

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.10.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.348 of 2006

Madheswaran

... Appellant/Complainant

vs.

1. Shanmugam
2. Gopal
3. Ratinam

... Respondents/Accused 1 to 3

Criminal Appeal filed under Section 378 of Cr.P.C., against the judgment dated 12.12.2005 made in C.C.No.255 of 2002 by Judicial Magistrate No.1, Namakkal.

For appellant : Mr.B.Vijayakumar

For Respondent : Mr.N.Manokaran

JUDGMENT

The order of acquittal dated 12.12.2005 passed in Calendar Case No.255 of 2002 by the Judicial Magistrate No.1, Namakkal is being challenged in the present Criminal Appeal.

2. The case of the complainant is that the accused 1 to 3 are junior paternal uncles of the complainant. A rice mill, which is situated in Manikampalayam belongs to father of the complainant and accused and with regard to the said rice mill, a partition suit has been instituted, wherein both preliminary as well as final decree have been passed. On 24.12.1995, the father of complainant has gone to Tiruchengode in connection with his business. On the same day at about 4 p.m., all the accused have come to rice mill with deadly weapons and the first accused has caught hold of mother of the complainant. Both the second and third accused have attacked her by using their hands and subsequently, all the accused has removed door of rice mill and placed the same in poultry farm of of one Sengodan. After

occurrence, mother of the complainant has been admitted in hospital, where she has been given treatment. Thereafter, the complainant has given a complaint to the police, but the police have not investigated the case properly. Under the said circumstances, the complaint in question has been filed under section 200 of Code of Criminal Procedure, 1973 and the same has been taken on file in Calendar Case No.255 of 2002.

3. The trial court, after considering the available evidence on record has found that on the side of the complainant, sufficient evidence is not available so as to found all the accused guilty under the sections mentioned in the complaint and ultimately acquitted them. The order of acquittal passed by the trial court is being challenged in the present Criminal appeal.

4. The learned counsel appearing for the appellant/complainant has contended that occurrence has taken place on 24.12.1995 at about 4 p.m., and during the course of occurrence, first accused has caught hold of mother of the complainant and both the second and third accused have attacked her by using their hands and due to that, she has become fainted and subsequently admitted in hospital and further she has been examined as P.W.2 and in fact, she has given her evidence so as to substantiate the allegations made in the complaint, but the trial court, without considering her evidence properly, has erroneously acquitted all the accused and therefore, the order of acquittal passed by the Court below is liable to be set aside and all the accused are liable to be punished in accordance with the sections mentioned in the complaint.

5. The learned counsel appearing for the respondents/accused has contended that even in the complaint, it has been specifically mentioned that all the accused are armed with deadly weapons, further it has been stated to the effect that the first accused has caught hold of mother of the complainant and both the accused 2 and 3 have attacked her by using their hands and mother of the complainant has been examined as P.W.2 and her specific evidence is that she has been attacked by deadly weapons. Since vital contradiction is available on the side of the complainant, the trial court has rightly acquitted all the accused and further, no witness has been examined with regard to removal of door of rice mill and also with regard to placing of all weapons in the poultry farm of one Sengodan.

6. For considering the divergent submissions made on either side, the Court has to look into the allegations made in the complaint. In the complaint, it has been specifically stated that on 24.12.1995 at about 4 p.m., all the accused have come to the place of occurrence with deadly weapons and during the course of occurrence, first accused has caught hold of mother of

the complainant (P.W.2) and the accused 2 and 3 have attacked her by using their hands.

7. The mother of the complainant has been examined as P.W.2 and she has clearly stated in her evidence that in the place of occurrence, she has been attacked by deadly weapons. Therefore, it is quite clear that P.W.2 has given a contra evidence with regard to manner of attack made on her person. It has also been pointed out that in the complaint, it has been specifically stated that the accused 2 and 3 have attacked her by using their hands, but as stated earlier, P.W.2 has given totally a different evidence.

8. Further, it is averred in the complaint that at the time of occurrence, all the accused have removed door of rice mill and placed the same as well as deadly weapons in the poultry farm of one Sengodan. But, for proving the said aspect, no independent witness has been examined.

9. It has already been pointed out that with regard to vital aspect, on the side of the complainant, contra evidence is available. Since with regard to vital aspect, on the side of the complainant, contra evidence is available and since the subsequent events mentioned in the complaint have not been proved, the Court cannot come to a conclusion that on 24.12.1995, an occurrence has taken place as stated on the side of the complainant.

10. The trial court, after considering the vital infirmities found on the side of the complainant, has rightly acquitted all the accused. In view of the discussions made earlier, this Court has not found any acceptable force in the contentions put forth on the side of the appellant/complainant and altogether present Criminal Appeal deserves to be dismissed.

In fine, this Criminal Appeal is dismissed. The order of acquittal passed in C.C.No.255 of 2002 by the Judicial Magistrate No.1, Namakkal is confirmed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To :

1.Judicial Magistrate No.1, Namakkal.

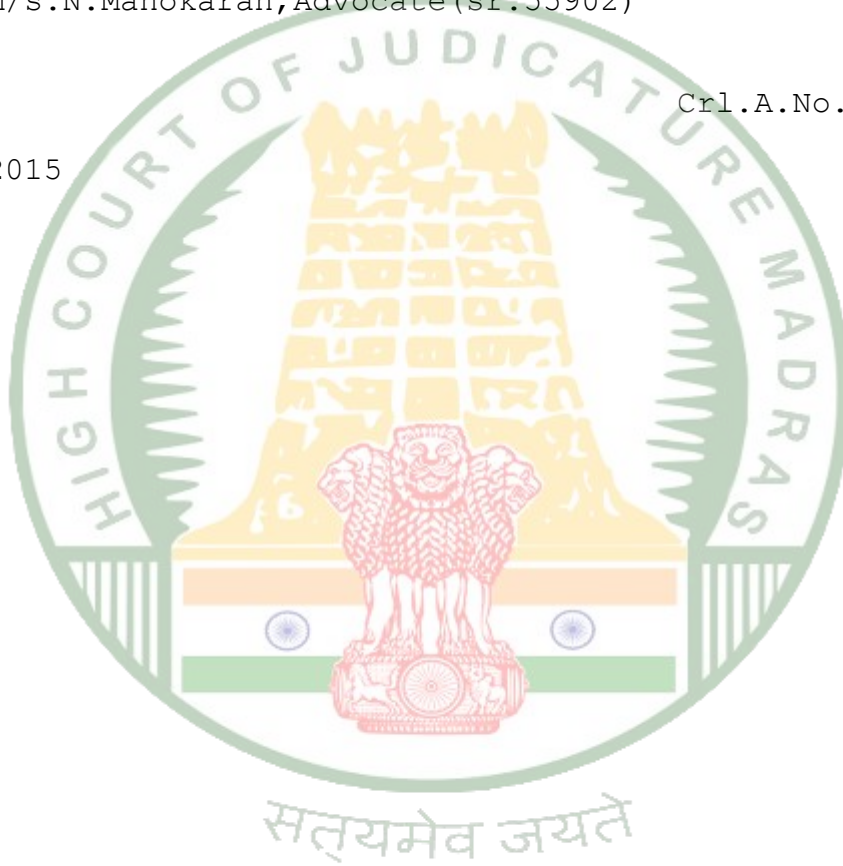
2. Do Thro the Chief Judicial Magistrate Namakkal.

+1 cc to M/s.B.Viajakumar,Advocate(sr.55576)

+1 cc to M/s.N.Manokaran,Advocate(sr.55902)

Crl.A.No.348 of 2006

RSI(co)
cp 28/10/2015



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