



Crl.R.C.(MD)No.900 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 28.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C.(MD)No.900 of 2017

Prakash

... Petitioner/1st Appellant/A1

Vs.

The State rep., by
The Inspector of Police,
South Thamaraikulam Police Station,
Kanyakumari District.

... Respondent/Respondent/
Complainant

PRAYER : This Criminal Revision Case has been filed under Section 397 r/w 401 of Cr.P.C., to set aside the judgment made in C.A.No.105 of 2007 by the Mahila Fast Track Court, Nagercoil dated 28.03.2016 confirming the judgment made in S.C.No.193 of 2005 by the Assistant Sessions Court cum Chief Judicial Magistrate, Nagercoil, dated 14.06.2007.

For Petitioner : Mr.M.P.Senthil

For Respondent : Mr.K.Sanjai Gandhi
Government Advocate (Crl.side)



ORDER

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This Criminal Revision Petition has been filed to set aside the judgment made in C.A.No.105 of 2007 by the Mahila Fast Track Court, Nagercoil, dated 28.03.2016 confirming the judgment made in S.C.No. 193 of 2005 by the Assistant Sessions Court cum Chief Judicial Magistrate, Nagercoil, dated 14.06.2007.

2. The case of the prosecution is that on 12.03.2004, there was a festival at Servaikaransamy Temple, at that time, P.W.2 had beaten the wife of A4 in order to exorcism. Therefore, there was an enmity between the accused persons and P.W2. While that being so, on 16.04.2004 at about 08.00 pm., all the accused persons were assembled in front of the house of P.W.2 in order to do away his life. When P.W.2 and P.W.3 came to their house, they were waylaid by the accused and scolded them with filthy language and when the same was questioned by P.W.1, who is the paternal uncle of P.W.2, the first accused attacked him on his head by sickle, second accused attacked with knife on his left cheek, third accused attacked with rod on his shoulder, fifth accused attacked with rod on his right knee and left chest bone and fourth accused attacked P.W.2 with rod. Therefore, they sustained grievous injuries. Hence, the



complaint. On receipt of complaint, the respondent registered FIR in Crime No.115 of 2004 for the offences punishable under Sections 148, 341, 307 r/w 149 of IPC and 324 r/w 149 of IPC as against the accused Nos.1,2,3 and 5 and Sections 148, 341, 294(b), 307 r/w 149 and 324 of IPC as against the fourth accused. After completion of investigation, the respondent filed a final report and the same has been taken cognizance in S.C.No.193 of 2005 by the trial Court.

3. On the side of the prosecution, 17 witnesses were examined as P.W.1 to P.W.17 and 12 documents were marked as Ex.P.1 to Ex.P.12. On the side of the accused, no documents were marked and no witnesses were examined. The prosecution also provides material objects as Ex.C. 1 to Ex.C.4.

4. On perusal of the oral and documentary evidence, the trial Court convicted the petitioner for the offence punishable under Sections 148, 341 and 307 IPC. Aggrieved by the same, the petitioner and other accused persons preferred an appeal. The appellate Court also confirmed the sentence imposed by the trial Court. Hence, the present revision petition has been filed.



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5. The learned counsel appearing for the petitioner would submit that P.W.1 to P.W.4 are interested witnesses and there were contradictions in their evidence with regard to the case of the prosecution. Therefore, the Courts below ought not to have convicted the petitioner. When P.W.1 categorically deposed about the material objects, it was perused by the prosecution that no weapon was used by the petitioner herein. Per contra, P.W.2 to P.W.4, who were eyewitnesses to the occurrence, deposed that P.W.1 was attacked by the petitioner by Vettukathi. The witnesses of observation mahazar and seizure of weapons turned hostile and as such, benefit of doubt ought to have given in favour of the petitioner. He specifically contended that though there was absolutely no intention to do away with the life of P.W.1, as far as the petitioner is concerned, he attacked P.W.1 with stick and as such, P.W.1 sustained grievous injury. Even according to the case of the prosecution, P.W.2 had previous enmity and in fact, all the accused persons were assembled in front of house of P.W.2. When P.W.1 questioned the same, there was wordy quarrel between the petitioner and P.W.2 and accused persons attacked P.W.1. There was absolutely no motive to do away with the life of P.W.1. Hence, offence under Section 307 is not at all attracted as against the petitioner. At the maximum, he may be convicted for offence under



Section 326 IPC and he is also ready to pay some compensation. So far, the period of incarceration is more than 3 months.

6. Per contra, the learned Additional Public Prosecutor would submit that it is the clear case of Section 307 I.P.C, since the petitioner along with other accused were assembled in front of house of P.W.2 to murder him. All the accused persons came to the scene of occurrence with deadly weapons. P.W.3 and P.W.4 are the eyewitnesses of the occurrence. They categorically deposed that the accused persons attacked P.W.1 with intention to murder him. The Doctor, who treated P.W.1, also deposed and corroborated the injuries. Therefore, the Courts below rightly convicted the petitioner and it does not warrant any interference by this Court.

7. Heard both sides.

8. There are totally 5 accused, in which, the petitioner is arrayed as A1. The petitioner has been convicted for the offences under Sections 148, 341 and 307 IPC by the trial Court and confirmed by the appellate Court. The ground in this revision that there were contradictions between P.W.1 to P.W.4 with regard to weapon used by the accused. The case of



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the prosecution is that P.W.2 while performing some ritual in order to release the ghost from the wife of A4, he had beaten the wife of A4 and also he had beaten her by bamboo stick on 12.03.2004. Therefore, there was a previous enmity between A4 and P.W.2. Therefore, A4 along with other accused persons were assembled in front of the house of P.W.2. There was wordy quarrel between accused persons and P.W.2 and it was intercepted by P.W.1 and P.W.3. P.W.3 is none other than the paternal uncle of P.W.2. Immediately, the petitioner attacked P.W.1 by sickle, A2 attacked P.W.1 by sickle and other accused beaten by iron rod. However, A4, who had enmity with P.W.2, got acquitted by trial Court. Only on the instigation of A4, the petitioner and his brother accompanied him to question P.W.2. When P.W.1 intercepted, there was wordy quarrel and he was attacked by the petitioner. Therefore, there was no motive for the accused persons to do away the life of P.W.1. Only quarrel with P.W.2, it was intercepted by P.W.1. Hence, offence under Section 307 cannot be attracted as against the petitioner. However, due to the said attack, P.W.1 sustained grievous injuries on his head. Immediately, he was taken to the hospital by taxi. P.W.13, who treated the injured person, had examined and found injuries on his cheek, head and also on his rib. The said injuries were opined as previous one. Though P.W.1 deposed that MO1 was not used by the petitioner herein while attacking, he subsequently



clarified that some weapon was used in the crime. Therefore, there is no contradiction in respect of identifying the materials objects, which were marked as Ex.M.O.1 and Ex.M.O.2. Therefore, the prosecution proved its case beyond any reasonable doubt. Further, the Courts below ought not to have convicted the petitioner for the offence punishable under Section 307 IPC, since the prosecution failed to prove that the petitioner had intention to do away with the life of P.W.1. However, it attracts offence 326 IPC. Hence, this Court modified the conviction under Section 326 IPC instead of Section 307 IPC and sentenced the petitioner to undergo three years Rigorous Imprisonment and also ordered to pay compensation to the tune of Rs.50,000/- (Rupees Fifty Thousand only) in favour of P.W.1 or his legal heirs, in default, to undergo further period of three months Simple Imprisonment. The respondent is directed to take appropriate steps to secure the petitioner in order to serve the remaining period of sentence.

9. In result, the Criminal Revision Petition is partly allowed.

28.03.2023

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NCC : Yes/No

Index: Yes/No



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To

- 1.The Mahila Fast Track Court, Nagercoil.
- 2.The Assistant Sessions Court cum
Chief Judicial Magistrate, Nagercoil.
- 3.The Inspector of Police,
South Thamaraikulam Police Station,
Kanyakumari District.
- 4.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.K.ILANTHIRAIYAN , J.,

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