

Haji Wappa Vs. State

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Court : Chennai

Decided On : Jul-19-2013

Judge : A.Selvam

Appellant : Haji Wappa

Respondent : State

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED :

19. 07.2013 CORAM THE HONOURABLE MR.JUSTICE T. SUDANTHIRAM
Crl.A.No.667 of 2012 and M.P.No.1 of 2012 Haji Wappa .. Appellant/Accused
Versus State rep. by The Inspector of Police, Nagore Police Station, Nagore,
Nagapattinam District. (Crime No.348 of 2008) .. Respondent/Complainant
Prayer:- Criminal Appeal filed under Section 374 (2) of Cr.P.C., against the
judgment dated 21.09.2012 passed by the learned Assistant Sessions Judge,
Nagapattinam, in S.C.No.20 of 2010. For Appellant : Mr.B.Natarajan Legal Aid
Counsel For Respondent : Mr.P.Govindarajan, Additional Public Prosecutor - - - -

JUDGMENT

The appellant herein is an accused in S.C.No.20 of 2010 on the file of the learned Assistant Sessions Judge, Nagapattinam, and he stands convicted for an offence under Section 307 I.P.C. and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.500/-, in default, to undergo simple imprisonment for

one week. Challenging the said conviction and sentence, the appellant herein had preferred this Criminal Appeal before this Court. 2. The case of the prosecution, in brief, is as follows:- P.W.1 namely Basheer Ahammed is a resident of Thittachery and he was doing Readymade Garments business. The accused is a resident of Nagore and he was running a Sweet Stall business. Due to the friendly relationship among them, the accused had borrowed a sum of Rs.50,000/- as a hand loan from P.W.1. The accused did not repay the said amount even after P.W.1 demanded the same. On 30.05.2008 at about 9.45 p.m., P.W.1 went to the place of the accused where he was doing business and demanded repayment of the loan from him. At that time, the accused picked up a knife and stabbed on the right side of the loin of P.W.1 and caused grievous injury. P.W.1 prevented that and he sustained simple injury on his left hand little finger also. P.W.3, who was working under P.W.1, had witnessed the occurrence. Thereafter, P.W.1 was taken to the hospital. (ii) P.W.8/Dr.Jayaprakash, Vinodhahan Memorial Hospital at Thanjavur attended P.W.1 and he noticed a lacerated injury of size about 6 x 3 x 8 cm in right side loin, bowel loops seen through wound and also a lacerated injury on the left hand. Ex.P.5 is the Accident Register. P.W.1 was admitted in the hospital. (iii) P.W.10, Sub-Inspector of Police of Nagore police station, on receiving information went to the hospital at 10.40 p.m. and received a complaint-Ex.P.1 from P.W.1, and he came back to the police station at 11.30 p.m. and registered a case in Crime No.348 of 2008 for the offences under Sections 324 and 307 I.P.C. and prepared the First Information Report-Ex.P.6. (iv) P.W.11, the Sub-Inspector of Police of Nagore police station, received the First Information Report-Ex.P.6 and took up the investigation in this matter. Then, he went to the scene of occurrence and prepared an Observation Mahazar-Ex.P.7 and Rough Sketch-Ex.P.8 in the presence of witnesses and also recorded the statements of witnesses. On 31.05.2008 at 11.00 a.m., he arrested the accused and recorded his confession and in pursuance of his confession statement, recovered M.O.1-Knife. After a period of one month, P.W.1 was discharged from the hospital. After completing the investigation, P.W.11 laid the final report against the accused on 10.07.2008 for the offences under Sections 324, 326 and 307 I.P.C. (v) In order to prove the case, the prosecution examined P.Ws.1 to 11, marked Exs.P.1 to P.9 and produced M.O.1. The accused was questioned under Section 313 Cr.P.C.,

with regard to the incriminating circumstances and he denied his complicity. The accused did not examine any defence witness and did not mark any defence document. (vi) The Trial Court, after analyzing the oral and documentary evidence, convicted and sentenced the accused as already stated above.

3. Mr.B.Natarajan, learned Legal Aid Counsel nominated by this Court appearing for the appellant/accused submitted that though P.W.1 is said to have sustained injury on the right side of the loin, in the charge it is mentioned that the injury was caused to P.W.1 at the left flank. The weapon-M.O.1, which was seized, had not been sent for chemical analysis. The learned Legal Aid counsel further submitted that though as per the rough sketch the occurrence took place in front of the house of the accused, P.W.3 claims that the occurrence took place at the backyard of the house of the accused. The learned counsel further pointed out that P.W.1 and the accused were taken to the police station on the same day night, but P.W.11, the investigating officer stated that he arrested the accused only on the next day.

4. The learned counsel Mr.B.Natarajan further submitted that even according to the prosecution case, the attack made by the accused was not a pre-planned one and it was only due to P.W.1, who had gone to the place of the accused, quarrelled with the accused and during the quarrel, P.W.1 had provoked the accused. In the said circumstances, due to grave and sudden provocation the accused had attacked P.W.1 and as such, the offence may fall under Section 308 I.P.C.

5. Per contra, the learned Additional Public Prosecutor submitted that P.W.1, who had given loan to the accused, went to the place of the accused as the accused asked P.W.1 to come to his place. After P.W.1 going there, the accused refused to pay the loan amount and deliberately attacked P.W.1 and caused serious injury on him. The learned Additional Public Prosecutor further submitted that the evidence of P.W.1 is corroborated by the evidence of P.W.3, independent witness, who was working under P.W.1 and also by medical evidence.

6. This Court considered the submissions made by the learned counsel on either side and perused the records.

7. According to the evidence of P.W.1, the accused and P.W.1 were known to each other and they were friendly for some time. P.W.1 had given a sum of Rs.50,000/- to the accused for the purpose of developing his business. On the date of occurrence in the night hours P.W.1 went to the place of the accused and demanded the loan amount. Though P.W.1 had stated in his evidence that it was the accused, who asked him to come and collect the loan amount, it was not stated so in Ex.P.1-complaint given by him. Therefore, it is to be taken as that P.W.1 himself had gone to the place of the accused for getting back the loan amount which he had paid. According to P.W.1, when he went and demanded the loan amount, the accused saying that P.W.1 was giving trouble to him attacked with knife on his right flank. The evidence of P.W.1 is corroborated by the evidence of P.W.3, who is not only independent witness but who is also working under P.W.1. P.W.3 had deposed that he and the accused were talking. At that time, P.W.1 came there and they were talking and while talking the accused went inside brought a knife and attacked P.W.1. There was no reason for P.W.3 to depose falsely against the accused. The prosecution had established the fact that grievous injury to P.W.1 was caused only by the accused.

8. Though the accused by using knife caused grievous injury to P.W.1, it is to be seen under what circumstances the injury was caused. As already observed P.W.1 went to the place of the accused and demanded the loan amount from him. It is admitted by P.W.1 in the cross examination that there was a quarrel among themselves and it reached the peak stage. Only at that stage, the accused had taken a knife and attacked P.W.1. It is not a premeditated attack. Only after heated arguments and continuous quarrel in a spur of the moment, the accused being suddenly provoked had attacked P.W.1. By gods grace P.W.1 had survived after treatment by the Doctors. In case P.W.1 had succumbed to injury, as per the facts available in this case, the accused would have been made liable under Section 304 I.P.C. i.e., the accused should have been guilty of culpable homicide not amounting to murder. Therefore, now P.W.1 having survived the accused would be liable not under Section 307 I.P.C., but only under Section 308 I.P.C., which reads as follows:- ".308. Attempt to commit culpable homicide.- Whoever does any Act with such intention or knowledge and under such circumstances that, if he by that Act caused death, he would be guilty of culpable homicide not amounting to

murder, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both, and if hurt is caused to any person by such Act, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both."

9. Therefore, the conviction and sentence imposed by the trial Court on the appellant/accused for the offence under Section 307 I.P.C., are set aside. Instead, he is convicted under Section 308 I.P.C. and sentenced to undergo one year rigorous imprisonment and to pay a fine of Rs.500/-, in default, to undergo one week simple imprisonment. The fine amount, if any, already paid by appellant/accused for the offence under Section 307 I.P.C., shall be adjusted towards the fine amount now imposed by this Court for the offence under Section 308 I.P.C.

10. In the result, the Criminal Appeal is partly allowed. Consequently, the connected Miscellaneous Petition is closed.

11. Mr.B.Natarajan was nominated by this Court as Legal Aid Counsel to argue the appeal on behalf of the appellant. The authorities of the High Court Legal Aid Centre, are directed to pay remuneration to the counsel for the services rendered by him. jrl To 1. The Assistant Sessions Judge, Nagapattinam.

2. The Inspector of Police, Nagore Police Station, Nagore, Nagapattinam District.

3. The Public Prosecutor, High Court, Madras.

4. The Secretary, High Court Legal Aid Centre, Madras.

5. The Superintendent Central Prison Cuddalore

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