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Crl.A.No.543 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.07.2023

CORAM:

The Hon'ble MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Criminal Appeal No.543 of 2016

A.Rameshkumar

...Petitioner

-Vs-

1.State represented by
Sub Inspector of Police,
Kavindapadi Police Station,
Erode District.
Crime No.223 of 2014.

2.Sureshkumar

3.Nithya

...Respondents

Prayer:- Criminal Appeal filed under Section 372 of Cr.P.C, to admit the appeal against the judgment dated 04.06.2015 passed in C.C.No.7 of 2015 by the Hon'ble Special Judicial Magistrate Court No.2, Gobichettipalayam, Erode District.

For Petitioner : Mr.M.Karthik

for M/s.I.C.Vasudevan



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For Respondents : M/s.G.V.Kasthuri
Additional Public Prosecutor for R1

: Mr.K.Sudhakar
for M/s.V.P.K.Gowtham for R2 & R3

JUDGMENT

The learned Counsel for the Appellant submitted that the Appellant is the Defacto complainant before the Respondent Police.

2. The few facts which are relevant for consideration of this Court are that the Accused and the Defacto Complainant are adjacent land owners. There had been a civil dispute between them regarding boundary. The Civil Case is pending before the Civil Court.

3. On the date of occurrence, the Accused is alleged to have dug up pits to put up boundary stones which was questioned by the Appellant/Defacto Complainant. When the Appellant questioned the First and Second Accused, retorted “அப்படித்தான் செய்வேன் டா நீ எங்கு வேணாலும் போய் சொல்லிக்கோ” and used abusive words. In the meantime, Second Accused pushed the Defacto Complainant down, First Accused hit him



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and caused injuries. Hearing the commotion, P.W.2/the mother of the Defacto Complainant and Wife/P.W.3 rushed to the spot. Afterwards they left to the hospital. Later on P.W.1 came to the Kavindapadi Police Station and registered the complaint under Ex.P.1, based on which P.W.7 registered a case in F.I.R in Crime No.223 of 2014 and proceeded with the investigation resulting in laying of the final report before the Court of the learned Judicial Magistrate II, Gobichettipalayam, Erode District.

4. On receipt of summons, the Accused appeared, copies were furnished under Section 207 of Cr.P.C., Accused denied the case against them. Therefore the learned Judicial Magistrate II, Gobichettipalayam, Erode District, ordered trial.

5. During the course of trial, the Defacto Complainant himself was examined as P.W.1 and complaint was marked as Ex.P.1. The Mother of the Defacto Complainant was examined as P.W.2, Wife of the Defacto Complainant was examined as P.W.3, the Father-in-Law of the Defacto Complainant was examined as P.W.4. The Mahazar witnesses in whose presence the P.W.7, the Investigation Officer had prepared the



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observation Mahazar under Ex.P.2 and rough sketch under Ex.P.5 were examined as P.W.5 and P.W.6. The Investigation Officer was examined as P.W.7. The witnesses were cross examined on behalf of the Accused. After hearing the arguments and on appreciation of evidence, the learned Judicial Magistrate II, Gobichettipalayam, Erode District, by judgment dated 04.06.2015 acquitted the Accused. Against the judgment of acquittal, the Defacto complainant has preferred this Criminal Appeal.

6. The learned Counsel for the Appellant/Defacto complainant invited the attention of this Court to the evidence of witnesses P.W.1 to P.W.4 and P.W.7. The learned Counsel also invited the attention of this Court to the cross examination of the witnesses. He would submit that in the cross-examination, the P.W.2, P.W.3 and P.W.4 had admitted that they are the relatives of the P.W.1. But the suggestion of the defence that they were not at all present in the scene of occurrence and they have been deposed false evidence only to support the evidence of the Defacto Complainant/P.W.1 was denied by them. The learned Counsel for the Appellant also invited attention of this Court to the wound certificate marked under Ex.P.6 and the intimation from the hospital to the Police



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Station under Ex.P.3, based on which the complaint was registered. The learned Counsel for the Appellant would submit that inspite of the corroborating evidence and the prosecution case having been proved through the evidence of P.W.1 to P.W.4 and P.W.7 and documents under Ex.P.1 to P.6, the learned Judicial Magistrate II, Gobichettipalayam, Erode District had acquitted the Accused. The learned Counsel for the Appellant/Defacto complainant also invited the attention of this Court to the observation made by the learned Judge in paragraph Nos.8 to 11. Therefore, the learned Counsel for the Appellant/Defacto complainant seeks to set aside the judgment of acquittal and to convict the Accused for offences under Section 294(b) and 323 of I.P.C.

7. The learned Additional Public Prosecutor also submitted that the prosecution had proved the case by adducing evidence through P.W.1 to P.W.7. The learned Additional Public Prosecutor would also submit that the judgment of the learned Judicial Magistrate II, Gobichettipalayam, Erode District is perverse and has to be set set aside.

8. The learned Counsel for the Second Respondent/Accused would



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submit that the judgment of the learned Judicial Magistrate II, Gobichettipalayam, Erode District is well reasoned and he further submitted that in the cross examination the Complainant had fairly conceded that the boundary dispute arose out between the Complainant and the Accused is pending before Civil Court. To the pointed question by the learned Counsel for the Accused before the Trial Court to the Defacto complainant/P.W.1 on the same day Complainant party had also attacked the Accused for which a case in Crime No.222 of 2014 was registered. He evaded a direct answer. The fact that the alleged occurrence took place some time between 10.00 and 11.00 in the morning, whereas the P.W.1 had reached the hospital after three hours after the alleged occurrence, particularly when the place of occurrence is within the local limits of Kavindapadi Police Station where Kavindapadi Government Hospital is also located. The fact that P.W.1 is alleged to have taken treatment in far away Hospital at Gobichettipalayam is against the case of the Complainant. The learned Counsel also submitted that instead of taking treatment in the hospital near to the place of his residence, he had gone to a far away hospital and also three hours after the alleged occurrence, for which P.W.1 did not give a satisfactory



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explanation.

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9. The learned Counsel for the Second Respondent/Accused before this Court submits that in this case Doctor was not at all examined. The wound certificate was marked through Investigation Officer. The learned Counsel for the Second Respondent/Accused also invited attention of this Court to the opinion of the Doctor in Ex.P.6 wherein it is stated as “*opinion could not be given since no injuries found*”. Further, the learned Counsel for the Second Respondent/Accused submitted that the alleged occurrence had taken place in agricultural field. As per the Defacto complainant evidence itself it in the boundary of the Defacto complainant's property and it is not a public place to attract the ingredients of Section 294(b) of I.P.C. Also the offence under Section 323 of I.P.C., is not supported with the medical evidence. Therefore, the prosecution had miserably failed before the Trial Court. The learned Counsel for the Second Respondent/Accused also invited attention of this Court to the cross-examination of the Investigation Officer. He had fairly conceded that the P.W.1 left the hospital without informing the Medical Officer, therefore opinion could not be given. He had also fairly conceded that the complaint preferred by the Accused was registered in



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F.I.R in Crime No.222 of 2014. When there is case and counter, the Complainant herein using his influence had preferred this case based of which according to the Complainant's complaint, interested witness alone were examined as witnesses and prosecution miserably failed to prove the case through Doctor's evidence. Therefore, the observation of the learned Judicial Magistrate II, Gobichettipalayam, Erode District, in the paragraph 8 to 11 is a well reasoned order and does not call for interference by this Court. Therefore, the learned Counsel for the Second Respondent/Accused submits that there is no merits in this Appeal and prays to dismiss the same.

10. Point for consideration:

Whether the judgment of acquittal recorded by the learned Judicial Magistrate II, Gobichettipalayam, Erode District is to be set aside and the Second Respondent/Accused is to be convicted for offences under Section 294(b) and 323 of I.P.C.

11. Heard the learned Counsel for the Appellant/ Defacto Complainant, the learned Additional Public Prosecutor for the State/First



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Respondent and the learned Counsel for the Second Respondent/Accused. Perused the evidence of P.W.1 to P.W.7, Exs.P.1 to P.6 and the judgment of the learned Judicial Magistrate II, Gobichettipalayam, Erode District.

12. On consideration of the rival submissions and on perusal of the judgment of acquittal recorded by the learned Judicial Magistrate II, Gobichettipalayam, it is found to be a well reasoned judgment. Considering the fact that as per evidence of P.W.1, the alleged occurrence took place in the agricultural land of the P.W.1 bordering land of the Accused. Therefore it is not a public place to attract the ingredients of offence under Section 294(b). Even though, witnesses had corroborated the evidence of P.W.1., all the witnesses from P.W.1 to P.W.6 are found to be close relatives of P.W.1. Apart from that, when the P.W.1 alleged to have been attacked by the Accused and have suffered injuries, instead of taking treatment near to the place of residence, he had gone to a hospital which is far away from the place of his residence and also after three hours of the alleged occurrence. That gives a doubt for which the P.W.1 is unable to offer satisfactory explanation. Also, the Doctor who is



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alleged to have issued Ex.P.6 /wound certificate not been examined as witness and Ex.P.6 was marked through the P.W.7 the Investigation Officer. In the evidence of the Investigation Officer, he had stated that P.W.1 alleged to have left the hospital without informing the Doctor who treated him. The Investigation Officer P.W.7 in his cross examination conceded that the Accused had also preferred a complaint against P.W.1, based on which F.I.R., in Crime No.222 of 2014 had been registered in the very same Police Station. Therefore, there is a case and a case in counter by filing of charge sheet against the Second Respondent alone that too wherein witnesses are close relatives and the Doctor having not been examined. The fact that the P.W.1 left the hospital without informing the Doctor who treated him, all create doubt in the minds of the learned Trial Judge.

13. As per the settled proposition of law laid down by the Hon'ble Supreme Court while appreciating the evidence before the Trial Court and the Trial Court had arrived at a conclusion based on proper appreciation of evidence, the Appellate Court shall not disturb the finding of the Trial Judge, even though there is a possibility of arriving at



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an opposite finding on the same set of evidence by the Appellate Court.

This is because, the Trial Judge had the advantage of observing demeanour of witnesses which is not available before the Appellate Court. Therefore the finding recorded by the Trial Court shall not be disturbed in the usual course. The Appellate Court have to be cautious on appreciating the evidence of the Trial Court. Also there are guidelines regarding the reversal of the finding of acquittal by the Appellate Court. Here, the learned Judicial Magistrate II, Gobichettipalayam, Erode District had properly appreciated the evidence as per the Indian Evidence Act and as per the settled proposition of law regarding case and counter and loopholes in the prosecution case and had recorded the finding of acquittal. This Court as Appellate Court does not find any ground to interfere with the finding recorded by the learned Judicial Magistrate II, Gobichettipalayam, Erode District. Therefore, the Criminal Appeal fails and the same is dismissed as there is no merits.

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