

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 30.11.2015

CORAM

THE HON'BLE MR.JUSTICE C.T.SELVAM

Cr1.R.C.No.108 of 2010

Vijayakumar

... Petitioner

Vs.

1. State rep. By
Inspector of Police
Vaduvur Police Station
Tiruvarur District
(Cr.No.105/08)

2. Sudhakar

3. Kumar

4. Santhanam

5. Chinnappa

6. Veerayya Maniyar

7. Sundararaj

8. Pandiyan

9. Anbalagan

10.Nethaji

... Respondents

Criminal Revision filed u/s.397 & 401 Cr.P.C. against the judgment of the learned Assistant Sessions Judge, Manargudi, Tiruvarur District made in S.C.No.53 of 2008 dated 03.11.2009 acquitting the accused 1 to 3/respondents 2 to 4 under Sections 147, 148, 324, 325, 307 & 506(ii) IPC r/w. Section 149, 307 r/w.Section 109 IPC and acquitting the accused 4 to

9/respondents 5-10 under Sections 147, 148, 323, 324, 325, 341, 307 & 506(ii) IPC r/w. Section 149, 307 r/w. Section 109 IPC.

For Petitioner : No Appearance

For Respondent 1 : Mr.C.Iyyapparaj,
Government Advocate (Crl. Side)

For R2 to 10 : No Appearance

O R D E R

The petitioner has filed the present revision against the judgment of acquittal passed by the learned Assistant Sessions Judge dated 03.11.2009 in S.C.No.53 of 2008.

2. The case of the prosecution was that due to political enmity between the wife of the petitioner and of the 6th accused, the accused persons formed an unlawful assembly and attacked the petitioner with deadly weapons and also abused him using filthy language. A case in Crime No.105 of 2008 on the file of the first respondent was registered. Upon completion of investigation and filing of charge sheet informing commission of offences under Sections 148, 341, 307 r/w.109, 324, 325, 307, 506(ii) IPC against Accused 1 and 2, 341, 323, 325, 506(ii), 307 r/w.149 against A3, 147, 341, 323, 506(ii), 307 r/w.149 IPC against 4th accused, 147, 341, 307 r/w.109, 325 r/w.149, 307 r/w. 149 IPC against accused 5 and 6 and 147, 341, 324 r/w.149, 325 r/w.149, 307 r/w.149 IPC against Accused 7 to 9, the case was tried in S.C.No.53 of 2008 on the file of learned Assistant Sessions Judge, Mannargudi.

3. Before the trial Court, the prosecution examined 14 witnesses and marked 10 exhibits and 3 material objects. None were examined on behalf of the defence, however, two exhibits were marked. Considering the evidence and an appreciation of materials before it, the Court below found that the prosecution had proved its case against the respondents 2 to 4 for offences under Section 323, 341, 323 (3 counts) respectively and accordingly convicted them and acquitted them in respect of other offences. As regards, respondents 5 to 10, the trial Court found that the prosecution has failed to prove its case and accordingly, acquitted them. Against the finding of acquittal, the present revision has been filed.

4. There repeatedly has been no representation for the petitioner. This Court issued a bailable warrant against the petitioner on 28.10.2015. Learned Government Advocate (Crl.side) submitted that the bailable warrant issued against the petitioner could not be executed since he is not available at the known address. This Court has perused the papers and does not find it necessary to further adjourn the matter towards hearing the petitioner.

5. In rendering the finding of acquittal, the Court below has informed the following reasons:

The prosecution has failed to establish what were the weapons used by each of the accused. Recoveries were made by the respondent police upon a confession. It was pertinent to note that only one confession statement was recorded from all the three persons. The same was not marked through witnesses. Though PW1 has deposed that a stick and one other weapon were used along with other weapons, only MO1-iron rod, MO2-Aruval and MO3-Wooden log have been shown as material objects recovered from the accused. The prosecution has failed to establish that all the accused conspired together in committing the offence. Though it was alleged that the accused Kumar used filthy language in a public place, the witnesses have given different versions regarding the words used by him. None from the public was examined regards the language used by the accused. The Court below has also observed that there is absence of evidence on which accused threatened with deadly weapons. It was also informed by the Court below that the usage of the words "you will be done away with" cannot amount to an attempt to murder. The evidence of PW3 makes clear that the accused had no intention to commit the offence of murder. The evidence of Pws 2 to 6 and PW11 corroborate each other to the effect that only the second accused waylaid Pws 1 and 2. PW12-Doctor deposed that there was a cut injury on the head of the injured/defacto complainant and the same could not have been caused by an iron rod. The prosecution has failed to prove how such cut injury was occasioned. PW11-doctor, who examined PW8 deposed to his having suffered fracture of bone, but no certificate to such effect has been obtained from the Orthopedician. The presumption would be that PW8 had sustained only simple injuries.

Reasoning as above, the trial Court rendered a finding of acquittal. This Court finds no error in the judgment under challenge. The criminal revision petition is dismissed.

Sd/-
Assistant Registrar(CS V)

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Sub Assistant Registrar

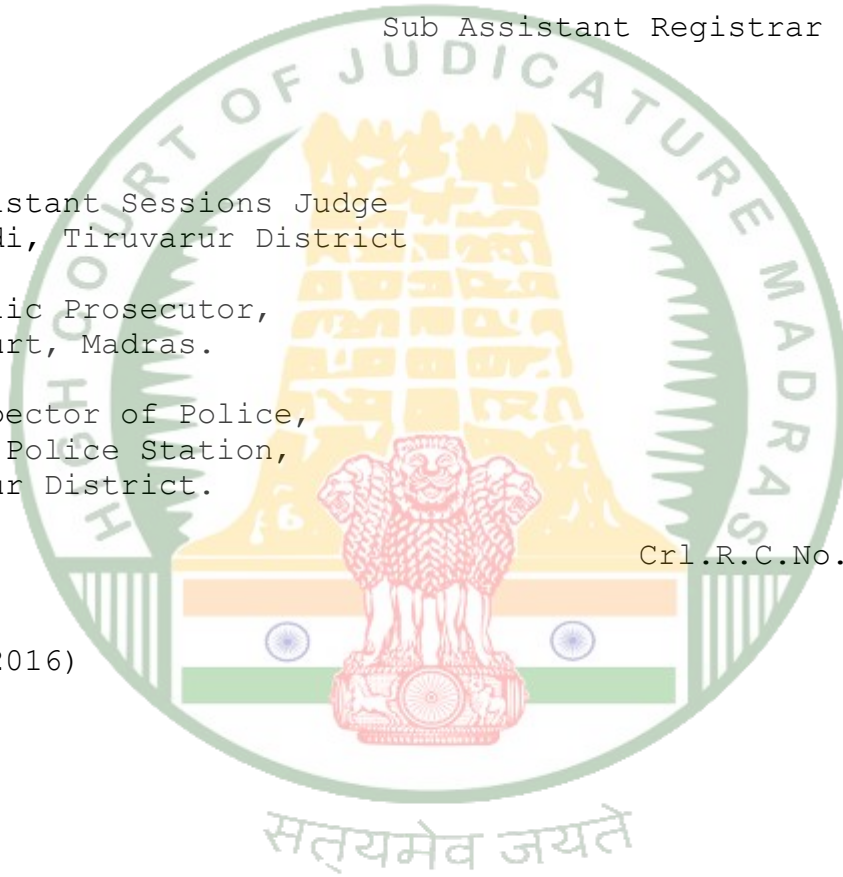
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To

- 1.The Assistant Sessions Judge
Manargudi, Tiruvarur District
- 2.The Public Prosecutor,
High Court, Madras.
- 3.The Inspector of Police,
Vaduvur Police Station,
Tiruvarur District.

Crl.R.C.No.108 of 2010

PA(CO)
CA(20/01/2016)



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