

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.A.No.396 of 2015

Kangiannan

... Appellant

vs.

1. State represented by
The Inspector of Police,
Mallur Police Station.
(Crime.No.18/2011)

2. P.Venkatesan

.... Respondents

The Criminal Appeal has been filed under Section 374(2) of Cr.P.C, seeking to set aside the judgment dated 06.04.2015 passed in C.A.No.21 of 2015 by the learned II Additional Sessions Judge, Salem, acquitting 2nd respondent by reversing the judgment of trial Court in S.C.No.45 of 2011 dated 29.01.2015 passed by the learned Principal Assistant Sessions Judge, Salem.

For Appellant : Mr.K.V.Sridharan

For respondents: Mr.T.Shanmugarajeswaran
Govt. Advocate (Crl.Side) for R1

Mr.M.Santhana Raman for R2

JUDGMENT

This criminal appeal has been filed against the judgment dated 06.04.2015 passed in C.A.No.21 of 2015 by the learned II Additional Sessions Judge, Salem, acquitting 2nd respondent by reversing the judgment of trial Court in S.C.No.45 of 2011 dated 29.01.2015 passed by the learned Principal Assistant Sessions Judge, Salem.

2 The first respondent police has registered a case against the second respondent in Crime No.18 of 2011 for the offence under Section 307 (2 counts) and after investigation laid a charge sheet before the learned Judicial Magistrate IV, Salem. The learned Magistrate taken the charge sheet on file in P.R.C.No.16 of 2010 and since the offence charged against the

appellant is triable only by the Court of Sessions, committed the case to the learned Principal Sessions Judge, Salem, and the learned Principal Sessions Judge, taken the case on file in S.C.No.45 of 2011 and made over the same to the Principal Assistant Sessions Judge, Salem, for disposal. During trial, in order to prove the case of the prosecution, P.Ws.1 to 14 were examined and Exs.P1 to 11 were marked, besides material objects 1 & 2. On the side of the defence, D.Ws.1 & 2 were examined and no document was produced. The learned Principal Assistant Sessions Judge, Salem, after trial, found the second respondent/accused guilty for the offence under Section 307 (2 counts) of IPC and accordingly by judgment dated 29.01.2015 convicted and sentenced him to undergo rigorous imprisonment for a period of seven years with fine of the Rs.3,000/- for each count, in default, to undergo rigorous imprisonment for a further period of one year for each default. Aggrieved against the judgment of conviction, the second respondent/accused has filed an appeal, which was taken on file by the learned II Additional Sessions Judge, Salem, in Criminal Appeal No.21 of 2015. The learned II Additional Sessions Judge, after hearing both the parties and considering the materials, by judgment dated 06.04.2015, set aside the judgment of conviction and acquitted the second respondent/accused. Aggrieved against the said reversal judgment of acquittal, victim has filed the present appeal before this Court.

3 The learned counsel appearing for the appellant/victim would submit that P.Ws.1 & 6 are injured eye witnesses and they have clearly spoken about the occurrence and involvement of the second respondent/accused in this case. Immediately after the occurrence, when P.W.2 came to rescue P.W.1, P.W.1 told her that he was attacked by one Venkatesan (the accused) and P.W.2 took P.W.1 to the Hospital for treatment and one another injured witness was unconscious and she was also taken to Hospital for treatment. On information from the Hospital, the first respondent police recorded statements from the victims and thereafter registered a case against the second respondent/accused and after investigation laid a charge sheet. Even though, the learned trial Judge has rightly appreciated the evidence of P.Ws.1 & 6 the injured witnesses, and also the medical evidence and convicted the second respondent/accused, whereas, in the appeal, the lower appellate Court, failed to consider the evidence of P.Ws.1 & 6 and also evidence of Doctor, but, given weightage to the discrepancies between the evidence of prosecution witnesses. Even though, evidence of the injured witnesses have corroborated with each other, and the injuries sustained by P.Ws.1 & 6 have corroborated with the medical evidences, the lower appellate Court failed to consider the same and erroneously allowed the appeal by acquitting the second respondent/accused, which warrants serious interference.

4 The learned counsel appearing for the second respondent/accused would submit that even though, P.W.2, who alleged to have come to the scene of occurrence and P.W.1 told him that he was attacked by one Venkatesan, on a perusal of the Accident Registers, Exs.P5 & 7, it was stated by P.W.2 that unknown person attacked. If at all P.W.1 was attacked by the second respondent and he revealed the same to P.W.2, at the time admitting the injured witnesses in the Hospital, P.W.2 very well would have informed that known person attacked, but, P.W.2 stated that unknown person attacked, which creates doubts in the case of the prosecution. Further it was stated that at the time admission in the Hospital, P.W.1 was conscious, hence atleast, he could have intervened and told that known person only attacked. P.W.1 has stated that, after attacking him, the second respondent/accused left the weapons there itself, whereas, the Investigation Officer/P.W.14 has deposed that he recovered the weapon, one week later at somewhere else. The Doctor, who treated the injured witnesses, had opined that the injuries cannot be sustained by the witnesses through the recovered weapon. P.W.7 son of P.W.1 is running a Government Aided School and he obtained money from several persons promising them to secure a job, but, he failed to procure job for them. Likewise, the second respondent/accused also given money for procuring job and affected person. On the date of occurrence, the accused consumed poison and he was also admitted in the Hospital for treatment. Therefore, any one of affected persons, from whom P.W.7 got money by promising to procure a job, may involved in the occurrence. In the copy of the Accident Registers (Exs.P5 & 7) itself, it was shown as unknown person attacked. P.W.1 has deposed that he knows the second respondent/accused and therefore, once he knows the accused and if really he was attacked by the second respondent/accused, at the time of admission in the Hospital, he should have stated that known person attacked, since he was conscious at that time. Further it was deposed by P.W.1 that the accused after attacking him, had thrown the weapon at the place of occurrence, but, the evidence of the investigating officer reveal that the weapon was recovered from the second respondent/accused. Further the second respondent/accused was also admitted in the Hospital for treatment for consuming poison, but the respondent police went to the Hospital and recorded statement from P.W.1 and knowing fully well that the accused was also in the Hospital, but failed to take steps to recover the weapon. It was stated that after discharge of the accused, he was surrendered before the Magistrate and subsequently made recovery, which is unbelievable. There is material contradictions between the eye witnesses and other witnesses including the medical evidence. Even though, the trial Court miserably failed to consider the material contradictions and discrepancies, which will go to the

root of the case, recorded conviction, the lower appellate Court, independently re-appreciated the evidence and applied its mind and came to the conclusion that prosecution has failed to prove its case and trial Court failed to note the discrepancies in the prosecution witnesses and other materials. Therefore, the lower appellate Court has rightly allowed the appeal and set aside the judgment of conviction of the trial Court, which does not call for any interference.

5 Heard the learned counsel appearing on either side and the learned Government Advocate (Crl.Side) appearing for the first respondent police and perused the materials available on record.

6 Case of the prosecution is that the second respondent/accused tried for the post of teacher in Ramaiah Government Aided School, in which, P.W.7 is the correspondent. The second respondent approached him for procuring job and P.W.7, after getting money from the second respondent, had cheated him and appointed some other person for the post of teacher and hence the accused developed enmity against P.W.7. On 13.01.2010, due to the said enmity, the accused went to house of appellant and asked whereabouts of P.W.7 for which the appellant questioned his conduct and the accused attacked him with iron rod and on hearing the sound, P.W.6 came out of the house and tried to rescue P.W.1, the accused attacked her also and caused injuries. Hence case was registered, against the second respondent/accused and trial Court convicted him, but the lower appellate Court acquitted him.

7 On reading of the evidence of P.W.1 it reveal that the second respondent/accused shouted at him by mentioning the name of P.W.7, son of the appellant, at that time P.W.1 was in the house and when he questioned the same, the second respondent/accused assaulted him with iron rod and P.W.6 came to rescue P.W.1, the accused attacked P.W.6 also and P.W.1 stated that he knows the accused, he used to visit the house of the appellant requesting P.W.7 to procure a job. If that be the case, there is no necessity to state before the Doctor that unknown person attacked. Further, evidence of P.W.1 shows that the second respondent/accused attacked him with iron rod and thrown the same in the place of occurrence itself, whereas, the Investigating Officer/P.W.14, has stated that he recovered the weapon from the second respondent/accused, one week later. It was stated by the Investigating Officer that the Material Object was recovered with blood stain, but the same has not been sent for chemical analysis to ascertain the fact whether the blood is that of P.W.1 or atleast human blood. Evidence of P.W.9 shows that on the date of occurrence, the second respondent/accused consumed poison and was admitted in the Hospital, but the

prosecution has not explained as to why they have not gone to the Hospital and recorded statement and arrested him.

8 It is stated that P.W.7 obtained money from several persons by promising them to procure a job in the School, in which he is Correspondent, but failed to do the same. But, P.W.1, pointed out the second respondent/accused only, any of the affected persons may involved in the occurrence, since knowing fully well that the accused only attacked P.W.1, in the Accident Register, it has been stated that unknown person attacked. Therefore, when two views are possible, the view, which favours the accused, should be taken into account and hence this Court is of the view that the prosecution has miserably failed to prove its case beyond all reasonable doubt. The discrepancies and contradictions pointed out by the defence had affected the case of the prosecution. Normally, this Court will not interfere with the judgment of acquittal, unless there is compelling reason exists. On reading of the evidence of P.Ws.1, 2, 6, 9 and 14 and also the material evidences, this Court does not find any compelled reason or sound ground to set aside the judgment of acquittal made by the lower appellate Court.

9 In the result, the criminal appeal is dismissed as devoid of merit and substance.

Sd/-

Assistant Registrar(CS-IV)

//True copy//

Sub Assistant Registrar

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To

1.The II Additional Sessions Judge, Salem.

2.The Principal Assistant Sessions Judge, Salem.

3.The Public Prosecutor, High Court of Madras.

4.The Inspector of Police, Mallur Police Station.

Copy To

The Section Officer,
Criminal Section,
High Court, Madras

+1cc to Mr.K.V.Sridharan, Advocate SR.No.56808

+1cc to Mr.M.Santhana Raman, Advocate SR.No.56600

Cr1.A.No.396 of 2015

PA (CO)
GMY (12/09/2019)



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