

Ramaswami Vs. Muthu and ors.

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Court : Chennai

Decided On : Oct-24-1975

Reported in : 1976CriLJ1504

Judge : Ratnavel Pandian, J.

Appellant : Ramaswami

Respondent : Muthu and ors.

Advocate for Def. : Mr. C. K. Venkatanarasimham

Judgement :

ORDER

Ratnavel Pandian, J.

1. P.W. 1 in S. C. No. 74 of 1974 on the file of the Assistant Sessions Judge of Ramanathapuram at Sivaganga has directed this revision petition challenging the acquittal of respondents 1 to 5 - accused 1 to 5 by the trial court. The respondents were charged under two heads, viz. for offences punishable under Sections 148 and 307 (latter part), I.P.C. The trial Judge, after finding that 'the prosecution does not appear to have come forward with clean hands in bringing home the guilt of the accused' and 'has not sufficiently and satisfactorily shown by any reliable evidence that the accused are the culprits who have inflicted the injuries on PW 1' and 'the accused are entitled to the benefit of doubt,' has found them not guilty of

any of the charges with which they were charged and acquitted them of all the offences. Aggrieved by the order of acquittal, the victim PW 1 has come to this Court by way of a revision petition.

2. The prosecution case is briefly that on 14-1-1974, at about 8-15 p.m., at Madhukulathur bazar, all the respondents formed themselves into an unlawful assembly armed with vel sticks, kattukambu and vangaruvals, with the common object of murdering the petitioner Ramaswami (PW 1) and in furtherance of the above said common intention, they waylaid the said Ramaswami and attempted to murder him and further voluntarily caused hurt to him. It is the common case of the prosecution that when PW 1 who was the Panchayat Board President of Keelasakkulam village, was passing through the Thidal Pallivasal Street, on the way to his house, he was waylaid by the respondents and attacked mercilessly. At the time of the occurrence, accused 1 and 3 were armed with vangaruvals, accused 2 was armed with kattukambu and accused 4 and 5 were armed with vel kambu. It is the case of the prosecution that accused 3 cut PW 1 on his head with a Vangaruvel, accused 1 cut him on his left eye-brow and nose with a vangaruval, accused 4 beat him on his right forearm, right shoulder and right thigh with a vel kambu, accused 5 beat him on his left shoulder, left thumb and left thigh with a vel kambu and accused 2 beat him on his buttocks, left knee and right leg below knee with kattukambu. Of the witnesses examined, P.Ws. 3 and 4 are the eye-witnesses to the occurrence. PW 2, Civil Asst. Surgeon, attached to the Government Hospital, Mudukulathur, examined PW 1 at about 10 p.m. on the same night and found 12 injuries as detailed in Ex P. 2. Of the injuries, injuries 1 to 3 are incised wounds and the rest are contusions and abrasions. He has opined that all the injuries were simple in nature.

3. PW 5, the Assistant Sub Inspector of Police Mudukulathur, took a complaint Ex, P. 1 from the injured and registered the same as Crime No. 12/74 under Sections 147, 148 and 307, I.P.C. Ex. P. 3 is the original first information report. Thereupon, PW 6, the Inspector of Police, took up further investigation of the case and examined PWs, 1, 3 and 4 in the hospital. After completing the investigation, he laid the charge-sheet on 26-2-1974. The respondents, when examined under Section 313, Cr. P.C., with regard to the incriminating circumstances appearing

against each of them, denied their complicity in the crime and stated that PWs, 3 and 4 are close relations of PW 1 and that they are giving false versions.

4. The trial court has disbelieved the portion of the evidence relating to the motive put forth by the prosecution. Then, coming to the evidence, the lower court has assigned various reasons for disbelieving the evidence of PW 1 by assessing his evidence with reference to the statement given at the earliest point of time in Ex. P. 1 and the dying declaration Ex. D. 1.

5. It admits of no doubt that it transpires from the evidence of these witnesses that PWs. 3 and 4 are interested in the victim. The lower court has also taken into consideration the non-examination of any of the inhabitants of the scene place and the fact that the prosecution has not given any explanation on this aspect. It is found from the evidence, as rightly pointed out by the trial court, that apart from PWs. 3 and 4, there were four other witnesses viz, one Kadiresan who is running a junk shop at the junction of the Thidal Pallivasal Street very near to the scene of occurrence, one Karuppiah with whom PW 3 is said to have been conversing for some time, one Thirukannan who is said to have come and separated the victim from the respondents, and one Ramiah who is said to have accompanied PW 4 at the time of the occurrence. All these four witnesses are cited in the charge-sheet as eye-witnesses to the occurrence, and according to the memo of evidence, they have to speak about their having witnessed the occurrence and other connected facts. The learned Public Prosecutor has filed two memos, one for the non-examination of witnesses 2 and 4 and mentioned in the charge-sheet viz, Karuppiah and Thiruk-kannathevar (whose names are mentioned in Ex. P. 1 by the victim as eye-witnesses to the occurrence) on the ground that the evidence of these two witnesses is superfluous, and the other memo for the non-examination of witnesses PWs. 6 to 10 and 12 in the charge-sheet viz. Ramiah, Kadiresan, Raju, Muthusami, Kumariah and Sivanandam, Of these witnesses, the examination of Kadiresan (eye-witness) is dispensed with on the ground that he has been gained over by the accused, and Ramiah, another eye-witness, has been dispensed with as an unnecessary witness, Raju, cited to speak to the part of the occurrence and the presence of the accused with weapons, has been dispensed with as he was suffering from acute dysentery. In my view, the

explanation given by the prosecution for the non-examination of the witnesses mentioned in Ex. P. 1 as superfluous, is understandable, especially when the prosecution has chosen to examine PW 4 whose name does not find place in Ex. P. 1. PW 1 in the chief examination has stated as follows:

(Original in Tamil omitted-Ed.) Of these witnesses, except the names of Karuppiah Thevar and Thirukkanna Thevar, the names of the other persons now mentioned by PW 1 in court have not been specifically mentioned in Ex. P-1. As pointed out by the trial court, the prosecution ought to have examined the witnesses mentioned in the first information report in all its fairness whilst it is not the case of the prosecution that they were gained over.

6. Mr. C. K. Venkatanarasimham, appearing for the respondents, has brought to my notice various decisions of our Supreme Court and would contend that the judgment of the trial court does not suffer from any manifest illegality and the interests of justice do not require this Court to interfere with the order of acquittal, and that the setting aside of the acquittal and the ordering of re-trial is a transgression of the narrow limits of the revisional jurisdiction under Section 43S, CrI. P. C. Of the decisions cited by him, I may mention the following -

In Chinnasami v. State of Andhra Pradesh : [1963]3SCR412 , it has been held that the interference of the High Court with a finding of acquittal in revision would be justified only in the following cases, viz., where the trial court has no jurisdiction to try the case but has still acquitted the accused, or where the trial court has wrongly shut out the evidence which the prosecution wished to produce, or where the appeal court has wrongly held evidence, which was admitted by the trial court, to be inadmissible, or where material evidence has been overlooked either by the trial court or by the appeal court, or where the acquittal is based on a compounding of the offence which is invalid under the law. It has also been held that these and other cases of similar nature can properly be held to be cases of exceptional nature, where the High Court can justifiably interfere with the order of acquittal; and in such a case it is obvious that it cannot be said that the High Court was doing indirectly what it could not do directly in view of the provisions of Sections 439 (4). Following and amplifying the above observations, it has been

held in Mahanendra Pratap Singh v. Sarju Singh : 1968 CriLJ665 that although the list of grounds given in the said decision is not exhaustive of all the circumstances in which the High Court may interfere with an acquittal in revision, it is obvious that the defect in the judgment under revision must be analogous to those actually indicated by the Supreme Court. Then, the learned Counsel cited Akalu Ahir v. Ramdeo Ram : 1973 CriLJ1404 wherein their Lordships of the Supreme Court after having referred to all the leading decisions on this point including the above two decisions, have held that the power of revision conferred on a High Court by Section 439 read with Section 435, Crl. P. C. is an extraordinary discretionary power vested in the superior court to be exercised in aid of justice, in other words, to set right grave injustice, that the High Court, when approached by a private party for exercising its power of revision from an order of acquittal, should refrain from interfering except when there is a glaring legal defect of a serious nature, which has resulted in grave failure of justice, and that the power being discretionary, it has to be exercised judicially and not arbitrarily. Next, the learned Counsel brought to my notice the decision in Satyendranath v. Ramnarain : [1975]2SCR743 , for the proposition that where the judgment of the Sessions Judge did not suffer from any manifest illegality and interests of justice did not require the High Court to interfere with the order of acquittal passed by the Sessions Court, the setting aside of the acquittal and ordering a retrial is a transgression of the narrow limits of the revisional jurisdiction under Section 439 (4).

7. Having regard to the several limitations imposed on this Court's power to interfere with an acquittal, that too at the instance of the private party, when the State has not preferred any appeal, I am of the view that this is not a fit case warranting my interference with the finding of acquittal made by the trial Judge.

8. Before parting with the case, I feel that it is my duty to express my opinion that this case unfortunately has failed by the inadvertence on the part of the prosecution by non-examining the material witnesses cited. Witnesses essential to the unfolding of the narrative on which the prosecution case is based, must be called by the prosecution, whether in the result the effect of their testimony is for or against the prosecution case. If a material witness has been unfairly kept back,

without assigning any acceptable and convincing reason, then a serious reflection is cast on the propriety of the trial itself. It will be seen that the test to find out whether a witness is material for the present purpose is not whether he would have given evidence in support of the defence, but is whether he is a witness essential to the unfolding of the narrative on which the prosecution is based. But, there is no obligation on the part of the prosecution to call each and every witness who might speak to something direct or indirect bearing on the offence and thus duplicate the evidence. As I have already mentioned, in this case, though witnesses whose presence has been mentioned in Ex. P. 1 and have been cited in the charge-sheet to speak about the occurrence, were available they have not been examined for the said purpose, which fact has been viewed by the trial court very seriously, thus culminating in the acquittal of the accused. Thus, in my view, the acquittal has been occasioned purely by the failure on the part of the prosecution in their duty.

9. In the result, the revision petition is dismissed.

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