



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 30.08.2019
CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl. A.(MD)Nos.398 & 399 of 2019

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Crl.A.(MD)No.398 of 2019

State rep. by,
The Inspector of Police,
SPE CBI ACB Chennai @ Madurai.

.. Appellant/ Complainant

Vs.

1. V.Karuppusamy(A3)
2. V.Madasamy(A4)

.. Respondents/Accused

Prayer : This Criminal Appeal is filed under Section 378(2) of Cr.P.C., to allow this appeal and set aside the finding of the Principal Sessions Judge, Madurai, dated 22.11.2013 passed in Crl.Appeal No.64 of 2011 finding that A3 and A4(Respondents) were not found guilty of the offences punishable under Sections 120(B) r/w. 182, 420, 511 of I.P.C.

Crl.A.(MD)No.399 of 2019

State rep. by,
The Inspector of Police,
SPE CBI ACB Chennai @ Madurai.

.. Appellant/ Complainant

Vs.

1. K.Karuppasamy(A1)
2. T.Karuppasamy(A2)

.. Respondents/Accused

Prayer : This Criminal Appeal is filed under Section 378(2) of Cr.P.C., to allow this appeal and set aside the common order of the finding of the Principal Sessions Judge, Madurai, dated 22.11.2013 passed in Crl.Appeal No.63 of 2011 finding that A1 and A2 (Respondents) were not found guilty of the offences punishable under Sections 120(B) r/w. 182, 420, 511 of I.P.C.

For Appellant : Mr. N.Nagendran,
Special Public Prosecutor
for CBI cases.
For Respondents : Mr.K.Suresh Subramanian

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

Both these appeals arise out of C.C.No.17 of 2006 on the file of the Chief Judicial Magistrate, Madurai.

<https://hcservices.ecourts.gov.in/hcservices/>



2. In the said C.C.No.17 of 2006, the accused who are four in number were convicted for the offences under Sections 120(b) r/w 420, 182 and 420 r/w. 511 of I.P.C. and sentenced to undergo Rigorous Imprisonment for three years and to pay a fine of Rs.1,000/- each vide Judgment dated 22.11.2011. Default sentences were also imposed. Aggrieved by the same, accused Nos.1 and 2 filed C.A.No.63 of 2011, while accused Nos.3 to 5 filed C.A.No.64 of 2011 before the Principal Sessions Judge, Madurai. Vide Judgment dated 22.11.2013, both the appeals were allowed and the Judgment of the trial Court was set aside. Challenging the same, these appeals have been filed.

3. The case of the prosecution is that in brief as under:

Accused No.1 K.Karuppasamy was riding TVS Suzuki motorcycle bearing registration No.TSA-4866 on 08.12.2005. The vehicle belonged to his father T.Karuppasamy(accused No.2). Accused No.1 did not have valid driving license to drive the said vehicle. The insurance policy of the vehicle had also lapsed. Accused No.1 was riding the vehicle with one K.Rajagopal. He was going from Keelapillayarkulam to Manur. While crossing a place called Kurinchi Nagar, the motorcycle skidded off the road, accused No.1 Karuppasamy fell down and sustained injury on his left leg. He took treatment locally till 21.12.2004. Then he was admitted to a private nursing home from where he was referred to Government Medical College Hospital, Tirunelveli. His left leg had to be ultimately amputated.

4. Insurance claim was not possible since the rider was not having the driving licence and the vehicle was not insured. Hence, accused No.1 entered into conspiracy with accused Nos.3 to 5 for preferring a false insurance claim with National Insurance Company Limited. Accused No.5 is the Clerk of an Advocate dealing with the cases relating to claiming compensation for accident victims. They preferred a false complaint before Manur police station, as if accused No.1 was only a pillion rider of the vehicle bearing registration No.TN 72 L 1930. The vehicle belonged to accused No.3 V.Karuppasamy. It was alleged that it was ridden by accused No.4 V.Madasamy. This substitution was done, since substituted vehicle was having a valid insurance policy with the National Insurance Company and the rider Madasamy had a valid driving licence. Based on this, a false complaint in Crime No.221 of 2005 was registered on the file of Manur police station. Investigation was done and final report was filed and cognizance of the offences was taken and the case was taken on file in S.T.C.No.793 of 2006 on the file of the Judicial Magistrate No.V, Tirunelveli against accused No.4 Madasamy. Accused No.4 Madasamy admitted his guilt and fine was imposed on him. A claim of Rs.10 Lakhs was also made by accused No.1 by filing M.C.O.P. against National Insurance Company Limited.

5. Following the orders of the Madras High Court, the case <https://www.cemil.org.in/cases> was transferred as R.C.37(A) of 2006 by C.B.I./ACB, Chennai.



Investigation was undertaken and these facts came to light. Thereupon, M.C.O.P. was dismissed as not pressed.

6. Before the learned trial Magistrate, the prosecution examined as many as 26 witnesses. Ex.P.1 to Ex.P.27 were marked. On the side of the accused, no evidence was adduced. The learned trial Magistrate by Judgment dated 22.11.2011 convicted and sentenced the accused as mentioned above. Questioning the same, the appeals were filed. The Judgment of the learned trial Magistrate was set aside and accused were acquitted. Challenging the same, these two appeals came to be filed.

7. Heard the learned counsel appearing for the learned Special Public Prosecutor appearing for C.B.I. Cases and the learned counsel appearing for the respondents.

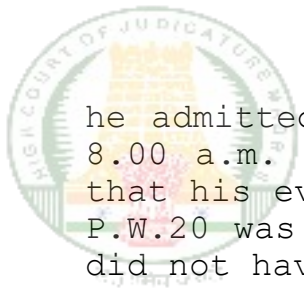
8. As already stated, as many as 26 witnesses were examined on the side of the prosecution. P.W.1 Johnson had worked in the Regional Transport Office, Tirunelveli, during the year 2006. He furnished the particulars regarding the vehicle bearing Registration No.TSA-4866. It stood in the name of one Vanitha, Chennai. It was later transferred to accused No.2 T.Karuppasamy on 11.06.2004. Since his testimony does not implicate the accused in any manner, he was not cross examined. P.W.2 Subramanian was working as Junior Assistant in the Regional Transport Office, Tirunelveli. He deposed that accused No.1 was issued only with light motor vehicle driving licence and that accused No.4 Madasamy was issued with license to ride two wheelers. P.W.3 Selvaraj was the Branch Manager of National Insurance Company Limited, Tuticorin Branch. He deposed that the vehicle bearing registration No.TSA-4866 did not have the insurance coverage after 28.10.2004. P.W.4 Esakki testified that the case was registered in Crime No.221 of 2005 for the offences under Sections 279 and 338 of I.P.C. on the file of the Manur police station. He examined accused No.1 Karuppasamy on 22.12.2005 in Tirunelveli Medical College Hospital. Based on the same, he registered First Information Report against accused No.4 Madasamy. P.W.5 Vijayakumar investigated Crime No.221 of 2005 and filed final report. P.W.6 Amulraj is the postal employee. P.W.7 is the Motor Vehicle Inspector Grade-II and he deposed that the vehicle bearing registration No.TN 72 L 1930 did not suffer any damage. P.W.8 Lakshmanaperumal is the Court staff who deposed about the receiving of the First Information Report in Crime No.221 of 2005 and taking of the final report on file in S.T.C.No.793 of 2006 on the file of the Judicial Magistrate No.V, Tirunelveli. He deposed that accused No.4 Madasamy was the sole accused and he pleaded guilty and was left with fine. P.W.9 Rajagopal deposed that accused No.2 Karuppasamy was having a two wheeler bearing registration No.TSA-4866(TVS Suzuki) and that on 08.12.2005 while accused No.1 Karuppasamy rode the vehicle, he sat in the pillion and that during the journey, the vehicle skidded off and that both of them fell down and sustained injuries. P.W.10 Karuppasamy deposed that he was the driver of the vehicle bearing registration No.1 Karuppasamy suffered injury.



9. P.W.10 M/s.Jeyalakshmi was employed in Tirunelveli Medical College Hospital and she spoke about the treatment given to accused No.1 Karuppasamy. P.W.11 Chellappa is also an employee of Tirunelveli Medical College Hospital. P.W.12 Dr.Pandi Perumal was also an employee of Tirunelveli Medical College Hospital. P.W.13 Bennet Duraisamy was a doctor who treated accused No.1 Karuppsamy. P.W.14 Palani Velammal was a Court employee who was employed in Principal Sessions Court, Tirunelveli in which M.C.O.P.No.123 of 2006 was pending. She deposed about the parties of the said M.C.O.P. and the dismissal of the same on 09.08.2006 as not pressed. P.W.15 Ramakrishnan turned hostile and did not support the case of the prosecution. P.W.16 Ganapathy turned hostile. P.W.17 Murugesan was an Ortho doctor who referred accused No.1 in Tirunelveli Medical College Hospital. P.W.18 Dr.Senthil Sivakumar had also treated accused No.1. P.W.19 Muthukaruppasamy Durai was an employee in the Regional Transport office, Tirunelveli and furnished the details regarding the vehicle bearing TN 72 L 1930. P.W.20 Ganesan deposed about the recording of investigation of the Crime No.221 of 2005 and filing of final report and the subsequent reregistration of crime numbers and transfer of investigation to CBCID. P.W.21 Rajagopalan was a senior official of National Insurance Company. P.W.22 Jeyabalan was an Advocate dealing with the cases claiming compensation for accident victims. He filed M.C.O.P.No.123 of 2006 on behalf of accused No.1 and subsequently withdrew the case as not pressed. P.W.23 Gandhi was the Junior lawyer of P.W.22. P.W.24 turned hostile. P.W.25 Ulagarani was the Sub Inspector of Police of Manur police station. P.W.26 Moni was the investigation officer in the case on hand.

10. To prove the charge against the accused, the prosecution was obliged to establish its case beyond reasonable doubt that the two wheeler bearing Registration No.TSA-4866 was involved and that the two wheeler bearing registration No.TN 72 L 1930 was not involved. The prosecution examined one Ganapathy P.W.16 who deposed that it was TSA- 4866 which was involved in the accident. He was cited as an eyewitness. But he did not support the prosecution case and turned hostile.

11. P.W.4 is a important witness. He was working in Manur police station on 22.12.2005. He clearly deposed that based on the testimony of accused No.1 Madasamy, he registered the case in crime No.221 of 2005 and that the final report was filed against accused No.4 Madasamy. P.W.4 Esakki was not cross examined by the prosecution. In this case while the vehicle bearing Registration No.TN 72 L 1930 was inspected by P.W.7 Motor Vehicle Inspector, the vehicle bearing Registration No.TSA-4866 was not even sent for examination. It is true that the testimony of P.W.9 Rajagopal is to some extent supporting the prosecution case. But then he did not specifically state that at the time of accident he came in a two wheeler bearing registration No.TSA-4866. In the cross examination,



he admitted that he did not know that on the date of occurrence at 8.00 a.m. who went on which vehicle. The Court below has observed that his evidence is not reliable and his version is not believable. P.W.20 was an investigation officer of the insurance company and he did not have direct knowledge of the events.

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12. This is a case of appeal against acquittal. When two views are possible, this Court will have to necessarily take the view that is in favour of the accused. The view taken by the lower appellate Court cannot be said to be perverse or palpably erroneous.

13. Though the plenitude of power available to the Court hearing an appeal against acquittal is the same as that of a Court hearing an appeal against an order of conviction, the Court hearing an appeal against acquittal, will not interfere solely because a different possible view may arise from the evidence. The Supreme Court in the case of *C. Anthony v. K.G Raghavan Nair* (2003) 1 SCC 1) has observed that while hearing an appeal against an order of acquittal, if two reasonable conclusions can be reached on the basis of the evidence on record, the appellate court should not disturb the finding of the trial Court.

14. It is true that M.C.O.P. filed by accused No.1 was allowed to be dismissed as not pressed. But from this solitary circumstances, one cannot come to the conclusion that since it was a fraudulent claim, it was allowed to be dismissed as not pressed. That would only be a conjecture and guess work. Since the learned Special Public Prosecutor for CBI has not demonstrated that the Judgment of acquittal suffers from perversity, I am not inclined to interfere with the impugned Judgments passed by the appellate Court.

15. The criminal appeals stand dismissed, accordingly. No costs.

Sd/-

Assistant Registrar (CS-II)

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/ /2020

Sub Assistant Registrar(CS)

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To

1. The Principal Sessions Judge,
Madurai



2. The Inspector of Police,
SPE CBI ACB Chennai @ Madurai.
3. The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.(2 copies)
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+2 CC to Mr.K. SURESH SUBRAMANIAN, Advocate SR-85101, 85100

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