



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.07.2019

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.A.(MD)No.83 of 2011

State represented by
The Inspector of Police,
Rajakkamangalam Police Station,
Nagercoil.

... Appellant/Complainant

Vs

1.Justin

2.Eswaran Pillai

3.RAjeswaran

... Respondents/Accused

PRAYER: Criminal Appeal is filed under Section 378 of Cr.P.C., to allow the appeal and set aside the acquittal Judgment daed 03.08.2009 in S.C.No.193 of 2000 on the file of the learned Assistant Sessions Judge cum Chief Judicial Magistrate, Nagercoil and convict the respondent/accused (A1-A3 & A-4).

For Appellant : Mr.A.Robinson

Government Advocate (Crl.side)

For Respondents : Mr.M.Suri

JUDGMENT

The State has preferred this Appeal questioning the Judgment dated 03.08.2009 made in S.C.No.193 of 2000 on the file of the Assistant Sessions Judge cum Chief Judicial Magistrate, Nagercoil, acquitting all the accused of the offence with which they were charged.

2.The case of the prosecution is that on 20.06.1995 at about 09.00 a.m., A1 to A3 waylaid P.W.1 Boopathi Dasan, when he was going in his scooter. With an intention to cause his death, A1 to A3 inflicted grievous injuries on various parts on the body of P.W.1. P.W.1 lost two of his fingers and also suffered fracture on his leg. In this regard, P.W.1 lodged Ex.P1-Complaint leading to registration of Crime No.123 of 1995 on the file of the Inspector of



Police, Rajakkamangalam Police Station. Investigation was taken up and after recording the statements of the witnesses under Section 161 of Cr.P.C and after completing the usual formalities, the Investigating Officer filed final report before the learned Judicial Magistrate No.1, Nagercoil. The case was committed to Sessions Court and made over to Assistant Sessions Judge cum Chief Judicial Magistrate, Nagercoil in S.C.No.193 of 2000. Cognizance of the offences under Sections 341, 307 and 120b of IPC was taken. Before the learned trial judge, only four of the accused faced trial namely A1 to A4. The case against the five accused was split up and tried separately. The out come of S.C.No.59 of 2009 is not known. The accused A1 to A4 pleaded not guilty to the charges and claimed to be tried. The prosecution examined as many as 25 witnesses and marked Ex.P1 to Ex.P18. M.O.1 to M.O.9 were marked. On the side of the accused A1 to A4, no evidence was adduced. The learned trial Judge, by the impugned Judgment, acquitted all the accused of all the charges. It is relevant to note here that the second accused had passed away during trial. Challenging the same, this appeal has been filed.

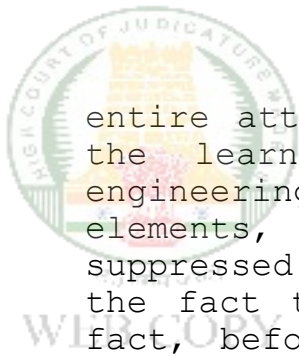
3.The learned Government Advocate (Crl.side) as well as the learned counsel appearing for the accused reiterated their respective contentions.

4.The learned counsel appearing for the accused would submit that the presumption of innocence in favour of the accused has been strengthened by this Judgment of acquittal and that, therefore, this court should be slow to interfere. He would further contend that if two views can be taken, that view which favours the accused should be adopted by this Court.

5.I carefully considered the rival contentions and also perused the entire evidence on record. The case of the prosecution is that a rape complaint was given by a student of Palavilai Kamaraj Polytechnic College against the fifth accused who was in the faculty. It was further alleged that the fourth accused had supported the fifth accused. In this regard, a departmental enquiry was ordered. P.W.1 Boopathi Dasan, who was working as H.O.D in the College, was the enquiry officer. This is said to be the motive for the accused to launch the murderous attack on P.W.1.

6.The learned counsel appearing for the accused would submit that the complainant/student was no longer a student and ceased to be a student in the year 1993 itself. The complaint is said to have been given in the year 1995. According to him, this motive furnished by the prosecution cannot be believed.

7.The learned counsel appearing for the accused also contended that there was a serious dispute with regard to who was to be appointed as the Principal of the Polytechnic. P.W.13 was one of the accused and that, it was he who was engineered the



entire attack through his henchmen. In fact, a suggestion put by the learned counsel for the accused is that P.W.13, after engineering a murderous assault on the victim through his hired elements, chose to lodge a complaint and that, the same has been suppressed by the prosecution. Whether the motive is true or not, the fact that the occurrence took place cannot be in doubt. In fact, before the trial Court, P.W.1 had shown his hands and the learned trial Judge had categorically recorded that his two fingers are missing. From the evidence of the Doctor, one can come to the conclusion that the victim suffered fracture in his hands and there was cut on his ankle. The learned trial Judge had chosen to acquit the four accused, who faced trial in S.C.No.193 of 2000 only on the ground that even though according to P.W.1, three persons attacked him, he chose to mention the name of Al-Justin alone and did not mention the other two accused by name. In the accident register and Ex.P11 also, it had been clearly mentioned that he was attacked by "a known person". The learned trial Judge had observed that P.W.1 had clearly written that it was a known person who caused the injury.

8.Taking note of these aspects, the learned trial Judge came to the conclusion that the version of the victim cannot be believed. Merely because the learned trial Judge came to the conclusion that the case of the victim cannot be believed in respect of the some of the accused, it could not be a ground to reject his testimony in toto. It is the duty of any court to remove the chaff from the grain. In this case, the occurrence had taken place on 20.06.1995 at about 09.00 a.m. Ex.P1-Complaint statement was taken from P.W.1 at about 11.45 a.m., on the same day. The registration of the case was at 1.30 p.m. This was because, after getting intimation from the hospital, the police came to the Hospital to take the statement of P.W.1. In Ex.P1, P.W.1 had categorically mentioned that Al Justin had attacked him. The manner of attack has been described in clear and categorical terms. In this case, a person who lost two of his fingers, had clearly named the first respondent herein. The Court below erred in rejecting the testimony of P.W.1 completely. The maxim *Falsus in Uno, Falsus in Omni* Bus will not be applicable to the criminal trials in India. Therefore, taking note of these facts, even while sustaining the acquittal of the trial Court in respect of the other accused, this Court is of the view that the acquittal in respect of the first respondent will have to be reversed and he will have to be convicted for the offence under Sections 307 and 341 of IPC.

9.The first respondent Justin was heard in the matter of sentence. He reiterated that he is innocent and that he has been falsely implicated in this case. However, his counsel submitted that since the occurrence dates back to the year 1995 and the first respondent is having three children, this Court can show some leniency in the matter of punishment.



10. Therefore, this Court imposes two years rigorous imprisonment on the first respondent for the offence under Section 307 IPC. The trial Court shall take steps to enforce this order.

Sd/-

Assistant Registrar (A.S)

// True Copy //

Sub Assistant Registrar (CS)

To

1. The Assistant Sessions Judge cum Chief Judicial Magistrate, Nagercoil at Kanniyakumari District.
2. The Judicial Magistrate No.I, Nagercoil at Kanniyakumari District.
3. The Inspector of Police,
Rajakkamangalam Police Station,
Nagercoil at Kanniyakumari District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to: The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

+2 CC to M/s.M.SURI, Advocate SR-79303.

CrI.A. (MD)No.83 of 2011
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