

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2019

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CRL.RC.NO.1400 OF 2012

Jayalakshmi

... Petitioner

vs

1.Arumugham
2.Moorthy
3.Vadivel @ Vadivu
4.Gnanasekar
5.Anjalatchi
6.Vinodhkumar
7.Dharmaraj
8.State represented by
The Inspector of Police,
Marakkanam Police Station,
Villupuram District.
(Crime No.273 of 2011)

.... Respondents

Prayer:-

Criminal Revision Case filed under Section 397 r/w 401 of Code of Criminal Procedure, to call for the records and set aside the order dated 27.07.2012 rendered in C.A.No.17 of 2012 by the learned I Additional District and Sessions Judge, Tindivanam and restore the conviction and sentence on the respondents 1 to 7 impose by the learned Judicial Magistrate No.2, Tindivanam in C.C.No.90 of 2011 by judgment dated 15.02.2012 for the offences charged.

For Petitioner : Mr.H.Rajasekar

For R8 : Mr.T.Shanmuga Rajeshwaran
Government Advocate (Criminal Side)

ORDER

The 8th respondent police registered a case against the respondents No.1 to 7 for the offence under Sections 147, 148, 448, 506(ii), 294 (b) and 323 IPC. After investigation, the 8th respondent police laid a charge sheet before the learned Judicial Magistrate No.2, Tindivanam. The learned Judicial

Magistrate, has taken the charge sheet on file in C.C.No.90 of 2011. After completing trial, the learned Judicial Magistrate came to the conclusion that the respondents No.1 to 7 found guilty for the offence under Sections 147, 148, 448, 506(ii), 294 (b) and 323 IPC, and convicted all the accused and sentenced to undergo imprisonment for each 3 months for the offence under Sections 147, 148, 448 and 506(ii) IPC, to undergo imprisonment for one month for the offence under Section 294(b) IPC, to undergo six months imprisonment for the offence under Section 323 IPC.

2 Challenging the said judgment of the learned Judicial Magistrate No-2, Tindivanam, all the respondents No.1 to 7 filed an appeal before the learned Principal District and Sessions Judge, Villupuram. The learned Sessions Judge, Villupuram, taking the appeal on file in C.A.No.17 of 2012, made over the appeal to the learned I Additional District and Sessions Judge, Tindivanam for disposal. The learned I Additional District and Sessions Judge, Tindivanam, after hearing the arguments, allowed the appeal and set aside the judgment of the learned Judicial Magistrate No.2, Tindivanam, in C.C.No.17 of 2012.

3 Challenging the said judgment passed by the learned I Additional Sessions Judge, Tindivanam, the defacto complainant filed a present revision case before this Court.

4 The learned counsel for the revision petitioner would submit that though P.W.1, P.W.2 and P.W.3 are the eye witnesses, P.W.2 and P.W.3 are the brother and son of P.W.1., respectively. They have clearly spoken about the occurrence and also corroborated the evidence of P.W.1. P.W.7 is the doctor, who has given the treatment to P.W.1 and he has also given a wound certificate. Though, the learned Judicial Magistrate No.2, Tindivanam appreciated the prosecution evidence, convicted the respondents No.1 to 7 for the offence under Sections 147, 148, 448, 506(ii), 294(b) and 323 IPC. Hence, the respondents No.1 to 7 filed an appeal before the learned Sessions Judge, Villupuram. Whereas, the learned I Additional District and Sessions Judge, failed to appreciate the evidence of the prosecution witnesses, allowed the appeal and set aside the judgment of the learned Judicial Magistrate No.2, Tindivanam, which warrants interference of this Court.

5 The learned Government Advocate (Criminal Side) appearing for the 8th respondent would submit that though the prosecution has proved its case beyond all reasonable doubt. The trial Court has rightly convicted the respondents No.1 to 7 and sentenced them as stated above. Whereas, the appellate Court failed to consider the facts and allowed the appeal, which warrants interference of this Court.

6 The learned counsel for the respondents No.1 to 7 would submit that though the occurrence have taken place in the ECR Road, in both sides of the road there are industries and shops and there are so many pedestrian available at the time of the occurrence but, the prosecution has failed to produce witness among any one of the persons nearby the place of the occurrence. The occurrence have taken place on 03.05.2011 at about 02.00p.m. P.W.1 was admitted in the hospital only at 08.00p.m., and the First Information Report was registered on the next day on 04.05.2011 with one day delay and the same was sent to the Court after two days. P.W.2 and P.W.3 are not the eye witnesses. The weapon has not been recovered. There is no corroboration on the evidence of P.W.1. P.W.1 foisted a false case against them. Though the trial Court wrongly convicted the respondents No.1 to 7, the appellate Court rightly appreciated the evidence and allowed the appeal. which does not warrant any interference by this Court.

7 Heard the learned counsel for the revision petitioner, learned counsel for the respondents No.1 to 7 and the learned Government Advocate (Criminal Side) appearing for the respondent No.8 and carefully perused the materials available on record.

8 The case of the prosecution is that, occurrence had happened on 03.05.2011 at about 02.00 p.m., at complainant's house in Panichamadu Village. At that time, all respondents A1 to A7 unlawfully trespassed into the complainant's house with knife and stick and while, she was in her house respondents 1 to 3 assaulted on her back of the chest and abdomen with stick and also they threatened her with knife. Respondent 4 and 5/ A4 and A5 abused her and also assaulted her back side with stick. Then 4th respondent threatened here with knife. 6th and 7th respondents/A6 and A7 assaulted on her back side and abdomen with stick.

9 On reading of the evidence of the Doctor/P.W.7, who has given treatment to P.W.1., has opined that there was no external injuries found. If the person fell down on the force of somebody it would definitely cause grievous injuries. Though, P.W.2 has stated that the accused used stick that means wooden log there is no visible injuries found on the body of P.W.1 and also stated that they used knife. But there is no recovery in this regard. Neither the wooden log nor the knife was recovered. So the non-recovery of weapons by the Investigating Officer creates suspicion. P.W.2 and 3 stated to have been the eye witnesses. But they have stated that they came to know about the occurrence only through neighbours. But, they have not specifically named any of the person in this regard actually who informed them and the prosecution has also not cited any witness for the occurrence actually who witnessed the occurrence at the

time of incident. From the evidence of P.W.2 and P.W.3, it is seen that the occurrence had taken place in the house of the victim.

10 The learned counsel for the respondents 1 to 7 stated that the occurrence has taken place in the ECR road but none of the persons who seen the occurrence were cited as witness. Even as per the evidence of P.W.2 and P.W.3, they were not present at the time of occurrence in the place of the occurrence and they came there later, i.e, after receiving the information from the neighbours. But, no neighbours were cited as a witnesses. The prosecution has also failed to examine those persons. In the absence of recovery of the weapons, injury sustained by P.W.1 is not proved.

11 Therefore, the appellate Court considering the facts and circumstances of the case, as pointed out by the learned counsel for the respondents that the prosecution has not proved its case beyond all reasonable doubt. The appellate Court is a final Court of fact finding, it re-appreciated the entire evidence independently and refused to accept the case of the revision petitioner and accepted the case of the respondent 1 to 7.

12 It is well settled proposition of law that while exercising the revisional jurisdiction, this Court need not sit in the armchair of the appellate Court and revisit the entire evidence. However, this Court has to see as to whether there is any perversity in the appreciation of evidence while deciding the case by the Courts below.

13 Under these circumstances, this Court finds that there is no perversity in the judgment of the appellate Court, and this Court does not find any merit in this revision case. Accordingly, this present Criminal Revision Case is dismissed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

sbn

To

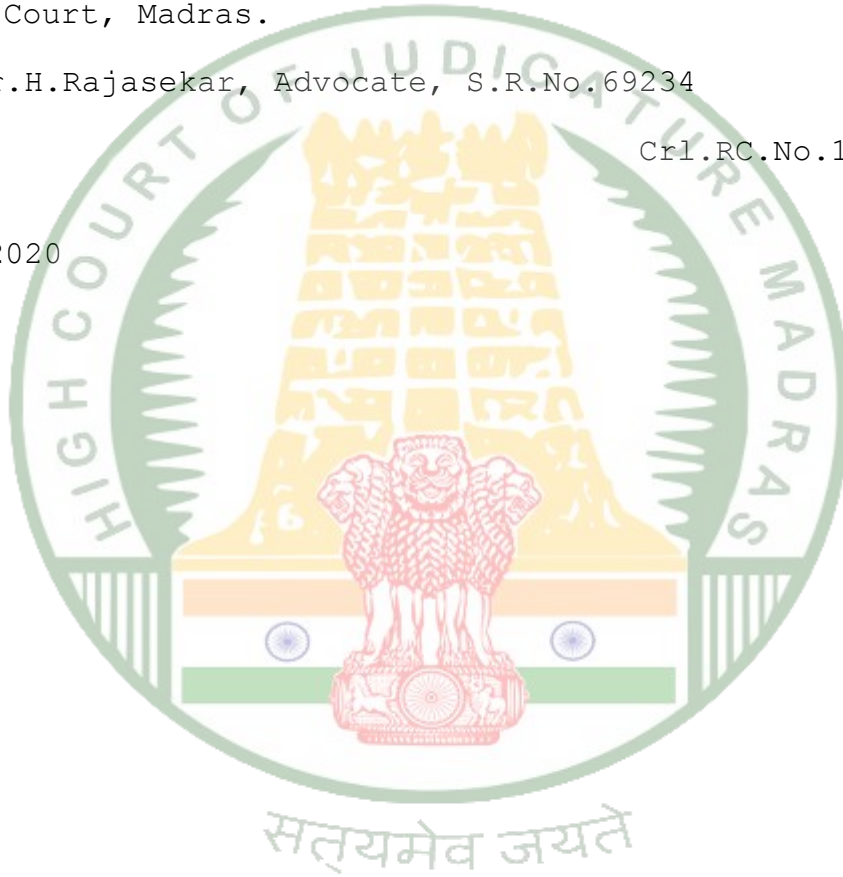
1. The I Additional District and Sessions Court,
Tindivanam

2. The Judicial Magistrate No.2,
Tindivanam
3. Do Through The Chief Judicial Magistrate,
Villupuram.
4. The Inspector of Police,
Marakkanam Police Station,
Villupuram District.
Chidambaram.
5. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.H.Rajasekar, Advocate, S.R.No.69234

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EV(CO)
CS/10/02/2020



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