



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.08.2019

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.R.C. (MD)No.414 of 2012

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R.Kondalsamy

... Petitioner

Vs.

1.The State Rep. by
The Inspector of Police,
B14, Sellur Police Station,
Madurai.

2.Panchavarnam

3.C.Mani

4.Kaliappan

5.Angammal (Died)

... Respondents

Prayer: Criminal Revision Case is filed under Section 397 r/w. 401 of Cr.P.C, to call for the records and set aside the judgments in S.C.No.199 of 2006, on the file of the Principal District and Sessions Judge, Madurai by order dated 09.10.2006.

For Petitioner : Mr.S.C.Herold Singh

For Respondents : Mr.A.Robinson

Govt. Advocate (Crl. Side) for R1

: Mr.M.Sivakumar for R2 & R3

: Mr.T.C.S.Thillainayagam for R4

O R D E R

The defacto complainant in S.C.No.199 of 2006, on the file of the learned Principal District and Sessions Judge, Madurai, is the revision petitioner herein.

2.The father of the revision petitioner namely., Thiru.Raju Naidu died on 24.01.2004. It the case of the defacto complainant that the respondents 2 to 5 herein beat up his father with their hands. As a result of which, he had a fall, which led to his eventual death. The defacto complainant lodged information before B14, Sellur Police Station, leading to registration of Crime No.54 of 2004, for the offence under Section 302 of I.P.C. In the said FIR itself, all the private respondents herein have been named in person. Investigation was taken up and final report came to be filed before the learned Judicial Magistrate No.II, Madurai. Cognizance of the offences under Sections 448 and 302 r/w 34 of I.P.C. was taken and the case was committed to Sessions Court. It



was taken up for trial in S.C.No.199 of 2006, on the file of the the learned Principal District and Sessions Court, Madurai. Charges were framed against the four accused for the offences under Sections 448 and 302 r/w 34 of I.P.C. The accused pleaded not guilty of the charges and claimed to be tried.

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3.The prosecution examined as many as 12 witnesses and marked Exs.1 to 11. M.O.1 to M.O.13 were also marked. On the side of the accused Ex.D1 to Ex.D.4 were marked.

4.The learned Trial Judge after a detailed consideration of the evidence on record by the impugned judgment dated 09.10.2006, acquitted the accused of all the charges. Questioning the same, this criminal revision case has been filed.

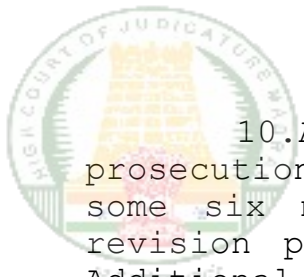
5.At the very outset, it is relevant to mention here that the State did not challenge the judgment of acquittal. On the other hand, it is only the defacto complainant, who has come before this Court. Of course, after the amendment to Section 372 of Cr.P.C., a victim also has the right to file an appeal, challenging the judgment of acquittal. But then, the impugned judgment was passed before the amendment was made. Therefore, the nature of these proceedings will have to be only a revision proceeding and not an appeal proceeding. The scope of the revision proceeding is limited compared to the scope of appeal.

6.The leaned counsel appearing for the revision petitioner reiterated all the contentions set out in the memorandum of grounds and wanted this Court to remand the matter so that the case can be heard afresh.

7.Per contra, the learned appearing for the acquitted accused submitted that the impugned judgment does not warrant any intervention.

8.I carefully considered the rival contentions and perused the evidence on record.

9.The property bearing Door No.38, Ayyanar Kovil 5th Street, Sellur, Maduari, stood in the name of Thiru.Raju Naidu. He sold the the said property in favor of Panchavarnam/second respondent herein vide a registered sale deed dated 26.06.2003. The case of the accused is that even though the title in respect of the property had changed hands, the possession was not handed over. The case of the revision petitioner is that the accused did not pay the full sale consideration and without doing so, they chose to take forcible possession of the property and it was in that process, the occurrence had taken place.



10.As rightly pointed out, the occurrence according to the prosecution, took place on 24.01.2004. The sale deed was registered some six months earlier. It is also not in dispute that the revision petitioner filed O.S.No.816 of 2004, before the learned Additional District Munisf Court, Madurai Town. The case was filed not only against the accused herein but also against his co-borns namely., brothers and sisters. Panchavarnam/second respondent herein was impleaded as fourth defendant in the suit.

11.Thus, it is the petitioner, who filed the civil suit against his own father in respect of the property that was sold in favour of the second respondent/Panchavarnam. Therefore, the accused will have a motive only against the revision petitioner and not against the person, who sold the property to them.

12.The learned Trial Judge in the impugned judgment has stated that even though there are several houses situated on the southern side, northern side and opposite side of the occurrence, no one was cited as witness in the final report except P.W.4. Even the said P.W4 did not support the prosecution case but turned hostile. That leaves only the revision petitioner and his brother namely., Kannan alone as the witnesses supporting the prosecution case. Both the revision petitioner as well as his brother/Kannan would have the serious grudge against their father and also against the accused herein. Therefore, it would be most unsafe to disturb the impugned judgment of acquittal merely on the strength of the interested testimony of the revision petitioner and that of his brother. More than anything else, the whole sale implication of not only the second respondent/Panchavarnam but also her husband and her parents, arises the doubt and suspicion of this Court. The Trial Court had observed that the revision petitioner did not even take his father to the hospital. In fact, it was his brother/Kannan and his son Venkatesan, who took the deceased to the hospital. The revision petitioner chose to go to police for the purpose of implicating all the members of the purchaser's family. The Trial Court rightly disbelieved the version projected by the prosecution.

13.It may not be out of place to remark that till date it is the revision petitioner, who is still in occupation of the house purchased by the second respondent herein. The learned counsel appearing for the accused drew my attention to the fact that the suit filed by the revision petitioner suffered dismissal on 29.07.2008 and appeal suit filed in A.S.No.153 of 2008, filed by the revision petitioner was also dismissed on 24.02.2014. S.A.(MD)No.424 of 2014 filed by the revision petitioner is still pending before this Court. This criminal case has effectively kept the accused at bay.



14.The learned counsel for the accused would draw my attention to the fact that the even though the impugned judgment was passed on 09.10.2006, the revision itself came to be filed only on March, 2012. The delay of six years in filing the revision case also shows that the revision petitioner was not bone fide or diligent in prosecuting the matter. Of course, once delay has been condoned, it may not be open to this Court to re-examine the same but then, the facts are facts and this Court cannot shut its eyes.

15.With these observations, this criminal revision case stands dismissed.

Sd/-

Assistant Registrar (C.O)

// True Copy //

Sub Assistant Registrar(CS)

To:

1.The Principal District and Sessions Judge,
Madurai.

2.The Inspector of Police,
B14, Sellur Police Station,
Madurai.

+1 CC to Mr.S.C.HEROLD SINGH, Advocate SR-79130.

+2 CC to Mr.R.R.KANNAN, Advocate SR-79266.

Crl.R.C. (MD)No.414 of 2012
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CS(06.09.2019) 4P 6C