

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2017

CORAM :

THE HONOURABLE MR.JUSTICE C.T. SELVAM

Criminal Appeal No.725 of 2009

State rep. by

The Sub Inspector of Police,
Bagalur Police Station,
Krishnagiri District.
Crime No.174/97

... Appellant

-Vs-

1. Devaraj
2. Gopi
3. Jayapal
4. Sampath
5. Balu
6. Jakkappa

... Respondents

Criminal Appeal under Section 378 of Cr. P.C. against judgement dated 03.07.2009 in C.C.No.293/2007 on the file of the learned Judicial Magistrate No.2, Hosur and pray that this Court may be pleased to set aside the judgment of acquittal and convict the respondents / accused [A1- to A-6] for the charges framed against them.

For Appellant :: Mr.V.Arul,
Additional Public Prosecutor
For Respondents :: Mr.N.E.A.Dinesh

J U D G M E N T

This appeal arises against the judgment of acquittal passed by learned Judicial Magistrate-II, Hosur, passed in C.C.No.293 of 2007 on 03.07.2009.

2. Pursuant to complaint in Crime No.174 of 1997 on the file of appellant, C.C.No.293 of 2007 on the file of learned Judicial Magistrate, Hosur, was tried for offences u/s.148, 451, 427 and 506(ii) IPC against respondents herein informing that PW-1, Rajanna has constructed an asbestos house in Survey No.54/7 by spending Rs.50,000/-. The Survey No.54/7 contains two house sites and it was jointly purchased by the complainant with one Gopalappa (PW-3). It was purchased from one Gowdappa on

20.07.1997 through unregistered sale agreement. On 02.08.1997 at 2.00.a.m., the accused, armed with weapons, have damaged the house fully and on questioning the unlawful and rowdy acts of the accused, the accused have also threatened the complainant by showing the weapons. Hence, the complaint.

3. Before trial Court, appellant/complainant examined 13 witnesses and marked 6 exhibits and marked 4 material objects. Defence examined one witness and marked 12 exhibits. On appreciation of materials before it, trial Court, under judgment dated 03.07.2009, acquitted respondents. There against, the present appeal.

4. Heard learned Additional Public Prosecutor for State and learned counsel for respondents.

5. In acquitting respondents, trial Court has found as follows:

- (i) The First Information Report in the case was registered on 03.08.1997 and the charge sheet has been filed only on 30.04.2004. There was no explanation for delay in filing the charge sheet and further, in the charge sheet, the date of occurrence was mentioned as 03.08.1997. Since the Investigating Officer had wrongly mentioned the date of occurrence as 03.08.1997 instead of 02.08.1997, it is suspicious whether the incident had taken place as stated by the appellant at the time and at the said place.
- (ii) As PW-1 claims ownership through an unregistered document Ex.P1, it is for him to prove the same. Neither Gowdappa, who is the agreement holder nor the witnesses to that agreement were examined.
- (iii) Prosecution has failed to establish in whose possession, the subject property was, on the date of occurrence.
- (iv) In cross, accused has failed to question PW-2 Rangappa, an alleged eye-witness to the occurrence, as to why he had been to that place at 2.00.a.m. Even so, Alisayubu, Venkatesh, Nanchudachari, Gowdappa, Venkatesh, Rajeskararaja, Munusamy, J.R.D.Chandrasekar, Mariappa, Muniappa, Nagaraj, Thimmappa, Billappa who are listed as witnesses on behalf of the prosecution, have not been examined.
- (v) It was the evidence of PW-6 that 5 workers were in his loom and he had only witnessed the occurrence and none of the above five had. It is highly unbelievable that when 50 persons joined together at 2.00.a.m and carried out the offending acts, none of the 5 workers had seen the happening. Even though PW-6 had stated that his loom is close to the place of occurrence, the house of PW-6 or loom is not mentioned in Ex.P6, rough sketch. Therefore, PW-6's presence at the place of occurrence was doubtful. There were contradictions in the

- evidence of PW-2 and PW-6.
- (vi) Survey number of the property has not been correctly mentioned.
- (vii) It is unbelievable that the house of de facto complainant has been razed to the ground by accused persons using M.Os.3 & 4 [crowbar and wooden log].
- (viii) There was delay of several years in sending the material objects to Court and filing of charge sheet and there was no explanation for the delay. In such circumstances, a doubt arises whether the occurrence had taken place as projected by prosecution.
- (ix) Given the lapse of time, the witnesses could have forgotten the facts.

For the aforesaid reasons and for other reasons, Court below has held that the prosecution has failed to establish its case and afforded the benefit of doubt to accused. This Court finds no reason to interfere with the judgement under challenge.

The Criminal Appeal shall stand dismissed.

Sd/-

Assistant Registrar (CS III)

//True Copy//

Sub Assistant Registrar

kmi/gm

To

1. The Judicial Magistrate II,
Hosur.
2. The Sub Inspector of Police,
Bagalur Police Station,
Krishnagiri District.
3. The Public Prosecutor,
High Court, Madras.
4. The Section Officer,
Criminal Section,
High Court

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SSI (CO)
SRG (12/03/2019)