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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.06.2021

Coram

The Honourable Mr. Justice P.N.PRAKASH
and
The Honourable Mr. Justice R.PONGIAPPAN

Crl.A.No.551 of 2018

Mara Naicker,
S/o.Palaniappan,
Therku Thottam,
Oppilavadalur, Shenbagapudur,
Sathyamangalam, Erode.

.. Appellant

Vs.

1. The Inspector of Police,
Sathyamangalam Police Station,
Erode.

2. Nagaraj,
S/o.Thimma Naicker,
Oppilavadalur, Shenbagapudur,
Sathyamangalam, Erode.

.. Respondents

Criminal Appeal filed under Sections 397 and 401 Cr.P.C. against the judgment and order dated 08.09.2011 passed in S.C.No.78 of 2011 on the file of the Additional Sessions Court, (Fast Track Court No.II), Gobichettipalayam and set aside the same.

For Appellant	: Mr.P.R.Balasubramanian
For R1	: Mr.R.Muniyapparaj Govt. Advocate (Crl.Side)
For R2	: Mr.Ma.P.Thangavel

JUDGMENT

[Order of the Court was made by P.N.PRAKASH, J.]

Challenging the judgment and order of acquittal dated 08.09.2011 passed in S.C.No.78 of 2011 on the file of the Additional Sessions Court, (Fast Track Court No.II),



Gobichettipalayam, the appellant/de facto complainant (PW1) has preferred the present criminal appeal.

2. It is the case of the prosecution that there were financial dealings between the deceased Ramaraj and the accused Nagaraj, second respondent herein, pursuant to which, Ramaraj went to the house of Nagaraj at 07.30 p.m. on 09.10.2010 and demanded repayment. At that time, it is alleged that Nagaraj assaulted Ramaraj with an iron rod, which resulted in the death of Ramaraj on 29.10.2010.

3. On these allegations, on a complaint (Ex-P1) given by the appellant/de facto complainant (PW1), the police registered a case in Crime No.645 of 2010 under Section 326 IPC and on the death of Ramaraj, the case was altered to one under Section 302 IPC.

4. After completing the investigation, the police filed a final report in P.R.C.No.2 of 2011 before the Judicial Magistrate Court, Sathyamangalam.

5. On the appearance of the accused, he was furnished with the relied upon documents under Section 207 Cr.P.C. and the case was committed to the Court of Session in S.C.No.78 of 2011 and was made over to the Additional Sessions Court, (Fast Track Court No.II), Gobichettipalam, for trial.

6. The trial Court framed a charge under Section 302 IPC against the accused and when questioned, he pleaded "not guilty".

7. To prove the prosecution case, the police examined twelve witnesses and marked ten exhibits and three materials objects.

8. When the accused was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same. From the side of the accused, no witness was examined nor any document marked.

9. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 08.09.2011 in S.C.No.78 of 2011, acquitted the accused of the charge under Section 302 IPC, aggrieved by which, the appellant/de facto complainant (PW1), father of Ramaraj, has filed the present appeal against acquittal under the proviso to Section 372 Cr.P.C.

10. Heard Mr.P.R.Balasubramanian, learned counsel for the appellant/de facto complainant, Mr.R.Muniyapparaj, learned Government Advocate (Crl.Side) appearing for the first



respondent/State and Mr.Ma.P.Thangavel, learned counsel for the second respondent/accused.

11. The entire prosecution case revolves around the evidence of Chinnasamy (PW2) and Mohanraj (PW3).

12. Chinnasamy (PW2) and Mohanraj (PW3) have stated in their evidence that, while they were standing near their house around 7.30 p.m. on 09.10.2010, they saw Ramaraj talking to Nagaraj near the latter's house. They further stated that Ramaraj was demanding repayment of the monies lent by him from Nagaraj and infuriated by the same, Nagaraj assaulted Ramaraj with an iron rod.

13. The trial Court has disbelieved this testimony on the ground that in the cross-examination, Chinnasamy (PW2) and Mohanraj (PW3) have stated that they were standing around 100-150 feet away from Nagaraj's house. There was no evidence to show that the area was illuminated. Therefore, the evidence of these two witnesses that they heard the conversation between Nagaraj and Ramaraj was disbelieved by the trial Court on appreciation of their evidence.

14. The trial Court has had an opportunity to see the demeanor of these two witnesses and we do not find any perversity in the findings arrived at by the trial Court warranting interference.

15. Trite it is that when two views are possible from a given set of evidence, the view that favours the accused merits acceptance.

In the result, we find no reason, much less any good reason, to interfere with the judgment and order of acquittal that has been passed by the trial Court and consequently, this criminal appeal is dismissed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

nsd

To

1. The Additional Sessions Judge,
(Fast Track Court No.II),
Gobichettipalayam.



2. The Inspector of Police,
Sathyamangalam Police Station,
Erode.

3. The Public Prosecutor,
Madras High Court,
Chennai - 600 104.

4. The Section Officer, Criminal Section,
High Court, Madras.

+lcc to Mr.Ma.P.Thangavel, Advocate, S.R.No.30152

Crl.A.No.551 of 2018

UM(CO)
BE(28/07/2021)