



Crl.R.C(MD)No.777 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.04.2023

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C(MD)No.777 of 2017

1.Manoharan
2.Bhoopalan
3.Pappa
4.Vasanthi

... Petitioners/Appellants/Accused

Vs.

Pitchaikaran (Died)

1.Rajamani
2.P.Pushparaju

... Respondents

[R1 & R2 substituted vide order dated 07.10.2021
in Crl.M.P(MD)No.8292 of 2021]

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 dated 07.02.2017 passed in C.A.No.23 of 2016 by the Principal Sessions Judge, Trichirappalli, confirming the conviction and sentenced passed by the learned Judicial Magistrate, Thuraiyur in C.C.No.74 of 2009, dated 28.04.2016.

For Petitioners : Mr.Ilanchezian

For Respondent : Mr.C.Dhanasekar



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ORDER

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This Criminal Revision Petition has been filed to set aside the Judgment dated 07.02.2017 passed in C.A.No.23 of 2016 by the Principal Sessions Judge, Trichirappalli, confirming the conviction and sentence passed by the learned Judicial Magistrate, Thuraiyur in C.C.No. 74 of 2009, dated 28.04.2016.

2.The case of the prosecution is that on 12.02.2002, at 06.30 a.m., when the victim was in his house along with the family members, all the accused persons trespassed into his house, the second accused caught hold the victim, the first accused attacked him with stick on his right and left side of the forehead. A3 and A4 attacked him with sticks. Therefore, he sustained injuries on his forehead and right hand wrist region. They also abused him in filthy language and threatened him with dire consequences. Immediately, he went to T.Pettai Police Station and the police personnel advised him to go to hospital for treatment. Hence, he was taken to Thuraiyur Hospital. On the next day, the police personnel came there and recorded the statement of the victim. However, the police did not register any FIR. Thereafter, he was referred to the Government Hospital, Thuraiyur, for further treatment. Immediately, he was taken to



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Government Hospital, Thuraiyur, Trichy and he was admitted as inpatient from 14.02.2009 to 17.02.2009. After discharge, again he was admitted as inpatient in the Government Hospital, Thuraiyur, for further treatment. Thereafter, he was discharged on 23.02.2009 and went to the concerned Police Station about the stage of the complaint and he came to know that the police did not take any action on his complaint. Hence, the victim was constrained to file a private complaint under Section 200 Cr.P.C.

3.After recording the evidence and on perusal of the documents, the trial Court had taken cognizance of the complaint for the offences under Sections 447, 324, 294(b), 323, 341 and 506(ii) IPC.

4.In order to bring the charges to prove the case, the de-facto complainant had examined 5 witnesses as P.W.1 to P.W.5 and exhibited five documents as Ex.P.1 to Ex.P.5 and marked two material objects as M.O.1 and M.O.2. On the side of the accused, four witnesses were examined and exhibited two documents as Ex.D.1 and Ex.D.2.

5.On perusal of the oral and documentary evidence, the trial Court convicted the accused and sentenced as under:



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Accused	Section	Sentence
A1	452, 324, 294(b) and 506(ii) IPC	2 years S.I., and a fine of Rs.2,000/- in default, 4 months S.I for the offence under Section 452 IPC
A1	324 IPC	1 year S.I and a fine of Rs. 1,000/- in default, 2 months S.I.
A1	294(b) IPC	1 month S.I., and a fine of Rs.100/- in default, 1 months S.I.
A1	506(ii) IPC	2 years S.I., and a fine of Rs.2,000/- in default, 4 months S.I.
A2	452 IPC	2 years S.I., and a fine of Rs.2,000/- in default, 4 months S.I. for the offence under Section 452 IPC;
A2	341 IPC	1 month S.I. and a fine of Rs.100/- in default, 1 month S.I.
A3 and A4	452 IPC	2 years S.I and a fine of Rs. 2,000/- each in default, 4 month S.I.
A3 and A4	323 IPC	1 month S.I and a fine of Rs.100/- each in default, 1 month S.I.

6. Aggrieved by the same, all the accused persons preferred an appeal before the Principal Sessions Judge, Tiruchirappalli and the First Appellate Court dismissed the appeal and also confirmed the conviction and sentence imposed by the trial Court. Hence, the present appeal.



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7. The learned counsel for the petitioners would submit that insofar as the counter complaint is concerned, the police personnel also did not take any action. However, the second accused sustained injury and was admitted in the hospital. The accused persons are the close relatives. He did not file any complaint. No independent witnesses were examined by the de-facto complainant. They were also identified before the Doctor. He would further submit that now, P.W.1 died and as such, he prayed for acquittal.

8. The learned counsel for the respondents would submit that the said crime was intentional one committed by the petitioners. All the accused persons trespassed into the house of P.W.1. A2 caught hold P.W.1, the first accused attacked him with stick on the both sides of forehead, due to which, he sustained two injuries on his forehead. A3 and A4 came with stick and attacked him on his right hand, due to which, he sustained injuries on his right hand wrist region. Unfortunately, no FIR has been registered, since the petitioners are the political persons and as the local police station, did not even register any FIR, though P.W.1 was admitted in the hospital as inpatient for long days. He would further submit that the second accused did not sustain any injury. The occurrence had taken



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place on 12.02.2009. While P.W.1 had taken treatment in Thuraiyur Government Hospital, the second accused also got admitted himself as if he was attacked by P.W.1 on 14.02.2009. From 12.02.2009 till 14.02.2009, he was admitted as inpatient in Government Hospital, Thuraiyur. Again on 14.02.2009, for further treatment, on advice, he was shifted to Government Hospital, Trichy. Therefore, D.W.1 on coming to know that he was attacked by P.W.1 and in order to escape from the clutches of law, he himself admitted in to the hospital with the influence of Doctor. P.W.2 and P.W.3 were eyewitnesses to the occurrence and they categorically and cogently deposed about the specific overt act of the accused persons. The evidence of P.W.1 to P.W.3 also corroborated by the evidence of P.W.4. Another Doctor, who had taken X-ray, was examined as P.W.5 and found that there was no fracture on the P.W.1's head. Therefore, the respondent proved his case beyond any doubt and as such, both the Courts below rightly convicted the petitioners herein and the First Appellate Court also confirmed the same and concurrently held that the petitioners are liable to be punished for the offences 452, 324, 294(b), 323, 341 and 506(ii) IPC.



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

10. Admittedly, both the petitioners' family and the de-facto complainant's family are relatives. There was a previous enmity between P.W.1 and the petitioners' family. Therefore, on 12.02.2009, at about 06.30 a.m., all the accused persons trespassed into the house of P.W.1. The second accused caught hold P.W.1, the first accused attacked him with stick on his forehead. Therefore, he sustained injuries on his head. A3 and A4 attacked him with sticks. Therefore, all the accused trespassed into the house in order to attack P.W.1 with weapons and sticks. The evidence of P.W.1 was also duly corroborated by P.W.2 and P.W.3, who are the other eyewitnesses. Unfortunately, the concerned jurisdictional police did not even register any FIR, even after recording the statement of P.W.1. Therefore, P.W.1 filed a private complaint. The Doctor who treated P.W.1 was examined as P.W.4. He also categorically deposed that P.W.1 sustained injuries on his left and right side of the forehead. Therefore, he was admitted in the hospital as inpatient. On 13.02.2009, again, he was referred to Thuraiyur Government Hospital for further treatment and he was admitted as inpatient till 17.02.2009. However, the



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Doctor did not find any injuries on his right hand as alleged by P.W.1.

Thereafter, P.W.1 was subjected for scan and P.W.5 scanned him and found no fracture on his head. Therefore, P.W.4 opined that the injury sustained by P.W.1 is simple in nature.

11.Though D.W.1 stated that 14.02.2009 at about 08.00 a.m., P.W.1 and others attacked him with stick and as such, he sustained injuries on his left hand fingers. It is not believable one, since P.W.1 got admitted in the Government Hospital, Thuraiyur. Thereafter, he was shifted to Trichy Hospital and admitted as inpatient. Therefore, there is absolutely no possibility for P.W.1 to attack the second accused on 14.02.2009. Therefore, in order to escape from the clutches of law, the second accused had set up those arrangements and obtained Wound Certificate also.

12.However, the overt act of the accused 3 and 4 is concerned, according to P.W.1, they attacked him on his right hand wrist, whereas, the Doctor did not find any injury on his right hand. Therefore, the evidence of P.W.1 did not corroborate with the Doctor's evidence. Therefore, no offence is made out as against A3 and A4.



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13. According to P.W.1, the second accused caught hold the hands of P.W.1 and the first accused attacked him with stick on his head. If at all the second accused caught hold the hands of P.W.1, A3 and A4 have attacked on his hands. Therefore, insofar as the overt act as against A2 also, the respondents failed to prove the charges under Sections 452 and 341 IPC as against the second accused beyond any doubt. The respondents also failed to prove the charges under Sections 452 and 323 IPC as against the accused 3 and 4 beyond any reasonable doubt, whereas, the respondents categorically proved all the charges as against the first accused.

14. In view of the above facts and circumstances of the case, the conviction and sentence passed by the Courts below as against A2 to A4 are hereby set aside. The conviction and sentence imposed on the first accused for the offences under Sections 452, 324, 294(b) and 506(ii) IPC by the Courts below is hereby confirmed and insofar as the sentence is concerned, this Court is inclined to reduce the sentence from 2 years S.I to one year S.I for the offence under Section 452 IPC.



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15. With the above modification, this Criminal Revision Case is partly allowed.

21.04.2023

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

1. The Principal Sessions Judge, Trichirappalli.
2. The Judicial Magistrate, Thuraiyur.
3. 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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