

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :10.04.2019

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Criminal Revision Case No.1280 of 2011

Raja

... petitioner/P.W.1
Defacto complainant

Versus

1.Seetharaman

2.Sekar

3.Iyyanar

4.Annadurai

5.Elumalai

6.Sakthivel

7.Thambidurai

8.Subramanian

9.Saravanan

10.Thangamani

11.Chinnasamy

12.Murugan

13.Pavadai

14.Arumugam

15.Govindan

... Respondents/Accused

16.The Station House Officer,
Manalurpettai Police Station,
Tirukovilur Taluk,
Villupuram District.

... Respondent/Complainant



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Criminal Revision Case has been filed under Section 397 and 401 of Cr.P.C., against the order of acquittal dated 30.03.2011 in SC.No.37 of 2006 on the file of the learned Principal Session Judge, Villupuram.

For Appellant : Mr.T.Muruganantham
(Legal Aid Counsel)

For Respondents 1 to 15 : Mr.D.S.Thirumavalavan

For Respondent 16 : Mr.T.Shanmuga Rajeswaran, GA

O R D E R

Heard the learned counsels.

2.This revision is preferred against the judgment of acquittal dated 30.03.2011 passed by the learned Principal Sessions Judge, Villupuram in SC.No/37/2006. Though the petition is filed under revision, after the amendment to the Code of Criminal Procedure, the victim is entitled to prefer an appeal against the judgment of acquittal. Under Section 401(5) of the Code of Criminal Procedure, when an appeal lies but an application for revision has been made to the High Court by any person and if the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of justice, the Court may treat the revision application, as an appeal to deal with same accordingly. So in exercise of powers under Section 401(5) of Criminal Procedure Code, this Court treats the revision, as an appeal and proceeds further.

3.Though P.W.1 aggrieved by judgment of acquittal and preferred this revision, he has not turned up to pursue the matter. Hence this Court has appointed, Mr.T.Muruganatham, learned counsel through the Legal Service Authority to represent the petitioner herein.

4.The learned counsel has gone through the records and has made the submission vividly point out how the court below has erred in appreciating the evidence let in by the prosecution, more particularly the deposition of P.W.3(Karunakaran), who sustained grievous injury in the incident and the opinion of the Doctor, Thayanithi, examined as P.W.4 and would submit that due to the communal clash, the P.W.3, sustained grievous injuries and lost his vision. P.W.1, P.W.2 and P.W.3 have categorically identified, the 1st Respondent, Seetharaman as the assailant who attacked one P.W.3(Karunakaran) with knife, particularly on his left eye. While so, the Court below has

erred in holding that the prosecution has not proved the case against the accused persons. A Plain reading of the depositions of P.W.1, P.W.2, P.W.3 and P.W.4 would clearly indicate that the 1st respondent along with the other respondents/accused had unlawfully assembled with weapons to cause injury to PW-3 and other witnesses.

5.Per contra, the learned Government Advocate would submit that it is a case in counter, and the cases had arisen due to disharmony between two communities and members of both the communities had free fight between them on 07.02.2009 at the night hours. Properties of both communities were damaged and members of both communities were armed with weapons and has caused injuries to each other. In Crime No. 50 of 2005, the case was registered against the respondents herein. Whereas Crime No. 49 of 2005 was registered against the P.W.1 to P.W.3 and others for almost identical offence except offences under the provisions of the SC/ST Prevention of Atrocity Act. As far as PW-3, who has sustained grievous injuries in this case he is in the prime accused in the counter case. In the course of the trial, the parties arrived at a compromise and the counter case ended in acquittal. Similarly in this case, except P.W.1 to P.W.3 who were father and sons, none other witnesses corroborated the version of the prosecution. Hence the Court below had acquitted the accused persons for want of evidence.

6.As far as the alleged injuries sustained by P.W.3, the learned counsel for the respondents/accused 1 to 15 would point out, when P.W.3 was taken to P.W.4- Doctor, no injury found on his left eye. P.W.4 found only a contusion around the left eye. At a latter point of time, after filing the final report, opinion has been obtained from the Doctor-P.W.4 stating that the injury found on P.W.3's left eye is grievous in nature. The Accident Report does not indicate that the injury found on P.W.3 was caused due to any object or dangerous weapon. For the first time, before the Court, P.W.1, P.W.2 and P.W.3 had spoken, as if the injury was caused by the 1st accused Seetharaman using knife. The Trial Court considering this discrepancy and embellishment in the case of the prosecution witnesses, had disbelieved the version of P.W.1 and acquitted the accused.

7.It is pointed out by the learned counsel appearing for the respondents 1 to 15, that except the interested witnesses namely P.W.1 to 3, the other alleged injured witnesses namely Elumalai and Vellankanni, were not even examined as witnesses by prosecution. Thus in view of the overwhelming embellishment in the evidence of the prosecution witnesses namely P.W.1, P.W.2 and P.W.3, the trial Court has rightly acquitted the respondents 1 to 15 /accused.

8.The learned Public Prosecutor would submit that the communal disharmony, which has led to free fight between two communities has now subsidised and people are living in harmony peacefully without any interference and any finding at this length of time, may disturb the tranquillity. Regarding legality of the order passed by the Lower Trail Court, the learned Government Advocate would submit that it was based on the evidences let in the trial court had arrived at conclusion it lacks reliability disbelieving the evidences of P.W.1 to P.W.3. The suppression of the aggressive act of Elumalai, Annaduthrai and Iyyanar, who are arrayed as accused 2, 3 and 4 in the counter case has led to the inference that the injuries sustained by P.W.3 may not be due to the voluntary act of causing injuries.

9.Heard the learned counsels and perused the materials on record.

10.The proven fact in the case is that on 07.02.2005, there was fight between two communities in the public. Members of both communities were around with weapons and have sustained injuries. The offence had been taken cognizance and two cases were registered in Crime No.49 of 2005 as against P.W.1, P.W.2 and P.W.3 and others and in Crime No.50 of 2005 has been registered against the respondents 1 to 15. The grievous injury has been sustained by Karunagaran(P.W.3) and from the evidences of P.W.1 to P.W.3 that was caused by A-1(Seetharaman) using knife. The prosecution was not able to recover any material object. The earliest version of the prosecution witness does not disclose about the use of any weapon. The injury now projected by P.W.3 that he has lost his vision, was not substantiated by the accident report or subsequently through evidence. It was the opinion given by P.W.4, after nine months of the occurrence, which has certified that the injury caused by P.W.3 is grievous in nature. There is no evidence to prove that the loss of vision if any, was due to the injuries sustained by him, at the time of accident. There is every possibility that he would have lost the vision due to the some subsequent intervening factors.

11.As far as the other facts, which are placed before this Court, more particularly the evidence of P.W.4, who has spoken about the treatment given to A2, A3 and A4 on the same date, while he was in causality ward would clearly indicate that the accused 3 to 5 have also sustained injuries over their body and that was due to the fight between the two groups. When there is case in counter the Court has to consider the injuries on both the parties and ascertain who was the aggressor. If the parties have voluntarily entered into fight and have sustained injury, we cannot blame the other group and hold that the persons who

has sustained more injury, as innocent. In this case, the witnesses P.W.1 to P.W.3 alone have spoken about the accused persons and the said witnesses are closely related to each other and the earlier statements to the police and the deposition before the Court are embellished.

12.In the said circumstances, as pointed out by the learned counsel for the respondents, the view expressed by the Court below is possible and legally acceptable. While so the alternate view if any, cannot be trust upon at the appeal stage. Accordingly, the revision stands dismissed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1. The Principal Sessions Judge,
Villupuram.
2. The Station House Officer
Manalurpettai Police Station,
Tirukovilur Taluk, Villupuram District.

+1 cc to Mr.T.Muruganathan, Advocate, Sr.No. 36096

+1 cc to Mr.D.S.Thirumavalavan, Advocate, Sr.No. 36091

CSL/01.07.2019

Crl. RC.No.1280 of 2011

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