



CrI.R.C.No.402 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.04.2025

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.R.C.No.402 of 2022

1.Selvaraj
2.Shantha

... Petitioners

Vs.

The State, rep.by
Inspector of Police,
Annamalai Nagar Police Station,
(Cr.No.142 of 2012),
Chidambaram.

... Respondent

PRAYER: Criminal Revision Case is filed under Sections 397 and 401 of Criminal Procedure Code, to set aside the judgment in C.A.No.14 of 2020 dated 13.01.2022 on the file of II Additional Sessions Judge at Chidambaram, confirming the judgment and conviction and sentence passed in S.C.No.145 of 2013 dated 05.11.2020 on the file of the Assistant Sessions Judge, Chidambaram and acquit the petitioners.



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For Petitioners : Mr.K.V.Sridharan
For Respondent : Mr.L.Baskaran,
Government Advocate (Crl. Side)

ORDER

This Criminal Revision Case has been filed to set aside the judgment, dated 13.01.2022 in Crl.A.No.14 of 2020 passed by the learned II Additional District Sessions Judge, Chidambaram (Lower Appellate Court) confirming the judgment of conviction, dated 05.11.2020 in S.C.No.145 of 2013 passed by the learned Assistant Sessions Judge, Chidambaram (Trial Court).

2.The conviction and sentence of the Trial Court are as follows:

<i>S. No.</i>	<i>Rank of the Accused</i>	<i>Charges Framed</i>	<i>Conviction and Sentence</i>
1	A1	For offence under Sections 294(b), 307 & 326 IPC.	● A1 is convicted for offence under Section 307 IPC and sentenced to undergo seven years Rigorous Imprisonment and to pay a fine of Rs.2,000/-, in default to undergo Simple Imprisonment for six months. ● A1 is acquitted from the charges under Sections 294(b) and 326 IPC.



S. No.	Rank of the Accused	Charges Framed	Conviction and Sentence
2	A2	For offence under Sections 324 & 307 r/w 34 IPC	● A2 is convicted and sentenced to undergo Rigorous Imprisonment for one year and to pay a fine of Rs.1,000/-, in default to undergo three months Simple Imprisonment for offence under Section 324 IPC. ● A2 is acquitted from the charges under Section 307 r/w 34 IPC.

Aggrieved over the judgment of Trial Court, the petitioner preferred an appeal before the Lower Appellate Court in Crl.A.No.14 of 2020 and the same was dismissed on 13.01.2022 confirming the judgment of the Trial Court. Challenging the same, the present Criminal Revision Case is filed.

3.Gist of the case is as follows:

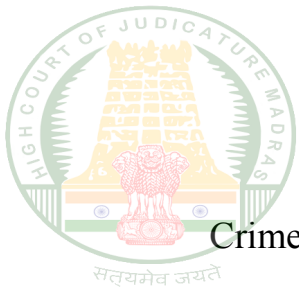
(i)The injured PW1 (defacto complainant) and PW2 are spouses and PW3 is their son. The 1st petitioner and PW1 are cousin brothers and neighbours. Prior to the occurrence, there was some dispute between them in sharing the common backyard area. On 25.07.2012, at about 01.00 p.m, the petitioners had gone to the house of PW1 and at that time PW1 was in



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the backyard. PW3, son of PW1, who came from the school, was asked to call his father/PW1. PW1 came out from the house, there was wordy quarrel and altercation. Suddenly, the 1st petitioner took knife (MO1) from his hip, attacked PW1 on his forehead. When the 1st petitioner attempted to attack second time, the same was warded off by his left hand. Due to which, PW1 sustained cut injury to his left wrist exposing bone and tendons. On hearing noise, PW2 came out from the house, when she attempted to save her husband, the 2nd petitioner attacked PW2 on her hip using wooden log. PW4, a relative of PW1 and PW3, son of PW1 pulled the knife (MO1) from the 1st petitioner's hand. Thereafter, the injured (PW1 & PW2) were immediately taken to Chidambaram Government Hospital for treatment, from there referred to Rajah Muthiah Medical College Hospital and thereafter to JIPMER, Puducherry. From Rajah Muthiah Medical College Hospital, the respondent Police was informed about the incident.

(ii)PW10/Sub Inspector of Police, received information, went to Rajah Muthiah Medical College Hospital, recorded the statement of PW1, obtained his signature in the complaint (Ex.P1), registered FIR (Ex.P8) in



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Crime No.142 of 2012 for offence under Sections 294(b), 323, 324 & 506(ii) of IPC, visited the scene of occurrence, prepared Observation Mahazar (Ex.P9), Rough Sketch (Ex.P10), examined the witnesses present in the scene of occurrence, altered Sections including offence under Section 307 IPC and deleting Section 506(ii) IPC by alteration report (Ex.P11). PW11/Investigating Officer took up further investigation, examined the witnesses present in scene of occurrence, examined the Doctor (PW9), collected the medical records (Exs.P6 & P7). In the meanwhile, the 1st petitioner was arrested on 30.07.2012, confession statement (Ex.P12) recorded and knife (MO1) recovered. On completion of investigation, charge sheet filed before the Trial Court. During trial, on the side of the prosecution, 11 witnesses examined as PW1 to PW11 examined, 13 documents marked as Exs.P1 to P13 and MO1 marked. On the side of the defence, one Dr.Saravanakumar examined as DW1 and the copy of Accident Register of 1st petitioner marked as Ex.D1. On conclusion of trial, the Trial Court convicted the petitioners as stated above.



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4.The learned counsel for the petitioners submitted that in this case, the petitioners and the injured PW1 & PW2 are relatives and neighbours and they have some dispute with regard to sharing of common backyard area. He further submitted that it is PW1 to PW3, who attacked the 1st petitioner with wooden log, stones and caused injuries to him, hence they are aggressors. When the appellant defend himself, there was scuffle and exchange of blows, completely suppressed in this case. Due to the attack of the PW1 to PW3, the 1st petitioner sustained injuries, went to Government Kamarajar Hospital, Chidambaram where the Casualty Medical Doctor (DW1) examined him on 25.07.2012 at about 03.25 p.m, admitted him as inpatient and the 1st petitioner took treatment for five days. Suppressing this fact, the 1st petitioner was shown arrest near Ganesh Bhavan, Chidambaram opposite to the hospital on 30.07.2012. The Doctor (DW1) treated the 1st petitioner in Government Kamarajar Hospital confirmed the injuries sustained by the 1st petitioner through Ex.D1. PW11/Investigating Officer admits that in the confession statement (Ex.P12) of the 1st petitioner, it is recorded the 1st petitioner was taking treatment as inpatient in the hospital. Hence, the 1st petitioner sustained injuries on 25.07.2012 is confirmed by



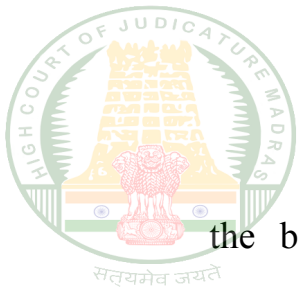
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the evidence of DW1, Accident Register (Ex.D1) and confession statement (Ex.P12). Added to it, the statement of PW3 is categorical that when the 1st petitioner attacked his father/PW1, he intervened and pulled the knife (MO1) from him, later the same handed over to the respondent Police, which is corroborated by PW2 and PW4. In such circumstances, the arrest and recovery of MO1 becomes doubtful. Though the Trial Court finds that there is discrepancy in the recovery of MO1, but the same glossed over stating that in this case there is direct evidence to the occurrence and hence, the recovery of MO1 becomes insignificant, is not proper.

5.The learned counsel further submitted that in this case, initially on the complaint of PW1, FIR (Ex.P8) registered by PW10 in Crime No.142 of 2012 for offence under Sections 294(b), 323, 324 & 506(ii) of IPC, but on the same day, altered Section including the offence under Section 307 IPC and deleting Section 506(ii) IPC by alteration report (Ex.P11). Though Ex.P11 prepared on the same day of registration of FIR on 25.07.2012, Ex.P11 reached the Court after five days on 30.07.2012. No explanation for such delay. The reason given by the Investigating Officer/PW11 for



altering Section is that the 1st petitioner assaulted PW1 shouting he will finish PW1's life. In the earlier records, nothing found. PW11 admits the Doctor not given any opinion that the injuries are fatal and life threatening. The four eye witnesses projected in this case are PW1/injured eye witnesses, PW2 his wife, PW3 his son and PW4, a relative of PW1. PW2 stated that she came to the scene after hearing the noise and attempted to save her husband, hence her presence is highly doubtful. PW2 further stated that the 2nd petitioner assaulted her using wooden log, but PW1 stated that his wife/PW2 attacked with wooden portion of knife (MO1). PW3 and PW4 stated PW2 was attacked on her hip. The Doctor (PW9) and Accident Register (Ex.P7) confirms that there is only a small contusion to the right thumb, which is a simple injury. The presence of PW3 and PW4 in the scene is also highly doubtful. PW3 stated that he stayed back in his house and PW4 stated that he called Ambulance and he had gone to the hospital. But in the Accident Register (Ex.P6), it is recorded that it is PW3, who accompanied PW1 and PW2 and there is nothing about PW4. Hence, the presence of PW4 is highly doubtful. Even in the Accident Register (Ex.P6), it is recorded that three persons attacked PW1 and PW2. Thus, right from



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the beginning, PW1 to PW3 suppressed the real facts, attempted to implicate the entire family of the petitioners. Added to it, the Investigation not properly conducted and the injuries sustained by the 1st petitioner on 25.07.2012 suppressed.

6.He further submitted that the Doctor who gave treatment to PW1 in JIPMER Hospital not examined and no medical records from JIPMER Hospital marked as exhibits. In this case, due to the death of Dr.Sivakannappan who gave treatment to PW1 and PW2, another Doctor (PW9) from Rajah Muthiah Government Hospital examined. Dr.Sivakannappan recorded in the Accident Register (Ex.P6) that as per the JIPMER Hospital medical records, there is cut injury to the left wrist exposing bone and tendons which is grievous in nature and laceration found in the mid-parietal region is simple. The Investigating Officer/PW11 admits that though PW1 took treatment at JIPMER Hospital, he failed to examine the concerned Doctor from JIPMER Hospital. Without examining the Doctor from JIPMER Hospital and producing contemporary medial records such as X-Ray, Scan Reports, conviction under Section 307 IPC is not



sustainable.

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7.The other eye witness to the occurrence viz., PW5 not supported the case of the prosecution. The witness for Observation Mahazar (PW6) turned hostile. PW7, the other Observation Mahazar witness stated that he does not know what was written in Ex.P9. PW8 is the witness for arrest and confession statement (Ex.P12) of the 1st petitioner but not supported the case of the prosecution. Hence, the seizure of (MO1) becomes highly doubtful. PW9 is the Doctor deposed based on the Accident Registers (Exs.P6 & P7) recorded by Dr.Sivakannappan from Rajah Muthiah Medical College Hospital. PW10 is the Sub Inspector of Police, received the complaint (Ex.P1), registered FIR (Ex.P8), examined the injured eye witnesses, prepared Observation Mahazar (Ex.P9), Rough Sketch (Ex.P10), thereafter handed over investigation to PW11. PW11/Investigating Officer took up further investigation, collected Accident Registers (Exs.P6 & P7) and filed charge sheet before the Trial Court. In view of the above, the Trial Court failed to consider the contradiction in the prosecution witnesses and also failed to consider the evidence of DW1 and Ex.D1. In any event, the



conviction of the Trial Court is not sustainable. The Lower Appellate Court without independently assessing the evidence and materials, mechanically confirmed the judgment of the Trial Court, hence, prayed for acquittal.

8.The learned Government Advocate (Crl. Side) appearing for the respondent Police filed counter and submitted that on 25.07.2012 in the afternoon, the petitioners/A1 and A2 had gone to the house of PW1 and called him out with an intention to finish him. When PW1 came out, the petitioners abused, picked up quarrel. The 1st petitioner took the knife (MO1) from his hip, attacked him on his forehead stating that only if PW1 is alive, he will ask for share in the disputed common area. When the 1st petitioner attempted to attack PW1 second time, PW1 defended using his left hand which caused cut injury to the left wrist exposing bone and tendons. PW2, the wife of PW1 hearing noise came out, attempted to intervene to save her husband. At that time, 2nd petitioner attacked PW2 on her hip using wooden log. PW3, the son of PW1 intervened and snatched the knife (MO1) from the 1st petitioner. PW4, a relative present there intervened and called Ambulance. Both PW1 and PW2 initially taken to



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Government Hospital, Chidambaram, thereafter referred to Rajah Muthiah

Medical College Hospital where one Dr.Sivakannappan examined them, issued the Accident Registers (Exs.P6 & P7). Thereafter, PW1 referred to JIPMER Hospital, thereafter took further treatment at Government Rajiv Gandhi Hospital, Chennai. PW10/Sub Inspector of Police on getting information from Rajah Muthiah Medical College Hospital visited the hospital, recorded the complaint (Ex.P1) of PW1, took his signature, registered FIR (Ex.P8), visited the scene of occurrence, prepared Observation Mahazar (Ex.P9), Rough Sketch (Ex.P10) and recorded the statement of witnesses present in the scene of occurrence. Finding that the 1st petitioner with intention to murder attacked PW1 & PW2, Section altered by PW10 including 307 IPC and deleting Section 506(ii) IPC by alteration report (Ex.P11). PW11/Investigating Officer took up further investigation, arrested the 1st petitioner on 30.07.2012, in presence of PW8, recorded confession statement (Ex.P12), based on Ex.P12, recovered knife (MO1). On collecting the medical records (Exs.P6 & P7) and other documents, charge sheet filed before the Trial Court. During trial, 11 witnesses examined as PW1 to PW11 examined, 13 documents marked as Exs.P1 to

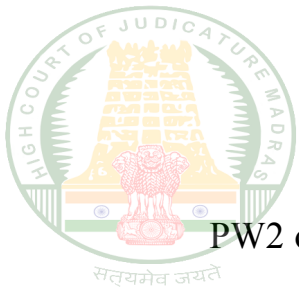


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P13 and MO1 marked. On completion of trial, the trial Court convicted the petitioners. On independent assessment of evidence and materials, the Lower Appellate Court confirmed the judgment of the Trial Court. Hence, the revision is to be dismissed.

9.This Court considered the submissions made on both sides and perused the materials available on record.

10.Prior to the occurrence, there was some dispute between the petitioners and PW1, PW2 with regard to sharing of common area. On 25.07.2012, at about 01.00 p.m., the petitioners had gone to the house of PW1, at that time PW1 was in the backyard. PW3 was asked to call his father/PW1. PW1 came out from the house, wordy quarrel arose. Suddenly, the 1st petitioner took knife (MO1) from his hip, attacked PW1 on his forehead. When the 1st petitioner attempted to attack PW1 second time, the same was ward off by his left hand which caused cut injury to the left wrist exposing bone and tendons. On hearing noise, PW2 came out from the house, when she intervened to save her husband, the 2nd petitioner attacked



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PW2 on her back using wooden log. PW4, a relative of PW1 and PW3, son of PW1 snatched the knife (MO1) from the 1st petitioner's hand.

11.It is seen that the 1st petitioner was attacked by three persons by wooden log and stones, due to which, he sustained contusion on the right chest and abrasion to his right knee. On the same day of the occurrence, the 1st petitioner took treatment at Government Kamarajar Hospital, Chidambaram at about 03.25 p.m, DW1 Dr.Saravanakumar examined the 1st petitioner, admitted him as inpatient and he took treatment for five days till 30.07.2012 proved by the evidence of DW1 and the Accident Register (Ex.D1). On the other hand, this fact suppressed and withheld by the Investigating Officer/PW11 and Trial Court not considered the same.

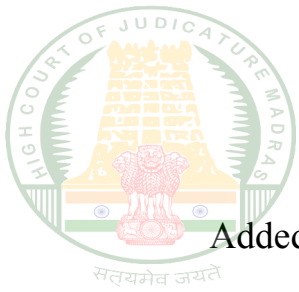
12.It is not in dispute that the petitioners and PW1, PW2 are neighbours and relatives and there was long standing dispute with regard to sharing of common space between them. On the fateful day, at about 01.00 p.m, the petitioners had gone to the house of PW1 and questioned PW1 for tying a rope earmarking and dividing the boundary, thereafter wordy quarrel



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arose, in heat of passion, the 1st petitioner assaulted PW1 on his forehead, when the 1st petitioner made second attempt, it fell on the left wrist of PW1.

PW2 intervened to save her husband/PW1, at that time, the 2nd petitioner attacked PW2 with wooden log on her hip. PW3 confirmed that he pulled the knife (MO1) from the 1st petitioner, later handed over to the Police, which is corroborated by PW2 and PW4. PW1 and PW2 were initially taken to Government Hospital, Chidambaram, thereafter referred to Rajah Muthiah Medical College Hospital where one Dr.Sivakannappan examined them, issued Accident Registers (Exs.P6 & P7), for better treatment PW1 referred to JIPMER Hospital. On the contrary, PW1's version is that he got admitted in the Government Rajiv Gandhi Hospital, Chennai for further treatment. From the Accident Register of PW1 (Ex.P6), it is seen that the medical records of JIPMER Hospital perused, thereafter opinion given by Dr.Sivakannappan. The Investigating Officer/PW11 admits that he had gone to JIPMER Hospital, collected medical records of PW1, produced the same to Dr.Sivakannappan, based on which, Dr.Sivakannappan gave opinion. PW11 gave no reason for non production of JIPMER medical records of PW1 and non examination of Doctor from JIPMER Hospital.



Added to it, PW11 does not whisper anything with regard to treatment taken by PW1 at Government Rajiv Gandhi Hospital, Chennai. From Ex.P6, it is seen that the injury sustained by PW1 on the forehead is simple and the injury to the left wrist grievous. Likewise, in the Accident Register (Ex.P7) of PW2, it is recorded the injury sustained by PW2 is simple in nature. In this case, except for Accident Registers (Exs.P6 & P7) and opinion of the Doctor, no documents such as X-Ray, Scan Report and other medical records produced.

13.In this case, the recovery of the knife (MO1) is doubtful. PW3 stated that he pulled the knife (MO1) from PW1, later handed over to the Police on the same day of the attack on 25.07.2012. But the Investigating Officer/PW11 projected the case that on 30.07.2012 when he arrested the 1st petitioner in presence of PW8, he gave confession statement (Ex.P12) and knife (MO1) seized by Seizure Mahazar (Ex.P13). Since PW8 does not support the case of the prosecution, the arrest, recovery of MO1 becomes doubtful. Added to it, PW1 disputed the knife (MO1) used during the attack.



14. In this case, the 2nd petitioner attacked PW2 using wooden log.

PW2 stated that she was attacked on her hip, back of her shoulder and sustained injuries. PW3 and PW4 corroborated the same. In the Accident Register (Ex.P7) of PW2, it is recorded that contusion on the left thumb, nothing more. The wooden log used to attack PW2 not seized as Material Object. Hence, the injuries sustained by PW2 is not in conformity to the Accident Register (Ex.P7).

15. A dispute over sharing of common area between the petitioners and PW1, PW2 was on going dispute for quite sometime. Admittedly, PW1 tied a rope, divided the property unilaterally and informed the petitioners that henceforth the petitioners have no right over the other common area. Due to which, wordy quarrel arose, in heat of passion, there have been exchange of blows and attack by both the group. Due to this incident, the first petitioner sustained injury, took treatment as inpatient for five days, suppressed, hence adverse inference under Section 114 of Indian Evidence Act comes in aid of the 1st petitioner.



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16.Though prior to the occurrence, there was dispute between the petitioners and PW1 and PW2 with regard to sharing of common area, but there is no evidence or material that the petitioners having intention to cause death of PW1 and PW2. In this case, the medical evidence is contrary to the ocular evidence. There have been withholding of evidence with regard to injury sustained by the 1st petitioner. Added to it, the arrest, recovery of knife (MO1) doubtful. The prosecution failed to establish the charge of attempt to murder. Hence, the present case to be a case of voluntarily causing a grievous hurt, punishable under Section 325 IPC. It is seen that already, the 1st petitioner was in prison for 60 days and the 2nd petitioner was in prison for 9 days.

17.In view of the above, the conviction of 1st petitioner for offence under Section 307 IPC is not sustainable and this Court modifies the same to Section 325 IPC. As regards the sentence of imprisonment, the period already undergone by the 1st petitioner is sufficient. Fine amount is sustained.



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18.As regards the conviction of the 2nd petitioner is concerned, the conviction under Section 324 IPC is modified to Section 323 IPC. The period already undergone by the 2nd petitioner is sufficient. Fine amount is sustained.

19.In the result, this Criminal Revision Case is partly-allowed.

20.The 1st petitioner is directed to deposit a sum of Rs.1,00,000/- (Rupees one lakh only) to the credit of S.C.No.145 of 2013 on the file of the Trial Court, on or before 28.04.2025. On such deposit, the same to be paid as compensation to PW1. PW1 to file appropriate petition and receive the said amount.

21.Post the matter under the caption “For Reporting Compliance” on 28.04.2025.

21.04.2025

Speaking Order/Non Speaking Order

Index : Yes/No

Neutral Citation: Yes/No

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Note: Issue Order Copy on 23.04.2025.

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M.NIRMAL KUMAR, J.

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To

- 1.The II Additional District Sessions Judge,
Chidambaram.
- 2.The Assistant Sessions Judge,
Chidambaram.
- 3.The Inspector of Police,
Annamalai Nagar Police Station,
Chidambaram.
- 4.The Public Prosecutor,
High Court, Madras.

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