

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 23.04.2018
Pronounced on : 07.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Criminal R.C.No.465 of 2011

- 1.K.Paily (Deceased) ...Petitioner/P.W.2
S/o.late Kuruvilla.
2. Babu, ...Petitioner/P.W.3
S/o.Paily

(Legal heir of the deceased K.Paily
impleaded as per the order of this
Hon'ble Court dated 05.02.2018 made in
Crl.M.P.No.1217 of 2018 in
Crl.R.C.No.465 of 2011)

Vs.

- 1.Eldho, Son of Kuriakose.
2.Vargheese (died)
3.Kennedy, Son of Eldho
4.Digol, Son of Eldho
5.Eldho, son of Eldho
6.Scaria, Son of Eldho ... 1 to 6 Respondents/1 to 6 Respondents
7.State,
represented by the
Inspector of Police,
Nilgiris. ... 7th Respondent/Complainant

PRAYER: Criminal Revision filed under Section 397 r/w 401 of
Criminal Procedure Code to set aside the judgment dated
15.12.2009 passed in Criminal Appeal No.20 of 2008 on the file
of the Sessions Judge, The Nilgiris at Udagamandalam modifying
the judgment of the Assistant Sessions Judge, Nilgiris at
Udagamandalam dated 25.06.2008 made in S.C.No.48 of 2007.

For Petitioner : Mr.B.Ramamoorthy

For Respondents : Mr.K.V.Sridharan (RR1,3,4,5 & 6)

Mr.T.P.Savitha
Government Advocate for R2

ORDER

This Criminal Revision has been filed by the victim-K.Paily/P.W.2, praying to set aside the judgment dated 15.12.2009 passed in Criminal Appeal No.20 of 2008 on the file of the Sessions Judge, The Nilgiris at Udagamandalam modifying the judgment of the Assistant Sessions Judge, Udagamandalam dated 25.06.2008 passed in S.C.No.48 of 2007.

2.Pending revision, the 1st petitioner herein had died. Hence, the legal heir of the deceased K.Paily, who is P.W.3 in S.C.No.48 of 2007 has been impleaded as 2nd petitioner.

3.Initially, the second respondent police had registered a case in Crime No.69 of 2005 against seven accused/respondents herein and they stood charged for the offences punishable under Sections 147,148 r/w149, 452, 323 r/w149 and 325 r/w 149. At the end of the trial, A1 to A6 convicted and sentenced to undergo four months rigorous imprisonment under section 147 IPC, six months rigorous imprisonment under section 148 r/w 149 IPC, three years rigorous imprisonment under section 452 IPC, three months rigorous imprisonment and also imposed a fine of Rs.500/- in default to undergo one month rigorous imprisonment under section 323 r/w 149 IPC and four years rigorous imprisonment and a fine of Rs.1,000/- in default to undergo six months rigorous imprisonment under section 325 r/w 149 IPC further acquitted A7 under section 235(1) IPC.

4.Challenging the above said conviction and sentence, A1 to A6 filed an appeal in C.A.No.20 of 2008 before the learned Sessions Judge, The Nilgiris at Uthagamandalam. The lower appellate court by judgment dated 15.12.2009, confirmed the conviction and modified the sentences for A1 and A3 to A6 to undergo one week rigorous imprisonment and to pay a fine of Rs.500/-, in default to undergo one month for the offence under section 147 IPC, one week rigorous imprisonment and to pay a fine of Rs.1,000/-, in default to undergo two months rigorous imprisonment for the offence under section 148 r/w 149 IPC, one week rigorous imprisonment and to pay a fine of Rs.1,000/-, in default to undergo two months rigorous imprisonment under Section 452 IPC, one week rigorous imprisonment and to pay a fine of Rs.1,000/- in default to undergo one month rigorous imprisonment under section 323 r/w 149 IPC, one week rigorous imprisonment and to pay a fine of Rs.6,000/- in default to undergo one month rigorous imprisonment for the offence under section 325 r/w 149 IPC. The substantial sentence of imprisonment are directed to run concurrently. Since, the fine amount imposed by the trial court has already been paid by the accused, the remaining fine amount of Rs.8,000/- is to be paid

by each of the accused. Since, the substantial sentence for a period of one week rigorous imprisonment has already undergone by the accused, each of the accused (1,3 to 6) are directed to be set at liberty and the charge against A2 is recorded as charge abates.

5.Challenging the modification of the sentence passed by the learned Sessions Judge, Nilgiris at Uthagamandalam, the present revision has been filed.

6.Heard Mr.B.Ramamoorthy, learned counsel appearing for the petitioner, Mr.K.V.Sridharan, learned counsel appearing for the respondents 1,3,4,5 and 6 and Ms.T.P.Savitha, learned Government Advocate, appearing for the 2nd respondent.

7.Learned counsel appearing for the revision petitioners submitted that the respondents are willing to pay Rs.20,000/- as a compensation to the victims in this case. He further submitted that the fine amount already paid by the respondents in the trial Court shall also be given to P.W.1 to 4 as compensation.

8.On going through the entire papers placed before this Court, the conviction and sentences imposed by the lower Appellate Court was already undergone by the respondents /A1,A3 to 6, which aspect has been clearly mentioned by the learned Sessions Judge, Nilgiris at Uthagamandalam in his judgment dated 15.12.2009 in Criminal Appeal No.20 of 2008 itself. Moreover, as per the evidence let in in the Trial Court, the revision petitioner and the respondents/Accused 1,3 to 6 are close relatives and they are residing in the same village. Further, the alleged offence occurred on 16.04.2005 and now, after completion of 13 years from the date of occurrence, waiving sentence is unnecessary. Moreover, both the parties are willing to compromise the matter as represented above. Hence, the fine amount collected earlier and now, an amount of Rs.20,000/-, which the respondents willing to pay, have to be paid equally to P.W.1 to 4 as a compensation. Since, P.W.2 has died, the legal heirs of P.W.2 is entitled to receive the same on behalf of P.W.2.

9.In the result, the Criminal Revision is disposed of with the direction that the fine amount already collected and the amount of Rs.20,000/-, the respondents willing to pay now as compensation shall be paid to the revision petitioners. The Revision Petitioner shall deposit the agreed amount of Rs.20,000/- into the account of S.C.No.48 of 2007 within one

month from the date of receipt of copy of this order. Thereafter, the Assistant Sessions Judge, Udhagamandalam is directed to disburse the same alongwith the fine amount already paid by the respondents/accused. After complying the same, a report shall be sent to this Court.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Sessions Judge,
The Nilgiris at Uthagamandalam.
- 2.The Assistant Sessions Judge,
Udagamandalam.
- 3.The Inspector of Police,
Nilgiris.
- 4.The Superintendent of Police,
Nilgiris District.
- 5.The District Collector,
Nilgiris District.
- 6.The Public Prosecutor,
High Court, Madras.

Copy to:

The Section Officer,
Criminal Section,
High Court, Madras-104
(for watching the report)

+1cc to Mr.K.V.Sridharan, Advocate sr.no.30578(10/07/2018)

Criminal R.C.No.465 of 2011

ssd(co)
nr 21/06/2018