

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Judgment 20.06.2019	Date of pronouncing Judgment 04.10.2019
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THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.A.No.495 of 2015

The State represented by
The Public Prosecutor
High Court, Madras.
(Valavanur Police Station
Crime No. 377 of 2000)

... Appellant/Complainant

Versus

1. Manibalan
2. Padmanaban
3. Chandrasekar
4. Thiruma. Elango
5. Ettiyar @ Vengaiyan
6. Vijayan
7. Surendar
8. Subramanian
9. Pasarai Balu
10. Shanmugam
11. Viji, S/o. Kathavarayan
12. Devanathan
13. Parthasarathy
14. Vadivelan @ Vadivel
15. Soundrarajan
16. Perumal
17. Magendran
18. Thol.Thirumavalavan

... Respondents

Appeal filed u/s.378 of Cr.P.C. against the Judgment of acquittal of the respondents/accused, passed by the learned I Additional Assistant Sessions Judge, Villupuram, in S.C.No.342 of 2012 dated 31.03.2015.

For Appellant : Mr.T.Shanmugarajeswaran
Government Advocate (Crl. Side)

For Respondents: Mr.C.Sivakumar

Judgment

Valavanur police registered a case against the respondents herein in Cr.No.377 of 2000 and after the investigation, laid a charge sheet before the learned Judicial Magistrate No.2, Villupuram. The learned Magistrate, after taking the charge sheet on file in PRC No.33 of 2012, since the offence committed by the appellants is triable by the Court of Sessions, committed the case to the learned Principal Sessions Judge, Villupuram. The learned Principal Sessions Judge, Villupuram, after completing all the formalities, taken the case on file in S.C.No.342 of 2012 and made over the case to the I Additional Assistant Sessions Judge, Villupuram, for disposal.

2. The learned I Additional Assistant Sessions Judge, Villupuram, after completing the formalities, framed the charge against the respondents 1 to 17 for the offence under Sections 147, 148, 341, 323, 324, 332, 336, 307, 397, 436 and 149 IPC r/w. 3 & 4 of TNPPD Act and against 18th respondent for the offence under Sections 147, 148, 341, 323, 324, 332, 336, 307, 397, 436, 109 and 149 IPC r/w. 3 & 4 of TNPPDL Act.

3. In order to prove the prosecution, before the trial Court, during trial, on the side of prosecution, as many as 14 witnesses were examined and 49 documents were marked, besides marking 9 Material Objects. After completing the evidence of prosecution, when incriminating circumstances culled out from the prosecution witnesses were put before the respondents/accused, they have denied as false. On the side of defence, no oral and documentary evidence was produced.

4. The learned trial Judge, after completing the trial, after hearing the arguments advanced on either side and perusal of entire oral and documentary evidences, found that the prosecution has not proved its case beyond reasonable doubt. Therefore, all the accused were acquitted from the above alleged offences.

5. Challenging the said judgment of acquittal, the State has filed the present Appeal before this Court.

6. The learned Government Advocate (Crl. Side) would submit that PW.1 is working as Conductor of the Tamil Nadu State Transport Corporation, who lodged a written complaint Ex.P33 and he has disclosed the allegations in the complaint that all the respondents/accused caused damages to the bus and also attacked PW.2 - Driver and PW.1 - Conductor of the bus and PW.1 and PW.2

sustained injuries and the bus also got damaged. But the trial Court failed to consider the said fact and extended the benefit of doubt to all the respondents and acquitted them, which warrants interference of this Court.

7. Further, the learned Government Advocate (Crl. Side) would submit that though P.Ws.1 and 2 turned hostile, the investigation reveals that the bus got damaged and the damaged pieces of glasses of the bus were also recovered and also at the time, three of the members of Viduthalai Chiruthaigal Katchi (VCK) have died and due to that, in order to show their protest, they intercepted the bus and also attacked PW.1 and PW.2, conductor and driver of the bus, and also damaged the bus. After seeing the same, all the passengers ran away from the bus. Therefore, the trial Court failed to consider the evidences of prosecution. Though PW.1 - conductor of the bus, turned hostile, Ex.P33 - written complaint given by PW.1, clearly reveals the involvement of the respondents and further, the medical records also show that on the particular date, the driver (PW.2) and conductor (PW.1) sustained injuries and therefore, these facts are also failed to consider. It is well settled proposition of law that mere the witnesses turned hostile, that may not be the sole ground to disbelieve the case of the prosecution and acquit the accused. In this case also, due to fear P.Ws.1 and 2 turned hostile, whereas the other records show that the respondents have committed the offence charged against them, therefore, which warrants interference of this Court.

8. The learned counsel for the respondents would submit that though PW.1 is the conductor of the bus bearing Registration No.TN-32-N-0774 and PW.2 is the driver of the said bus, the prosecution has even failed to examine any of the passengers, who travelled in the bus on that day and further, PW.1 has not given any specific evidence against any of the respondents/ accused regarding the overt act attributed by them; Though PW.2 is the driver of the bus, he has also not named any of the accused; Though there are allegations against 18 respondents, neither PW.1 nor PW.2 has stated that which of the accused attacked PW.1 and which of the accused attacked PW.2; Though 18 persons intercepted the bus and attacked PW.1, PW.2 and the bus, the police recovered only M.Os - 5 litres two petrol cans and 5 wooden logs and they have not mentioned which of the accused poured petrol on the bus. Since 18 persons alleged to have attacked the bus, driver and conductor, but they are all only unknown persons; Though 18th respondent may be a popular person, founder of the party 'Viduthalai Chiruthaigal', the remaining 17 persons are not known. No identification

parade has been conducted to identify the accused by any of the witnesses and therefore, the prosecution has not proved its case beyond reasonable doubt and the trial Court extended the benefit of doubt and acquitted all the respondents from the charges levelled against them, which warrants no interference.

9. Heard both sides. Perused the records.

10. The case of the prosecution is that in order to show the feelings of Viduthalai Chiruthaigal Katchi with regard to murder of three persons, who belong to Viduthalai Chiruthaigal Katchi, the respondents 1 to 17, based on the instigation of 18th respondent / 18th accused, namely, Thol.Thirumavalavan, State organizer of Viduthalai Chiruthaigal Katchi, assembled unlawfully with weapons and with common intention, on 01.06.2000 at about 9.30 p.m waylaid the bus, which is coming to Villupuram from Puducherry, bearing Registration No.TN-32-N-0774, and attacked the conductor of the bus - PW.1 and the driver of bus - PW.2 with wooden log and stabbed with koduval and knife, in order to commit murder of the above witnesses. While PW.1-Conductor and PW.2- Driver of the bus tried to escape from the scene, A1 snatched the cash bag from the Conductor and took the cash of Rs.5,500/-. Further, all the respondents caused damages to the mirror and lights of the above bus with stones and wooden logs. Further, the respondents poured petrol and set fire of the bus. The total cost of the damages to the bus is to the tune of Rs.1,51,168.33p. Due to the act of all the respondents, if the death of PW.1 and PW.2 taken place, all the accused are responsible for the commission of offence, thereby, murder of PW.1 and PW.2. Based on the occurrence, a case in Valavanur police station Crime No.377 of 2000, for the offence under Sections 147, 148, 341, 323, 324, 332, 336, 307, 397, 436, 109 and 149 IPC r/w. 3 & 4 of TNPPDL Act, is filed and the Investigating Officer, after investigating the matter, laid the charge sheet and based on the charge sheet and after committal procedure and usual formalities, the trial Court came to the conclusion that the prosecution has not proved the case beyond reasonable doubt.

11. Though PW.1 - Conductor of the bus immediately took to the hospital, where he gave the written complaint Ex.P33 and Valavanur Police registered the case in Crime No.377 of 2000, in the complaint and the First Information Report, name of all the respondents have been mentioned. When all the respondents are not the residents of same village as the residence of PW.1, he may not know the name of all the persons. Though 18th respondent is a popular man and founder of 'Viduthalai Chiruthaigal Katchi', he may be known by name, but the name of 17 other respondents may not be known to PW.1. It makes doubt, how PW.1 named other 17 persons. Further, the residence of PW.1 is

Valavanur, whereas all the respondents/accused are not the residents of same village.

12. Further PW.2 - driver also belongs to Valavanur Village. Even in the complaint and the First Information Report, they have not specifically stated that which of the respondents attacked PW.1 and PW.2 ?, which of the respondents poured petrol and set fire on the bus ?, and also which of the accused attacked the bus and caused damages to the glasses and mirrors of the bus. Further, none of the passengers were examined and they have not supported the case of the prosecution. Even PW.1-Conductor and PW.2 - Driver of the bus have not supported the case of the prosecution before the Court and they have not substantiated the complaint given by PW.1. Though PW.1 sustained injury and PW.2 also sustained injury and admitted in the hospital and taken treatment, they have not specifically stated, which of the respondents attacked them. PW.1 was attacked with Aruval, but the said Aruval or knife was not recovered and the same was not produced before the Court.

13. Even the appellants have not produced the copy of Accident Register, at the time of admitting in the hospital, as to whether PW.1 and PW.2 have stated known persons or unknown persons or how many persons were involved in the occurrence. Therefore, non-production of even the first incident document, namely, copy of the Accident Register is fatal to the prosecution in this case. Though PW.1 admitted the signature found in Ex.P33 complaint, he clearly deposed that he does not know, who has written and what was written in the complaint. Though the prosecution has stated that PW.1 has given the written complaint, whereas PW.1 sustained grievous injuries and he could not have given the complaint and could not have mentioned all the respondents. Further, there is no specific overt act attributed by any of the respondents and there is no identification parade conducted in this case. Though the case of the prosecution is that all the respondents waylaid the bus and also some of the respondents entered into the bus and also they attacked the Conductor and Driver of the bus, none of the passengers were examined and substantiated the case and identified the respondents. Further, even though the occurrence occurred in the public place, none of the public were examined to establish that the respondents involved in this case. Admittedly on the occurrence day, three of the party members died and therefore, the police got the impression that these party men would have attacked the driver and conductor and also caused damages to the bus. The prosecution has not established its case that the respondents only involved in this case, except they filed the confession statements of 6th and 7th respondents, none of the witnesses before the Court has stated anything about the respondents. Therefore, on careful reading of the evidence,

even especially eye witnesses PW.1 and PW.2 - the injured witnesses, it is seen that they themselves have not specifically stated any of the respondents. Therefore, under these circumstances, this Court finds that the prosecution failed to establish its case beyond reasonable doubt.

14. When the trial Court appreciated the entire evidence and found that the respondents are not guilty of any of the charges framed against them and acquitted them, in the appeal against acquittal, this Court has to see as to whether any perversity of the evidence by the trial Court and also is there any compelled circumstances or reasons warranting interference of the judgment of the trial Court. When the trial Court acquitted the accused, unless there is perversity in appreciation of evidence or compelled circumstances warranting interference by this Court, normally, in the appeal against acquittal, the appellate Courts had not interfered with the judgment of the lower courts and this Court does not find any compelled circumstances or reasons to interfere with the judgment of the trial Court. There is no merit in the appeal. Therefore, the appeal fails and the same is dismissed.

15. In the result, the Criminal Appeal stands dismissed and the acquittal order passed by the learned I Additional Assistant Sessions Judge, Villupuram, in S.C.No.342 of 2012 dated 31.03.2015 is hereby confirmed.

Sd/-

Assistant Registrar(CS VI)

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Sub Assistant Registrar

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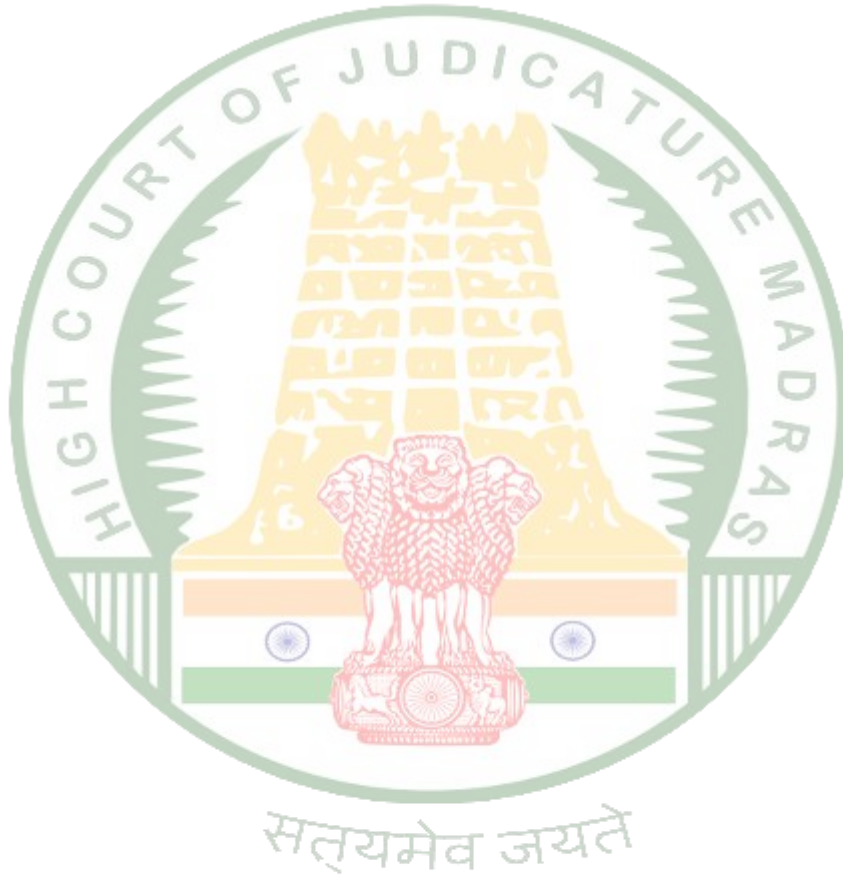
To

1. The Principal Sessions Judge,
Villupuram.
2. The I Additional Assistant Sessions Judge,
Villupuram.
3. The Inspector of Police
Valavanur Police Station
(Crime No. 377 of 2000)

4. The Public Prosecutor,
High Court, Chennai.

Crl.A.No.495 of 2015

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