



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE ON WHICH RESERVED : 17.02.2021

DATE ON WHICH PRONOUNCED : 16.03.2021

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.O.P.(MD)No.5918 of 2017

and

Crl MP(MD)Nos.4011 & 4012 of 2017

Gunasekaran

... Petitioner/A-2

Vs.

1.The State rep by

The Inspector of Police,

Gandarvakkottai Police Station,

Pudukottai District.

... Respondent/Complainant

2.Renganathan

... Respondent/Defacto Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in S.C.No.105 of 2004 on the file of the learned Special Court for Essential Commodities Act - Cum - Additional Sessions Judge, Pudukkottai and quash the same as illegal.

For Petitioner : Mr.S.Ravi for

Mr.A.K.Manickam

For R1

: Mr.M.Ganesan,

Government Advocate (Crl.Side)

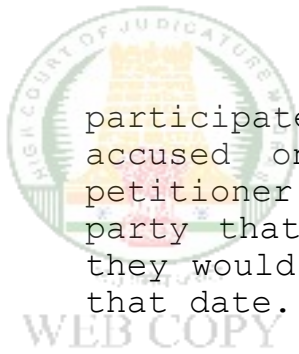
For R2

: No Appearance

ORDER

This Criminal Original Petition has been filed to quash the proceedings in S.C.No.105 of 2004, on the file of the learned Special Court for Essential Commodities Act - Cum - Additional Sessions Judge, Pudukkottai.

2. (i) The case of the prosecution before the Trial Court is that the present petitioner and as well as the other accused persons in S.C.No.91 of 1995, on the file of Sessions Judge, Pudukottai, were charge sheeted for various offences, such as, under Sections 147, 148, 302 r/w 149, 326, 324, 323 IPC and also for causing grievous and simple injuries to the various witnesses. As per the prosecution version, the witness party and the accused party belong to the separate village called Marungoorani and Rajapatti respectively. A dispute arose between the villagers over Vinayagar Temple. A sporting event called 'Jallikattu' was conducted on 02.04.1994, in the village called Ganapathipuram. So, in that event, the witness party participated. The accused party also



participated and during the sport event, quarrel arose between the accused on one side and P.W.1 party on the other side. The petitioner along with the other accused, challenged the deceased party that they have to pass through their village in any event, they would murder them. That incident took place around 3.30 p.m on that date.

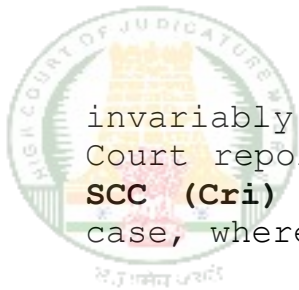
(ii) At about 09.30 p.m, when the deceased party was passing though the land of one Rasu Konar, the accused party, who waited in a water canal emerged at the scene. The first accused and this petitioner alleged to have armed with aruval and other accused persons armed with sticks and rods and the first accused hit the deceased namely, Chinnaiah Konar on his right side neck with aruval. Subsequently, he fell down. P.W.1, immediately, shouted and on hearing his noise, P.Ws.2, 5 and 6 reached the place of occurrence. When P.W.1 tried to lift the injured Chinnaiah Konar, this petitioner attacked him on his right forehead with an aruval. The other accused persons have also attacked the witnesses. When Chinnaiah Konar was taken to the hospital, he died enroute. P.W.1 went to the Village Administration Officer of Sundampatti and gave a complaint.

(iii) After completing the formalities, the case was committed to the Additional Sessions Judge, Pudukkottai and during that time, this petitioner did not appear and the case against him was split up as S.C.No.105 of 2004 on the file of the learned Special Court for Essential Commodities Act Cum Additional Sessions Judge, Pudukkottai, and rest of the accused were tried by the Trial Court and were convicted and sentenced to undergo various sentences as noted in the petition. Against the conviction and sentence order, all the other accused persons, preferred Crl.A.No.322 of 1998 before this Court. By the judgment, dated 10.02.2003, Hon'ble Division Bench of this Court, allowed the appeal, filed by all the accused persons and accordingly, conviction and sentence imposed against the accused persons were set aside.

3. Now, according to this petitioner, the benefit of doubt, extended to the co-accused in Crl.A.No.322 of 1998, also enures him and the sessions case pending against him in S.C.No.105 of 2004 is liable to be quashed.

4. The point, which arose for consideration is **whether in the light of the judgment in Crl.A.No.322 of 1998, the case pending against this petitioner in S.C.No.105 of 2004 is liable to be quashed?**

5. Straight-away the learned counsel for the petitioner, before going into the factual aspects would draw the attention of this Court to various judgment pronounced on this point. In all the judgment, cited by the learned counsel for the petitioner,



invariably in all the cases, the judgment of the Hon'ble Supreme Court reported in **Mohemed Moin Uddin Vs. State of Maharashtra, 1971 SCC (Cri) 617** is either referred or followed. That is the base case, wherein, the following proposition has been laid.

"Where the evidence against all the accused persons is inseparable and indivisible and if some of the accused persons have been acquitted, the remaining accused persons cannot be treated differently on the basis of the same evidence."

6. But, at the same time, the general proposition of law is restated by the Hon'ble Supreme Court in a judgment reported in **Sat Kumar Vs. State of Haryana AIR 1974 SC 294** to the effect that,

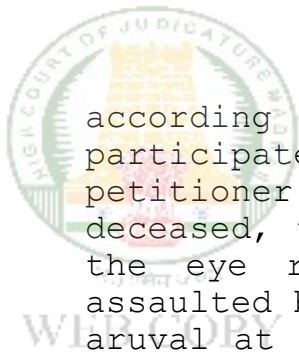
"there is no rule of law that if the Court acquits some of the accused on the evidence of a witness raising doubt with regard to them the other accused against whom there is absolute certainty about his complicity in the crime based on the remaining credible part of the evidence of that witness must be acquitted."

7. So, following this proposition of law, this Court, in a judgment reported in **Thamilendi Vs State of Inspector of Police, Orathanadu Police Station, 2008 (2) CTC 153**, a similar situation arose by referring to the judgment of the Hon'ble Supreme Court mentioned above, came to the conclusion that when the entire prosecution story has been disbelieved in a parent case, the said benefit, shall also be extended to the absconding accused and directing him to undergo the trial will serve no purpose and the proceedings may be quashed. So, this is followed in a number of judgments such as,

- i) **Chinnappa @ Mahendran Vs. State (2015) 1 MadWN(Cri) 259 in Crl.OP.(MD)No.16303 of 2014 dated 18.11.2014,**
- ii) **Crl.OP.(MD)No.19944 of 2018 dated 01.11.2018,**
- iii) **Crl.OP.(MD)No.28114 of 2019 dated 21.11.2019 and,**
- iv) **M.Nithtanandam Vs State 2020 (5) CTC 921.**

8. According to the learned counsel for the petitioner, this case also squarely falls, under the above principle and subjecting or directing the petitioner to undergo trial proceedings will become useless and no purpose is going to be served since the very manner of the occurrence was doubted by this Court, in the above Criminal Appeal. So, with this legal principles in mind, we have go to the factual aspects. Because as mentioned earlier, the Hon'ble Supreme Court has a cautious note, while dealing with such matters, to be followed by this Court.

9. The learned counsel for the petitioner, took this Case through various observations and findings recorded by this Court, in the above said Criminal Appeal. In para 2, it has been observed that



according to the prosecution case, this petitioner and others have participated in the occurrence. The specific allegations against the petitioner is that when P.W.1 namely, Renganathan tried to lift the deceased, the accused assaulted him on his right forehead and above the eye region. The second allegation is that P.W.3 was also assaulted by this petitioner in his left forehead with the handle of aruval at the instigation of the first accused namely, Mamundi. The petitioner assaulted P.W.5 in his left forearm. P.W.6 was assaulted by this petitioner in his left hand little finger. The other accused persons alleged to have assaulted the other witnesses and also caused the death of Chinnaiah Konar. This Court, doubted the following things for acquitting the accused:-

i) Place of occurrence:-

Regarding the place of occurrence, after going through the evidence of the witnesses and the documents produced by the prosecution, it has been found that the place of occurrence is not properly established by the prosecution and the place of occurrence, where the occurrence is said to have taken place, as per the case of the prosecution, was doubted.

ii) Time of occurrence:-

As per the case of the prosecution, time of occurrence, said to have taken place at 05.30 p.m, at 02.04.1994. After analysing the evidence of record, this Court, came to the conclusion that, the time is also not properly established by the prosecution. Because, witnesses have deposed that occurrence took place at 04.00 p.m, whereas, the case of the prosecution is that it took place on 05.30 p.m on the date.

10. It is further observed that as per the evidence of P.W.1, during chief examination presence of all the 11 accused, all the accused at the time, when Chinnaiah Konar came to be attacked is open to be a very serious doubt. So, on this finding, presence of all the accused persons when Chinnaiah Konar was attacked were given the benefit of doubt. Further observation is that the one of the accused party namely, All by name, Palanivel was also alleged to have been attacked and injured. There was no explanation on the part of the prosecution regarding this. Similarly, one another person namely, Karuppaiah was also said to have been injured in the incident. He was neither added as a witness nor charge-sheeted as an accused.

11. In the concluding portion of the judgment, this Court has observed that when two villagers are pitted against each other, the prosecution also must come out, with clear case and must prove the guilt of the accused beyond all reasonable doubt. The concluding portion of the judgment runs like this:-

" 11. For all the reasons referred to above, we are convinced that the prosecution is not projecting a truthful version. In other words, it appears to be a



fabricated version to suit their case. In the light of our earlier conclusion that the scene of occurrence is itself open to a serious doubt; the presence of all the accused at the time when Chinniah Konar came to be attacked is doubtful and according to the injured witnesses, the occurrence could have taken place at an earlier point of time, we are inclined to give the benefit of the cumulative effect of all our doubts to the accused and accordingly, the appeal is allowed setting aside the judgment under challenge and all the accused are acquitted of the offences for which they were tried, convicted and sentenced."

12. So, in the concluding observation or finding, this Court has given a complete answer to the question raised by the petitioner. So, in the light of the finding of this Court, I am of the considered view that no useful purpose is going to be served by directing this petitioner to face the trial. This Court, after appreciation of evidence, came to a clear finding with regard to the manner, place, time and involvement of the accused persons in the occurrence. When that is being so, reappriciation of evidence in the absence of any new facts against this petitioner, in the course of separate trial is not possible. It is also not the case of the prosecution that against these petitioner, new facts or new evidences are available and so, he must be subjected to trial. So, in the absence of any new facts, such argument, on the side of the prosecution and another exercise of trial against this petitioner, in the opinion of this Court, will be a futile exercise. So, the case, against this petitioner, is liable to be quashed.

13. In the result, S.C.No.105 of 2004 pending on the file of the Special Court for Essential Commodities Act - Cum - Additional Sessions Judge, Pudukkottai. is quashed and the Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To

1.The Special Court for Essential Commodities Act
- Cum - Additional Sessions Judge,
Pudukkottai.

2.The Judicial Magistrate No.I, Pudukottai.

3.The Principal District Judge, Pudukottai.

4. The Inspector of Police,
Gandarvakkottai Police Station,
Pudukottai District.

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

**Crl.O.P. (MD)No.5918 of 2017
and**

**Crl MP(MD)Nos.4011 & 4012 of 2017
16.03.2021**

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