

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 15.07.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.1214 of 2012

and

Crl.M.P.No.01 of 2012

M.Shanmugam

...Petitioner/Defacto Complainant

Vs

1.Krishnan

2.Duraisamy

3.Boopathy

4.Sathyaraj

5.Prakash alias Kallan

6.Vijayan

7.Balamurugan

8.Manickam

9.Arthanari

10.Chinnaiyan alias Rangasamy

...Respondents 1 to 10/Accused No. 1 to 10

11.State Rep., by

The Inspector of Police,

Vennandhur Police Station,

Namakkal District.

(Crime No.47 of 2005)

...11th Respondent/ Complainant

PRAYER: Criminal Revision filed under Article 397 r/w 401 of Criminal Procedure Code, to call for the records and set aside the judgment passed in C.A.No.76 of 2010 on the file of the Additional District Sessions Judge, Namakkal by judgment dated 10.07.2012 reversing the judgment passed in S.C.No.40 of 2006 on the file of the Chief Judicial Magistrate, Namakkal, dated 28.07.2010.

For Petitioner : Mr.B.Vasudevan

For R1 to R10 : Mr.M.Elango

For R11 : Mr.R.Shanmugarajeswaran
Government Advocate (Criminal Side)

O R D E R

This Criminal Revision filed to call for the records and set aside the judgment passed in C.A.No.76 of 2010, on the file of the Additional District Sessions Judge, Namakkal by judgment dated 10.07.2012 reversing the judgment passed in S.C.No.40 of 2006, on the file of the Chief Judicial Magistrate, Namakkal, dated 28.07.2010.

2 The 11th respondent police registered a case against respondents 1 to 10, based on the complaint given by the revision petitioner for the offence under Section 147 IPC, for R1, R2, R5, R7 to R10 under Section 148 IPC for R3, R4 and R6, under Section 324 IPC for R3, under Section 324 IPC r/w 149 IPC for R1, R2, R4 to R10, under Section 506 (ii) IPC for R1 to R10, under Section 326 IPC for R6, under Section 326 r/w 149 IPC for R1 to R3, R5, R7 to R10 and under Section 3(1) of TNPPD Act for R1 to R10, in Crime No. 47 of 2005 on the file of the Vennandhur Police Station, Namakkal District. After completing investigation, the 11th respondent laid a charge sheet before the learned Judicial Magistrate, Rasipuram. The learned Judicial Magistrate, Rasipuram has taken the charge sheet on file in P.R.C.No.12 of 2005 and committed the case to the Principal District and Sessions Court, Namakkal. The learned Principal District and Sessions Judge, taken the case on file in S.C.No.40 of 2006 and made over the case to the Chief Judicial Magistrate, Namakkal, for disposal. After completing trial, the Chief Judicial Magistrate, Namakkal, found guilty of the accused and convicted them as follows:

Sl.No	Accused	Offence	Sentence
1	A1, A2, A5, A7 to A10	147 IPC	Sentenced to undergo Rigorous Imprisonment for a period of 6 months
2	A3, A4 and A6	148 IPC	Sentenced to undergo Rigorous Imprisonment for a period of one year
3	A3	324 IPC	Sentenced to undergo Rigorous Imprisonment for a period of two years

Sl.No	Accused	Offence	Sentence
4	A1, A2, A4 to A10	324 IPC r/w 149 IPC	Sentenced to undergo Rigorous Imprisonment for a period of two years
5	A1 to A10	506(ii) IPC	Sentenced to undergo Rigorous Imprisonment for a period of two years
6	A6	326 IPC	Sentenced to undergo Rigorous Imprisonment for a period of three years and pay a fine of Rs.1,000/- in default to undergo Simple Imprisonment for a period of three months.
7	A1 to A3, A5, A7 to A10	326 r/w 149 IPC	Sentenced to undergo Rigorous Imprisonment for a period of three years and pay a fine of Rs.1,000/- each in default to undergo Simple Imprisonment for three months.
8	A1 to A10	Under section 3 (1) of TNPPD Act	Sentenced to undergo Rigorous Imprisonment for a period of 4 years and pay a fine of Rs.1,000/- each in default to undergo Simple Imprisonment for six months
Ordered the above sentences imposed on the respondents/accused 1 to 10 are to run concurrently.			

3 Against the said judgment of the learned Chief Judicial Magistrate, Namakkal, in S.C.No.40 of 2006, the respondents/accused have filed criminal appeal before the Principal District and Sessions Court, Namakkal, in CrI.A.No.76 of 2010. The learned Principal District and Sessions Judge, made over the appeal to the learned Additional District and Sessions Judge, Namakkal, for disposal. After hearing arguments, the

learned Additional District and Sessions Judge, set aside the judgment of the learned Chief Judicial Magistrate, Namakkal, in S.C.No.40 of 2006 and acquitted all the accused from the charges framed against them. Challenging the said judgment of the learned Additional District and Sessions Judge, Namakkal, in CrI.A.No.76 of 2010, the defacto complainant has filed the present Criminal Revision Case before this Court.

4 The learned counsel for the revision petitioner would submit that the injured witnesses have clearly spoken about the incident and also the involvement of respondents No.1 to 10 and the medical evidence also corroborated the same and the Doctor has also opined the same. Therefore, from the oral and documentary evidences coupled with the medical evidence, the prosecution has proved its case beyond reasonable doubt. Though, the learned Chief Judicial Magistrate, Namakkal, found that the accused have committed some of the offences and convicted the accused in some of the offences and acquitted them from the other offences. The lower appellate Court failed to consider the entire oral and documentary evidence and set aside the judgment of the learned Additional District and Sessions Judge, Namakkal, and allowed the appeal, which warrants interference by this Court.

5 The learned counsel for the respondents No.1 to 10 would submit that there are material contradictions between the evidence of the eyewitnesses and the accused also sustained injury and that aspects have not been properly explained by the prosecution. Further, worth of the damaged property have not been assessed and no valuation certificate has been produced before the Court. The prosecution has not proved that the worth of the damaged property is more than Rs.100/-. Therefore, the prosecution has not proved its case beyond reasonable doubt. The appellate Court extended the benefit of doubt to the accused by allowing the appeal and set aside the judgment of the learned Chief Judicial Magistrate, Namakkal, in S.C.No.40 of 2006. There is no sound reason to interfere with the judgment of the learned Additional District and Sessions Judge, Namakkal, in CrI.A.No.76 of 2010. Further, he would submit that the revision against the order of acquittal, is liable to be dismissed.

6 The learned Government Advocate (Criminal Side) appearing for the 11th respondent would submit that though, the prosecution has established its case beyond reasonable doubt, the trial Court appreciated the evidence and exhibits projected on the side of prosecution and convicted the accused as mentioned above. But, the lower appellate Court failed to appreciate the evidence and given much importance to the fact that two of the accused have sustained injuries and that the prosecution has not established the said injuries sustained by

the accused persons and in this regard, counter case was registered against the defacto complainant, however, based on the complaint given by the accused, the said case was closed as mistake of fact. Against the said findings, the respondents No.1 to 10 have not filed any appeal. Therefore, when the respondents No.1 to 10 themselves have accepted the findings, the lower appellate Court failed to consider the fact that the injury sustained by the respondents are very simple in nature and it was caused by the defacto complainant. Therefore, the findings of the lower appellate Court is liable to be set aside.

7 Heard the learned counsel for the revision petitioner, the learned counsel for the respondents No.1 to 10 and the learned Government Advocate (Criminal Side) appearing for the 11th respondent and perused the materials available on record.

8 The case of the prosecution is that on 17.02.2005 at about 11.30p.m., the respondents/accused 1 to 10 came to the house of the revision petitioner/P.W.1, while P.W.1, P.W.2 and P.W.5 were talking in front of the house of P.W.1, Boopathy (A3) damaged the cement sheets with iron rod, Krishnan (A1) (with stone) damaged the house hold articles, Duraisamy (A2) (with stones) damaged P.W.1's house tiles, (with stone) Prakash (A5), Balamurugan (A7), Manickam (A8), Arthanari (A9) with stones damaged the house tiles of P.W.1, Vijayan (A6) with iron kambi (Rod) hit the left hand wrist of P.W.2 and caused fracture, A3 Boopathy with iron rod beat on P.W.5 Thirumugan, A4 Satyaraj beat with iron rod P.W.2's shoulder, then caused damage to the tune of Rs.65,000/- then threatened to do away the life of the witnesses. Thereby, the accused persons have committed the offences punishable under Sections 147, 148, 324, 427 and 506 (ii) IPC.

9 The specific case of the prosecution is that the respondents 1 to 10 went to the house of P.W.1, while P.W.1, P.W.2 and P.W.5 were talking in front of the house of P.W.1, and damaged the property. When, P.W.1 questioned the same, they caused injuries. In this case, P.W.2 and P.W.5 are the injured witnesses and they are also the eyewitnesses to the occurrence. P.W.4/Doctor who treated P.W.2 and P.W.5 also made an entry in the Accident Register and also he issued wound certificate. The evidence of P.W.4 and P.W.5 proves that the injuries were caused only by A3 and A6. P.W.2 and P.W.5 are the injured witnesses. They have clearly corroborated the evidence of each other and the corresponding injuries also tallied with the medical witnesses and wound certificate, X ray report and also that of the evidence of P.W.4. The trial Court has clearly appreciated the evidence of eyewitness P.W.2 and P.W.5, who have also sustained injuries, during occurrence. From the evidence of the eye witnesses and the investigation report reveals that the

respondents 1 to 10 went to the house of the revision petitioner and caused damages to his property and also caused injuries to the witnesses.

10 Though, the learned Chief Judicial Magistrate, Namakkal, has rightly appreciated the evidence of the prosecution and convicted and sentenced them as mentioned above, the appellate Court has stated that all the accused sustained injuries and the prosecution has not explained the same properly.

11 On reading of the entire records, it is seen that though the witnesses themselves admitted that the respondents No.1 to 10 have also sustained injuries, but their injuries are very simple in nature and that was also not caused by victims, but on their own act, they sustained injuries. Though the case in counter was also registered, after investigation, the 11th respondent filed a final report the case was also closed as mistake of fact. Though, all the accused have participated in this case, they have not challenged the finding given by the learned Chief Judicial Magistrate, Namakkal, and that too when their case was closed as mistake of fact. Therefore, the accused/respondents No.1 to 10 have not challenged the final report filed by the prosecution, now, they cannot say that the injury sustained by the accused have not been properly explained. Though, the learned trial Court has rightly appreciated the evidence of the prosecution and given the reason, the appellate Court failed to consider the fact that the respondents No.1 to 10 have not challenged the charge sheet and the order of the learned Chief Judicial Magistrate, Namakkal.

12 Further the value of the properties is concerned, the injured witnesses have clearly spoken about the damage caused to the properties. The appellate Court failed to consider the facts that the damaged properties were worth about more than Rs.100/- and mere non-filing of the valuation report itself, is not fatal to the case of the prosecution. Subsequent, to the occurrence the accused sustained injuries and the said injuries not caused by P.W.2 and P.W.5, therefore the appellate Court acquitted the accused is not sustainable.

13 The main case of the prosecution is that the respondents No.1 to 10 went to the house of P.W.1, which was established by the prosecution through investigation and that they damaged the properties. On reading the evidence of the prosecution witnesses, specifically in the evidence of P.W.1 to P.W.5, it is clearly proved that P.W.4 and P.W.5 were attacked by the accused. A3 and A6 caused injuries to P.W.2 and P.W.5. The evidence of P.W.5 is corroborated by the evidence of P.W.4

the Doctor and also the medical records Ex.P3, Ex.P4 and Ex.P5. The prosecution has established its case.

14 Though the trial Court rightly appreciated the evidence and convicted them, the lower appellate Court failed to consider the evidence of prosecution and further the reason stated by the lower appellate Court is perverse which reason pointed out by the lower appellate Court, is not at all sustainable ground to set aside the judgment of the trial Court.

15 It is a well settled proposition of law that while exercising the revisional jurisdiction, the scope of the revision is very limited, this Court cannot re-appreciate the entire evidence. But at the same time, this Court finds that there is a perversity in the appreciation of evidence. Therefore, a conjoint reading of the evidence of the prosecution and the Judgment of the trial Court and the appellate Court, this Court finds that the reasons stated by the appellate Court for setting aside the judgment of the trial Court, warrants interference. The trial Court rightly appreciated the evidence and the appellate Court failed to re-appreciate the evidence in the right manner.

16 Therefore, the revision is allowed and the judgment of the learned Additional District and Sessions Judge, Namakkal made in CrI.A.No.76 of 2010 is hereby set aside and the judgment of the learned Chief Judicial Magistrate, Namakkal made in S.C.No.40 of 2006 is restored. The trial Court is directed to secure the custody of the accused to undergo the remaining period of imprisonment, if any.

17 In the result, the Criminal Revision Case is allowed. Consequently, connected Criminal Miscellaneous Petition is closed.

सत्यमेव जयते

Sd/-

Assistant Registrar(CS VIII)

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Sub Assistant Registrar

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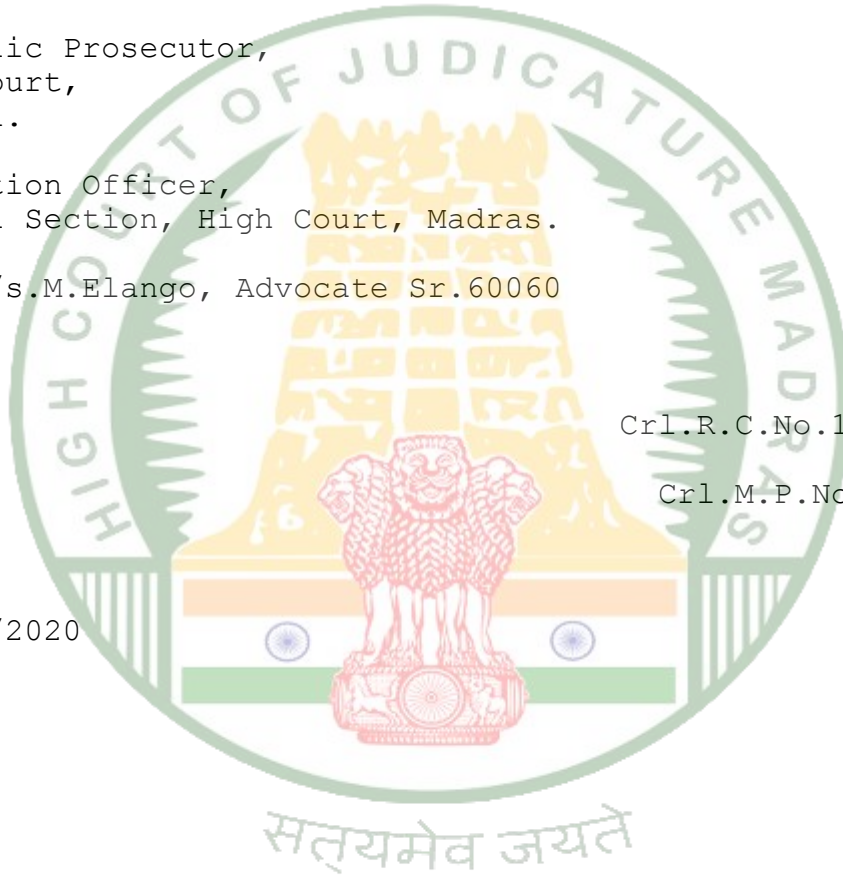
1.The Judicial Magistrate,
Rasipuram.

- 2.The Chief Judicial Magistrate,
Namakkal.
- 3.The Additional District and Sessions Judge,
Namakkal.
- 4.Do-Thro The Principal Sessions Judge,
Namakkal.
- 5.The Inspector of Police,
Vennandhur Police Station,
Namakkal District.
- 6.The Public Prosecutor,
High Court,
chennai.
- 7.The Section Officer,
Criminal Section, High Court, Madras.

+1cc to M/s.M.Elango, Advocate Sr.60060

Crl.R.C.No.1214 of 2012
and
Crl.M.P.No.01 of 2012

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