
(2007) 09 MAD CK 0122
In the Madras High Court
Case No : Criminal R.C. No. 932 of 2005

Mariappan

APPELLANT

Vs

The State and Others

RESPONDENT

Date of Decision : 28-09-2007

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 323, 324, 325

Citation : (2007) 09 MAD CK 0122

Hon'ble Judges : S. Tamilvanan, J

Bench : Single Bench

Advocate : V. Sairam, for the Appellant; R. Muniyappa Raj, Government Advocate (crl. side) for R1 and D. Shivakumaran, for R2 to R9, for the Respondent

Final Decision : Dismissed

Judgement

S. Tamilvanan, J.—This Criminal Revision is preferred against the judgment of acquittal, dated 24.06.2005, rendered by the Judicial

Magistrate No. I, Sangagiri in C.C. No. 157 of 2002 on the file of the said court. Based on the complaint given by the revision petitioner/P.W. 1,

the case was registered by the first respondent police against A1 under Sections 148, 341, 324 and 506(ii) IPC and against A2 to A6 and A8

under Sections 147, 341, 323 and 506 (ii) IPC and against A7 under Sections 147, 341, 325 and 506(ii) IPC.

2. It is not in dispute that the revision petitioner/P.W.1 and the second respondent/A1 are brothers and there was a civil dispute between the

brothers with regard to partition of their family properties. As per the prosecution case, on 20.03.2002, at about 5 a.m, respondents 2 to 8

attacked the revision petitioner/P.W. 1 at Kullampatti Bharathi Nagar, within

Thevur police station limit and thereby committed the aforesaid offence, punishable under the aforesaid sections of IPC. It is seen that all the independent witnesses had turned hostile and did not support the prosecution case. P.W. 1 and his son P.W. 6 have deposed evidence. But, as per the evidence available on record, P.W. 6 had come to the alleged scene of crime, only after the occurrence and therefore, as found by the trial court, he cannot be treated as an eye witness.

3. As contended by the learned Counsel appearing for the respondents 2 to 9, even the mahazar witnesses turned hostile and further, there is a delay of four days in sending the FIR to the Judicial Magistrate, for which as per the finding of the trial court, there is no explanation from the prosecution.

4. As found by the trial court, P.W. 1, in his chief examination has stated that the occurrence had taken place at 5 a.m, but in the cross examination, he has stated that the doctor gave treatment to him at 5.30 a.m. P.W. 9 who gave treatment to P.W. 1 has deposed in his cross examination that P.W. 1 informed him that the occurrence had taken place at 9 a.m on 11.09.2001. Therefore, there is a self contradictory version of P.W. 1, with regard to the time of occurrence, similarly, the petitioner/P.W. 1 would state that the occurrence took place at Bharathi Nagar at 5.30 a.m, but in the cross examination, he would state that the occurrence had taken place nearby the Kullampatti Co-operative Society. For the alleged occurrence, P.W. 6 is not eye witness and the only witness available to establish the occurrence is P.W. 1, but his evidence is self-contradictory, as found by the trial court.

5. Mr. D. Shivakumaran, learned Counsel appearing for the respondents 2 to 9 in support of his contention, cited the decision, *Hydru v. State of Kerala* reported in 2004 (13) SCC 374, wherein, the Hon"ble Apex Court has held that the powers of the revisionary court is limited and it can interfere only if there is any procedural irregularity or material evidence has been overlooked or misled by the Subordinate Court, so as to cause miscarriage of justice.

6. It is a settled proposition of law that this Court cannot reappraise the evidence in the revision, if two views are possible. Here in this case, there is a delay of four days in sending the FIR to the Judicial Magistrate, which has

not been explained by the prosecution, apart from that P.W. 2 to P.W. 5 and P.W. 7 turned hostile and did not support the prosecution case. Therefore, the sole witness to establish the occurrence is only P.W. 1, but his self contradictory version, as discussed earlier is not sufficient to base the conviction and therefore, I could find no procedural irregularity or circumstance to hold that the trial court had overlooked any material evidence, so as to treat it as perverse finding, leading to miscarriage of justice. Therefore, the criminal revision fails.

7. In the result, the Criminal Revision is dismissed.