

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.07.2018

PRONOUNCED ON : 18.07.2018

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRL.A.No.1635 of 2003

The State rep by
The Deputy Superintendent of Police,
C.B.C.I.D.,
Dharmapuri
Cr.No.311 of 2011 Appellant/Complainant

Vs

1. Mullaiventhan
2. City Murugesan
3. Prakasam
4. Madaiyan
5. Dhanakoti
6. Kozhi Razak @ Muniyappan
7. Srirangan
8. Semalai
9. Raji
10. Tamilmani
11. Krishnankumar Respondents/Accused

Prayer:- Criminal Appeal filed under Section 378 of Criminal Procedure Code, against the judgment dated 04.04.2003 in C.C.No.174 of 2001 on the file of the learned Judicial Magistrate No.1, Dharmapuri and pray that this Court may be pleased to set aside the order of acquittal and convict the accused as charged.

For Appellant : Ms.M.Prabavathi Ganeshram
Additional Public Prosecutor

For Respondents
For R1 : Mr.C.P.Palanichamy
for Mr.G.Anbarasu
For R3,4,7 & 10 : Mr.R.Thamaraiselvan
For R5 : Mr.M.Ramamurthy
For R9 : No appearance
R6 & R11 : died

JUDGMENT

This appeal is arising out of the judgment dated 04.04.2003 on the file of the learned Judicial Magistrate-I, Dharmapuri thereby acquitted all the accused for the offence under Section 147, 506(ii) r/w 149, 341, 332, 342 of IPC.

2. The case of the prosecution is that P.W.1 Anbumani on 19.02.2001 about 3.30 p.m., after receiving a message through telephone, he had come to travelers bungalow and waited in the dinning room, where the first accused stayed along with other accused. While so A4, A7, A8 and A9 compelled him to cancel the auction in respect of Hogenakkal Desanatheeswarar temple land for lease. He refused to cancel and said that he had no power to cancel the auction. Thereafter, the first accused scolded him with filthy language, and P.W.1 was running towards his vehicle to escape from them and he was chased by accused A7, A8 and A9 and he was beaten by them by their hands and legs. He sustained simple injury and on the same day he went to the Government Head Quarters Hospital, Dharmapuri and he was referred to G.M.K.M.C. Hospital, Salem. Thereafter, he lodged a complaint and it was registered in Crime No.311 of 2001 for the offence under Sections 147 and 332 IPC by P.W.39. P.W.41 investigated and further investigation completed by P.W.42 and filed charge sheet for the above said offences.

3. The trial Court framed necessary charges and the accused pleaded not guilty. During the course of trial P.W.1 to P.W.42 were examined; Ex.P.1 to Ex.P.13 were marked. When the accused were questioned under Section 313 of Cr.P.C. about the incriminating evidences against them, they denied the same. On the defence side, the accused marked Ex.D.1 to Ex.D.3. Upon considering the oral and documentary evidence, the trial Court acquitted all the accused persons and exonerated them from all the charges. As against the same the present criminal appeal preferred by the respondent/Police.

4. The learned Additional Public Prosecutor for the appellant would submit that the charges are laid as against all the accused and the prosecution proved the case beyond any doubt by examining P.Ws.1 to 42 and marked Ex.P.1 to Ex.P.13. Further, P.W.1 categorically deposed and it was clear, cogent and convincing evidence to prove the commission of offence. The medical evidences are also corroborated with the ocular evidence and as such as the accused persons are liable to be convicted.

5. The learned counsel for the first respondent would submit that the entire prosecution case stands on the sole witness to the incident viz., P.W.1 and except P.W.1 no other witnesses to support the case of the prosecution. Admittedly, P.W.1 came to the travellers bungalow on 19.02.2001, and waited

in the dinning room. Only on the petition submitted by the general public, he was called for enquiry. But P.W.1, categorically deposed that while he was waiting, the accused 7, 8 and 9 were requested to cancel the auction in respect of the temple property lease. P.W.1 also deposed that he did not see any of the accused before the alleged occurrence and there was no previous enmity between him and the first accused. Therefore, it is clear that there is no intention to invite P.W.1 to the travellers bungalow.

6. Further, P.W.1 stated that the first accused scolded him with filthy language and he was trying to run away from that place to board his vehicle, the accused 7, 8 and 9 were chased him. When he about to board the vehicle, he was pulled out by the accused persons and he was beaten by them with hands and legs. Even though, he knew the name of the persons, he did not disclose the same and deposed that he can identify them. But the prosecution failed to conduct identification parade and as such, there was no identification of the accused persons by P.W.1. There are so many persons standing out side the first accused's room and also the travellers bungalow. Hence, it is difficult to find out the persons who actually attacked P.W.1. Further, P.W.1 admitted that while he was running to his vehicle, he did not see any of the accused, who are assembled there. It shows that the non-conduction of the identification parade is fatal to the case of the prosecution.

7. The learned counsel appearing for the first respondent also contended that A4, A5 and A8 were injured on the very same occurrence and lodged the complaint and the same was registered by P.W.39, the Sub Inspector of Police in Cr.No.310 of 2001 for the offence under Section 341 and 342 IPC. Only on the complaint lodged by P.W.1, investigation has been completed and filed charge sheet as against all the accused persons. In respect of the complaint, lodged by the accused A4, A5 and A8, was not investigated and no charge sheet has been filed. It is against Rule 588-A of the Madras Police Standing Order and as such the entire case of the prosecution vitiated and the trial Court rightly acquitted the appellants.

8. The learned counsel for the first respondent further contended that except P.W.1, no other witnesses corroborated the allegation and none of the witnesses supported the case of P.W.1. P.W.1 even though deposed that he can identify the accused persons, no identification parade was conducted by the respondent and it is fatal to the prosecution case. Even P.W.1 did not name the accused persons, he simply stated that while he was running to the jeep, he did not see the persons who chased him. Further contended that P.W.37, who treated the accused 5 & 8 and also P.W.1 issued wound certificates and Accident

Register under Exs.D. 2 & 3 and Ex.P.5. So admittedly, on the very same occurrence in which, P.W.1 sustained injury, the accused 4, 5 and 8 were also sustained injury and as such, the investigation officer ought to have filed charge sheet in both crime numbers. But the investigation officer did not follow the procedure laid down in the Police Standing Order 588-A. Therefore, he prayed for confirmation of acquittal order passed by the trial Court.

9. The learned counsel appearing for the respondents/accused 3, 4, 6, 7, 10 and 11 would submit that the argument made by the learned counsel for the first respondent/accused to be adopted for them also. Further he would submit that 6th and 7th accused are died. The learned counsel for the 5th respondent has also made the same submission to adopt the same arguments for him also.

10. Heard rival arguments advanced by Ms.Prabavathi Ganesh Ram, learned Additional Public Prosecutor appearing for the appellant and Mr.C.P.Palanichamy, learned counsel appearing for the first respondent and Mr.R.Thamarai Selvan, learned counsel appearing for the respondents 3,4,7 and 10 and Mr.M.Ramamurthy, learned counsel for the fifth respondent and perused the records placed before this Court.

11. It is seen from Exs.D.2 & 3 issued by P.W.37 on behalf of the accused 5 and 8 for the injuries sustained by them on the very same occurrence took place on 19.02.2001. The same doctor P.W.37, also treated P.W.1 and issued Ex.P.4. Even before the lodgment of complaint by P.W.1, the 8th accused lodged complaint before the very same Police Officer and it was registered in Crime No.310 of 2001 for the offence under Sections 341 and 342 of IPC. Subsequent to the said First Information Report, the complaint lodged by P.W.1 was registered in Crime No.311 of 2001 as against all the accused persons herein. As such, it is confirmed that on the very same occurrence, there was a counter case registered by the same Police Officer. When that being so, the Investigation Officer shall follow the procedure laid down under Rule 588-A of the Madras Police Standing Order which reads as follows:-

"In a complaint and counter complaint arising out of a same transaction, the investigation officer has to enquire into both of them and adopt one or the other of the two courses, namely, (1) to charge the case where the accused were the aggressors or (2) to refer both the cases if he finds them untrue. If the Investigation Officer finds that either of the course is difficult, he should seek the opinion of the Public Prosecutor and act accordingly. A

final report should be sent in respect of the case referred as mistake of law and the complainant or the counter-complainant, as the case may be should be advised about the disposal by a notice in Form-96 and to seek remedy before the specified Magistrate if he is aggrieved by the disposal of the case by the Police."

While such being the law, the Investigation Officer does not said to have adopted the law that is to be followed in the investigation of the case in counter. It vitiates the entire trial of the prosecution case. Admittedly, the counter case has been registered and unfortunately, the respondent did not produce any piece of evidence to show that the said crime No.310 of 2001 has been investigated and closed as "Mistake of fact". Therefore, the respondent did not follow the procedure laid down under Rule 588-A of the Madras Police Standing Order.

12. It is also seen from the records, P.W.1 was the Assistant Commissioner of HR & CE department and the witnesses from the same department, who are the eye witnesses to the alleged occurrence, turned hostile. Even though other witnesses supported the case of the prosecution, they are only hear-say witnesses and as such, the prosecution failed to prove the case as charged against the accused persons. Except P.W.1, no witnesses supported the case of the prosecution.

13. The learned Additional Public Prosecutor relied the judgment made in "Crl.A.No.914 of 2006 - Namdeo Vs State of Maharashtra", by the Hon'ble Supreme Court of India which held as follows:-

".....It is no doubt true that there is only one eye witness, who is also a close relative of the deceased, viz., his son. But it is well settled that it is quality of evidence and not quantity of evidence which is material. Quantity of evidence was never considered to be a test for deciding a criminal trial and the emphasis of Courts is always on quality of evidence"

In the same judgement, the Hon'ble Supreme Court of India cited the judgment reported in "1957 SCR 981 - Vadivelu Thevar Vs State of Madras" held as follows :-

On a consideration of the relevant authorities and the provisions of the Indian Evidence Act, the following propositions may be safely stated as firmly established: (1) As a general rule, a court can and may act on the testimony of a single witness though uncorroborated. One credible witness outweighs

the testimony of a number of other witnesses of indifferent character. (2) Unless corroboration is insisted upon by statute, courts should not insist on corroboration except in cases where the nature of the testimony of the single witness itself requires as a rule of prudence, that corroboration should be insisted upon, for example in the case of a child witness, or of a witness whose evidence is that of an accomplice or of an analogous character. (3) Whether corroboration of the testimony of a single witness is or is not necessary, must depend upon facts and circumstances of each case and no general rule can be laid down in a matter like this and much depends upon the judicial discretion of the Judge before whom the case comes.

Quoting Section 134 of the Evidence Act, their Lordships stated that "we have no hesitation in holding that the contention that in a murder case, the court should insist upon plurality of witnesses, is much too broadly stated."

14. The judgment relied upon by the learned Additional Public Prosecutor in respect of only one eye witness and it is a credible one. In the case on hand there is only one witness, the victim P.W.1 and his deposition has not corroborated by other witnesses, since the nature of testimony of P.W.1 is not clear to prove the case of the prosecution beyond any doubt.

15. The learned counsel for the first respondent relied the judgement reported in "AR 2003 SC 507 - Joseph Vs. State of Kerala" which held that :-

"in case of this nature, when there is a sole witness to the incident, his evidence has to be accepted with an amount of caution and after testing it on the touchstone of the evidence tendered by the other witnesses or evidences as recorded."

In the case on hand, except P.W.1, no other witnesses or evidences supported the case of the prosecution. As such the prosecution failed to prove the case beyond any doubt.

16. Further, the learned counsel appearing for the first respondent relied the judgement reported in "(2014)5 SCC 154 - Basappa Vs. State of Karnataka" held that :-

"Criminal Law - Appeal against acquittal - Scope for appellate Court - Held- While considering the appeal against acquittal, the appellate Court is first required to seek an answer to the question whether findings of trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable and if the court answers the above question in negative then acquittal cannot be disturbed"

In this case, the Hon'ble Supreme Court of India cited a judgment reported in "(2006) 10 SCC 313 - Kallu alias Masih and ors Vs. State of Madhya Pradesh" which held as follows :-

"8. While deciding an appeal against acquittal, the power of the appellate Court is no less than the power exercised while hearing appeals against conviction. In both types of appeals, the power exists to review the entire evidence. However, one significant difference is that an order of acquittal will not be interfered with, by an appellate court, where the judgement of the trial court is based on evidence and the view taken is reasonable and plausible. It will not reverse the decision of the trial court merely because a different view is possible. The appellate Court will also bear in mind that there is a presumption of innocence in favour of the accused and the accused is entitled to get the benefit of any doubt. Further, if it decides to interfere, it should assign reasons for differing with the decision of the trial Court."

Further the Hon'ble Supreme Court of India cited another judgment reported in "2010(12) SCC 59 - Ganpat Vs.State of Haryana and ors." which held that :-

"13.The following principles have to be kept in mind by the appellate court while dealing with appeals, particularly, against an order of acquittal:

(i) There is no limitation on the part of the appellate court to review the evidence upon which the order of acquittal is founded and to come to its own conclusion.

(ii) The appellate court can also review the trial court's conclusion with respect to both facts and law.

(iii) While dealing with the appeal preferred by the State, it is the duty of the appellate court to marshal the entire evidence on record

and by giving cogent and adequate reasons may set aside the judgment of acquittal.

(iv) An order of acquittal is to be interfered with only when there are "compelling and substantial reasons" for doing so. If the order is "clearly unreasonable", it is a compelling reason for interference.

(v) When the trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of ballistic experts, etc. the appellate court is competent to reverse the decision of the trial court depending on the materials placed.....

14.....

15. In this context, yet another caution struck by this Court in Chandrappa and ors Vs. State of Karnataka (2007) 4 SCC 415 would also be relevant :-

42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate Court while dealing with an appeal against an order of acquittal emerge:

[1] An appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded.

[2] The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

[3] Various expressions, such as, substantial and compelling reasons, good and sufficient grounds, very strong circumstances, distorted conclusions, glaring mistakes, etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of flourishes of language to emphasis the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

[4] An appellate Court, however, must bear in mind that in case of acquittal there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent Court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial Court.

[5] if two reasonable conclusions are possible on the basis of the evidence on record, the appellate Court should not disturb the finding of acquittal recorded by the trial Court."

17. In view of the above discussions, this Court has no hesitation to conclude that there is no infirmity or illegality in the order passed by the trial Court and as such the impugned judgment does not warrant any interference from this Court. The learned Judicial Magistrate No.1, Dharmapuri, has rightly acquitted the accused persons and as such the present appeal has no legs to stand further and it is liable to be dismissed.

18. Accordingly, the criminal appeal is dismissed and the Judgement passed by the learned Judicial Magistrate No.1, Dharmapuri, in C.C.No.174 of 2001 on 04.04.2003 is confirmed.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

सत्यमेव जयते Sub Assistant Registrar

rts

TO

1. THE JUDICIAL MAGISTRATE NO.1,
DHARMAPURI

2. DO THRO THE CHIEF JUDICIAL MAGISTRATE,
DHARMAPURI.

3. THE DEPUTY SUPERINTENDENT, C.B.C.I.D.
DHARMAPURI.

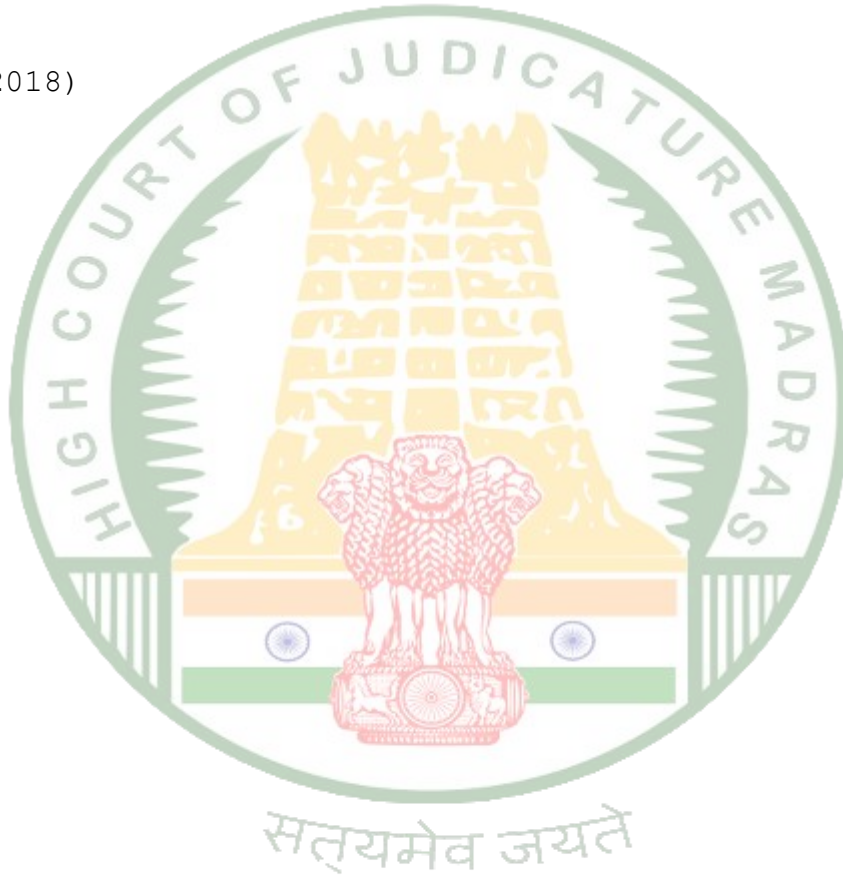
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THE SECTION OFFICER,
CRIMINAL SECTION, HIGH COURT, MADRAS.

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+1cc to Mr.M.D.THIRUNAVUKKARASU, Advocate, S.R.No.48439

JUDGMENT IN
CRL.A.1635 OF 2003

GJ (CO)
TR(30/07/2018)



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