

(2009) 06 MAD CK 0011

In the Madras High Court

Case No : Criminal R.C. No. 963 of 2006

Ambujam

APPELLANT

Vs

Ayyasamy and Others

RESPONDENT

Date of Decision : 25-06-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 219, 401
Penal Code, 1860 (IPC) — Section 379, 380, 498A, 506

Citation : (2009) CriLJ 3872 : (2010) 7 RCR(Criminal) 855

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : S. Ayyathurai, for the Appellant; N. Manoharan and Hasan Mohamed Jinnah, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

G. Rajasuria, J.—The relevant facts which are absolutely necessary and germane for the disposal of this revision would run thus:

The police laid the police report in terms of Section 173 Cr. P.C. for the offence u/s 498A IPC as against all the accused and as against A1 u/s

506(ii) IPC. Inasmuch as the accused pleaded not guilty, trial was conducted. During trial on the prosecution side, P.Ws. 1 to 5 were examined

and Exs. P. 1 and P. 2 were marked. On the side of the accused no oral or documentary evidence was adduced. Ultimately the trial Court

acquitted the accused.

2. Being aggrieved by and dissatisfied with the order of the lower Court, this revision is focussed on various grounds, the pith and marrow of them

would run thus:

Even though on the prosecution side the witnesses deposed in support of the

prosecution case without valid reasons, the lower Court simply acquitted the accused as if the case was not proved by the prosecution. The lower Court was not justified in holding that the evidence of P.Ws. 1 tp.4 are not believable for the reason that they are related to one another and in matters of this nature, only relatives would be knowing about the details and hence the lower Court was not justified in acquitting the accused on that ground. P.W. 1 being the victim narrated the harassment and cruelty meted out to her by the accused. P.Ws. 2 to 4 also corroborated the evidence of P.W. 1, but unjustifiably the lower Court rejected their evidence. The husband of P.W. 1 indulged in torturing the wife which caused mental and physical torture; owing to such cruelty she could not conceive and give birth to any child. The lower Court acquitted the accused on flimsy ground that the place of occurrence of the offence of criminal intimidation was not proved. In F.I.R., P.W. 1 indicated that the occurrence took place in front of Sankari R. D. O. Office and in such a case, there is no doubt about the place of occurrence. Even then, the lower Court wrongly interpreted the evidence and acquitted the accused. Accordingly, P.W. 1 the revision petitioner herein prays for setting aside the order of the lower Court and for passing suitable orders.

3. Heard the learned Counsel for the revision petitioner, the learned Government Advocate (Crl. side) and the learned Counsel appearing for the respondent/accused.

4. The point for consideration is as to whether the approach of the Magistrate was perverse in acquitting the accused?

5. The learned Counsel for the revision petitioner by inviting the attention of this Court to various parts of evidence would develop his argument to

the effect that it is a trite proposition of law that even though P.Ws. 1 to 4 might be relatives, nonetheless yet they are competent witnesses to

speak about the family matters and what transpired between husband and wife and other family members could be spoken to by them only. The

expectation of the Magistrate for independent evidence was not correct. Reiterating the grounds, the learned Counsel for the petitioner prays for

interfering with the order of the lower Court by setting aside the same and to pass necessary orders.

6. Whereas the learned Public Prosecutor would submit that no appeal has been

filed as against the Judgment of the Magistrate Court.

7. The learned Counsel for the accused would set forth and put forth his argument that even as per the prosecution case, the offence u/s 506(ii),

I.P.C. took place at 11.00 a.m. on 25-6-2005 near RDO Office, whereas the offence u/s 498A is alleged to have taken place during evening

hours in a different place and as such the very clubbing of the two incidents and the conducting of one trial itself violates the right of the accused.

The learned Magistrate, as per the contention of the accused after scanning the evidence felt that absolutely there was no believable evidence

available for conviction.

8. At this juncture my mind is redolent and reminiscent of the following decisions of the Hon"ble Apex Court reported in

(i) Bindeshwari Prasad Singh @ B.P. Singh and Others Vs. State of Bihar (Now Jharkhand) and Another, an excerpt from it would run thus:

13. The instant case is not one where any such illegality was committed by the trial Court. In the absence of any legal infirmity either in the

procedure or in the conduct of the trial, there was no justification for the High Court to interfere in exercise of its revisional jurisdiction. It has

repeatedly been held that the High Court should not reappreciate the evidence to reach a finding different from the trial Court. In the absence of

manifest illegality resulting in grave miscarriage of justice, exercise of revisional jurisdiction in such cases is not warranted.

14. We are, therefore, satisfied that the High Court was not justified in interfering with the order of acquittal in exercise of its revisional jurisdiction

at the instance of the informant. It may be that the High Court on appreciation of the evidence on record may reach a conclusion different from that

of the trial Court. But that by itself is no justification for exercise of revisional jurisdiction u/s 401 of the Code of Criminal Procedure against a

judgment of acquittal. We cannot say that the judgment of the trial Court in the instant case was perverse. No defect of procedure has been

pointed out. There was also no improper acceptance or rejection of evidence nor was there any defect of procedure or illegality in the conduct of

the trial vitiating the trial itself.

(ii) Satyajit Banerjee and Others Vs. State of West Bengal and Others, an excerpt from it would run thus:

22. The cases cited by the learned Counsel show the settled legal position that the revisional jurisdiction, at the instance of the complainant, has to

be exercised by the High Court only in very exceptional cases where the High Court finds defect of procedure or manifest error of law resulting in

flagrant miscarriage of justice.

9. As such the aforesaid decisions would display and demonstrate that only in exceptional circumstances, the High Court while exercising its

revisional jurisdiction can interfere with the order of acquittal passed by the Court below. If at all there is any perversity or non-application of law

in interpreting the evidence, the question of interference as against the order of acquittal would arise. Therefore it is just and necessary to set out

the pith and marrow of the two charges framed as against the accused to the effect that on 25-6-2005 at about 11.00 a.m. near R. T. O. Office,

Sankagiri within the jurisdiction of the All Women Police Station, Sankagiri, AI, the husband of P.W. 1 Ambujam uttered out in filthy, scurrilous

and vituperative statements as against P.W. 1 and her family members, that (sic) the accused for the past fifteen years anterior to 25-6-2005

indulged in physically and mentally torturing P.W. 1 in various ways. P.W. 1's deposition is extracted hereunder:

(Vernacular matter is omitted - Ed.)

10. It is ex facie and prima facie clear that the two incidents are different and also allegedly took place at two different places at two different

points of time and it cannot be stated also that in the course of the same transaction both incidents took place. Hence in such a Case the police was

not justified in registering one FIR relating to two independent set of occurrence. Over and above that, the Magistrate also was not justified in

entertaining the police report u/s 173 with regard to those two instances. At this juncture, it is worthwhile to refer to Section 219, Cr. P.C. and it is

extracted hereunder for ready references:

219. Three offences of same kind within a year may be charged together : (1) When a person is accused of more offences than one of the same

kind committed within the space of twelve months from the first to the last of such offences, whether in respect of the same person or not, he may

be charged with, and tried on one trial for any number of them not exceeding three.

(2) Offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Indian Penal Code

(45 of 1860) or of any special or local laws:

Provided that, for the purposes of this section, an offence punishable u/s 379 of the Indian Penal Code (45 of 1860) shall be deemed to be an

offence of the same kind as an offence punishable u/s 380 of the said Code and that an offence punishable under any Section 380 of the said Code

and that an offence punishable under any, section of the said Code, or of any special or local law, shall be deemed to be an offence of the same

kind as an attempt to commit such offence, when such an attempt is an offence.

11. Applying the said provision of Section 219 of Cr. P. C, if the aforesaid two charges are analysed, it is crystal clear that there is no possibility of

conducting joint trial of both the offences. However, it was done. In such a case, the accused is having a right to plead that they were prejudiced

by such wrong trial.

12. Over and above that the admitted factual background is that long prior to the lodging of the said complaint by P.W. 1, the husband and wife

involved in this case could not see eye to eye and in this factual matrix, the learned Counsel for the accused would correctly develop his argument

to the effect that the narration of facts by P.W. 1 that all of a sudden on 25-6-2005 at 11.00 a.m. the husband that too in a public road ventured to

shout at the wife was unbelievable. It is also a fact that at the relevant point of time that is on the date of occurrence on 25-6-2005, the divorce O.

P. was pending as per the learned Counsel for the revision petitioner. Accordingly, the learned Counsel for the accused would pray for dismissing

the revision without interfering with the order of acquittal.

13. A plain perusal Of the order of the Magistrate would reveal that the Magistrate applied his mind on all aspects of the matter and found that

clinching and convincing evidence was not placed before the Court on the prosecution side. At this juncture I would like to point out that the

revisional Court normally cannot re-appreciate the entire evidence unless there is perversity or non-consideration of the materials as per law.

14. Here the learned Magistrate in his elaborate order dealt with the evidence as put forth through the witnesses P.Ws. 1 to 4. P.W. 1 is the de

facto complainant, the wife of A1. P.W. 2 is the elder sister of P.W. 1. P.W. 3 is the

aunt of P.W. 1 and P.W. 4 Shanmugamsundaram is the P.W.

1's elder sister's son. On considering their evidence, the lower Court felt that there is no genuineness on the part of the witnesses in speaking

about the incident. In fact, earlier same P.W. 1 lodged a complaint without disclosing the details as set out in this case. So, the Magistrate correctly

remarked that the witnesses were such that they were capable of stooping down in any level to utter out. In fact, in paragraph 14, the Magistrate

dealt with the previous proceedings as well as evidence of the witnesses in the current proceedings and highlighted that so many new insertions

were in the present complaint so as to robe in the relatives of AI also. The Magistrate gave a finding that P.W. 1 falsely uttered about the alleged

dowry harassment and that she was abused in filthy language. Regarding place of occurrence, the learned Magistrate would point out that in the

complaint lodged by P.W. 1, she stated that the offence u/s 506(ii), I.P.C. took place in front of R. T. O. Office, however, the evidence was to the

contrary.

15. P.W. 5, the Investigating Officer would depose as under:

(Vernacular matter is omitted - Ed.)

16. As such the Investigating Officer herself deposed that the offence u/s 506(ii), I. P. C, took place in front of the Revenue Divisional Office,

whereas F.I.R. and deposition of P.W. 1 would refer to the place of occurrence as the one near Regional Transport Office. As such the lower

Court correctly looked askance at the evidence on the prosecution side warranting no interference by this Court. The learned Magistrate also

elaborated in his judgment as to how prevaricated stand was taken by P.W. 1. Hence in these circumstances, I am of the considered opinion that it

is not a fit case for interference in the revision.

17. It is trite proposition of law that witnesses might lie, but the circumstances would not do so. Here it is axiomatic that P.W. 1 purely for the

purpose of putting her husband and his relatives to difficulty had chosen to dish out a false cas as though on 25-6-2005 at about 11.00 a.m. AI

abused her in the public place and thereby lodged a complaint on 25-6.-2005 narrating as though she was tortured by her husband for a pretty

long time long prior to 25-6-2005. No man having head over shoulder would ever believe the artificial narration in the FIR lodged by P.W. 1 in the

wake of P.W. 1's past conduct in filing a frivolous complaint as against her husband without these current details. The learned Magistrate discussed the evidence of P.Ws. 2 to 4 and held that those witnesses did not speak from their personal knowledge about the occurrence referred to by P.W. 1. Revisional Court cannot re-appreciate the evidence and come to a different conclusion unless it is perverse. Here the learned Magistrate clearly furnished reasons for disbelieving the prosecution witnesses. In concinnity with the Hon"ble Apex Court decisions, this Court should not interfere with the order of acquittal passed by the lower Court normally and only on sound ground the revisional jurisdiction should be exercised so as to interfere with the order of acquittal. Accordingly, the Civil Revision Petition has no merit and hence the same is dismissed.