removing of the knot, he asked him to lay down and attacked him with lathe. Therefore, he got fainted. Immediately, he



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was taken in the police jeep to Sujatha Clinic at Paramakudi. After knowing this incident from a relative, P.W.1 was taken to Government Hospital, Paramakudi, by his wife. However, they refused to treat him and referred him to the Higher Hospital at Madurai. He was admitted in the Government Rajaji Hospital, Madurai as an inpatient and had taken treatment for three days. As directed by this Court, the petitioner was called for enquiry by the Revenue Divisional Officer. In this regard, the Human Rights Commission also conducted enquiry. P.W.6 was also enquired by the Revenue Divisional Officer and during the enquiry, she submitted that the missing jewel was very much available in her house itself. Therefore, again two false cases were foisted as against P.W.1 in Crime Nos.56 of 2007 and 83 of 2008 in order to escape from the present case. The petitioner and others also threatened him to withdraw his complaint, otherwise, they will foist other cases. The wife of P.W.1 was examined as P.W.2. Sister of P.W.1 was examined as P.W.3. Both categorically deposed that P.W.1 was taken to Police Station for enquiry and they were informed that P.W.1 was taken to Hospital for the injuries sustained by him during the enquiry. The Homeopathy Doctor who had given first aid to the victim was examined as P.W.7. His deposition corroborates the evidence of P.W. 1. In fact, he was also enquired by the Revenue Divisional Officer.



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Thereafter, P.W.1 was taken to Paramakudi Hospital, wherein P.W.9 treated him. He was also deposed about the injuries sustained by him. Again, P.W.1 was referred to Higher Hospital, where P.W.8 treated P.W.1. He also deposed and corroborate the evidence of P.W.9.

11. Though P.W.10 registered the F.I.R in the complaint lodged by P.W.6, in which, the petitioner compelled and assaulted P.W.1 to admit the guilt. Admittedly, the petitioner was not the Investigating Officer in the complaint registered by P.W.10. Therefore, in order to prosecute the petitioner, no sanction is required as contemplated under Section 197 of Cr.P.C. Further, the simple contradictions in respect of the injuries sustained by P.W.1 are not fatal to the case of the prosecution since P.W.1 was taken to the police station for enquiry and he was assaulted by the petitioner, due to which, he sustained injury and was taken to three hospitals. Though the injuries sustained by him differ, the prosecution proved that P.W.1 was assaulted by the petitioner in the Police Station, that too without committing any offence. Therefore, the Judgments cited by the learned Senior Counsel appearing for the petitioner are not helpful to the case on hand. The trial rightly convicted the petitioner



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for the offence under Section 330 of I.P.C and the Appellate Court also rightly confirmed the conviction and modified the sentence alone, and this Court finds no infirmity or illegality in the orders passed by the Courts below.

12. Accordingly, this Criminal Revision Case is dismissed. The trial Court is directed to take appropriate steps to secure the petitioner in order to serve the remaining period of sentence.

21.04.2023

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

- 1.The Principal District and Sessions Court,
Ramanathapuram.
- 2.The Judicial Magistrate No.II,
Ramanathapuram.
- 3.The Deputy Superintendent of Police,
Paramakudi Town,
Nainarkovil Police Station,
Ramanathapuram 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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