

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	15.07.2019
Date of Judgment	25.10.2019

CORAM

THE HONOURABLE MRS. JUSTICE **T.KRISHNAVALLI****Cr1.RC(MD)No.536 of 2015**

Elangovan

: Appellants/1st Appellant/A5

Vs.

State represented by
The Sub Inspector of Police,
Kombai Police Station,
Theni, Theni District.
(Crime No.23 of 2009)

: Respondent/Complainant

Prayer: Criminal Revision has been filed under Section 397 r/w 401 of the Code of Criminal Procedure, against the judgment of the Principal District and Sessions Judge, Theni, dated 20.07.2015 passed in C.A.No.52 of 2014, modifying the Judgment of the Assistant Sessions Judge, Theni, in SC No.118 of 2009, dated 24.11.2014.

For Petitioner : Mr.R.Suriyanarayanan

For Respondent : Mr.APG Ohm Chairma Prabhu

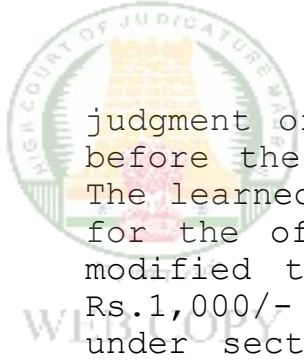
Government Advocat (Criminal side)

J U D G M E N T

This Criminal Revision is directed against the judgment of the Principal District and Sessions Judge, Theni, dated 20.07.2015 passed in C.A.No.52 of 2014, modifying the judgment of the Assistant Sessions Judge, Theni, in SC No.118 of 2009, dated 24.11.2014.

2.According to the prosecution, on 01.02.2009 at about 1.30 pm, when PW1 to PW3 were proceeding to the disputed land by Yamaha Two Wheeler, at that time, A1 to A6 were stood near the subject land and A5 (Petitioner) and A6 waylaid them and beaten PW1 by hands and thereafter, A1 and A2 instigated A3 to cut PW1 and hence, A3 attacked PW1 by Aruval on his left ear, A4 cut PW1 on his right hand by Aruval and when PW1 and other witnesses PW2 and PW3 ran away from the place of occurrence, A5 and A6 set fire on the bike of PW1. The Sub Inspector of Police attached to Kombai Police Station, Theni District has filed a final report against the accused examining the witnesses.

3.The trial court convicted A1 to A6 for the offence under section 147 IPC and sentenced them to undergo each 1 year rigorous imprisonment and for the offence under section 148 IPC, sentenced them to undergo 2 years rigorous imprisonment and for the offence under section 307 r/w 149 IPC and sentenced them to undergo each 7 years RI and to pay a fine of Rs.1,000/-, in default to undergo 6 months imprisonment and acquitted A1 to A6 from the charge under section 341 IPC and the petitioner/A5 and A6 were acquitted from the charges under sections 323, 506(ii) and 435 IPC. Aggrieved by the



judgment of the trial court, A5/petitioner and A6 preferred appeal before the Principal Sessions Judge, Theni, in C.A.No.52 of 2014. The learned first appellate court acquitted the petitioner/A5 and A6 for the offences under Section 147, 148 and 307 r/w 149 IPC and modified the sentenced against A5 and A6 and imposed a fine of Rs.1,000/- each, in default to undergo 3 months SI for the offence under section 147 IPC. Aggrieved by the judgment of the first appellate court, the petitioner/A5 is before this court.

4.Heard both sides and perused the materials available on record.

5.PW1 in his complaint and evidence stated that on 01.02.2009 at about 1.30 pm, when he along with PW2 and PW3 were proceeding to the disputed land by Yamaha Bike, A1 to A6 were stood near the disputed land and A5 and A6 waylaid them and beaten him by hands and thereafter, A1 and A2 instigated A3 to cut and A3 attacked him by Aruval on his left ear and A4 cut on his right hand by Aruval and when they were run away from the place of occurrence, A5 and A6 set fire on the bike of PW1.

6.According to the prosecution, the petitioner waylaid PW1 and beaten him by hands along with A6 and set fire on the bike of PW1. But the prosecution failed to prove the allegation as against the petitioner and A6 about set fire on the bike of PW1.

7.Further, PW1 in his evidence stated that he told the first Doctor, who gave treatment to him that he was attacked by known persons. But PW14/the 2nd Doctor, who gave treatment to PW1 told that PW1 told him that he was attacked by six known persons. Hence, there are contradictions between the evidence of PW1 and the Doctors.

8.In this case, PW2 and PW3 are residing at Madurai and there is no evidence available with regard to their presence in the place of occurrence. Further, PW4 told the Investigating Officer that PW1 asked him that he was attacked by five persons. But PW4 turned hostile and did not support the case of the prosecution.

9.From the above, it is seen that there is no evidence available about the alleged act of unlawful assembly against the petitioner. Since, the petitioner is a Government Servant, PW1 was falsely implicated the petitioner in this case as one of the accused. Further, from the evidence of PW8, PW11 and PW17, it reveals that there was previous motive between PW1 and the accused persons.

10.Further, in this case, the prosecution witnesses as well as the Investigating Officer have not stated that all the accused unlawfully assembled with arms and trespassed in the house with weapons or deadly weapons. Hence, this court is of the considered view that the charge under section 147 IPC is not made out as against the petitioner. The first appellate court without



considering the above facts, has erroneously given a finding, which is liable to be set aside and accordingly, it is set aside.

11. In the result, this Criminal Revision is **allowed**. The impugned judgment of conviction and sentence are set aside. The revision petitioner/accused is acquitted of the charge(s) levelled against him. The bail bond if any executed by him shall stand cancelled and the fine amount if any paid by him shall be refunded to him.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

Sub Assistant Registrar (CS)

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To,

1. The Assistant Sessions Judge,
Theni.

2. The Principal District and Sessions Judge,
Theni.

3. The Sub Inspector of Police,
Kombai Police Station, Theni, Theni District

4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Judgment made in
Cr1.RC.(MD) No.536 of 2015
25.10.2019

sma/03/01/2020/3p/5c