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Y.AlwIn Vs. 1.The State Rep. by Its

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Court : Chennai

Decided On : Dec-04-2014

Judge : The Honourable Ms.Justice R.Mala

Appellant : Y.Alwin

Respondent : 1.The State Rep. by Its

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

04. 12.2014 CORAM THE HONOURABLE MS.JUSTICE R.MALA Criminal Appeal (MD)No.315 of 2014 Y.Alwin : Appellant/P.W.1 Vs. 1.The State rep. by its The Inspector of Police, Suseendram Police Station, Kanyakumari District. (Crime No.147/09). :

1. t Respondent/Complainant 2.Yesurajan 3.Monikandan 4.Anand 5.Joesh 6.Bravin 7.Merlin : Respondents 2to7/Accused 1to6 Prayer : Criminal Appeal is filed under Section 372 of the Code of Criminal Procedure, against the acquittal judgment dated 04.09.2014 in C.C.No.159 of 2009, on the file of the learned Judicial Magistrate No.III, Nagercoil. !For Appellant :: Mr.K.P.Narayanakumar :

JUDGMENT
This appeal is directed against the judgment of acquittal dated 04.09.2014 passed in C.C.No.159 of 2009, on the file of the learned Judicial Magistrate No.III, Nagercoil.

2. The case of prosecution, in brief, is as follows: (i) Due to previous enmity, on 12.04.2009, at 04.30 p.m., the first accused kicked the stomach of P.W.1. The second accused attacked him with black stone on his left head. The third accused slapped him with hand on his hip. When P.W.2 questioned about the same, he was also attacked by the fourth accused. The first accused beat him with stick on his right leg. The fifth and sixth accused also attacked them. P.W.3 (Somu) and P.W.6 (Abrahom) took P.W.1 to the Government Hospital through ambulance for giving treatment, where P.W.8 (Dr.Resmi) has seen P.W.1 and treated him and issued wound certificate Ex.P.4 stating that he sustained injury on the left side head to the extent of 7 x 5 x 2 cm and she opined that the injury sustained by him is simple in nature. On the very same day, she also gave treatment to P.W.2 and issued wound certificate Ex.P.5 stating that he sustained injury on his right knee to the extent of 7 x 5 cm and also sustained injury on the thumb of left leg to the extent of 3 x 2 cm and his right hand was swelling. She opined that the injury sustained by him is simple in nature. (ii) P.W.7 (Rajan), Head Constable, on receiving information at 06.00 a.m., on 13.04.2009, went to Asaripallam Government Hospital and obtained a complaint from P.W.1 and on the basis of which, registered a case in Crime No.147 of 2009, for the offences under Sections 147, 148, 341, 324, 323 and 506(2) IPC and prepared the printed F.I.R.-Ex.P.3. (iii) P.W.9 (Tmt.Mariya Rosle), Sub-Inspector of Police, took up the case for investigation on the basis of Ex.P.3 registered by P.W.7 and she went to the place of occurrence on 13.04.2009 at 10.30 a.m., and prepared an observation mahazar and rough sketch (Ex.P.6). (iv) P.W.10 (Thangaraj), after examining P.W.8 (Dr.Resmi), the doctor who treated P.W.1 and P.W.2, laid the final report against the accused for the offences punishable under Sections 147, 148, 341, 324, 323 and 506(1) IPC. (v). The learned trial Judge, after following the procedures, framed necessary charges against the accused. Since the accused denied the same in toto and pleaded not guilty, to prove the charges, P.Ws.1 to 10 were examined and Exs.P.1 to P.6 were marked on the side of the prosecution. On completion of the examination of the witnesses on the side of the prosecution, the accused were questioned under Section 313 Cr.P.C., as to the incriminating circumstances found in the evidence of the prosecution witnesses and they denied the same as false. On behalf of the defence, neither the witness was examined

nor document was marked. (vi). The learned trial Judge, after considering the oral and documentary evidence, by giving the benefit of doubt in favour of the accused, acquitted them from the charges levelled against them.

3. Challenging the judgment of acquittal passed in C.C.No.159 of 2009, the appellant/P.W.1, the injured has come forward with the present appeal.

4. At the time of admission, arguments of the appellant were heard in length.

5. The learned counsel for the appellant would submit that the Trial Court has acquitted the accused on the following grounds: (i) The delay in preferring the complaint has not been properly explained. (ii) There is a contradiction between the evidence of P.W.1 and P.W.2 in respect of how many accused involved in the commission of offfence. Before the doctor, P.W.1 has stated that 8 accused assaulted him, but whereas P.W.2 has stated that 4 accused assaulted him. (iii) There is a correction in First Information Report. (iv) P.W.6, the other eye witness also turned hostile. Hence, giving the benefit of doubt in favour of the accused, the Trial Court has acquitted them. He would further submit that the delay has been properly explained and there is no contradiction. Hence, the learned counsel prayed for admission of this appeal.

6. Considering his arguments and also on perusal of the typed-set of papers, it is seen that the alleged occurrence is said to be taken place on 12.04.2009 at 16.30 hours, due to previous enmity between the appellant and the accused. But the complaint has been given on 13.04.2009 at 08.15 a.m. There was a delay of more than 12 hours. The delay has not been properly explained. Furthermore, it is pertinent to note that there was a correction in First Information Report. It is true that First Information Report is not an encyclopedia. But it must contain the date, time, place of occurrence and the name of the accused, if known to them. The learned Judge, in paragraph No.14 of the judgment, has stated that a correction has been made in the column of F.I.R. (Ex.P.3) 'date of occurrence and also names of the accused' and that has not been properly explained by the prosecution. Hence, the learned Judge has correctly held that the prosecution has failed to prove the guilt of the accused beyond all reasonable doubt. In criminal jurisprudence, conviction cannot be based on the inference. It is the duty of the

prosecution to prove the guilt of the accused beyond all reasonable doubt. Merely because P.W.1, the victim has sustained head injury, it will not be a reason for conviction. Furthermore, P.W.8 (Dr.Resmi) has seen the injured on 13.04.2009. At that time, P.W.1 has stated that 8 persons had assaulted him with stone, but whereas, P.W.2, who was admitted in the same hospital after 10 minutes, had stated that 4 persons assaulted him with wooden log and also with hands. Hence, the learned Trial Judge considered the same stating that there is a material contradiction between the evidence of P.W.1 and P.W.2, who are the injured. There was a variation with regard to the number of the accused involved in the occurrence and also the weapon used during the relevant time. Hence, the Trial Court has considered all the aspects in proper perspective and came to the correct conclusion. Therefore, I do not find any infirmity or illegality in the judgment of acquittal passed by the Trial Court. The appellant has not given any evidence to fascinate conviction on the basis of the available evidence and hence, the judgment of acquittal does not call for any interference at the hands of this Court.

7. In the result, finding no merit, the Criminal Appeal is dismissed at the stage of admission itself. 04.12.2014 Index:Yes/No Internet:Yes/No SML R.MALA, J.

SML To 1.The Judicial Magistrate No.III, Nagercoil. 2.The Inspector of Police, Suseendram Police Station, Kanyakumari District. 3.The Public Prosecutor, Madurai Bench of Madras High Court, Madurai. Judgment made in Criminal Appeal (MD)No.315 of 2014 Dated:

04. 12.2014

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