

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:16.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Revision No.7 of 2014

1.Chidambaram
2.Saminathan

... Petitioners

Vs.

1.The State rep. by Inspector of Police,
Kangeyam Police Station,
Tiruppur District.

2.K.V.Namasivayam

3.N.Premalatha

... Respondents

PRAYER: Criminal Revision filed under Section 397 r/w 401 of Cr.P.C. praying to set aside the judgment passed in Spl.S.C.No.172 of 2008 dated 28.11.2008, on the file of the Principal Sessions Court, Erode.

For Appellant : Mr.Ma.P.Thangavel

For R1 : Mr.R.Ravichandran
Government Advocate (Criminal side)

For RR2 & 3 : Mr.S.N.Thangaraj

सहायमेव जयते
O R D E R

This Criminal Revision is filed challenging the order of acquittal passed by the Principal Sessions Judge, Erode in Spl.S.C.No.172 of 2008 on 28.11.2008.

2.The petitioners, who are P.W.1 and P.W.2 in S.C.No.172 of 2008 on the file of the Principal Sessions Court, Erode, have filed this revision. The second and third respondent are the accused-A1 and A2 They stood charged for the offences under Sections 353, 506(ii), 294(b) and under Section 3(1)(x) of the SC and ST (Prevention and Atrocities) Act, 1989. The Trial Court acquitted both the accused from all the charges. Challenging the order of acquittal, the present revision has been filed.

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

P.W.1 and 2 are working as a sanitary workers, working in Kangeyam Town Panchayat. On 22.05.2008, there was a complaint from the resident in Bajanai Koil Street, Kangeyam to the Kangeyam Town Panchayat that a water pipeline was broken near one Senthil Medical Shop. P.W.5-Superintendent in the Kangeyam Town Panchayat asked P.W.1 and 2 to repair the damage. While P.Ws.1,2,3 and 6 were repairing the pipeline, both accused came there, A1 having Aruval and threatened them not to do any repair work there, and also abused P.Ws.1 and 2, who belongs to the Schedule Castes and the Scheduled Tribes by calling their caste name. Thereafter, both P.Ws.1 and 2 reported the same to P.W.6, the Executive Officer of Town Panchayat, and filed a written complaint. Based on the above complaint, P.W.5 sent a letter to the respondent-Police to take action. After that on 23.05.2008, at about 6 p.m., P.W.1 went to the respondent Police Station and filed a separate complaint. P.W.10, the Inspector of Police in the respondent Police Station, based on the complaint registered a case in Crime No.299 of 2008 for the offence under Sections 353, 506 (ii), 294(b) and under Section 3(1)(x) of the SC and ST (Prevention and Atrocities) Act, 1989. He prepared an F.I.R and sent the same to the higher officials. P.W.7, Deputy Superintendent of Police at Kangeyam, after getting necessary permission from higher officer, commenced investigation on 25.05.2008. He went to the scene of occurrence, where he recorded the statement of witnesses and after completion of investigation, he filed charge sheet. Based on the above materials, the Trial Court framed charges as mentioned above and the accused denied the same. In order to prove the prosecution, eleven witnesses were examined and marked nine documents.

4.Out of the witnesses examined, P.W.1 is the defacto complainant. According to him, he was working as a sanitary worker in the Kangeyam Town Panchayat. On 22.05.2008, at about 10 a.m, he along with P.Ws.2 and 3 went to the scene of occurrence to repair the damaged pipe. At that time, both accused came there and A1 having Aruval in his hand, threatened him with dire consequences and asked not to carryout any repair work and also abused him by calling his caste name. Therefore, he filed a complaint. P.W.2, also a sanitary worker in Kangeyam Town Panchayat. He has also stated that while they are repairing the pipeline, both accused came there and threatened them with filthy language and abused them by calling his caste name. P.W.3 was working as water tank cleaner, who was also present at the time of occurrence and deposed that both the accused abused P.W.1 and P.W.2 by calling their caste name and threatened them. P.W.4 is the resident of Kangeyam Town, he is one of the eye witnesses to the occurrence. According to him, A1 threatened P.W.1 and P.W.2 with Aruval, and A2 also prevented P.Ws.1 and 2 from proceeding with the work. P.W.5 is a Superintendent in the Town Panchayat, who assigned P.W.1 and 2 in the repair

work. P.W.6 is the executive officer. According to him, he received the written complaint from P.W.1 and P.W.2 and based on the complaint, he sent a D.O.letter to the respondent Police on 22.05.2008 to take action against the accused. P.W.7, is another eye witnesses to the occurrence. According to him, at the time of occurrence, A1 came there with Aruval and abused P.W.1 and P.W.2 in filthy language. A2 prevented P.W.1 and 2 from proceeding with their work. P.W.8 is the Tahsildar, who issued a community certificate to P.W.1 and 2 stating that they belong to SC/ST community. P.W.9 is the zonal Deputy Tahsildar, who gave the Community Certificateto A1 and A2 that he belongs to a Backward Community. P.W.10 is the Sub-Inspector of Police,who filed FIR after receiving the complaint. P.W.11 is the Deputy Superintendent of Police, who investigated the case and filed a charge sheet.

5.When the above incriminating materials were put before the accused, they denied the same. They neither examined any witnesses nor marked any documents. Considering the above materials, the Trial Court acquitted the accused from all the charges under Section 235(1) Cr.P.C.

6.I have heard Mr.MA.P.Thangavel, learned counsel appearing on behalf of the petitioner, Mr.R.Ravichandran, learned Government Advocate (Criminal Side), appearing on behalf of the first respondent and Mr.S.N.Thangaraj, learned counsel appearing on behalf of second and thrid respondents and perused the materials on record.

7.The case of the prosecution is that the occurrence took place on 22.05.2008 at about 10 a.m. According to P.W.1, at the time of occurrence, they were repairing the pipeline. A1 alone came to the scene of occurrence and threatened them with aruval and abused him with filthy language and also by calling his caste name, he did not depose anything about the presence of A2. P.W.2 has stated that at the time, both A1 and A2 came to the scene of occurrence and A1 alone abused him by calling his caste name and threatened with aruval. He has not spoken about the presence of A2. P.W.3 has also deposed regarding presence of A1 and giving a written complaint to the executive officer, P.W.6. According to him, P.W.6, immediately on receipt of the complaint, sent a D.O. Letter alongwith complaint to P.W.10, the Sub-Inspector of Police to take action. But the above complaint was not marked by the prosecution. Thereafter on the next day i.e., on 23.05.2008, at about 6 p.m., P.W.1 went to police station and filed a complaint. The above complaint was given with a delay of 30 hours, which was not explained by the prosecution. Apart from that, the FIR also reached the court only on 26.05.2008, after a delay of three days, even for that there is no explanation by the prosecution. Apart from that, there are lot of material contradiction in the evidence of eye witnesses, regarding the presence of A2 in the scene of occurrence.

8.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.

9.In the case of 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, as already held, the prosecution failed to prove the guilty of the accused beyond reasonable doubt and the trial Court has rightly acquitted the accused. In the above circumstances, I find no perversity in the judgment of the trial Court and I find no reason to interfere with the judgment of acquittal passed by the trial Court. Hence, the revision fails and the same deserves to be dismissed.

10.In the result, the Criminal Revision is dismissed, the judgment of the trial Court in Spl.S.C.No.172 of 2008, is hereby confirmed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

rm
To

1. The Principal Sessions Judge, Erode.
2. The Inspector of Police,
Kangayam Police Station, Tiruppur
3. The Public Prosecutor,
High Court of Madras.

+ 1 cc to Mr.Ma.P. Thangavel, Advocate Sr.16884
+ 1 cc to Mr.N. Damodaran, Advocate Sr.17153

Criminal Revision No.7 of 2014

KK(CO)
EU 28.4.17

<https://hcservices.ecourts.gov.in/hcservices/>