



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.RC (MD)No.873 of 2017

WEB COPY

1.Ayyappan
2.Palani
3.Bharath
4.Manikandan

: Petitioners

Vs.

State Rep.by
The Sub-Inspector of Police,
Pappanadu Police Station,
Orathanadu Taluk,
Thanjavur District.
(Crime No.240 of 2014)

: Respondent

PRAYER: The Criminal Revision case is filed under Section 397 (1) r/w 401 of the Code of Criminal Procedure, to call for the records and set aside the judgment dated 26.10.2017 in Crl.A.No.48 of 2017 on the file of the learned III Additional District and Sessions Judge, Thanjavur @ Pattukkottai, Thanjavur District, confirming the conviction and sentence imposed upon the petitioners in S.T.C.No.10 of 2015 on the file of the learned District Munsif cum Judicial Magistrate, Orathanadu, Thanjavur District, dated 12.06.2017 and acquit the petitioners.

For Petitioners	: Mr.A.Thiruvadi Kumar
For Respondent	: Mr.E.Antony Sahaya Prabahar Government Advocate (crl.side)

ORDER

This Criminal Revision Case has been filed to check the correctness of the judgment dated 26.10.2017 passed in Crl.A.No.48 of 2017 on the file of the learned III Additional District and Sessions Judge, Thanjavur @ Pattukkottai, Thanjavur District, confirming the conviction and sentence imposed upon the petitioners in S.T.C.No.10 of 2015 on the file of the learned District Munsif cum Judicial Magistrate, Orathanadu, Thanjavur District, dated 12.06.2017.

2.The revision petitioners are arrayed as accused Nos.1 to 4 in S.T.C.No.10 of 2015 on the file of the learned District Munsif cum Judicial Magistrate, Orathanadu, Thanjavur District. Before the trial Court, they were facing trial for the offence punishable under Sections 294(b), 342 and 352 of I.P.C. After full-fledged trial, the learned District Munsif cum Judicial Magistrate, Orathanadu,



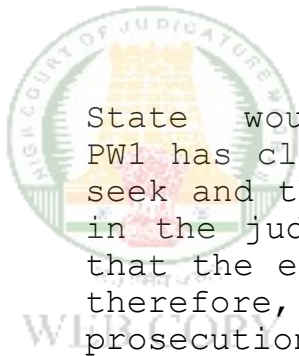
Thanjavur District, found that the petitioners guilty for the offence under Section 342 of I.P.C., and sentenced them to undergo two months simple imprisonment and to pay a fine of Rs.500/-, in default to undergo two weeks simple imprisonment. Challenging the said conviction and sentence, the petitioners herein preferred an appeal in Crl.A.No.48 of 2017 on the file of the learned III Additional District and Sessions Judge, Thanjavur @ Pattukkottai, Thanjavur District. By judgment dated 26.10.2017, the learned III Additional District and Sessions Judge, after affirming the findings arrived at by the trial Court dismissed the appeal. Now, to check the correctness of those judgment, the revision petitioners are before this Court with the present criminal revision case.

3.The case of the prosecution is that on 09.11.2014 at about 23.30 hours when the defacto complainant was sleeping in his house, the accused 1 to 4 came there and shouted by saying "உம் அருள் வெளியே வந்தார்." On hearing the same, the defacto complainant came out of the house. At that time, the first accused scolded with filthy language and all the accused were tied the defacto complainant in the electric post. Further, the accused 1 & 2 assaulted the defacto complainant by hands. Thus, the first accused appears to have committed the offence punishable under Sections 294(b), 342 and 352 of I.P.C and the second accused appears to have committed the offence punishable under Sections 342 and 352 of I.P.C and further, the accused 3 and 4 appear to have committed the offence punishable under Section 342 of I.P.C.

4.During the course of trial proceedings, in order to prove their case, on the side of the prosecution as many as 6 witnesses were examined as PW1 to PW6 and 6 documents were exhibited as Ex.P1 to Ex.P6, wherein PW1 to PW3, who are the occurrence witnesses, narrated the occurrence without any omission and contradiction. Believing the said evidences, the court below convicted the revision petitioners under Section 342 of IPC.

5.Now in respect to the present revision case, the learned counsel for the revision petitioners would submit that in respect to the alleged offence PW1 has lodged a complaint after 24 hours from the time of occurrence. Further, as per the case of prosecution during the time of occurrence, he was tied in the electric post by using the rope. In this regard, the material object i.e., rope has not been seized by the Investigation Officer at the time of investigation. More than that, in the Rough Sketch, which has been exhibited as Ex.P5 the electric post narrated by PW1 to PW3 has not been shown and therefore, the above reasons are sufficient to hold that the judgment rendered by the Courts below are perverse. Accordingly, he prayed to allow this criminal revision case.

6.Refuting the contention raised by the learned counsel for the revision petitioners, the learned Government Advocate (Crl.Side) for the



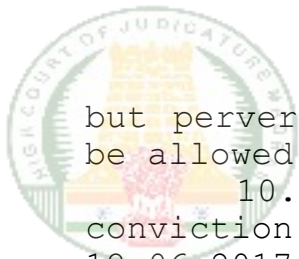
State would contend that in respect to the lodging of complaint, PW1 has clearly stated in his evidence as after incident, he became seek and therefore, he lodged the complaint after one day. Further in the judgment rendered by first appellate Court, it was decided that the electric post was present near to the occurrence place and therefore, the same is sufficient to accept the case of the prosecution.

7.By considering the said submission with relevant records, it is an admitted fact that the alleged occurrence had happened on 09.01.2008 around 23.30 hours. Thereafter, in respect to the registration of the case, PW6-Sakthikumar, the then Sub Inspector of Police, Pappanadu Police Station gave evidence as on 10.11.2014 at around 23 hours PW1 came to the police station and lodged a complaint and thereafter, the case has been registered in Crime No.240 of 2014 under Sections 294(b), 342 and 352 of I.P.C. Therefore, it is made clear that the alleged FIR has been registered after 24 hours from the time of occurrence. In respect to the delay occurred, PW1, who is the author of the complaint, gave an evidence that due to the sickness, he has not immediately go to the police station and lodged the complaint. But in this regard, he has further stated that for his sickness he has not taken any treatment from the hospital. Therefore, the evidence given by PW1 coupled with the delay arose in this case, reveals the fact that the evidence given by PW1, did not inspire the confidence of this Court.

8.Consequently, it is an admitted case of the prosecution that while at the time of occurrence, PW1 was tied in the electric post and then only all the revision petitioners herein attacked him. In this regard, in the Rough sketch prepared by the Investigation Officer, nothing was mentioned in respect to the availability of the lamp post in the occurrence place. He has mentioned the electric post in the Rough Sketch, which is situated away from the occurrence place. In respect to the same, he has not given any probable evidence to accept that there was omission in the preparation of Rough Sketch. Further the witnesses, who are all present, during the time of preparing those documents, are also not supported the case of the prosecution. Therefore, the said situation also raised the doubt whether the alleged occurrence had happened as narrated by the prosecution.

9.Before the trial Court, the case of the defence is that before the occurrence, PW1 and his friends made arrangements for elopement of A1's sister Sona. Since the same was questioned by the accused, PW1 lodged a false complaint before the police station. If the said story put forth by the defence being true one, in order to avoid the further consequences, PW1 might have lodged the complaint after gathering the advise from the others. The Court below without considering those aspects came to the conclusion that the revision petitioners are guilty for the offence under Section 342 of I.P.C.

<https://hccr.scribd.com/document/342017> I am of the view that the said finding is nothing,



but perverse and therefore, the present revision case is liable to be allowed.

10. In fine, this Criminal Revision Case is allowed and the conviction and sentence passed in S.T.C.No.10 of 2015, dated 12.06.2017, by the learned District Munsif cum Judicial Magistrate, Orathanadu, Thanjavur District as confirmed in Crl.A.No.48 of 2017, dated 26.10.2017 by the learned III Additional District and Sessions Judge, Thanjavur @ Pattukkottai, Thanjavur District, are set aside. The revision petitioners / accused are acquitted of all the charges. The fine amount, if any, paid by them, shall be refunded to them. The petitioners/accused is directed to be released forthwith, unless his presence is required in connection with any other case.

Sd/-

Assistant Registrar (CS II)

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Sub Assistant Registrar(CS)

To:-

1. The III Additional District and Sessions Judge,
Thanjavur @ Pattukkottai,
Thanjavur District.
2. The District Munsif cum Judicial Magistrate,
Orathanadu,
Thanjavur District.
3. The Sub-Inspector of Police,
Pappanadu Police Station,
Orathanadu Taluk,
Thanjavur District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
5. The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1 CC to M/s.A.THIRUVADIKUMAR, Advocate (SR-25436[F] dated 06/08/2021)

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