

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2015

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THE HONOURABLE MR.JUSTICE S.MANIKUMAR

Crl.R.C.No.110 of 2015
and M.P.No.1 of 2015

A.Palanivelu

.. Petitioner

Vs

1. State by
The Inspector of Police,
Kangayam Police Station,
Kangayam, Tiruppur District.

2. Balasubramaniam
3. Kumarasamy
4. Valliathal
5. Vadivel

.. Respondents

Criminal Revision filed under sections 397 r/w 401 of Criminal Procedure Code against the order dated 05.12.2013 made in C.C.No.67 of 2007 on the file of the learned Judicial Magistrate, Kangayam, Tiruppur District.

For Petitioner : Mr.C.Prakasam
For Respondents: Mr.P.Govindarajan (for R1)
Additional Public Prosecutor.

O R D E R

Criminal Revision Case is against acquittal. On the complaint of one N.A.Palanivelu, S/o.Appukutti Gounder, Neelakattupudur, Kangayam, Thiruppur District, Inspector of Police, Kangayam Police Station has laid a charge sheet against A1 for offences under Sections 147, 148, 448, 427 and 506(ii) IPC and against A2 to A4 for offences under Sections 147, 148, 448 and 427 IPC in C.C.No.614 of 2005. On trial, the learned Judicial Magistrate has acquitted the accused under Section 248 (1) Cr.P.C. All the accused have been arrayed as respondents in this revision case.

2. Case of the prosecution is that the accused on 02.12.2005 about 23.30 hours, when the complainant viz., N.A.Palanivelu was in his house at Palakad, Neelakattupdur, accused 1 to 4 and others unlawfully entered into the godown with dangerous weapons viz., wood,

panankai piece, chowkwood, Iron pipe and iron rod and damaged the godown. A1 with iron rod and A2 with Iron pipe, A3 with stones, A4 with wood and the minor 5th accused went to the top of the godown and damaged the same with the abovesaid deadly weapons. Damage was estimated at Rs.40,000/-. Further alleged that A1 threatened the complainant with dire consequences by showing the iron rod. FIR has been registered on the file of the Inspector of Police, Kangayam Police Station, Tiruppur in Cr.No.614 of 2005 for the offences stated supra. Though, prosecution has cited 12 witnesses, only 9 witnesses were examined. Others were dispensed with. Exs.P1 to P7 and M.Os. 1 to 8, have been marked.

3. Before, the Court below, PW1, Govindaraj, has deposed that on 02.12.2015 about 11.30 pm, he heard a sound and when he came out of his house from the back door, he found 10 persons, with sticks, Iron pipes, crow bar trying to damage the asbestos sheet of the godown. Hearing the sound of PW3/complainant, the accused jumped down and when their action was questioned, A1 to A3 threatened him with dire consequences.

4. Prosecution has examined one Mr.Govindaraj, Mr.Subburaj, Mr.Iyyappan and Mr. N.A.Palanivelu/Complainant as eye witnesses Pws.1, 7, 5 and 3 respectively. PW6 is an hearsay witness. PW2, is the Observation Mahazar witness, PW.9, is the Village Administrative Officer, PW.8 is the Sub Inspector of Police and PW.4 is the Inspector of Police. PW1, Govindarajan, though examined in chief, was not available for cross examination.

5. On analysis of the evidence, the lower Court found that there was a civil dispute between the parties and when PW3, Palanivelu has feigned ignorance of the results of the civil dispute, between the parties, the Court below has observed that testimony of PW3, does not inspire confidence of the Court, for the purpose of proving the offence. Though, PW5, Iyyappa is stated to be another witness, having regard to his testimony that he came to the spot only after 10 minutes, the Court below came to the conclusion that he cannot be an eye witness. PW7, stated to be another eye witness, was none other than the father of PW5, Iyyappan. PW7, is the tenant of PW3/complainant. According to him, the occurrence took place at 7.00 pm, whereas the case of the prosecution was that the occurrence took place at 11.30pm. Thus, when the alleged eye witness PW7 could not even speak about the exact time of occurrence, the Court below had come to the conclusion that PW7 also cannot be treated as eye witness.

6. Further analysing the evidence, the Court below has also noticed that A3 is entitled to 1/6th share in the disputed property. In the complaint, an allegation has been made that TVS 50 bearing TN39K9374 was left by the accused, near the place of occurrence. But the same, has not been deposed by PW3, complainant. He appears to have been identified the same in the police station. Above all, on

the important aspect of causing damage to the godown, PW6, one of the witnesses examined has deposed that the godown was in good condition, though, prosecution alleged that the same was damaged by the accused, estimated at Rs.40,000/-.

7. Thus, on the analysis of the evidence and the submissions advanced, vide the judgment dated 05.12.2013, in C.C.No.67 of 2007, the learned Judicial Magistrate, Kangayam, Tiruppur District has arrived at a conclusion that the prosecution has not satisfactorily proved the case, beyond reasonable doubt, on the charges levelled and accordingly, acquitted the accused.

8. Though, Mr.C.Prakasam, learned counsel for the defacto complainant submitted that the trial Court has failed to consider that the pendency of civil cases between the parties, ought not to have weighed the mind of the Court for discarding the testimony of witnesses supporting the prosecution case and further contended that the witnesses have corroborated the facts and further contended that the lower Court has failed to consider the recovery of M.O.Nos.1 to 8 supported by Ex.P1, dated 03.12.2005, Observation Mahazar, Exs.P2 & P3 dated 03.12.2005, Seizure Mahazar and therefore, prayed to set aside the judgment of acquittal dated 05.12.2013, this Court is not inclined to accept the submissions for the reason that after analysing the testimony of the witnesses, PW1, PW7, PW5 and PW3/Complainant, stated to the eye witnesses, the learned Judicial Magistrate, Kangeyam, has carefully considered their evidence, who have simply stated that only after hearing the sound they came to the place of occurrence. PW5 has arrived at the scene of occurrence after 10 minutes. PW7, has stated that the occurrence took place at 7.00 pm, whereas, as per the prosecution it was at 11.30 pm. PW1/Govindarajan was not available for cross examination and therefore, his chief examination alone is not sufficient. PW3, Palanivelu/Complainant, is stated to be the landlord of PW7, who is none other than the father of PW5, Iyyappan. Though, PW3, complainant has stated that vehicle TVS-50 bearing No.TN39K9473 was left near the place of occurrence by accused, according to him, he has identified the vehicle only in the police station.

9. First of all, the evidence adduced by the prosecution through the alleged eye witnesses, contains contradictions, even as regards the time of occurrence. The above witnesses have stated that only after hearing the sound they came out of their respective houses. Nobody seemed to have adduced evidence to the effect that they have seen the accused, damaging the godown. Above all, as observed earlier, PW6, has candidly stated that the godown was in good condition. Evidence of PW6, runs contrary to the very prosecution case of causing damage to the godown, estimated at Rs.40,000/-.

10. It is well known that in order to arrive at the guilt of the accused, prosecution has to prove the case beyond all reasonable doubt. Material contradictions as regards the time of occurrence, statements of the witnesses that they had come out of their respective houses only after hearing of the sound and that TVS 50 vehicle identified only at the police station by PW3/complainant, contrary to the averments in the complaint and thus, analysis of the entire evidence, makes it clear that no perversity can be attributed to the decision of the learned Judicial Magistrate, Kangayam, in acquitting the accused.

11. For the reasons stated above, the Criminal Revision Case is dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate,
Kangayam,
Tiruppur District.
2. The The Inspector of Police,
Kangayam Police Station,
Kangayam, Tiruppur District.
3. The Public Prosecutor, High Court, Madras.

+ 1 cc to Mr.C. Prakasm, Advocate SR.7908
+ 1 cc to Mr.S. Saravanan, Advocate SR. 7861

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PA(CO)
EU 11.03.2015

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