



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 10/01/2023

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CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Cr1.RC(MD)Nos.875 of 2019 and 157 of 2020
and
Cr1.MP(MD)Nos.1394 and 1397 of 2020

(1)Cr1.RC(MD)No.875 of 2019:-

K.Mariappan : Petitioner/2nd Respondent/A1

Vs.

1.Pappathi : R1/Appellant/De-facto Complainant

2.State represented by
Sub Inspector of Police,
Karur Town Police Station,
Karur.

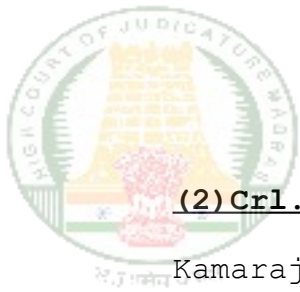
(Crime No.205 of 2015): R2/1st Respondent/Complainant

Prayer: Criminal Revision is filed under Sections 397 and 401 of the Criminal Procedure Code, to set aside the judgment of conviction and sentence imposed upon the petitioner by the Additional Sessions Judge(Fast Track Mahila Court), Karur, in Criminal Appeal No.119 of 2018, dated 31/10/2019, by reversing the order of acquittal passed by the Judicial Magistrate No.1, Karur, in CC No.147 of 2018, dated 01/08/2018.

For Petitioner : Mr.K.Suresh

For 1st Respondent : No appearance

For 2nd Respondent : Mr.S.Manikandan
Government Advocate
(Criminal side)



(2) Cr1.RC (MD) No.157 of 2020:-

Kamaraj

: Petitioner/2nd Respondent/A2

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Vs.

- 1.State through
Sub Inspector of Police,
Karur Town Police Station,
Karur District.
(Crime No.205 of 2015) : R1/Respondent/Complainant
- 2.Papathi : R2/Appellant/De-facto
Complainant
- 3.K.Mariyappan : R3/Respondent/Respondent

Prayer: Criminal Revision is filed under Sections 397 and 401 of the Criminal Procedure Code, to call for the records relating to the judgment passed in C.A No.119 of 2019, dated 31/10/2019 by the Additional Sessions Judge, Fast Track Mahila Court, Karur, reversing the judgment passed by the Judicial Magistrate No.1, Karur, in C.C No.147 of 2018, dated 01/08/2018 and set aside the same.

For Petitioner : Mr.P.Thirunavukkarasan

For 1st Respondent : Mr.S.Manikandan
Government Advocate
(Criminal side)

For R2 and R3 : No appearance

COMMON ORDER

These criminal revisions have been preferred against the judgment of conviction and sentence imposed upon the petitioners by the Additional Sessions Judge (Fast Track Mahila Court), Karur, in Criminal Appeal No.119 of



2018, dated 31/10/2019, reversing the order of acquittal, dated 01/08/2018 passed in CC No.147 of 2018 by the Judicial Magistrate No.1, Karur.

2.The facts in brief:-

PW1 is the de-facto complainant. On 07/04/2015 at about 03.00 pm, when she along with her daughter passing through their ancestral property situated in N.T.S Palace, at that time, one Mariappan and one employee namely Kamaraj were removing the machine wheels from the Mill. She made objection to remove the wheels stating that the property belongs to them. Over which, the above said Mariappan abused in filthy language. When that was objected by her daughter, she was also abused in filthy language. He also assaulted with hands and pushed her down. When that was sought to be prevented by her daughter, she was also assaulted. At that time, one Selvamathi and Valliammal were present. Both were taken to Karur Amaravathi Hospital for treatment, where they undertook treatment for 17 days. The Police recorded her statement. Over which, a case has been registered. Her complaint was marked as Ex.P1.

3.PW8-Doctor was on duty in the Amaravathi Hospital, Karur, on 07/04/2015 at about 06.35 pm, one Barathi and another person admitted in the hospital stating that they were assaulted by two known persons with iron rod



and stick. On examination, she has stated that she is expressing pain on the chest portion and on further examination by MRI scan, one abrasion was found on the back side. One Papathy was also examined and at that time, she was found one multiple abrasion on various parts of the forelegs measuring 1 x 1 cm abrasion on the left leg region. Both were discharged from the hospital, on 23/04/2015, all the injuries were found to be simple injury.

4. During their hospitalization, PW9 visited the hospital, on intimation, on 10/04/2015 and recorded the statement of PW1 and registered a case in crime No.205 of 2015 for the offences under sections 294(b), 323, 506(i) IPC r/w section 4 of Tamil Nadu Prohibition of Harassment of Woman Act. She undertook investigation and recorded the statement of the witnesses and after completing the investigation process, she filed a final report before the trial court stating that all the accused persons have committed the offences under sections 294(b), 323, 506(i) IPC and section 4 of the Tamil Nadu Prevention of Harassment of Women Act.

5. PW2 is the daughter of PW1 and has stated that she sustained injury due to the assault made by A1- Mariappan.



6.PW3 also went to the place of occurrence, on hearing the information that the accused are removing the wheels from the mill. PW4, PW5 and PW6 turned hostile, who were stated to be the eye witness to the occurrence.

7.After completing the investigation process, final report was filed before the Judicial Magistrate No.1, Karur and it was taken on file as CC No.147 of 2018.

8.During the trial process, on the side of the prosecution, 9 witnesses were examined and 6 documents marked. On the side of the accused, no witness was examined and no document was marked.

9.At the conclusion of the trial process, the trial court found that the prosecution has not proved the case beyond all reasonable doubt and accordingly, acquitted all the accused.

10.Against which, appeal was preferred by the de-facto complainant in Criminal Appeal No.119 of 2018 before the Additional Sessions Judge, Fast Track Mahila Court, Karur.

11.After hearing the parties, the learned appellate



court reversed the judgment of acquittal passed by the trial court and convicted the accused under sections 294(b), 323, 506(i) IPC and section 4 of Tamil Nadu Prevention of Harassment of Woman Act and sentenced A1 to pay a fine amount of Rs.1,000/- with default clause for the offence under section 294(b) IPC; and A1 and A2 were convicted and sentenced to undergo simple imprisonment for 3 months each and imposed a fine of Rs.1,000/- each with default clause for the offence under section 323 IPC. They were also convicted and sentenced to undergo one year simple imprisonment each and imposed a fine of Rs.10,000/- each with default clause for the offence under section 4 of Tamil Nadu Prevention of Harassment of Women Act. All the sentences were directed to run concurrently.

12. Against which, these criminal revisions have been preferred by A1 and A2.

13. At the outset, the learned counsel appearing for the petitioners would submit that the principles that have been set out to be followed, while entertaining the appeal against the acquittal were not properly applied by the appellate court and for that purpose, he would rely upon the judgment of the Hon'ble Supreme Court in the case of ***Shailendra Pratap and another vs. State of U.P [(2003) 1 SCC***



7611]. By pointing out this judgment, the learned counsel appearing for the petitioners would submit that unless acquittal was found to be perverted in nature, the appellate court should not have interfered into the order of acquittal. On more than one occasions, principle to be followed is stressed, while entertaining appeal against the acquittal has been brushed and unless acquittal has been passed in a perverse manner, no interference can be made by the appellate court.

14. With this principle in mind, let us go to the evidence on record, before we go into the reasoning of the trial court and the appellate court for acquittal and reversal.

15. The learned counsel appearing for the petitioners would submit that there are material contradictions between the evidence of PW1, PW2, PW3 and PW4. For that purpose, he would draw the attention of this court to the evidence of PW1 and PW2.

16. PW1 has stated that on the date of the alleged occurrence along with her daughter namely PW2, she was passing through the above said mill belongs to them in an Auto. But contra is the evidence of PW2. She has stated that they were passing through the above said mill along



with PW3 and PW4. On hearing the information that the accused were removing the wheels of the machineries, they went to the place and at that time, they were abused and assaulted and they were rescued by PW3 and PW4.

17.PW1 has stated that at the time of the above said occurrence, PW3 and PW4 were present in that place. But they were not given any information that they were walking through that place. This is the material contradiction.

18.Let us go to the evidence of PW3 and PW4. PW3 has stated that on 07/04/2015, they visited the property, on hearing the information that the accused are removing the wheels. PW1 was assaulted by A1-Mariappan.

19.PW4 also stated that on that particular date, all of them went to the place of occurrence and A1 opened the door. On seeing PW1, he abused her with filthy language, over which, quarrel broke out between them. When that was questioned by PW2, A2-Kamaraj assaulted her with hands. PW1 was assaulted by A1. In the above said occurrence, she also fell down.

20.As mentioned earlier, the eye witnesses, who were neighbours namely PW5 and PW6 turned hostile. So from



the evidence of PW1 to PW4, it is clear that they are contradicted with each other with regard to the very manner of the occurrence itself. Who assaulted her and what sort of injury sustained by them has not been clearly spoken by them. Even as per the evidence of the Doctor-PW8, who treated the injured, has not found any external injuries to PW1.

21. So from the above said evidence of PW3 and PW4, we can infer that there was some scuffle between PW1 and PW2 on the one part and the accused on the other part. Because of the scuffle, the above said abrasions would have taken place.

22. The scuffle has been given aggregated version. Even though, it is stated that the offence said to have been taken place, on 07/04/2015, on the date of the occurrence itself, both were admitted in the hospital. As per the evidence of the Medical Officer, both were admitted in the hospital at 06.35 pm. The occurrence said to have been taken place at about 03.00 pm on that date. After a gap of three hours, they said to have went to the hospital.

23. But from the evidence of PW9, it is seen that intimation was received, on 10/04/2015 and the reason for the delay is not properly explained.



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24. According to the evidence of PW8, intimation was immediately sent to police, over the admission of PW1 and PW2. But, as mentioned earlier, PW9 has stated that they received the information only, on 10/04/2015.

25. In the light of the above said material contradictions and considering the relationship of the parties, as mentioned earlier, there is every possibility of scuffle between them. This has been given exaggeration by PW1 and PW2. Without any serious injury, they remained in the hospital for 20 days.

26. In the light of the above discussion, let us go to the finding of the trial court and the appellate court.

27. With regard to the delay in registering the FIR, it was observed by the trial court that no proper explanation was offered by the prosecution, since intimation alleged to have been sent by PW8, on 07/04/2015 at about 06.35 pm. But PW9 has stated that she returned to duty, on 10/04/2015 from the bundobust duty. At that time, she was informed about the intimation from the hospital. On which date, the intimation was received by the Station House officer is not available on record.



28. With regard to the occurrence itself, as mentioned earlier, there are material contradictions between PW1 and PW2, that also taken into account by the trial court.

29. With regard to the availability of PW3 and PW4, it was observed by the trial court that if really, they were available in the place of occurrence, they would have taken the injured to the hospital and accompanied. But the evidence of PW8 is that PW1 and PW2 on their own came to the hospital and got themselves admitted. This has been taken into account by the trial court.

30. With regard to the weapons also, the trial court found that they are material contradictions, corroborated each other with regard to the weapon of assault. So considering those circumstances only, the trial court recorded the finding of acquittal.

31. Now let us go to the judgment of the appellate court. It believed the evidence of PW1, PW2 and PW3 and also taken into account the treatment period.

32. It has also been observed by the appellate court that the trial court has not appreciated the evidence on record and so, it interfered into the judgment of



acquittal. But the reasoning does not satisfy the requirement of law. As stated above, the trial court has taken into account the material contradictions and factual circumstances also, so it cannot be termed as perverse in nature. On re-appreciation of reasonings only, the appellate court rendered the judgement of conviction.

33.As mentioned earlier, improvements have been made by PW1 and PW2 over the very occurrence itself. Recovery of weapons also not made. Similarly, who assaulted whom was not properly correlated by evidence.

34.PW3 has stated that A1 picked up quarrel with PW1 and A2 assaulted PW2. But, she has not stated that A1 assaulted PW1, so also PW4. She has also stated that A1 assaulted PW1 with hands and pushed her down and in the above said scuffle, she also fell down. A2 assaulted PW2 with hands. Nowhere, it has been stated that iron rod and stones have been used.

35.As mentioned earlier, there is every possibility of some scuffle would have occurred between the parties at the time of the above said removal of wheels in the mill. Exaggerated version has been made due to the motive between them. So, I am of the considered view that the judgment of reversal, that was passed by the appellate court is



required to be interfered by way of these criminal revisions.

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36.In the result, these criminal revisions are **allowed**. The impugned judgment passed by the Additional Sessions Judge (Fast Track Mahila Court), Karur is hereby set aside, confirming the judgment of acquittal passed by the trial court. Fine amount, if any, paid by the accused persons shall be refunded to them forthwith. Bail bond, if any, executed by them, shall stand cancelled. Consequently, connected Miscellaneous Petitions are closed.

10/01/2023

Index:Yes/No
Internet:Yes/No
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To,

- 1.The Additional Sessions Judge,
Fast Track Court,
Karur.
- 2.The Judicial Magistrate,
Karur.
- 3.The Sub Inspector of Police,
Karur Town Police Station,
Karur District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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Crl.RC(MD)Nos.875 of 2019 and 157 of 2020

10/01/2023