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Crl.A.No.518 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.10.2022

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.A.No.518 of 2018

Lakshmi

...

Appellant

Vs

1. Ayyakannan @ Duraisamy
2. Arumugam
3. Raju
4. Sugu @ Sugumar
5. Govindan
6. Sathish
7. Kumar
8. Podiyan @ Arumugam
9. Kaliappan
10. Palani

11. The State by
Inspector of Police,
Anthiyur Police Station,
Erode District.
Crime No.56 of 2008

....

Respondents

Prayer: Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, to call for the records relating to the judgment dated 29.08.2012 made in S.C.No.19 of 2012 on the file of the learned IV Additional District and Sessions Judge, Bhavani and set aside by allowing this Criminal Revision Petition.



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For Appellant : Mr.M.Ganesh
for Mr.N.Manokaran
For R1 ro R10 : Mr.J.Prithivi
for Mr.S.Kaithamalai Kumaran
For R11 : Mr.A.Gopinath
Government Advocate (Crl. Side)

JUDGMENT

This Criminal Appeal is directed as against the Judgment dated 29.08.2012 passed in S.C.No.19 of 2012 on the file of the IV Additional District and Sessions Judge, Bhavani at Erode, thereby acquitted the respondents 1 to 10 herein.

2. The case of the prosecution is that the de-facto complainant owned two acres of land at Vedhakaran Kuttai. Her father-in-law's brother also owned a land admeasuring 2.5 acres. While being so, one Thavasi cut down the bushes, which were situated in the land belonged to the de-facto complainant's father-in-law's brother. When it was questioned by her husband, the said Thavasi stated that only on instructions from the de-facto complainant's father-in-law's brother, he is doing so. While so, after two or three days, the said Thavasi died. Therefore, the entire general public thought that her husband only threatened him and murdered him and. Therefore, her husband himself surrendered before the Court. After her husband surrendered the very next day, all the accused persons trespassed into the property and threatened her with dire



consequences. They completely damaged the entire property. They also caused damages to the crops i.e., sugarcane and turmeric. Unfortunately, she escaped from the hands of the accused. She lodged a complaint and the same was registered in Crime No.56 of 2008 for the offence punishable under Section 147, 148, 427 and 448 of IPC and Section 3(1) of TNPPDL Act. After completion of investigation, the respondent filed final report and the same has been taken cognizance by the Trial Court in C.C.No. 19 of 2012.

3. In order to bring home the charges, the prosecution had examined P.Ws.1 to 9 and marked Exs.P1 to P4. On the side of the accused, no one was examined and marked Exs.D1 to D3.

4. On perusal of the oral and documentary evidence, the Trial Court found the respondents 1 to 10 herein not guilty and acquitted them. Aggrieved by the same, the present appeal.

5. The learned counsel appearing for the appellant would submit that the evidence of P.Ws.1 to 6 would *ipso facto* prove the prosecution case against the accused persons. However, the Trial Court, without any reason, simply acquitted the accused persons. The Trial Court rejected the defacto-

complainant's evidence only for the reason that they are the witnesses in the murder case, which is being faced by the husband of the de-facto complainant.

P.W.3 categorically deposed about the damage caused to the properties by the accused persons. Further, the Trial Court acquitted the accused on the ground that the complaint was lodged belatedly. According to him, even the lodgment of the complaint with the delay would not be fatal to the case of the prosecution.

6. In support of his contention, he relied upon the Judgment reported in **(2003) 2 SCC 519** in the case of ***Raj Kishore Jha Vs.State of Bihar and others***, in which, the Hon'ble Supreme Court of India held that when the counter case has been registered, the Court hearing the same has to scrutinize the evidence greater in detail and even in such a situation the evidence, which is cogent, credible and trustworthy cannot be totally wiped out because of the only circumstance that they were accused in the counter case.

7. He also relied upon the Judgment reported in **(2003) 2 SCC 518** in the case of ***Amar Singh Vs. Balwinder Singh and others***, in which, the Hon'ble Supreme Court of India held that there is no order that any delay in lodging the FIR would automatically render the prosecution case doubtful. It necessarily depends upon facts and circumstances of each case whether there has been any



such delay in lodging the FIR which may cast doubt about the veracity of the prosecution case and for this a host of circumstances like the condition of the first informant, the nature of injuries sustained, the number of victims, the efforts made to provide medical aid to them, the distance of the hospital and the police station etc., have to be taken into consideration. There is no mathematical formula by which an inference may be drawn either way merely on account of delay in lodging of the FIR.

8. On perusal of the records reveals that admittedly the husband of P.W.1 is an accused in the case of the murder of one Thavasi. In the said case, all the respondents 1 to 10 herein were witnesses. That apart, the said case was not at all the counter case. It was a murder case, in which, the husband of P.W.1 is an accused. Due to the said case, the accused persons trespassed into her property and caused damages. Therefore, the Judgment cited by the learned counsel for the appellant is not applicable to the case on hand. Insofar as the delay is concerned, it is not the case of P.W.1 that she sustained injuries in the alleged occurrence. Even according to P.W.1, all the accused persons trespassed into the property and caused damages to the standing crops. Even then, P.W.1 failed to lodge any complaint immediately after the occurrence. Further no one was injured and no one was threatened by the accused persons.



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Therefore, the Trial Court rightly acquitted the respondents 1 to 10 herein.

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9. In view of the above, this Court finds no ground to interfere with the order of the acquittal passed by the Court below. Accordingly, this Criminal Appeal stands dismissed.

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Index : Yes/No
Speaking/Non Speaking order
Lpp

To

1. The IV Additional District and Sessions Judge,
Bhavani.

2. The Inspector of Police,
Anthiyur Police Station,
Erode District.

3. The Public Prosecutor,
High Court, Madras.

G.K.ILANTHIRAIYAN. J.

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