



Crl.R.C.(MD).No.817 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On	:	20.12.2023
Pronounced On	:	22.02.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.RC(MD)No.817 of 2023
and
Crl.MP(MD)Nos.11034 & 11035 of 2023

Yogeswaran

... Revision Petitioner/Appellant/
Accused No.1

Vs.

State Rep by
The Inspector of Police,
Kenikkarai Police Station,
Ramanathapuram – 623 504

... Respondent/Respondent/
Complainant

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records pertaining to the order passed in Crl.A.No.21 of 2021 on the file of the learned Principal Sessions Judge at Ramanathapuram, dated 30.03.2023 confirming the judgment passed in S.C.No.128 of 2015 on the file of the Chief Judicial Magistrate, Ramanathapuram, dated 07.10.2021 and set aside the same.

For Petitioner : Mr.R.Venkatesh

For Respondent : Mr.M.Muthumanikkam
Government Advocate (Crl.Side)



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ORDER

The accused No-I, in the S.C.No.128 of 2015, on the file of the Chief Judicial Magistrate, Ramanathapuram filed this criminal revision case to set aside the conviction and sentence passed against him vide judgment dated 07.10.2021 for the offence under Section 307 of IPC to undergo three years rigorous imprisonment with Rs.10,000/- as fine in default 6months of simple imprisonment, which has been confirmed in Crl.A.No.23 of 2021, by the learned Principal Sessions Judge at Ramanathapuram, dated 30.03.2023.

2.1. The case of the prosecution is that the complainant/P.W.2 has two sons namely Maheshwaran/injured witness and Parthasarathy/P.W.5. P.W.2 is running a TVS Auto Dealership business in the name and style of 'Sarathy Auto Agency' at Kenikarai. His younger son Maheshwaran/injured witness was managing the said business. His elder son Parthasarathy/P.W.5 started a branch in the said business in the name and style of 'Sarathy Auto Agency' at Karaikudi. A1 is the friend of Parthasarathy and A2 is the brother-in-law of A1. A3 to A5 are the friends of A1 and A2. A6 is the father of A1. A7 is the brother of A2. A1 and A2 created a partnership agreement in respect of Auto Agency, Kenikarai, as if they are also partners of the agency which was run by the complainant. Due to



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difference of opinion in dividing profit, A1, A2 and A6, demanded the investment amount from the Parthasarathi. But, he has not returned the investment amount. Hence, A1, A2 and A6 demanded the same from the complainant and his younger son Maheshwaran/injured witness. The complainant refused and replied that he was not aware about the agreement dated 15.09.2010. Hence, the accused locked the Agency of the complainant. Both the parties lodged complaints against each other. After compromise under A7, the complainant settled a sum of Rs.14.5 lakhs. Thereby, both withdrew the complaints. Even though, amount has been settled, the petitioner along with other accused persons are said to have threatened the family members of the complainant and also threatened that they would do away the life of the younger son of the complainant. In order to execute the same, at the instigation of A7, they are said to have unlawfully assembled in a nearby shop of the complainant along with deadly weapons like knife, aruval and sword. When the injured person was proceeding towards his house after closing his shop at 08.50 p.m, they waylaid the injured. A2 abused the injured in filthy language and assaulted over his left shoulder with sword. When the injured fell down and tried to escape from the scene of occurrence, A1 assaulted him on his right side head with knife and A4 assaulted on his left back side of his head with aruval. When the injured



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tried to resist the same, A5 made cuts on his right palm and on his right rib with sword, A4 made cuts on his left palm and his fingers and A1 stabbed him on his left side hip with knife.

2.2. Therefore, the respondent police registered a case against the petitioner and the other accused for the offences under Sections 147, 148, 294(b) and 307 IPC. After conducting investigation, the respondent police filed final report before the learned Judicial Magistrate No.II, Ramanathapuram, and the learned Judicial Magistrate, took the same on file in P.R.C.No.8 of 2013 and furnished the copies as per Section 207 Cr.P.C., and committed the case to the Court of Sessions on the ground that the same was exclusively triable by Sessions Court. After committal, the learned Chief Judicial Magistrate, Ramanathapuram, taken the same on file in S.C.No.128 of 2015. The learned trial Judge, after framing the necessary charges, read over the same to all the accused but they pleaded not guilty and claimed to be tried.

2.3. To prove the charges against all the accused, the prosecution examined P.W.1 to P.W.18 and marked Ex.P.1 to Ex.P.19 and no material object was marked.



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2.4. The learned trial Judge, considered the same, examined the petitioner under Section 313 Cr.P.C., by putting the incriminating material available against him and he denied the same and hence, the case was posted for examination for the defence witness. On the side of defence, no witness was examined and no document was marked.

2.5. The learned trial Judge after considering the oral and documentary evidence adduced by both sides, convicted the petitioner under Section 307 IPC by the impugned order dated 30.03.2023 and also sentenced him to undergo 3 years Rigorous Imprisonment and to pay a fine of Rs.10,000/- and in default, to undergo 6 months Simple Imprisonment.

2.6. Aggrieved over the same, the petitioner filed an appeal before the learned Principal Sessions Judge, Ramanathapuram, in Cr.A.No.23 of 2021. The learned Appellate Judge, re-appreciated the evidence and perused all the documents and upon considered all the grounds raised by the petitioner, dismissed the appeal and confirmed the conviction and sentence passed by the trial Judge.



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3. Aggrieved over the same, the present criminal revision case has been filed by the petitioner.

4.1. The learned counsel for the petitioner submitted that the prosecution failed to prove the case beyond reasonable doubt. After acquitting all the accused under Sections 147 and 148 of IPC, the Court below committed grave error in convicting the petitioner under Section 307 of IPC without disbelieving the entire evidence of the injured witness.

4.2. The learned counsel for the petitioner further submitted that there was material contradiction between Doctor's evidence and the injuries found on the body of P.W.6. When there was no corroboration between P.W.1 and P.W.6, the Court below ought not have convicted the petitioner.

4.3. The learned counsel for the petitioner further submitted that the conviction on the basis of the sole injured witness cannot be sustained in the absence of production of weapons before the Court below. Both the Courts below failed to consider the entry of Accident Register. It is noted as 'unknown



4.4. The learned counsel for the petitioner further submitted that both the Courts below failed to consider the delay in lodging FIR. When, P.W.2 to P.W.5, P.W.11, P.W.13 and P.W.16 turned hostile, the conviction was only based on the evidence of P.W.6 injured witness and it cannot be sustained. Hence, he prays for setting aside the conviction and sentence passed by the learned trial Judge by allowing this revision.

5.1. Per contra, the learned Government Advocate (Crl.Side) appearing for the respondent police submitted that P.W.1/complainant and P.W.6/injured witness clearly deposed about the occurrence that took place. P.W.6 is the injured witness. He sustained injuries at the hands of the petitioner and the other accused. Specific overtact has been attributed to each and every accused including the petitioner and the same also corroborated with the Doctor's evidence.

5.2. The learned Government Advocate (Crl.Side) appearing for the respondent police further submitted that P.W.6 clearly deposed before the Court



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about the injuries and the assault made by the each accused. Even though, P.W.7 and P.W.12 turned hostile, they specifically stated that at the time when injured sustained injuries, the petitioner and the other accused were present at the scene of occurrence. In the said circumstances, the prosecution clearly proved the case on the basis of the evidence of P.W.6 injured witness.

5.3. The learned Government Advocate (Crl.Side) appearing for the respondent police further submitted that as per the law laid down by the Hon'ble Supreme Court, conviction on the basis of the evidence of injured witness alone is sustainable and hence, he seeks for dismissal of the above Revision.

6. This Court considered the rival submissions made on either side and perused the materials available on record.

7. The petitioner is a hooligan had brutally attacked the injured witness (P.W.6). and caused more than 30 cut injuries. P.W.6 identified the said accused. P.W.6 cogently narrated the motive, manner of the occurrence took place and also over tact of the each accused without any infirmities. The injuries also supported by the medical evidence. The Doctor, who examined the injured



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clearly deposed about the injuries. He also affirmed the fact that the injuries are likely to be caused by Veecharuval etc., The wound certificate was marked as Ex.P.5 and Discharge summary was marked as Ex.P.6. From the perusal of the Wound Certificate and the Discharge summary, it is also seen that the petitioner and other accused brutally attacked the injured and caused more than 30 cut injuries. P.W.6 cogently deposed before the Court about the attack and the injuries sustained by him and the same was corroborated by the medical evidence. In the said circumstances, there is no reason to disbelieve his evidence.

7.1.It is well settled principle that the evidence of the injured witness to be considered unless strong circumstances are there to disbelieve his version. In this aspect, it is relevant to follow the principle laid down by the Hon'ble Supreme Court to rely the injured witness in the case of ***Balu Sudam Khalde v. State of Maharashtra***, reported in ***2023 SCC OnLine SC 355***

26. When the evidence of an injured eye-witness is to be appreciated, the under-noted legal principles enunciated by the Courts are required to be kept in mind:

(a) The presence of an injured eye-witness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.



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(b) Unless, it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused.

(c) The evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.

(d) The evidence of injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.

(e) If there be any exaggeration or immaterial embellishments in the evidence of an injured witness, then such contradiction, exaggeration or embellishment should be discarded from the evidence of injured, but not the whole evidence.

(f) The broad substratum of the prosecution version must be taken into consideration and discrepancies which normally creep due to loss of memory with passage of time should be discarded.

7.2. Even though some of the witnesses turned hostile, they supported the evidence of P.W.6 to some extent. Some of the witnesses clearly deposed about the motive existed between them. Some of the witnesses stated that the injured sustained injuries on the date of the occurrence. Even P.W.7, the head constable stated in his evidence that she saw the assault made by the petitioner and the



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other accused on the particular date. But, before she could reach the scene of occurrence, all the accused fled away from that place. The said accused were identified by P.W.6. The non-identification by P.W.7, cannot be a ground to reject the evidence of P.W.6. P.W.6 sustained injuries at the hands of the accused. Hence, the injured witness cogently deposed and inspired the confidence of this Court and also is corroborated by the medical evidence. Therefore, both the Courts below correctly relied the same to convict the petitioner under the above said offences.

8. The submission of the learned counsel for the petitioner that the injured identified the accused before this Court without conducting any identification parade can not be accepted on the ground that he was assaulted with deadly weapons by the accused. Therefore, his identification before this Court is acceptable one. In this aspects, it is relevant to note the Hon'ble Supreme Court judgment in the case of ***Pargan Singh v. State of Punjab***, reported in (2014) 14 SCC 619

18. Before entering upon the discussion on this aspect specific to this case, we would like to make some general observations on the theory of “memory”. Scientific understanding of how memory works is



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described by Geoffrey R. Loftus while commenting upon the judgment dated 16-1-2002 rendered in Javier Suarez Medina v. Janie Cockrell [Case No. 01-10763, decided on 16-1-2002 (5th Cir 2002)] by the United States Court of Appeals. He has explained that a generally accepted theory of this process was first explicated in detail by Neisser (1967) and has been continually refined over the intervening quarter-century. The basic tenets of the theory are as follows:

***18.1.** First, memory does not work like a video recorder. Instead, when a person witnesses some complex event, such as a crime, or an accident, or a wedding, or a basketball game, he or she acquires fragments of information from the environment. These fragments are then integrated with other information from other sources. Examples of such sources are: information previously stored in memory that leads to prior expectations about what will happen, and information—both information from external sources, and information generated internally in the form of inferences—that is acquired after the event has occurred. The result of this amalgamation of information is the person's memory for the event. Sometimes this memory is accurate, and other times it is inaccurate. An initial memory of some event, once formed, is not “cast in concrete”. Rather, a memory*



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is a highly fluid entity that changes, sometimes dramatically, with the passage of time. Every time a witness thinks about some event—revisits his or her memory of it—the memory changes in some fashion. Such changes take many forms. For instance, a witness can make inferences about how things probably happened, and these inferences become part of the memory. New information that is consistent with the witness's beliefs about what must have happened can be integrated into the memory. Details that do not seem to fit a coherent story of what happened can be stripped away. In short, the memory possessed by the witness at some later point (e.g. when the witness testifies in court) can be quite different from the memory that the witness originally formed at the time of the event.

18.2. *Memory researchers study how memory works using a variety of techniques. A common technique is to try to identify circumstances under which memory is inaccurate versus circumstances under which memory is accurate. These efforts have revealed four major sets of circumstances under which memory tends to be inaccurate. The first two sets of circumstances involve what is happening at the time the to-be-remembered event is originally experienced, while the second two sets of circumstances involve things that happen after the*



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between the to-be-remembered event and the time the person tries to remember aspects of the event. Examples of memory-distorting problems include a lengthy retention interval, which leads to forgetting, and inaccurate information learned by the person during the retention interval that can get incorporated into the person's memory for the original event.

18.6. The fourth set of circumstances involves errors introduced at the time of retrieval i.e. at the time the person is trying to remember what he or she experienced. Such problems include biased tests and leading questions. They can lead to a biased report of the person's memory and can also potentially change and bias the memory itself.

The Hon'ble Supreme Court has held that since the injured sustained injury at the hands of the accused, he identified the accused with his unfailing memory.

9. The petitioner contended that there was a delay in lodging the FIR. This Court is unable to accept the said contention on the ground that injured sustained more than 30 cut injuries and hence, he was admitted in the hospital in order to save his life. Therefore, the delay of few hours is not fatal to the prosecution. The occurrence took place at 20.15 hours on 04.01.2012. The complaint was



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lodged on 05.01.2012 at 13.00 hours. The said delay is not inordinate delay.

Therefore, the delay is not fatal.

10. The Hon'ble Supreme Court has held that the delay in giving FIR itself cannot be a ground to doubt the prosecution case In **Tara Singh [1991 Supp (1) SCC 536]**. Further, in the case of **Ravinder Kumar v. State of Punjab**, reported in **(2001) 7 SCC 690** has held as follows:

In any case, where there is delay in making the FIR the court is to look at the causes for it and if such causes are not attributable to any effort to concoct a version no consequence shall be attached to the mere delay in lodging the FIR.

In Munshi Prasad v. State of Bihar, reported in (2002) 1 SCC 351 : 2002 SCC (Cri) 175 : 2001 SCC OnLine SC 1217 at page 367

16. As noticed above, the statutory obligation warrants utmost promptitude and in the event of the delay not being an unreasonable one and in the event of availability of some explanation therefor, which is otherwise acceptable as well, question of prosecution being tainted would not arise. FIR sets the investigation rolling and in the event of there being some delay somewhere and as noticed above with the acceptable explanation, the delay cannot be said to vitiate the trial



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by reason therefor. In the wake of the aforesaid, we are thus unable to record our concurrence with the submissions in support of the appeals.

In this case the injured as stated above, the injured sustained more than 30 cut injuries and hence, he was admitted in the hospital in order to save his life. Therefore, there was a delay of few hours, which is not fatal.

11. The Hon'ble Supreme Court in 2019 12 SCC 560 has held that the delay should be questioned through the Investigation Officer and due to the delay, serious prejudice should have been caused to the appellant and the prejudice is to be explained by the accused. None of the above is established by the petitioner and hence, this Court has not accepted the submission of the learned Counsel regarding the delay.

12. One more important aspect is that the witnesses were cross-examined after two years from the date of the chief-examination.

13. Further, the injured witness deposed before the Court in cogent manner. The non-production of the weapon before the Court below is not fatal to the prosecution when the doctor clearly deposed that the injuries sustained by the



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injured might have been caused by the weapons like Veecharuval etc.,

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14. The acquittal of some of the accused is not a ground to acquit the petitioner when the evidence of the injured witness available is cogent and trustworthy relating to the overt act of the petitioner. In this aspect, it is relevant to note the following Hon'ble Supreme Court judgments:-

In ***Gangadhar Behera v. State of Orissa***, reported in (2002) 8 SCC 381 is as follows:

15. Even if a major portion of the evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, notwithstanding acquittal of a number of other co-accused persons, his conviction can be maintained. It is the duty of the court to separate the grain from the chaff. Where chaff can be separated from the grain, it would be open to the court to convict an accused notwithstanding the fact that evidence has been found to be deficient to prove guilt of other accused persons. Falsity of a particular material witness or material particular would not ruin it from the beginning to end.

The said principle was reiterated by the Hon'ble Supreme Court in number of cases in the latest decision of the Hon'ble Three Member Bench of the Supreme



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Court has reaffirmed the same in the following terms:

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In Achhar Singh v. State of H.P., (2021) 5 SCC 543

26. The learned State counsel has rightly relied on Gangadhar Behera [Gangadhar Behera v. State of Orissa, (2002) 8 SCC 381 : 2003 SCC (Cri) 32] to contend that even in cases where a major portion of the evidence is found deficient, if the residue is sufficient to prove the guilt of the accused, conviction can be based on it. This Court in Hari Chand v. State of Delhi [Hari Chand v. State of Delhi, (1996) 9 SCC 112 : 1996 SCC (Cri) 950] held that : (Hari Chand case [Hari Chand v. State of Delhi, (1996) 9 SCC 112 : 1996 SCC (Cri) 950] , SCC pp. 124-25, para 24)

“24. ... So far as this contention is concerned it must be kept in view that while appreciating the evidence of witnesses in a criminal trial especially in a case of eyewitnesses the maxim falsus in uno, falsus in omnibus cannot apply and the court has to make efforts to sift the grain from the chaff. It is of course true that when a witness is said to have exaggerated in his evidence at the stage of trial and has tried to involve many more accused and if that part of the evidence is not found acceptable the remaining part of evidence has to be scrutinised with care and the court must try to see whether the acceptable part of the evidence gets corroborated from other evidence on record so that the acceptable part can be safely relied upon.”



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(emphasis supplied)

15. In all aspects, both the Court below correctly appreciated the evidence and convicted the petitioner. This Court does not find any illegality or infirmity in the finding rendered by both the Courts below. The Hon'ble Supreme Court has repeatedly held that the interference in the concurrent finding by exercising revisional jurisdiction is not rule and it is only an exception. The petitioner has not come under the said exception. In the case ***Bir Singh v. Mukesh Kumar, (2019) 4 SCC 197*** has held as follows:

16. It is well settled that in exercise of revisional jurisdiction under Section 482 of the Criminal Procedure Code, the High Court does not, in the absence of perversity, upset concurrent factual findings. It is not for the Revisional Court to re-analyse and re-interpret the evidence on record.

Hence, the conviction and sentence passed by the learned trial Judge and confirmed by the learned Appellate Judge, does not warrant any interference.

16. Accordingly, the impugned order passed in Crl.A.No.23 of 2021 on the file of the learned Principal Sessions Judge at Ramanathapuram, dated 30.03.2023 confirming the judgment passed in S.C.No.128 of 2015 on the file of



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the Chief Judicial Magistrate, Ramanathapuram, dated 07.10.2021, is hereby confirmed and the Criminal Revision Case stands dismissed. Consequently, the connected miscellaneous petitions are closed.

22.02.2024

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

- 1.The learned Principal Sessions Judge,
Ramanathapuram.
- 2.The learned Chief Judicial Magistrate,
Ramanathapuram.
- 3.The Inspector of Police,
Kenikkarai Police Station,
Ramanathapuram – 623 504
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
5. The Section Officer,
Criminal Section (Records)
Madurai Bench of Madras High Court, Madurai.



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K.K.RAMAKRISHNAN, J.

dss

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