

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.1129 of 2012

P.Vedappan

...

Petitioner

Vs

1. State Rep. By Inspector of Police,
Magudanchavadi Police Station,
Magudanchavadi, Salem District.
(Crime No.567 of 2009)

2. Arthanari
3. Mariyappan
4. Rajendran
5. Veerasamy
6. Kumar@ Kumaravel
7. Sengottaiyan
8. Arumugam
9. Mani
10. Kuppusamy
11. Raja
12. Venkatesh
13. Mani
14. Rajendran
15. Ganesan

....

Respondents

PRAYER: Criminal Revision Case filed under Section 397 r/w 401 of Criminal Procedure Code, to set aside the judgment in Criminal Appeal No.167 of 2010 dated 20.04.2012 on the file of the learned Additional District and Sessions Judge, Salem reversing the judgment in S.C.No.96 of 2010 dated 29.10.2010 on the file of the learned Assistant Sessions Judge, Sankari.

For Petitioner : Mr.V.Sivalingam

For M/s.C.S. Associates

For Respondents: Mr.T.Shanmuga Rajeswaran R1
Government Advocate (Crl. Side)

Mr.B.Vasudevan - R2 to R15

O R D E R

This revision has been filed by the petitioner to set aside the judgment in Criminal Appeal No.167 of 2010, dated 20.04.2012, on the file of the learned Additional District and Sessions Judge, Salem reversing the judgment in S.C.No.96 of 2010, dated 29.10.2010, on the file of the learned Assistant Sessions Judge, Sankari.

2. Based on the complaint given by the revision petitioner herein, the first respondent has registered a case against the respondents 2 to 15 in Crime No.567 of 2009. After investigation, they filed a charge sheet before the learned Judicial Magistrate-II, Sankari. The learned Judicial Magistrate-II, taken the charge sheet on file against the respondents 2 to 15 for the offences under Section 148 and 506 (ii) IPC and Section 3(1) of Tamil Nadu Property (Prevention of Destruction and Loss) Act, 1992 (hereinafter referred to as 'TNPPDL Act'); and against the 15th respondent for the offence under Section 304 IPC. Since the offences are triable by the Court of Sessions, the learned Magistrate has committed the case to the learned Principal District and Sessions Judge, Salem. The learned District Judge and Sessions Judge, Salem, taken the case on file in S.C.No.96 of 2010 and made over the same to the learned Assistant Sessions Judge, Sankari for disposal. The learned Assistant Sessions Judge, after full-fledged trial, found the Accused 2 to 15 guilty for the offence under Section 147 IPC and convicted and sentenced to pay a fine of Rs.500/- each, in default, sentenced to undergo simple imprisonment for three months; and found the Accused 2 to 15 guilty for the offence under Section 3(1) of TNPPDL Act and convicted and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.1,000/- each, in default, to undergo simple imprisonment for three months; and found the 15th respondent guilty for the offence under Section 324 IPC and convicted and sentenced to pay a fine of Rs.1,000/-, in default, to undergo three months simple imprisonment; and not found the accused 2 to 15 guilty for the offence under Section 506(ii) IPC and acquitted them.

3. Challenging the said judgment passed by the learned Assistant Sessions Judge in S.C.No.96 of 2010 dated 29.10.2010, the respondents 2 to 15 herein filed an appeal before the learned Principal District and Sessions Judge, Salem in C.A.No.167 of 2010 and made over the appeal to the learned Additional District and Sessions Judge, Salem. The learned Additional District and Sessions Judge, after hearing the arguments of both sides, found held that the prosecution has not

proved its case beyond reasonable doubt and set aside the judgment of the learned Assistant Sessions Judge, Sankari and allowed the appeal.

4. Challenging the said judgment dated 20.04.2012, in C.A.No.167 of 2012, the petitioner/defacto complainant has filed the present revision before this Court.

5. The learned counsel for the revision petitioner would submit that due to previous enmity, the respondents 2 to 15 came to the tea stall of the defacto complainant and damaged the shop with deadly weapons and the 15th respondent has attacked the victim/P.W.3 and caused injuries. P.W.1 to P.W.3 are the eyewitnesses, they have clearly spoken about the involvement of the private respondents herein. Though the learned Assistant Sessions Judge, Sankari has rightly appreciated the entire evidence of the prosecution and found the respondents 2 to 15 guilty for the offences under Section 147 IPC and Section 3(1) of TNPPDL Act and the 15th respondent not found guilty for the offence under section 324 IPC and the respondents 2 to 15 found guilty for the offence under Section 506(ii) IPC, acquitted respondents 2 to 15 whereas, the Additional Sessions Judge failed to appreciate the evidence of the prosecution witnesses and wrongly allowed the appeal and set aside the judgment of the trial Court. The evidence of P.W.1 to P.W.3, who are eyewitnesses, and also the medical witnesses were corroborated the same. Even though the prosecution has established that the 15th respondent caused injuries to P.W.2, an eyewitness, who sustained injuries and clearly spoken about the overtact attributed against the 15th respondent. Though the appellate Court has pointed out some minor contradictions appeared here and there and totally disbelieved the evidence of P.W.1 to P.W.3/eyewitnesses, allowed the appeal and set aside the judgment of the Assistant Sessions Judge, Sankari, which warrants interference of this Court.

6. The learned Government Advocate (Cr1. Side) appearing for the first respondent would submit that the prosecution has established its case beyond reasonable doubt, through the eyewitnesses P.W.1 to P.W.3 and the medical evidence has also supported the case of the prosecution. The appellate Court allowed the appeal and set aside the judgment of the trial Court and pointed out some contradictions between P.W.1 to P.W.3 and also mainly contended that the witnesses have not specifically spoken about which of the respondents had possessed the weapons, since they have not specified the weapons, which were kept by the respondents and acquitted them. Further, they have not produced valuation certificate for damaged properties and it was

not proved that there was a previous enmity between the defacto complainant and the respondents 2 to 15, which warrants interference of this Court.

7. The learned counsel for the respondents 2 to 15 would submit that P.W.1 to P.W.3 have stated in the chief examination about the involvement of the respondents 2 to 15. However, in the cross examination, they have not stated anything about them and there is a material contradiction, which will go to root of the case of the prosecution. The prosecution has failed to prove its case beyond reasonable doubt against these respondents 2 to 15 for the offences under Section 147 IPC and Section 3(1) of TNPPDL Act and against the 15th respondent for the offence under Section 324 IPC. Even though the trial Court failed to consider the material contradictions and discrepancies pointed out by the learned counsel for the respondents 2 to 15 before the trial Court, the appellate Court rightly appreciated the evidence and found the contradictions between P.W.1 to P.W.3. Further, the prosecution has not established the worth of the damaged property. Therefore, the judgment of the Appellate Court does not warrant any interference.

8. Heard the learned counsel for the petitioner/defacto complainant and the learned Government Advocate (Crl. Side) as well as the learned counsel for the respondents 2 to 15 and perused the materials available on record.

9. The case of the prosecution is that on 11.09.2009, at about 5.00 p.m., the respondents 2 to 15 formed themselves into an unlawful assembly, armed with crow-bar and stick, committed mischief of the tea stall belonging to one Subramani to the tune of Rs.5,000/-. The further case of the prosecution is that the 15th respondent attacked the victim with bill hook with an intention to cause death to the victim and threatened him with dire consequences. Therefore, all the respondents 2 to 15 have committed the offence under Section 148 and 506(ii) IPC and Section 3(1) of TNPPDL Act. The first respondent police registered a case against the respondents 2 to 15 for the above said offence and against the 15th respondent for the offence under Section 307 IPC. After investigation, the respondent police laid charge sheet. Before the trial Court, on the side of the prosecution, the respondent police has examined 11 witnesses viz., P.W.1 to P.W.11 and marked 7 documents viz., Ex.P1 to Ex.P7 and produced 5 material objects i.e. M.O.1 to M.O.5.

10. The trial Court has convicted the respondents 2 to 15 for the offence under Section 147 IPC and Section 3(1) of TNPPDL

Act and against the 15th respondent for the offence under Section 324 IPC.

11. On a careful reading of the judgment of both the Courts below, it is seen that P.W.1 is the defacto complainant, P.W.2 is the injured witness, P.W.3 is the wife of P.W.2. There is a dispute between the respondents 2 to 15 and the witnesses P.W.1 to P.W.3. Due to the dispute on 11.09.2009 at about 5.00 p.m., the respondents 2 to 15 formed themselves an unlawful assembly and came to the tea stall of P.W.2 and caused damages. When P.W.2 questioned the act of respondents 2 to 15, the 15th respondent attacked him with bill-hook and caused injury. Due to that, P.W.2 sustained injury and was admitted in the hospital. The injuries made in the Accident Register/ Ex.P4 prove that P.W.2 sustained injuries and the Doctor has clearly spoken about the injury sustained by P.W.14. P.W.1, P.W.2 and P.W.3 are the eyewitnesses and they have clearly spoken that the respondents 2 to 15 came to the tea stall of the petitioner and caused damages.

12. The learned counsel for the respondents 2 to 15 has submitted that the shop does not belong to P.W.2 and he was not running the shop and P.W.3 is not his wife. The said fact has not been established either by producing any documentary evidence or through any of the witnesses. Even the respondents 2 to 15 have not put a suggestion before P.W.1 to P.W.3, P.W.2 and P.W.3 are not husband and wife. P.W.1 to P.W.3 have clearly stated that all the respondents came to the shop and caused damages worth about Rs.5,000/-. The appellate Court found that there is a contradiction regarding shop and also causing injuries and the prosecution has not proved that which part of the damage was caused by which accused. It is not possible to identify which persons caused damages on which part. Once the witnesses have spoken that 10 persons assembled and P.W.1 to P.W.3 have named the persons, who have unlawfully formed the association and came to the shop, whether he has got the ownership of the shop or not, whether the property belongs to him or not is immaterial. However, the prosecution and P.W.1 to P.W.3 have clearly established its case beyond reasonable doubt that all the respondents 2 to 15 came to the place of occurrence with weapons and caused damages to the properties and injury to the persons. Therefore, mere non mentioning of the specific name holding of specific weapon is not fatal to prosecution. In is the case, more than ten accused assembled and further, the evidence of P.W.2 is very clear that the 15th respondent attacked him with bill hook and caused injuries. P.W.10, Doctor has clearly spoken about the injuries and the Accident Register itself clearly established that known persons caused injuries to P.W.2/Victim. Therefore, there is no reason to discard the

evidence of P.W.2/injured witness.

13. This Court finds that since the valuation certificate has not been produced by the prosecution, this Court can extend the benefit of doubt to the respondents 2 to 15 for the offence under Section 3(1) of TNPPDL Act. However, the prosecution has proved its case beyond reasonable doubt for the offence under Section 147 IPC against the respondents 2 to 15 and the prosecution has proved its case against the 15th respondent for the offence under Section 324 IPC.

14. The judgement of the learned Additional District and Sessions Judge regarding the offence under Section 3(1) of TNPPDL Act against the respondents 2 to 15, is confirmed and regarding the offence under Section 147 IPC against the respondents 2 to 15 and Section 324 of IPC against 15th respondent are set aside and the conviction and sentence imposed on the accused for the said offences by the trial Court are restored.

15. With the above observations, this Criminal Revision is partly allowed and the trial Court is directed to secure the custody of the accused to undergo remaining period of sentence, if any.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Additional District and Sessions Judge,
Salem.

2.The Assistant Sessions Judge,
Sankari.

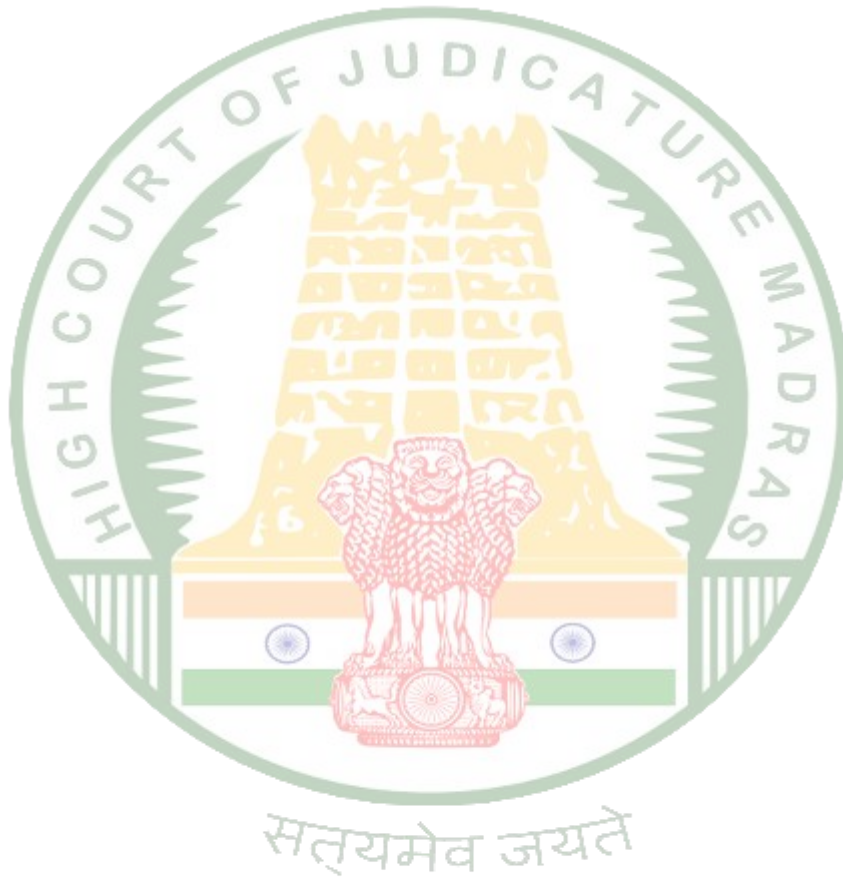
3.The Inspector of Police,
Magudanchavadi Police Station,
Magudanchavadi, Salem District.

4.The Public Prosecutor,
High Court, Madras-104.

+1cc to Mr.B.Vasudevan, Advocate SR.61055
+1cc to M/s.C.S.Associations, SR.61656

Crl.R.C.No.1129 of 2012

RSV(CO)
CB(10/02/2020)



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