



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 12.02.2018

CORAM:

THE HONOURABLE DR.JUSTICE S.VIMALA
AND
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

Cr1.A.(MD)No.258 of 2016

V.Maharajan : Appellant/Defacto complainant

Vs.

1.State through Inspector of Police,
Gangaikondan Police Station,
Gangaikondan,
Tirunelveli District.
(Crime No.4 of 2011) : 1st Respondent/Complainant

2.A.Ooikatan

3.A.Chinna Ooikatan

4.T.Nagarajan

5.M.Ravi

6.S.Meenakshi Sundaram : Respondents 2 to 6/Accused Nos.1 to 5

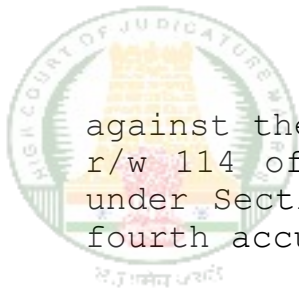
PRAYER : Criminal Appeal filed under Section 372 of Cr.P.C. to call for the records pertaining to the case in S.C.No.44 of 2012, on the file of the I Additional District and Sessions Judge, Tirunelveli, dated 20.08.2015 and to set aside the same and commit the respondents 2 to 6 into custody in accordance with law.

For Appellant	: Mr.V.Sriram Amicus Curiae
For R-1	: Mr.K.S.Durai Pandian Additional Public Prosecutor
For R-2, R3&R5	: Mr.P.Samuel Gunasingh
For R4 & R6	: Mr.R.Niresh Kumar

J U D G M E N T

(Judgment of the Court was delivered by S.VIMALA, J.)

The defacto complainant, the person, who set the criminal law in motion, has filed this appeal aggrieved over the acquittal of the accused Nos.1 to 5 by the Sessions Judge, Tirunelveli in S.C.No.44 of 2012, dated 20.08.2015. The charges were framed against the first accused under Sections 148 and 302 IPC and charges were framed



against the second and fifth accused under Sections 147, 341 and 302 r/w 114 of IPC. The charges against the third accused were framed under Sections 148, 341, and 302 of IPC and the charges against the fourth accused were framed under Sections 148 and 302 IPC.

2. The prosecution case in brief:-

(i) The accused Nos. 1, 2 and 5 belong to Gangaikondan and the accused No. 3 belongs to Srivaigundam and accused No. 4 belongs to Sivagangai District. The deceased Velu Thevar was enjoying the lands of one Sahul Hameed Family of Melapalayam for lease. On 26.03.2010, the first accused purchased the properties, in which, the deceased Velu Thevar was enjoying as lessee and thereby, there was enmity between the deceased and the first accused. In the meanwhile, on 10.10.2010, the son of the first accused was murdered. For that, A1 thought that the deceased aided for the murder of his son and developed enmity with him. Due to enmity on 09.01.2011, the first accused along with other accused, assaulted the deceased by using bill hooks on his head and caused death.

(ii) On receipt of complaint given by the appellant/defacto complainant, the respondent police registered a case in Crime No. 04 of 2011 for the offence under Sections 147, 148, 341 and 302 r/w 114 of IPC. Ex.P12 is the First Information Report. On completion of the investigation, the investigating officer filed a final report. The case was committed to the Court of session and thereafter, necessary charges were framed.

(iii) In order to substantiate the charges levelled against the accused, the prosecution examined 28 witnesses and also relied on 26 Exhibits and 14 Material Objects. On completion of the evidence on the side of the prosecution, all the accused were questioned under Section 313 of the Cr.P.C as to the incriminating circumstances found in the evidence of the prosecution witnesses, which they flatly denied as false. No defence witness was examined.

(iv) The lower Court heard the arguments and made a scrutiny of the materials available on record and found that the prosecution has not proved its case beyond reasonable doubt and hence, acquitted all the accused of all the charges. Hence, this appeal at the instance of the defacto complainant.

3. We have heard the learned counsel for the appellant and the learned counsel for the respondents and also perused the materials available on record.

4. The learned counsel for the appellant/defacto complainant would submit that there is motive for the occurrence and the motive was spoken to by P.Ws. 20 and 21. But perusal of the Judgment would go to show that P.Ws. 20 and 21 did not support the prosecution case and both of them have been treated as hostile.



5. Yet another contention of the learned counsel for the appellant/defacto complainant is that the recovery of material objects have been spoken to by witnesses and once the recovery is proved, then the confession leading to recovery become admissible and that will be a material evidence against these accused persons. Even the recovery witnesses have turned hostile and they did not support the case on recovery, according to the accused persons, they were called to police station and they were asked to sign and except that, they had not deposed anything.

6. It is not in dispute that the death of the deceased was not a natural one and he died only on account of multiple injuries sustained. According to Postmortem report, the death could have occurred 6 hours to 24 hours prior to postmortem and it was on account of multiple cut injuries. But the question is who caused those injuries, in other words, whether there is evidence to show that it is only the accused Nos.1 to 5, who are responsible for causing those injuries.

7. The complaint preferred by P.W.1 has been received by P.W.24-Sornam, who was the then Sub Inspector of Police at Gangaikondan and First Information Report has been registered under Ex.P12 and thereafter, investigation has been taken over by P.W.27-Periyasamy and the Observation Mahazar under Ex.P5 and Sketch-Ex.P14 have been preferred in the presence of witnesses. A bloodstained Bill Hook-M.O.5 has been seized under a seizer mahazar. Even though P.W.17-Vallinayagam is stated to be the Village Administrative Officer, who has signed in the Observation Mahazar as well as in the recovery mahazar, he has also turned hostile.

8. According to the prosecution, the first accused is stated to have purchased the properties, in which, the deceased Velu Thevar had been enjoying lease hold rights and on account of the same, there was an enmity between the deceased Velu Thevar and the first accused. It is also stated that the son of the first accused was murdered on 10.10.2010 and on account of that, the first accused thought that it is only the deceased, who aided the murder of his son and developed enmity with him. But, even the enmity part of it, is not supported by prosecution and the witnesses, who are relied upon by the prosecution viz., P.Ws.2 to 6 have also turned hostile and the motive part even is not supported.

9. Under such circumstances, when there is no proof for motive, occurrence and recovery of material objects, nothing survives to hold that the accused persons might have murdered the deceased Velu Thevar. The ground taken by the defacto complainant in the grounds of appeal does not merit acceptance and this Court is constrained to confirm the order of acquittal on account of the fact that there is not even an iota of evidence to hold that the accused persons are guilty. Hence, the appeal fails and the order of acquittal stands confirmed.



10.The services rendered by the counsel representing the appellant/defacto complainant is placed on record. The High Court Legal Services Committee of this Court is directed to pay remuneration, payable to the learned counsel for the appellant/defacto complainant.

11.In fine, the Criminal Appeal is dismissed.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

- 1.The Principal District Judge, Tirunelveli.
- 2.The Judicial Magistrate No.3, Tirunelveli.
- 3.The I Additional District and Sessions Judge, Tirunelveli.
- 4.The Chief Judicial Magistrate, Tirunelveli.
- 5.The District Collectorate, Tirunelveli.
- 6.The Director General of Police,
Mylapore, Chennai.
- 7.The Superintendent of Police, Tirunelveli.
- 8.The Inspector of Police,
Gangaikondan Police Station,
Gangaikondan,
Tirunelveli District.
- 9.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

COPY TO:

The Section Officer,
Criminal Section (Records),
Madurai Bench of Madras High Court,
Madurai. **(Two Copies)**

+1cc to M/S.V.Sriram, Advocate SR.No. 47757

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