

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.01.2019

PRONOUNCED ON : 30.01.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.R.C.No.1269 of 2011

1.Raja
2.Dhatchinamurthy
3.Manikandan
4.Elaiyaraja
5.Ananthavelu @ Ananthu
6.Kadiresan

... Petitioners/Accused

Vs

The State rep. by
Inspector of Police,
Nellikuppam Police Station,
Cuddalore
(Cr. No.281/2007)

.. Respondent

Criminal Revision preferred under Section 397 r/w 401 Cr.P.C. to set aside the judgment of the Principal Sessions Judge, Cuddalore passed in Crl.A.No.87 of 2010 dated 12.09.2011 confirming the judgment of the Assistant Sessions Judge (Chief Judicial Magistrate), Cuddalore in S.C.No.469 of 2007 and consequently acquit the petitioners of the charges under Sections 148 and 324 IPC.

For Petitioners : Mr.P.M.Subramaniam
for Mr.M.Murali

For Respondent : Mr.G.Ramar, GA (Crl. Side)

O R D E R

This Criminal Revision Petition has been preferred to set aside the judgment dated 12.09.2011 passed by the Principal Sessions Judge, Cuddalore in Crl.A.No.87 of 2010, confirming the judgment dated 07.07.2010 passed by the Assistant Sessions Judge, Cuddalore in S.C.No.469 of 2007.

2.It is the case of the prosecution that the accused group belong to P.M.K. party and the complainant group belong to A.I.A.D.M.K. party; in the 2007 Assembly elections and in the subsequent Panchayat elections, there was bitter contest between them in Natham village, in which, several cases were registered against the accused group, on account of which, ill feeling between them was rife; on 03.05.2007, around 06.30 a.m., Arumugam (P.W.1) along with his friends, was having tea in the tea shop of one Balaraman; at that time, thirteen persons belonging to the accused party, headed by one Sundari (A9), came there and demanded the complainant group to withdraw the criminal cases filed by them, which was not acceded to; incensed by that, Sundari (A9) exhorted her group men to attack the complainant group and accordingly, a brutal attack took place with lethal weapons by the accused group, resulting in serious injuries to Arunachalam (P.W.1), Balamurugan (P.W.2), Jagadeesan (P.W.3), Kaliyaperumal (P.W.4) and Thirugnanasambandam (P.W.5); the accused group proceeded to the farm of Sivamani (P.W.6), a member of the complainant group and indiscriminately attacked him there; the injured were rushed to the hospital for treatment; the police took up the investigation of the case and filed Final Report in P.R.C.No.53 of 2007 before the Judicial Magistrate No.I, Cuddalore for the offence under Sections 147, 148, 341, 324, 326 and 307 r/w 149 IPC against thirteen accused.

3.On the appearance of the accused, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session in S.C.No.469 of 2007 and was made over to the Assistant Sessions Court, Cuddalore, for trial. The trial Court framed charges under Sections 147, 148, 341, 324, 326 and 307 r/w 149 IPC against thirteen accused. When questioned, they pleaded 'not guilty'.

4.To prove the case, the prosecution examined fifteen witnesses, marked seventeen exhibits and three material objects (knives). On behalf of the accused, Ex.D1 was marked. When the accused were questioned under Section 313 Cr.P.C. about the incriminating circumstances appearing against them, they denied the same. No witness was examined on behalf of the accused.

5.After considering the evidence on record and hearing either side, the trial Court, by judgment dated 07.07.2010 in S.C.No.469 of 2007, acquitted all the accused of the major charge under Section 307 IPC and convicted and sentenced only six accused, out of thirteen accused as follows, acquitting them of the other charges.

Rank of the accused	Provision under which convicted	Sentence
Raja/A1, Datchinamurthy/A2	Section 148 IPC	One month rigorous imprisonment
'Manikandan/A4, Elayaraja/A5, Ananthavel/A6 and Kadhiresan/A8	Section 324 IPC	One month rigorous imprisonment

The aforesaid sentences were ordered to run concurrently.

6.The State did not choose to file any appeal against the acquittal of seven accused. However, the convicted accused filed Crl.A.No.87 of 2010 before the Principal Sessions Judge, Cuddalore, who, by judgment dated 12.09.2011, dismissed the appeal, confirming the conviction and sentence imposed by the trial Court. Challenging the judgments passed by the trial Court and the appellate Court, this revision petition has been filed under Section 397 r/w 401 Cr.P.C. by the convicted six accused.

7.Heard Mr.P.M.Subramaniam, learned counsel for the revision petitioners/accused and Mr.G.Ramar, learned Government Advocate (Crl. Side) appearing for the State.

8.Before adverting to the rival submissions, it may be necessary to state here that, while dealing with a revision petition under Sections 397 r/w 401 Cr.P.C., this Court cannot reappreciate the evidence, as if it is a Court of second appeal. In this regard, it is profitable to allude to the following paragraphs in the judgment of the Supreme Court in State of Maharashtra Vs Jagmohan Singh Kuldip Singh Anand and Others, etc. [(2004) 7 SCC 659.]

"22.The revisional court is empowered to exercise all the powers conferred on the appellate court by virtue of the provisions contained in Section 401 CrPC. Section 401 CrPC is a provision enabling the High Court to exercise all powers of an appellate court, if necessary, in aid of power of superintendence or supervision as a part of power of revision conferred on the High Court or the Sessions Court. Section 397 CrPC confers power on the High Court or Sessions Court, as the case may be,

"for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court".

It is for the above purpose, if necessary, the High Court or the Sessions Court can exercise all appellate powers. Section 401 CrPC conferring powers of an appellate court on the revisional court is with the above limited purpose. The provisions contained in Section 395 to Section 401 CrPC, read together, do not indicate that the revisional power of the High Court can be exercised as a second appellate power.

(emphasis supplied)

23. On this aspect, it is sufficient to refer to and rely on the decision of this Court in *Duli Chand v. Delhi Admn.* [(1975) 4 SCC 649 : 1975 SCC (Cri) 663 : AIR 1975 SC 1960] in which it is observed thus: (SCC p. 651, para 5)

"The High Court in revision was exercising supervisory jurisdiction of a restricted nature and, therefore, it would have been justified in refusing to reappreciate the evidence for the purposes of determining whether the concurrent finding of fact reached by the learned Magistrate and the learned Additional Sessions Judge was correct. But even so, the High Court reviewed the evidence presumably for the purpose of satisfying itself that there was evidence in support of the finding of fact reached by the two subordinate courts and that the finding of fact was not unreasonable or perverse."

However, if it is shown that the Courts below have overlooked any material piece of evidence, which would have otherwise turned the tables in favour of the petitioner or had grossly misappreciated the evidence, then, it is open to this Court to reappraise the same.

9. This Court perused the evidence of the injured witnesses, viz., P.W.1 to P.W.5, who have all stated that they belong to A.I.A.D.M.K. party and in the Assembly elections and Panchayat elections, they fought bitterly against P.M.K. party men and won; during the elections, there were clashes, in which, cases were filed against P.M.K. party men; they know the accused and the accused belong to P.M.K. party; on 02.05.2007, they were having tea in the tea shop of one Balaraman and at that time, the accused came there armed with weapons under the leadership of Sundari (A9) and asked them to withdraw the criminal cases; when they refused, Sundari (A9) exhorted the accused to attack.

10. In their evidence, P.W.1 to P.W.5, have individually named the accused, who had attacked each of them with weapons. The cross-examination of these witnesses was not done immediately, but, was done after several months. However, the defence was not able to make any serious dent in their evidence.

11. Sivamani (P.W.6), has stated that he knows P.W.1 to P.W.5 and also the accused; the accused belong to P.M.K. party and he (P.W.6) belongs to A.I.A.D.M.K. party; in the Assembly elections and in the Panchayat elections, there were clashes between them and so, several criminal cases were filed against the accused party; on 02.05.2007, Dakshinamurthy (A2) approached him and negotiated with him for withdrawing the criminal cases; however, he declined; on 03.05.2007, around 08.00 a.m., while he was in his lands with his wife and son, supervising the agriculture operations, A1 to A13 came there and attacked him indiscriminately. He has named Raja, Dhatchinamurthy and Manikandan specifically and has stated, who all attacked him and where he was attacked. In the cross-examination, it was suggested to him that he had attempted to attack them with shovel, which suggestion, he denied.

12. Dr. Ashok, Baskar (P.W.10) examined Arumugam (P.W.1) and Kaliyaperumal (P.W.4) and issued Accident Register copies Ex.P6 and Ex.P5 respectively. Dr. Lakshmi (P.W.11) examined Balamurugan (P.W.2), Jagadeesan (P.W.3), Thirugnanasambandam (P.W.5) and Sivamani (P.W.6) and issued Accident Register copies Ex.P8, Ex.P7, Ex.P9 and Ex.P10 respectively.

13. Mr. P.M. Subramaniam, learned counsel for the revision petitioners submitted that apart from the injured witnesses, the prosecution had failed to examine one Babu and Devan, who were cited in the memo of evidence as eyewitnesses to the occurrence and therefore, the prosecution case becomes suspect. He further contended that Dr. Ashok Baskar (P.W.10) has noted only one injury on the parietal region of Arumugam (P.W.1), but, Arumugam (P.W.1) has stated that he was attacked by Raja (A1), Dhatchinamurthy (A2) and Velmurugan (A3) and that the presence of only one injury in the absence of any other injury, falsifies the testimony of Arumugam (P.W.1).

14. Though at the first blush, this argument appeared convincing, yet, on a reading of the cross-examination of Arumugam (P.W.1), it is seen that he has clearly stated that all the three attacked him on the same portion of his head. That apart, when a group of thirteen persons go on rampage, attacking their rivals, minor discrepancies in the evidence of witnesses are bound to occur. All the witnesses, in their evidence, have clearly named the thirteen accused and also the overt acts of some of them. The defence had taken a stand that Arumugam

(P.W.1) and his group had come to the tea shop of Balaraman and had picked up quarrel with the local villagers and they were assaulted by them, which suggestion, the witnesses have denied. The injured witnesses have clearly stated that the accused also belong to their village and therefore, they know them well. Therefore, the non-examination of Babu and Deva cannot be said to be fatal to the case of the prosecution.

15.Mr.P.M.Subramaniam contended that when the Court had disbelieved the evidence of these witnesses and had acquitted seven accused including Sundari (A9), the conviction of the accused, who are the petitioners herein, on the same evidence, is improper.

16.This Court perused the evidence of the injured witnesses viz., P.W.1 to P.W.6 and found that they have clearly implicated all the thirteen accused, who were part of the unlawful assembly for perpetrating the attack. In the light of the overwhelming evidence against all the thirteen accused, the acquittal of the seven accused on specious reasonings by the trial Court, in the opinion of this Court, is indeed flawed. Strangely, as referred to above, the State has not chosen to challenge the acquittal of seven accused and therefore, this Court cannot interfere with their acquittal in this revision petition. However, wrongful acquittal of seven accused will not render the conviction of the others illegal. In Marachalilpakku Vs. State of Madras [AIR 1954 SC 648], the Supreme Court has held as follows :

"We have not been able to understand how the High Court could acquit these persons having held that the evidence of PWs 5 and 6 as to how Kannan was murdered by Accused 1 and 2 stabbing him and the others holding him by his hands and legs, was true. It also said that with regard to participation of Accused 3 to 7 they could not say that the prosecution evidence was unreliable. On these findings, in our opinion, no scope was left for introducing into the case the theory of the benefit of doubt. We think that Accused 3 to 7 were wrongfully acquitted. Though their acquittal stands, that circumstance cannot affect the conviction of the appellants under Section 302 read with Section 149 IPC."

(emphasis supplied)

In Nallabothu Venkaiah Vs. State of A.P. [(2002) 7 SCC 117], the Supreme Court has held as follows :

"On an analytical reading of a catena of decisions of this Court, the following broad proposition of law clearly emerges: (a) the conviction under Section 302 simpliciter without aid of Section 149 is permissible if overt act is attributed to the accused resulting in the fatal injury which is independently sufficient in

the ordinary course of nature to cause the death of the deceased and is supported by medical evidence; (b) wrongful acquittal recorded by the High Court, even if it stood, that circumstances would not impede the conviction of the appellant under Section 302 read with Section 149 IPC; (c) charge under Section 302 with the aid of Section 149 could be converted into one under Section 302 read with Section 34 if the criminal act done by several persons less than five in number in furtherance of common intention is proved." (emphasis supplied)

17. In view of the above authoritative pronouncements of the Supreme Court, the acquittal of the seven accused will not necessarily lead to automatic acquittal of the revision petitioners herein. That apart, the trial Court has awarded a flea bite sentence on the revision petitioners for their murderous adventure, which also cannot be interfered with by this Court, in the absence of the State challenging the sentence under Section 377 Cr.P.C.

In the result, this revision petition is dismissed as being devoid of merits and the judgment of conviction and sentence passed by the appellate Court in CrI.A.No.87 of 2010 dated 12.09.2011 and the trial Court in S.C.No.469 of 2007 dated 07.07.2010 are confirmed. The trial Court is directed to take steps to secure the petitioners/accused and commit them to prison for undergoing the remaining period of sentence, if any. Registry is directed to send the original records to the trial Court forthwith.

Sd/-
Assistant Registrar(CS III)

//True Copy// सत्यमेव जयते

Sub Assistant Registrar

gya

To

1.The Principal Sessions Judge,
Cuddalore.

2.The Assistant Sessions Judge,
Cuddalore.

WEB COPY

3. The Inspector of Police,
Nellikuppam Police Station,
Cuddalore District.

4.The Superintendent,
Central Prison, Cuddalore.

5.The Public Prosecutor,
High Court, Madras.

Copy to

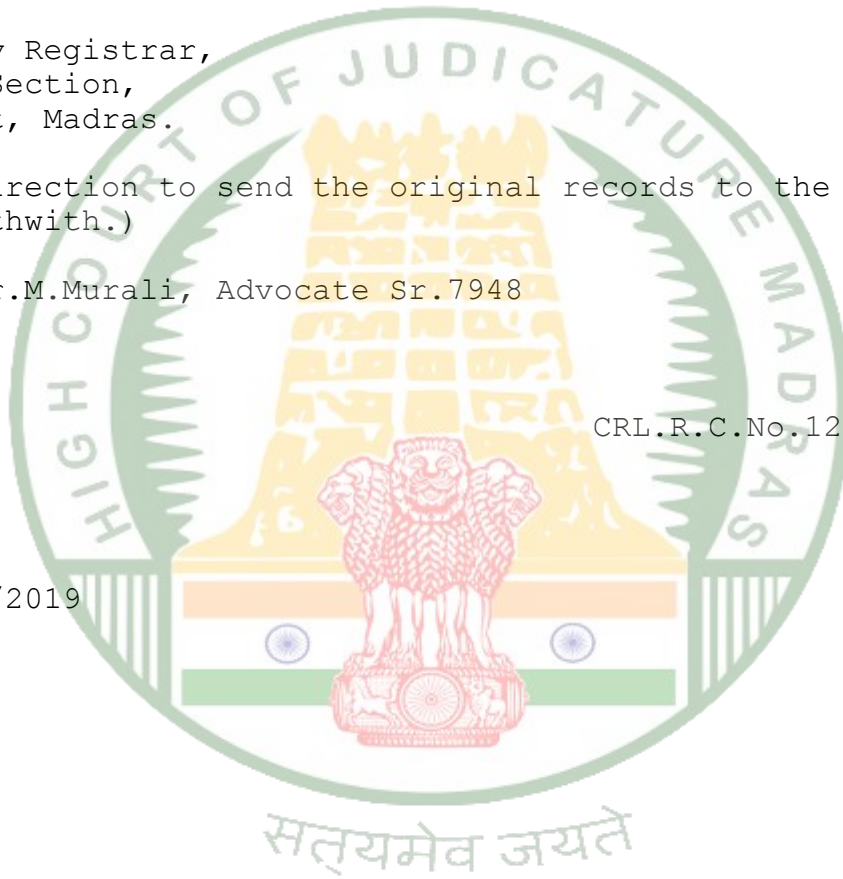
The Deputy Registrar,
Criminal Section,
High Court, Madras.

(With a direction to send the original records to the trial
Court forthwith.)

+1cc to Mr.M.Murali, Advocate Sr.7948

CRL.R.C.No.1269 of 2011

nmI[co]
srg 18/02/2019



WEB COPY