

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Revision No.119 of 2014

Dr.K.R.Bhuvaneswari

... Petitioner/Respondent

Vs.

1.State by:Inspector of Police,
Tiruttani Police Station,
Tiruttani.

2.Susila

3.Umapathy

4.Venkatesan ... Respondents/Complainant/Accused 2 to 4

Prayer:- This Criminal revision is filed under Section 397 & 401 of Cr.P.C., to set aside the order of acquittal passed by the learned Additional District Judge, Fast Track No.III, Thiruvallur, passed in C.A.No.6 of 2013 by order dated 19.04.2012 and confirm the order passed by the learned Assistant Sessions Judge, Thiruttani, in S.C.No.127 of 2010 order dated 03.12.2011.

For Petitioner :Mr.A.P.Sathya Murthy

For 1st Respondent:Mr.R.Ravichandran

Government Advocate (Crl.side)

For 2nd Respondent:Mr.R.Balachandran

O R D E R

Challenging the order of acquittal, the present revision has been filed by P.W.4.

2.Respondents 2 to 4 are the accused A1 to A3 in S.C.127 of 2010, on the file of the learned Assistant Sessions Judge, Tiruttani. They stood charged for offences under Sections 294(b), 506(2) IPC and Section 3(1) of Tamil Nadu Properties (Prevention of Damage and Loss) Act 1992 r/w 34 of IPC. The Trial Court by judgment dated 03.12.2011, acquitted them for the charges under Section 506(2) and 235(1) IPC and

convicted them for the offence under Section 447 IPC and under Section 3(1) of Tamil Nadu Properties (Prevention of Damage and Loss) Act 1992 r/w 34 IPC and sentenced him to undergo three months rigorous imprisonment and also to pay a fine of Rs.2500/- in default to undergo one month simple imprisonment for the offence under Section 3(1) of Tamil Nadu Properties (Prevention of Damage and Loss) Act 1992 and no separate sentence was awarded for the offence under Section 447 IPC. Challenging the above said conviction and sentence, respondents 2 to 4 filed an appeal in C.A.No.6 of 2012 on the file of the Additional District Judge, Fast Track Court No.III, Tiruvallur and the lower appellant court acquitted respondents 1 to 3 from all the charges. Challenging the above order of acquittal, the present revision has been filed.

3.The case of prosecution in brief is as follows:

P.W.4, claiming to be the owner of the property in S.No.83/2 and 84/2 situated at Mel Murukkampattu Village, Thiruthani Taluk, Thiruvallur District to an extent of 0.72 acres and he has also fenced the property and put a gate. On 20.07.2008, at about 1 p.m., respondents 2 to 4 trespassed into the property and by using the JCP machine, removed fence, break opened the gate and also damaged the trees, plantations standing therein and also threatened and intimidated P.W.1, watchman in the above property. Thereafter, P.W.1, the watchman as well as driver of P.W.4, made a complaint before the respondent police-Ex.P1. The head constable in the respondent police station based on the complaint, registered a case in Crime No.1186 of 2008 for the offence under Section 294(b), 506(2) IPC and 3(1) of Tamil Nadu Properties (Prevention of Damage and Loss) Act 1992. Then P.W.12, Inspector of Police, took up investigation and visited the scene of occurrence and prepared observation mahazar, and recorded the statement of witnesses, and arrested the driver of the JCP, after completion of investigation, filed a charge sheet.

4.Based on the above materials, the Trial Court framed charges as mentioned in paragraph one of this judgment and the accused denied the same. In order to prove this case, prosecution examined 12 witnesses and marked 16 documents and 4 material objects.

5.Out of the witnesses examined, P.W.1 is the driver, who is also working in the site as watchman, where the occurrence took place. According to him, on 20.07.2008, accused 2 to 4 came to the land and with the help of JCP broke opened the gate and also damaged the plantations therein. P.W.2 also an employee in the land is also a witness to the occurrence. P.W.3, is the witness to the observation mahazar. P.W.4, is the owner of the property in S.No.83/2 and 84/2 and

according to her, she came to know about the occurrence from P.W.1 and she submitted documents relating her title over the property. P.W.5 is the witness to seizure of JCP. P.W.6 is also the witness to the seizure mahazar and arrest of the Driver of JCP. P.W.7 is the photographer, who took photographs to the scene of occurrence. P.W.8, is the owner of the JCP, which involved in the crime. P.W.9 is a Village Administrative Office, who has given a certificate regarding the ownership of property. P.W.10, is a Civil Engineer, who estimated the damage caused in the land. P.W.11 is also an employee, who is also an eye witness to the occurrence. P.W.12 is the Inspector of Police, who conducted the investigation and filed a final report.

6. When the above incriminating materials were put before the accused under Section 313 Cr.P.C., the accused denied the same and did not examine any witness nor marked any documents. Considering all the above materials, the Trial Court convicted respondent 2 to 4 as mentioned in paragraph one of this order. Challenging the same, the respondents filed an appeal in C.A.No.6 of 2012 and the lower Appellate Court acquitted respondents 2 to 4 from all the charges, challenging the same, the petitioners filed this present revision.

7. I have heard Mr.A.P.Sathya Murthy, learned counsel appearing on behalf of the petitioners, Mr.R.Ravichandran, learned Government Advocate on behalf of the first respondent and Mr.R.Balachandran, learned counsel appearing on behalf of the second respondent.

8. Learned counsel appearing for the petitioners submitted that there are ample materials available on record to show that only respondents 2 to 4 trespassed the property belonging to P.W.4 and caused damage to the property. The damages to the property has been estimated by an engineer-P.W.10, and there are eye witnesses, who are working in the site also spoke about the occurrence. The Court below without considering the same, acquitted the accused and hence sought allowing this revision.

9. Per Contra, learned counsel for the respondents 2 to 4 submitted that there is no proper investigation by the respondent police. Even though, the damages alleged to have been caused in S.Nos.84/1 and 84/2, it is evident from the statement of the investigating officer-P.W.12 that the investigation was proceeded as if the damages were caused in S.No.80/2 and 80/3. Apart from that there is also a delay of one day in filing the complaint, which was not properly explained by the prosecution.

10.I have considered the rival submissions made by the counsel on either side. The case of the petitioner is that she is the owner of the property in S.No.83/2 and 84/2 situated at Mel Murukkampattu Village, Thiruthani Taluk, Thiruvallur District, in which respondents 2 to 4 have trespassed and caused damages. But, P.W.10-the Inspector of Police has deposed that that the investigations was done in respect of S.No.80/2 and 80/3, and he has also further stated that he was not even aware of the survey number of the damaged property. Apart from that, there is no materials available to show that the damage occurred in S.Nos.82/3 and 83/4. In the above circumstances, the prosecution does not prove that the respondents 2 to 4 have caused damages in S.Nos.82/3 and 82/4. Apart from that there is also a delay of more than one day in filing the complaint. The occurrence took place on 20.07.2008, but the case was registered on 21.07.2008. On 20.07.2008. Though P.W.1 has stated that he has given complaint to the Head Constable on 20.07.2008, which was registered only on the next day, but the Head Constable was not examined. Hence, the delay in filing the complaint was not explained by the prosecution. Considering all the above, the trial court came to a conclusion that the prosecution failed to prove the case beyond reasonable doubt and acquitted the accused.

11.In an appeal against acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him and the fundamental principle of criminal justice delivery system is that every person, accused of committing an offence shall be presumed to be innocent, unless his guilt is proved by a competent Court of law. Secondly, if the accused has secured an order of acquittal, the presumption of his innocence is reaffirmed and strengthened by the trial Court. Even if two reasonable conclusions are possible on the basis of evidence on record, the appellate Court should not disturb the finding of the acquittal recorded by the trial Court. In the instant case, the prosecution has failed to prove the guilt of the accused beyond any reasonable doubt and the court below considered the same and rightly acquitted the accused. I find no perversity in the judgment of the trial Court. In the above said circumstances, I find no reason to interfere with the order of acquittal passed by the Court below. Hence, I find no merits in the revision and the same deserves to be dismissed.

12. In the result, the Criminal Revision fails and accordingly, the same is dismissed. The order passed by the Courts below is hereby confirmed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Additional District & Sessions Judge,
Fast Track Court-III,
Thiruvallur.

2.The Assistant Sessions Judge,
Tiruttani.

3.The Inspector of Police,
Tiruttani Police station,
Tiruttani.

4.The Public Prosecutor,
High Court, Madras.

+lcc to Mr.A.P.Sathyamoorthy, Advocate Sr.22472

Criminal Revision No.119 of 2014

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srg 24/05/2017

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