

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10-06-2015

Coram :

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No. 359 of 2010

Paramasivam

.Petitioner/p.w.1

Versus

1. Vishnu Parthipan

2. State represented by
Inspector of Police
Kannankurichi Police Station
Salem District
Cr. No.495 of 2008.

.. Respondents

Criminal Revision Case filed under Section 397 and 401 of Criminal Procedure Code to set aside the judgment dated 10.12.2009 passed in C.C. No. 292 of 2008 on the file of Judicial Magistrate No.4, Salem.

For Petitioner

:Mr. S. Sivakumar

For Respondent

:Mr. P. Nalliyappan for R1

Mr. T. Arul

Government Advocate (Criminal side)
for R2

ORDER

The petitioner, who is the defacto complainant and who was examined as PW1 in C.C. No. 292 of 2008 on the file of the learned Judicial Magistrate No.4, Salem, has come forward with this Criminal Revision Case aggrieved by the order dated 10.12.2009 passed in C.C. No. 292 of 2008 whereby the second respondent/accused was acquitted from the criminal case.

2. The case of the prosecution, as per the version of the defacto complainant/PW1 is that on 04.11.2008 at 7.00 pm, after delivering coffee power, PW1 was riding his Mini Door Vehicle bearing Registration No. TN 67 A 3832. When the vehicle was nearing Gorimedu, K.K. Nagar near K.P. Saw Mill, he heard a noise on the back side of the vehicle. Therefore, PW1 stopped the vehicle and looked whether there is any one behind the vehicle, but he could not see any one. Therefore, PW1 proceeded 100 feet further. At that time, the accused persons came in a motor bike and way laid him and made PW1 to stop his vehicle. When PW1 stopped the vehicle, the accused persons assaulted him with hand and also with a knife and caused him bleeding injuries in his lip and hand. PW1 was thereafter taken to hospital by his

brother, PW2. In connection with this incident, a case in Crime No. 499 of 2008 was registered for the offences punishable under Sections 341, 323 and 325 of IPC.

3. During the course of trial, in order to prove the case against the accused, prosecution has examined 8 witnesses and marked Exs. P1 to P6. On the side of the defence, one Mr. Gurumurthy was examined as DW1 and Exs. D1 and D2 were marked. The trial Court, on appreciation of the oral and documentary evidence concluded that there were lot of material contradictions in the deposition of the prosecution witnesses and therefore, on the basis of such contradictory version, it is unsafe to convict the accused. The trial Court also pointed out that even though it was alleged that the accused caused cut injuries to the defact complainant with a knife, it was not produced as a Material Object before the Court. Accordingly, by holding that the prosecution has failed to prove the guilt against the accused, the trial Court acquitted the accused of all the charges.

4. The learned counsel for the revision petitioner would contend that the prosecution has not properly conducted the case which led to the acquittal of the revision petitioner. Merely because the material object used in the commission of offence i.e., knife has not been produced before the trial Court, it will not be a ground for acquitting the accused. The discrepancies pointed out by the trial court in the deposition of the prosecution witnesses will not in any manner entitle the accused to get an order of acquittal from the criminal case.

5. The learned Government Advocate (Criminal side) appearing for the first respondent would contend that the investigation was properly conducted by the investigation officer and it cannot be called in question by the defacto complainant in this Criminal Revision Case.

6. The learned counsel appearing for the second respondent/accused would contend that the prosecution has not proved the case beyond reasonable doubt. The trial Court has clearly pointed out that the knife, alleged to have been used in the commission of offence, has not been produced before it. The next important aspect dealt with by the trial court is that even the accused persons were also injured in the incident and they were also admitted in the hospital. From the hospital, the accused were arrested and produced before the learned Judicial Magistrate for remand. However, in the remand report, it was not stated as to the injuries sustained by the accused. But the learned Judicial Magistrate, at the time of remand, specifically indicated that the accused also sustained injuries. In the cross-examination of PW7, investigation officer, it was brought out that in the remand report, the injuries sustained by the accused have not at all mentioned. Further, even though the occurrence took place on 04.11.2008, the first information report came to be registered only on 08.11.2008 and this delay in

registering the first information report is not explained. The trial Court therefore held that it is a case in counter and it is not safe to convict the accused on the basis of the available material evidence.

7. I heard the learned counsel for both sides and perused the materials placed. It is the specific case of the defacto complainant that the accused persons have used knife in the commission of offence to cause cut injuries on his body. However, the knife said to have been used by the accused has not been produced before the Court below. This is fatal to the case of the prosecution. In fact, the Medical Officer, PW6 in his deposition would depose that immediately after the defacto complainant was admitted in his hospital, he was enquired regarding the manner in which the occurrence took place to which the defacto complainant has stated that he got injuries with a knife by three unknown persons. When it is specifically alleged by the defacto complainant as regards the usage of knife to commit the offence, non-production of the same will render the entire case of the prosecution vitiated. In this context, useful reference can be made to the decision of this Court in the case of (Seerangan vs. Forest Range Officer, Salem) 2005 Criminal Law Journal 987 wherein this Court had an occasion to consider a case arising out of Tamil Nadu Forest Act. In that case, this Court, by following the decision of the Honourable Supreme Court in Jitendera vs. State of Madhya Pradesh (2004) 1 Madras Law Weekly (Criminal) 433 = 2003 Criminal Law Journal 4985 held that non-production of sandal wood and the ambassador Car in which it was transported is fatal to the case of the prosecution. In that case, sandalwood was transported in an Ambassador Car and the quantum of the sandalwood log was estimated to be 196.5 kilogram. In that case, the properties seized were not produced during the course of trial. However, at the time of remand of the accused on 29.03.1992, the properties were produced. Since it was night, it was directed to be produced on some other day. Pursuant to such direction, the seized goods were produced on 02.04.1992 before the Judicial Magistrate, Omalur, which were received in Case Property No. 156 of 1996. Again the property was returned for safe custody to be kept in the Forest Range Office. The learned Judicial Magistrate, while passing a judgment of conviction held that the Forest Range Officer is empowered to confiscate the property and therefore, non-production of the properties seized is not fatal to the case of the prosecution. This Court, having regard to the above facts, held that the seized goods which were directed to be kept in safe custody ought to have been produced by the respondent at the time of trial. Therefore, this Court in the above decision held that the non-production of the seized goods is fatal to the case of the prosecution. In the present case, the material object namely Knife was not at all produced before the trial Court and therefore, I hold that the entire case of the prosecution is vitiated.

8. Yet another lacuna is that the accused have also sustained injuries in the incident and they were hospitalised. However, in the remand report, PW7 has failed to mention the injuries sustained by the accused persons. This was also admitted by PW7 in the cross-examination. Rather, the learned Judicial Magistrate recorded in the remand order as regards the

injuries sustained by the accused persons. Therefore, it cannot be decided as to who is the aggressor in this case. Further, the accused were arrested as per the arrest card on 04.11.2008 but they were remanded to judicial custody only on 08.11.2008. Therefore, the trial Court found that the contention of the defence that the accused were illegally detained for four days is probable and acceptable. It is also well settled that when the trial court, on proper appreciation of evidence passed an order of acquittal, interference of this Court in exercise of revisionary power is limited unless it is shown that the order passed by the trial court is patently illegal or materially irregular. In such circumstances, this Court has no other option but to accept that there are lot of inconsistencies in the case projected by the prosecution and consequently, the guilt against the accused has not been proved. Therefore, this is a fittest case where this Court is justified in confirming the order of acquittal passed by the trial court.

9. Accordingly, the Criminal Revision Case is dismissed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

rsh

To

1. The Judicial Magistrate No.4
Salem.
2. Thro the chief judicial magistrate
salem.
3. The Inspector of police,
kannankurichi police station,
salem.
4. The public prosecutor,
High court,
Madras.

+1 cc to Mr.R. Nalliyappan, Advocate, SR.28054.
+1 cc to Mr.S. sivakumar, Advocate, SR.28372

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gj[col]

srn 22, 07

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