

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2019

CORAM:

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.A.No.175 of 2001 and Crl.R.C.No.1210 of 2000

Crl.A.No.175 of 2001

State by:

Inspector of Police,
District Crime Branch,
Coimbatore, Crime No.991/93.

Rep. by

Public Prosecutor,
High Court, Madras.

... Appellant/Petitioner

/Vs/

1. Senkaniappan @ Selvaraj
2. Kuppusamy
3. Arukutty @ Paiya @ Krishnan
4. Gopal
5. Thangamani
6. Ponnusamy
7. Damodharan
8. Rajendran
9. Sakthivel
10. Natarajan
11. Aruchamy @ Arukutty
12. Thambi Gounder @ Ramasamy
13. T.Thangaraj
14. P.K.Rajan.

... Respondents /Accused

Prayer in Crl.A.No.175 of 2001: Criminal Appeal filed under section 378 of the Criminal Procedure Code, to set aside the order of acquittal and judgement dated 14.09.2000 passed in S.C.No.184 of 1999 on the file of the learned II Additional Assistant Sessions Judge, Coimbatore.

Crl.R.C.No.1210 of 2000

A.Rangawamy

... Petitioner/P.W.1

/Vs/

1. Sengaliappan @ Selvaraj @ Selvam
2. Kuppusamy
3. Krishnan @ Paiya @ Arukutty
4. Gopal
5. Thangamani
6. Ponnuswamy
7. Damodaran
8. Rajendran
9. Sakthivel
10. Natarajan
11. Arukutty @ Aruchamy
12. Ramaswamy @ Thambi Gounder
13. Thangaraj
14. P.K.Rajan
15. Inpsector of Police,
CB-CID, Coimbatore,
(Crime No.991/93)

.... Respondents /Accused/Complainant

Prayer in Crl.R.C.No.1210 of 2000: Criminal Revision Case filed under section 397 and 401 of the Criminal Procedure Code, to set aside the acquittal passed by the learned II Additional Assistant Sessions Judge, Coimbatore order dated 14.09.2000 made in S.C.No.184 of 1999.

For Appellant in
Crl.A.No.175 of 2001 and : Mr.K.Prabakar, APP
R-15 in Crl.R.C.No.1210 of 2000

For Appellant in Crl.R.C.No.1210
of 2000 : Mr.T.Senthil Kumar

For R-1 to R12 in Crl.A.No.175 of
2001 : Mr.R.Bharathkumar for
Mr.Govi Ganesan

For R-13 and R-14 in Crl.A.No.175
of 2001 : Mr.V.Samuthira Vijayan

For R-1 to R-12 in Crl.R.C.No.1210
of 2000 : Mr.R.Murali

For R-13 and R-14 in Crl.R.C.
No.1210 of 2000 : Mr.K.Annadurai

C O M M O N J U D G M E N T

This criminal appeal and the Criminal Revision Case are directed against the order passed by the learned II Additional Assistant Sessions Judge, Coimbatore dated 14.09.2000, acquitting the respondents/accused. The Appeal has been filed by

the State, against the order of acquittal and the Revision case has been filed by PW.1/de-facto complainant, against the common order of acquittal.

2. When the matter is taken up for hearing, the learned counsel for the Revision petitioner/de-facto complainant/PW.1 would submit that the matter has been compromised between the parties and that during the pendency of the appeal and revision, respondents 2, 5, 12 and 13 have passed away and he would further submit that the revision petitioner/defacto complainant is not interested in pursuing the revision and seek to withdraw the revision.

3. The learned counsel for the revision petitioner as well as the respondents would further submit that the parties, have, during the pendency of the above CrI.R.C.No.1210 of 2000, settled their disputes, which is also the subject matter of the above proceedings and further there are also connected suit which was pending between the parties in O.S.No.1193 of 1993 on the file of the learned District Judge, Coimbatore and they have also filed a compromise petition in I.A.No.206 of 2013, pursuant to which, a final decree has been passed in I.A.No.910 of 2006. Based on the Joint Memo filed by the petitioner and the 1st respondent/main accused, the petitioner had sought for withdrawal of the above CrI.R.C.No.1210 of 2000. This Court enquired the revision petitioner, who is present before this Court today and he submitted that he is not interested in pursuing with the revision. In view of the same, CrI.R.C.No.1210 of 2000 is dismissed as withdrawn and now, the State appeal has to be decided. In view of the demise of the respondents 2, 5, 12 and 13, the appeal and the revision stands abated against them.

4. The case of the prosecution in brief is as follows:-

(i) PW.1/Ranagasamy obtained a loan of Rs.5,28,893/- from the Tamil Nadu Industrial Investment Corporation (TIIC) to run the Industry called "Sri Karunambigai Industries" for manufacturing Mosquito Knitting Machine at Kalappatti Village. As he could not successfully manage the Factory, he leased out the Factory building to Thirukumaran Spinners on monthly rental of Rs.5,000/- with a deposit of Rs.50,000/-. Thiru.Sengaliappan was the Managing partner and A-2/Kuppusamy and A7/Damodaran were partners of the said Thirukumaran Spinners. Since the said accused defaulted the payment of monthly rent, PW.1 could not make regular monthly payments of the TIIC. As a result, on 15.07.1993, at 4.00 p.m., the TIIC Officials locked the said Thirukumaran Spinners factory premises. A local Panchayat was conducted at 10.00 p.m., on 15.07.1993 to compromise the matter at the house of PW.3/C.R.Subramaniam, Chinniampalayam Panchayat President, in which PW.1, PW.2/Jayapal, Assistant of PW.1,

PW.3/C.R.Subramaniam, A-1 and A-7 participated. During the Panchayat A-1, offered to purchase the factory for Rs.7,00,000/- from PW.1. As PW.1 refused to oblige to accept the offer, A-1 challenged PW.1 by saying that, he knew how to get the said factory for him and left the place in anger with his associate.

(ii) On 16.07.1993 at about 6.45 a.m., PW.1 along with PW.2 left the Village in his motorcycle bearing Registration No.TN.37-C 2160 with certain records for Coimbatore to meet his Advocate and TIIC Officials to manage the further situation. When they came in front of Venkatesa Timber Mart, near Kovai Medical Centre Hospital along Avanashi Road, A-1 and A-2 waylaid them, forcibly abducted both PW.1 and PW.2 in an Ambassador car bearing Registration No.TN 37-D-7888 with a threat to cut PW-1 into pieces and kill him, wrongfully confined them secretly at a house at Samichettipalayam at the foot of Palamalai Hills till 7.30 p.m., transported them to Coimbatore, via Keeranatham, made spade work for preparing a document for sale of certain property by PW.1 in favour of A-1 and for compulsory registration of the same at the Sub-Registrar's Office and compelled PW.1 to affix his signature on the already prepared document at about 10.30 p.m., at a building near Singapore Plaza building at Cross-cut-Road, Coimbatore. When PW.1 refused, both A-1 and A-2 threatened to kill him and dispose of his dead body at Mettupalayam River. PW.1 got afraid and signed on the said document. The said accused brought PW.1 and PW.2 back to Keeranatham and again secretly confined them wrongfully in a building situated in the North of the village.

(iii) On the Saturday, 17.07.1993 at about 8.00 a.m., A-1 and A-12 forcibly brought PW.1 and PW.2 to the office at the Sub-Registrar, Gandhipuram Coimbatore. A-13, the District Registrar/Incharge of the Sub-Registrar and A-14, his office Assistant came to the office even though it was a Government Holiday.

(iv) PW.1 represented to A-13 that he was forcibly abducted and kept in duress by the said accused. At that time, A-1 threatened to cut and kill PW-1 in the presence of A-13 and A-14. But both A-13 and A-14 did not come to rescue PW.1, but they simply ignored his plea. As a result, PW.1, in helpless condition, signed a register and A-14 forcibly obtained the left thumb Impression and signature of PW.1 in the Register of his office. PW.1 and PW.2 were brought back to Keeranatham, where A-1 forcibly obtained the signature of PW.1 on a number of filed and unfilled documents. Both PW.1 and PW.2 continued to be wrongfully confined at keeranatham till 10.00 p.m., and they were dropped at about 11.00 p.m., at Coimbatore with threats that they would be killed.

(v) On these allegations, the charges were framed and the case was taken on file in S.C.No.184/99 on the file of learned II Additional Assistant Sessions Judge, Coimbatore. During the course of trial, 36 witnesses were examined, 53 documents were marked and one material object was produced by the prosecution and the respondents examined three witnesses and produced eight documents in their defence. The Trial Court, after questioning the respondents/accused under Section 313 Cr.P.C and after hearing the arguments of both sides, acquitted the respondents/accused from all the charges and as against the order of acquittal, the appeal and the revision have been filed.

5. The learned Additional Public Prosecutor appearing for the Appellant/State would submit that the Trial Court erred in acquitting the respondents/accused basing reliance on minor contradictions and infirmities. He would further submit that the learned Trial Judge ought to have accepted the prosecution version, which has been deposed by the main witnesses. He would also submit that the learned Trial Judge erred in not believing the evidence of PW.1/Rangasamy and PW.2/Jayabal, when their evidence had been corroborated by two independent witnesses, viz., PW.4/Ganesan and PW.5/Subramaniam. Further, the learned Trial Judge erred in not taking into consideration the extra judicial confession made by A-9/Sakthivel accepting that he along with the other accused had committed the offences. He would further submit that the reasoning given by the learned Trial Judge for acquitting the respondents/accused cannot be accepted and to sum up, he would submit that the order of acquittal is perverse and not legally sustainable.

6. The learned Additional Public Prosecutor would further submit that the finding of the learned Trial Judge that the reopening of the case for further investigation without orders from the learned Magistrate, is not proper. He would further submit that as per Section 173(8) Cr.P.C, nothing shall preclude the prosecution is conducting further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate. He would further submit that only after receipt of further materials by way of notarized affidavit from the victims and also after obtaining proper orders from the Director General of Police, the investigation was reopened and it was conducted in accordance with law. He would further submit that the learned Trial Judge erred in acquitting the respondents/accused, based on minor inconsistencies and contradictions.

7. Now, what is to be seen is as to whether the Trial Court is right in acquitting the respondents/accused and whether the prosecution has made any ground warranting to set aside the

order of acquittal.

8. As per the case of the prosecution, there are totally 14 accused in this case. A-1 to 12 are friends. A-1 is the Managing Director, A-2 to A-7 are partners in Thirukumaran Spinners, A-13 is the Sub Registrar and A-14 is the Assistant in Sub Registrar Office. The occurrence is stated to have taken place on 16.07.1993 at 7.00 a.m., near Kovai Medical Centre Hospital, Avinasi Road. The complaint had been given by PW.1 on 20.10.1993 at 11.15 a.m., to PW.27, the Sub Inspector of Police, B6, Peelamedu Police Station, based on which, a case in Crime No.991 of 2003 was registered for the offences under Sections 143, 342, 348 and 363 IPC. Ex.P30 is the printed FIR.

9. When the respondents/accused had been questioned under Section 313 Cr.P.C, the respondents/accused had denied the charges and they have stated that the 1st accused/1st respondent was a tenant in the premises owned by the de-facto complainant/PW.1 from the year 1990 and that the de-facto complainant/PW.1, in order to settle the dues to TIIC, had sold the property to them and thereafter, in order to extract more money from them, he had given a false complaint against them. Further, in order to prove their case, the respondents/accused had examined the three witnesses on the side of their defence and have also marked Ex.D1 to D9. In order to prove falsify the case of the prosecution, the accused have examined one Mohanasundram, who was a Senior Administrative Manager in Lakshmi Mills and he had deposed that A-7/Dhamodharan had attended the duty on 17.09.1993 and he was available in the office from 7.00 a.m., to 4.00 p.m., and the attendance register was marked as Ex.D4, the leave letter register was marked as Ex.D5 and the permission card was marked as Ex.D6. One Shanmuga Sami was examined as DW.2 and he was a Personal Manager in Ramakrishna Mills and that he had deposed that A-10 was working in Ramakrishna Mills and that he had not taken leave from 14.07.1993 to 19.07.1993 and the monthly attendance register was marked as Ex.D7. One T.P.Ramachandran, District Registrar was examined as DW.3 and he had deposed that he had not granted any sanction for prosecuting A-13 Registrar and the Tamil Nadu Registrar Manual Part-2 was marked as Ex.D8.

10. The learned Trial Judge, taking into consideration the contradictions between the witnesses with regard to the date and place of occurrence and also taking into consideration the evidence of DW.1 and DW.2 with regard to alibi of A-7 and A-10 and also taking into consideration that the case was earlier registered by B6, Peelamedu Police Station and having been referred as "mistake of fact" and also finding that no proper procedure or orders have been obtained regarding further investigation, has rendered a finding that the prosecution has

failed to prove its case beyond all reasonable doubt and had acquitted the accused.

11. The learned counsel for the respondents would submit that though the finding rendered by the learned Trial Judge, in respect of further investigation may be wrong, the learned Trial Judge, after analysing the oral evidence of the witnesses and after analysing the documents and having found that the entire case of the prosecution is false, had rightly acquitted the respondents/accused. He would further submit that the learned Trial Judge carefully and categorically analysed the evidence of each and every witnesses and the circumstances has disbelieved the case of the prosecution and acquitted the respondents/accused and that there is no infirmity or perversity in the order.

12. I have carefully analysed the materials available in record. The Trial Court, has, apart from the ground of procedural lapses and also taking into consideration the various contradictions, disbelieved the evidence of the prosecution regarding abduction and wrongfully concealing the person and also disbelieved the allegations regarding putting the victim in fear of death or on previous enmity in order to commit the offence had acquitted the respondents/accused. Further, the learned Trial Judge has also disbelieved the evidence with regard to the allegations against A-13 and A-14, who are the Sub Registrar and the Assistant in Sub Registrar Office respectively and disbelieved that the registration had happened on 17.07.1993 as projected by the prosecution.

13. Though the finding of the learned Trial Judge with regard to the further investigation, is wrong, the other reasonings for acquitting the accused are due to the fact that the prosecution has failed to prove its case beyond all reasonable doubt.

14. In view of the above, I do not find any manifest illegality, perversity or gross miscarriage of justice in the order of acquittal passed by the learned Trial Judge. In view of the same, the Criminal Appeal is dismissed. In view of the settlement of dispute between the parties, as stated earlier, the Criminal Revision is dismissed as withdrawn.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

kv

To

1. The II Additional Assistant Sessions Judge,
Coimbatore.
- 2.do Thro Principal Sessions Judge,
Coimbatore.
- 3.The district Munsif,
Coimbatore.
- 4.The Chief Judicial Magistrate,
Coimbatore.
5. The Inspector of Police,
District Crime Branch,
Coimbatore.
6. The Inspector of Police, CB-CID, Coimbatore.

Copy To

1. The Section Officer,
Criminal Section,
High Court of Madras.
2. The Public Prosecutor,
For CB-CID Cases,
High Court of Madras.

+1cc to Mr.R.Bharath Kumar, Advocate, S.R.No. 30332

+1cc to Mr.B.Vijaya Kumar, Advocate, S.R.No.30147 (29/01/2020)

Cr1.A.No.175 of 2001 and
Cr1.R.C.No.1210 of 2000

GJ(CO)
GN(21/05/2019)

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