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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.11.2017

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Criminal Appeal No.51 of 2006

State by
Station House Officer,
Vepur.
Crime No.208 of 1993

.. Appellant

Vs.

1.Rathinam
S/o.Kannu

2.Ramamoorthy
S/o.Meganathan

.. Respondents

Criminal Appeal preferred under Section 378 of Cr.P.C against the judgment of acquittal passed by learned Additional District and Sessions Judge, Fast Track Court III, Virudhachalam, in C.A.No.118 of 2001 on 11.10.2002.

For Appellant : Mr.P.Muthukumar
Government Advocate [Crl.side]

For Respondents : Mr.T.R.Ravi [R1]
No appearance
Ms.Jayasri Baskar,
Legal Aid Counsel [R2]

J U D G M E N T

This appeal arises against judgment of acquittal passed by learned Additional District and Sessions Judge, Fast Track Court III, Virudhachalam, in C.A.No.118 of 2001 on 11.10.2002.

2. Case of the prosecution is that on 16.07.1993 at about 21.30 hours while PW-1 was in his tuition centre, an unknown persons came there and informed him that he and PW-1's brother came in a bus, which was stationary due to break down and hence, he wanted to meet PW-1. Believing his words, PW-1 went with him and when they reached near ITI, Virudhachalam Road, the messenger



shouted at PW-1 'to stop'. PW-1 got down from his cycle, saw accused standing there, who instructed the messenger to attack PW-1 and he attacked PW-1 with a stick on his left eye, owing to which PW-1 lost his eye sight. On the complaint of PW-1, a case was registered in Crime No.208 of 1993 on the file of Station House Officer, Veppur, for offence u/s.326 IPC. Upon completion of investigation, a charge sheet was filed informing commission of offence u/s.326 IPC and the case was tried in C.C.No.644 of 1994 on the file of learned Judicial Magistrate I, Vriddhachalam.

3. Before trial Court, prosecution examined 7 witnesses and marked 7 exhibits. None were examined on behalf of defence nor were any exhibits marked. On appreciation of materials before it, trial Court, under judgment dated 19.10.2001, convicted the accused and sentenced him to 3 years R.I. and directed the accused to pay a sum of Rs.1,00,000/- as compensation to victim/PW-1. Against such finding, accused preferred C.A.No.118 of 2001 on the file of learned Additional District Judge, Fast Track Court III, Cuddalore, Vriddhachalam. Appellate Court, under judgment dated 11.10.2002, acquitted the accused and directed the victim/PW-1 to collect the compensation of Rs.1,00,000/- from the State of Tamil Nadu. There against, State has preferred the present appeal.

4. Heard learned Government Advocate [Crl.side] for appellant and learned counsel for first respondent.

5. In rendering a finding of acquittal, appellate Court has found as follows:

- (i) In Ex.P1, complaint, PW-1 informed that on the instructions of accused, an unknown person assaulted him with a stick on his eye. However, in the charge sheet, it has been alleged that the accused himself has assaulted PW-1. Having found such discrepancy, trial Court rightly has altered the charge to 326 r/w 114 IPC. However, that would not be the end of the matter. Once trial Court has found that there were discrepancies between Ex.P1 and charge sheet, then it ought to have directed re-investigation. Having failed to do so, it was not open to trial Court to find fault with PW-7, Investigation Officer.
- (ii) Two section 161 (3) Cr.P.C. statements of PW-1 have been recorded, in that, one did not disclose the date and the other bears the date 16.07.1993. However, both statements bear Court seal dated 18.04.1994. In one statement, PW-1 has spoken to assault by accused and in the other, he has spoken to assault by an unknown person. When both statements were recorded at different points of time, both statements could not bear the Court seal of even date. This aspect should have been questioned by trial Court while the taking the case on file,



which it had failed to do. Mere finding of trial Court that investigation done by PW-7 was defective, was not reason enough to substantiate the prosecution case.

(iii) PW-5, who accompanied PW-1 on the date of occurrence, has not even referred the presence of accused or the words said to have been uttered by him. That apart, one Muthiyan, who, according to prosecution, took the unidentified person in his bicycle has not been examined. Non-examination of vital witness is fatal to the prosecution case.

(iv) When the identity of the principal offender has not been established by prosecution, the very root of the prosecution case suffered. According to PW-7, Investigation Officer, the principal offender and the abettor were one and the same, which totally wipe out the prosecution case.

On the above finding, appellate Court has held that prosecution miserably has failed to establish its case beyond reasonable doubt and accordingly, acquitted the accused. Appellate Court has further found that once the charges against accused have not been proved, he was not bound to effect payment of compensation. At the same time, it directed the victim/PW-1 to collect the compensation of Rs.1,00,000/- from the State of Tamil Nadu.

6. Though at the time of passing of judgment under appeal, there was no scheme for victim compensation, such provision u/s.357-A Cr.P.C. having come into force only on 31.12.2009, for such reason alone, this Court would not interfere with the direction to effect payment of compensation. Such direction reflects forward thinking. This Court finds no error in the judgment under challenge.

The Criminal Appeal shall stand dismissed.

gm/mrr

Sd/-
Assistant Registrar (CSVIII)
/TRUE COPY/

Sub-Assistant Registrar



To

1.The Judicial Magistrate No.I,
Virudhachalam.

2.Do Thro to Chief Judicial Magistrate,
Virudhachalam.

3.The Additional District and Sessions Judge,
Fast Track Court III,
Virudhachalam.

4.The Public Prosecutor,
High Court, Madras.

Criminal Appeal No.51 of 2006

MG[CO]
MK:26/03/2018