

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09-07-2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No. 315 of 2009

Rajendran

.. Petitioner

Versus

1. Prabu
2. Raju @ Ramaraj
3. Dinesh Kumar
4. Muthusamy
5. Vetrivel
6. Devaraj
7. State

rep. by Inspector of Police
Negamam Police Station
Coimbatore
(Crime No.161 of 2007)

.. Respondents

Criminal Revision Case filed under Sections 397 and 401 of Cr.P.C. against the judgment dated 05.12.2008 made in CrI.A.Nos.268 and 269 of 2008, dated 05.12.2008 on the file of the Additional District Judge, Fast Track Court No.III, Coimbatore, reversing the judgment made in S.C.No. 26 of 2008 on the file of the Assistant Sessions Judge, Pollachi, dated 31.07.2008.

For Petitioner : Mr. S.Suresh

For 7th Respondent : Mr.V.Arul
Government Advocate (CrI.Side)

ORDER

The revision petitioner is the complainant and he is an injured eye witness to the occurrence and was examined as P.W.1 in connection with the case in S.C. No. 26 of 2008 on the file of the Assistant Sessions Judge-cum-Sub-Judicial Magistrate, Pollachi. The case of the complainant is that on 03.06.2007, at about 1.00 a.m., while P.W.1 and other witnesses were travelling in the car, the accused were alleged to have come in a lorry and dashed against P.W.1's maruthi car and pelted stones on P.Ws. 1 to 4. To save his life, P.W.3 is alleged to have concealed in a nearby bush and escaped from further attack. On the basis of the complaint given by P.W.1/complainant, a case was registered against the accused. After trial, the Trial Court, convicted accused Nos.1 to 6 under Sections 147 and 506 (ii) IPC and sentenced to undergo rigorous imprisonment for six months for each offence; accused Nos. 1 to 6 were convicted u/s. 3(1) of Prevention of Public Property Damages Act, 1992, and sentenced to undergo rigorous imprisonment for one year; accused Nos. 1, 3 to 6

were convicted u/s. 307 r/w. 149 IPC and sentenced to undergo rigorous imprisonment for two years and to pay fine of Rs.500/- each, in default to undergo rigorous imprisonment for three months each; and the second accused was convicted u/s. 307 IPC and sentenced to undergo rigorous imprisonment for two years and to pay fine of Rs.500/- in default to undergo rigorous imprisonment for three months. The sentences were directed to run concurrently. Aggrieved against the same, accused Nos. 1 to 3 have filed CrI.A.No.268 of 2008 and accused Nos.4 to 6 have filed CrI.A.No.269 of 2008. The learned Additional District Judge, Fast Track Court No.III, Coimbatore, by judgment dated 05.12.2008, reversed the judgment passed by the Trial Court and acquitted the accused. Challenging the same, the present Criminal Revision Case is filed by the complainant/P.W.1.

2. Mr.S.Suresh, learned counsel appearing for the petitioner/P.W.1 would mainly contend that the evidence of P.W.3 is that accused No.1 pelted stone only aiming at P.W.3, which caused injury on the leg of P.W.1 and thereafter, to save his life, P.W.3 concealed himself in the nearby the bush and escaped from attack, but, this fact was not considered by the first Appellate Court. He would further add that the overt acts attributed against the accused by the prosecution have been clearly proved beyond reasonable doubt that the accused have committed the offences, which fact has not been taken note of by the first Appellate Court.

3. Mr.V.Arul, learned Government Advocate (Criminal Side) appearing for the seventh respondent would contend that the discrepancies as pointed out by the first Appellate Court is correct and therefore, the first Appellate Court has rightly granted acquittal.

4. On a perusal of the judgment of the first Appellate Court, it is seen that the first Appellate Court has given a clear finding pointing out the discrepancies in the evidence of prosecution witnesses. Infact, the evidence of P.Ws. 1, 3 and 4 are totally inconsistent with each other. The first Appellate Court has clearly pointed out that there is an undue delay in lodging the complaint and registration of case itself. As per the complaint-Ex.P.1 and the F.I.R.-Ex.P.10, the time of occurrence is 1.00 a.m. early in the morning, but the complaint has been lodged at Negamam Police Station only at 9.00 a.m. Though, the Police Station is situated just 8 kilometers away from the place of occurrence, the delay in lodging the complaint has not been properly explained by the complainant. Nextly, as rightly pointed out by the first Appellate Court, there are lot of material contradictions with regard to the time and the manner of lodging the complaint and registration of the case. Further more, Ex.P.1 was a written complaint, which has been presented in the Police Station, whereas, in the F.I.R.-Ex.P.10, it was stated as oral complaint. Further, as per the evidence of P.W.1, he made a complaint to Negamam Police Station over phone at about 1.30 a.m. and immediately thereafter the Inspector of Negamam Police Station arrived at the place of occurrence. But, in the cross examination, P.W.1 has stated that he was at the scene of occurrence till 5.30 a.m. and the Inspector, who was present there enquired about the occurrence and he gave an oral statement which was recorded by the Inspector. According to P.W.3 he was there at the place of

occurrence till 5.30 a.m. and the Inspector of Police was also there till then. As per the version of P.W.4, P.Ws. 1, 2, and 3 were not at the occurrence spot at the time of examination. These are all clear contradictions, which are fatal to the prosecution case and remained unexplained by the prosecution. These vital contradictions were rightly pointed out by the first Appellate Court and hence, I do not find any reason to interfere with the order of acquittal passed by the first Appellate Court.

5. In the result, this Criminal Revision case is dismissed. The order of acquittal passed by the first Appellate Court is confirmed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

paa

To

1. The Additional District Judge,
Fast Track Court No.III,
Coimbatore.
2. The Assistant Sessions Judge-
cum-Sub-Judicial Magistrate,
Pollachi.

rsi(co)
pmk.11.8.2015

Cr1 RC No. 315 of 2009

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