

Kumar Vs. State by, The Sub-Inspector of Police, Salem

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Court : Chennai

Decided On : Aug-11-2016

Judge : G. Chockalingam

Appeal No. : Crl.R.C.No. 928 of 2013 & Crl.M.P.Nos. 1 & 2 of 2013

Appellant : Kumar

Respondent : State by, The Sub-Inspector of Police, Salem

Judgement :

(Prayer: Criminal Revision Case filed under Section 397 r/w 401 of the Code of Criminal Procedure, praying to call for the records in C.A.No.60 of 2012 on the file of the learned II Additional District and Sessions Judge, Salem, and set aside the judgment dated 17.01.2013 confirming the judgment and sentence passed in C.C.No.143 of 2011 by the learned Judicial Magistrate No.V, Salem, by allowing this revision.)

1. This criminal revision case is directed against the judgment dated 17.01.2013 passed by the learned II Additional District and Sessions Judge, Salem, in Crl.A.No.60 of 2012 and confirming the judgment passed in C.C.No.143 of 2011 by the learned Judicial Magistrate No.V, Salem, on 12.06.2012.

2. The brief facts of the case are as follows:-

In this case, on the complaint given by one Thilakavathi/P.W.1, F.I.R. was registered in Crime No.330 of 2011 for the offences punishable under Sections 147, 148, 447 and 427 against A.1, A.2 and A.4 and under Sections 147, 148, 447, 354, 324, 506(2) and 427 IPC against A.3 and under Sections 147, 148, 447, 323 and 427 IPC against A.5, A.6 and A.7 and the respondent police filed a charge sheet before the learned Judicial Magistrate No.V, Salem, and the case was taken on file as C.C.No.143 of 2011. The learned Judicial Magistrate No.V, Salem, on examining all the witnesses, acquitted A.1, A.2 and A.4 from the charges levelled against them and acquitted

A.3 from the charges under Sections 147, 148, 447, 506(2) and 427 IPC and acquitted A.5, A.6 and A.7 from the charges levelled against them. Since the charges against A.3 under Sections 324 and 354 IPC are proved beyond reasonable doubt, the learned Magistrate convicted the third accused under Section 324 of IPC and sentenced him to undergo six months simple imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo one month simple imprisonment and also convicted him under Section 354 of IPC and sentenced him to undergo six months simple imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo one month simple imprisonment and the sentences of imprisonment were ordered to run concurrently. As against the said conviction and sentence, the third accused/revision petitioner herein had filed an appeal in Crl.A No.60 of 2012 before the learned II Additional District and Sessions Judge, Salem and the learned II Additional District and Sessions Judge, after perusing the entire records, confirmed the conviction and sentence passed by the learned Judicial Magistrate No.V, Salem. As against the confirmation of the order passed by the learned II Additional District and Sessions Judge, the present criminal revision case is preferred by the petitioner/A.3.

3. The learned counsel appearing for the petitioner mainly contended that the trial Court and the lower Appellate Court failed to appreciate the defence version that P.W.1's version is highly contradictory in nature. Further, P.W.1's version in the accident register is directly contradicting her version in the Court. The learned counsel for the petitioner further contended that P.W.1, in her chief examination, has stated that all the accused torned her blouse and it was seized by the

Investigating Officer/P.W.9. But P.W.9, in his cross-examination, has admitted that he has not seized any torn blouse. Hence, the offences under Sections 324 and 354 IPC against the present petitioner/A.3 is not at all proved by the prosecution beyond all reasonable doubt. Hence, the learned counsel prayed that the orders passed by the Courts below may be set aside.

4. The learned Government Advocate (Crl.Side) contended that there is no infirmity or illegality in the judgments of the Courts below. Hence, the criminal revision has to be dismissed.

5. Heard the submissions made by the learned counsel on either side and perused the records.

6. In this case, on the complaint given by P.W.1, F.I.R. was registered and the respondent police also has filed a charge sheet before the learned Judicial Magistrate No.V, Salem. On a reading of the accident register, which is marked as Ex.P.4, wherein, it is recorded by the Doctor that alleged to be assaulted by three known females and one known male person on 24.02.2011 at 2.45 p.m. using knife and the injury was abrasion 6 x 0.5 cms on the right hand. P.W.1/Thilagavathi, in her deposition before the Court, had deposed as follows:- (Tamil) 7. P.W.1, in her cross-examination, clearly named seven persons, but all of them were acquitted by the trial Court itself. Further, P.W.1, in her chief-examination before the Court clearly stated that the third accused Kumar (Tamil). But, in the Accident Register copy, it was clearly stated that P.W.1 was assaulted by three known females and one male person on 24.03.2011 at 2.45 p.m. by using knife (Tamil). It is totally contradictory in the evidence given by P.W.1 in the Court. Further, P.W.1, in her cross-examination had stated that the third accused/Kumar (Tamil)

8. P.W.1, in her cross examination, had further stated that the revision petitioner beaten her by manvetti on the head. But there was no injury on the head. Dr.Senthilkumar/P.W.8, in his cross-examination, stated that (Tamil) According to P.W.1, injury was caused by Manvetti. But the Doctor says that the injury would not be caused due to the sharp edged weapon. Hence, since there is contradiction between the evidence of P.W.1 with the Accident Register copy and also there is

no possibility of happening of that injury and the injury cannot be happened by sharp edged weapon, the case of the revision petitioner/A.3 that he caused injury to P.W.1 is highly doubtful. Hence, this Court is of the view that the charge framed against the present petitioner for the offence under Section 324 IPC is not clearly proved beyond reasonable doubt.

9. In this case, the revision petitioner/A.3 also charged for the offence under Section 354 of IPC. P.W.1, in her statement, stated that there are three or more persons (Tamil) Further, in her cross examination, stated that (Tamil) The police seized the jocket-M.O.2 from the place of occurrence itself. But, P.W.1 has not identified the M.O.2 as her jocket before the Court. The prosecution has not clearly established that M.O.2-jocket was torned by A.3 on the date of occurrence. The Investigating Officer had produced M.O.2-jocket as if he recovered the the same from the place of occurrence. But it was not identified by P.W.1 in her evidence. Further, in this case, P.W.1, in her chief examination, stated that more than one person torned her jocket. But subsequently, it was stated in her cross-examination that A.3 torned the jocket. But the jocket was not identified by P.W.1 in the Court. In view of the above circumstances, the charge against the revision petitioner/A.3 for the offence under Section 354 IPC is also not proved beyond reasonable doubt. In view of the above, this Court is of the considered view that the charges under Sections 324 and 354 of IPC against the present petitioner/A.3 are not proved beyond reasonable doubt and benefit of doubt has to be given to the petitioner/A.3. The conviction and sentence passed against the revision petitioner/A.3 for the offences under Sections 324 and 354 of IPC have to be set aside.

10. In the result, the Criminal Revision Case is allowed and the conviction and sentence imposed on the revision petitioner/A.3 by the learned Judicial Magistrate No.V, Salem, in C.C.No.143 of 2011, dated 12.06.2012, are set aside. The petitioner/A.3 is acquitted of the charges. The bail bond executed, if any, shall stand cancelled and the fine amount paid, if any, shall be refunded to the petitioner/A.3. The connected miscellaneous petitions are closed.