

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 24.02.2020
PRONOUNCED ON : 28.02.2020
CORAM
THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.R.C.No.1460 of 2013

1.Pragalathan
2.Uvaraj

.. Petitioners/
A2 and A4
Vs.

State rep. by
The Station House Officer
Kottucherry Police Station
Karaikal

... Respondent/ Complainant

Criminal Revision preferred under Section 397 read with 401 Cr.P.C. to set aside the judgment and order dated 12.12.2008 passed by the Additional Sessions Judge, Puducherry in C.A.No.5 of 2006 confirming the judgment of conviction and sentence dated 11.10.2006 passed by the Judicial Magistrate No.II, Karaikal in C.C.No.113 of 2004.

For Petitioners : Mr.L.Poovendra Perumal
for Mr.Kamalakumar

For Respondent : Mr.V.Balamurugane
Public Prosecutor (Puducherry)

O R D E R

This criminal revision has been preferred to set aside the judgment and order dated 12.12.2008 passed by the Additional Sessions Judge, Puducherry in C.A.No.5 of 2006 confirming the judgment of conviction and sentence dated 11.10.2006 passed by the Judicial Magistrate No.II, Karaikal in C.C.No.113 of 2004.

2.The prosecution story is as follows :
Tamilselvi (P.W.1) was the President of Keezhakasakudy women self-help group. In the year 2004, Arumugam (A1) requested Tamilselvi (P.W.1) and her family members to conduct a cultural programme and they agreed. Both Tamilselvi (P.W.1) and Arumugam (A1) collected donations for the cultural programme. On the night of 12.05.2004, the cultural programme was

conducted.

Tamilselvi (P.W.1) published a pamphlet, setting out the amounts collected by her and the money spent by her for the cultural programme. This was not to the liking of Arumugam (A1). Therefore, it is alleged that on 13.05.2004 around 09.00 a.m., Arumugam (A1) along with Pragalathan (A2), Murugaian (A3), Uvaraj (A4), Francis Victor (A5), Pandian (A6) and Mathivanan (A7), came to the house of Tamilselvi (P.W.1) and asked her for her husband. When she stated that her husband was not at home, they pushed her aside, barged into her house, pulled her husband, pulled her also out of her house holding her tresses and assaulted them near the house of one Thangavelu with sticks and caused serious injuries to them, including her son Sankaralingam (P.W.11).

3.On the written complaint (Ex.P1) lodged by Tamilselvi (P.W.1), the respondent police registered a case in Crime No.73 of 2004 under Sections 147, 448, 427, 324, 323 read with 149 IPC and took up the investigation of the case.

4.The injured were examined by Dr.M.Balaji Rao (P.W.12) on 13.05.2004 at 10.00 a.m. in the Government Hospital, Karaikal and their wound certificates were marked as Exs.P7 to P12. Dr.Balaji Rao, in his evidence as well in the wound certificate (Ex.P10), has stated that, except one injury i.e. fracture in the 5th finger that was sustained by Narayanasamy (P.W.2), the other injuries sustained by him and others were simple in nature.

5.After examining the witnesses and collecting the reports, the police completed the investigation and filed a final report in C.C.No.113 of 2004 before the Judicial Magistrate No.II, Karaikal for the offences under Sections 147, 448, 427, 324, 323 read with 149 IPC against A1 to A7. Charges for the aforesaid offences were framed against the accused and when questioned, they pleaded "not guilty".

6.The prosecution examined 13 witnesses and marked 13 documents and 4 material objects. When the accused were questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against them, they denied the same. No witness was examined nor any document marked from the side of the accused.

7.During trial, Arumugam (A1) died. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 11.10.2006 in C.C.No.113 of 2004, acquitted A2 to A7 of the offences under Sections 147, 427, 325, 323 read with 149 IPC, but convicted them of the offence under

Section 448 IPC and sentenced them to pay a fine of Rs.500/- each, in default, to undergo simple imprisonment for one month. The appeal in C.A.No.5 of 2006 that was filed by A2 to A7 was dismissed by the Additional Sessions Court, Puducherry on 12.12.2008. Aggrieved by the concurrent findings of fact of the Courts below with regard to the offence under Section 448 IPC, Pragalathan (A2) and Uvaraj (A4) have filed the present criminal revision.

8.Heard Mr.L.Poovendra Perumal, learned counsel for the revision petitioners and Mr.V.Balamurugane, learned Public Prosecutor (Puducherry) appearing for the respondent State.

9.Before advertng to the rival submissions, it may necessary to state that while exercising revisional jurisdiction in a case involving concurrent findings of fact arrived at by two Courts below, the High Court cannot act as a second appellate Court [See State of Maharashtra Vs. Jagmohan Singh Kuldeep Singh Anand and Others, etc. (2004) 7 SCC 659]. Very recently, in Bir Singh Vs. Mukesh Kumar [(2019) 4 SCC 197], the Supreme Court has held as under:

"17. As held by this Court in Southern Sales & Services v. Sauermilch Design and Handels GmbH [Southern Sales & Services v. Sauermilch Design and Handels GmbH, (2008) 14 SCC 457] , it is a well-established principle of law that the Revisional Court will not interfere even if a wrong order is passed by a court having jurisdiction, in the absence of a jurisdictional error. " (emphasis supplied)

10.Learned counsel for the petitioners contended that when the Courts below had disbelieved the evidence of Tamilselvi (P.W.1), Narayanasamy (P.W.2) and Sankaralingam (P.W.11) with regard to the assault, the Courts below ought not to have convicted the petitioners for trespass. He further contended that there was no independent witness to show that the accused have trespassed into the house of the de facto complainant. He also contended that the trial Court had held that the witnesses have failed to say exactly who assaulted whom and who caused which injury.

11.Per contra, the learned Public Prosecutor (Puducherry) refuted the contentions put forth by the learned counsel for the petitioners.

12.This Court carefully perused the evidence of

Tamilselvi (P.W.1), Narayanasamy (P.W.2), Muniyammal (P.W.3), Sumathi (P.W.8) and Sankaralingam (P.W.11), who were all attacked by the accused and sustained injuries and who were treated by Dr.Balaji Rao (P.W.12). These witnesses have clearly stated that, on account of the dispute between Arumugam (A1) and Narayanasamy (P.W.2) with regard to the amounts collected for the cultural programme that was held on 12.05.2004, A1 to A7 came armed with sticks to the house of Tamilselvi (P.W.1) and Naryanasamy (P.W.2) on 13.05.2004 at 09.00 hours, pushed Tamilselvi (P.W.1), entered her house and held Narayanasamy (P.W.2) by his shirt and dragged him out of the house; when Tamilselvi (P.W.1), Muniyammal (P.W.3), Sumathi (P.W.8) and Sankaralingam (P.W.11) resisted, they were also attacked.

13.The medical evidence of Dr.Balaji Rao (P.W.12) and the wound certificates clearly corroborate the testimony of the injured witnesses. However, on a very specious reasoning that the injured witnesses have not stated, as to who inflicted which injury, on whom, the accused were acquitted for the murderous attack they mounted on the victims, but, were convicted for merely trespassing and were fined Rs.500/-, which, in the opinion of this Court, is perverse. However, the State has not challenged the findings of the trial Court.

14.The trial Court lost sight of the fact that, the incident had taken place on 13.05.2004 and the witnesses were examined only from 08.04.2008 onwards i.e. after a lapse of four years. The fact that five persons sustained injuries, of whom, Narayanasamy (P.W.2) sustained a grievous injury, has been established by the prosecution. The further fact that seven persons armed with sticks, assembled at the house of Tamilselvi (P.W.1) shows that, they shared a common object to commit assault. In pursuance of that object, they barged into the house of Tamilselvi (P.W.1), dragged her husband out and attacked five persons with sticks. Though in the F.I.R. which was given contemporaneously by Tamilselvi (P.W.1), she was able to state who had attacked whom, her failure to state exactly in her evidence four years later as to who attacked whom, cannot be a good reason to disbelieve her.

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As a result, this Court does not find any infirmity in the

findings of the Courts below, warranting interference and this criminal revision stands dismissed. The Registry is directed to transmit the original records to the Court concerned forthwith.

Sd/-
Asst.Registrar (CS VI)

/true copy/
Sub Asst. Registrar

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To

1.The Additional Sessions Court
Puducherry

2.The Judicial Magistrate Court No.II
Karaikal

3.The Station House Officer
Kottucherry Police Station
Karaikal

4.The Public Prosecutor
High Court of Madras

5.The Section Officer
Criminal Section
High Court Madras

+1 cc to M/s.R.Saravanan Advocate sr17585

CRL.R.C.No.1460 of 2013

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