

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.7.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No.1464 of 2008

Mary

.. Petitioner

Versus

1. Durai @ Durairaj
2. Irudhayaraj
3. Arokiyasamy
4. Anthony

... Respondents/accused

5. State Rep.by
The Inspector of Police
Crime Branch CID
Kancheepuram District

Respondent/ complainant

Criminal Revision Petition filed under Section 397 and 401 of Cr.P.C. against the order of the Assistant Sessions Judge, Mathurantagam, Kancheepuram District dated 05.8.2008 made in S.C.No.333 of 2001 and to revise the judgment dated 5th August 2008 and to set aside the same insofar as it has acquitted the respondents/Accused and to award punishment to the respondents/Accused.

For Petitioner : Mr. K.M.Ramesh

For R1 to R4 : Mr. R.Vijayakumar

For R5 : Mr.V.Arul
Government Advocate

O R D E R

The petitioner has filed the above Criminal Revision Petition as against the order dated 05.8.2008 passed in S.C.No.333 of 2001.

2. The brief facts of the case are as follows:-

During May 1999, there was a theft of Television set in the fourth accused house, for which there was a Panchayat. In the Panchayat P.W.4 and P.W.5 were directed to pay a fine of Rs.10,000/- for alleged theft of the TV Set. But the same was not paid. Therefore, complaint was lodged. As no action was taken, legal notice was issued. While so, on 13.4.2000, at about 9.00 p.m. when P.Ws.1 to 3 were watching a film in TV., the door of the house was rudely knocked. When P.W.1 and P.W.2, mother of P.W.1, went in front of the door, all the five accused started beating P.W.1 and threatened him with dire consequences. In that incident, P.W.1 sustained serious injuries and was admitted in the hospital. Thereafter, a complaint was registered and after investigation,

police filed a final report against the accused for the alleged offences under Sections 147, 148, 307 read with 149 IPC and the same was taken cognizance in S.C.No.333 of 2001 by the learned Assistant Sessions Judge, Madurantagam. After due trial, the trial Court, acquitted all the accused by judgment dated 05.2.2003 .

3. As against the said order of acquittal, Criminal Revision case in Crl.R.C.No.801 of 2003 has been filed by the petitioner/P.W.2 herein and this Court by order dated, 25.7.2006, while setting aside the judgment dated 05.2.2003, has remanded the matter back to the trial Court for further proceedings. Paragraphs 18 to 20 of the said order dated 25.7.2006, read thus:-

18. In view of the decisions cited supra, since the answers given by A.2. to A.5 for the questions framed under Section 313 Cr.P.C, have not been incorporated or written in the statements and only signatures have been obtained from the accused below each questions, I am of the view that on this score alone, the revision has to be allowed and remanded back for further proceedings.

19. In Satyajit Banerjee vs. State of West Bengal, reported in 2005 SCC (Criminal) 276, the Hon'ble Supreme Court has held as follows:-

26. The law laid down in Best Bakery Case (2004 (4) SCC 158), in the aforesaid extraordinary circumstances cannot be applied to all cases against the established principles of criminal jurisprudence. Direction for retrial should not be made in all or every case where acquittal of accused is for want of adequate or reliable evidence. In best Bakery Case, the first trial was found to be a farce and is described as "mock trial". Therefore, the direction for retrial was in fact, for a real trial. Such extraordinary situation alone can justify the directions as made by this Court in Best Bakery Case.

27. So far as the position of law is concerned, we are very clear that even if a retrial is directed in exercise of revisional powers by the High Court, the evidence already recorded at the initial trial cannot be erased or wiped out from the record of the case. The trial Judge has to decide the case on the basis of the evidence already on record and the additional evidence which would be recorded on retrial.

28. With the above clarification, we decline to interfere in the order of remand. To put the matter beyond any shadow of doubt we further clarify and reiterate that the trial Judge, after retrial, shall take a decision on the basis of the entire evidence on record and

strictly in accordance with law, without in any manner, being influenced or inhibited by anything said on the evidence in the judgment of the High Court or this Court".

20. In the above circumstances, the acquittal of the accused are set aside. The learned Assistant Sessions Judge, Maduranthagam, is directed to record answers to the questions under Section 313 Cr.P.C, put to the accused, can record additional evidence if necessary, and to consider what is the actual offence committed by the accused and then give fresh judgment, on merits and in accordance with law.

4. As per the above direction of this Court, the trial Court again conducted the trial and after considering all the materials, acquitted the accused as against which, the present Criminal Revision is filed.

5. The learned counsel for the petitioner submitted that the Court below has not appreciated the facts properly. The Court below failed to consider the evidence of P.W.1, the first informant, who is a lawyer by profession and who had categorically stated as to how all the accused had assaulted him and attempted to murder him. According to the learned counsel for the petitioner, inspite of clear evidence of P.W.1 corroborated and supported by other witnesses, the Court below has come to a wrong conclusion in acquitting the accused.

6. The learned counsel submitted that P.W.2 to P.W.7 were the eye witnesses and close relatives of P.W.1 and their evidence were brushed aside by the Court below without giving any valid reason. It is also submitted that inspite of the specific direction given by this Court in Criminal revision in CrI.RC.No. 801 of 2003, while remitting the matter back to the Court below, the Court below has not passed detailed order giving specific reasons for acquitting the accused. The Court below failed to take into consideration the fact that P.W.1 has sustained serious injuries, which has been clearly proved by the evidence of P.W.8 and P.W.9, Doctors, and Exs.P.3 and P5, the copies of Accident Register.

7. The learned counsel pointed out that the Court below has erred in coming to the conclusion that there is contradiction with regard to the number of persons said to have attacked P.W.1 and the weapons used by them, especially when the evidence of P.W.1 and P.W.8 specifically speaks with regard to the injuries sustained by P.W.1. The rejection of the evidence of P.W.2 to P.W.7 on the ground that they are the relatives of P.W.1 cannot be accepted for the simple reason that the occurrence took place in the house. There are also enough evidence available to connect the accused to the offence and, therefore, the court below ought not to have acquitted the accused.

8. On the contrary, the learned counsel appearing for the respondents 1 to 4 /accused would contend that the court below is right in holding that the prosecution has failed to prove the guilt

against the accused/respondents 1 to 4 beyond any reasonable doubt. The learned counsel would further contend that there are lot of discrepancies in the evidence and, therefore, the Court below acquitted the accused. According to the learned counsel for the respondents/accused, when P.W.1 was originally admitted in the hospital, in the Accident Register, Ex.P3, P.W.6 has clearly stated that there was a lacerated injury to the extent of 1 x 1 x ¼ cm in the head whereas in Ex.P4, which has been given by P.W.10 at the time of admitting P.W.1 as in-patient in Stanley hospital, it is stated that P.W.1 sustained simple injuries. P.W.2 to P.W.6 are the villagers and they are only the interested witnesses.

9. The learned counsel for the respondents 1 to 4/ accused further pointed out that the Court below failed to take into consideration the fact that complaint given by the respondents 1 to 4 / accused against the petitioner in Crime No.192 of 2000 was pending and that the aggressor has not been decided by the prosecution. When there is a case AND counter, no separate charge sheet has been filed. Therefore, the lower Court has rightly acquitted the respondents 1 to 4/ accused. The learned counsel for the respondents also pointed out that there is a discrepancy in the evidence of P.W.1 with regard to the number of persons said to have attacked him. In any event, when the Court below recorded a finding to acquit the respondents 1 to 4 /accused, the same need not be interfered with by this Court.

10. In support of his contention, the learned counsel for the respondents/accused 1 to 4 relied on the latest decisions of the Honourable Supreme Court reported in (PITCHALAPALLI NARESH REDDY vs. STATE OF ANDHRA PRADESH AND OTHERS) [(2014) 12 SCC 457] and (MURUGESAN AND OTHERS vs. STATE THROUGH INSPECTOR OF POLICE) (2012 SCW 5627) wherein it was held that in case of an appeal against acquittal, the presumption of innocence available to the accused has been reinforced by such order of acquittal and it need not be slightly interfered with. The learned counsel for the respondents 1 to 4/accused also relied on the decision of the Honourable Supreme Court reported in (Hydrus vs. State of Kerala) (2004) 13 Supreme Court Cases 374 to contend that an order of acquittal need not be interfered with by the higher Courts unless there is any procedural irregularity or material evidence has been overlooked or misread by the subordinate Court.

11. The learned Government Advocate appearing for the fifth respondent would only contend that the prosecution has not preferred any appeal against the order of acquittal passed by the Court below.

12. I heard the counsel on either side and perused the materials available on record.

13. Admittedly it is a second round of litigation. In the earlier round, the respondents 1 to 4 / accused were acquitted and the matter was challenged before this Court and this Court remanded the matter back to the lower Court with a direction to record answers to the questions under Section 313 Cr.P.C, put to the accused, to record additional evidence if necessary, and pass fresh

judgment on merits. After remand, the Court below, after taking into consideration the entire evidence, acquitted the respondents 1 to 4 / accused. Therefore, the petitioner is before this Court.

14. The prosecution has examined 12 witnesses and marked 10 documents, to prove the guilt against the respondents 1 to 4/accused. Of the 12 witnesses, Pws 1 to 5 were projected as eye witnesses. Since P.W.2 to P.W.7 are relatives of P.W.1, the Court below has come to the conclusion that their evidence may not be a justifiable one. On careful scrutiny of the entire evidence, especially the deposition of P.W.8 to P.W.10, it is clear that there are lot of discrepancies with regard to the nature of injury. Further, the court below pointed out that in support of the injuries sustained by P.W.1, three doctors were examined and P.W.8, Doctor, has stated that there was a lacerated injury of 1 cm x $\frac{1}{4}$ cm on the vault of skull; multiple abrasions around injury; a contusion of 5 cm x 3 cm on the neck and complaint of pain on the left shoulder and head injury. Further, P.W.8 stated that as there was a big wound on the head, he was referred to Chengalpet Government Hosital for further treatment.

15. Further, the Court below pointed out that P.W.8 in his deposition has stated that P.W.1 has stated four persons have attacked the injured on his head by wooden log and hands. But, P.W.1 in his deposition has stated that five persons attacked him. P.W.1 has stated that A1 attacked him with wooden log on his head and neck and A2 beat on the left shoulder and hip. A3 threatened by saying that only if you are alive, you will file a case against us. So saying, he gave a blow on his stomach with wooden log. A4 fisted P.W.1's face repeatedly. A5 threatened to kill him by saying that only if you are alive, you will go to Court and file a case, I will burn the entire family and so saying he beat on the face of P.W.1. Then, A4 and A5 dragged him to the road and pushed him down and A4 kicked on the chest of P.W.1. But P.W.8 doctor in his evidence has stated that there was a wound on the head. Therefore, it is clear that there is a total contradiction in the evidence. The Court below pointed out that PW.1 in his evience has not corroborated the injuries. Similarly, Doctors' evidence does not tally with the alleged injuries as stated by P.W.1. The Court below has also pointed out that even at the time of admission in the hospital, P.W.1 has not even pointed out that there was pain either on his chest or on his shoulder on account of the alleged attack by A2, A3 and A4. In view of the above discrepancies, I am of the view that the Court below is justified in disbelieving the version of P.W.1.

16. Even though doctor in the local hospital felt that the injuries sustained by P.W.1 were grievous in nature and that he was referred to the Chengalapttu Government Hospital, as rightly pointed out by the Court below, he did not go to the Chengalpattu Government hospital but he went to the Stanley hospital, wherein he was treated by P.W.10. With regard to the injuries sustained, P.W.10 has stated that P.W.1 sustained lacerated injury in his head to the extent of 4 x 3 x 2 cm, which is totally contradictory to the evidence of P.W.8 as P.W.8 has given evidence that injury in the head was only 1 x $\frac{1}{4}$ cm. Similarly, P.W.10 has given evidence

that the contusion in the neck was to the extent of 10 x 6 x 5 cm, whereas P.W.8 has stated that it was 5 x3 c.m., It is also not the case of the Doctor that P.W.1 was unconscious at the time of admission in the hospital.

17. As rightly pointed out by the Court below, P.W.9, another Doctor, who has given treatment to P.W.1 in the Ward has deposed that only abrasion was found in the head and he did not depose anything about the contusion in the neck. Therefore, the Court below, after taking into consideration the evidence of P.W.8, P.W.9, and P.W.10 has clearly come to the conclusion that three different versions have been given by three different doctors in respect of the injury caused and also the way by which it was caused. Therefore, the Court below has rightly come to the conclusion that as there is lot of discrepancies in the evidence of P.W.8 to P.W.10, it is not legally sustainable to prove the guilt of the respondents 1 to 4 /accused.

18. Moreover, the respondents 1 to 4/ accused have also brought to the knowledge of this Court that apart from the complaint given by the petitioner, the respondents 1 to 4 have also given complaint against the petitioner in Crime No.192 of 2000 in respect of the very same incident and no action was taken on the said complaint.

19. It is to be noted that when there is a case and counter, the police before registering the case, ought to have look in the counter case and found out the real aggressor. In this case, unfortunately, the same has not been done and separate case has not been registered. This vital information was suppressed by the prosecution and it is fatal to its case. Therefore, the Court below has rightly come to the conclusion in acquitting the accused as the investigation has not been done properly to find out the real aggressor.

20. The court below also pointed out glaring inconsistencies in the version of the prosecution witnesses, not taking action in the counter case and even disbelieved the manner in which injury was caused to P.W.1. Such a conclusion arrived at by the Court below, in my opinion, is based on materials available on record and it cannot be said to be illegal or unreasonable. In this context, it is useful to refer the decision of the Honourable Supreme Court reported in (Putchalapalli Naresh Reddy v. State of Andhrapradesh and others) 2014 12 SCC 457, wherein the Hon'ble Supreme Court has categorically stated that the order of acquittal is liable to be interefered with only in exceptional cases where there are compelling circumstanes and judgment in appeal is found to be perverse. It is also stated in the said judgment that intereference in a routine manner where other view is possible should be avoided unless there are good reasons for intereference.

21. No doubt, if really there is a very good case, where it is pointed out that illegality or irregularity has been committed by the Court below, this Court has got every jurisdiction to interfere with the order passed by the Court below.

22. In this context, it is also useful to extract the relevant portion of the decision of the Honourable Supreme Court reported in (Murugesan and others vs. State through Inspector of Police) 2012 AIR SCW 5627 wherein it was held as follows:-

"27. It will be necessary for us to emphasize that a possible view denotes an opinion which can exist or be formed irrespective of the correctness or otherwise of such an opinion. A view taken by a court lower in the hierarchical structure may be termed as erroneous or wrong by a superior court upon a mere disagreement. But such a conclusion of the higher court would not take the view rendered by the subordinate court outside the arena of a possible view. The correctness or otherwise of any conclusion reached by a court has to be tested on the basis of what the superior judicial authority perceives to be the correct conclusion. A possible view, on the other hand, denotes a conclusion which can reasonably be arrived at regardless of the fact where it is agreed upon or not by the higher court. The fundamental distinction between the two situations have to be kept in mind. So long as the view taken by the trial court can be reasonably formed, regardless of whether the High Court agrees with the same or not, the view taken by the trial court cannot be interdicted and that of the High Court supplanted over and above the view of the trial court.

28. A consideration on the basis on which the learned trial court had founded its order of acquittal in the present case clearly reflects a possible view. There may, however, be disagreement on the correctness of the same. But that is not the test. So long as the view taken is not impossible to be arrived at and reasons therefor, relatable to the evidence and materials on record, are disclosed any further scrutiny in exercise of the power under Section 378 Cr.P.C. was not called for."

23. Similarly, in the decision reported in (Hydrus vs. State of Kerala) (2004) 13 Supreme Court Cases 374, the Honourable Supreme Court held that it is well settled that in a revision against acquittal by a private party, the powers of the Revisional Court are very limited. It can interfere only if there is any procedural irregularity or material evidence has been overlooked or misread by the subordinate Court. If upon reappraisal of evidence, two views are possible, it is not permissible even for the appellate Court in appeal against acquittal to interfere with the same, much less in revision where the powers are much narrower.

24. In the case on hand, this Court, on scrutiny of the order passed by the Court below, can only hold that there is no procedural or material irregularity in arriving at a conclusion to acquit the accused. In this case, as rightly pointed out by the Court below, there are lot of discrepancies in respect of the very nature of injury, the manner in which the same was caused, the weapon used and the number of persons participated in the incident. All these facts do not correlate with the case of the prosecution. Even if it is considered that P.W.2 to P.W.7 are good evidence and acceptable evidence, the nature of injury and the manner in which the injuries were caused do not tally with their evidence. Therefore, it is clear that there is a total contradiction in the evidence in respect of injuries sustained by P.W.1. Therefore, the benefit of doubt is in favour of the respondents 1 to 4/ accused. Apart from this, as already stated, it is a case and counter and the same has not been properly examined by the prosecution.

25. Considering all these facts and as rightly pointed out by the Court below, the benefit of doubt is in favour of the respondents 1 to 4/ accused. Therefore, I do not find any reason to interfere with the reasoned order passed by the Court below.

26. In the result, the Criminal Revision case is dismissed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

ga

To

1. The Assistant Sessions Judge, Mathuranthagam, Kanchipuram
2. do thro the Principal Sessions Judge, Kancheepuram
3. The Public Prosecutor, High Court, Madras
4. The Inspector of Police
Crime Branch CID
Kancheepuram District

1 cc to Mr.K.M. Ramesh, Advocate,a sr. 37271

Cr1 RC No.1464 of 2008