BAILSLIP
CRL RC 52 OF 2012

The petitioners/Accused 1,2,4& 5 namely 1. Munichandrappa, S/o.Venkatasappa 2. Malaesappa S/o.Venkatasappa 3. Narasiamappa S/o. Munisamy 4. Devaraj S/o.Narasimmappa Were ordered to be released on bail by orderof this court dted 25.01.2012 and made in M.P. No.2 of 2012 in Crl Rc. No.52/2012.

The 3rd Petitioner/Accused 3, namely Srinivasa, S/o. Venkatesappa, Was directed to be released on bail as per the order of this court, dated 07.02.2002 made in MP.3 of 2012 in CRL. RC.52 of 2012.

In the High Court of Judicature at Madras

Orders Reserved on	23.03.2018
Orders Pronounced on	13.04.2018

C O R A M

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

Crl.R.C.No.52 of 2012

1. Munichandrappa
2. Malaesappa
3. Srinivasa
4. Narasiamappa
5. Devaraj ... Petitioners/Appellants/Accused 1 to 5

-vs-

State Rep. by
The Sub-Inspector of Police,
Choolagiri Police Station,
Hosur Taluk,
Krishnagiri District.
(Crime No.151/1999) ... Respondent/Respondent/Complainant

PRAYER: Criminal Revision filed under Section 397 r/w 401 of the Code of Criminal Procedure to call for the entire records in respect of C.A.No.10 of 2009 dated 12.11.2011 on the file of Principal District Sessions Judge, Krishnagiri by confirming the judgment passed by learned Assistant Sessions Judge Hosur in S.C.No.294 of 2002 dated 15.04.2009, peruse the same and set aside the judgment in view of the above mentioned grounds and acquit the accused persons and thus render justice.

For Petitioners: Mr.C.Karthick (Senior Counsel)
For Mr.D.Rajagopal

For Respondent : Mr.B.Arulmozhiarasan
Govt. Advocate (Crl. Side)

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O R D E R

The Accused 1 to 5 5 in S.C.No.294 of 2002 on the file of the learned Assistant Sessions Judge, Hosur, who were convicted by the said trial Judge. have come forward with the present Criminal Revision Case against the judgment of the appellate Judge, namely, The Principal Sessions Judge, Krishnagiri, pronounced in C.A No.10 of 2009, whereby the appellate Judge. confirmed the sentence of imprisonment with which they stood charged.

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

i) Al to A5 are closely related to each other. Already a civil dispute is pending between the accused and P.W.1. When P.W.1 tried to cultivate the land, the accused persons have threatened that "$kPd; gf;fk; te;jhy; bfhiy bra;nthk;". On 25:06.99 at around 02.30pm, when P.W.1 went to Soolagiri Shandy, all the accused stood around and fought with P.W.1. At that time, A1 assaulted P.W.1 with spear, A2 strangulated P.W.1's neck with his hands, A3 assaulted P.W.1 with knife on P.W.1's buttocks, A4 took a rock and came to assault and A5 assaulted with his hands. The occurrence was seen by Gopalappa and Sagaraja. P.W.1 was admitted in Soolagiri Government Hospital by general public. Thereafter P.W.1 was shifted for further treatment in Victoria Hospital, Bangalore.

ii) P.W.1 gave a complaint against the accused persons, which came to be registered in Crime No.29 of 99 on the file of the VHPS Police Station under Sections 141,143, 147, 148, 307 r/w 149 of IPC and thereafter, it was transferred to Soolagiri Police Station, which came to be registered in Crime No.151 of 99 under sections, 147, 148, 307 of Indian penal code on the file of the Inspector of Police, Soolagiri Police Station. After completing the investigation, the said police had filed a final report charging the accused under Sections 147, 148, 342, 307, 307 r/w 149 of Indian Penal Code.

3. The case was taken on file in PRC No.14 of 2002 by the learned Judicial Magistrate No.1, Hosur, and copies were served under section 207 Cr.P.C. and the case was committed being a sessions case and the learned Assistant Sessions Judge, Hosur took up the case on file in S.C.No.294 of 2002 and all

the accused denied the charge as false case during questioning.

4. Supporting the case of the prosecution, totally 14 witnesses were examined, 11 exhibits were marked and on the part of the defence, 6 exhibits were marked. No material objects were seized and produced.

5. After trial, the learned Assistant Sessions Judge, Hosur found the revision petitioners guilty and convicted all of them as under.

a) A2, A4, A5 punishable under section 147 of IPC for a period of 1 year R.I.;

b) A1 and A3 under section 148 of IPC punishable for a period of 1 year R.I.;

c) Al to A5 under section 342 of IPC for 9 months R.I.;

d) A1 to A3 punishable under Section 307 of IPC, 7 years R.I and fine of Rs.250/- I.D 3 months RI;

e) A4 and A5 under sections 307 r/w 149 of IPC, 7 years R.I and fine of Rs.250/- ID 3 months R.I.

6. As against the judgement of the learned Assistant Sessions Judge regarding the conviction as well as the sentences, the revision petitioners / accused preferred an appeal before the Principal Sessions Judge, Krishnagiri in C.A No.10 of 2009. The learned Appellate Judge, after hearing the arguments, concurred with the findings of the trial court holding the revisions petitioners/accused guilty of all the offences.

7. Aggrieved by the same and questioning the legality and substantiality of the said judgement of the learned Appellate Judge, confirming their conviction, the present Criminal revision Case has been filed.

8. Mr. C.Karthick, learned Senior Counsel appearing for the revision petitioners / accused contended that the learned trial Judge failed to consider the vital contradictions found in the testimonies of the prosecution witnesses and also the improbabilities found in the case of the prosecution; that therefore, the conviction of the revision petitioners / accused by the trial Court, which was confirmed by the appellate Court, for the offences could not be sustained in law and this court should acquit the revision petitioners / accused by holding that the prosecution had failed to prove its case beyond reasonable doubt.

9. In addition, the following contentions were also raised by the learned Senior Counsel for the revision petitioners / accused:

i) There was a delay in registering the case and delay in forwarding the complaint and FIR to the learned Judicial

Magistrate;

ii) The courts below failed to take into account the fact that a civil suit was pending between the revision petitioners / accused and the defacto complainant and that the same provided the motive for the Pw1 to prefer a false compliant against the revision petitioners / accused.

iii) The courts below failed to take into account that though as per the prosecution, P.W.1 was attacked with deadly weapons, but no weapons were seized by the prosecution to support their case.

10. This court paid its anxious consideration to the above said submissions made on both sides. The judgements of the courts below and the materials available on record were also perused.

11. The defacto complainant / victim and the revision petitioners/accused are relatives. The case of the prosecution is that due to dispute over an immovable property, the revision petitioners / accused with an intention to eliminate the defacto complainant / victim, made an attempt on his life by inflicting cut injuries on various parts of his body using spear and knife The prosecution has alleged a motive for occurrence. The existence of such motive is not at all disputed and on the other hand it is admitted. According to the prosecution version, a civil case is pending and in this regard, it is proved by way of Defence side Exhibits. In addition, prosecution witnesses had admitted to the property dispute. Hence, the courts below have committed no error in arriving at a conclusion that there was a motive for the occurrence. However, motive shall not be considered as everything for the prosecution as it is only one of the factors in the path of proving the charge against the accused. While the existence of such a motive is held to be proved, the court must keep in mind that motive is a double edged weapon capable of being used far and against the accused.

12. In this case, the dispute regarding a landed property has been proved by the prosecution and admitted by the accused. Apart from proving the said motive, the witnesses have given clear testimonies regarding the occurrence. However P.W.2, who is the eyewitness had made contradictory statement with regard to the incident that, P.W.1 victim was taken to the hospital with the spear, was disproved.

13. P.W.11-Dr.S.G.Ramanna is the medical officer, who admitted the victim in Victoria hospital and issued Ex.P4-wound certificate. The following injuries were noted by P.W.11 as the injuries found on P.W.1:

i) a cut injury measuring 6x4 cm from the front to back of the stomach;

ii) a lacerated injury measuring 1x1 ½ cm over the nose;

iii) swelling around the neck.

14. For the above injuries, as per the prosecution, P.W.1 was originally treated in Government Hospital, Soolagiri and thereafter shifted to Victoria hospital, Bangalore. However, no documents were marked in this regard. The first information report was lodged on 27.06.99 with delay of 2 days. However it is to be seen that the injuries could have been self inflicted or could not have been sustained in any other way like in an accident. Therefore, the findings of the trial court, which was confirmed by the appellate Court, that the injuries found on P.W.1 were made by another person does not support with materials. Further it is seen that no material objects were seized by the prosecution, which both the courts failed to consider.

15. Further it is seen that all the eye Witnesses had turned hostile and other witnesses are chance witnesses. Various courts have reiterated that in order to convict a person, the chain of investigation should be without missing links. However, in the present case, both the courts below had rightly considered the motive, however failed to note that the prosecution theory is with missing link connecting the chain of events.

16. The opinion of the Medical officers in this regard, coupled with shakeable oral testimony without proper seizure of the weapons will make it clear that the occurrence, as alleged by the prosecution, stands not proved beyond reasonable doubt; Hence the concurrent findings of the trial court as well as lower appellate Court holding that the prosecution had established its case by reliable evidence and materials beyond reasonable doubt that the assailants of P.W.1 are the revision petitioners / accused and they have caused injuries with deadly weapons cannot sustain.

17. Moreover, the evidence adduced by the Medical officer do not support the case of the prosecution that P.W.1 was likely to die, had he not been attended medically. There is no evidence to prove that any of the wounds if unattended, would have in all probability resulted in death of P.W.1. The nature of injuries and the parts of the body on which the injuries were found will make it clear that the life of P.W.1 will be in danger.

18. The Courts below have committed an error in holding that the prosecution had proved its case that the revision petitioners / accused by their act committed the offence of attempting to commit murder. The said finding,

according to the considered view of this Court, is on an erroneous appreciation of evidence and application of the provisions of law. Hence the offence proved to have been committed by the revision petitioners / accused would have been given benefit of doubt for want of sufficient evidence supported by materials. The findings of the courts below could be construed as perverse, when the same is against the evidence or not supported by evidence. Therefore, I am of the considered view that the conviction and sentence imposed on the revision petitioners herein is not sustainable in law, as the finding of the courts below is not supported by evidence. Hence, to meet the ends of justice, I am of the view that the criminal revision has to be allowed.

19. In the result,

a) the Criminal Revision case is allowed;

b) the conviction and sentence, imposed on the revision petitioners by the courts below are set aside;

c) The bail bonds, if any executed by the revision petitioners shall stand cancelled and the fine amount, if any paid by the revision petitioners is ordered to be refunded to them forthwith.

Sd/-
Assistant Registrar(Co)

//True Copy//

Sub Assistant Registrar

ar/vs
To:

1. The Principal District & Sessions Judge,
   Krishnagiri.

2. The Assistant Sessions Judge
   Hosur.

3. The Judicial Magistrate No.1,
   Hosur.

4. Do thro. The Chief Judicial Magistrate, Krishnagiri.

5. The Sub-Inspector of Police,
   Choolagiri Police Station,
   Hosur Taluk,
   Krishnagiri District.

6. The Public Prosecutor,
High Court, Madras.

7. The Superintendent, Central Prison, Vellore.

Copy to

The Section Officer,
Criminal Section, High Court, Madras.

Judgment made in
Crl.R.C.No.52 of 2012

sv(CO)
TR(25/04/2018)