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Crl.A.No.546 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.04.2024

CORAM

THE HONOURABLE MRS. JUSTICE **R. HEMALATHA**

Crl.A.No.546 of 2017

Periyanayaka Sami

... Appellant

Vs.

1. The Inspector of Police,
Andimadam Police Station,
in Cr.No.399/2014

2. Robert Rajasekar

3. Amalraj

4. Mariyakavaskar

... Respondents

Prayer: Criminal Appeal filed under Section 374 (2) of Criminal Procedure Code, to set aside the Judgment passed in S.C.No.95/2014, dated 14.12.2016 by the Principal District and Sessions Judge, Ariyalur District.

For Appellant : Mr.Usha Ramman

For Respondent : Mr.S.Raja Kumar, (for R1)
Additional Public Prosecutor



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JUDGMENT

Challenging the Judgment passed in S.C.No.95/2014, dated 14.12.2016 on the file of the Principal District and Sessions Judge, Ariyalur District, the present Criminal Appeal is filed by the appellant / defacto complainant.

2. The appellant is the defacto complainant. The Respondents 2 to 4 are accused. The learned trial Court Judge acquitted all the accused as mentioned hereunder:

<i>S.No.</i>	<i>Accused</i>	<i>Offence</i>	<i>remarks</i>
1	A1	Sections 294 (b), 307 and 324 I.P.C.,	found not guilty
2	A2	Sections 307 r/w. 109, 323 I.P.C.,	
3	A3	Sections 307 r/w. 109 I.P.C., and Section 3(1) of Tamil Nadu Property (Prevention of Damage and loss) Act, 1992	

3. Mr.Usha Ramman, learned counsel for the petitioner would contend that the trial Court mainly acquitted the accused for the reason that there was a delay in lodging the complaint and that the knife (M.O.1) recovered from A1 on 19.08.2012, was sent to the Judicial Magistrate



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with a delay of four months as per Form 95. According to him, the accused cannot take advantage of the defective investigation of the Police and therefore, the order of acquittal passed by the trial Court is liable to be set aside.

4. Per contra, S.Raja Kumar, learned Additional Government Pleader appearing for the 1st Respondent would contend that the trial Court Judge after considering the evidence on record, has come to the conclusion that the accused was not guilty of the offence and therefore no interference is called for by this Court.

5. Tmt.Sebasthiammal (P.W.4) is the wife of A1. According to the Prosecution, there was a dispute between P.W.4 and A1, due to which, A1 hit P.W.4 on her head. P.W.1 (the appellant) is the brother of P.W.4. According to him, though he heard the incident through his sister, he neither attempted to contact A1 nor questioned him. However, A1 came over to his house and called P.W.4 to come out of his house. According to P.W.1, A1 abused him in filthy language and also stabbed



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another brother of the appellant (P.W.2) with a knife (M.O.1), as a result of which, he was admitted as an inpatient for 8 days. The learned trial Court Judge vide his Judgment and orders dated 14.12.2016 had observed thus:

"20. Answer for Point

It is not disputed that the PW4 was married to A1. The entire prosecution case has its origin from the matrimonial dispute between PW4 and A1, resulting in the assault made by A1 on the head of PW4. It is peculiar to point out that PW4 having sustained injuries has went to hospital and got treated for the injuries sustained by her. But it is very much suspicious to note that having suffered such a huge blow, PW2 has not attempted to lodge a complaint before the police. She has simply come to her parental home and stayed back with her brothers.

21. As per the evidence of PW1, he has heard about the occurrence of assault on his sister over phone. He has not attempted to contact A1 and question regarding the above occurrence. But he has come down to his home along with PW2. As pointed out by the defense counsel the call details in respect of the alleged phone calls said to have been made by A1 to the mobile phone of PW2 has not been secured by the police. This is a vital piece of evidence



because the case of prosecution is based on the phone call made by A1 to PW2 by standing in front of the house. By virtue of the phone call PW1 and PW2 attended the phone call and heard A1 abusing with filthy words. Thereafter only they opened the door and came out of the house to see A1 standing with knife.

22. As per the complaint of PW1 there is no version found in respect of handing over the knife used by A1 at the time of occurrence by PW1. However the evidence of PW13 Manavalan would reveal that he recovered the weapon from PW1. It is very much disturbing to note that the recovery of knife has been shown in form 95 which is dated 19.08.2012 at 7.00 a.m. The form 95 has reached the Judicial Magistrate on 04.12.2012. When the form 95 is carefully perused, the date is initially mentioned as 03.09.2012. But it has been altered as 19.08.2012. At any event the recovery of weapon is very much unnatural and unbelievable. More particularly PW1 has been examined by the police on 19.08.2012. While so PW1 has stated to the Inspector that he has handed over the knife at the time of investigation. But this is contrasting to the evidence of PW13 Manavalan, who states that he proceeded to the place of occurrence on 19.08.2012 at 7.30 a.m. But according to the form 95 the



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knife is said to have been recovered at 11.00 am. on 19.08.2012. It creates a great doubt in the case of prosecution.

23. Now the evidence of PW15 Jayanthi is perused. She is the wife of PW2 Anthonisamy. She states that she was looking after her husband at the hospital when he was inpatient for 8 days. He has stated during cross-examination that when her husband was under treatment as inpatient, he was unable to speak. Hence when the police came there, she made a complaint statement and signed in at complaint statement. The Police also obtained signatures from PW1 and other relatives and lodged registered the case. The above averment from the evidence of PW5 makes it clear that there are two complaints in this case.

24. In respect of the evidence of PW2 Anthonisamy is concerned, he states that after his reaching the house on the date of occurrence, he came to note the assault on his sister Sebasthiammal. The relevant portions from the evidence of PW2 are extracted hereunder.

"சம்பவம் நடந்ததாக சொல்லப்படும் அன்று மாலை எது தங்கை செபஸ்தியம்மாளை 1வது வதிரி தாக்கிய விவரம்



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எங்களுக்கு நேரடியாக தெரியாது. வீட்டிற்கு வந்துதான் தெரிந்தது."

25. But PW4 Sebasthiammal has contrastingly stated during cross-examination that her brother lodged a complaint at Police Station. The relevant portions from the evidence of PW4 Sebasthiammal are extracted hereunder.

"என்னை 1வது எதிரி தாக்கியது சம்பந்தமாக சம்பவம் நடந்த மறுநாள் காவல் நிலையத்திற்கு புகார் கொடுக்க சென்றேன். அப்போது போலீசார் உங்கள் அண்ணன் ஒரு புகார் கொடுத்திருக்கிறார். நீ புகார் எதுவும் கொடுக்க வேண்டாம் என்று சொல்லி என்னை அனுப்பி வைத்தார்கள்."

26. From the above evidence of PW2 and PW4 the suspicion in the case of prosecution gets stronger.

27. In respect of the recovery of roof tiles, the prosecution witnesses have not supported the case. More specifically PW5 Jayanthi states that she lodged the complaint to police while she was at hospital and she also states that her relatives Adaikalasamy and Arokiyasamy were there. But the said Arokiyasamy who was examined as PW8 and Adaikalasamy who was examined as PW9, have unanimously deposed before the Court that they signed in a paper at Police Station and that they do not



know any other thing. Hence the above evidences of prosecution witnesses are woven with suspicion which create a reasonable doubt in favour of the accused persons.

28. It is also pertinent to point out the delay in lodging the complaint and the delay in dispatching the F.I.R. to Court. The entire case of prosecution seems to be after thought as against the accused persons. The previous motive in respect of the matrimonial dispute between the PW4 and A1 has been clearly established by the prosecution itself. Hence such a motive can also be pointed out against the prosecution in such a way that by virtue of the matrimonial dispute there are possibilities for lodging a false complaint against accused persons. This is because the unexplained suspicious circumstances namely recovery of weapon through PW1, delay in lodging the complaint, evidence of PW5 stating that she has lodged a complaint, the non examination of other independent witnesses of the locality, and the contrasting evidence of PW1 and PW2 from that of the other witnesses have thrown the case of prosecution to dark. According to the A.R. entry of PW1 which was marked as Ex.P7, PW1 was discharged on 18.08.2012. But PW1 has contrastingly stated that he was not admitted at hospital and instead he was treated as



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outpatient. He also states that they were nearly 50 persons near the place of occurrence at the time of occurrence. He states that those persons know about the occurrence and he has stated the same to the police also. But excepting the witnesses belonging to the family of PW1 no other independent witnesses have been examined in this case. Hence summing up all the above infirmities in the case of prosecution, this Court is unable to appreciate the case of prosecution and concludes that the accused persons are entitled to benefit of doubt leading to their acquittal and this point is answered accordingly.

In the result, the prosecution has failed to prove the charges against the accused persons and accordingly A1 is found not guilty for the offences U/s. 294(b), 307 and 324 I.P.C. and A2 is found not guilty for the offences U/s. 307 r/w 109, 323 I.P.C. and A3 is found not guilty for the offences U/s. 307 r/w 109 I.P.C. and U/s. 3(1) of Tamilnadu Properties (Prevention of Damage and loss) Act and A1 to A3 are acquitted U/s. 235(1) Cr.P.C. The bail bond executed by the accused persons stand cancelled. The material objects in M.O.1 and M.O.2 are ordered to be destroyed after the lapse of appeal time.



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6. The above observations made by the trial Court Judge is perfectly in order and I do not see any reason to interfere with the same. Moreover, when two views are possible, the view favouring the accused should be taken into consideration.

7. In the result,

- i. the Criminal Appeal is dismissed;
- ii. The Judgment passed by the Principal District and Sessions Judge, Ariyalur District, in S.C.No.95/2014, dated 14.12.2016 is confirmed.

15.04.2024

Index: Yes/No
Speaking/Non-Speaking order
Neutral Citation : Yes / No
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To

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Ariyalur District.

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2. The Section Officer,
VR Section,
Madras High Court,
Chennai.

R.HEMALATHA, J.

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