

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.08.2019

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.1512 of 2013

Pachaiappan

...Petitioner

Vs.

1. Balasubramani
2. Velusamy (died)
3. Paramasivam
4. Arumugam
5. Marimuthu
6. The State Rep. By
Sub Inspector of Police,
Dharapuram Police Station,
Erode District.
(Crime No.73 of 2003)

... Respondent

PRAYER: Criminal Revision Case filed under Sections 397 and Section 401 of the Criminal Procedure Code, to set aside the judgment of C.C.No.139 of 2003, on the learned Judicial Magistrate Court, Dharapuram, dated 05.10.2007.

For Petitioner : Mr.A.K.Sridharan

For Respondents : Mr. B.Kumarasamy

For Mr.B.Vijayakumar- R1 and R3 to R5

Mr.T.Shanmugarajeswaran - R6

Government Advocate (Crl. Side)

ORDER

This Criminal Revision has been filed to set aside the judgment of acquittal in C.C.No.139 of 2003 on the file of the learned Judicial Magistrate Court, Dharapuram, dated 05.10.2007.

2. Based on the complaint given by the revision petitioner, the respondent police registered a case for the offences under Sections 148, 341 and 324 (2 counts) IPC against the first respondent; and for the offences under Sections 147, 341 and 323

(2 counts) of IPC against the 2nd and 4th respondents; and for the offences under Sections 147, 341, 323 (3 counts) and 355 IPC against the 3rd respondent; and for the offences under Sections 147, 341, 323 and 506(ii) IPC against the 5th respondent. After investigation, the respondent police filed charge sheet for the offences under Sections 148, 341, 324 (3 counts) IPC against the first respondent; and for the offences under Sections 147, 341 and 323 (2 counts) of IPC against the 2nd and 4th respondents; and for the offences under Sections 147, 341, 323 (3 counts) and 355 IPC against the 3rd respondent; and for the offences under Sections 147, 341, 323 and 506(ii) IPC against the 5th respondent before the learned Judicial Magistrate, Dharapuram and the same was taken on file as C.C.No.139 of 2003.

3. Before the trial Court, on the side of the prosecution, the respondent police examined as many as 9 witnesses viz., P.W.1 to P.W.9 and marked as many as 8 documents as Ex.P1 to Ex.P8 and no material object was produced. There is no oral and documentary evidence produced on the side of the defence.

4. After hearing the arguments of both sides and considering the records, the learned Judicial Magistrate found that the prosecution has not proved its case beyond reasonable doubt and acquitted all the accused from the charges made against them. Challenging the said judgment of acquittal passed by the learned Judicial Magistrate, Dharapuram in C.C.No.139 of 2003, dated 05.10.2007, the complainant has filed the present revision before this Court.

5. The learned counsel for the petitioner would submit that due to previous enmity, on 14.02.2003 near Pethampatty Milk Society, respondents 1 to 5 formed themselves an unlawful assembly with armed deadly weapons and attacked witnesses viz., P.W.1, P.W.2, P.W.3 and P.W.4. The revision petitioner has stated about the overt act attributed against respondents 1 to 5. P.W.6, the Doctor, stated that P.W.5 along with P.W.1 came to the hospital for treatment and admitted P.W.1 in the hospital. The Doctor, who given treatment to the victims, has clearly stated about the injury sustained by the revision petitioner and other witnesses. Accident Register itself shows that five known persons have assaulted. The prosecution has clearly established its case beyond reasonable doubt that the accused have assaulted the petitioner and other witnesses with deadly weapons and caused injuries. Hence, the learned counsel prays this Court to allow this revision and convict the accused.

6. The learned Counsel for respondents 1, 3 to 5 would submit that during trial, the second respondent died. Therefore, the case was dismissed as abated against the second respondent.

All the other respondents are relatives and interested witnesses. The alleged occurrence has occurred in a public place, but no independent witness was examined, which creates a doubt. The prosecution has not proved its case beyond reasonable doubt and the respondent police have only examined interested witnesses. The trial Court observed that the prosecution has not proved its case and further, the weapons alleged to have been used by the respondents were not recovered by the prosecution. The prosecution witnesses and the medical witness have not tallied with the injuries sustained by the victims. Due to previous enmity, the petitioner has foisted a false case as against the respondents and the respondents are innocent persons. There is no reason to interfere with the judgment of the learned Magistrate.

7. Per contra, the learned Government Advocate (Crl. side) appearing for the State would submit that P.W.1 to P.W.3, who are the victims, have clearly stated that respondents 1 to 5 have attacked them with deadly weapons. The trial Court has not considered the evidence of P.W.6 viz., Doctor that there is possibility of sustaining injuries as stated by the injured witnesses. There was a previous enmity between the petitioner and the respondents 1 to 5 with regard to fetching of water from the pipeline, for which, respondents 1 to 5 have attacked the petitioner and caused injuries and the petitioner was admitted in the hospital as inpatient for 11 days. Therefore, prosecution has proved its case beyond reasonable doubt. The learned Judicial Magistrate has failed to appreciate the evidence of the prosecution and acquitted all the accused, which warrants interference.

8. Heard the learned counsel appearing for the petitioner and the learned counsel for respondents 1, 3 to 5 as well as the learned Government Advocate (Criminal Side) appearing for the State and perused the documents available on record.

9. The case of the prosecution is that due to previous enmity, on 14.02.2003, near Pethampatty Milk Society, respondents 1 to 5 formed themselves an unlawful assembly, armed with deadly weapons and attacked P.W.1, P.W.2, P.W.3 and P.W.4.

10. P.W.1 to P.W.4 are injured witnesses, P.W.5 is the eyewitness, one who has taken P.W.1 to the hospital, P.W.6 is the Doctor, who examined the injured witnesses. Even the A.R.Copy itself shows that the injured witnesses have stated that known persons have gathered with weapons, but they have not stated that how many persons. It is admitted that all the witnesses are relative and interested witnesses. Admittedly, in this case, the occurrence took place on 14.02.2003 at about 7.00 P.M., in a public place, but the respondent police has not

examined any independent witnesses. All the witnesses examined by the prosecution viz., P.W.1 to P.W.5 are relatives and interested witnesses and also there is a contradictions between them.

11. The injuries sustained by the victims, are simple in nature. In this case, though the injured witnesses have stated that the accused persons have attacked them with wooden log and iron rod, the prosecution has not recovered the alleged weapons. From the evidence of the injured witnesses and medical evidence, it is seen that the injuries are simple in nature and also not tallied with each other.

12. Considering the facts and circumstances of the case, the trial Court, rightly came to the conclusion that the prosecution has not proved its case beyond reasonable doubts, therefore, acquitted all the respondents 1,2 to 5. When two views possible, the view in favour of the accused has to be taken into consideration.

13. This Court being a revisional Court, while exercising the revisionary jurisdiction, has to see as to whether there is any perversity in appreciating the evidence by the Courts below.

14. On a perusal of the entire records and judgment of the trial Court, this Court does not find any perversity in appreciation of the evidence and findings given by the trial Court. There is no compelled circumstances to interfere with the acquittal judgment of the trial Court and there is no merit in the revision.

15. In the result, this Criminal Revision is dismissed.

Sd/-
Assistant Registrar(CS-)

// True Copy//सत्यमेव जयते

Sub Assistant Registrar

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To

1.The Judicial Magistrate Court,
Dharapuram.

2.The Sub Inspector of Police,
Dharapuram Police Station,
Erode District.

3. The Public Prosecutor,
High Court of Madras.

Crl.R.C.No.1512 of 2013

MR (CO)
CSR:30.01.2020



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