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Crl.R.C.No.592 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.04.2025
PRONOUNCED ON : 19.06.2025

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.592 of 2021
and
Crl.M.P.Nos.9863 of 2021 & 1899 of 2022

C.Vijayakumar @ Viji

... Petitioner

Vs.

State rep. By
The Sub-Inspector of Police,
G-5 Secretariat Colony Police Station,
Chennai – 600 012.
(Crime No.422/2017)

... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 r/w. 401 of Cr.P.C. to call for the records in Crl.A.No.16 of 2019 on the file of the learned XXIII Additional Sessions Judge, Allikulam, Chennai modifying the order in C.C.No.5913 of 2017 on the file of the learned II Metropolitan Magistrate at Egmore, Chennai and to set aside the order of conviction passed in Judgment in Crl.A.No.16 of 2019 dated 19.08.2021 passed by the learned XXIII Additional Sessions Judge, Allikulam, Chennai.



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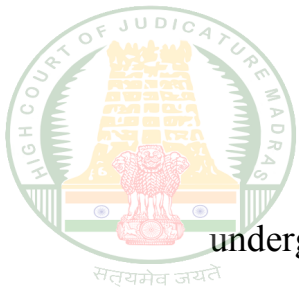


Crl.R.C.No.592 of 2021

For Petitioner : Mr.M.A.Mathew Berchmans
For Respondent : Mr.L.Baskaran
Government Advocate (Crl. Side)

ORDER

The petitioner/accused convicted by judgment, dated 20.12.2018 in C.C.No.1913 of 2017, by the learned II Metropolitan Magistrate, Egmore, Chennai and sentenced to undergo one month simple imprisonment and to pay a fine fo Rs.500/-, in default to undergo one week simple imprisonment for the offence under Section 341 IPC, to undergo six months simple imprisonment and to pay a fine of Rs.9,000/-, in default, to undergo one week simple imprisonment for the offence under Section 326 IPC and to undergo one month simple imprisonment and to pay a fine of Rs.500/-, in default, to undergo one week simple imprisonment for the offence under Section 506(ii) IPC. Aggrieved over the judgment of the trial Court, an appeal was filed by the petitioner before the Sessions Court in C.A.No.16 of 2019. The learned XXIII Additional Sessions Judge, Allikulam, Chennai by judgment dated 19.08.2021 allowed the appeal by modifying the sentence imposed by the Trial Court and sentenced the petitioner to undergo six months simple imprisonment and to pay a fine of Rs.2,000/-, in default to

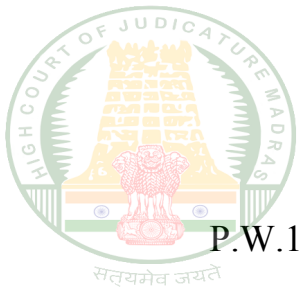


Crl.R.C.No.592 of 2021

WEB COPY

undergo one week simple imprisonment for the offence under Section 335 IPC and to undergo two weeks simple imprisonment and to pay a fine of Rs.500/-, in default, to undergo one week simple imprisonment for the offence under Section 506(i) IPC. Against which, the present revision is filed.

2.The case of the prosecution is that on 10.03.2017 at about 3.30 p.m., the victim/P.W.3 was playing cricket with his friends in the playground situated at Otteri Mullai Park, at that time, the petitioner/accused came there, forced the victim to hand over the cricket bat to him, which was refused and resisted, the petitioner forcibly pulled the bat from the victim and hit him on his head. The petitioner further threatened him not to disclose the incident to anyone or his parents, otherwise he will be done away. Fearing for the same, P.W.3 not disclosed the same to his parents but complained about headache. P.W.1 and P.W.2, parents of P.W.3, found contusion on the head of the victim and took him to Ponni Clinic at Nammalwarpet, Chennai where P.W.11 examined P.W.3 and advised to take xray and CT scan, from which, it is found that there is a fracture on the left side skull together with some abrasions and blood clot on the brain.



Crl.R.C.No.592 of 2021

WEB COPY

P.W.10/Doctor at Prime India Hospital conducted surgery on 17.03.2017, removed the fracture bone and blood clot and installed artificial net on the head of the victim. P.W.12/RMO at Prime India Hospital confirmed that the victim was brought to the hospital on 15.03.2017 by his father/P.W.1 for treatment, the victim took treatment as inpatient and he was discharged on 21.03.2017. In the meanwhile, P.W.1 lodged a complaint to P.W.13, who received the complaint, collected the cricket bat from P.W.1, registered FIR, prepared observation mahazar and rough sketch, examined the witnesses, recorded their statements, arrested the accused, recorded his confession and produced him for judicial custody. On completion of investigation, charge sheet filed. During the trial, P.W.1 to P.W.13 examined, Ex.P1 to Ex.P15 marked and M.O.1 produced on the side of the prosecution. On the side of the defence, no witness examined and no documents marked. On conclusion of trial, the Trial Court convicted the petitioner for the offence under Sections 341, 326 and 506(ii) IPC. Aggrieved against the same, the petitioner preferred an appeal before the Sessions Court in C.A.No.16 of 2019. The Lower Appellate Court modified the conviction and sentence imposed by the Trial Court as stated above. Against which, the present revision is filed.



Crl.R.C.No.592 of 2021

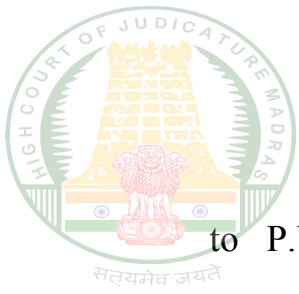
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3.The contention of the learned counsel for the petitioner is that the alleged occurrence is said to have taken place on 10.03.2017 but the complaint was lodged only on 21.03.2017 and no reason given for the delay. In this case, P.W.1/father of the victim confirms that on 14.03.2017 he lodged a complaint without the name of the accused and subsequently on the advise of the Police included the petitioner as accused. P.W.3 is a minor boy aged about 14 years who had been tutored by P.W.1 and P.W.2, his parents and the Police to depose against the petitioner. None from the scene of occurrence examined in this case. Further, in this case the projected eye witnesses P.W.4 and P.W.5 denied knowledge about the occurrence. P.W.6 and P.W.7 are the witnesses for observation mahazar and rough sketch. P.W.8 and P.W.9 are the witnesses for arrest and confession. From the petitioner's confession, no recovery made. P.W.10, P.W.11 and P.W.12 are the Doctors who treated the victim. Now in this case, except for P.W.3 there is no other witness to the occurrence. There have been considerable amount of delay in lodging the complaint. Further, going by the prosecution's case it is not a pre-planned attack. He would submit that P.W.1 states that when he was in his Tailor shop, his son was brought by his friends and informed



about the incident. But P.W.2/mother gives a contra version station that her son was brought by his friends to their home. Added to it, in this case the alleged attack is said to have taken place on 10.03.2017 but the complaint was lodged only on 14.03.2017, what had happened in between, whether the victim sustained injury elsewhere is not known and the petitioner is made as a scapegoat in this case.

4.The learned Government Advocate (Crl. Side) strongly opposed the petitioner's contention stating that in this case, P.W.3/victim, who is a minor aged about 14 years, was playing cricket with his friends in the playground at Otteri Mullai Park, at that time, the petitioner, aged about 30 years who has nothing to do with the children, had come to the playground and snatched the cricket bat from the victim which the victim resisted. The petitioner pulled the cricket bat, hit hard on the head of the victim and he was threatened. Hence, the victim initially not disclosed the attack by the petitioner but he was suffering with pain. Thereafter, the victim was taken to Ponni Clinic where P.W.11 examined the victim, found contusion on the skull and advised to take xray and CT scan, from which, it is revealed that there is a fracture on the skull. Thereafter P.W.1 and P.W.2 took the victim

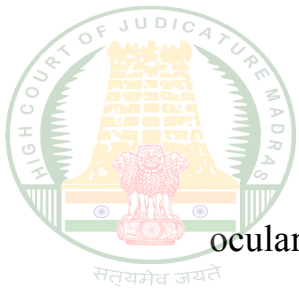


Crl.R.C.No.592 of 2021

to P.W.10/Doctor at Prime India Hospital. From the evidence of

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P.W.11/Doctor, it is clear that on 13.03.2017 he examined the victim/P.W.3, who was brought by his parents, P.W.1 and P.W.2. The evidence of P.W.3 confirms that on 10.03.2017 at about 3.30 p.m., when he was playing cricket along with his friends, the petitioner grabbed the bat from him and attacked him on his head using the cricket bat, the petitioner further threatened the victim not to disclose the incident. P.W.3 further deposed that he had seen the petitioner four or five time before the attack, due to the threat he had not informed his parents immediately and it is his parents who found the swelling in the victim's head and thereafter, he was taken to the Hospital two days later. After the xray and CT scan and finding the fracture in the skull, P.W.10 treated the victim on 15.03.2017, surgery conducted on 17.03.2017 and the victim took treatment as inpatient till 29.03.2017. P.W.10 and P.W.12 confirms the same. There was a delay in lodging the complaint since the victim not informed about the incident to his parents immediately and P.W.3/victim informed about the incident to P.W.11/Doctor on 13.03.2017, thereafter the victim's parents were only concerned with the medical treatment of the victim and later, lodged a complaint to P.W.13 on 14.03.2017. Hence, the delay was properly explained. In this case, the



Crl.R.C.No.592 of 2021

WEB COPY

ocular evidence and medical evidence confirms the attack and the injury caused by the petitioner. The Trial Court as well as the Lower Appellate Court finds no reason to doubt the evidence of P.W.3/victim who identified the petitioner and had clearly spoken about the attack by the petitioner using the cricket bat and had rightly convicted the petitioner. The Lower Appellate Court modifying the sentence and acquitting the petitioner for the offence under Section 341 IPC is not proper but he fairly submitted that the State had not preferred any appeal against the judgment but the conviction of the petitioner in any event to be sustained.

5.Considering the submissions made and on perusal of the materials, it is seen that in this case the victim/P.W.1 is aged about 14 years who was playing cricket with his friends in the playground at Otteri Mullai Park. The petitioner, aged about 30 years, who has nothing to do with the children, had come to the playground, forced the victim/P.W.3 to hand over the cricket bat to him which was resisted by P.W.3 which is the normal conduct of any child of his age. The petitioner forcibly not only snatched the cricket bat from the victim, he also assaulted him on his forehead and threatened him. The victim not disclosed the same to his parents immediately and it



Crl.R.C.No.592 of 2021

WEB COPY

was his parents who found the contusion and thereafter, he was taken to P.W.10, who advised to take xray and CT scan which confirms the fracture in the skull. Thereafter, the victim was admitted in the hospital on 15.03.2017 and surgery conducted on 17.03.2017. P.W.10, P.W.11 and P.W.12 confirm the fracture, surgery conducted and the victim taken treatment as inpatient. Thus the victim sustained injury on 10.03.2017 at the hands of the petitioner had been proved.

6.In this case, the petitioner was arrested on 14.03.2017 and thereafter he was remanded. The petitioner is a daily wage coolie, doing menial work. His elderly parents to be taken care of by the petitioner and admittedly there was no premeditation or a fight, it is only during the play the incident happened. The petitioner now come forward to pay a compensation of Rs.1,50,000/- which was agreeable by the victim and his parents and to show his bonafide, the petitioner initially paid a sum of Rs.40,000/- by way of Demand Draft [DD.No.505807 dated 28.04.2025 drawn on Indian Bank. Madras High Court Branch in favour of Mr.K.Neelakandan/P.W.1, father of P.W.3/victim] before this Court on 28.04.2025 and undertook to pay the balance amount of Rs.1,10,000/- on or before 01.06.2025. But till date the



Crl.R.C.No.592 of 2021

petitioner not paid the victim.

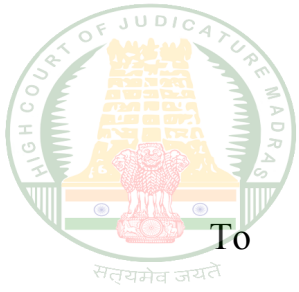
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8.Finding that the petitioner is the sole breadwinner to the family, the petitioner is having no previous cases of similar nature and he has got elderly parents to be taken care, this Court was inclined to modify the sentence, provided petitioner paid the agreed compensation amount, in the event of non-payment of balance amount of Rs.1,10,000/-, the conviction is confirmed. The respondent police to secure the petitioner to undergo the remaining period of his conviction. It is made clear that even at the time of executing the conviction warrant if the petitioner pays the remaining compensation amount of Rs.1,10,000/-, the sentence will stand modified as period already undergone and he can be let off.

9.In the result, the criminal revision petition stands disposed of.

19.06.2025

Index: Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation: Yes/No
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Crl.R.C.No.592 of 2021

To

WEB COPY

- 1.The Sub-Inspector of Police,
G-5 Secretariat Colony Police Station,
Chennai – 600 012.
- 2.The II Metropolitan Magistrate,
Egmore, Chennai
- 3.The XXIII Additional Sessions Judge,
Allikulam, Chennai
- 4.The Public Prosecutor,
High Court, Madras.



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Crl.R.C.No.592 of 2021

M.NIRMAL KUMAR, J.

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Crl.R.C.No.592 of 2021

19.06.2025