

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.10.2017

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Crl.R.C.No.1601 of 2013

Gopal

... Petitioner

vs

State by

The Inspector of Police,

Vaniyambadi Town Police Station,

Vellore District.

... Complainant/respondent - 1

2.Damodaran

3.Shanmugam

4.Ellappan

5.Ramachandran

6.Gangadaran

7.Vedhavasani

... Respondents/Accused

Prayer:Criminal Revision Case filed under section 397 r/w 401 of the Code of Criminal Procedure, to set aside the Judgment dated 18.08.2005 in C.C.No.118 of 2004, passed by the learned District Munsif cum Judicial Magistrate, Vaniyambadi.

For Petitioner : Mr.Su.Srinivasan

For Respondent : Mr.V.Arul

Additional Government Pleader
for R-1.

सत्यमेव जयते

O R D E R

Challenging the order of acquittal, the defacto complainant/P.W.1 filed the present revision case. The respondents 2 to 7 are the accused in C.C.No.118 of 2004 on the file of the learned District Munsif cum Judicial Magistrate, Vaniyambadi. They stood charged for the offence under Sections 323, 326, 147 and 148 of IPC. The trial Court, after considering the materials acquitted the accused from all the charges framed against them. Challenging the order of acquittal, the present criminal revision case has been filed by the defacto complainant/P.W.1.

2. The case of the prosecution, in brief, is as follows:-

The defacto complainant/P.W.1 earlier married one Indira, who is the relative of the accused herein. Thereafter, P.W.1 got second marriage with another lady, while the first marriage is in existence. In the above circumstances, on 05.04.2004, the accused took P.W.1 under the guise of conducting panchayat to the lake area and attacked him with pipe and wooden log and caused injuries. Then, he was taken to private hospital and after taking treatment, he has admitted in the Government Hospital, Vellore and based on the intimation given by the Government Hospital, Vellore, on 11.04.2004, P.W.9, the Head Constable, working in the first respondent police station, went to the Government Hospital, Vellore and recorded the statement of P.W.1[Ex.P1] and based on the statement, P.W.10, the Sub Inspector of police registered a case in Crime No.292 of 2004 for the offence under Sections 323, 326, 147 and 148 of IPC and prepared a first information report[Ex.A6]. Then, he commenced investigation, went to the scene of occurrence, prepared observation mahazar[Ex.P9] and rough sketch[Ex.P7]. He examined the witnesses and recorded their statement and after completion of investigation, he laid the charge sheet.

3. Considering the above materials, the Trial Court framed charges as detailed above and the accused denied the same as false. In order to prove the case of prosecution, as many as 10 witnesses were examined and 9 documents were exhibited and two material objects were marked.

4. Out of the said witnesses examined, P.W.1 is the injured witness. According to him, on 05.04.2004 at about 12.00 p.m., all the accused came Nurullahpet and took him under the guise of Panchayat to one Lala Eari and the first accused attacked him with steel pipe in the knee, A-2 and A-3 attacked him with wooden log. A-4 attacked him with his leg. A-5, A-6 and A-7 attacked him with brick and thereafter he kept him in a room and after three days, his relative took him to the private hospital for treatment and after taking treatment he has admitted in the Government Hospital, Vellore. P.Ws.2, 5 and 8 were turned hostile. P.W.3 is only hearsay evidence. P.W.4 is one Sankar. He knows P.W.1 and he informed about the occurrence. P.W.6, the Doctor, working in the Government Hospital. He has given treatment to P.W.1 and issued wound certificate [Ex.P4]. P.W.7 is one Mahendran. He came to know about the occurrence later and he admitted P.W.1 in the Government Hospital, Vellore. P.W.8 is the witness to the observation mahazar. P.W.9, the Head Constable working in the respondent police station. According to him, on receipt of the information from Government Hospital, Vellore, he went to the Hospital and recorded the statement of P.W.1 and sent the same to the Sub Inspector of

Police. P.W.10, the Inspector of Police, working in the respondent police station. He deposed that he registered a case in Crime No.292 of 2004 for the offence under Sections 323, 326, 147 and 148 of IPC and prepared a first information report, commenced investigation, went to the scene of occurrence, prepared observation mahazar and rough sketch, arrested the accused, examined the witnesses and recorded their statement, and after completion of investigation, he filed charge sheet.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. The accused did not examine any witness nor marked any document.

6. Having considered all the above materials, the Trial Court acquitted the accused as stated in first paragraph of this judgment. Challenging the above said order of acquittal, the defacto complainant/P.W.1 is before this Court with the revision case.

7. I have heard Mr.Su.Srinivasan, learned counsel appearing for the defacto complainant/P.W.1 and Mr.V.Arul, learned Additional Government Pleader appearing for the first respondent and perused the materials available on record.

8. P.W.1 is the one and only injured witness in this case. According to him, the occurrence taken place on 05.04.2004, but he was admitted in the hospital only on 10.04.2004 and thereafter on 11.04.2004 he has given complaint. P.W.1 further stated that he has kept in room for three days and thereafter he admitted in the Hospital. But, the delay of six days in filing complaint has not properly explained by the prosecution. Apart from that there are material contradiction between the evidence of P.W.1 and other evidence. Further, the witness to the Mahazar turned hostile. Even at the time of admitted in the Hospital on 10.04.2004, P.W.1 told the Doctor that one known person and some other unknown persons attacked him. But, the other accused was not identified by the prosecution. Further, from the evidence of P.W.1 there are lot of contradiction in the evidence of P.W.1 and he also not corroborated by the medical evidence. Considering the facts and circumstances of the case, the trial Court come to the conclusion that the prosecution has failed to prove the case beyond reasonable doubt and acquitted the accused and this Court also gone through the evidence available on record and find no illegality or irregularity in the Judgment of the Court below.

9. In an appeal against acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to them 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 above said circumstances, I find no reason to interfere with the order of acquittal passed by the trial Court. Hence, the appeal fails and the same is deserves to be dismissed

10. In the result, the Criminal R.C., fails and accordingly, the same is dismissed. The judgment passed by the learned District Munsif Cum Judicial Magistrate, Vaniyambadi dated 18.08.2014 in C.C.No.118 of 2004 is hereby confirmed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

rrg
To

1. The District Munsif Cum Judicial Magistrate,
Vaniyambadi.

2.The The Inspector of Police,
Vaniyambadi Town Police Station,
Vellore District.

3.The Public Prosecutor,
High Court, Chennai.

CrI.R.C.No.1601 of 2013

mr (CO)
srg 16/05/2018



WEB COPY