



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.10.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No. 26 of 2009

Sumathra Devi

.. Petitioner/P.W.2

Versus

1. Dhandapani
2. Suresh
3. Balakrishnan
4. Srinivasan

... Respondents/Accused

5. State. Rep. by its
Inspector of Police
Kangayam Police Station,
Dharapuram,
(Crime No.295 of 1999)

.. Respondent

Criminal Revision Petition filed under Section 397 and 401 of Cr.P.C. against the order of acquittal dated 20.06.2003 passed in S.C.No.173 of 2001 on the file of Principal Sessions Judge, Erode.

For Petitioner : Mr. G.Karthikeyan

For Respondents 1 to 4 : Mr.P.Palaninathan

For Respondent-5 : Mr.V.Arul,
Government Advocate (Crl.side)

ORDER

This revision has been filed by the petitioner challenging the order of acquittal dated 20.06.2003 passed in S.C.No.173 of 2001 on the file of Principal Sessions Judge, Erode.

2. This Criminal Revision is filed by P.W.2, against the acquittal order passed by the learned Principal Sessions Judge, Erode.

3. The case of the prosecution is that one Dhandapani and Linguswamy were brothers running financial business separately. Since Dhandapani motivated the customers of Linguswamy by offering lower rate of interest, there arose a dispute between the brothers. Subsequently, Linguswamy made arrangements for purchasing the land which stood in the binami name of



Dhandapani which provoked the enmity between the brothers. On the occurrence day, while Linguswamy was going in his motor cycle, Dhandapani along with others intercepted him and assaulted with 'Aruval' and caused his death. On a complaint lodged by the VAO, a case has been registered against the accused persons under Section 302 of IPC. While the same was taken cognizance in S.C.No.173 of 2001, the learned Principal Sessions Judge, Erode found the accused not guilty under Section 302 of IPC and acquitted the accused. Aggrieved against the same, the wife of the deceased Linguswamy, P.W.2 has preferred this Criminal Revision.

4. Learned counsel for the revision petitioner would mainly contend that there were 15 witnesses examined and Exs.P1 to Ex.P18 and M.Os.1 to M.O.19 were marked on the side of the prosecution and without examining the witnesses properly and without analyzing the documents properly the Court below had acquitted the accused. It is also contended that only on the confession given by the first accused the car, M.O.2 along with M.Os.3 to 6, Blood stained Aruvals, were seized by the investigating officer and without considering this vital evidence, the Court below had erred in acquitting the accused persons. The main ground of attack made is that the car seized in this case belongs to the first accused and only in the presence of VAO and other witnesses the material objects were seized which is very vital to the case of the prosecution. This aspect has been completely neglected by the Court below.

5. Above all these facts, there was an admission by the accused in the presence of VAO and also in the police station which has led to the recovery of articles when that recovery is as per Section 27 and when that narrow point is admissible that has not been properly appreciated by the Court below. Even though it is alleged that the article 'Aruval' is the weapon which is the fatal one, and though the investigating officer P.W.15, has also clearly been examined, he has not made out a proper clear cut case. Therefore, the lower court has come to the wrong conclusion and hence, he would contend that the lower Court has not properly appreciated the evidence in this case. Learned counsel for the revision petitioner also relied upon the decision in Dharnidhar vs. State of Uttar Pradesh reported in 2010(7) SCC 759 wherein, it has held that:

"There is no hard and fast rule that family members can never be true witnesses to the occurrence and that they will always depose falsely before the Court. It will always depend upon the facts and circumstances of a given case. In the case of Jayabalan v. U.T. of Pondicherry (2010(1) SCC 1999), this Court had occasion to consider whether the evidence of interested witnesses can be relied upon. The Court took the view that a pedantic approach cannot be applied while dealing with the evidence of an interested witness."



6. It is the further submission of the learned counsel for the petitioner, by relying upon the evidence of other witnesses that there was a problem and that there were disputes with respect to the property between the family members, has not at all been considered by the Court below. According to him, this being the motive, ought to have been taken into consideration by the Court below. Hence, he prayed for allowing the revision.

7. On the other hand learned counsel for the respondents 1 to 4 mainly contend that the lower Court has categorically pointed out that prosecution has relied on the recovery of the alleged weapon and the same has not been clearly proved. As per the evidence of the Investigating Officer, P.W.15, the 'Aruval' was recovered from salai. According to the learned counsel appearing for the respondent, when the person alleged to have taken the weapon and handed over to police has not been examined, can it be treated that it is the accused who had brought the object there?. It is the further submission of the learned counsel that the scope of High Court while exercising powers of revision and the interference with the order of acquittal is only where there is manifest error of law or procedure. In this regard, he also relied on the following judgments;

(i) Mahendra Pratap Singh vs. Sarju Singh & Another reported in AIR 1968 SC 707.

(ii) Venkatesan vs. Rani & Another reported in 2014(1) L.W.(Crl.) 425.

8. Heard the learned counsel on either side and perused the materials available on record.

9. A perusal of the deposition of P.W.9, Village Administrative Officer, would show that on the confession given by the first accused the alleged recovery was made. However, in the cross examination, P.W.9 has categorically deposed that though the recovery of the material objects were made from the 'Salai' he did not know from which place exactly the 'Aruval' has been recovered. Above all, he has stated that the 'Aruval' has been brought by one person from 'Salai'. Therefore, in the absence of factual admission, the evidence of the prosecution was disbelieved by the Court below, which cannot be found fault with by this Court.

10. Secondly, with regard to the contention that the witnesses turned hostile and the Magistrate who had conducted the identification parade was not examined is concerned, it is not on the first occasion that the witnesses have identified the accused. In fact even on the third occasion they have not identified the accused. The difference has been made only after the 4th occasion and thereafter only they were able to identify all of them. Law is well settled that identification parade should be clear and in this case even that has not been done.



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11. It is true that the non examination of the Magistrate has not been sufficiently explained by the prosecution. As per the decision reported in 1968 SC 287 cited supra, it has been held as follows:

"The practice on the subject has been stated by this Court on more than one occasion. In D. Stephens v. Nosibolla only two grounds are mentioned by this Court as entitling the High Court to set aside an acquittal in a revision and to order a retrial. They are that there must exist a manifest illegality in the Judgment of the Court of Sessions ordering the acquittal or there must be a gross miscarriage of justice. In explaining these two propositions, this Court further states that the High Court is not entitled to interfere even if a wrong view of law is taken by the Court of Sessions of. If even there is misapprehension of evidence."

12. In Venkatesan vs. Rani & Another reported in 2014 (1) L.W. (Crl.) 425 in paragraph 7 it has been held as follows:

"The above consideration would go to show that the revisional jurisdiction of the High Courts while examining an order of acquittal is extremely narrow and ought to be exercised only in cases where the Trial Court had committed a manifest error of law or procedure or had overlooked and ignored relevant and material evidence thereby causing miscarriage of justice. Re-appreciation of evidence is an exercise that the High Court must refrain from while examining an order of acquittal in the exercise of its revisional jurisdiction under the Code. Needless to say, if within the limited parameters, interference of the High Court is justified the only course of action that can be adopted is to order a re-trial after setting aside the acquittal. As the language of Section 401 of the Code makes it amply clear there is no power vested in the High Court to convert a finding of acquittal into one of conviction."

13. Thus, it is clear that the revisional power can be exercised by this Court only when there is manifest illegality in the judgment by the Court below in ordering acquittal or when there is miscarriage of justice and this Court cannot re-appreciate the evidence. For all the aforesaid reasons, finding no merit this Criminal Revision Petition stands dismissed.

Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar

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To,

1.The Principal Sessions Judge, Erode.

2. The Public Prosecutor, High Court, Madras.

+ 1 cc to MR.G. Karthikeyan, Advocate Sr.56614

+ 1 cc to Mr.P. Palaninathan, Advocate sr.56075

Crl. R.C. No. 26 of 2009

SV(CO)

Eu 12.02.16