



Crl.A.No.515 of 2015

IN THE HIGH Court OF JUDICATURE AT MADRAS

DATED: 13.10.2022

CORAM

THE HON'BLE Dr.JUSTICE G.JAYACHANDRAN

Crl.A.No.515 of 2015

T.Elakkuvan

... Appellant

-Vs.-

1.Munusamy

2.Lokesh

3.The Inspector of Police,
H-1, Washermenpet Police Station,
Chennai 600 021
Crime No.645 of 2009

.. Respondent

Criminal Appeal filed under Section 372 of Code of Criminal Procedure to set aside the order dated 10.11.2014 made in C.C.No.2313 of 2011 on the file of the XV Metropolitan Magistrate Court at George Town and treated the accused persons in accordance with law.

For Appellant : Mr.G.Anbayachozhan

For Respondent : No appearance for R1 and R2
Mr.R.Kishore Kumar,
Government Advocate (Criminal side)
for R3



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J U D G M E N T

This Criminal Appeal, against the acquittal, has been filed by the *de facto* complainant.

2. According to the FIR, since the appellant herein had an estranged relationship with his wife, she got separated and living with her parents. On 05.09.2009, at about 02:00 P.M., the appellant had gone to the house of his wife at Washermenpet and when he asked her to join him, there was a wordy quarrel between the appellant and the accused persons, A1 and A2, who are father-in-law and brother-in-law of the appellant. A1 and A2 had hit the appellant on his face by hands causing bleeding injury in the nose and fracture of his right hand ring finger. The appellant went to Sri Balaji Hospital for first aid and thereafter, his friends took him to Sri Kamatchi Hospital at Pallikaranai for treatment.

3. The police from Pallikaranai Police Station came to enquire him on the receipt of the memo from the hospital. After considering that the occurrence has took place in different police station limit, the Pallikaranai



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police asked the appellant to approach Washermenpet Police Station. Accordingly, he went to the Washermenpet Police Station to report the matter. But they did not acted upon his complaint and hence, he had approached the Hon'ble High Court by filing Crl.O.P.No.20595 of 2009 for a direction to register his complaint. Thereafter, the third respondent police has registered FIR in Crime No.645 of 2009 dated 05.10.2009. On completion of the investigation, the final report was filed and based on the materials, the trial Court has framed the charges under Sections 341, 323, 325 and 506(i) read with Section 34 IPC against A1 and A2.

4. To prove the charges, the prosecution has examined 9 witnesses and marked 6 exhibits. The trial Court on considering the evidence, has acquitted the accused from all the charges holding that the prosecution has failed to prove the guilt beyond reasonable doubt.

5. In this appeal petition, being aggrieved by the order of acquittal, the *de facto* complainant submitted that PW1 is the wife of the appellant, PW2 is the mother-in-law of the appellant and PW3 is the sister-in-law of the appellant. A1 and A2 are father and brother of PW1 and PW3, they



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are the husband and son of PW2 being related so, all these three witnesses are interested witnesses to favour the accused persons. Therefore, it cannot be expected that they will incriminate their own family members. In such circumstances, the medical evidence, as spoken by the PW6 and PW7, along with accident report/Ex.P2 and wound certificate/Ex.P3 ought to have been considered in right perspective.

6. It is further contended by the learned counsel for the appellant that the trial Court had not considered the fact that the incident took place inside the house, where the witnesses PW1 to PW3 and accused A1 and A2 are residing and it is not fair to expect the family members to incriminate the accused persons. The inaction of the police for not examining Prabhu, who took the appellant to Sri Kamatchi Hospital, cannot be a reason for disbelieving the case of the appellant and therefore, he states that the trial Court judgment has to be set aside and the accused, who are respondents 1 and 2 should be convicted for the offences.

7. The learned Government Advocate (Criminal side) would submit that the trial Court has suspected the case of the prosecution since the *de*



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facto complainant has not cogently explained for his delay in getting himself admitted in the Sri Kamatchi Hospital and also not stated the reason for traveling nearly 20 km from the site of the occurrence to the hospital where he got treatment. In the cross examination of PW4, it has been elucidated that from the place of occurrence at Washermenpet to Sri Kamatchi Hospital at Pallikaranai, there are several hospitals like Stanley medical college hospital and Rajiv Gandhi General Hospital. But instead of taking treatment in these hospitals, he has gone to a private hospital by name Sri Balaji Hospital. However, there is no evidence to show that he took first aid at Sri Balaji Hospital. Further considering that the *de facto* complainant, being an executive in Pharma Company, has a possibility of getting medical evidence with exaggerated facts, the accused persons were acquitted by the trial Court.

8. This Court on perusing the evidence and documents finds that the *de facto* complaint has proved, by his medical evidence and ocular evidence of PW6 and PW7, that he had sustained injury on his nose and right hand ring finger. Though he contents that the injuries sustained by the appellant was caused by first and second respondent when there was a



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quarrel inside the house of the first respondent, there is lack of evidence for the said fact to believe the case of the appellant. The appellant should have cogently marshal the evidence regarding his treatment at Sri Balaji hospital, where the hospital is located and who treated him and also he should have examined his two friends, who had took him to the Sri Kamatchi Hospital at Pallikaranai.

9. The learned counsel appearing for the appellant submitted that the omission to record the statement of Prabhu and non examination of Prabhu is the fault of the Investigating Officer and for that purpose, he cannot be left without redressal.

10. In normal circumstances, this Court would have given due consideration to these submissions, if the *de facto* complainant is not aware of the law. Having approached the High Court to register the complaint, if at all there was any lapse in the investigation and the Investigating Officer has not included two important witnesses who had taken him to hospital, he could have intervene by filing the necessary application by examining them. The non-production of documents and



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information about Sri Balaji Hospital in which he has taken first aid is also fatal to his complaint, for which he cannot attribute any motive on the Investigating Officer.

11. For the said reasons, this Court finds that though there may be different view regarding appreciation of the witnesses, but the rights enure to the accused by way of an order of acquittal need not to be interfered, since no perversity found in the trial Court order and accordingly, this Criminal Appeal is dismissed.

13.10.2022

Speaking/Non-speaking order
Index: Yes/No
Internet : Yes/No
nsa

To

1.The XV Metropolitan Magistrate Court,



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George Town.

2.The Inspector of Police,
H-1, Washermenpet Police Station,
Chennai 600 021
Crime No.645 of 2009

3.The Public Prosecutor,
High Court of Madras,
Chennai.



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Dr.G.JAYACHANDRAN.J.,

nsa

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