

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.09.2017

CORAM

THE HONOURABLE Mr.JUSTICE N.AUTHINATHAN

CRL.A.No.448 of 2017

N.Vengadam

... Appellant

Vs

1. The State of Tamil Nadu
Rep. by Inspector of Police
Karumalaikoodal Police Station
Karumalaikoodal, Mettur,
Salem district
2. K.Sampath
3. Asokan
4. Rajasekar
5. Perumal

... Respondents

PRAYER: Criminal appeal filed under Section 378 Cr.P.C., to set aside the order of acquittal dated 18.11.2016 passed in C.C.No.178 of 2012 on the file of the Judicial Magistrate Court No.2, Mettur and convict the accused for the offence under Sections 447, 341 and 323 of IPC.

For Appellant : Mr.P.Mani

For Respondents : Mr.K.Mathan,
Govt.Advocate (Crl.side) for R1
Mr.Sai Bharath & Mr.Ilanthiraiyan
for R2 to R5.

JUDGMENT

The appeal is directed against the order of acquittal dated 18.11.2016 passed in C.C.No.178 of 2012 on the file of the learned Judicial Magistrate Court No.2, Mettur.

2. PW1/informant, Vengadam the appellant herein was a resident of Konnur, West Village, Mettur Circle, Salem district . Chitra (PW2) is the wife of PW1, Vijayakumar (PW3) is their relative, PW8 is PW1's brother. PW1 was the trustee and Poosari of Chenraya Perumal Temple, Konnur. He had a dispute over the administration of said temple with Sampath, the first accused. On 04.01.2012 at about 11:00 a.m. PW1 was performing Pooja at Chenraya Perumal Temple, Konnur. The accused Sampath, Asokan, Rajasekaran and Perumal came to the temple and dragged PW1 from the temple while he was performing pooja and assaulted him. Chitra (PW2) and Vijayakumar (PW3) tried to rescue PW1. Chitra was assaulted by Perumal (A4), Sampath (A1) and Vijayakumar (PW3) was beaten up by Perumal, Sampath and Asokan. PW1 to PW3 were taken to Medical College Hospital, Salem for treatment in an ambulance. Dr.Vasanthakumar (PW11) examined PW1 at 1:20 p.m, PW2 at 1:30 p.m and PW3 at 1:35 p.m. on 04.01.2012 for the injuries said to have been caused by five known persons on 04.01.2012 at 11:00 a.m. using blade and

hands. PW11 Doctor found multiple abrasions over chest of PW1. He found abrasions on forearm and on the face of PW2. He found multiple abrasions over face and forearms of PW3. The injuries sustained by PW1 to PW3 are simple in nature. Ex.P.8 to Ex.P.13 are the certificates issued by P.W.11.

3. P.W.9 Ramasundaram, the then Special Sub Inspector of Police attached to Karumalai Koodal Police station received an intimation from the Medical College Hospital, Salem and visited the hospital and recorded the statement of PW1 Vengadam and registered a case in C.No.6/12 for the offence under Section 447, 341 and 323 IPC. Ex.P.4 is the FIR. He visited the scene of occurrence and prepared rough sketch (Ex.P.5) and observation mahazar (Ex.P.6) in the presence of witnesses. He examined the injured witnesses and other witnesses. PW.10 Natrajan, the then Inspector Karumalai Koodal Inspector took up further investigation and deleted the name of Ravichandran from the case. PW12 Inspector who succeeded PW10 took a further investigation and after completion of investigation he filed a final report before the Court for the offences under Section 447, 341, & 323 of IPC.

4. The trial Court framed charges under Section 447, 341 and 323 of IPC. The accused pleaded not guilty. Prosecution examined 12 witnesses in support of their case. The accused did not adduce any evidence on their behalf. The

trial Court on appreciation of evidence has come to the conclusion that prosecution has failed to prove the case beyond reasonable doubt and acquitted the accused. Challenging the order of acquittal this PW1 Vengadam /informant has come forward with this appeal.

5. The learned counsel for the appellant submitted that the trial Court has given much importance to minor discrepancies found in the evidence given by the prosecution witnesses and the trial Court failed to take note of the medical evidence given by the Doctor and the medical certificates and that the trial Court has committed error in acquitting the accused on the ground of delay in lodging the complaint.

6. The learned counsel appearing for the accused/respondents argued in support of the judgment. The learned Government Advocate submits that there are materials to support the case of the prosecution.

7. It is not in dispute that PW1 Vengadam is a resident of Konnur West Village. PW2 Chitra is the wife of PW1 vengadam and PW3 Vijayakumar is the brother's son of PW1. It is the evidence of PW1 to PW3 that while PW1 was performing pooja at Chenraya Perumal Temple, Konnur he was dragged from the temple and was assaulted by the accused. It is also their evidence that

PW2 and PW3 intervened and they were also assaulted at about 11:00 a.m. on 04.01.2012. The prosecution mainly relied on the injured witnesses namely PW1 to PW3. It is to be seen whether their evidence can be accepted to record a finding of guilt against the accused. PW8 was examined however he was not an eye witness.

8. The occurrence is said to have been taken place at 11:00 a.m. on 04.01.2012. They were examined by the Doctor PW11 at about 1:30 p.m. At Salem, Medical College Hospital. It is significant to note that PW1 to PW3 informed the Doctor that they were assaulted by five known persons using blade and hands. However, only four were prosecuted. It appears from the evidence of PW1 that he had a dispute over administration of the said temple with the first accused Sampath. Therefore, his evidence and the evidence of PW2 and PW3 cannot be relied on without any corroboration. In view of the contradictory statements made by the injured witnesses it is not possible to fix the criminal liability of the accused.

9. The place of occurrence is 3 Kms away from the Police Station as could be seen from Ex.P4 FIR. However, there is a huge delay in registering the case. The FIR reached the Court at 1:00 p.m. On 06.01.2012. The delay has not been properly explained.

10. The evidence of PW1 and the investigating officers would reveal that the said Chenraya Perumal Temple was under police protection on the date of occurrence. However, the police officers who were present at the place of occurrence have not been examined as witnesses. It is a serious infirmity affecting the case of the prosecution.

11. On an analysis of the entire materials on record, I hold that the prosecution has not adduced sufficient evidence to bring home the guilt of the accused for all for any of the charges levelled against the accused. The accused are certainly entitled to the benefit of doubt. This appeal against order of acquittal. The appellate Court should not interfere with an order of acquittal unless it finds that the view taken by the trial Court is unreasonable or perverse. In the case at hand on the basis of the materials available on record the trial Court has taken a reasonably possible view. I do not find any valid reason to hold a different view. The appeal is liable to be dismissed.

12. In the result, the above appeal is dismissed.

01.09.2017

Index : Yes/No

Internet : Yes
dpq

To

1. The Judicial Magistrate Court No.2, Mettur

2. The State of Tamil Nadu
Rep. by Inspector of Police
Karumalaikoodal Police Station
Karumalaikoodal, Mettur,
Salem district

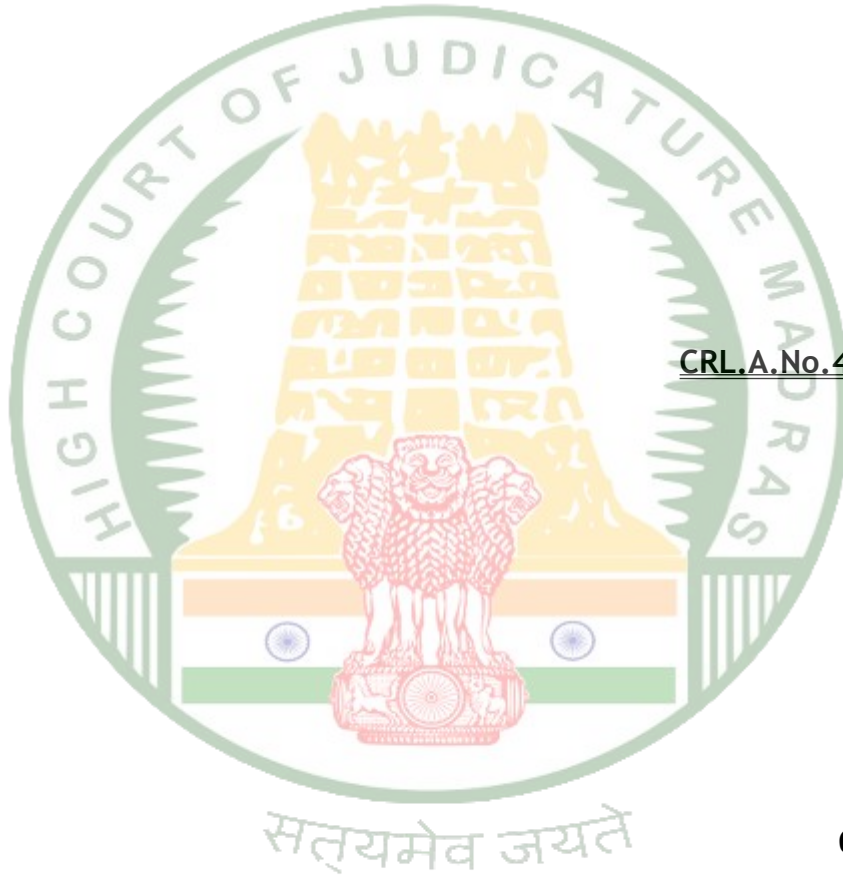
3. The Public Prosecutor,
High Court, Madras.



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N.AUTHINATHAN, J.

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