
(2014) 11 MAD CK 0231

In the Madras High Court

Case No : Criminal Revision Case (MD) No. 613 of 2012

M. Pandian

APPELLANT

Vs

The Sub Inspector of Police

RESPONDENT

Date of Decision : 25-11-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 294(b), 332, 353

Citation : (2014) 11 MAD CK 0231

Hon'ble Judges : R. Mala, J

Bench : Single Bench

Judgement

R. Mala, J.—The Criminal Revision has been filed against the judgment of conviction and sentence passed in C.A.No. 67 of 2011 dated 27.08.2012 by the II Additional District Judge, Trichy confirming the judgement of conviction and sentence dated 29.06.2011 made in C.C.No. 288 of 2010 by the Judicial Magistrate No. II, Trichy, wherein, the revision petitioner/accused was convicted for the offence under Section 332 of I.P.C. and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs. 1,000/- in default to undergo simple imprisonment for one month.

2. The case of prosecution briefly is as follows:

(i) P.W.1 Rajkumar was working as Head Constable in Cantonment Police Station. On 16.07.2010, while he was discharging his duty at the Zonal Point, at about 11.45 hours, since there was red signal, he stopped the accused, who was coming from Aristo towards Kallukuzhi in a two wheeler, whereas, he proceeded without stopping his vehicle and since P.W.1 questioned the same to the accused as to why he did not stop the vehicle since there was red signal, the accused abused P.W.1 saying that did he know who he was fisted on his face, which leads bleeding in his nose. Thereafter, he caught the accused and informed the same to the Traffic Inspector and gone to Cantonment Police Station along with the accused and he gave a complaint Ex.P1 and he gone to Government Hospital

with medical memo for taking treatment.

(ii) On 16.07.2010, P.W.8 Manivannan, Sub Inspector of Police received the complaint, Ex.P1 from P.W.1 and registered a case in Cr.No. 1814 of 2010 for the offence under Sections 294(b) and 353 of I.P.C. and prepared Ex.P.5, First Information Report and he took the investigation of the case and gone to the scene of occurrence and prepared Ex.P.4, Observation Mahazer and Ex.P.6, Rough Sketch in the presence of P.W.7 Mariyakamal and P.W.6 Gunasekaran and recorded their statements. He arrested the accused, who was available in the Police Station and released him on bail and received the Beat book M.O.1 and Diary M.O.2, which were produced by P.W.1 under Form 91, Ex.P7.

(iii) On 16.07.2010, P.W.5 Dr.Geetha Sankari examined P.W.1 Rajkumar, who was alleged to be attacked by unknown person and treated him and issued Ex.P2, A.R.Copy saying that the injury sustained by him is simple in nature.

(iv) Thereafter, P.W.8, Manivannan, Sub Inspector of Police after completing his investigation, filed a charge sheet against the accused for the offences under Sections 294(b) and 332 of I.P.C.

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 8 were examined and Exs.P.1 to 7 and M.Os.1 and 2 were marked on the side of the prosecution. 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 them as false. No witness was examined on the side of the defence.

4. On considering the oral and documentary evidence, the learned Judicial Magistrate No. 2, Trichy, found the accused guilty for the offence under Section 332 of I.P.C. and convicted and sentenced him as stated above. Aggrieved over by the judgment of the learned Judicial Magistrate No. 2, Trichy, an appeal was preferred by the accused in C.A.No. 67 of 2011 before the learned II Additional District Judge, Trichy, wherein, the conviction and sentence was confirmed and the appeal was dismissed. Against which, the present revision has been filed.

5. Challenging the conviction and sentence passed by trial Court and confirming by the first appellate Court for the offence under Section 332 of I.P.C., the learned counsel for the petitioner would submit that the failure to take action against the accused for violation of traffic rules is fatal to the case of prosecution and neither the bloodstained shirt nor kerchief of P.W.1 has been seized and there is contradiction between the evidence of P.Ws.1 and P.W.8, the Investigating Officer and there is a delay in preferring the complaint and hence, he prayed for setting aside the conviction and sentence and acquitting the petitioner.

6. Resisting the same, the learned Government Advocate (criminal side) would

submit that the failure to take action for violating the traffic rules against the accused is not fatal to the case of prosecution. Evidence of P.W.1 has been corroborated by P.Ws.2 and 3, who are the independent eye witnesses, who are the passersby. Evidence of P.W.5 Dr.Geetha Sankari has also been corroborated the same and there is no contradiction between the evidence of P.W.1 and P.W.8 and hence, she prayed for dismissal of the revision.

7. Considering the rival submissions made by both sides and perusal of typed set of papers would show that on 16.07.2010 at 11.45 a.m., when P.W.1 was on duty by regulating the traffic, according to the prosecution, the petitioner/accused, even after seeing the red signal and P.W.1 stopped the vehicle, he proceeded and further, he stopped the vehicle and came there and abused him and fisted on his face, which leads bleeding in his nose. Immediately, P.W.1 gave a complaint Ex.P1 and on that basis, investigation was done and charge sheet has been filed.

8. The first limb of argument of the learned counsel for the petitioner is that for the violation of the traffic rules, no action has been taken against the petitioner/accused and that factum was not considered by the trial Court and the first appellate Court and hence he prayed for setting aside the conviction and sentence. Considering the argument made by the learned counsel for the petitioner, I am of the view that merely because of the failure to take action for violation of traffic rules, it would not be a fatal to the case of prosecution. It is the duty of the prosecution to prove that the accused is guilty for the offence under Sections 294(b) and 353 of I.P.C. But, the trial Court and the first appellate Court has held that the prosecution has failed to prove the charges against the petitioner/accused for the offences under Sections 294(b) and 353 of I.P.C., however, found him guilty for the offence under Section 332 of I.P.C. and convicted and sentenced him. Hence, I am of the view that the failure to take action for violation of traffic rules is not a fatal to the case of prosecution.

9. Now, this Court has to decide as to whether the evidence of P.W.1 is reliable or not? P.W.1 Rajkumar is the complainant, who was working as Police Head Constable. P.Ws.2 and 3 are chance witnesses. It is true that the passengers known the traffic police and it would not be a reason for discarding the evidence of these witnesses. Therefore, considering the evidence of P.Ws.1 to 3, I do not find any reason to discard their evidence, since their evidences are reliable.

10. According to P.W.5, Dr.Geetha Sankari, who issued Ex.P2, A.R.Copy, she had seen the injured at 2.30 p.m. Considering the Ex.P2, A.R.Copy, after registration of the case only, P.W.1 gone to the hospital along with medical memo. P.W.8 Sub Inspector of Police in his cross examination has clearly conceded that after taking treatment only, P.W.1 has given the complaint. But, that factum has not been falsified the case of prosecution. Because, in the A.R.Copy itself, number of the medical memo has been mentioned. P.W.5 Doctor has also stated that on medical memo only, she has treated the injured. Hence, the evidence of P.Ws.1 to 3 and P.W.5 have clearly proved that the revision petitioner/accused fisted P.W.1 and caused simple injury, while he was in duty. In such circumstances, I am of the

view that the argument advanced by the learned counsel for the revision petitioner that there are contradictions between the evidence of P.Ws.1 and P.W.8 is fatal to the case of the prosecution does not merit acceptance. Hence, I do not find any reason to interfere with the conviction and sentence passed against the petitioner/accused.

11. The learned counsel would further submit that P.Ws.6 and P.W.7, who are the attestors of observation mahazer have turned hostile. It is true that the observation mahazer is not played a vital role for deciding the guilt.

12. Now, this Court has to decide whether the ingredients of Section 332 of I.P.C. has been proved or not by the prosecution beyond all reasonable doubt? The ingredients of Section 332 of I.P.C reads as follows:

Hurt was caused to a public servant:

- (a) While acting in discharge of his official duty
- (b) to prevent him or deter him to discharge his duty
- (c) in consequence of his having done some act or attempted to be done in lawful exercise of his duty as public servant.

Admittedly, P.W.1 was a Head Constable and at the time of occurrence, he was discharging his official duty. As per the evidence of P.Ws.1 to 3, the revision petitioner/accused has not stopped the vehicle even though there was red signal and P.W.1 has stopped and he proceeded and later, he stopped the vehicle and came to the place of occurrence and fisted on his face, which leads bleeding in his nose. In such circumstances, I am of the view that the prosecution has proved the guilt of the revision petitioner/accused for the offence under Section 332 of I.P.C. and that has been correctly considered by the trial Court and the first appellate court and hence, I do not find any reason to interfere with the judgments of both the Courts below and the conviction passed against the revision petitioner/accused is liable to be confirmed.

13. At this juncture, the learned counsel appearing for the petitioner/accused would submit that the sentence imposed against the petitioner/accused may be reduced. Therefore, I am of the view that the fine imposed against the petitioner/accused is liable to be confirmed and the imprisonment may be reduced.

14. In respect of the sentence is concerned, the revision petitioner/accused was sentenced to undergo six months rigorous imprisonment and pay a fine of Rs. 1,000/- in default to undergo one month simple imprisonment. The fine amount has already been paid.

15. In the result, the criminal appeal is dismissed with modifications of sentence alone. The conviction under Section 332 of I.P.C. is hereby confirmed and the fine amount imposed against the petitioner/accused is also hereby confirmed and the period of imprisonment against the petitioner/accused is modified to the effect that he shall undergo one month rigorous imprisonment. The trial Court is

directed to take steps to secure the petitioner/accused and send him to undergo the period of sentence. The bail bond, if any executed by the appellant, shall stand cancelled.