

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.09.2022

CORAM :

THE HONOURABLE MRS.JUSTICE J. NISHA BANU

and

THE HONOURABLE MR.JUSTICE N. ANAND VENKATESH

CRL.A.(MD)No.290 of 2019

A.Varadharajan

.. Appellant / defacto complainant

Vs.

1.The State of Tamil Nadu,
rep. by The Inspector of Police,
Keezhayur Police Station,
Nagapattinam,
Thanjavur District.

.. 1st Respondent / Complainant

2.Paneerselvam

3.Mail @ Balasubramanian

4.Appanu @ Subramaniyan

.. Respondents 2 to 4 /

Accused Nos.1 to 3

PRAYER: Criminal Appeal filed under Section 374 (2) of the Code of Criminal Procedure, praying to set aside the judgment made in S.C.No.36 of 2010, on the file of the learned I Additional District and Sessions Judge (Protection of Civil Rights), Thanjavur, dated 23.11.2010 and allow this Criminal Appeal.

For Appellant : Mr.T.Lajapathi Roy
For Respondent No.1 : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

JUDGMENT

J. NISHA BANU, J.

AND

N. ANAND VENKATESH, J.

The de-facto complainant has filed this Criminal Appeal against the judgment of the learned I Additional District and Sessions Judge (Protection of Civil Rights), Thanjavur, made in Spl.S.C.No.36 of 2010, dated 23.11.2010, whereby, the trial Court acquitted all the accused persons from all the charges framed against them.

2. The case of the prosecution is that the appellant (P.W.1) is the brother of the deceased Mariappan. The deceased was a Nattamai of the Village and Trustee of the temple and he had collected money for the temple Kumbabhisegam. When he demanded money from A1, there was a wordy quarrel and A1 is said to have refused to give money to the deceased. On 15.09.2008, at about 6.30 to 7.00 p.m., P.W.9 is said to have informed P.W.1 that the deceased was talking with A1 in his house. He therefore, went along with his brother P.W.2 and at that time, he saw that the deceased was way-laid by all the three accused persons and he was attacked indiscriminately with Aruval on the back side of the body and the shoulder and the deceased fell down. The accused persons fled the scene of occurrence.

3. A complaint was given by P.W.1 at about 1.00 a.m. on 16.09.2008. Based on the same, an FIR came to be registered and the investigation was taken up. On completion of investigation, final report came to be filed against all the accused persons and the following charges were framed against all the three accused persons :-

Sl. No.	Accused Rank	Charges
1.	A1	under Sections 341, 302 IPC and 3(2)(v) of SC/ST Act.
2.	A2 & A3	under Sections 341, 302 r/w.109 IPC and 3(2)(v) of SC/ST Act r/w. 109 IPC

4. The prosecution examined P.W.1 to P.W.18 and marked Ex.P.1 to Ex.P.28 and relied upon M.O.1 to M.O.9. The circumstances that appeared against the accused persons in the evidence that was adduced by the prosecution in the course of trial, was put to the accused persons under Section 313(1)(b) Cr.P.C., and they denied the same as false.

5. The Trial Court on considering the facts and circumstances of the case and on appreciation of evidence, came to a categorical conclusion that the prosecution has not made out a case against the accused persons beyond reasonable doubts. Accordingly, through judgment, dated 23.11.2010, all the accused persons were acquitted from all the charges.

6. Heard Mr.T.Lajapathi Roy, learned Counsel appearing for the appellant and Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor appearing for the first respondent.

7. We have carefully gone through the materials available on record and considered the submissions made on either side.

8. The trial Court, on appreciation of evidence, found that there was an inordinate delay in preferring the complaint before the police and there was absolutely no explanation for the delay either in Ex.P.1 complaint or in Ex.P.22 FIR. The trial Court also found that P.W.1 also did not come forward to explain the delay in preferring the complaint. The trial Court on analyzing the evidence found that the police had already got the information and had visited the place of occurrence on 15.09.2008 itself and the enquiry and investigation was over by 1.00 a.m. on 16.09.2008. Hence, the trial Court came to a clear conclusion that the complaint itself has been lodged

thereafter and the evidence of P.W.7 and P.W.8 clearly show that the earlier information given to the police was completely concealed and Ex.P.1 came into existence subsequently, only for the purpose of this case.

9. The trial Court also carefully examined the evidence of P.W.1 and found that the ocular evidence was completely in variance with the medical evidence. The Doctor, who had conducted the post-mortem had found only one injury in the body of the deceased and whereas, P.W.1 gave a version as if all the accused persons indiscriminately attacked the deceased. That apart, P.W.1 came up with a version as if he came along with P.W.2 and with the help of torch-light, they saw the deceased at the time of occurrence. Whereas, P.W.2 in his evidence has clearly stated that he did not accompany P.W.1 and he was in his house and he was not even aware that P.W.1 had gone to the scene of occurrence. That apart, the trial Court also found lot of contradictions in the evidence that was projected by the prosecution.

10. In view of the above, the trial Court came to a categorical conclusion that the case of the prosecution lacks credibility and reliability

and there were grave doubts and suspicious circumstances in the case as projected by the prosecution and accordingly, the accused persons were acquitted from all the charges.

11. In a case of appeal against acquittal, it is now a settled law that this Court can interfere with the acquittal only when there is a glaring infirmity in appreciation of evidence or the trial Court had given a finding which is perverse and arbitrary. Once the trial Court on assessing the materials, acquits the accused and if it is a "possible view", the same cannot be reversed in appeal by this Court. Useful reference can be made in the judgment in **State of U.P. Vs. Punni and Others** reported in **2008(1) MLJ (Crl.) 700 (SC)** and **Chellappa Vs. State, through the Inspector of Police** reported in **2021(1) MWN (Cr.) 80 (SC)**.

12. In view of the above discussion, we do not find any reason to interfere with the judgment of the Court below.

13. Accordingly, this Criminal Appeal stands dismissed.

[J.N.B., J.] & [N.A.V., J.]

07.09.2022

Index : Yes/No

Internet : Yes

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To

1.The I Additional District and
Sessions Judge (Protection of Civil Rights),
Thanjavur.

2.The Inspector of Police,
Keezhayur Police Station,
Nagapattinam,
Thanjavur District.

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

4.The Record Keeper,
Vernacular Records Section,
Madurai Bench of Madras High Court,
Madurai.

Crl. A(MD)No.290 of 2019

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AND

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JUDGMENT MADE IN

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