

Kasi Vs. the State

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Court : Chennai

Decided On : May-14-2014

Judge : T.S. Sivagnanam

Appellant : Kasi

Respondent : The State

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED:

14. 05.2014 Coram The Hon'ble Mr. Justice T.S. SIVAGNANAM CrI.R.C.No.292 of 2009 Kasi ... Petitioner/Accused No.1 Vs The state rep. by The Inspector of Police, Mathur Police Station, Mathur, Krishnagiri District, (Crime No.625 of 2003) ...Respondent/Complainant Prayer:-Petition filed under Section 397(1) r/w 401 of Cr.P.C. against the judgment of Appellate Court passed by the learned First Additional Sessions Judge, Dharmapuri, at Krishnagiri in Criminal Appeal No.5 of 2005, dated 19.09.2007, modified the finding and sentence of the trial Court passed by the learned Chief Judicial Magistrate, No.2, Dharmapuri at Krishnagiri (Sub Court, Krishnagiri), dated 31.01.2005, the petitioner is preferring this revision to call for the records and revise the judgments. For petitioner .. Mr.V.Rajamohan For Respondents .. Mr.C.Iyyapparaj, G.A.(crl.side)

ORDER

This Criminal Revision Petition filed under Section 397 read with 407 Cr.P.C., is directed against the judgment dated 19.09.2007, in Criminal Appeal No.5 of 2005, on the file of the First Additional Session Court, Dharmapur, at Krishnagiri, allowing the appeal and modifying the sentence imposed on the petitioner for offence under Section 307 I.P.C by the Chief Judicial Magistrate-II, Krishnagiri in S.C.No.145 of 2004, dated 03.01.2005. Further holding that as the offence under Section 324 of IPC is made out against the petitioner/A-1, he was convicted thereunder and sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.3,000/- in default to undergo simple imprisonment for six months.

2. The petitioner is the first accused, accused Nos.2 and 3 are his sons and the victim Annamalai (PW-1) is the brother of the A1. The Inspector of Police, Mathur laid a charge sheet against the A1 to A3. That on 08.12.2003 at about 22.15 hours, A1 to A3 assembled in front of the house of Murugan (PW-4) and the first accused armed with Soorikathi, accused Nos.2 & 3 armed with Koduvakathi and sticks, chased PW-1 Annamalai to assault him in front of the house of PW-4 and at the time of occurrence A2 and A3 pushed down PW-1 on the ground and caught hold of him and A1 assaulted him with Soorikathi on his abdomen, right middle finger, ring finger and voluntarily caused simple injuries making certain utterances and committed an act with such intention and knowledge under such circumstances.

3. During the course of trial, 11 witnesses were examined on the side of the prosecution, out of which the deposition of following witnesses would be relevant for appreciation of the contentions of the petitioner. PW-1 Annamalai, his wife Tmt.Padma as PW-2; Saravanan brother's son of PW-1 as PW-3; Murugan brother of A1 as PW-4; Doctor as PW-6; the person who registered the FIR as PW-10 and the Inspector of Police, PW-11.

4. On the side of the defence, one witness was examined as DW-1, Dr.Gunasundari and one document was marked as Exhibit D-1. The trial Court found A1 guilty under Section 307 of IPC, and sentenced to undergo rigorous imprisonment for seven years and pay fine of Rs.5,000/- in default to undergo

simple imprisonment for six months. A2 and A3 were found not guilty of the offence under Sections 307 read with 109 IPC and were acquitted from the charges against them.

5. As against the conviction, the first accused/the petitioner preferred appeal before the First Additional Session Court, Dharmapuri at Krishnagiri contending that the trial Court failed to consider that the FIR has come into existence under suspicious circumstances and the Court failed to see the infirmities arising between the evidence of PW-1 and FIR. It was further contended that the version given by the PW-1 was not corroborated by PW-2, PW-3 & PW-4 in material parts and PW-3 was narrating the incident for the first time in Court and he was not examined by the Police and therefore, his evidence ought to have been discarded. Further, it was contended that as per the evidence of PW-6 (Doctor), the injuries sustained by PW-1 was a simple injury and would not endanger his life and no prima facie case has been made out for offences under Section 307 IPC.

6. The lower Appellate Court accepted the case of the petitioner insofar as the contentions raised on the conviction under Section 307 IPC. The lower Appellate Court held that only offence under Section 324 IPC is made out in the case and accordingly, the sentence was modified from Section 307 to 324 IPC and accordingly, convicted the petitioner and sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.5,000/-, in default to undergo simple imprisonment for six months.

7. Before the lower Appellate Court apart from the contentions referred to above, the petitioner contended that on the date of the alleged occurrence, PW-1 and eight other persons had assaulted the accused due to previous enmity in a civil dispute and in this regard, the evidence of DW-1 is significant, the injuries sustained by the accused has not been explained in the FIR and the prosecution witnesses were questioned during the time of investigation and there is no explanation on the injuries sustained and this is fatal to the case of the prosecution. The petitioner placed reliance on the decision of the Hon'ble Supreme Court in the case of Lakshmi Singh & Ors., vs. State of Bihar reported in AIR 1976 SC2263 8. The lower Appellate Court considered this submission and after

appreciating the evidence available on record, observed that the accused had sustained simple injuries in the counter attack by the prosecution witnesses and on a perusal of the evidence of PW-1, DW-1 and Exhibit D-1, the accused sustained only simple injuries and therefore, the non-explanation of the injuries is not fatal. Further, the lower Appellate Court pointed out that the prosecution has not established that the intention of the accused is to kill PW-1 by means of causing the dangerous injuries and the prosecution has not established through oral and documentary evidence that the injuries having been caused, thus dangerous to the life of PW-1 and accordingly, convicted the petitioner/A1 under Section 324 IPC. Challenging the said order, the present revision has been filed.

9. The learned counsel appearing for the petitioner reiterated the contentions raised before the lower Appellate Court and referred to the depositions of PW-1 to PW-4, PW-6, PW-10, PW-11 and DW-1 and endeavoured to make out a case that there is gross discrepancy in the statements of the accused and the evidence of PW-1 is not corroborated by the other witnesses namely, PW-2 to PW-4 and the lower Appellate Court failed to appreciate this aspect of the matter. Further, the learned counsel submitted that the non-explanation of the injuries sustained by the accused has been failed to be taken into consideration by the Courts below. By referring to the decision of the Hon'ble Division Bench of this Court in the case of Sulian @ Chinnathambi vs. State of Tamil Nadu reported in 2009 (1) MWN (Cr.) 423 (DB), it is submitted that the non-explanation of the injuries sustained by the accused at the time of occurrence or in the course of altercation is a very important circumstances and the Courts below have not considered the same. With the above submissions, the learned counsel prays for setting aside the order of conviction passed by the lower Appellate Court and acquitting the accused.

10. The learned Government Advocate after referring to the depositions of PW-1 as well as PW-6 and PW-11 submitted that the case as stated by PW-1 has been properly corroborated and the trial Court appreciated the evidence on record and convicted the accused. Thereafter on appeal, the lower Appellate Court re-appreciated the evidence and partly allowed the appeal and this Court exercising revision jurisdiction cannot re-appraise the evidence and come to a different conclusion.

11. Heard Mr.V.Rajamohan appearing for the petitioner and Mr.C.Ayyapparaj, learned Government Advocate appearing for the respondent and perused the materials placed on record.

12. Before examining the case as projected by the learned counsel appearing for the petitioner, it would be first necessary to take into consideration the legal aspect as regards the scope and jurisdiction of this Court while exercising powers under Section 397 read with Section 407 Cr.P.C. The powers conferred under the said provisions, is the revisional jurisdiction of this Court. The exercise of the power under these provision is to examine the correctness and legality of any of the finding, sentence or order recorded or passed and as to the regularity of any proceedings of such inferior Court and pass appropriate orders. Therefore, the provisions namely Section 397 and Section 401 are required to be read together.

13. The Hon'ble Supreme Court in the case of State of Kerala vs. Puttumana Illath Jathavedan Namboodiri reported in AIR 1999 SC981 held that the High Court while hearing revision does not work as an appellate Court and will not re-appreciate the evidence unless some glaring feature is pointed out which may show that injustice has been done. The Hon'ble Supreme Court further pointed out that the High Court in its revisional jurisdiction, can call for and examine the records of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding sentence or order, but the said revisional power cannot be equated with the power of an appellate jurisdiction and normally it will not be appropriate for the High Court to re-appreciate the evidence and come to its own conclusion on the same, when the evidence has already been appreciated by the Magistrate as well as the Session Judge in appeal.

14. The contention raised by the learned counsel appearing for the petitioner is that the injuries sustained by the accused has not been noted and both the Courts failed to consider that aspect. This according to the learned counsel, it is fatal to the case of the prosecution. In this regard, reference was also made to the decision of the Hon'ble Division Bench of this Court in the case of Sulian @ Chinnathambi (supra).

15. On a perusal of the judgment of the lower Appellate Court, it is seen that the very same contention was raised and reference was also made to the decision of the Hon'ble Supreme Court in the case of Laskhmi Singh & Ors (supra). The lower Appellate Court considered the said contention re-appreciated the evidence and rendered a finding that on the said aspect that the accused sustained only simple injuries and it is not necessary to explain the injuries of the accused sustained by the prosecution witness. Under such circumstances, held that the non-explanation of the injuries is not fatal to the prosecution case.

16. The correctness of this finding has to be examined in the light of the law which has been laid down by the Hon'ble Division Bench. The Hon'ble Division Bench after referring to the decision of the Hon'ble Apex Court in the case of the Babu Ram and Ors., vs. State of Punjab reported in 2008 (1) MLJ (Cri.) 1369 (SC), also took note of the decision of the Hon'ble Supreme Court in the case of Krishnan and Ors., vs. State of Haryana, reported in (2007) 2 SCC (Cri.) 214, wherein the Hon'ble Supreme Court observed that it is well settled that merely because the prosecution has failed to explain the injuries of the accused, the same cannot be a solitary ground for doubting the prosecution case, if otherwise, evidence relied upon is found to be credible.

17. Similar view was taken by the Hon'ble Supreme Court in the case of State of U.P., vs. Gajey Singh and Anr., reported in 2009 (3) Scale 337, wherein the Hon'ble Supreme Court held that even if it is assumed that the prosecution has failed to explain the minor and simple injuries on the defence, the same cannot be taken to be a ground to reject the testimony of such witnesses. After taking into consideration the law laid down by the Hon'ble Supreme Court, the Hon'ble Division Bench examined the injuries sustained by the accused in the said case and having found that the injuries sustained were in the skull, one cut injury on the right thigh and another lacerated wound over the right parietal region found that the injuries are not minor and therefore, observed that it is very unsafe to convict the accused placing reliance on the evidence of the eye-witnesses.

18. In the case on hand, PW-11 the Inspector of Police has spoken about this aspect and he has stated that the first accused without permission on his own

volition left the hospital and therefore, he was unable to secure further information. DW-1 Dr.Gunasundari was examined on the side of the defence to show that the accused was treated by her on 09.12.2013, the day after the occurrence. In the cross examination, DW-1 has stated that the injuries could have been sustained by a clay-pot and the other injuries could have been sustained on account of falling down.

19. Thus, it is clear that the accused himself did not take treatment in the hospital and he walked away on his own volition and the injuries were stated to be simple and in fact DW-1 would state that it could have been caused for other reasons and it is clear that the injuries sustained by the accused are simple injuries. In such circumstances, by following the decision of the Hon'ble Supreme Court in the case of Krishnan and Ors., (supra), the case of the prosecution cannot be doubted on the sole ground that the injuries of the accused was not noted. That apart, the injuries being simple injuries, the same cannot be a ground to reject the testimony of the prosecution witnesses, which have been found to be cogent and corroborated by both the Courts below. As regards the other aspects, the lower Appellate Court has rightly appreciated the evidence and rendered decision.

20. Thus, in the absence of any perversity in the approach of the Lower Appellate Court or any misreading or mis-appreciation of the evidence, no grounds have been made out to interfere with the order passed by the lower Appellate Court and accordingly, the Criminal Revision Petition fails and it is dismissed. Consequently, connected miscellaneous petition is closed. 14.05.2014 pbn Index : Yes Internet:Yes T.S. SIVAGNANAM, J.

pbn To 1.The First Additional Session Court, Dharmapuri, at Krishnagiri 2.The Chief Judicial Magistrate, No.2, Dharmapuri at Krishnagiri (Sub Court, Krishnagiri), 2.The Inspector of Police, Mathur Police Station, Mathur, Krishnagiri District, Crl.R.C.No.292 of 2009 14.05.2014

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