



Crl.A.(MD)No.468 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 01.11.2022

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THE HON'BLE MRS JUSTICE J. NISHA BANU
AND
THE HON'BLE MR JUSTICE N. ANAND VENKATESH

Crl.A.(MD)No.468 of 2022

Annalakshmi ... Appellant / Defacto Complainant (PW1)

/Vs./

- 1.State Rep. By,
The Deputy Superintendent of Police,
Kulithalai Sub-Division,
Karur District. ... 1st Respondent / Complainant
- 2.Kaviyarasu ... 2nd Respondent / Accused No.7
- 3.Shanmugam (Dikki) ... 3rd Respondent / Accused No.8
- 4.Hariharan (Vinoth) ... 4th Respondent / Accused No.9
- 5.Natarajan (Sales Natarajan) ... 5th Respondent / Accused No.10

PRAYER: Appeal - filed under Section 372 r/w 378 (3) & (4) of the Criminal Procedure Code, to call for the records and set aside the order of acquittal against A7 to A10 passed by the learned District and Sessions Judge, Karur, in S.C.No.74 of 2019 dated 25.04.2022 and allow the appeal.



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For Appellant : Mr.T.Sivaganasambandan

For Respondents : Mr.S.Ravi

Additional Public Prosecutor (For R1)

No appearance (For R2 to R5)

JUDGMENT

J. NISHA BANU,J.

and

N. ANAND VENKATESH,J.

This criminal appeal has been filed by the defacto complainant (P.W.1) against the judgment and order passed by the learned District and Sessions Judge, Karur made in S.C.No.74 of 2019 dated 25.04.2022, acquitting A7 to A10 from all charges.

2. The case of the prosecution is that the deceased Veeramalai is the father and another deceased Nallathambi is the brother of the defacto complainant. The water body in Mudhalaipatti Village was encroached by the villagers and the temple, named as Sellayee Amman Temple was built by the first and tenth accused persons with the help of the village people by collecting money from them. Since the water body was encroached, a writ



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petition came to be filed by the deceased Veeramalai in W.P.(MD)No.16338 of 2016 seeking for a direction to the officials to remove the encroachment.

Since the directions were not complied with, contempt proceedings were also initiated against the Revenue Officials. Pursuant to the same, an inspection was conducted by the Revenue Officials on 25.07.2019.

3. The above incident is said to have created enmity between the deceased and A1 & A10 and hence, both these accused persons decided to eliminate the said Veeramalai and his son Nallathambi. The criminal conspiracy was hatched on 28.07.2019 and pursuant to the same, on 29.07.2019, the deceased Nallathambi was waylaid and he was attacked with aruval indiscriminately in various parts of his body and he died on the spot. Thereafter, the accused persons went to the agricultural land belonging to Veeramalai and he was attacked indiscriminately and he also died on the spot.

4. P.W.1, who is the daughter of Veeramalai and sister of Nallathambi lodged a complaint (Ex.P1) and an FIR came to be registered (Ex.P28). The investigation was taken up initially by P.W.30 and later it was taken over by



P.W.31 and a final report came to be laid before the learned Judicial Magistrate No.II, Kulithalai as against ten accused persons. The learned Magistrate issued copies of the documents to the accused persons and committed the case to the Court below.

5. The Court below framed the following charges against the accused persons:

Rank of the accused	Provision of Law
A1 to A6	Sections 144, 341, 120(b) and 302 of IPC
A7 and A8	Sections 120(B) r/w Section 302, 201 r/w 302 of IPC
A9	Section 201 r/w 302 of IPC
A10	Section 109 r/w 302 of IPC

6. The prosecution examined P.W.1 to P.W.31, marked Ex.P1 to Ex.P41 and identified and marked M.O.1 to M.O.31. The defence examined D.W.1 to D.W.5 and marked Ex.D1 to Ex.D3. The Court below marked certain exhibits as Ex.X1 to Ex.X4. The Court below questioned the accused persons under Section 313(1)(b) of Cr.P.C, by putting the incriminating materials collected during the course of investigation and the



same was denied as false. The Court below, on considering the facts and circumstances of the case and after appreciating the oral and documentary evidence, came to a conclusion that the prosecution has proved the case beyond reasonable doubt as against A1 to A6 and proceeded to convict and sentence them under Sections 148, 341 and 302 of IPC. A7 to A10 were acquitted from all charges. Aggrieved by the same, the defacto complainant has filed this criminal appeal against the acquittal of A7 to A10.

7. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the first respondent.

8. Insofar as A7 and A8 are concerned, the main charges against them are under Sections 120(B) and 201 of IPC r/w Section 302 of IPC. Insofar as the charge of criminal conspiracy is concerned, the Court below took into consideration the available evidence and came to the conclusion that the charge of criminal conspiracy has not been proved by the prosecution, as against any of the accused persons. To come to such a conclusion, the Court below took into consideration the evidence of P.W.1 and P.W.5. Whatever benefit of doubt was given to A1 to A5 was also extended to A7 and A8.



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9. Insofar as the charge under Section 201 of IPC r/w Section 302 of IPC is concerned, the case of the prosecution is that A7 and A8 had screened the real offenders in this case. While dealing with this issue, the Court below took into consideration the surrender petition that was filed by A7 and A8 apprehending arrest by the respondent police and in the said petition, they had stated that they are no way connected with the offence and the respondent police is attempting to add them as accused. The Court below found that there was absolutely no material to sustain the charge under Section 201 of IPC and nothing was available to prove that A7 and A8 indulged in screening the real offenders. Accordingly, A7 and A8 were acquitted from the charges under Sections 120 (B) and 201 of IPC r/w Section 302 of IPC.

10. Insofar as A9 is concerned, he was charged for the offence under Section 201 of IPC r/w 302 of IPC. The allegation against A9 is that he facilitated the accused to hide the weapon in his house. The Court below, while dealing with this issue took into consideration the evidence of the Village Administrative Officer (P.W.19). On appreciation of the evidence,



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the Court below came to the conclusion that the prosecution has not proved that A9 facilitated the other accused persons to hide their weapons and the motor cycle. Hence, the benefit of doubt was given in favour of A9.

11. Insofar as A10 is concerned, the charge against him is under Section 109 of IPC r/w 302 of IPC. To sustain the charge of abetment, the prosecution came up with a story that it was A1 and A10, who had encroached upon the water body and constructed the temple and since the deceased took steps for removal of the encroachment, A10 should have abetted the accused persons to commit the crime. The witnesses, who were examined by the prosecution in this regard did not support the case of the prosecution and the Court, after considering M.O.22 and M.O.23, found that these two material objects cannot sustain the charge of abetment as against A10. The reasoning given by the Court below is that even if A10 had taken an active role to construct the temple, that by itself is not sufficient to hold that he has abetted the other accused persons to commit murder.

12. In the considered view of this Court, when dealing with the case of appeal against acquittal, this Court can interfere only when there is a



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glaring infirmity in appraisal of evidence or the finding rendered by the Court below is found to be perverse or arbitrary. Once the trial Court on assessing the materials, acquits the accused persons and if it is a possible view, the same cannot be reversed in an appeal, just because some other view is also possible, based on evidence available on record. Useful reference can be made to the latest judgment of the Hon'ble Apex Court in *N.Vijayakumar v. State of Tamil Nadu, reported in 2021 (1) MWN (Crl) 602*.

13. The Court below has assigned proper reasons for acquitting A7 to A10, based on the available evidence and has taken a possible view and the same cannot be reversed by this Court, in an appeal against acquittal. There are no grounds to interfere with the judgment and order passed by the Court below in S.C.No.74 of 2019. In the result, this criminal appeal stands dismissed.

(J.N.B.,J.) (N.A.V.,J.)
01.11.2022

Index : Yes/No
Internet : Yes
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To:

- 1.The Deputy Superintendent of Police,
Kulithalai Sub-Division,
Karur District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 3.The District and Sessions Judge, Karur.



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Judgment made in
CrI.A.(MD)No.468 of 2022

Dated
01.11.2022