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Criminal Revision Case No. 860 of 2021

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 06.08.2024**

**CORAM**

**THE HON'BLE MR. JUSTICE M.NIRMAL KUMAR**

**Criminal Revision Case No. 860 of 2021**

Imran Basha

... Petitioner/Appellant  
/Accused

-VS-

The State Rep. Inspector of Police  
Hosur Town Police Station  
Krishnagiri District.  
(Crime No. 373 of 2010)

... Respondents /Complainant

**Prayer:-** Criminal Revision Petition filed under Sections 397 and 401 of Criminal Procedure Code, to call for the records on the file the learned Principal District and Sessions Court, Krishnagiri, Krishnagiri District in Criminal Appeal No. 23 of 2019 by judgment dated 07.07.2021 and confirming the conviction and modifying the sentence passed by the learned Judicial Magistrate, No.II, Hosur, Krishnagiri District in C.C. No. 32 of 2016 dated 23.05.2019 and set aside the judgment dated 07.07.2021.

For Petitioner : M/s. P.Tamilvel

For Respondents : Mr. P.Sathish, AGP (R1 & R2)



## ORDER

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The petitioner /accused in C.C. No. 32 of 2016 was convicted by the trial Court for the offence under Section 429 IPC sentenced to 2 years simple imprisonment and to pay a fine of Rs.1,000/-.

2. Aggrieved against the same, the petitioner had preferred an appeal before the Principal District and Sessions Judge, Krishnagiri, Krishnagiri District in Criminal Appeal No. 23 of 2019 and the Sessions Court by judgment dated 07.07.2021, modified the sentence jail sentence from 2 years to 18 months confirming the fine. Against which the present Revision.

3. In the Trial Court, PW1 to PW5 examined. Ex.P1 to P8 marked and MO1 produced.

4. The case of the prosecution is that on 12.05.2010 at about 10.30 p.m. PW1, the defacto complainant when he was in a cot sleeping in front of his house. At that time, a 10 months old calf was attacked by the petitioner by using MO1 stone caused severe injury, later died. PW2 also witnessed the attack by the petitioner. PW1 lodged a complaint P1 to PW5, who visited the scene of occurrence prepared P2-observation mahazar, and P7-rough sketch, in presence of PW3, sent the dead calf for the post-mortem PW4, Doctor, conducted post-mortem, issued P5-post mortem certificate, confirming the death was due to the injuries found on the left shoulder, left side stomach and corresponding



contusions and a tear in the left lung and due to profound bleeding, calf died.

PW5 is the investigating officer, on receipt of complaint Ex.P1 from PW1, visited the scene of occurrence and prepared Ex.P2-observation mahazar and on the same day, arrested the accused nearby new Hosur bus-stand and recorded his confession Ex.P3, on his confession, MO1 was ceased in the front of PW2's house covered by Mohan Ex.P4. Collected evidence filed charge-sheet. The trial Court on the evidence of the witnesses and the documents produced convicted the petitioner and the appellate court dismissed the appeal confirming the conviction, but sentence modified from 1 years to 18 months.

5. The contention of the learned counsel for the petitioner is that in this case, PW-1 and PW2 are projected as eye-witness but PW-2 not supported the case of the prosecution. PW-1 states that it is a village calf donated by the village panchayat Chief Ramanji Reddy and it used to roam around the village freely and it was also mischievous, dashing causing injuries to the villagers and due to which, some of the villagers might have attacked the calf and not the petitioner. He further submitted that there is a delay in lodging the complaint and the respondent police reaching the scene of occurrence. The case projected that the petitioner had motive for the reason that the calf used to come to the petitioner's cow shed and eat the cow feed, kept for his cattles. But no such cattle shed shown. In this case, MO1 stone was available in the open space and



there was no disclosure statement to recover MO1. MO1 from concealment the calf might had a fall, due to the chase by the villagers, sustained injuries for which, the petitioner falsely implicated.

6. The Public Prosecutor on the other hand vehemently opposed the contention of the petitioner and submitted PW1 and PW2 are the eye-witnesses, who are from the same village, identity of the petitioner is not in dispute. Though PW2 had resiled from his earlier statement, PW1 confirms that when he was sleeping in front of his house at about 10.30 p.m. the petitioner was found chasing the calf and hitting the calf with stone MO1 causing serious injuries to the calf, which caused death of the calf within 1 ½ hours after the attack. In the presence of PW3, observation mahazar and rough sketch prepared, PW4 is the Veterinary Doctor, who conducted post-mortem had issued post-mortem certificate confirming the injuries corresponding to the attack of the petitioner. In this case, all witnesses supported the case of the prosecution except PW2 to limited extent. The trial court considering the evidence had rightly convicted the petitioner and the lower appellate court independently considered the evidence and confirmed the conviction.

7. The learned counsel for the petitioner submits that the petitioner is a daily coolie, married having two daughters, and he is the only earning member to his family. The petitioner has got no antecedents of any kind, has no reason



to attack the calf the petitioner subsequent conduct is also without any blemish and sought for leniency.

8. Considering the submissions and perused the materials provided. The petitioner by throwing stone MO1, attacked the calf due to which the calf passed away. In this case, the PW1 is the eye-witness, who lodged complaint Ex.P1 and PW5 is the investigating officer who visited the scene of occurrence, found calf dead with injuries, sent the body to PW4 Veterinary Doctor, who confirmed the death due to injuries. Admittedly, the MO1 recovered in the open space and not from any concealment. In the scene of occurrence, there are other residents but except PW1 and PW2, none examined, PW2 not supported the case of the prosecution. The occurrence had taken place at night hours and there is nothing to show that there was enough light available in the scene of occurrence. Whether PW1 had witnessed the occurrence with the aid of the available light it is not clear. In the rough, there is nothing to show that light was available. The petitioner's contention is that the MO1 is a 700 gram stone, which is commonly available. As regards MO1 there is contradiction between PW1 and PW3 recovery witness regarding physical features of MO1. Be that as it may. In this case, PW1 is the sole eye witness, there is nothing to show PW1 had any animosity against the petitioner. The evidence of PW1, and PW4 Veterinary Doctor and Ex.P5 post-mortem report confirms the death of the calf is



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due to injuries sustained. A voiceless animal done to death. Hence conviction is sustained, with modification of sentence. This Court considering the petitioner has got two daughters of young age and he is a coolie, his sentence is modified to already person undergone and the petitioner to pay an amount of Rs. 50,000/- to the Om Sakthi Temple as donation.

9. Accordingly, the revision case is disposed off.

06.08.2024

Index: Yes/No

NCC: Yes/No

Maya

To

1. The Principal District and Sessions Court,  
Krishnagiri, Krishnagiri District
2. The Judicial Magistrate, No.II,  
Hosur, Krishnagiri District



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**M.NIRMAL KUMAR, J.**

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