

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.02.2017

CORAM :

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.174 of 2009

State rep. by
Sub-Inspector of Police,
Puliyampatti Police Station,
Erode District. Appellant/Complainant

Vs

1.Kuppusamy
2.Ubalth Raguman
3.K.A.Abbas @ Showkath Ali ... Respondents/Accused 1 to 3

Prayer:- Criminal Appeal filed under Section 378 of Cr.P.C., against the order of acquittal passed by the learned Judicial Magistrate, Sathyamangalam, vide judgement dated 20.02.2008 in C.C.No.171 of 2006.

For Appellant : Ms.M.F.Shabana
Govt. Advocate (Crl.side)

For Respondents : Mr.S.Parthasarathy for R1 to R3

JUDGEMENT

Against the order of acquittal passed by the learned Judicial Magistrate, Sathiyamangalam, state has preferred the present appeal.

2. The case of the prosecution in brief are as follows:
P.W.1 is an agriculturists, he has a well and a motor pump set, on 23.06.2006 in the early morning, P.W.1 saw three persons moving near the well carrying gunny bags, when he questioned them, they started running. P.W.1 raised alarm and others came to his assistance and with the help of them, he caught hold of the accused persons. When he checked the gunny bag, it contained spare parts of the motor pump set. Immediately, he had taken the accused persons to the police

station and filed a complaint. P.W.5, Sub Inspector of Police of the respondent police station registered the complaint in Crime No.171 of 2006 for offences under Section 379 of IPC and seized the spare parts of the motor pump sets. Thereafter, he proceed to the scene of occurrence and prepared observation mahazar and rough sketch and also recorded the statements of the witnesses. After completing investigation, he filed charge sheet against the accused persons and submitted the final report. Based on the materials available on record, the Trial Court framed charges against the accused persons as stated supra. To establish the case, prosecution has examined 6 witnesses (P.Ws.1 to 6) and produced 5 exhibits (Exs.P1 to P5). No material objects were marked. When the accused were questioned under Section 313 of Cr.P.C., they denied the same. However, they examined one Mr.Allabas as D.W.1, but not marked any documents. Considering all the above materials, trial Court acquitted the accused. Challenging the same, the present appeal is filed.

3. I have heard Ms.M.F.Shabana, learned Government Advocate (Crl.side) and Mr.S.Parthasarathy, counsel for the respondent and perused the materials carefully.

4. According to P.W.1, on 23.06.2006, in the early morning P.W.1 saw three persons near the well, one holding a gunny bag and others accompanied him and when he enquired about them they started running and he along with others chased and caught hold of them. On verifying the bags, it was found that the spare parts of the motor pump sets had been stolen by the accused persons. Hence, he preferred a complaint and produced the accused persons before the police station.

5. A reading of the P.W.1's evidence would show that he saw the accused persons roaming near the well and with the help of P.W.2 and P.W.6, he caught hold of them. A perusal of the P.W.2 and P.W.6 evidences reveals that only through P.W.1, P.W.2 and P.W.6 came to know that the accused persons tried to steel the spare parts of the motor pump sets. P.W.2 and P.W.6 are not the eye witness to the occurrence. Even according to P.W.1, in the complaint he had disclosed that he do not know about the names of the accused persons but in the cross examination, he had deposed that he knew one of the accused much earlier. P.W.1 also deposed that after raising alarm, with the help of P.Ws.2 & 6, he caught hold of the accused persons who were tried to ran away on seeing him. But, P.W.6 gave evidence to the effect that only on coming to know through P.W.1, he knew about the occurrence and while he visited the place of occurrence, the materials objects were found only with P.W.1 and not with the accused persons.

6. A careful analysis of the evidence of P.W.6 would go to show that only after the occurrence took place he would have visited the place and he cannot be an eye witnesses to the occurrence. A perusal of the evidences of mahazar witnesses who had stated that the police had obtained signatures from them would go to show that the police has not proved the alleged seizure. With regard to the stolen materials which were said to be the spare parts of motor pump sets, as per the evidence of P.W.1, the same were taken from his motor pump sets which was in the working condition till the date of occurrence. As rightly held by the trial Court, the same cannot be dismantled without the help of any supporting instruments. However, no instruments were seized by the prosecution nor they have shown in the observation mahazar also.

7. The evidence of P.W.4, mahazar witnesses who is also one of the brother of P.W.1 and residing very near to the place of occurrence is also contradictory. P.W.4, did not hear any noise about the alleged chasing nor the incident that took place very near to his residence. P.W.1, at first had not called P.W.4 who was residing very near to his residence for chasing the accused but took the help of other two witnesses is totally contradictory.

8. The evidence of D.W.1 is vital to this case. He had deposed to the effect that prior to the date of occurrence, P.W.1 had enquired with him about one of the accused and he had shown him the residence of the accused and thereafter, then only he came to know about the complaint lodged by P.W.1 against the accused persons. After analysing the entire evidence and the materials produced before it, the Trial Court had acquitted the accused persons as there were contradictions in the evidences.

9. In view of the aforesaid circumstances, I am of the considered view that the prosecution failed to prove the case beyond any reasonable doubt and under the aforesaid circumstances, the appellants are entitled for acquittal. No convincing facts are produced before this Court to show that the accused have committed the offence.

10. In the result, this appeal is dismissed.

Sd/-

Assistant Registrar(CS IV)

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Sub Assistant Registrar

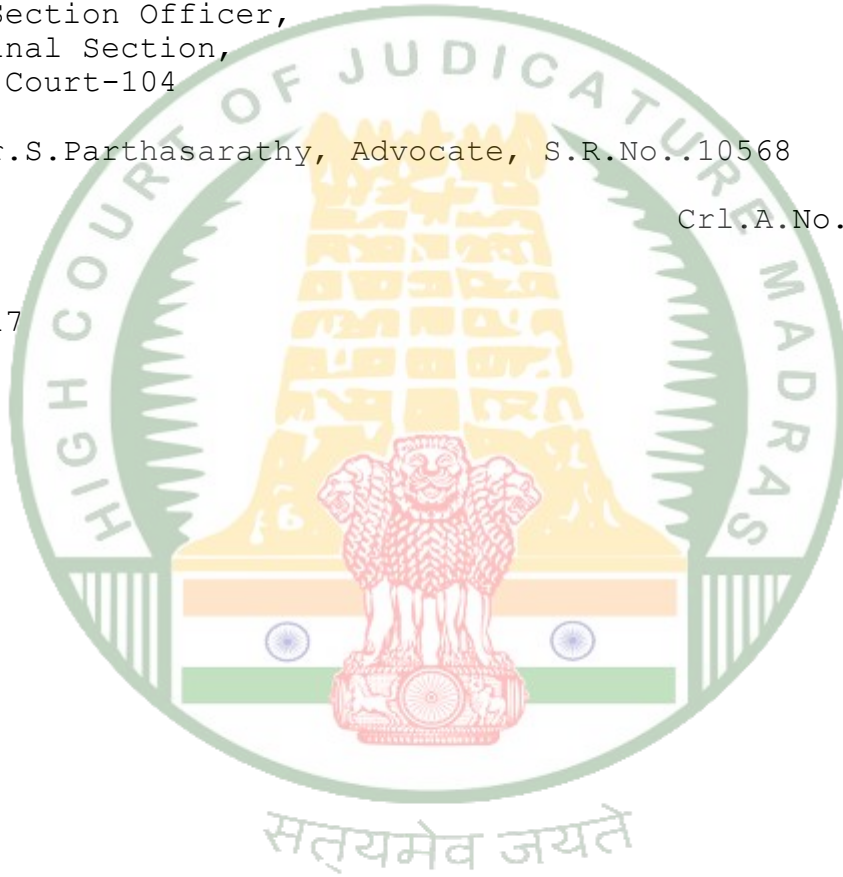
To

1. The Judicial Magistrate,
Sathyamangalam,
2. The Sub Inspector of Police,
Puliyampatti Police Station,
Erode District.
3. The Public Prosecutor,
High Court, Madras.
4. The Section Officer,
Criminal Section,
High Court-104

+1cc to Mr.S.Parthasarathy, Advocate, S.R.No..10568

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PVS (CO)
CS/06/12/17



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