

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:02.07.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.1402 of 2011

S. Subramani

...Petitioner

-Vs-

1. Arukkani
2. Krishnasamy @ Kittusamy
3. Balasubramanian @ Kumar

....Respondents/Accused 1 to 3

4. The Inspector of Police,
Avinashipalayam Police Station,
Tiruppur District.
(Crime No.61 of 2003)

.....Respondent

This Criminal Revision Case is filed under Sections 397 read with Section 401 of Cr.P.C., to call for the records and to set aside the judgment of acquittal dated 22.03.2006 made in C.A.No.454/2005, on the file of the learned Additional District and Sessions Judge, Fast Track Court-I, Coimbatore, which reversed the judgment of conviction dated 13.10.2005 made in S.C.No.305 of 2004, on the file of the learned Assistant Sessions Judge-cum-Chief Judicial Magistrate, Coimbatore and punish the respondent/accused in accordance with law.

For Petitioner : Mr.P.M.Duraisamy

For Respondents: Mr.S.Ramachandran - R1 to R3

Mr.T.Shanmugarajeswaran - R4

Government Advocate (Crl.Side)

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O R D E R

This criminal revision has been filed to call for the records and to set aside the judgment dated 22.03.2006 in C.A.No.454/2005, on the file of the learned Additional District and Sessions Judge, Fast Track Court-I, Coimbatore, which reversed the judgment dated 13.10.2005 in S.C.No.305 of 2004, on the file of the learned Assistant Sessions Judge-cum-Chief Judicial Magistrate, Coimbatore.

2. The fourth respondent police registered a case against the respondents 1 to 3 in Crime No.61 of 2003, for the offence under Sections 341 and 307 of IPC. After investigation, the respondent police filed a charge sheet as against the first respondent viz., A1 for offence under Section 341 of IPC and filed charges for the offence under Section 307 of IPC (2 counts) as against the second and third respondents viz., A2 and A3 before the learned Judicial Magistrate, Palladam and the same was taken on file in P.R.C.No.12 of 2004. Since the offences are triable by the Sessions Court, therefore, the case was committed to the Sessions Court, Coimbatore. The learned Sessions Judge, Coimbatore has taken the case on file in S.C.No.305 of 2004 and the same was made over to the learned Additional Sessions Judge-cum-Chief Judicial Magistrate for disposal.

3. The learned Chief Judicial Magistrate has framed the charges against the first accused for the offence under Section 341 of IPC and Section 307 of IPC (2 counts) against the respondents 2 and 3. After framing the charges, during trial, before the trial Court, in order to prove the case, on the side of the prosecution, the respondent police examined as many as 13 witnesses viz., P.W.1 to P.W.13, marked as many as 13 documents viz., Ex.P1 to Ex.P13 and produced 4 material objects viz., M.O.1 to M.O.4.

4. After completion of prosecution evidences, the incriminating materials were put before the respondents 1 to 3. The respondents denied all the evidences are false. On the side of the defence, no oral and documentary evidence was produced.

5. The learned Assistant Sessions Judge-cum-Chief Judicial Magistrate, Coimbatore, after hearing the arguments of both sides and after perusing the materials available on record, the first respondent is found guilty for the offence under Section 341 IPC and convicted and sentenced him to undergo simple imprisonment for one month and to pay a fine of Rs.100/- in default, sentenced to undergo simple imprisonment for one week; and respondents 2 and 3 are found guilty for the offence under Section 307 IPC (2 counts) and convicted and sentenced them to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.5,000/- for each count, in default, sentenced them to undergo rigorous imprisonment for a period of three months each.

6. Challenging the said judgment in S.C.No.305 of 2004 dated 13.10.2005, on the file of the learned Assistant Sessions Judge-cum-Chief Judicial Magistrate, Coimbatore, the respondents had filed the appeal before the learned Principal Sessions Judge, Coimbatore and the same was taken on file in C.A.No.454 of 2005. After hearing arguments on either side, the learned Additional

Sessions Judge, allowed the appeal and set aside the judgment of the learned Assistant Sessions Judge-cum-Chief Judicial Magistrate, Coimbatore, dated 13.10.2005.

7. As against the judgment of acquittal in C.A.No.454 of 2004, dated 22.03.2006 passed by the learned Additional Sessions Judge, FTC-I, Coimbatore, the victim/defacto complainant has preferred the present revision before this Court.

8. The learned counsel for the petitioner would submit that the appellate Court failed to appreciate the evidence of injured witnesses P.W.1 and P.W.2 as well as the eyewitnesses of P.W.3 and P.W.4. The learned Additional Sessions Judge has not given any valid reason for disbelieving the evidences of eyewitnesses P.W.1 to P.W.4. The learned Additional Sessions Judge failed to consider the fact that the petitioner and his father were immediately admitted in the Government Hospital, Tirupur for treatment. There is no reason to disbelieve the evidence of P.W.8 Doctor, one who treated the victim, immediately, after the occurrence. The respondents 1 to 3 had not disputed the injuries sustained by the revision petitioner and his father and there was no dispute in the place of occurrence which was pathway adjacent land of the respondents 1 to 3. Mere non seizure of the weapons or production of the weapons before the Court is not fatal to the case of the prosecution. The eyewitnesses happened to be injured witnesses and they have clearly spoken about the involvement of the accused. The Appellate Court failed to consider the evidence of P.W.1 and P.W.2 and not only corroborate with each other and also corroborate with the eyewitnesses P.W.3 and P.W.4. The Court can rely on evidence of the injured witnesses and other eyewitnesses of the occurrence. The oral and material evidence have clearly established the prosecution case and though the trial Judge rightly appreciated the evidence and convicted the respondents 1 to 3 herein whereas the Appellate Court failed to appreciate the evidence and set aside the judgment of the trial Court and acquitted the respondents 1 to 3 which warrants interference.

9. The Doctors' evidence and the medical records were matching with the evidence of P.W.1 and P.W.2. The wound certificate and the accident register and case sheets have also substantiated the case of the prosecution and therefore, as already stated that the injured witnesses have clearly spoken about the involvement of the respondents 1 to 3 and the reason stated by the lower Appellate Court for setting aside the judgment of the learned Assistant Sessions Judge is perverse which warrants interference of this Court.

10. The learned counsel for the respondents 1 to 3 would submit that the prosecution has failed to prove its case beyond reasonable doubt. The injuries sustained by the P.W.1 and the medical evidences are not tallied with each other. The trial Court failed to appreciate the contradictions between the prosecution witnesses and also P.W.1 to P.W.3 are interested witnesses. Though the learned trial Judge failed to consider the material contradictions and given importance to the evidence of the injured witnesses and also P.W.3 and P.W.4 and Doctors' evidences. But whereas the appellate Court rightly appreciated the evidence and pointed out the material contradictions and discrepancies and the evidence of P.W.1 to P.W.4 were not believable and rightly discard their evidence and set aside the judgment of the trial Court and allowed the appeal.

In support of his contentions, the learned counsel for the respondents has placed reliance on the following judgments:-

1. 2015 (17) SCC 804 (Dinesh Vs. State of Haryana)
2. 2018 (15) SCC 161 (State of Maharashtra Vs. Dinesh)
3. 2012 (3) MWN (Cri) 202 (Arivazhagan Vs. State)
4. CDJ 2019 SC 715 (Guman Singh Vs. State of Rajasthan)
5. 2019 SCC Online SC 431 (Balaji Vs. State of Maharashtra)

11. Heard the learned counsel appearing for the petitioner as well as the learned counsel for the respondents 1 to 3 and the learned Government Advocate (Crl. side) and perused the available materials on record.

12. It is the case of the prosecution that the defacto complainant and the second respondent are brothers and the first respondent is the wife of A2 and third respondent is their son. The respondents and the victim were living in the same village viz., Thonguttipalayam. The P.W.2 and the A2 are having dispute with regard to their common land, besides taking water to their land from PAP channels.

13. On 01.05.2003 at about 7.00 a.m., P.W.1 was working in his land. His son Subramani P.W.2 came in his moped to his land. A1 has not allowed P.W.2 to go to his land towards west along the PAP Channel. While P.W.2 questioning her act, the second and third respondents, came there with each sickle and attacked him and he sustained injuries. On seeing this, his father P.W.1 Swaminathan came there. Suddenly, the second and third respondents cut him with Aruval stating that 'as you refusing to allow water into the field we would not leave without killing you' When P.W.1 warded off the blow with his right hand, the second respondent cut P.W.1 with M.O.3 sickle on his head, cheek and on the knees of both legs. P.W.3 and P.W.4 who were engaged in a discussion at Vaikalmedu, saw the occurrence and rushed to the place. The respondents 1 to 3 threw the sickles and ran

towards east. P.W.3 and P.W.5 taken the victim i.e. P.W.1 and P.W.2 to the Tiruppur Government Hospital.

14. The Inspector of Police, Avinashipalayam Police station, registered a case against the respondents 1 to 3 and filed the final report against the first respondent for the offence under Section 341 IPC and against the second and third respondents for the offence under Section 307 IPC.

15. Due to previous enmity in taking water to their lands from PAP Channel through the land of P.W.2, the first respondent wrongfully restrained P.W.1 and the second and third respondents cut him with sickles and caused grievous injuries.

16. The respondent police has examined 13 witnesses, out of which, P.W.1 and P.W.2 are injured witnesses, P.W.3 and P.W.4 are eyewitnesses. P.W.3 and P.W.4 have corroborated the evidence of P.W.1 and P.W.2.

17. P.W.8 to P.W.11 Doctors', who have spoken about the injuries sustained by the P.W.1 and P.W.2 and also the wound certificate and accident register, which shows that P.W.1 sustained grievous injuries. Though the prosecution failed to recover the weapons alleged to have used by the respondents 1 to 3. The same is not fatal to the case of the prosecution.

18. P.W.1 and P.W.2 have clearly narrated the occurrence. On 01.05.2003 at about 7.00 a.m., while P.W.1 was working in his land. His son Subramani P.W.2 came in his moped to his land. Al has not allowed P.W.2 to go to his land towards west along the PAP Channel. While P.W.2 questioning her act, the second and third respondents, came there with each sickle. The second respondent cut him on his left cheek and he sustained injuries. When the third respondent came to cut him with the sickle M.O.4, P.W.2 warded it with his left hand and in that process, he fell down on the ground. Immediately, the second and third respondent cut him with sickles on his left leg. Further while the third respondent cutting him with sickle on his leg, the second respondent twisted his left hand and P.W.2 sustained fracture in his left hand. Thereafter, the second respondent Krishnan cut indiscriminately on the right hand of P.W.2.

19. On seeing this, his father P.W.1 Swaminathan came there. Suddenly, the second and third respondents cut him with Aruval stating that ''as you refusing to allow water into the field we would not leave without killing you'' When P.W.1 warded off the blow with his right hand the second respondent cut P.W.1 with M.O.3 sickle on his head, cheek and on the knees of both legs. The first respondent put mud into his mouth and also into the mouth of P.W.2, at that time, P.W.3 and P.W.4 who were

engaged in a discussion at Vaikalmedu, saw the occurrence and rushed to the place. The respondents 1 to 3 threw the sickles and ran towards east. P.W.3 and P.W.5 taken the victim i.e. P.W.1 and P.W.2 to the Tiruppur Government Hospital. The Doctor P.W.8 Civil Surgeon, admitted the P.W.2 at 7.40 a.m. on 01.05.2003 and given treatment for the injuries sustained by him. On the same day, at 8.15 a.m., he treated P.W.1 Swaminathan in Tiruppur Government Hospital and found injuries mentioned in the wound certificates. P.W.10 who is the Assistant Surgeon in the Government Hospital, Coimbatore. While he was on duty, P.W.1 and P.W.2 were brought from the Tiruppur Government Hospital to the Coimbatore Government Hospital for further treatment and inspected accident register copies wherein initially he wrote as 'RTA' and later it was corrected by him as 'Assault'. P.W.11 Dr.Gnana prakasam, Civil Surgeon, Coimbatore Government Hospital has given further treatment to P.W.1 and P.W.2 for the injuries. Thereafter, he issued wound certificate.

20. Though the learned counsel for the respondents submitted that in the copies of the accident register Ex.P7 and Ex.P8 correction were found showing 'RTA' were scored out and replaced by the word 'assault' without signature of the Doctors. On reading of evidence of the Doctor, who has clearly stated that by mistakenly he himself written as RTA and subsequently, he corrected the same by noting the mistake done by him. Therefore, mere making a correction in the A.R.Copy may not be a fatal to the case of the prosecution and the same may not be the reason for discard the evidence of the Doctor and also the injured witnesses, which was properly explained by the Doctor one who has written and subsequently corrected the same.

21. On a reading of the evidence of P.W.1 and P.W.2 who are injured witnesses and P.W.3 and P.W.4 eyewitnesses. Immediately, soon after the occurrence, the injured witnesses were initially taken to Tiruppur Government Hospital, from where, on advice of the Doctors, they were brought to the Government Hospital, Coimbatore for further treatment. The evidence of P.W.11 Doctor on who treated the P.W.1 and P.W.2 and also the evidence of P.W.3 and P.W.4 are corroborated the same. The evidence of P.W.8 to P.W.11 and medical records of P.W.1 and P.W.2. further strengthen the case of the prosecution. On a reading of the entire material records, the prosecution has proved its case beyond reasonable doubt. The learned Assistant Sessions Judge-cum-Chief Judicial Magistrate has rightly convicted the first respondent for the offence under Section 341 IPC and respondents 2 and 3 for the offence under Section 307 IPC (2 counts). Whereas the Additional Sessions Judge, Coimbatore failed to appreciate the evidence and set aside the judgment of the learned Assistant Sessions Judge, without any valid reason. The reason assigned by the learned Additional Sessions Judge,

Coimbatore is not in sound reason. Mere delay in registering the FIR is not fatal to the case of the prosecution when it is properly explained by the prosecution. The prosecution has proved its case beyond reasonable doubt. The injured witnesses P.W.1 and P.W.2 have clearly spoken about the incident and they sustained grievous injuries and there is no reason to discard the evidence of the injured witnesses and evidence of the Doctors'. The citations referred by the learned counsel for the respondents which are not helpful to the present case on hand.

22. Though the Appellate Court is fact finding Court can re-appreciate the evidence and give an independent findings. If necessary, they can set aside the judgment of the trial Court and give it own findings. But at the same time, when there is no perversity in the judgment of the trial Court and there is no valid reason to take different view, normally, the lower appellate Court need not interfere with the findings of the trial Court.

23. In this case, on a reading of the evidence of P.W.1 to P.W.4 and P.W.8 to P.W.11 and the copy of the complaint and wound certificates and also the copies of the Accident Register and other material documents, this Court finds that the prosecution has proved its case beyond reasonable doubt and the trial Court appreciated the evidence in the right perspective and the Appellate Court failed to consider the prosecution witnesses in right way and erroneously set aside the judgment of the trial Court and allowed the appeal which warrants interference.

24. Normally, this Court, while exercising the revisional jurisdiction, will not interfere with the judgment of the appellate Court, since the appellate Court is final Court of fact finding. In case this Court finds any perversity in appreciation of evidence can always interfere with the judgment of the lower appellate Court. Further more, in revision against acquittal unless compelling circumstances warrants this Court will not interfere with the judgment of acquittal. There is no quarrel with the proposition of law laid down in the decision referred to by the learned counsel appearing for the respondents 1 to 3 the facts of those cases are different from the present case on hand. The above decisions are not helpful to the respondents 1 to 3.

25. On reading of the entire materials on record and judgment of the trial Court and appellate Court, this Court finds that the trial Court rightly appreciated the evidence and convicted the respondents 1 to 3 and whereas the lower Appellate Court failed to appreciate the evidence which warrants interference of this Court.

26. In the result, this Criminal Revision is allowed, by setting aside the judgment of the learned Additional District Judge, Coimbatore made in C.A.No.454 of 2005 dated 22.03.2006 and the judgment of the learned Assistant Sessions Judge-cum-chief Judicial Magistrate, Coimbatore, in S.C.No.305 of 2004 dated 13.10.2004 is hereby restored.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Additional District Judge, Fast Track Court No.1
Coimbatore.

2. The Assistant Sessions Judge-cum-Chief Judicial Magistrate,
Coimbatore.

3. Do Thro Principal Sessions Judge, Coimbatore

4. The Inspector of Police,
Avinashipalayam Police Station,
Tiruppur District.

5. The Public Prosecutor,
High Court, Madras.

Copy to

The Section officer
Criminal Section
High Court, Madras 104.

+1 CC to Mr.S.Ramachandran, Advocate sr 53401.

+1 CC to Mr.P.M.Duraisamy, Advocate sr 54835(04/11/2019)

SP(22/07/2019)

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