

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 21.01.2020
DELIVERED ON: 29.01.2020

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl.R.C. No.997 of 2013

1 Shanmugam

2 Sagadevan

..Petitioners/Appellants 3 & 5/
Accused 3 & 5

vs.

The State by the Sub-Inspector of Police
Singarapettai Police Station
Uthangarai Taluk
Krishnagiri District
(Cr. No.197/2003)

..Respondent/Respondent/Complainant

Prayer: Criminal Revision filed under Section 397 r/w 401 Cr.P.C. seeking to set aside the judgment and order dated 27.02.2013 passed by the Additional District Judge, Krishnagiri, Krishnagiri District in Crl.A. No.9 of 2010 modifying the judgment and order dated 15.12.2009 passed in C.C. No.267 of 2004 on the file of the District Munsif-cum-Judicial Magistrate Court, Uthangarai.

For petitioners Mr. Shankararaman
for Mr. S. Sathish Rajan

For respondent Mr. R. Surya Prakash
Government Advocate (Crl. Side)

ORDER

This criminal revision has been filed seeking to set aside the judgment and order dated 27.02.2013 passed by the Additional District Judge, Krishnagiri, Krishnagiri District in Crl.A. No.9 of 2010 modifying the judgment and order dated 15.12.2009 passed in C.C. No.267 of 2004 on the file of the District Munsif-cum-Judicial Magistrate Court, Uthangarai.

2 The prosecution case, in a nutshell, is as follows:

2.1 The accused numbering 12 and the victim party numbering 4 were having a dispute with regard to enjoyment of the land in S. No.71/2A in Kommampattu Village. In the civil litigation between them, the victim party succeeded.

2.2 While so, on 22.07.2003, around 03.30 p.m., the accused party were ploughing the disputed land and at that time, the victim party, viz., Amudha (P.W.1), Vediappan (P.W.2), Kavitha (P.W.3) and Lakshmi (P.W.4) came there and questioned them, as a result of which, a quarrel ensued, in pursuance whereof, it is alleged that Kuttiappa Gounder (A.2) exhorted the other accused to attack the victim party. Immediately, the accused party fell upon the victim party and started belaboring them resulting in injuries to Amudha (P.W.1), Vediappan (P.W.2), Kavitha (P.W.3) and Lakshmi (P.W.4). The injured were admitted to the hospital and on the complaint lodged by Amudha (P.W.1), the respondent police registered a case in Cr. No.197 of 2003 and after completing the investigation, filed a final report in C.C. No.267 of 2004 before the District Munsif-cum-Judicial Magistrate, Uthangarai against A.1 to A.12.

2.3 The trial Court framed charges against the accused for the offences under Sections 147, 148, 323, 324, 326 and 506(II) IPC read with Section 149 IPC. When questioned, the accused pleaded not guilty.

2.4 To prove the case, the prosecution examined ten witnesses and marked eleven exhibits.

2.5 From the side of the accused, one Valliammal was examined as D.W.1 and six exhibits were marked.

2.6 After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 15.12.2009 in C.C. No.267 of 2004, acquitted Garipeeriyammal (A.7), Valli (A.10), Sumathy (A.11) and Manjula (A.12) and convicted and sentenced the rest of the accused as follows:

Name of Accused with rank	Provisions under which convicted	Sentence
Saminathan (A.1) Vijayarangan (A.6) Panjalai (A.8) Sinthakodi (A.9)	Section 323 IPC	Fine of Rs.500/- each, in default to undergo one week rigorous imprisonment
Kuttiappa Gounder (A.2)	Section 506 (I) IPC	Fine of Rs.1,000/-, in default to undergo six months rigorous imprisonment
Shanmugam (A.3)	Section 324 IPC	Six months rigorous imprisonment
Venkatachalam (A.4)	Section 323 IPC Section 325 IPC	Fine of Rs.500/-, in default to undergo one week rigorous imprisonment Fine of Rs.2,000/-, in default to undergo six months rigorous imprisonment
Sagadevan (A.5)	Section 324 IPC Section 326 IPC	Six months rigorous imprisonment One year rigorous imprisonment

2.7 In the appeal in CrI.A. No.9 of 2010 preferred by Saminathan (A.1), Kuttiappa Gounder (A.2), Shanmugam (A.3), Venkatachalam (A.4), Sagadevan (A.5), Vijayarangan (A.6), Panjalai (A.8) and Sinthakodi (A.9), the appellate Court confirmed the conviction and sentence imposed on Shanmugam (A.3), Venkatachalam (A.4) and Sagadevan (A.5) for the charge under Section 324, Section 323 and Section 326 respectively and modified the default clause of rigorous imprisonment imposed on them as simple imprisonment and acquitted Saminathan (A.1), Kuttiappa Gounder (A.2), Venkatachalam (A.4), Sagadevan (A.5), Vijayarangan (A.6), Panjalai (A.8) and Sinthakodi (A.9) of the charges under Sections 323, 506(I), 325, 324, 323, 323 and 323, respectively.

2.8 Calling in question the legality and validity of the conviction and sentence imposed by the trial Court and confirmed by the appellate Court, Shanmugam (A.3) and Sagadevan (A.5) have filed the instant criminal revision. Seemingly, as per the

records available before this Court, Venkatachalam (A.4) has not preferred any revision before this Court challenging the conviction and sentence confirmed by the appellate Court.

3 Heard Mr. Shankararaman, learned counsel for the petitioners and Mr. R. Surya Prakash, learned Government Advocate (Crl. Side) appearing for the respondent State.

4 The learned counsel for the petitioners submitted that the police had failed to recover the weapons that were allegedly used by the petitioners for the attack and therefore, the conviction and sentence slapped on them deserve to be interfered with. In support of this contention, the learned counsel placed reliance on the following judgments:

- Niranjan Panja vs. State of West Bengal¹
- Raja vs. State by Sub-Inspector of Police, Mahendramangalam P.S.²
- Meenakshi Sundaram vs. State³ and
- Kannan vs. State represented by the Inspector of Police⁴

5 He further contended that when the trial Court had disbelieved the evidence of P.Ws. 1 to 4 qua the acquitted accused, the conviction of Shanmugam (A.3) and Sagadevan (A.5) on the basis of the same evidence was improper.

6 Per contra, the learned Government Advocate (Crl. Side) refuted the contentions put forth by the learned counsel for the petitioners.

7 This Court gave its anxious consideration to the rival submissions.

8 This Court perused the evidence of P.Ws. 1 to 4 and found that they have cogently narrated the events that took place on the date of the incident. In their evidence, they have also stated the attack mounted by each of the accused and the injuries suffered by them (prosecution witnesses). Since the case of the acquitted accused is not before this Court, it may not be necessary to discuss the evidence against them and suffice it to confine to the evidence against the petitioners herein alone, viz., Shanmugam (A.3) and Sagadevan (A.5).

1

2

3

4

9 All the witnesses, including Lakshmi (P.W.4), have stated that Shanmugam (A.3) attacked Lakshmi (P.W.4) with a knife and caused injuries. Likewise, all the prosecution witnesses have stated that Sagadevan (A.5) attacked Vediappan (A.2) with a knife and when he tried to defend the attack, he suffered injuries on his forearm.

10 Dr. Devarajan (P.W.9) attached to the Government Hospital, Krishnagiri, who examined Vediappan (P.W.2) and Lakshmi (P.W.4) on the same day, has spoken about the three injuries, viz., (i) a skin-coloured swollen injury measuring 15 cm. x 2 cm. behind the left shoulder - grievous injury, (ii) a skin-coloured swollen injury measuring 6 cm. x 2 cm. behind the right thigh - simple injury and (iii) two bloodstained teeth in the upper jaw in a shaking condition - simple injury, suffered by Vediappan (P.W.2) and the four injuries, viz., (i) a cut injury measuring 10 cm. x 4 cm. with blood clot on the right side of the head, (ii) a lacerated injury measuring 3 cm. x $\frac{1}{2}$ cm. on the left side of the head, (iii) a cut injury measuring 3 cm. x 2 cm. x $\frac{1}{2}$ cm. on the left side of the neck and (iv) a skin-coloured swollen injury measuring 12 cm. x 2 cm. on the left side of the back, all simple injuries. Thus, the evidence of the injured witnesses has been corroborated by the testimony of Dr. Devarajan (P.W.9) who treated them and who has recorded the same in the Accident Registers, viz., Exs.P.8 and P.9.

11 Coming to the judgments relied on by the learned counsel for the petitioners, it is to be noted that the said judgments turned out on their own facts and they are not for the proposition that in every case, where, the police have failed to recover the weapons, the accused should have to be acquitted perforce. Investigation in India cannot be done by a private person and the power is vested only with the police under Chapter XII of the Code of Criminal Procedure. In this case, Ramasamy (P.W.10), Sub-Inspector of Police, who conducted investigation has stated that he arrested only Saminathan (A.1) and that he did not effect any recovery. Therefore, in the absence of arrest of other accused, the police would not have been able to effectively recover the weapons used by the attackers. Failure of the police to effect seizure will not ipso facto vitiate the evidence of the injured witnesses. In this context, it may be profitable to allude to the judgment in Mritunjoy Biswas vs. Pranab @ Kuti Biswas and another⁵, wherein, it was categorically held that non-recovery of weapons, when there is ample unimpeachable ocular evidence and the same has been corroborated by medical evidence, will not vitiate the

prosecution case. The relevant portion of the said judgment reads thus:

"33. The learned counsel for the respondent has urged before us that there has been no recovery of weapon from the accused and hence, the prosecution case deserves to be thrown overboard and, therefore, the judgment of acquittal does not warrant interference.

34. In *Lakshmi v. State of U.P.* [(2002) 7 SCC 198 : 2002 SCC (Cri) 1647] this Court has ruled that: (SCC p. 205, para 16)

"16. Undoubtedly, the identification of the body, cause of death and recovery of weapon with which the injury may have been inflicted on the deceased are some of the important factors to be established by the prosecution in an ordinary given case to bring home the charge of offence under Section 302 IPC. This, however, is not an inflexible rule. It cannot be held as a general and broad proposition of law that where these aspects are not established, it would be fatal to the case of the prosecution and in all cases and eventualities, it ought to result in the acquittal of those who may be charged with the offence of murder."

35. In *Lakhan Sao v. State of Bihar* [(2000) 9 SCC 82 : 2000 SCC (Cri) 1163] it has been opined that: (SCC p. 87, para 18)

"18. The non-recovery of the pistol or spent cartridge does not detract from the case of the prosecution where the direct evidence is acceptable."

36. In *State of Rajasthan v. Arjun Singh* [(2011) 9 SCC 115 : (2011) 3 SCC (Cri) 647] this Court has expressed that: (SCC p. 122, para 18)

"18. ... mere non-recovery of pistol or cartridge does not detract the case of the prosecution where clinching and direct evidence is acceptable. Likewise, absence of evidence regarding recovery of used pellets, bloodstained clothes, etc. cannot be taken or construed as no such occurrence had taken place."

Thus, when there is ample unimpeachable ocular evidence and the same has been corroborated by the medical evidence, non-recovery of the weapon does not affect the prosecution case."

12 In the case at hand, the fact remains that Vediappan (P.W.2) and Lakshmi (P.W.4) suffered injuries in the attack, which include one grievous injury by Vediappan (P.W.2). All the witnesses have stated that Shanmugam (A.3) and Sagadevan (A.5) attacked with knife.

13 As regards the contention of the learned counsel for the petitioners that the acquittal of the some of the other accused by the trial Court would enure to the advantage of the petitioners herein, this Court perused the judgment of the appellate Court and found that the reasons for acquitting the other accused are not sound. For instance, the appellate Court has held that Amudha (P.W.1) has not stated that Shanmugam (A.3), Garipeeriammal (A.7), Panjalai (A.8), Sinthakodi (A.9) and Manjula (A.12) had attacked her with sticks, whereas, she has only stated that they had beaten her with bare hands. The fact remains that Amudha (P.W.1) was treated for her injuries as an in-patient and there is ample evidence to sustain the conviction of the petitioners under Section 323 IPC, which the trial Court did not choose to for the reasons best known to it. In this context, it is worth alluding to the sagely observation of the Supreme Court in Gangadhar Behera and others vs. State of Orissa⁶, wherein, it was held that merely because some of the accused persons have been acquitted, though evidence against all of them, so far as direct testimony went, was the same, does not lead, as a natural corollary that, those who have been convicted must also be acquitted. Likewise, in Nallabothu Venkaiah vs. State of Andhra Pradesh⁷, the Supreme Court held that wrongful acquittal recorded by the Court of some of the accused, even if it stood, the circumstances would not be impeding the conviction of the other accused.

14 In view of the foregoing discussion, this Court does not find any reason to acquit Shanmugam (A.3) and Sagadevan (A.5). Accordingly:

- the judgment of the appellate Court confirming the conviction of Shanmugam (A.3) and Sagadevan (A.5) by the trial Court of the offence under Section 324 IPC and Section 326 IPC respectively, is confirmed.

6 (2002) 8 SCC 381

7 (2002) 7 SCC 117

- however, the sentence of six months rigorous imprisonment imposed by the trial Court on Shanmugam (A.3) for the offence under Section 324 IPC and the sentence of one year rigorous imprisonment imposed by the trial Court on Sagadevan (A.5) for the offence under Section 326 IPC, both confirmed by the appellate Court, are reduced to three months rigorous imprisonment and six months rigorous imprisonment, respectively.
- as far as the default sentence is concerned, the modification made by the appellate Court from rigorous imprisonment to simple imprisonment, shall be maintained.

15 Resultantly, this criminal revision is allowed to the limited extent indicated in paragraph no.14 (supra). The trial Court is directed to secure the presence of the petitioners and commit them to prison to undergo the remaining period of sentence.

Further, this Court, vide order dated 13.03.2018, had called for explanation from the trial Judge, viz., Mrs. R. Vijayakumari, for not marking the weapons as material objects, in response to which, the trial Judge has submitted her explanation letter dated 22.03.2018, wherein, she has assigned satisfactory reasons for not marking the weapons as material objects. Her explanation stands accepted and this file is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

cad

To

- 1 The Sub-Inspector of Police
Singarapettai Police Station
Uthangarai Taluk
Krishnagiri District
- 2 The Additional District Judge
Krishnagiri
Krishnagiri District

3 The District Munsif-cum-Judicial Magistrate
Uthangarai

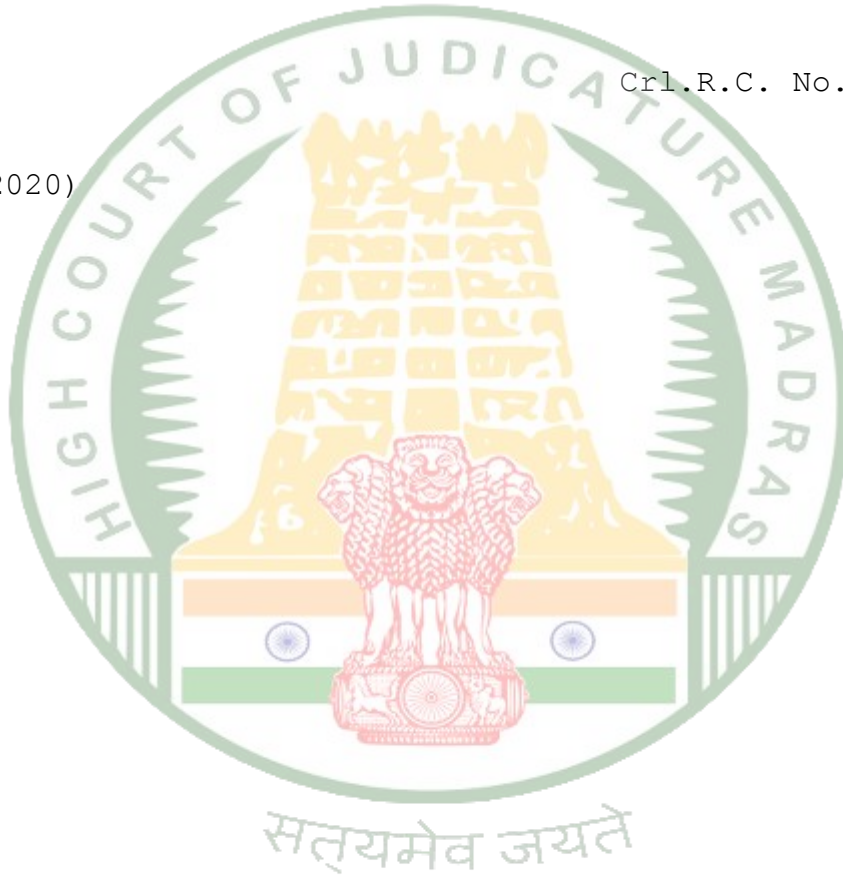
4 The Deputy Registrar
(Crl. Side)
Madras High Court
Chennai

} with a direction to return the
original records to the respective
Courts

+1 CC to Mr.S. Sathish Rajan, Advocate sr 6890.

Crl.R.C. No.997 of 2013

MR (CO)
SP (28/02/2020)



WEB COPY