

Kasiraja Vs. State Represented By,

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Court : Chennai

Decided On : Dec-08-2014

Judge : The Honourable Ms.Justice R.Mala

Appellant : Kasiraja

Respondent : State Represented By,

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

08. 12.2014 CORAM THE HONOURABLE MS.JUSTICE R.MALA
Crl.R.C.(MD)No.400 of 2012 and M.P.(MD)No.3 of 2012 Kasirajan :
Petitioner/Accused Vs. State represented by, The Inspector of Police, Puliampatti
Police Station, Thoothukudi District. Crime No.16 of 2009. :
Respondent/Complainant Prayer : Revision is filed under Section 397(1) r/w 401 of
the Code of Criminal Procedure praying to call for the records in Crl.A.No.32 of
2012, on the file of the learned 2nd Additional Sessions Judge, Thoothukudi,
Thoothukudi District and set aside the judgment dated 21.07.2012, modifying the
conviction and sentence in C.C.No.104 of 2009 on the file of the learned Judicial
Magistrate No.I, Kovilpatti, Thoothukudi District, dated 18.05.2012 and acquit the
petitioner/accused for the charges framed against him. !For Petitioner ::
Mr.A.Thiruvadikumar ^For Respondent :: Mrs.S.Prabha, Government Advocate
(Crl. Side) :

ORDER

This revision has been filed challenging the conviction and sentence passed in CrI.A.No.32 of 2012, dated 21.07.2012, on the file of the learned Second Additional Sessions Judge, Thoothukudi, confirming the conviction and modifying the sentence from 2 years SI to 3 months SI and increasing the fine amount from Rs.1,000/- to Rs.5,000/-, of which, Rs.4,000/- was ordered to be paid as compensation to P.W.1.

2. The case of prosecution in brief is as follows: (i) On 10.02.2009 at 06.30 a.m., one stone was thrown inside the house of P.W.1 Shanmugarajan and when he asked about the same, the accused replied that he only threw the stone and due to which, a dispute arose between them. Then, the accused stabbed him with a stone on his left eyebrow and abused him in filthy language and thereafter, P.W.1 was taken to Palayamkottai Government Hospital. (ii) P.W.7 Doctor Lawrance was on duty at Tirunelveli Government Hospital on 10.02.2009 at 08.45 p.m., and he gave treatment to P.W.1 and on examining him, P.W.7 found one switched wound on his left eyebrow in 2 cm length and X-ray was taken for the said injury and he issued Ex.P.3 wound certificate stating that the injury was grievous in nature. (iii) P.W.8 Doctor Alagammal was working at Tirunelveli Radiological Section and on 11.02.2009, 3 x-rays were taken to P.W.1 and she issued Ex.P.4-X-ray report. (iv) On intimation from P.W.1, one Head Constable by name Arumugam went to Palayamkottai Government Hospital and recorded his complaint Ex.P.1 and on the basis of which, he registered a case in Crime No.16 of 2009 and prepared an F.I.R. Ex.P.5. (v) P.W.9 Vijayarajan, Sub-Inspector of Police took up the case for investigation and on 11.02.2009 he visited the place of occurrence and prepared an observation mahazar Ex.P.2 and rough sketch Ex.P.6. (vi) P.W.10 Seenivasagam, Sub-Inspector on 12.03.2009 took up the investigation of the case and on completion of the investigation of the case, he laid the charge sheet against the accused for the offences punishable under Sections 294(b), 323 and 325 IPC. 3. The learned trial Judge, after following the procedures, framed necessary charges against the accused. Since the accused denied the same in toto and pleaded not guilty, to prove the charges, P.Ws.1 to 10 were examined and Exs.P.1 to 6 were marked on the side of the prosecution, besides marking M.O.1. On completion of the examination of witnesses on the side of the prosecution, the accused was questioned under Section 313 of Cr.P.C., as to the

incriminating circumstances found in the evidence of the prosecution witnesses and he denied the same as false. Neither witness was examined nor document was marked on the side of the defence.

4. The learned trial Judge, after considering the oral and documentary evidence, acquitted the accused for the offence under Section 294(b) IPC and convicted and sentenced him to undergo 2 years simple imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo 1 month simple imprisonment for the offence punishable under Section 325 IPC. Being aggrieved, the accused went on appeal and the appeal is allowed in part and the sentence imposed against him alone is reduced to 3 months simple imprisonment instead of 2 years simple imprisonment and the fine amount is increased to Rs.5,000/- from Rs.1,000/- for the offence under Section 325 IPC. The accused was directed to pay the additional fine amount of Rs.4,000/- to P.W.1, as compensation. As against the conviction and sentence, the revision has been preferred. .

5. Heard the submissions made on either side.

6. The learned counsel for the petitioner would submit that the petitioner and the defacto complainant are the neighbours and he is not canvassing anything in respect of conviction. Since the petitioner, at the time of occurrence, was aged about 30 years and he is having two children and he has already undergone the imprisonment for 13 days, he wants some leniency in sentence stating that he is ready to pay some amount to the defacto complainant as compensation in addition to the compensation awarded by the first appellate Court and hence, he prayed for reduction in sentence.

7. The learned Government Advocate (Criminal side) would submit that since the petitioner has pleaded mercy, she leaves the matter for the discretion of the Court.

8. Considering the arguments advanced by the learned counsel appearing for the petitioner, I am of the view that the conviction imposed against the petitioner under Section 325 IPC is not under challenge and hence, it is hereby confirmed.

9. Now, the only point to be decided is whether he is entitled to any leniency in respect of sentence?.

10. It is the admitted fact that even though charge has been levelled against the petitioner under Sections 294(b) and 325 IPC, he was convicted only under Section 325 IPC and sentenced to undergo 2 years SI and to pay a fine amount of Rs.1,000/-, in default, to undergo 1 month SI, against which, he preferred an appeal in CrI.A.No.32 of 2012, whereby and whereunder, the first appellate Court confirmed the conviction under Section 325 IPC and reduced the sentence from 2 years SI to 3 months SI and increased the fine amount from Rs.1,000/- to Rs.5,000/-, and the additional fine amount of Rs.4,000/- was ordered to be paid as compensation to the defacto complainant P.W.1 (the injured person).

11. Adding further, the learned counsel would submit that the petitioner is blessed with two child and his wife is working as Panchayat Clerk. Hence, he prayed for reduction in sentence.

12. Considering the plight of the accused and that he was in custody for 13 days, the period of sentence already undergone is directed to be treated as sentence for the offence under Section 325 IPC. However, fine amount has been increased to Rs.15,000/- from Rs.5,000/-. The petitioner is directed to deposit the enhanced fine amount of Rs.10,000/- to the credit of C.C.No.104 of 2009 on the file of the learned Judicial Magistrate No.I, Kovilpatti, on or before 22.12.2014, failing which, the default sentence of 3 months SI will be executed against him. On such deposit being made, the lower Court is directed to pay the said amount to P.W.1 as compensation.

13. The Criminal Revision Case is disposed of with the above modification. Consequently, the connected miscellaneous petition is closed. 08.12.2014
Index:Yes/No Internet:Yes/No SML To 1.The 2nd Additional Sessions Judge, Thoothukudi, Thoothukudi District. 2.The Judicial Magistrate No.I, Kovilpatti, Thoothukudi District. 3.The Inspector of Police, Puliyampatti Police Station, Thoothukudi District. 4.The Public Prosecutor, Madurai Bench of Madras High Court, Madurai. R.MALA, J.

SML Order made in Crl.R.C.(MD)No.400 of 2012 Dated:- 08.12.2014

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