

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:09.06.2015

CORAM

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

Criminal Revision Case No. 772 of 2008

Raja

...Petitioner

Versus

State by Sub Inspector of Police
Mahendramangalam Police Station
Dharmapuri District

...Respondent

Criminal Revision Case filed under Section 397 r/w 401 of the Criminal Procedure Code against the conviction and sentence passed in C.A.No. 49 of 2007 by the Additional Sessions and Fast Track Court, Dharmapuri, in the judgment dated 05.9.2007 confirming the conviction and sentence passed in C.C.No.186 of 2004 by the learned Judicial Magistrate, Palakkodu in the judgment dated 17.4.2007.

For Petitioner : Mr.V.Subburam

For Respondent : Mr.T.Arul
Government Advocate (Crl. Side)

ORDER

This revision petition is filed by the accused in C.C. No. 186 of 2004, challenging the judgment dated 17.4.2007 made in C.C.No.186 of 2004 on the file of the learned Additional Sessions & Fast Track Court, Dharmapuri, whereby he was convicted for the offences punishable under Section 326 I.P.C. and sentenced to undergo six months Rigorous Imprisonment with fine of Rs.1000/-, in default, to undergo simple imprisonment for a period of one month. On appeal, the appellate Court also confirmed the conviction and sentence imposed on him by the judgment dated 05.9.2007 made in C.A.No.49 of 2007. This Criminal Revision Case is filed thereagainst.

2. The case of the prosecution is that on 18..4..2004 at about 9 a.m, due to previous enmity, the accused voluntarily stopped the defacto complainant Shanmugam from proceeding further before the Thar house and assaulted him with crowbar on his chest and thereby caused grievous injuries. Further, the accused assaulted the witnesses Malliga and Raja and threatened them with dire consequences. Based on the complaint, a case has been registered under Section 342,326, 323 and 505 (ii) IPC in Crime No.130 of 2004.

3. According to the revision petitioner, both the Courts below have failed to take into consideration that the material object namely crowbar, allegedly used in the commission of offence, has not been produced. Hence, the benefit of doubt ought to have been

given to the revision petitioner. The learned counsel for the revision petitioner further would contend that non production of the crowbar is fatal to the case of the prosecution. The learned counsel also submitted that there is no explanation on the side of the Investigating Officer for the non production of the material object. Further, X-ray alleged to have been taken to show the nature of injuries sustained by the complainant has not been produced to prove the nature of injury. Mere examination of doctor is not sufficient to prove the exact injury. These vital points have not been considered by the Courts below. Since the Court below accepted that there is a slackness on the part of the prosecution, it ought to have acquitted the accused instead of convicting him.

4. The learned Government Advocate (Criminal Side) would only contend that mere non production of the material object is not fatal to the prosecution case and it is not a ground for acquittal. Since all the witnesses have specifically mentioned about the material object and the incident, there is no justification to discard their testimony. Further, doctor has also been examined to speak about the nature of injury sustained by the prosecution witnesses. Considering all these facts, the Courts below have rightly convicted the accused and he would pray for dismissal of the Criminal Revision Case.

5. Heard the learned counsel for the petitioner and the learned Government Advocate (Criminal side) and perused the materials available on record.

6. The main ground of attack raised by the learned counsel for the petitioner is that the non production of material object namely crowbar, alleged used by the accused in the commission of offence is fatal to the case of the prosecution. No doubt, the Courts below, even though pointed out that there is a slackness on the part of the investigation especially in not producing the material object, the courts below have concurrently held that that by itself will not be a ground to acquit the accused as the witnesses have spoken in unison about the use of material object during the commission of offence. Further, the Courts below have taken note of the evidence adduced by the Doctor to conclude that the prosecution witnesses have sustained injury due to the use of crowbar. 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

7. It is pertinent to point out that the main case of the prosecution is that the accused attacked the complainant with crowbar, but, admittedly, the said weapon was never recovered or produced. There is no evidence produced by the investigating Officer as to why, he has not produced the weapon. No explanation has been put forth by the prosecution for the non production of the material object, namely, crowbar. Merely, because there is a injury, it will not be a ground to convict the petitioner accused for the offence. The non production of material object itself is fatal to this case.

8. Admittedly, there are no evidence available on record to connect the accused to the offences complained of and the prosecution has miserably failed to establish the guilt against the accused beyond reasonable doubt. Therefore, I am of the view that the Courts below ought to have acquitted the accused by giving benefit of doubt on the ground of non production of the material Object.

In the result, the Criminal revision case is allowed. The conviction and sentence awarded by the Courts below are set aside. The fine amount, if any paid by the petitioner is directed to be refunded to him.

सत्यमेव जयते

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

1. Additional Sessions and Fast Track Court, Dharmapuri,
- 2.-do- thro'The Principal Sessions Judge, Dharmapuri.
3. The Judicial Magistrate, Palakkodu
4. -do- thro'The Chief Judicial Magistrate, Dharmapuri.

5.The Sub Inspector of Police
Mahendramangalam Police Station, Dharmapuri.

6.The Public Prosecutor, High Court, Chennai.

+1 cc to Mr.K.Subburam, Advocate,SR.27746.

Krd 15/7

Cr1.R.C.No.772 of 2008



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