

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.10.2015

DELIVERED ON : 15.10.2015

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.No.23399 of 2015

and

M.P.No.1 of 2015

Nariyan @ BalamuruganPetitioner/A3

Vs

State rep by
The Inspector of Police
Kurinjipadi Police Station
Cuddalore.

...Respondent

Prayer:- Criminal Original Petitions filed under Section 482 Cr.P.C. to call for the records in Juvenile C.C.No.49 of 2012 on the file of Juvenile Justice Board, Cuddalore and quash the same as illegal to secure the ends of justice.

For Petitioner : Mr.R.Sankarasubbu

For Respondent : Mr.C.Emalias,
Addl.Public Prosecutor

O R D E R

This petition has been filed to call for the records in Juvenile C.C.No.49 of 2012 on the file of Juvenile Justice Board, Cuddalore and quash the same as illegal to secure the ends of justice.

2. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the State.

3. It is the case of the prosecution that on 10.08.2003 a wordy quarrel ensued between deceased Selvi and her husband Kumar, in which Kumar appears to have made some disparaging remarks touching upon the character of Hyrunnisa, a close relative of Selvi. One Settu, Arul @ Arul Kumar along with five juveniles, including this petitioner, who were members of an unlawful assembly, came to the house of Selvi and questioned Selvi's husband Kumar as to why he had made such a damaging remark touching upon their caste. A quarrel appears to have ensued between the accused on one side and Selvi and her husband Kumar on the other side, in which it is alleged that Kumar was manhandled. Unable to withstand the taunt, Selvi went inside and doused herself with kerosene and came out asking for matchbox. At that juncture, it is alleged that, Settu lighted a matchstick and threw it on her, resulting in she being engulfed by fire. A dying declaration was recorded from Selvi, in which she has implicated Settu, and later she succumbed to the injuries. Police registered a case in Cr.No.472 of 2003 and after completing the investigation filed a Final Report against Settu and Arul Kumar before the regular Court and a separate Final Report was filed against this petitioner and four other juveniles before the Juvenile Justice Board, Cuddalore in Juvenile C.C.No.49 of 2012, challenging which Nariyan @ Balamurugan, the petitioner is before this Court.

4. Settu [A1] and Arul @ Arul Kumar [A2] were tried for offences under Sections 147, 302 r/w 149, 306 IPC in S.C.No.136 of 2005 by the Additional District and Sessions Judge, Fast Track Court-2, Cuddalore. In the trial, Arul @ Arulkumar [A2] was acquitted, but Settu [A1] was convicted for offences under Sections 304(ii) IPC r/w 147 IPC and was sentenced to undergo six months imprisonment for offence under Section 147 IPC and 7 years Rigorous Imprisonment for offence under Section 304(ii) IPC by judgment dated 31.01.2008.

5. Mr.R.Sankarasubbu, learned counsel for the petitioner took this Court through the judgment in S.C.No.136 of 2005 dated 31.01.2008 and submitted that there are clear findings by the learned Sessions Judge that, Arul @ Arul Kumar was not involved in the offence and therefore, in the teeth of such findings, the trial of this petitioner will be an abuse of process of law. It is true that Arul @ Arul Kumar [A2] has been acquitted by the learned Sessions Judge finding that, the prosecution had failed to prove his presence at the time of occurrence beyond reasonable doubt and the benefit of doubt

was extended to him for acquitting him.

6. Mr.R.Sankarasubbu, learned counsel relied upon the following judgments for the proposition that the acquittal of Arul @ Arul Kumar is binding on the Juvenile Justice Board, which is trying this petitioner and four others for offence under Sections 147, 294(b), 352, 302 r/w 149 IPC in Juvenile C.C No.49 of 2012.

S.No.	Cause title	Citation
1	Gorle S.Naidu v. State of A.P. and others	AIR 2004 SC 1169
2	Vana @ Vadivel @ K.K.Swaminathan v. Inspector of Police, 'Q' Branch, East Thanjavur	1989(1) MWN (Cr) 208
3	Vedi @ Raman v. State by Inspector of Police, Mathur Police Station	
4	Mohd.Iqbal M.Shaikh and others v. State of Maharashtra	(1998) 4 SCC 494
5	Manipur Administration, Manipur v. Thokchom Bira Singh	AIR 1965 SC 87

In the considered opinion of this Court, none of the aforesaid judgments will have any bearing on the facts obtaining in this case.

In Gorle's case [cited supra], 39 accused faced trial and some of the co-accused were acquitted, since the High Court had disbelieved the evidence of some of the witnesses. Only in that context, the Hon'ble Supreme Court had held that when the evidence of a certain witness has been found unreliable, his evidence cannot be used to convict other accused.

In Vana @ Vadivel's case [cited supra], the petitioners were absconding and trial was held against the available accused and they were acquitted on the finding of the trial Court that, the evidence of the approver, Rajendran, P.W.1 does not inspire confidence. In those circumstances, when there was wholesale acquittal of the available accused, this Court felt that the trial of the absconding accused who were later put to trial will be an abuse of process of law.

In VEDI @ Raman's case [cited supra], out of 7 accused, 5 accused were in abscondance and the trial proceeded as against A1 and A2 and they were acquitted on the ground that, the evidence of prime witness was not satisfactory. When the absconding accused were put to trial, this Court quashed the prosecution on the ground that the witnesses who have been disbelieved cannot become believable subsequently.

In Mohd. Iqbal Shaikh's case [cited supra], the accused were all tried by the TADA Court and while appreciating the evidence adduced by the trial Court, the Hon'ble Supreme Court held as follows: "19. But where the evidence consists of only chaff as in the present case, the question of separating the chaff from the grain would not arise. Then again when all the eyewitnesses suffer from the same infirmities as has been discussed by us, the question of one corroborating the other would not arise. If a witness is partly reliable and partly unreliable then one may look for corroboration to the reliable part of the ocular version of a witness. But if a witness is wholly unreliable as has been assessed by us, the question of corroboration does not arise. It is no doubt true that the incident with which we are concerned in the present case was a ghastly one and on account of communal frenzy several people belonging to one community were burnt alive by some others but unless and until the prosecution evidence conclusively establishes those others as the perpetrators of the crimes, it is not possible for a court of law to record conviction on mere conjectures and hypothesis."

In Bira Singh's case [cited supra], prohibitory orders under Section 144 Cr.P.C. were in force in Manipur and on 25.04.1960, between 3.00 p.m. and 5.00 p.m., Bira Singh and others, in violation of the prohibitory orders formed into an unlawful assembly and attacked the police wireless station. In connection with this incident, a complaint was filed for an offence under Section 188 IPC against Bira Singh for violation of prohibitory orders. A separate Final Report for the offence of attacking the police wireless station was filed for offences under Sections 333, 323, 340 r/w 149 IPC. It must be remembered that both the private complaint and the police charge sheet were for the incident that took place on 25.04.1960 between 3.00

p.m. and 5.00 p.m. In the prosecution under Section 188 IPC, though Bira Singh was convicted by the Magistrate, but he was acquitted by the Sessions Court on the ground that, there was no evidence to show that Bira Singh was present between 3.00 p.m. and 5.00 p.m. on 25.04.1960 in the crowd. In that context, the Hon'ble Supreme Court held that, when once a finding of fact has been given, that acts as an issue estoppel in respect of the prosecution against the same person for the incident which had taken place at the given time, namely between 3.00 p.m. and 5.00 p.m. on 25.04.1960.

7. In this case, out of 26 cited witnesses, only 15 witnesses were examined in S.C.No.136 of 2005 before the Sessions Court. The Sessions Judge has convicted Settu, but has acquitted Arul Kumar. This judgment is not binding on the Juvenile Justice Board. If the prosecution is able to examine more than 15 witnesses before the Juvenile Justice Board and bring the case against this petitioner, clinchingly he cannot escape from the liability. Therefore, the contention of Mr.R.Sankarasubbu, learned counsel for the petitioner that, the prosecution of this petitioner is an abuse of process of law does not merit consideration.

In the result, the petition is devoid of merits and the same is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

gms

To

1.The Inspector of Police
Kurinjipadi Police Station
Cuddalore.

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2. Juvenile Justice Board,
Cuddalore.

3.The Public Prosecutor
High Court, Madras.

1 CC to Mr.R.Sankarasubbu, Advocate SR.No. 57427

Cr1.O.P.No.23399 of 2015

SV (CO)
PSI (16.11.2015)



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