

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.07.2019

CORAM:

THE HONOURABLE MR. JUSTICE A.D. JAGADISH CHANDIRA

Crl.A.No.255 of 2010

State represented by
The Inspector of Police,
B4 Race Course Police Station,
Coimbatore.
(Crime No.1266/2006) ... Appellant/Complainant

Vs.

1.B.Ganesh Pandiyan @ GaneshRajapandiyan

2.B.Sivakumar ... Respondents/Accused 1 & 2

PRAYER: This Criminal Appeal has been filed under Section 378 of the Criminal Procedure Code, to set aside the order of acquittal passed by the learned Second Additional Assistant Sessions Judge, Coimbatore by judgment dated 16.04.2008 in S.C.No.49 of 2007 and convict the accused /respondents herein for the offence with which they were charged.

For Appellant : Mr.K.Prabakar, APP

For Respondents: Mr.D.Ramesh Raj

JUDGMENT

This Criminal Appeal has been preferred against the judgment dated 16.04.2008 in S.C.No.49 of 2007 on the file of the learned Additional Sessions Judge/ Second Additional Assistant Sessions Judge, Coimbatore, acquitting the respondents/accused 1 and 2 for the offence under Section 307 IPC.

2 The case of the prosecution is that on 15.06.2006, when the son-in-law of PW.1 had been washing his hands in the bathroom after having his lunch, the brother of the respondents/accused one Senthilkumar had lifted the asbestos roof and looked into the bathroom. PW.1 had informed about the same to the house owner and the house owner had questioned the brother of respondents/accused due to which there ensued an quarrel. PW.1 had given a complaint to the police on

16.06.2006. Thereafter on 01.07.2006, when P.W.1 was not in station, the respondents/accused have caused damage to the household articles by letting in water into the house of the PW.1 by a tube. Thereby, the house owner had reprimanded the respondents/accused. On the night of 07.07.2006, while PW.1 along with his daughter Padma and his grand-daughter Pavithra were sleeping, the respondents/accused with an intention to commit the murder of the grand-daughter, Pavithra had let in water into the house and when PW.1 had questioned, the accused have threatened him saying "சாவங்கடா நாய்களா, நாங்கள் தான் ஏற்கெனவே, எச்சரித்தோம்ல" and on the complaint given by PW.1 a case in Cr.No.1266/2006 was registered by the Appellant against the respondent/accused for offence under Section 307 IPC after completion of investigation a final report was filed by against the respondents/accused for the offence under Section 307 IPC before the learned Judicial Magistrate No.III, Coimbatore. Finding that the case is exclusively triable by the Court of Sessions, the learned Magistrate after complying with the formalities under Section 207 Cr.P.C committed the case to the Principal District and Sessions Court, Coimbatore and thereafter, the case was made over to the trial Court. When the Trial Court questioned the respondents /accused, they had denied the offence and the Court finding that there was a prima facie case made out against the respondents/accused, had framed the charges and questioned the respondents/accused and they denied the charges and the sought to be tried. On the side of the prosecution. PW.1 to PW.14 were examined and Exs.P1 to P7 were marked and M.O.1 and M.O.2 were marked. Thereafter, the respondents/accused were questioned under Section 313 Cr.P.C. and after hearing the arguments of both learned counsel, the trial Court had acquitted the respondents/accused, stating that the Appellant/Complainant had not proved the case beyond reasonable doubt. Assailing the judgment of the acquittal, the present appeal has been filed by the the State.

3 The learned Additional Public Prosecutor appearing for the appellant / State would submit that the trial Court had failed to appreciate the evidence adduced on the side of the prosecution when the charges against the respondents/accused were proved beyond reasonable doubt by cogent evidence. He would submit that the trial Court had erred in disbelieving the evidence of the prosecution witnesses by citing the minor contradictions in their evidence and the trial Court failed to appreciate the convincing and cogent evidence of PW.1, Mohan with regard to the occurrence place, time, etc. Further he would submit that the trial court failed to appreciate the evidences of PWs.2,3 and 4 who have corroborated the evidence of PW.1 and thereby, the trial court had committed a grave error in acquitting the respondents/accused.

4 The learned counsel for the respondents/accused would submit that there existed previous enmity between PW.2 the house owner of PW.1 and the respondents/accused. He would submit that it is an admitted case that suits were pending between PW.2, the house owner of PW.1 and the respondents/accused with regard to a common pathway and thereby, the case had been falsely foisted by PW.1 against the respondents/accused . The trial Judge taking into consideration the existing enmity and also finding that the witnesses have not cogently spoken about the occurrence rendered a finding that the prosecution has not proved the case beyond all reasonable doubt, and thereby had acquitted the respondents/accused and would submit that the judgment of acquittal rendered by the Trial Court does not warrant interference.

5 He would further submit that the learned trial Judge also took into consideration the grave delay in the F.I.R and the connected statements reaching the Court despite the case stated to have been registered immediately and thereby the trial Court had rightly come to the conclusion that the case was foisted on the respondents/accused due to previous enmity regarding a common pathway. The trial Court which had seen the demeanour of the witnesses had carefully analysed the evidence and the materials available on record and had come to a legal conclusion that the prosecution has not proved the case beyond reasonable doubt. He would submit that the learned Trial Judge had given valid reasoning for acquittal which needs no interference.

6.This Court has carefully considered the rival submissions and also thoroughly scanned through the evidence on record including the impugned judgment of acquittal.

7.The point for consideration is whether the trial Court is right in acquitting the respondents/accused?

8.As per the evidence let in by the prosecution, PW.1, Mohan, his wife Pangazham/PW.4 are residing in the house of PW.2/Kamalambal. PW.3/Manoharan is the son of PW.2. On 15.06.2006 when the son-in-law of PW1 one Ramesh had come to his father-in-law's house and was washing hands in the bathroom after having lunch, the brother of the respondents/accused viz., one Senthilkumar, had opened the asbestos roof and seen Ramesh and when the said incident was narrated by Ramesh to PW1, PW1 in turn, had told the same to PW3 who went to the house of the respondents/accused and questioned as to why Senthilkumar opened the roof of the bathroom and saw Ramesh washing hands and there ensued a wordy quarrel among them.

9. During quarrel the respondents/accused have assaulted PW.3 and caused injury on his head in respect of which a case was pending and in that case the son-in-law of PW.1 and PW.4 are the important witnesses. Thereby, there had been a previous enmity between the parties and due to the previous enmity while so on 01.07.2006, when PW.4 had come back from the temple, she had found water inside the bedroom and kitchen and this incident was informed by her to PW1/ her husband and PW1 had informed to the house owner and the house owner along with few persons had come and witnessed the same. PW1 suspected that the respondents/accused were the persons who were responsible for such act. Again on 08.07.2006, when PW1, his wife/PW4 and grand-daughter were sleeping, at about 2.30 a.m., the grand-daughter started crying and when PW1 woke up, he had found his room filled with water and that the respondents/accused are stated to have let in water through bedroom window by tube and thereby, PW.1 had questioned the respondents/accused, as to why they are repeatedly doing this. Thereafter PW.1 and PW.4 have informed to PW.2 and they had gone to the Police station and lodged a complaint under Ex.P.1 and the police, upon receipt of the complaint, had registered a case in Crime No.1266/2006 for the offence u/s.307 IPC and the printed FIR is marked as Ex.P.6. Thereafter, P.W.14 took up the case for investigation and visited the place and prepared an observation mahazar under Ex.P.2 and rough sketch under Ex.P.7. He had also recorded the statements of the witnesses and recovered M.O.1 plastic pipe under the cover of mahazar in which PW.5 and PW.6 have attested. PW.5 had spoken about the the incident that took place on 01.07.2006 and 08.07.2006.

10. The learned trial Judge after analysing the entire evidence on record had found that the evidence of the witnesses are not cogent. Further, the learned Trial Judge had taken into consideration the evidence of PW.2 and finding that there were cases pending against PW.2 and the respondents/accused and finding that none of the witnesses have spoken clearly about the level of stagnant water in the room, had acquitted the respondents/accused. Further the Trial Court had taken into consideration the long delay in the FIR and the connected statements reaching the Court. The Trial Judge also had found that the level of the water has not been clearly stated in the mahazar, which would be sufficient to cause the death of the child. Further, the mahazar witnesses have not supported the case of the prosecution with regard to the length of the plastic pipe. Taking into consideration all the above aspects the trial Court had acquitted the respondents/accused.

11. I have carefully, and consciously analysing the materials available on record. I do not find any infirmity, illegality or

perversity in the judgment of acquittal and this Court is of the opinion that the judgment of acquittal passed by the learned Second Additional Assistant Sessions Judge, Coimbatore by judgment dated 16.04.2008 in S.C.No.49 of 2007 does not need any interference. Accordingly the present criminal appeal stands dismissed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

jrs

To

1.The Second Additional Assistant Sessions Judge,
Coimbatore.

2.Do The Principal Sessions Judge,
Coimbatore.

3.The Inspector of Police,
B4 Race Course Police Station,
Coimbatore.

4.The Public Prosecutor
High Court, Madras.

Copy to:

The Section Officer,
Criminal Section,
High Court, Madras

+1cc to Mr.D.Ramesh Raj, Advocate sr.63556

ca(co)
nr 24/09/2019

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