

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.A.No.727 of 2009

State rep. By
The Inspector of Police,
Bagalur Police Station,
Krishnagiri District.
(Crime No.173/1997)

...Appellant

Vs

1.Devaraj
2.Gopi
3.Jayapal
4.Sampath
5.Balu
6.Jakkappa

...Respondents

Prayer:- This Criminal Appeal is filed under Section 378 Cr.P.C, to allow this appeal and set aside the judgement of acquittal of the respondents/accused [A-1 to A-6] passed by the learned Judicial Magistrate No.2, Hosur, in C.C.No.292/2007, dated 03.07.2009.

For Appellant :Mr.K.Prabakar, APP

For Respondents:Mr.G.B.Gnanavinothan for
M/S.V.Nicholas

JUDGEMENT

- 1.This Criminal Appeal arises against the judgment of acquittal passed by the learned Judicial Magistrate-II, Hosur, passed in C.C.No.292 of 2007 on 03.07.2009.
- 2.The case of the Prosecution is as follows:-
 - a) Based on a compliant given by one Gopalappa (PW.1) a case in Crime No.173/1997 was registered by the appellant for offences under Sections 147, 148, 448, 427 and 506(ii) IPC. The Investigating Officer after completion of investigation filed the final report in C.C.No.292/2007 on the file of the learned Judicial Magistrate No.II, Hosur against the respondents/accused for the offences under Section 148,451, 427 and 506(ii) IPC.

- b) The charges against the respondents was that, PW.-Gopalappa had constructed a house with an asbestos roofing in Survey No.54/7 by spending Rs.5,000/- and that another house was built originally in Survey No.54/7 consisting of two house sites and it was jointly purchased by the complainant/PW.1 (Gopalappa) and PW.4 one Rajanna.
- c) PW.1 and PW.4 had purchased 6 cents of house land for building a house from on Gowdappa on 20.07.1997 through an unregistered Sale agreement and after purchasing of the land, he had put up a construction of house with asbestos roofing. While so, on 02.08.1997, at 2.00 am, the accused, armed with weapons, damaged the house fully and when it was questioned by the PW.1 and others, Respondents/Accused have threatened PW.1 by brandishing weapons, thereby the complaint was registered.
- d) Before the Trial Court, the appellant/complainant examined 13 witnesses and marked 6 exhibits and 4 Material Objects.
- e) On the side of the defence, the 3rd respondent/accused one Jayabal was examined as defense witness and through him 12 exhibits were marked as Ex.D1 and Ex.D12. On appreciation of materials before it, the Trial Court vide Judgement dated 03.07.2009, acquitted respondents. The respondent/State has preferred the present appeal against the acquittal.
3. The learned Additional Public Prosecutor appearing for the State/appellant would submit that the prosecution has proved the case by examining PW.1 and PW.4, the owners of the house and further, they have spoken about the purchasing property from one Gowdappa and building up of houses there. Further, they have also examined and cross examined the witnesses to prove that they had purchased the property from one Gowdappa. The incident has been proved by examination of the other witnesses who had spoken about the respondents/accused coming to the scene of occurrence and damaging the entire houses during the wee hours on 02.08.1997. The evidence of PW.1 and PW.4 has been corroborated by PW.2 and PW.3 who are respectively the brother and wife of the PW.1. PW.4 is the co-owner and whose house was also damaged on the same day. PW.5 is the Mason who had constructed the houses and he has spoken about having constructed the house for PW1 and PW4. PW.6 is the witness to the occurrence on the night hours. PW.7 is the witnesses to the Observation mahazar in respect of recovery of broken pieces of asbestos and bricks. PW.8 and PW.9 have spoken the accused having agreed to pay the compensation to PW.1. P.W.10 was the Village Administrative Officer and he was examined to prove that PW.1 and PW.4 were in possession of the property during the relevant time. PW.11 is the witness with regard to the arrest of the second respondent/Gopi and that he has given a confiscation leading to recovery of crowbar and stick which were marked as M.O.3 and M.O.4. PW.12/ the Sub

Inspector of Police has spoken about the registration of the case and PW.13 is the Investigating Officer who had conducted the investigation and filed the final report.

4. The learned Additional Public Prosecutor would further submit that the prosecution has proved the case beyond all reasonable doubts whereas the Trial Court on wrong presumption of fact, has acquitted the respondents/accused.
5. The learned counsel for the respondents would submit that during the pendency of the appeal, the first respondent had passed away on 23.01.2018 and the third respondent had passed away on 25.10.2018 respectively and thereby the charges against them stand abated.
6. He would further submit that the property in question belongs to the first respondent/accused and that the property was purchased by the first respondent/accused by a registered Sale Deed and he has been in possession from the date of purchase as per Exs.D1 and D2 the citta adangal. He would submit that the PW.10, Village Administration Officer had, in his evidence, stated that the property in question belong to the first respondent/accused through a Will and thereby, he has granted chitta infavour of the first Respondent/accused and he had admitted that the certificate issued in favour of the defacto complainant was not issued after perusing the concerned revenue records. The learned counsel for the respondents would further submit that in respect of a very same incident on a complaint given by PW.4 a case in Cr.No.174/1997 was registered against the very same accused. The respondent after completion of investigation filed CC.No.293/2007 and the Trial Court, after full-fledged trial, acquitted the accused. Against the judgment of acquittal in the connected case, the State/Appellant had preferred an appeal in CrI.A.No.725/2009 and this Court, by a detailed judgment dated 18.07.2018 and by accepting the finding of the Trial Judge in acquitting the accused, had dismissed the appeal filed by the State, finding no reason to interfere. He would submit that this Court taking into consideration, the finding of the Trial Court that the State has not proved the case beyond reasonable doubt, granted benefit of doubt to the accused and acquitted them on the same set of facts relating to the case in Cr.No.174/1997 on the basis of the complaint given by PW.4 and after completion of investigation, the respondents filed FIR in CC.No293/2007 before the learned Judicial Magistrate No.II, Hosur and the respondents/accused were tried for offence under Section 148, 148, 448, 427 and 506(ii) IPC, and in the above case, the present defacto complainant was examined as PW.3 and the trial Court by a reasoned Judgement acquitted the accused.
7. The reasons given by the trial Court in Acquittal are follows:
 - “(i) The First information Report in the case was registered on 03.08.1997 and the charge sheet has been filed only on 30.04.2004. There was no explanation for

delay in filing the charge sheet and further, in the charge sheet, the date of occurrence was mentioned as 03.08.1997. Since the Investigating Officer had wrongly mentioned the date of occurrence as 03.08.1997 instead of 02.08.1997, it is suspicious whether the incident had taken place as stated by the appellant at the time and at the said place.

(ii) As PW-1 claims ownership through an unregistered document Ex.P1, it is for him to prove the same. Neither Gowdappa, who is the agreement holder nor the witnesses to that agreement were examined.

(iii) Prosecution has failed to establish in whose possession, the subject property was, on the date of occurrence.

(iv) In cross, accused has failed to question PW-2 Rangappa, an alleged eye-witness to the occurrence, as to why he had been to that place at 2.00 a.m.. Even so, Alisayubu, Venkatesh, Nanchudachari, Gowdappa, Venkatesh, Rajeskararaja, Munisamy, J.R.D.Chandrasekar, Mariappa, Muniappa, Nagaraj, Thimmappa, Billappa who are listed as witnesses on behalf of the prosecution, have not been examined.

(v) It was evidence of PW-6 that 5 workers were in his loom and he had only witnessed the occurrence and none of the above five had. It is highly unbelievable that when 50 persons joined together at 2.00 a.m. And carried out the offending acts, none of the 5 workers had seen the happening. Even though PW-6 had stated that his look is close to the place of occurrence, the house of PW-6 or look is not mentioned in Ex.P6, rough sketch. Therefore, PW-6's presence at the place of occurrence was doubtful. There were contradictions in the evidence of PW-2 and PW-6.

(vi) Survey number of the property has not been correctly mentioned.

(vii) It is unbelievable that the house of de facto complainant has been razed to the ground by accused persons using M.Os.3 & 4 [crowbar and wooden log]

(viii) There was delay of several years in sending the material objects to Court and filing of charge sheet and there was no explanation for the delay. In such circumstances, a doubt arises whether the occurrence had taken place as projected by prosecution. "

8. I have carefully analysed the evidence on record and the judgment passed by the Trial Court and also the order of this Court in Crl.A.No.725/2009, I do not find any infirmity in the order passed by the Trial court. In view of the same and also taking into consideration the judgment of this court in Crl.A.No.725 of 2009, the appeal stands dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

jrs

To:

1. The Judicial Magistrate No.2,
Hosur.
2. The Inspector of Police,
Bagalur Police Station,
Krishnagiri District.
(Crime No.173/1997)
3. The Public Prosecutor,
High Court, Madras.

+1cc to Ms.V.Nicholas, Advocate Sr.54135

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vd[co]
srg 09/09/2019