



Crl.A.No.513 of 2018

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02-06-2025

CORAM :

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Criminal Appeal No.513 of 2018

S. Satish Kumar

.. Appellant

Versus

1. L.A.T. Selvaraj
2. D. Selvam
3. K. Mani
4. C. Venkatesan
5. K. Chinnappan
6. R. Baskar
7. R. Siva @ Sivasankaramoorthi
8. State Rep. by
The Station House Officer,
Srimushnam Police Station,
Cuddalore Taluk and District.

.. Respondents

Criminal Appeal filed under Section 372 of Criminal Procedure Code, 1973, to set aside the Judgment dated 25.10.2013 made in Criminal Appeal No. 65 of 2011 on the file of the learned III Additional District and Sessions Judge, Cuddalore, Vridhachalam setting aside the Judgment of conviction dated 14.07.2011 passed in Sessions Case No. 164 of 2010 on the file of the Principal Assistant Sessions Judge, Vridhachalam, Cuddalore Division.



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For Appellant

: Mr. A.K. Samy
for Mr. R. Sudhakar

For Respondents 1 to 7

: Mr. V. Ramamurthy
for Mr. S. Thirumavalavan

For Respondent 8

: Mrs.G.V.Kasthuri
Additional Public Prosecutor

JUDGMENT

This Appeal is filed by the *De facto Complainant* against the judgment of acquittal passed in Criminal Appeal No. 65 of 2011 passed by the learned III Additional District and Sessions Judge, Cuddalore at Vridhachalam, dated 25.10.2013 acquitting A-1 to A7 from all the charges levelled against them.

2. The brief facts, which are necessary for the disposal of this Criminal Appeal, are as follows:-

2.1. The case of the Prosecution is that there was a civil dispute between the *De facto Complainant* and the Accused with respect to the property namely residential house situated at Sapta Rishi Street, Srimushnam, Cuddalore District belonged to the first Accused. On 11.01.2009, during night hours i.e., 12.01.2009 at about 1.00 am the *De facto Complainant* and his friend Siva @ Suvasuriyan were sleeping in the thatched shed. At that time,



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the Accused 1 to 7 trespassed into the said property with a common intention to set the thatched shed on fire. When the *De facto Complainant* and his friend questioned them, they threatened the *De facto Complainant* to vacate the premises, else, they would kill him. However, the *De facto Complainant* declined and refused to budge. Therefore, the first Accused scolded him in filthy language and attacked the *De facto Complainant* on his cheek with his hands. At the same time, the third Accused beat the *De facto Complainant* with his hands. In the same transaction, the Accused 2, 4, 5 and 6 caused damages to the household articles. When the 7th Accused attempted to cut the *De facto Complainant* with a knife, his friend Sivasuriyan defended him, therefore, the 7th Accused scolded Sivasuriyan in filthy language and beat him on his left hand with his hand. Finally, all the Accused joined together and set fire to the thatched shed and the shed completely gutted. In this context, the *De facto Complainant* had given a complaint, based on which, the case in Crime No. 5 of 2009 was registered for the offences punishable under Sections 147, 148, 448, 427, 323, 436 and 506 (ii) of IPC was registered. Ex.P-1 is the written complaint. The printed copy of the First Information Report was marked as Ex.P-6. P.W-7, Selvaraj, Inspector of Police of Srimushnam Police Station, after receipt of the complaint from the Appellant/*De facto Complainant* sent him and his friend Sivasuriyan/P.W-14 to the hospital for



treatment on memo.

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2.2. P.W-13 – Dr. Subramanian treated P.W-1 and P.W-14 at 3.00 pm on 12.01.2009. On enquiry, P.W-1 and P.W-14 told him that they were attacked by 7 known persons with cane and knife. Thereafter, P.W-13 issued the Wound Certificate which are marked as Ex.P-4 and Ex.P-6.

2.3. In the meantime, at 9.30 a.m. on 12.01.2009, P.W-15, Chandrababu, Inspector of Police took up the case for investigation on 12.01.2009 and enquired the witnesses present in the scene of occurrence. P.W-15 drew an observation mahazar, Ex.P-2 and rough sketch, Ex.P-7 in the presence of P.W-12, Saravanan and another witness by name Manikandan. In the scene of occurrence, he seized burnt reapers, casuarina cane, broken piece of asbestos and utensils under the Seizure Mahazar, Ex.P-3. On the same day viz., 12.01.2009, at about 11.45 a.m. he arrested the Accused Selvam-A2, Venkatesan-A3 and Baskar-A6 and remanded them to judicial custody. Subsequently, on 13.01.2009, P.W-13 enquired Sankaran and Gunasekaran-P.W-11. In the course of investigation, on 22.01.2009 at about 6.00 am, in front of Raj Tea Shop, near Car Street, P.W-13 arrested the 7th Accused. On 19.03.2009, P.W-13 enquired Dr. Subramanian and recorded his statement. He had also received the wound certificates of P.W-1 and P.W-14. During the course of investigation, the other Accused surrendered before the Court and



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were released on Bail. After conclusion of the investigation, P.W-13 filed an alteration report under Ex.P-8 altering the charges into one under Sections 147, 148, 448, 427, 294 (b), 323, 324, 436 and 506 (i) of IPC. P.W-13, after conclusion of investigation, filed the charge sheet against the Accused 1 to 7.

2.4. The charge sheet filed by the Accused was taken on file in P.R.C. No. 19 of 2009 and summons were served to the Accused. On appearance of the Accused, the documents filed by the prosecution have been furnished to the Accused under Section 207 Cr.P.C. When the incriminating materials against them were explained and the Accused were questioned under Section 313 (1) (b) of the Code of Criminal Procedure, they denied the same. However, the Accused No.1 produced the written statement along with (i) Certified copy of the order dated 27.01.2006 passed by the District Munsif-cum-Judicial Magistrate, Kattumannarkoil; (ii) certified copy of the Delivery receipt dated 28.01.2006 and (iii) Certified copy of the receipt issued by P.W-2 and P.W-3 for having received the household articles found in the disputed house.

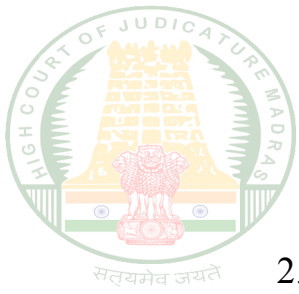
2.5. In order to prove the case, on behalf of the prosecution, 15 witnesses were examined as P.W-1 to P.W-15 and 8 documents were marked as Ex.P-1 to Ex.P-8. Also, the Prosecution projected 6 material objects as M.O-1 to M.O-6. The learned Principal Assistant Sessions Judge,



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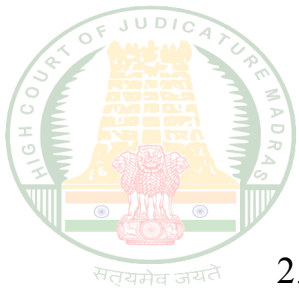
Vridhachalam, Cuddalore District after conclusion of trial and upon analysing the oral and documentary evidence, convicted the Accused 1 to 7 and sentenced them as follows:-

Accused	Conviction under section	Sentence awarded
A1	148 IPC 506 (i) IPC 323 IPC 436 IPC 450 IPC	To undergo rigorous imprisonment for one year. To undergo rigorous imprisonment for one year. To undergo rigorous imprisonment for one year. To undergo rigorous imprisonment for three years, and to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for three months. To undergo rigorous imprisonment for three years.
A2, A4, A5 & A6	148 IPC 436 IPC 450 IPC	To undergo rigorous imprisonment for one year each. To undergo rigorous imprisonment for three years each and to pay a fine of Rs.1,000/- each and in default to undergo simple imprisonment for three months each. To undergo rigorous imprisonment for three years each.
A3 & A7	148 IPC 436 IPC 450 IPC	To undergo rigorous imprisonment for one year each. To undergo rigorous imprisonment for three years each and to pay a fine of Rs.1,000/- each and in default to undergo simple imprisonment for three months each. To undergo rigorous imprisonment for three years each.



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2.6. Challenging the Judgment of conviction, the Accused 1 to 7 have filed Criminal Appeal No. 65 of 2011 before the learned II Additional District and Sessions Judge, Cuddalore at Vridhachalam. The learned Appellate Judge, on considering the three documents filed by the first Accused during his questioning under Section 313 of Cr.P.C. concluded that through the process of the Court, the first Accused took possession of the premises in dispute and there is no evidence produced by the prosecution to show that P.W-1 took re-delivery of the said premises from the Accused through process of the Court. The Appellate Court, on perusal of the evidence of P.W-1 and P.W-14 in their statement under Section 161 of Cr.P.C. and their depositions before the trial Court, concluded that there are glaring inconsistency in their depositions. The Appellate Court also concluded that there is enormous delay in the registration of First Information Report besides P.W-1 and P.W-14 went to the hospital only at 3.00 p.m. for treatment for the injuries sustained on 12.01.2009 at 1.00 am. Thus, the Appellate Court had concluded that the prosecution had failed to prove the charges against the Accused and accordingly, allowed the Criminal Appeal filed by the Accused 1 to 7 and set aside the Judgment dated 14.07.2011 passed in S.C. No. 164 of 2010 on the file of the learned Principal Assistant Sessions Judge, Vridhachalam, Cuddalore District.



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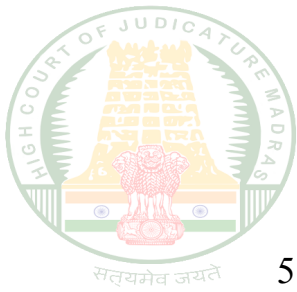
2.7. Challenging the correctness and validity of the Judgment dated 25.10.2013 passed in Criminal Appeal No. 65 of 2011, the *De facto Complainant* had come forward with this Criminal Appeal.

3. Mr. A.K. Samy, learned Counsel appearing for the Appellant/*De facto Complainant* submitted that the Judgment of reversal passed by the Appellate Court is legally not sustainable. In connection with the occurrence that had taken place on 11.01.2009, the complaint was given at 8.30 a.m. on 12.01.2009. While so, it cannot be said that there is enormous delay in registering the First Information Report. Further, P.W-1 and P.W-14 have taken treatment on the same day for the injuries suffered by them which was clearly spoken to the Doctor, P.W-13. P.W-13 also issued Wound Certificates under Ex. P-4 to P.W-1 and P.W-14. Therefore, it is evidently clear that P.W-1 and P.W-14 have suffered injuries in the occurrence that had taken place on 11.01.2009. Even P.W-1 examined himself as a witness before the Trial Court which was also corroborated by P.W-14 and other witnesses. Therefore, it is clear that there was an incident in which P.W-1 and P.W-14 were attacked by the Accused. The learned III Additional District and Sessions Judge, Cuddalore at Vridhachalam, failed to appreciate the same and acquitted Accused-1 to Accused-7.



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4. The learned Counsel for the Appellant/*De facto Complainant* further submitted that P.W-1 and P.W-14 were not only eye witnesses, but they are injured witnesses. The Appellate Court did not notice that immediately after the occurrence in which they were assaulted during night, they could not immediately go to the Police Station. Admittedly, P.W-1 has given the complaint at 8.30 a.m. on the same day viz., after 7 to 8 hours of the incident, which cannot be said to be a delayed complaint. It is also an admitted fact that P.W-1 and P.W-14 were sent to the hospital through a Police memo. It is further submitted that even assuming that the *De facto Complainant* and P.W-14 were in illegal possession of the property in question, there was an incident in which they were attacked by the Accused which was not properly taken of by the Appellate Court, while reversing the Judgment of conviction passed by the Trial Court. Therefore, the learned Counsel for the Appellant seeks to set aside the judgment of acquittal by the learned III Additional District and Sessions Judge, Cuddalore at Vridhachalam, in C.A.No.65 of 2011, dated 25.10.2013 and to restore the judgment of conviction recorded by the learned Principal Assistant Sessions Judge, Vridhachalam, in S.C.No.164 of 2010 dated 14.07.2011.



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5. In support of his contentions, the learned Counsel for the Appellant also relied on the reported ruling of the Hon'ble Supreme Court in the case of ***Ramdas & Others Vs. State of Maharashtra*** reported in ***CDJ 2006 SC 1046*** wherein it has been held as follows:-

“21. ... In the ultimate analysis, what is the effect of delay in lodging the report with the police is a matter of appreciation of evidence, and the court must consider the delay in the background of the facts and circumstances of each case. Different cases have different facts and it is the totality of evidence and the impact that it has on the mind of the court that is important. No strait jacket formula can be evolved in such matters, and each case must rest on its own facts. It is settled law that however similar the circumstances, facts in one case cannot be used as a precedent to determine the conclusion on the facts in another. (See AIR 1956 SC 216 : [Pandurang and others vs. State of Hyderabad](#)). Thus mere delay in lodging of the report may not by itself be fatal to the case of the prosecution, but the delay has to be considered in the background of the facts and circumstances in each case and is a matter of appreciation of evidence by the court of fact.”

6. On the other hand, the learned Counsel for the Respondents/A1 to A7 invited the attention of this Court to the grounds of Appeal and submitted that the grounds are generic and not specific. There was no ground raised by the Appellant/*De-facto Complainant* with respect to the Civil dispute between the parties. The Appellate Court, on an elaborate consideration of such civil dispute, including Ex.D-1 to Ex.D-3 filed on behalf of the first Accused, has categorically concluded that due to a civil dispute, the Accused have been falsely implicated in the Criminal case. The Appellate Court also scanned



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through the statement of P.W-1 and P.W-14 recorded under Section 161 (3) of the Code of Criminal Procedure and their depositions before the Trial Court to conclude that there are material contradiction between the two statements and it cannot be relied on. Above all, it was concluded that after the case was posted for Judgment by the Trial Court, additional charges were framed against Accused-1, Accused-3 and Accused-7 for the offence under Section 436 of IPC and against Accused-1 to Accused-7 for the offence under Section 450 of IPC and against Accused-7 for the offence under Section 323 of IPC. However, the Accused were not given opportunity to adduce further evidence and opportunity was given only to the prosecution side. The Appellate Court also extracted the deposition of P.W-14 and pointed out the glaring consistency between his deposition and that of the P.W-1. Further, the Appellate Court pointed out the deposition of P.W-1 wherein he had stated that he is fully aware of the Judgment and Decree passed in favour of the first Accused and the possession of the property was also delivered to him. He had further deposed that at the time of delivery of the property through Court Ameen, all the belongings have been received and acknowledged by his mother and grandmother. Therefore, in the ultimate analysis of the Appellate Court, it was concluded that the case against the Respondents/Accused has been foisted and therefore, it will be unsafe to convict them.



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7. The Learned Counsel for the Respondents/A1 to A7 also invited the attention of this Court to the cross-examination of the prosecution witnesses. P.W-1 specifically admits that he was aware of the outcome of the R.C.O.P. proceedings. He also admitted that he was aware of the filing of the E.P. but he was not aware of the delivery of possession and it shows possession was not with the tenant but possession was handed over to the landlord, who is the first Accused herein. Further, the landlord had filed the suit before the learned District Munsif-cum-Judicial Magistrate, Chidambaram, seeking injunction against the tenant not to interfere in the suit property. When the Civil Court had granted a decree in favour of the Accused, the entire prosecution case is to be considered as a foisted case to wreck personal vengeance. It is proved from the conduct of P.W-1 who has stated that in the alleged house when the Accused and the co-Accused had knocked on the door, they opened the door and found the Accused and others waiting outside and attacked them. He also alleged that he was threatened to set the house on fire. Immediately, P.W-1 and his brother went and complained it to his mother. When it is alleged that P.W-1 and P.W-14 were attacked and the house was gutted, they ought to have given the complaint immediately to the Police, instead they have rushed to the house of his mother and complained it



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to her. This part of the deposition of the P.W-1 is unnatural and it was taken note of by the Appellate Court. When P.W-1 was not in lawful possession of the property and possession was taken over by the first Accused through the Court Ameen, the question of the Accused committing trespass into the house of P.W-1 will not arise.

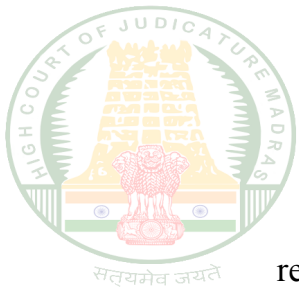
8. In support of his contention, the learned Counsel for the Respondents/A1 to A7 relied on the following rulings:-

8.1. In the case of ***Sahib Singh Vs. State of Haryana*** reported in ***(1997) 7 SCC 231*** the Hon'ble Supreme Court has observed as follows:-

“53. A little effort on the part of the trial court would have revealed to it the falsity of the prosecution case, but it proceeded in a mechanical manner and ultimately convicted the appellant ignoring that there was a deliberately delayed FIR and the case set out therein was sought to be proved through highly interested witnesses, instead of independent witnesses, and also by bringing on record a Confessional statement which contained false facts. This leads to the conclusion that the trial judge was sitting only to convict forgetting that judiciary holds the SCALES even, not tilted.”

8.2. In the case of ***Kishan Singh (Dead) through LRS. Vs. Gurpal Singh and Others*** reported in ***(2010) 8 SCC 775*** the Hon'ble Supreme Court has observed as follows:-

“24. It is to be noted that the appellants' father Kishan Singh lodged FIR No.144/02 on 23.7.2002 through his attorney Jaswant Singh Mann under Sections, 420, 323, 467, 468, 471, 120-B IPC, against the



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respondents. The allegations made in the FIR were substantially similar to the allegations made by the appellants in Civil Suit No.1075/96, which had been decided against them. It is evident that the aforesaid FIR was filed with inordinate delay and there has been no plausible explanation for the same. The appellants lodged the aforesaid FIR only after meeting their Waterloo in the Civil Court. Thus, it is evident that the FIR was lodged with the sole intention of harassing the respondents and enmeshing them in long and arduous criminal proceedings. We are of the view that such an action on the part of the appellants' father would not be *bona fide*, and the criminal proceedings initiated by him against the respondents amount to an abuse of the process of law.”

8.3. In the case of ***Motiram Padu Joshi Vs. State of Maharashtra*** reported in ***(2018) 9 SCC 429*** the Hon'ble Supreme Court had observed as follows:-

“22. It is fairly well-settled that in an appeal against the order of acquittal, the appellate court would be slow to disturb the findings of the trial court which had the opportunity of seeing and hearing the witnesses. In an appeal against the order of acquittal, there is no embargo for reappreciating the evidence and to take a different view; but there must be strong circumstances to reverse the order of acquittal. In the appeal against order of acquittal, the paramount consideration of the appellate court should be to avoid miscarriage of justice.”

8.4. In the case of ***Geeta Devi Vs. State of U.P and Others*** reported in ***2022 SCC OnLine SC 57*** the Hon'ble Supreme Court has observed as follows:-

“7. Applying the law laid down by this Court in the aforesaid decisions of this Court to the facts of the case on hand and while considering the impugned judgment and order passed by the High Court, we find the same is unsustainable. On perusal of the impugned judgment and order passed by the High Court, we find that decision of the High Court is totally erroneous as it has ignored the settled legal position. As



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observed hereinabove, the High Court has not at all discussed and/or re-appreciated the entire evidence on record. In fact, the High Court has only made the general observations on the deposition of the witnesses examined. However, there is no reappraisal of entire evidence on record in detail, which ought to have been done by the High Court, being a first appellate court. Under the circumstances on the aforesaid ground alone, impugned judgment and order passed by the High Court deserves to be quashed and set aside and the same is to be remanded back to the High Court to decide the appeal afresh in accordance with law and on its own merits being mindful of the observations made hereinabove.”

8.5. In the case of ***Arun Wahane v. The State of Maharashtra*** reported in **2011 Crl.L.J.2220** the Bombay High Court had observed as follows:

“If charge is drastically altered or amended after the stage of statement of the Accused has been recorded under Section 313 of the Criminal Procedure Code the trial Court ought to have adopted cautious and careful approach to adjourn the trial as contemplated under Section 216 of the Criminal Procedure Code so as to enable either of the parties in the trial to adduce further evidence either of the parties in the trial to adduce further evidence pursuant to amended or altered charge in the case. This was not done in this case. That being so it has to be concluded that failure of justice has occasioned and serious prejudice has resulted to the Accused which makes the conviction recorded by the Courts below unsustainable”.

8.6. In the case of ***Sujit Biswas v. State of Assam***, reported in **2013 Crl.L.J. 3140** the Hon'ble Supreme Court had held as under:

“(D) Criminal P.C(2 of 1974)S.311 – Examination of Accused- Object is to give opportunity to Accused to explain



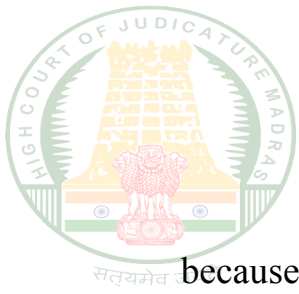
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incriminating circumstances – S.311 meets requirement of principle of natural justice – Examination is essential in case based on circumstantial evidence – circumstance on which Accused is not examined – cannot be used against him”

8.7. In the case of ***K. Shajahan v. Subramani Gounder and Others*** reported in ***(2009) 3 MLJ (Crl.) 972*** this Court had observed as follows:

“Once there is valid Court order where upon there emerged the record of delivery, evidencing actual delivery of the property on certain date, it is not open for the Accused who is bound by such court order, to veer and take a plea before the criminal Court as through the property delivered was only a paper delivery and that he continued to be in possession and such a case, he should not be treated as a trespasser”

9. The learned Additional Public Prosecutor appearing for the 8th Respondent submitted that among the prosecution evidence including P.W-1 to P.W-15, Ex.P-9 is the most important document in this case, based on which the learned Principal Assistant Sessions Judge, Vridhachalam, convicted the Accused. The learned III Additional District and Sessions Judge, Cuddalore at Vridhachalam, had reversed the finding, which is against the guidelines issued by the Hon'ble Supreme Court. When the learned Trial Judge had on proper appreciation of the evidence, arrived at a finding, the learned Appellate Judge on the same set of evidence, cannot arrive at a different conclusion or disturb the finding of the learned Trial Judge. This is



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because the learned Trial Judge had the opportunity to observe the demeanour of the witnesses, which is not available to the Appellate Court. Therefore, the finding of the reversal of the judgment of the Trial Court by the learned III Additional District and Sessions Judge, Cuddalore at Vridhachalam, is to be set aside and the instant appeal has to be allowed.

Point for consideration

Whether the judgment dated 25.10.2013 passed in Criminal Appeal 65 of 2011 by the learned Additional District Judge, Vridhachalam is to be set aside and the judgment dated 14.07.2011 passed in S.C.No.164 of 2010 by the learned Principal Assistant Sessions Judge, Vridhachalam is to be restored?

10. Heard the learned Counsel for the Appellant and the learned Counsels for the Respondents 1 to 7 as well as the learned Additional Public Prosecutor (Crl Side) appearing for the State/Respondent No.8. Also perused the evidence of the prosecution witnesses P.W-1 to P.W-15 and documents marked under Ex.P-1 to Ex.P-8, the Judgment of the learned Principal Assistant Sessions Judge, Vridhachalam in S.C.No.164 of 2010 dated 14.07.2011 and the judgment of the learned Additional Sessions Judge,



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Vridhachalm in Criminal Appeal No.65 of 2011 dated 25.10.2013.

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11. It is an admitted fact that there was civil dispute between the parties to this appeal with respect to the property situated in Sapta Rishi Street, Srimushnam, Cuddalore District. This property originally belonged to Bethusamy Naidu. After his death, his wife Aathilakshmi Ammal executed a Settlement Deed in favour of his adopted son Sambantham. The said Sambantham rented out the house to the husband of P.W-3 namely Muthu Pathar. When the tenancy is in subsistence, the first Accused purchased the said property from Sambantham through a registered sale deed. After such purchase, P.W-2 and P.W-3 were paying rent to the first Accused. However, as the tenants committed default in payment of rent, the first Accused filed RCOP No. 5 of 2001 for eviction before the District Munsif Court, Kattumannar Koil. Pending R.C.O.P. No. 5 of 2001, P.W-2 and P.W-3 have filed a suit in O.S. No. 69 of 2002 for a declaration to declare that they are the owners of the property and claimed a rival right. On notice, the first Accused also filed a suit in O.S. No. 581 of 2000 for permanent injunction restraining P.W-2 and P.W-3/Tenants from making any further construction or altering the existing building. The suit in O.S. No. 581 of 2000 filed by the first Accused was allowed. Similarly, R.C.O.P. No. 5 of 2001 filed by the first respondent



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for eviction on the ground of default in payment of rent was also allowed. The first Accused therefore filed E.A. No. 1 of 2006 for delivery of possession and it was also allowed. On 28.01.2006, the said property was delivered to the first Accused by the officer of the Court. Thereafter, the first Accused had demolished the existing superstructure and the land was vacant. It is alleged that when the first Accused was away from the Town during Pongal Festival, P.W-1 to P.W-3 gained entry into the vacant land, put up a thatched shed and they themselves set fire to the shed and foisted a case.

12. It is in this factual backdrop, the criminal proceedings initiated by P.W-1 and P.W-14 against the Accused 1 to 7 has to be considered. Admittedly, on the date of the alleged occurrence, the property was in lawful possession of the first Accused after evicting the prosecution witnesses. Further, on the date of the alleged occurrence, after alleged to have been attacked, P.W-1 and 14 did not go to the police Station which is half a kilo meter away from the occurrence spot, rather, they have gone to their mother's house and informed them of the occurrence. It is stated that P.W-5 informed the Fire Service about the fire caused to the thatched shed.

13. The conduct of the P.W-1 and P.W-14 is required to be mentioned



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here. Admittedly, as on the date of occurrence, they are not the owners of the property in dispute. However, it is claimed that they were sleeping inside the thatched hut. When P.W-1 and P.W-14 are not the owners or has no right over the said property, they have no semblance of right to remain in occupation of the said property. Such occupation can only amount to a trespass by P.W-1 and P.W-14 . Further, P.W-1 or P.W-14 did not mark any document to show the previous civil litigation between the parties. It is only the first Accused has stated about the Civil Proceedings in his statement under Section 313 of Cr.P.C. and also marked three documents, Ex.D-1 to Ex.D-3 to substantiate the same. In fact, when P.W-1 was cross-examined, he has stated that he is aware of the decree passed in favour of the first Accused. He also admitted that the articles in the tenanted premises were handed over upon due acknowledgment. He also admitted that upon taking delivery of the property through Ameen of the Court, the first Accused demolished the superstructure thereon and left the land vacant. Having admitted so, it is futile on the part of P.W-1 to contend that he was sleeping in the property in his own right and the Accused have attacked them. Therefore it is clear that a false case has been foisted at the behest of P.W-1 against the Accused in this case.

14. It is an apathy that the Investigation Officer in this case has not



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brought to the notice of the Trial Court about the previous civil litigation between the parties. The prosecution documents are Complaint of P.W-1, Observation Mahazar, Seizure Mahazar, Accident Register of P.W-1 and P.W-14, First Information Report, Rough Sketch and Alteration Report. The Investigation Officer in this case has not probed into the background facts, which led to the dispute between the parties. The Investigation Officer also did not go into the details of the civil litigation and failed to collect the Judgment and Decree passed by the Civil Court in favour of the first Accused much prior to the alleged occurrence in this case. It is also very much in evidence that only after taking delivery of possession of the property through Court, the *De facto Complainant* has alleged that the Accused have trespassed into his property. On the other hand, it is P.W-1 and P.W-14 who have trespassed into the property of the first Accused, which was not probed into by the Investigation Officer. The investigation conducted in this case is shoddy which led to the conviction of the Accused, who are innocents. The Appellate Court, on proper consideration of the Civil Dispute, deposition of P.W-1 and P.W-14, the delay in preferring the complaint etc., has rightly reversed the Judgment of conviction passed by the Trial Court.

15. Yet another lacuna in the Judgment of the Trial Court, which was



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also pointed out by the Appellate Court, is that after prosecution evidence was closed, the Accused was examined under 313 Cr.P.C. Subsequently, the charges were altered. In case of altering charges, after recording of the evidence, the trial Court has to frame Additional charge and once again put the Accused on notice, thereby opportunity has to be granted to the Accused to recall the same witnesses and enquire them for the altered charges. Otherwise punishment or the conviction recorded on the alternate charges will be considered as perverse and vitiated. Therefore, the learned III Additional District Judge, Cuddalore at Vrindhachalam had relied on the reported decision in **2011 CRL L.J 2020**, wherein it was held as follows:

“Opportunity is to be given to either of the parties to adduce further evidence pursuant to altered/amended charge and failure to give opportunity to the Accused will cause create prejudice to the Accused which makes the conviction is unsustainable”.

16. It must be stated here that the Complaint under Ex.P-1 itself is bereft of details. The First Information Report was belated. When the Investigation Officer was cross examined, he had clearly admitted that the details were not spoken to by the prosecution witnesses as list witnesses during investigation under 161 Cr.P.C statement. During trial, they had stated that each of the Accused had attacked the prosecution witnesses. In this



regard, the Trial Court, in Paragraph 21 of the judgment held as follows:

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“In the complaint marked as Ex.P-1, P.W-1 has not mentioned about the assault made by the Accused persons on P.W-1 and P.W-14. Only when P.W-1 was examined by Police u/s.161(3) Cr.P.C he deposed about the assault over him. In the complaint marked as Ex.P-1, it is not mentioned that Accused-3 assaulted P.W-1 in the evidence P.W-1 had deposed that Accused-7 assaulted him over the left side of chest and Accused-3 assaulted with wood on the backside of the head. P.W-1 during his cross examination admits that he had not stated as the 7th Accused Siva attempted to assault him with Aruvol and also admits in the complaint not mentioned as the Accused Chinnappan informed the other Accused to set fire over the thatched hut and admits not stated as A-3 poured the kerosene over the hut and A1 set fire to the house...”

17. In the complaint marked as Ex.P-1, P.W-1 had not mentioned about the assault made by the Accused persons on P.W-1 and P.W-14. However, only when P.W-1 was examined by Police under 161(3) Cr.P.C he deposed about the assault over him. In the complaint marked as Ex.P-1 it is not mentioned that Accused-3 assaulted P.W-1 but he had deposed before the Trial Court that Accused-7 assaulted him over the left side of the chest with the edge of the knife. He also stated that Accused-3 assaulted him with wooden log on the back of his head. P.W-1 during his cross examination admitted he had not stated that the Accused-7 attempted to assault him with 'Arival' (Machette). Also he admitted in the complaint he had not mentioned that the Accused Chinnappan informed the other Accused to set fire to the thatched



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hut. Also in the complaint he had not stated that Accused-3 poured kerosene over the hut and Accused-1 set fire to the house. These facts were also admitted in cross examination by the Investigation Officer to the effect that those details were not mentioned in the statement of each of the prosecution witnesses under Section 161 of the Code of Criminal Procedure. He also admitted that the details regarding possession of weapon used by each of the Accused to attack the prosecution witnesses is absent. Therefore, it is clear that the complaint under Ex.P-1 is bereft of material particulars.

18. When the Accused-1 and his family, as landlord of the property, obtained a decree from the competent civil Court and taken delivery of possession through execution processes, the question of setting fire to the property of the prosecution witnesses will not arise at all. When the structure had been demolished by the landlord/A-1 after getting delivery of possession, the possession of P.W-1 and 14 in such property itself is unlawful and it would amount to a criminal trespass.

19. The prosecution witness/Complainant party had lost the civil dispute. Having lost the Civil Court Proceedings, P.W-1 has unceremoniously given the instant complaint against the Respondents/Accused 1 to 7 and made



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them to undergo the ordeal of a lengthy Criminal Trial. The complaint and the criminal prosecution against the Respondents/Accused 1 to 7 is nothing short of an abuse of process of the Court. Therefore, the Appeal by the Accused before the learned III Additional District Judge, Cudalore at Vridhachalam was allowed and the judgment of the conviction recorded by the learned Principal Assistant Sessions Judge was set aside. There is no perversity in the judgment of the learned III Additional District and Sessions Judge, Cuddalore at Vridhachalam. It is a well reasoned judgment on independent assessment of materials made available.

20. In the light of the above discussion, the point for consideration is answered in favour of the Respondents/Accused and against the *De facto Complainant*. The judgment dated 25.10.2013 passed in Criminal Appeal No. 65 of 2011 by the learned Additional District Judge, Vridhachalam reversing the conviction and sentence recorded in the judgment dated 14.07.2011 passed in S.C.No.164 of 2010 by the learned Principal Assistant Sessions Judge, Vridhachalam is found proper which does not warrant any interference by this Court and the same is to be confirmed.

In the result, ***this Criminal Appeal is dismissed.*** The judgment dated



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25.10.2013 passed in Criminal Appeal No. 65 of 2011 by the learned Additional District Judge, Vridhachalam reversing the conviction and sentence recorded in the judgment dated 14.07.2011 passed in S.C.No.164 of 2010 by the learned Principal Assistant Sessions Judge, Vridhachalam is confirmed.

02.06.2025

shl/cda

Speaking/Non-speaking order

Neutral Citation : Yes/No

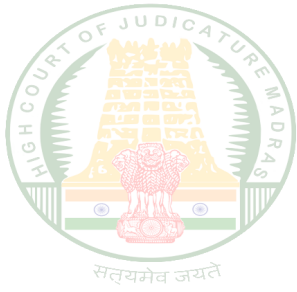


Crl.A.No.513 of 2018

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To

- 1.The III Additional District and Sessions Judge,
Cuddalore, Vridhachalam.
- 2.The Principal Assistant Sessions Judge,
Vridhachalam.
- 3.The Station House Officer,
Srimushnam Police Station,
Cuddalore Taluk and District.
- 4.The Public Prosecutor,
High Court, Madras.
- 5.The Section Officer,
Criminal Section,
High Court, Madras.



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Crl.A.No.513 of 2018

SATHI KUMAR SUKUMARA KURUP, J

shl/cda

Judgment in
Crl.A.No.513 of 2018

02.06.2025