

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 12.12.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH
CRL.R.C.No.1561 of 2013

Kolandasamy

.. Petitioner

Vs

1.Chenniappan

2.Rasumani

3.Seethappan

.. Respondents 1 to 3/Accused 1 to 3

4.The State by Sub-Inspector of Police,

Kanchi Koil Police Station,

Crime No.21 of 2006,

Erode District.

..5th Respondents/Complainant

Criminal Revision Petition filed under Section 397 and 401 of Cr.P.C. praying to set aside the order of acquittal made in the judgment dated 11.01.2008 made in C.C.No.249 of 2006 on the file of the District Munsif-cum-Judicial Magistrate, Perundurai by allowing this Criminal Revision Petition.

For Petitioner : Mr.S.J.Mohamed Sathik
for Mr.N.Manokaran

For R1 and R3 : Mr.V.S.Kesavan &
Mr.Prince Premkumar

For R4 : Ms.P.Kritika Kamal, GA
(Crl. Side)

O R D E R

This Criminal Revision Petition has been filed to set aside the order of acquittal made in the judgment dated 11.01.2008 made in C.C.No.249 of 2006 on the file of the District Munsif-cum-Judicial Magistrate, Perundurai by allowing this Criminal Revision Petition.

2.On the complaint given on 13.05.2006 by Kolandasamy (PW1), Sumathi (PW6), Sub Inspector of Police, registered a case in Crime No.21 of 2006 on 14.05.2006 under Section 294(b), 323 and 506(ii) IPC against three accused, viz. Chenniappan (A1), Rasumani (A2) and Seethappan (A3) and after completing the

investigation, filed Final Report before the District Munsif-cum-Judicial Magistrate, Perundurai in C.C.No.249 of 2006. On the appearance of the accused, the provisions of Section 207 Cr.P.C were complied with and charges for the offences under Sections 294(b), 323 and 506(ii) IPC were framed. When questioned, the accused pleaded not guilty. The prosecution examined six witnesses, marked six exhibits and one material object to prove the case. The accused were questioned under Section 313 Cr.P.C and they denied the incriminating circumstances appearing against them. No witness was examined by the accused nor any document marked. After considering the evidence on record, the trial Court, by judgment dated 11.01.2008, acquitted the accused in C.C.No.249 of 2006. Since, the State did not file appeal against acquittal, the defacto complainant has filed the present revision petition.

3. Heard Mr.S.J.Mohamed Sathik, learned counsel for the revision petitioner/defacto complainant and Mr.V.S.Kesavan and Mr.Prince Premkumar learned counsel for respondents 1 to 3 and Ms.P.Kritika Kamal, learned Government Advocate (Crl. Side).

4. The amendment to Section 372 Cr.P.C, came into force on 31.12.2009, whereas, the order of acquittal was passed on 11.01.2008 and therefore, the defacto complainant has invoked the revisional jurisdiction under Section 397 Cr.P.C. It is trite law that while dealing with a revision petition challenging the acquittal of the accused, this Court cannot completely re-appreciate the evidence. But, if it is found that the reasons given by the trial Court, for acquitting the accused are perverse and contrary to the evidence on record, then, it is open to this Court to interfere with the order of acquittal. Bearing in mind this legal position, this Court now proposes to deal with the case at hand.

5. It is the case of the prosecution that Ammaniammal (PW2) is the wife of Kolandasamy (PW1); that the lands belonging to the complainant party and the accused party are near to each other and there is a common cart track over which, they have disputes. On 13.05.2006, A1, A2 and A3 were found by the complainant party, dumping stones in the cart track; when PW1 and PW2 questioned them, a quarrel ensued in which, A2 abused PW2 and pushed her on the ground; while Kolandasamy (PW1) came to the rescue of his wife Ammaniammal (PW2) and at that time, A3 threw stones at PW1; A1 assaulted PW2 on head with the handle of a shovel and caused injuries to her; Vadivel (PW3) and Govindan (not examined), who were working in the lands of PW1, witnessed the occurrence; the injured PW1 and PW2 went to the Police Station and gave complaint and thereafter, they were sent to the Hospital for treatment.

6.PW1, PW2 and PW3 have stated in their evidence about the quarrel and the attack. Ragupathi (PW4) was the witness to the Observation Mahazar (Ex.P2) and Rough Sketch (Ex.P6) that was prepared by the Investigating Officer (PW6) on 14.05.2006. Dr.Sakthivel, who treated PW2 for the injuries sustained by her was examined as PW5. The Wound Certificate was marked as Ex.P4. However, the trial Court has disbelieved the evidence of the injured witnesses, namely, PW1 and PW2 and has given specious reason for acquitting the accused.

7.Ammaniammal (PW2) was treated in a private hospital, viz. S.K.Hospital by Dr.Sakthivel (PW5). In the Wound Certificate (Ex.P4), a sutured wound in the back of the parietal region has been noted. The Trial Court has held that the prosecution have not adduced any evidence to show that how the sutured wound was caused and therefore, the prosecution case becomes suspect. From the evidence of Sumathi (PW6), Sub-Inspector of Police, it is seen that, she had given medical memo to the injured for treatment in the Government Hospital. Perhaps, PW2 would have gone there and would have had the wound sutured and for better treatment, she would have gone to S.K.Hospital. In the absence of any evidence, this Court cannot draw such an inference. The Police should have conducted investigation on this aspect. Assuming for a moment that failure of the prosecution to explain the sutured wound is fatal, yet, the trial Court has failed to note that Dr.Sakthivel(PW5) has also noted a contusion on the right side of the parietal region. It is possible that this wound is the consequence of the attack with the handle of the shovel, which is a blunt instrument. It is nobody's case that A1 had attacked PW2 with the sharp portion of the shovel. It is the specific case that he attacked her with the handle of shovel, which is a blunt object and that has been marked as MO-I.

8.Sumathi (PW6), Sub Inspector of Police has stated in the cross-examination that she has registered the FIR on 13.05.2006, whereas, overwhelming records show that the FIR was registered only on 14.05.2006 and therefore, the prosecution theory has to be disbelieved, is the observation of the trial Court. That apart, even before the registration of the FIR, Sumathi (PW6), Sub Inspector of Police has commenced her investigation, which is fatal. In the opinion of this Court, this is a very perverse reasoning and is a patent misinterpretation of facts. It is the case of PW1 and PW2 that after the attack, they went by car to the Police Station and gave the written complaint (Ex.P1) to Sumathi (PW6), Sub-Inspector of Police. Under normal circumstances, on seeing the injuries, Sumathi (PW6) should have registered a regular FIR. Instead, she took the complaint and gave receipt No.30 of 2006 and issued police memo No.2/2006 MDL/2006 to the injured for treatment in the Government Hospital. After sending the injured to the hospital, she went to the place of occurrence and after satisfying about the

veracity of the complaint, she registered the FIR on 14.05.2006 in Crime No.21 of 2006. For the fault of the Investigating Officer in not registering the FIR immediately, but registering it the next day after conducting some preliminary enquiries, the case of the prosecution cannot be thrown overboard. In Ravinder Kumar and another Vs. State of Punjab [2001 (7) SCC 690], the Supreme Court has held that registration of FIR is not a sine qua non for commencing investigation and any investigation conducted and the materials gathered, prior to registration of FIR will not stand vitiated.

9.Yet another reason for acquittal given by the trial Court is that Vadivel (PW3) has not given the date of occurrence. This reasoning is also untenable because, Vadivel (PW3) is a rustic witness, who was working in the farm of PW1 at the relevant point of time and on account of which, he had the occasion to witness the incident. Just because he had not given the date of incident his testimony cannot be disbelieved.

10.The last reasoning given by the trial Court is that, the prosecution have failed to produce records to show that, the occurrence had taken place in public place. This reasoning also cannot hold water. It is not the case of the prosecution that the quarrel had taken place inside the house of the victim. It is the specific case of the prosecution that, when the accused dumped stones on the disputed cart track, PW1 and PW2 questioned them, on account of which, they were attacked in the open fields in public view. It was not suggested by the accused to PW2 that she had not suffered any injury or that she suffered the said injury elsewhere.

11.In view of the aforesaid discussion, this Court is of the view that the findings arrived at by the trial Court are incorrect and improper and are against the evidence on record, thereby warranting interference by this Court.

12.In the result, this revision petition is allowed and the order of acquittal dated 11.01.2008 is set aside and the matter is remanded back to the trial Court for fresh disposal. It is open to the prosecution and the accused to adduce additional evidence, if required. The trial Court shall proceed to appraise the evidence afresh without in any manner being influenced by what is stated by this Court above.

Today, the respondents/accused viz., Chenniappan (A1), Rasumani (A2) and Seethappan (A3) are present. They are directed to appear before the District Munsif-cum-Judicial Magistrate, Perundurai at 10.30 a.m. on 17.02.2019, failing which, the trial Court may issue warrant for securing their presence. The Deputy Registrar, Criminal Section is directed to ensure that a copy of this order and the back records reaches

the District Munsif-cum-Judicial Magistrate, Perundurai, well before 17.02.2019.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Sub-Inspector of Police,
Kanchi koil Police Station,
Crime No.21 of 2006
Erode District.
- 2.The District Munsif-cum-Judicial Magistrate,
Perundurai.
- 3.The Public Prosecutor,
High Court, Madras.
- 4.The Deputy Registrar,
Criminal Section, High Court,
Madras. (+1 copies) (04/02/2019)

(To ensure that back records reaches the District Munsif-cum-Judicial Magistrate,Perundurai before 17/02/2019).

+1cc to Mr.N.Manokaran, Advocate, S.R.No.86150
+2ccs to Mr.P.Prince Premkumar, Advocate, S.R.No.85894

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RSI (CO)

rrs 04/01/2019

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