

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.517 of 2015

K.Balu

... Appellant/Defacto
Complainant

vs.

1.State by
Sub-Inspector of Police,
Marakkanam Police Station,
Villupuram District

2.Govindasamy
3.Thnagamani
4.Mariyappan
5.Murthy
6.Padmanapan
7.Murugan @ Mathivanan
8.Subramani
9.Sundaraj
10.Arulprakash
11.Durai
12.Sathiyaraj
13.Ragupathi
14.Manikandan

...Respondents

Criminal Appeal filed under Section 372 of Criminal Procedure Code, 1973, against the judgment dated 08.09.2014, passed by the I Additional District and Sessions Judge, Tindivanam in Crl.A.No.85 of 2013 against the order passed in C.C.No.421 of 2009 by the Judicial Magistrate No.II, Tindivdanam, dated 6.12.2013.

For appellant : Mr.R.Thirumoorthy

For respondents: Mr.P.Govindarajan,
Addl.Public Prosecutor for R1
No appearance for R2 to R14

JUDGMENT

This criminal appeal has been directed against the order of acquittal passed in Criminal Appeal No.85 of 2013, by the I Additional District and Sessions Court, Tindivanam.

2. The case of the prosecution is that the defacto complainant has sold his lands to third parties for a sum of Rs.44,30,000/-. In connection with sale deeds executed by the defacto complainant, all the accused have convened a panchayat on 13.12.2007 and abused defacto complainant and his family members. The defacto complainant has also been forced to pay a sum of Rs.25,00,000/- (Rupees Twenty Five Lakh only) on 14.12.2007. Since the defacto complainant has not conceded the demand of the accused, 10 days' time has been granted and subsequently, all the accused have abducted the defacto complainant and others and wrongfully confined in a place. Under the said circumstances, a complaint has been given by the defacto complainant and the same has been registered in Crime No.354 of 2008. The complaint given by the defacto complainant has been marked as Ex.P1.

3. On receipt of Ex.P1, the investigating agency has taken up investigation, examined connected witnesses and after completing the same, laid a final report against all the accused under Sections 147, 344 and 386 of the Indian Penal Code and also under Section 7(1)(b) of Protection of Civil Rights Act.

4. The trial Court, after considering the rival contentions put forth on either side has framed necessary charges and the same have been read over and explained to the accused. The accused has denied the charges and claimed to be tried.

5. On the side of the prosecution PWs.1 to 11 have been examined and Exs.P1 to P8 have been marked.

6. When the accused have been questioned under Section 313 of the Criminal Procedure Code, as respects the incriminating materials available in evidence against them, they denied their complicity in the crime. No oral and documentary evidence have been adduced on the side of the accused.

7. The trial Court, after hearing the arguments of both sides and also after evaluating the available evidence on record has found the accused guilty under Sections 147, 386 and 344 of the Indian Penal Code and also under Section 7(1)(b) of the Protection of Civil Rights Act and imposed sentences as mentioned in the judgment. Against the convictions and sentences passed by the trial Court, the accused, as appellants,

have prepared Criminal Appeal No.85 of 2013 on the file of the first appellate Court.

8. The first appellate Court, after hearing the arguments of both sides and upon perusing the available evidence on record, has allowed the appeal and thereby acquitted all the accused and against the order of acquittal, the present criminal appeal has been preferred, at the instance of the defacto complainant, as appellant.

9. Even though respondents 2 to 14 have been served with notices, appearance has not been made. Under such circumstances, this criminal appeal is disposed of on merits on the basis of contention put forth on the side of the appellant/defacto complainant.

10. The learned counsel appearing for the appellant has contended that the defacto complainant has sold his lands for a sum of Rs.44,30,000/- and in connection with the same, a panchayat has been convened by all the accused and they threatened to pay certain amount and since the defacto complainant has failed to concede the demand put forth by the accused, all the accused have abducted the defacto complainant and others and wrongfully restrained in an isolated place and therefore, Ex.P1, complaint has been given and for the purpose of proving the offences alleged to have been committed by all the accused, on the side of the prosecution, so many witnesses have been examined and the trial Court, after considering the available evidence on record, has rightly found all the accused guilty under Sections 147, 386, 344 of the Indian Penal Code and also under Section 7(1)(b) of the Protection of Civil Right Act. But the first appellate Court, without properly assessing the evidence adduced on the side of the prosecution, has erroneously acquitted all the accused and therefore, the order of acquittal passed by the first appellate Court is liable to be set aside.

11. For considering the submissions made on the side of the appellant, the Court has to analyse the evidence adduced on the side of the prosecution.

12. The consistent case put forth on the side of the prosecution is that the defacto complainant has sold his lands to third parties for a sum of Rs.44,30,000/-. For the purpose of proving the factum of sales alleged to have been made by the defacto complainant, no document has been filed.

13. Further, the case of the prosecution is that in connection with the sales alleged to have been made by the defacto complainant, a panchayat has been convened by all the accused and thereby threatened the defacto complainant to give certain amount to them and since he failed to concede their

demand, all the accused have abducted the defacto complainant and others and kept them in an isolated place.

14. On the side of the prosecution, the defacto complainant has been examined as P.W.1 and his son has been examined as P.W.3. But P.W.3 has not virtually supported the case of the prosecution. The remaining witnesses have not given corroborative evidence to the evidence adduced by P.W.1.

15. It has already been pointed out that the genesis of the case of the prosecution is that the defacto complainant (P.W.1) has sold his lands to third parties and thereby received sale consideration of Rs.44,30,000/- and only for the purpose of extracting money from him all the accused have convened a panchayat. It has already been pointed out that the said fact has not been proved on the side of the prosecution. Therefore, it is quite clear that the genesis of the case of the prosecution has not at all been established and further, except the defacto complainant (P.W.1), the remaining witnesses have not supported the case of the prosecution. Since the aforesaid factual aspects have not at all been established in order to prove the case of the prosecution, it is highly impossible on the part of the Court to come to a conclusion that the accused has committed offences, as alleged on the side of the prosecution.

16. The trial Court, without considering lack of evidence on the side of the prosecution, has erroneously invited convictions and sentences against the accused. But the first appellate Court, after re-appraising the available evidence properly, has rightly acquitted all the accused. In view of the discussion made earlier, this Court has not found any acceptable force in the contention put forth on the side of the appellant/defacto complainant and therefore, the present criminal appeal is liable to be dismissed.

In fine, this criminal appeal is dismissed. The order of acquittal passed in CrI.A.No.85 of 2013, by the I Additional District and Sessions Court, Tindivanam, is confirmed.

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Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

msk

To

1.The I Additional District and Sessions Judge,
Tindivanam

2. -do- Thro' The Principal Sessions Judge, Villupuram.

3.The Sub-Inspector of Police,
Marakkanam Police Station,
Villupuram District

5.The Public Prosecutor,
High Court, Madras.

4. The Judicial Magistrate No-II, Tindivanam.

Crl.A.No.517 of 2015

MG(CO)
EU 08.12.15



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