

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2015

CORAM:

THE HONOURABLE MR. JUSTICE C.T. SELVAM

Crl.R.C.No.688 of 2010

S.Vijaya  
D/o.Velu

...Petitioner/Defacto Complainant  
vs.

1.State represented by  
Inspector of Police,  
Avalurpet Police Station,  
Gingee Taluk,  
Villupuram District.

2.Kannu @ Appayu  
S/o.Chinnasamy Gounder .... Respondents/Complainant  
& Accused

Criminal Revision filed under Section 397 r/w 401 Cr.P.C.  
against the judgment of acquittal passed in S.C.No.266 of 2008  
on the file of learned Additional District and Sessions Judge,  
Fast Track Court II, Tindivanam, dated 07.01.2009.

For Petitioner : No appearance

For Respondent : Mr.D.Sivaramkumar  
Government Advocate [Crl.side] [R1]  
Mr.V.G.Suresh Kumar [R2]

O R D E R

Challenging the judgment of learned Additional District  
and Sessions Judge, Fast Track Court II, Tindivanam, passed in  
S.C.No.266 of 2008 on 07.01.2009, whereunder the second  
respondent was acquitted of charges u/s.302 IPC, the present  
revision has been filed.

2. The prosecution case was that the deceased and the  
second respondent were relatives. Both were in possession of  
lands and there was a dispute with regard to irrigating water  
from a common well. While so, on 25.09.2007 at about 11.00  
a.m., the second respondent picked up a quarrel with the  
deceased, assaulted him using a stone, owing to which the  
deceased sustained grievous injuries and despite treatment,  
died. Upon the complaint of the petitioner, a case was

registered in Crime No.350 of 2007 on the file of the first respondent. On completion of investigation, a charge sheet was filed informing commission of offence u/s.302 IPC. The case was tried in S.C.No.266 of 2008 on the file of learned Additional District and Sessions Judge, Fast Track Court II, Tindivanam.

3. Before the trial Court, the prosecution examined eighteen witnesses and marked twenty two exhibits and ten material objects. None were examined on behalf of the defence, however, two exhibits were marked.

4. On appreciation of materials before it, the trial Court acquitted the accused under judgment dated 07.01.2009. Aggrieved by such judgment, the petitioner has filed this revision.

5. There is no representation for petitioner. Heard learned counsel for petitioner and learned Government Advocate (Crl.side) for first respondent and learned counsel for second respondent.

6. In arriving at a finding of acquittal, the trial Court has reasoned as follows:

(i) the occurrence had taken place on 25.09.2007 at about 11.00 a.m. and the deceased died at 07.45 p.m. on the same day. However, PW-1, mother of the deceased, preferred the complaint only on 26.09.2007 at about 08.00 a.m. The accused, who sustained injuries at the hands of the deceased, preferred a complaint on 25.09.2007 itself and was sent to hospital for treatment with a police memo. The same was evident by Exs.D1, Hospital Memo and Ex.D2, Wound Certificate. It was the admission of PW-18, Investigating Officer and PW-17, Sub-Inspector, that no action has been taken on the complaint of the accused. It was clear that the prosecution has suppressed the complaint preferred by the accused. Therefore, the very origin of the prosecution case was doubtful.

(ii) It was the evidence of PW-2 that the deceased repeatedly had assaulted the accused and in an attempt to prevent him the accused pushed the deceased, who fell down and sustained a head injury. According to PW-13, Doctor, who conducted postmortem, the deceased sustained fracture on the left frontal region and such injury could not be caused by throwing a stone.

(iii) It was the evidence of PW-7, a student, that since the occurrence day was a Sunday, he was present at the scene of crime. The actual date of occurrence was a Tuesday. Therefore, the presence of PW-7 at the scene of crime was

doubtful.

- (iv) PW-9, Photographer, deposed to having taken photos of MO-1, stone, on 26.09.2007 at 09.15 a.m. Though PW-18, Investigating Officer, visited the scene of crime on 26.09.2007 itself, MO-1, stone, blood stained earth and ordinary earth were seized only on 27.09.2007. The prosecution has failed to explain why there was delay in seizing the material objects.
- (v) PW-12, who accompanied the accused to the field, deposed of the accused having requested the deceased to irrigate both fields by turn and of the deceased assaulting the accused owing to which the accused sustained injuries to his left ear. PW-16, Doctor, who treated the accused deposed that the accused could have lost his eye sight if he sustained injury to his eye. Therefore, it was clear that the accused had no intention to murder the deceased.
- (vi) The distance from which the stone had been thrown was not clear. There were contradictions in the evidence of PWs.1 and 7. This apart, the opinion of the Doctor has not been obtained regarding the possibility of causing injury by use of MO-1, stone.
- (vii) PW-6 admitted that the distance between the well bund and the field is 1 furlong and only on hearing the noise, she and PW-1 reached the scene and witnessed the deceased lying with head injuries and the accused bleeding from his left ear.
- (viii) Recoveries have not been satisfactorily proved by the prosecution.
- (ix) Even assuming that the deceased could have met his death owing to the assault by the accused, the same could be seen only as an attempt at private defence and no motive could be attributed against the accused.

This Court finds the reasoning of the trial Court in acquitting the accused justified and finds no reason to interfere.

This Criminal Revision shall stand dismissed.

sd/-

Assistant Registrar (Cs-III)

/TRUE COPY/

Sub-Assistant Registrar

To

1.The Additional District and Sessions Judge,  
Fast Track Court II,  
Tindivanam.

2.Do thro the Principal Sessions Judge,  
Tindivanam.

3.The Inspector of Police,  
Avalurpet Police Station,  
Gingee Taluk,  
Villupuram District.

4.The Public Prosecutor,  
High Court, Chennai.

+1 CC to MR.Su.Srinivasan Advocate. SR.NO.69224

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CO-MG  
JD 20/01/2016



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