



Crl.A(MD) No.38 of 2017 & Crl.R.C(MD) No.754 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 30.08.2023

Pronounced on : 26.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE **P.DHANABAL**

Crl.A(MD) No.38 of 2017

and

Crl.R.C(MD) No.754 of 2016

Crl.A(MD) No.38 of 2017

M.Radhakrishnan

.. Appellant

Vs.

**1. The Sub Inspector of Police
Tirunelveli Medical College
Hospital Police Station,
Tirunelveli City**

2.Paramasivam

...Respondents

PRAYER : Criminal Appeal is filed under Section 374 of Cr.P.C to call for the entire records pertaining to the judgment delivered by the learned III Additional District and Sessions Judge, Tirunelveli in C.A.No.93 of 2014 vide his judgment dated 26.09.20136 and set aside the same inso far as it acquits the second respondent under Sections 451,352 and 506(i) of IPC and consequently confirm the conviction and sentence imposed by the Additional Mahila Court, Tirunelveli in C.C. No.527 of 2013 vide his judgment dated 14.11.2014.



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For Appellant : Mr.R.Anand
For R-1 : M/s.M.Aasha
Government Advocate(Crl.Side)
For R-2 : Mr. G.Thalaimutharasu

Crl.R.C(MD) No.754 of 2016

Paramasivam

... Petitioner

-Vs-

The Sub Inspector of Police
Tirunelveli Medical College
Hospital Police Station,
Tirunelveli City

... Respondent

PRAYER:- Criminal Revision Petition is filed under section 397 and 401 of Cr.P.C to call for the records from the lower court and to duly set aside the orders passed by the learned III Additional Sessions Judge, Tirunelveli, Tirunelveli District in C.A. No.93 of 2014 dated 26.09.2016 confirming the conviction of the Additional Mahila Court, Tirunelveli, Tirunelveli District in C.C.No.527 of 2013 dated 14.11.2014 relates to 323 of IPC by allowing this revision.

For Petitioner : Mr. G.Thalaimutharasu
For Respondent : Mrs. M.Aasha
Government Advocate(Crl.Side)



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COMMON JUDGMENT

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This Criminal Appeal has been filed against the judgment passed in C.A. No.93 of 2014 on the file of the learned III Additional District and Sessions Judge, Tirunelveli.

2.The appellant is the defacto complainant and P.W.1 in C.C. No.527 of 2013 on the file of the Additional Mahila Court, Tirunelveli. Before the trial Court based on the complaint given by P.W.1 the accused was convicted for the offences under Sections 451,323,352 and 506(i) of IPC. As against the judgment and conviction the accused preferred appeal an in C.A. No.93 of 2014 before the learned III Additional District and Sessions Judge, Tirunelveli and the appellate court confirmed the conviction for the offence under Sections 323 of IPC and acquitted the accused from the charges under Sections 451,352 and 506(i) of IPC. As against the acquittal the defacto complainant has preferred this Criminal Appeal.

3. This Criminal Revision in Crl.R.C(MD) No.754 of 2016 has been filed by the accused for the punishment awarded under Section 323 of IPC in C.A. No.93 of 2014 wherein the trial Court had convicted the accused for the offences under Sections 451,323,352 and 506(i) of IPC. The accused has preferred an appeal in C.A. No.93 of 2014 before the



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learned III Additional District and Sessions Judge, Tirunelveli and in the appeal the appellate court has confirmed the conviction for the offence under Sections 323 of IPC and acquitted the accused from the charges under Sections 451,352 and 506(i) of IPC. As against the judgment and conviction for the offence under Section 323 of IPC the present revision has been filed.

4. Since the appeal and the revision are arising out of the same judgment this Court is inclined to hear both the cases and to pass common judgment.

5. The case of the prosecution is that on 16.05.2013 at about 8.00pm., when the defacto complainant along with his family were in their house at Palayamkottai, Maharaja Nagar, 18th Cross street, the accused trespassed into the house of the defacto complainant and assaulted the defacto complainant and his wife , threatened them and also criminally intimidated. After the occurrence the victim went to hospital where the police obtained complaint/Ex.P.1 and P.W.6 registered First Information Report /Ex.P.3 and thereafter the case was investigated by P.W.9 and he filed final report as against the accused for the offences under Sections 452,294(b),323,506(i) of IPC and Section 4 of TNPHW Act.



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6. Thereafter copies of documents relied by the prosecution were furnished to the accused under Section 207 of Cr.P.C and then after hearing both sides the trial Court has framed charges under Sections 452,294(b),323, 506(i) of IPC and Section 4 of TNPHW Act. The charges were read over and explained to the accused and he denied the charges and thereby inorder to prove the case the prosecution has examined P.W. 1 to P.W.9 and marked documents Ex .P.1 to Ex.P.5 and no material objects was marked. On the side of the accused no one was examined and no material objects were marked. After completion of prosecution evidence the trial Court had examined the accused under Section 313(1) (b) of Cr.P.C with regard to the incriminating circumstances as against the accused and the accused denied the evidence. Thereafter the trial Court acquitted the accused for the offence under Sections 294(b) of IPC and Section 4 of TNPHW Act and found the accused guilty for the offences under Sections 451,323,352 and 506(i) of IPC and sentenced to undergo one year simple imprisonment for the offence under Section 451 of IPC; two months simple imprisonment for the offence under Section 323 of IPC; one month simple imprisonment for the offence under Section 352 of IPC and six months simple imprisonment for the offence under Sections 506(i) of IPC and the sentences shall run concurrently.



7. As against the judgment and conviction the accused preferred appeal an appeal in C.A. No.93 of 2014 before the learned III Additional District and Sessions Judge, Tirunelveli and the appellate court confirmed the conviction under Section 323 of IPC and acquitted the accused for the offences under Sections 352,451 and 506(i) of IPC.

8. Hence revision has been filed by the accused as against the conviction under Section 323 of IPC and as against the acquittal the P.W.1 has preferred appeal.

9. As against the judgment and conviction passed by the learned III Additional District and Sessions Judge, Tirunelveli the present appeal has been preferred by the appellant/defacto complainant on the following grounds:

i) the judgement of the appellate Court is against law, weight of evidence and broad probabilities of the case.

ii) the appellate court erred in acquitting the second respondent in respect of three charges under Sections 451,352 and 506(i) of IPC, since the evidence of the petitioner, his wife P.W.2 and his daughter P.W.3 are cogent and fully established beyond reasonable doubts.



iii) the trial Court failed to consider the injuries sustained by the petitioner and the other witness/P.W.2. The injuries were also corroborated by the evidence of doctor. The reasons given by the appellate court for acquitting the accused for the offence under Section 451 of IPC is totally illegal and the accused entered into the house of the victim and then assaulted and caused injuries and thereby the offence under Section 451 of IPC has been clearly proved by the prosecution. Further prosecution has also established that the P.W.1 was also assaulted by the accused and thereby the offence under Section 352 of IPC also proved but the trial Court failed to consider the same.

iv) so far as offence under Sections 506(i) of IPC is concerned the trial Court has misunderstood and wrongly interpreted section 503 of IPC , therefore the acquittal judgment passed by the trial Court is liable to be set aside and the conviction passed by the trial Court is to be restored.

10. The petitioner/accused has preferred the present revision before this Court on the following grounds:

i) the judgment of the lower courts are against law, the weight of evidence.



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ii) the judgment of the lower courts have to be set aside since the evidence of P.W.8 discloses that P.W.2 was assaulted by unknown person. It shows that the revision petition was not involved in the commission of offence. The lower court have failed to look into this matter and the trial Court has given the explanation that by mistake P.W. 2 has stated before the doctor. This is not the correct appreciation of evidence but it has to be clarified to the doctor, so the conviction under Section 323 of IPC is not correct.

iii) Already there is a motive relating to money transaction in between the revision petitioner and P.W.1 . It is admitted by P.W.6 that P.W. 1 had cheated the accused to the tune of Rs.11 lakhs. P.W.1 wants to swindle Rs.11 lakhs and hence he has given false complaint with the help of family members. The independent witness by name Maruthiah treated hostile. There is no corroborative evidence of P.Ws 1 to 3

iv) the judgment of the lower court has to be set aside since the witnesses examined before the Court are interested witnesses and also other witnesses not supported the case of prosecution.



v) the judgement of the lower courts have to be set aside since the investigation is not properly collected the evidence to prove the case of prosecution and the investigation is defective in nature in this case and the lower courts have travelled beyond the scope of evidence. The judgment of the lower court are legally defective in this case. The question of law is concerned section 323 of IPC is not made out with the available evidences in this case.

11. The learned counsel appearing for the appellant in Crl.A(MD) No. 38 of 2017 would contend that the trial Court convicted the accused for the offences under Section 352,451, 506(i) of IPC and 323 of IPC but the appellate Court wrongly acquitted the accused for the offences under Section 352,451 and 506(i) of IPC. The prosecution witnesses have categorically deposed about the trespass into house, assault of P.W. 1 and the criminal intimidation caused by the accused. The P.W.1 to P.W. 3 have clearly deposed about the entering into the house of the victim by the accused and the assault made by the accused, but the trial Court wrongly interpreted the section of 503 of IPC and the accused entered into the house of P.W.1. Since he was holding office of share broking and failed to appreciate that accused assaulted the P.W.1 and the P.W. 1 to P.W.3 have stated about the assault made by the accused. The trial Court correctly analysed evidences adduced by the prosecution and convicted



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the accused but the appellate Court wrongly acquitted the accused hence this appeal is liable to be allowed.

12. The learned counsel appearing for the revision petitioner in Crl.RC(MD) No. 754 of 2016 would contend that the prosecution has failed to prove the charges levelled against the accused beyond reasonable doubt and the trial Court wrongly convicted the accused for the offences under Section 323,451,352 and 506(i) of IPC thereby the accused filed appeal and the appellate Court correctly acquitted the accused for the offence under Sections 451,352 and 506(i) of IPC but wrongly convicted the accused for the offence under Section 323 of IPC. Infact P.W.2 has not stated about the injuries sustained by her and further P.W. 2 while admission before the hospital stated that one unidentifiable person assaulted her. But the case of prosecution is that P.W.2 know well about the accused. The appellate Court failed to consider the motive behind P.W.1 and accused already paid Rs.11 lakhs to P.W.1 and inorder to evade from payment this false complaint has been lodged against the accused. The appellate Court failed to consider these aspects and wrongly convicted the accused under Section 323 of IPC. Therefore the judgment and conviction of the appellate Court is liable to be set aside by allowing this appeal.



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13. The learned Government Advocate(Crl.Side) appearing for the respondent would contend that the prosecution has examined P.W.1 to P.W.9 and marked document Ex.P.1 to Ex.P.5. The P.W.1 to P.W. 3 are the eye witness to the occurrence and they categorically deposed about the trespass and the assault made by the accused. The P.W.8 doctor who treated the victim also corroborated the evidence of P.W. 1 and P.W.2 in respect of injuries sustained by them. The investigation officer also deposed about the fair investigation conducted by him and the trial Court correctly convicted the accused for the offences under Sections 352,452,323 and 506(i) of IPC and the appellate Court wrongly acquitted the accused for the offence under Section 352,452 and 506(i) of IPC. Therefore the judgment and conviction of the trial Court is to be restored and the judgment of acquittal by the appellate Court is liable to be set aside.

14. Upon hearing both sides and perusing the records, judgements of the trial Court and appellate Court and grounds of appeal the point for determination in this appeal is:

a) whether the prosecution has proved the charges levelled against the accused for the offences under Sections 352, 452 and 506(i) of IPC beyond any reasonable doubt or not ?



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15. Upon hearing both sides and perusing the records and judgement of the trial Court and appellate Court and grounds of appeal the point for determination in this revision are:

a) Whether the judgment and conviction passed by the appellate Court in C.A. No.93 of 2014 on the file of the learned III Additional District and Sessions Judge, Tirunelveli in confirming the conviction under Section 323 of IPC and acquitting under Sections 352, 451 and 506(i) of IPC of the trial Court in C.C. No.527 of 2013 is sustainable in law and facts.

16.This Criminal appeal has been preferred against the acquittal judgment passed by the appellate Court in C.A. 93 of 2014 on the file of the learned III Additional Sessions Judge, Tirunelveli for the offences under Sections 451,352 and 506(i) of IPC and the criminal revision petition has been filed as against the confirmation of conviction under Section 323 of IPC in C.A.No.93 of 2014. According to the case of prosecution on the date of occurrence i.e., on 16.05.2013 at about 8.00 pm., the accused entered into the house of victim and assaulted P.W.1 and when the same was prevented by P.W.2 she was also assaulted by the accused and thereby they sustained injuries and further the accused caused criminal intimidation to the victim.



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17. In order to prove the case of prosecution, they have examined P.W.1 to P.W.9 and marked documents Ex.P.1 to Ex.P.5 and no material object was marked. On the side of the accused no one was examined and no material objects were marked.

18. In this case P.W. 1 is the victim, injured witness as well as defacto complainant and he categorically deposed about the injuries sustained by him on the hands of the accused but no wound certificate was obtained for the injuries sustained by P.W.1. Further in his evidence P.W.1 has stated that the accused assaulted him with bare hands and used obscene words and no specific overt act was attributed as against the accused and the evidence is vague and he has not specifically stated in which part of his body the accused assaulted him. He simply stated that he throttled and repeatedly assaulted with hands but there is no any complaints of pain over the body of P.W.1. The charges were framed as against the accused for the offence under Section 323 of IPC. As per the prosecution case both P.W.1 and P.W. 2 sustained injuries. In the absence of medical evidence the charge under Section 323 of IPC would not attract as against the accused.



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19. The trial Court has convicted the accused for the offence under Section 352 of IPC by holding that the accused assaulted P.W.1 but charges were framed under Section 323 of IPC, but there is no explanation by the trial Court for convicting the accused under Sections 352 of IPC without charge. The trial Court had convicted the accused for the offence under Section 352 of IPC when specific charge was framed under Section 323 of IPC, but there is no discussion as to why convicted the accused for the offence under Section 352 of IPC when charge was not framed under Section 352 of IPC. Therefore the offence under Section 352 of IPC as against the accused has not been proved by the trial Court and the appellate court also in the judgment discussed about that there is no charges framed under Section 352 of IPC and the specific charge was framed under Section 323 of IPC and thereby the accused was acquitted for the offence under Section 352 of IPC. Even according to evidence of P.W.1 he went to hospital but no injuries sustained by him.

20. So far as section 323 of IPC is concerned the charge is that the accused assaulted P.W.2 and caused simple injuries. P.W.2 in her evidence stated about the occurrence but not stated about the injuries sustained by her. P.W.8 doctor in her evidence stated that on 17.05.2013 at about night 12.05hrs ,P.W.2/Jeyalakshmi appeared before her for



injuries sustained by her and she on examination found 4x2 cm contusion over right cheek and there is swelling on the chin, below the right eye there was swelling injuries 1x2 cm and she was admitted as inpatient and then she gave wound certificate/Ex.P.5 as the injuries are simple in nature. P.W.1 also clearly deposed about the assault made by the accused and the injuries sustained by victim/P.W.2, but the P.W.2 being injured has not stated about the injuries sustained by her but she deposed that the accused assaulted her on her face but not specifically deposed about the injuries sustained by her.

21. As per evidence of P.W.8 and Ex.P.5, P.W.2 sustained four injuries but she has not stated about the injuries sustained by her. Therefore the evidence of P.W.8 alone is not sufficient to prove the guilt of the accused for the offence under Section 323 of IPC. The P.W.2 being the injured witness in her evidence did not state about the injury sustained by her. This raises serious doubt over the prosecution case. The trial Court as well as the appellate Court have failed to consider the same but it is an admitted fact that there is a dispute between P.W.1 as well the accused for the business transaction in share market and the motive has been proved by the prosecution.



22. According to the evidence of P.W.2 the accused slapped her on her cheek and therefore she closed her face and then the accused assaulted her on her head and back side of head but the medical evidence is totally contra to the evidence of P.W.2 Further P.W.3 in her evidence deposed about the assault made by the accused to P.W. 2 and she sustained blood injuries on her teeth but P.W2 has not spoken anything about the bleeding on the teeth, therefore reasonable doubt would arise as to whether the occurrence said to have taken place as alleged by the prosecution.

23. So far as offence under Section 506(i) of IPC is concerned according to the evidence of P.W.1 the accused caused criminal intimidation by saying that “ இன்று இரவுக்குள் உங்களை வெட்டி கொன்று விடுவேன்” but P.W.2 in his evidence has stated that “ இன்றோடு நீ தொலைந்தாய் என்றும் உன்னை கொன்று புதைத்து விடுவேன் என்று சொல்லிவிட்டு சென்று விட்டார் “. According to the evidence of P.W.3 “இன்று இரவே உங்களை தூக்கி விடுவேன் என்று மிரட்டி விட்டு சென்றார். “. Therefore the words uttered by the accused for causing criminal intimidation are differ between the prosecution witnesses. Further mere threat would not constitute the offence under Section 506(i) of IPC. To establish the offence under Section 506(i) of IPC the prosecution has to prove that the accused caused fear in the minds of the victim but in this case there is no



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evidence that due to the above said threats fear caused to the victims.

The words uttered to cause criminal intimidation by the accused also not tallied with the prosecution witnesses. Therefore the prosecution failed to prove the charge under Section 506(i) of IPC. The Appellate Court wrongly interpreted Section 503 IPC and the same is not acceptable.

24. So far as offence under Section 452 of IPC is concerned the trial Court has framed charges under Section 452 of IPC but conviction was made under Section 451 of IPC and there is no discussion about the conviction under Section 451 of IPC, when specific charge was framed under Section 452 of IPC, charges under Section 451 and 452 of IPC are different and as per Section 452 trespass after preparation to commit offence, as per Section 451, criminal trespass to commit offences punishable. Therefore, the trial Court has to give reasons to convict the accused under Section 451 IPC, when the specific charge was not framed. Though under Section 222 of Cr.P.C the conviction can be made for the lesser offence where the charge was framed for major offence the trial Court has not stated any reasons as to how convicted the accused for the offence under Section 352 of IPC without charge. The prosecution has failed to prove the charges for the offences under Sections 323,506(i) of IPC and 352 of IPC and thereby the offence under Section 451 of IPC, i.e., criminal trespass to commit offence punishable



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would not arise. Therefore the prosecution has failed to prove the charges levelled against the accused beyond reasonable doubts. The conviction of the accused based on the above evidence for the offence under Section 323 of IPC by the appellate Court is not sustainable.

25. So far as offence under Section 323 of IPC is concerned the appellate Court as well as the trial Court failed to consider that P.W.2 has not stated about the injuries sustained by her. The medical evidence is also contra to the evidence of P.W.2 and thereby the conviction and judgment passed by the trial Court as well as appellate court with regard to Section 323 of IPC are not sustainable and liable to be set aside. In other aspects there is no infirmity in the judgement passed by the appellate court by acquitting the accused for the offences under Sections 451, 352 and 506(i) of IPC and the appellate Court judgment is confirmed and in the result, the criminal appeal is dismissed.

26. In so far as the revision is concerned as discussed in the previous paras that the trial Court failed to consider the major discrepancies of the prosecution case and P.W.2 has not witnessed about the injuries sustained by her and the medical evidence is contra to the oral evidence of P.W.2 and P.W.1 has not sustained any injuries and the criminal intimidation caused by the accused has not been proved and



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therefore there is no real threat caused by the accused to create fear in the minds of the victim and thereby the trial Court failed to consider the same and wrongly convicted the accused for the offences under Sections 451,323,352 and 506(i) of IPC. Further the trial Court failed to discuss about the conviction under Sections 352 and 451 of IPC. When there is no specific allegation for those offences without adducing reasons simply convicted the accused without specific charges. The appellate Court also failed to consider the said aspects regarding offence under Section 323 of IPC and wrongly confirmed the conviction under Section 323 of IPC Therefore the judgment and conviction passed by the trial Court are liable to be set aside and the appellate Court judgement and conviction with regard to the section 323 of IPC is also liable to be set aside.

27. In the result:

a) the Criminal Appeal in Crl.A(MD) No. 38 of 2017 is dismissed.

b) the Criminal Revision in Crl.RC(MD) No.754 of 2016 is allowed and judgment and conviction passed by the trial Court in C.A. No.93 of 2014 by the III Additional District and Sessions Judge, Tirunelveli in confirming the judgment and conviction passed by the trial Court in C.C. No.527 of 2013 on the file of the Additional Mahila Court, Tirunelveli for the offence under Section 323 of IPC is set aside and the



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accused is acquitted from the charges under Sections 323 of IPC. The petitioner be set at liberty subject to other cases if any. The bail bond if any executed by the petitioner shall stand cancelled. .

26.09.2023

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

1. The III Additional District and Sessions Judge, Tirunelveli
2. The Additional Mahila Court, Tirunelveli
3. The Sub Inspector of Police
Tirunelveli Medical College Hospital Police Station,
Tirunelveli City
4. The Section Officer,
Criminal Records,
Madurai Bench of Madras High Court,
Madurai.
5. The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai



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P.DHANABAL, J.

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