

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CrI.R.C.No.193 of 2019 and
CrI.M.P.Nos.1892 & 1894 of 2019

Abdul Majeed ...Petitioner/Appellant/Accused No.4

-Vs-

State rep. by
The Inspector of Police,
B-11, Sai Baba Colony Police Station,
Coimbatore. (Cr.No.887/2009)

...Respondent/Respondent/Complainant

The Criminal Revision Case is filed under Sections 397 read with Section 401 of Cr.P.C. to call for the records pertaining to the judgment dated 05.01.2019 passed in C.A.No.386 of 2017 by the learned I Additional District and Sessions Judge, Coimbatore, partly modifying the judgment dated 31.10.2017 passed in S.C.No.95 of 2010 by the learned II Additional Assistant Sessions Judge, Coimbatore, and set aside the same and allow the revision case.

For Petitioner : Mr.C.D.Sugumar

For Respondent : Mr.R.Ravichandran,
Government Advocate (CrI.Side)

ORDER

This criminal revision case has been filed against the judgment dated 05.01.2019 passed in C.A.No.386 of 2017 by the learned I Additional District and Sessions Judge, Coimbatore, partly modifying the judgment dated 31.10.2017 passed in S.C.No.95 of 2010 by the learned II Additional Assistant Sessions Judge, Coimbatore, and set aside the same and allow the revision case.

2 Case of the prosecution is that the petitioner along with others have gathered in a public place and one Shajahan/Al stabbed P.W.1 and P.W.2 and petitioner and others caught hold P.W.2 and thereby the petitioner committed offence punishable

under Sections 147, 307 r/w 149 of IPC. The respondent police, after investigation, filed a charge sheet before the Court below and the Court below after trial by judgment dated convicted the petitioner and sentenced to undergo rigorous imprisonment for a period of one year for the offence under Section 147 of IPC and to under undergo rigorous imprisonment for a period of seven years for the offence under Section 307 r/w 149 (2 nos.) each, against which the petitioner/A4 has preferred an appeal before the learned I Additional District and Sessions Judge, Coimbatore, in C.A.No.386 of 2017, the learned Sessions Judge, after advertng to the entire materials placed on record, by judgment dated 05.01.2019 acquitted the petitioner/A4 from the offence under Section 147 and modified the conviction under Section 307 r/w 149 to 307 r/w 34 of IPC and confirmed the period of imprisonment i.e. seven years and imposed fine of Rs.1000/-. Assailing the above judgment, the petitioner/A4 is before this Court with the present criminal revision case.

3 The learned counsel for the petitioner would submit that the petitioner has not committed any offence as alleged by the prosecution. The weapon alleged to have been used in the occurrence had not been recovered and P.W.2, who is an injured witness has been examined only after 8 days and prosecution has failed to explain the delay in examining the witness. Further P.W.3, who is said to have been an eye witness to the occurrence, has stated that only four persons were present at the time of occurrence, whereas prosecution has laid charge sheet against five persons including the petitioner, which itself creates doubt in the case of the prosecution. A5 has been acquitted by the lower appellate Court on the same set of evidence and hence the petitioner being arrayed as A4 is also entitled to get the benefits of doubts.

4 The learned Government Advocate (Crl.Side) appearing for the respondent police would submit that P.W.2 and P.W.1 are injured eye witnesses. P.W.1 in his evidence has clearly narrated the incident and spoken about the involvement of the petitioner in the occurrence. P.W.2, who is an injured eye witness had been admitted in the Hospital and hence there was a delay in recording statement from P.W.2. Further, mere non recovery of weapon is not a ground to acquit the accused. In the copy of the Accident Register, it has been stated that known persons attacked, which was corroborated by the evidence of the injured eye witnesses. Therefore, prosecution has proved its case beyond reasonable doubt.

5 Heard the learned counsel appearing on either side and perused the materials available on record.

6 The petitioner herein has been arrayed as A4 in Cr.No.887 of 2009. The respondent police filed a final report against five accused and the case was taken on file, after trial the learned II Additional Assistant Sessions Judge, convicted all the accused persons, against which, the petitioner/A4 filed an appeal. The lower appellate Court, after hearing both the parties and after appreciating entire evidence on record, had confirmed the conviction against A1 to A4 and acquitted the 5th Accused, since charges against him were not proved. The petitioner/A4 contended that with the same set of evidence, A5 has been acquitted by the lower Appellate Court and there is no evidence against the petitioner/A4, who is also entitled for acquittal.

7 It is seen that P.W.2 and P.W.1 are injured eye witnesses. P.W.2 in his evidence has clearly narrated the incident and spoken about the involvement of the petitioner in the occurrence. P.W.2, who is an injured eye witness had been admitted in the Hospital and hence the respondent police could not record the statement from him in time. Further, mere non recovery of weapon is not a ground to acquit the accused. In the copy of the Accident Register, it has been stated that known persons attacked, which was corroborated by the evidence of the injured eye witnesses. The lower appellate Court, being a final Court of fact finding, had independently re-appreciated entire evidence and acquitted the petitioner/accused from the offence under Section 147 of IPC, since he was not found guilty of rioting, but, altered the conviction under Section 307 r/w 149 to 307 r/w 34 of IPC and sentenced to undergo 7 years rigorous imprisonment with fine of Rs.1000/-, in default, to undergo simple imprisonment for a period of three months. This Court is of the view that the reasons assigned for alteration of Sections are well founded and hence no need to interfere with the same. In this regard, it is useful to refer the decision of the Hon'ble Supreme Court reported in AIR 1999 SC 981 (State of Kerala Vs. Putthumana Illath Jathavedan Namboodiri), wherein the Hon'ble Supreme Court held as follows:

"... In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of Supervisory Jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an Appellate Court nor can it be treated even as a second Appellate Jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court

to re-appreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice."

8 In the result, the criminal revision case is dismissed as devoid of merit and substance. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The II Additional Assistant Sessions Judge, Coimbatore.
2. I Additional District and Sessions Judge, Coimbatore.
3. The Public Prosecutor, High Court of Madras.
4. The Inspector of Police, B-11, Saibaba Coloney Police Station, Coimbatore.

सत्यमेव जयते

+lcc to Mr.C.D.Sugumar, Advocate Sr.26105

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