

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.07.2019

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.RC.No.466 of 2012

R.Karthikeyan

.... Petitioner/Defacto complainant

vs

1.State by,

The Inspector of Police,
Dharmapuri B-1 Police Station,
Dharmapuri.
(Crime No.706 of 2010)

2.Nagaraj

3.Annadurai

4.Alagu

5.Suresh

.... Respondents

Prayer Criminal Revision filed under Section 397 r/w 401 of Code of Criminal Procedure, against the order of acquittal passed by the learned Additional Sessions Judge, (Fast Track Court) Dharmapuri in S.C.No.96 of 2011 dated 20.01.2012.

For Petitioner : Mr.v.Rajamohan

For R1 : Mr.T.Shanmugarajendran
Government Advocate (Crl.Side)

For R2 to R5 : Mr.R.Jaikumar for
M/s.T.Fennwalter Associates

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ORDER

This Criminal Revision Case has been filed against the order of acquittal passed by the learned Additional Sessions Judge, (Fast Track Court) Dharmapuri in S.C.No.96 of 2011 dated 20.01.2012.

2 The respondent police registered a case against the respondents 2 to 5 for the offence under Sections 294(b), 324 and 506(ii) IPC in Crime No.706 of 2010. After completion of the investigation, the respondent police laid a charge sheet before the learned Judicial Magistrate No-I, Dharmapuri. The learned Judicial Magistrate No-I, Dharmapuri, taken the case on file in P.R.C.No.19 of 2011, thereafter the learned Judicial Magistrate No-I, Dharmapuri, has committed the case to the learned Principal Sessions Court, Dharmapuri. The learned Principal Sessions Judge taken the case on file in S.C.No.96 of 2011 and made over the case to the learned Additional Sessions Judge, Fast Track Court, Dharmapuri, for disposal in accordance with law. Learned Additional Sessions Judge, Fast Track Court, Dharmapuri, after completing the formalities, framed the charges against the accused persons for the offence under Sections 448, 307 and 506(ii) IPC.

3 Before the trial Court, in order to prove the case of the prosecution, P.W.1 to P.W.10 were examined and 9 documents were marked besides material objects M.O.1 to M.O.3 were produced. After completing the prosecution evidences, when the incriminating circumstances culled out from the prosecution witnesses were put before the respondents 2 to 5, the respondents 2 to 5 denied as false. On the side of defence Ex.D1 was marked but, no oral evidence was examined.

4 After completing the trial and also hearing the arguments on either side, considering the materials place before the trial Court, the trial Court has found that the prosecution has not proved its case beyond reasonable doubt and acquitted the accused.

5 Challenging the said judgment passed by learned Additional Sessions Judge, Fast Track Court, Dharmapuri, in S.C.No.96 of 2011, the defacto complainant has filed the present revision case before this Court.

6 The learned counsel for the revision petitioner would submit that P.W.1 sustained injury and admitted in the hospital. Accident Register and the evidence of Doctor/P.W.2 and eyewitness in this case corroborated the same. P.W.1 is the injured witness. He has clearly spoken about the injury sustained by him. Though, the prosecution has established its case, the trial Court failed to consider the evidence of P.W.1 to P.W.4 and also the Ex.P2 A.R.Copy and acquitted the accused persons, which warrants interference of this Court.

7 The learned counsel appearing for the respondents two to five submitted that in this case, A1 also sustained injury and admitted in the hospital and copy of the Accident Register was marked Ex.D1. P.W.1 also admitted that during cross examination, A1 also sustained injury and admitted in the hospital. Whereas, the Investigating Officer has stated that he arrested the accused at 08.45p.m, it is not possible, when A1 sustained injury and also admitted in the hospital, the Investigating Officer could arrested him. The trial Court has rightly appreciated the evidence that the arrest of A1 was suspicious. The prosecution has not registered the case against the petitioner and they have not conducted the fair investigation. It is well settled law that, if two views are possible the view in favour of the accused should be extended and when the accused also sustained injury, it is for the prosecution to establish as to how the injury was sustained by the accused. First respondent state has not challenged the judgment. Therefore, under these circumstances, there is no perversity in the judgment of the trial Court, and the said judgment does not warrant any interference of this Court.

8 Heard the learned counsel for the petitioner, learned Government Advocate (Criminal Side) for the first respondent and the learned counsel for the respondents 2 to 5 and perused the materials available on record.

9 The case of the prosecution is that the petitioner had left his Motor Cycle on the corner of the road in front of his house on 08.05.2010. At that time, the accused 1 and 2 came in TATA Sumo Car bearing Registration No.TN29AA5497 and asked the petitioner to take his Motor Cycle on the road to pave free way for their TATA Sumo Car. The dispute arose between the petitioner and accused 1 and 2 with regard to moving of Motor Cycle on the road. Then A1 and A2 called the accused A3 and A4 to the above dispute place through their mobile phone. On 08.05.2010 at about 06.00p.m., all the accused entered into the house of petitioner and committed the offence. Due to the above dispute all the accused have voluntarily entered into the house of petitioner and A2 has voluntarily attacked the petitioner on the left cheek with small knife and A1 has voluntarily attacked the petitioner on the left jaw with blade and A3 has voluntarily attacked the petitioner of the chest with stone and A4 has voluntarily attacked the petitioner on his back with iron rod and all the accused threatened the petitioner by showing knife and iron rod and all the accused caused injuries to the petitioner with an intention and knowledge and under such circumstances, if the above act of the accused caused the death of petitioner the accused would be guilty of murder and thereby

all the accused appears to have committed the offence punishable under Sections 448, 307 r/w 120(b) IPC.

10 In order to prove the case of the prosecution, as many as 10 witnesses were examined, out of which 10 witnesses PW.1 is the injured witness. On careful reading of the evidence of P.W.1 during cross examination, he admitted that A1 also sustained injury and he was also admitted in the hospital and getting treatment. The prosecution has not explained as to how A1 sustained injury. On the side of the defence Accident Register copy/Ex.D1 was also marked, which shows the Doctor one who made entry in the Ex.P2. The Doctor who made entry in the Accident Register was not examined. P.W.2 himself admitted that during cross examination A1 was brought to the hospital at about 06.25p.m., and also this was not denied or properly explained by the prosecution. Therefore, once P.W.2 has stated that P.W.1 was admitted in the hospital and P.W.1 was brought to the hospital at about 06.30 p.m., it is relevant to note that A1 was admitted in the hospital at 06.25 p.m., itself. As per the evidence of the Doctor, P.W.1 was admitted at 06.30 p.m., on 08.05.2010, A1 was admitted on the same day at 06.25 p.m, itself. Whereas, the Investigation Officer has stated that A1 was arrested at 08.45p.m, near by the four road. P.W.9 Sub-Inspector of Police deposed that he arrested the A1 on 08.05.2010 at 08.45p.m near four road.

11 From the careful reading of the evidence of P.W.2 and P.W.9, it transpires that if at all the A1 was admitted in the hospital at 06.25p.m., P.W.9 could not have arrested A1 at 08.45 p.m, and the same creates suspicion. Further, P.W.1 himself admitted that A1 also sustained injury and also admitted in the hospital and taking treatment. When A1 also sustained injury, the prosecution has not explained as to how A1 sustained injury and without registering the case against P.W.1, it is stated that P.W.1 was assaulted by two known persons and two unknown persons. The police should have recorded the statement from P.W.2 the very same Officer had recorded the statement from P.W.1 when he was admitted in the hospital. The respondent police falsely registered the case against A1 to A4 and also produced the document that A1 was arrested at 08.45p.m, by P.W.9. The prosecution has foisted false case and there is no fair investigation in this case. Therefore, the trial Court rightly appreciated the evidence and also acquitted all the accused.

12 This Court is a revision Court, while exercising the revisional jurisdiction, this Court has to see whether there is any perversity in appreciation of the evidence in deciding the

case. On reading of the entire records, this Court does not find any perversity in the appreciation of the evidence, while deciding the case. Further there is no compelled circumstances to take different view. Under these circumstances, this Court finds that there is no reason to interfere with the judgment of the trial Court and there is no merit in the revision case.

13 In the result, the Criminal Revision Case is dismissed.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

sbn

To

1.The learned Additional Sessions Judge,
Fast Track Court,
Dharmapuri.

2.The Inspector of Police,
Dharmapuri B-1 Police Station,
Dharmapuri.

+1cc to Mr.N.Mohindeen Basha, Advocate SR.56756

+1cc to M/s.T.Fennwalter Associates, Advocate SR.57393

Crl.RC.No.466 of 2012

NMI (CO)
CB(03/02/2020)

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