



Crl.RC.No.517 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.04.2025

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.517 of 2022

Kumar, M/34 years,
S/o.Kumbalam @ Palaniappan,
Vanniyar Street, Anna Nagar, Pennagaram Taluk,
Dharmapuri District.

... Petitioner/Accused

Vs.

State Rep By,
The Sub Inspector of Police,
Pennagaram Police Station,
Dharmapuri District.
Crime No.65 of 2018.

... Complainant/Respondent

Prayer: Criminal Revision Petition has been filed under Section 397 and 401 of Cr.P.C., pleaded to set aside the conviction and sentence made in Criminal Appeal No.18 of 2019, dated 10.03.2020 on the file of the Principal Sessions Judge, Dharmapuri in confirming the judgment made in C.C.No.101 of 2018, dated 26.06.2019 on the file of the Judicial Magistrate, Pennagaram.

For Petitioner : Mr.V.Sakkarapani.

For Respondent : Mr.L.Baskaran.
Government Advocate, (Crl.Side),
Assisted by Ms.Sumai Arnica



ORDER

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The petitioner herein is the accused in C.C.No.101 of 2018 on the file of the learned Judicial Magistrate, Pennagaram. He was found guilty of the offence under Section 326 of I.P.C and convicted and sentenced to undergo simple imprisonment for a period of one year and to pay a fine amount of Rs.2,000/-, in default to undergo simple imprisonment for a period of one month.

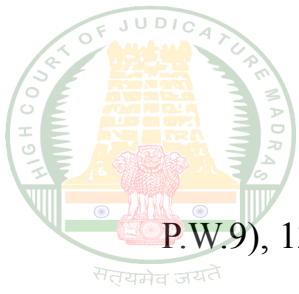
2. Aggrieved against the same, the petitioner had filed appeal in C.A.No.18 of 2019 and the learned Principal Sessions Judge Dharmapuri by order dated 10.03.2020, had dismissed the appeal and confirmed the conviction and sentence, against which the present revision in Crl.R.C.No.517 of 2022 is filed.

3. The case of the prosecution is that on 28.02.2018, when the victim (P.W.2) was sleeping in her room, the petitioner who was the estranged husband and had doubted the victim's conduct and character, had entered the house, abused her and attacked her with Aruval, causing grievous cut injuries on her forehead. He also threatened the victim in the scene of occurrence, which took place at around 8.00 a.m. P.W.3, neighbour had come there, whereas P.W.4, neighbour who had



gone there and took the victim to the Government Hospital, Pennagaram, where P.W.6, the Doctor had given first aid. P.W.3, another neighbour who had received the information, informed P.W.1, the father of the victim. Both P.W.1 and P.W.3 had gone to the Dharmapuri Government Hospital, where the victim was taking treatment. Thereafter, P.W.1 had enquired the victim (P.W.2) and gone to Pennagaram Police Station, lodged a complaint to P.W.7, Special Sub Inspector, who received the complaint (Ex.P.1), registered the F.I.R (Ex.P.5), visited the scene of occurrence and prepared rough sketch (Ex.P.6) and observation mahazar (Ex.P.7). Subsequently, the accused was arrested on 28.02.2021 and based on his confession, the Aruval (M.O.1) had been seized from his residence under Form-95 (Ex.P.9). P.W.8, another Sub Inspector, also visited the Government Hospital, Dharmapuri, examined P.W.1 and recorded her statement. Thereafter, the charges was altered through alteration report marked as Ex.P.12 and the case was prosecuted for the offences under Sections 294(b), 326, 506(ii) of I.P.C and the charge sheet was filed.

4. During trial, the prosecution examined 9 witnesses (P.W.1 to



P.W.9), 12 exhibits (Ex.P.1 to Ex.P.12) and one material object (M.O.1) marked.

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5. On conclusion of the trial, the trial Court had convicted the petitioner as stated above. The Lower Appellate Court dismissed the appeal, confirming the conviction of the trial Court. After conviction, the petitioner remained in prison for a period of 43 days.

6. The Learned Counsel appearing for the petitioner contends that the alleged occurrence is said to have taken place on 28.02.2018, at around 3.00 a.m and the information received by the Police Station was at 10.00 a.m and thus there is a delay of 7 hours. However, in this case, F.I.R was registered only at about 10.00 a.m, with considerable delay and no explanation given for the said delay. Admittedly, P.W.2 is the estranged wife of the petitioner and living separately. P.W.2 is not a woman with good character and the reason for the assault on her is not known. In this case, except P.W.2, all other witnesses are in the nature of hearsay. P.W.4 is a neighbour who had taken the victim (P.W.2) to the hospital. P.W.6, the Doctor attached to the Government Hospital, Pennagaram, stated that at about 4.15 a.m., he had examined the victim (P.W.2). However, no Accident



Register copy has been produced to show that P.W.4 had accompanied P.W.2 to the Hospital. The wound certificate Ex.P.4, dated 18.05.2018 was issued by Medical Officer, Government District Headquarters Hospital, Dharmapuri. The person who had treated the victim and issued the wound certificate, not examined as witness and no reason given for the non examination. He further submitted that, P.W.1 is the father of the victim, P.W.3 and P.W.4 are neighbours and relatives of the victim, not eye witnesses to the occurrence. P.W.1 admits that P.W.2 was injured and she was in unconscious state for three days. In such circumstances, who had given the details of the attack is not known. Since the petitioner was having misunderstanding with his wife and living separately, the petitioner falsely implicated in this case. In this case, the weapon M.O.1 is said to have seized from the petitioner. P.W.5 and P.W.8 are witnesses for arrest and recovery. P.W.5 not supported the case of the prosecution. P.W.8 not stated anything about M.O.1. Both the witnesses admit signature alone in the observation mahazar and rough sketch and nothing more. Hence, the trial Court convicting the petitioner is not proper.

7. Further, the Lower Appellate Court, confirming the trial Court



conviction and giving reason that there has been permanent disfigurement on the face of P.W.2 for the injuries since she sustained injury on parietal region which is on its own motion without any materials. Neither P.W.2 nor the Doctor have spoken anything with regard to any disfigurement and any permanent injury on the face. The prosecution failed to prove the case beyond reasonable doubt, which not considered and appreciated both by the trial Court and the Lower Appellate Court.

8. The Learned Government Advocate (Crl.Side) for the respondent strongly opposes the petitioner's contention, in this case P.W.2 is the injured victim, on 28.02.2018 at about 3.00 a.m., the petitioner entered the house of the victim armed with M.O.1 Aruval, inflicted injury on the forehead. The victim raised alarm. P.W.4 a neighbour, who heard the shout, saw the victim lying in a pool of blood and took her in his two wheeler to the Pennagaram Hospital. P.W.6 the doctor who treated P.W.2 and thereafter, P.W.2 was referred to District Headquarters Hospital, Dharmapuri. P.W.9 received the information from the hospital. In the meanwhile, P.W.8 had gone to the hospital. P.W.1 came to the police station, lodged the complaint. After receiving the complaint from P.W.1, F.I.R registered. P.W.7 visited the scene of occurrence, examined the witnesses,



prepared observation mahazar, rough sketch and the petitioner was arrested. On his arrest and confession, M.O.1 weapon recovered. P.W.5 and P.W.8 are witnesses for arrest and recovery. P.W.9 thereafter took up further investigation and altered the case from the offences under Section 294(b), 324, 506(ii) of I.P.C to Sections 294(b), 326, 506 (ii) of I.P.C, after getting medical report from the doctor, finding that the petitioner inflicted grievous injuries to the forehead of victim P.W.2.

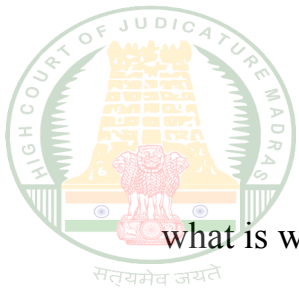
9. The trial Court as well as the Lower Appellate Court rightly convicted the petitioner, finding strained relationship between the petitioner and the victim P.W.2. The petitioner was acquitted for the offences under Section 294 (b) and 506 (ii) of I.P.C but convicted the petitioner for offence under Section 326 of I.P.C.

10. Considering the submissions and on perusal of the material records of the case, it is seen that the petitioner is the estranged husband of P.W.2. They are not living together. On 28.02.2018, when the victim was sleeping in her residence at about 3.00 a.m, the petitioner entered the house, using M.O.1 (Aruval) inflicted three cut injuries on the parietal region of the victim. P.W.4 had taken the



victim immediately to the hospital at about 4.00 a.m, P.W.6 the doctor treated the victim in the Government Hospital, Pennagaram and thereafter, she was referred to District Headquarters Hospital, Dharampuri. P.W.1, father and P.W.3 neighbour had gone to Dharampuri hospital, enquired the victim and they informed the Police. P.W.9 had come to the hospital recorded the statement from the victim girl. In the meanwhile, P.W.1 had gone to the police station, lodged a complaint to P.W.7 and F.I.R registered. On completion of investigation charge sheet filed, during trial P.W.1 to P.W.9 examined and Exhibits P.1 to P.12 and M.O.1 Material marked.

11. In this case, P.W.1, P.W.3 & P.W.4 are in the nature of hearsay. The fact of the case is that P.W.4 immediately took the victim (P.W.2) to the hospital which is confirmed by P.W.6. In this case, admittedly, no Accident Register produced. On the other hand, Ex.P.6 wound certificate issued by Government Headquarters Hospital, Dharampuri marked through P.W.6, the doctor attached to Pennagaram Hospital. No doctor from Government Headquarters Hospital, Dharmapuri examined no reason given for non examination, added to it, M.O.1 is said to have been seized from the accused in presence of P.W.5 & P.W.8. P.W.5 have not supported the case of the prosecution, P.W.8 admits he does not know



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what is written in Mahazar. Both P.W.5 & P.W.8 have not identified M.O.1. Hence, recovery of M.O.1 (Aruval) as well as the wound certificate Ex.P.6 not proved in the manner known to law. It is seen that the petitioner and the victim P.W.2 are husband and wife with estranged relationship, the petitioner doubted her character and conduct. The chance of implication is very much there. In this case, evidence of P.W.2 is with exaggeration.

12. In view of the same, this Court finds the conviction of the petitioner under Section 326 of I.P.C is not sustainable. Hence, the conviction of the trial Court is modified and the petitioner is convicted for the offence under Section 325 of I.P.C and sentenced to period already undergone.

13. Accordingly, this *Criminal Revision Case is Partly Allowed.*

03.04.2025

Speaking order/Non-speaking order

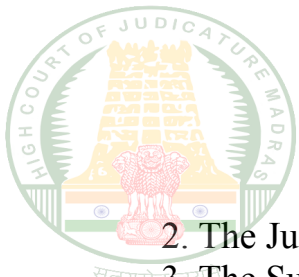
Index : Yes/No.

Neutral Citation : Yes/No.

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To,

1. The Principal Sessions Judge, Dharmapuri.



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2. The Judicial Magistrate, Pennagaram.
3. The Sub Inspector of Police, Pennagaram Police Station, Dharmapuri District.
4. The Section Officer, Criminal Section, High Court, Madras.
5. The Public Prosecutor, High Court, Madras.



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M.NIRMAL KUMAR, J.

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