

Chockalingam Vs. 1.State Rep by

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Court : Chennai

Decided On : Sep-15-2014

Judge : P.R.Shivakumar

Appellant : Chockalingam

Respondent : 1.State Rep by

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED: 15.09.2014 CORAM THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR Criminal Revision Case (Md.No.390 of 2010 Chockalingam ..Petitioner versus 1.State rep by The Sub Inspector of Police, Aamathur Police Station, in Cr.No.12 of 008, Virudhunagar District.

2.Sundaramoorthy (R-2 impleaded as per order dated 21.04.2014, in M.P.(MD)No.1 of 2014) ..Respondents Petition filed under Section 397 read with 401 Cr.P.C., to call for the records from the lower courts and set aside the judgment of the appellate court passed by the learned Additional District Sessions Court (Fast Track Court).Virudhunagar in C.A.No.6 of 2009, dated 14.05.2010 wherein he has modified the conviction into three years of the learned Assistant Sessions Court, Virudhunagar in S.C.No.159 of 2008, dated 24.11.2009 by allowing this revision.

!For Petitioner : Mr.J.Jeyakumaran ^For 1st Respondent : Mr.S.Prabha,
Government Advocate (Crl.Side) For 2nd Respondent : Mr.G.Mariappan :

ORDER

The sole accused in S.C.159 of 2008 on the file of the learned Assistant Sessions Judge, Virudhunagar who was convicted by the said trial Judge has come forward with the present Criminal Revision Case against the judgment of the appellate Judge namely, the Additional District and Sessions Judge (Fast Track Court).Virudhungar pronounced in C.A.No.6 of 2009, whereby the appellate Judge reduced the sentence of imprisonment alone into a rigorous imprisonment for three years from one of rigorous imprisonment for four years for an offence punishable under Section 307 IPC with which he stood charged.

2.The prosecution story, in brief, is as follows:- The revision petitioner/accused is none other than the son of the victim Sundaramoorthy (P.W.1).The revision petitioner/accused was occupying a house in Velloor, Virudhunagar District belonging to the Pittammal (P.W.2) wife of P.W.1, mother of the revision petitioner/accused.

Sundaramoorthy (P.W.1) and his wife Pittammal (P.W.2) along with their daughter Packialakshmi (P.W.3) were residing in a rented house.

Sundaramoorthy (P.W.1) asked the revision petitioner/accused to vacate and hand over possession of the house belonging to P.W.2 to him so that he could reside there with his wife (P.W.2) and daughter Packialakshmi (P.W.3).As the revision petitioner/accused did not comply with the said request and continued to squat on the property and made an attempt to stake a claim to the property, Sundaramoorthy (P.W.1) took steps to get the house tax assessment made in the name of his wife (P.W.2) and pay the house tax in her name.

The same provided the motive for the revision petitioner/accused to cause a threat on 02.02.2008 at about 6.00 p.m holding a billhook in his hand when Sundaramoorthy (P.W.1) was sitting outside their house and chatting with his wife (P.W.2) and his daughter (P.W.3) and adumbrated that Sundaramoorthy (P.W.1) could get the tax receipt in the name of his wife (P.W.2) only if his life was spared

by him.

Subsequent to the said incident in which an attempt was made by the revision petitioner/accused to attack Sundaramoorthy (P.W.1) with billhook, Sundaramoorthy (P.W.1) ran from that place to save his life.

Thinking that Sundaramoorthy (P.W.1) was proceeding towards the police station to lodge a complaint against the revision petitioner/accused, he intercepted him at a place near the hotel owned by Velusamy (P.W.4).attacked him with billhook causing injuries on the ankle of right side leg.

Receiving the said cut injury, Sundaramoorthy (P.W.1) fell down, in which couRs.he sustained an injury on the forehead.

Not content with causing such injury, the revision petitioner/accused again indiscriminately cut him on the right elbow, right forehead, right thumb, left elbow, left wrist and left thumb.

On hearing the hue and cry, P.Ws.

2 and 3 (wife and daughter of P.W.1 and Velusamy (P.W.4) rushed to that place and shouted where upon the revision petitioner run away from the said place of occurrence.

Thereafter, Sundaramoorthy (P.W.1) was taken to the Government Hospital, Virudhunagar where he was given treatment as in-patient.

On receipt of intimation from the hospital, Amalraj, the Sub Inspector of Police (P.W.11).Aamathur Police Station, met him in the hospital and recorded his statement (Ex.P.1).Based on the said statement P.W.11 prepared Ex.P.13 FIR and registered a case in Crime No.12 of 2008 on the file of the Aamathur Police station for alleged offences under Section 341 and 307 IPC.

Subsequently, Sundaramoorthy (P.W.1) was referred to Government Rajaji Hospital, Madurai for further management.

The case was taken up for investigation by the Inspector of Police (P.W.12) and it was continued by the Inspector of Police (P.W.13) who laid charge sheet against the revision petitioner/accused alleging commission of offences punishable under Sections 341 and 307 IPC.

3.The case was taken on file by committal Magistrate as P.R.C.No.19 of 2008 and the accused was committed for trial to the Court of Session.

It was taken on file in the Sessions Division, Virudhunagar as S.C.No.159 of 2008.

The Assistant Sessions Judge, Virudhunagar, to whom the case was made over for trial and disposal of case, conducted trial after framing necessary charges and recording the plea of the accused.

4.After trial, the learned Assistant Sessions Judge found the revision petitioner/accused guilty of the offence under Section 307 IPC alone and convicted him for the said offence with Rigorous Imprisonment for four years and imposed a fine of Rs.2,000/- with a default sentence of simple imprisonment for six months.

However, he was not found guilty of the offence under Section 341 IPC and he was acquitted of the said offence.

5.As against the judgment of the learned Assistant Sessions Judge regarding the conviction as well as the sentence for the offence under Section 307 IPC, the revision petitioner/accused preferred an appeal before the Sessions Judge, Virudhunagar Sessions Division.

The same was taken on file as C.A.No.108 of 2009.

Subsequently, it was transferred to the Additional District and Sessions Judge, Fast Track Court, Virudhunagar, whereupon it was renumbered as C.A.No.6 of 2009 on the file of the said Court.

The Assistant District and Sessions Judge, Fast Track Court, Virudhunagar, after hearing, concurred with the finding of the trial Court holding the revision petitioner/accused guilty of the offence under Section 307 IPC and confirmed his conviction for the said offence.

However, the learned Appellate Judge chose to reduce the substantive sentence alone from four years rigorous imprisonment to three years rigorous imprisonment without altering the fine and the default sentence.

6. Aggrieved by the same and questioning the legality and sustainability of the said judgment of the learned Appellate Judge confirming his conviction with a reduced sentence for the offence under Section 307 IPC, the present Criminal Revision Case has been filed.

7. Mr. J. Jeyakumaran, learned counsel for the revision petitioner/accused, contended that the learned trial Judge as well as the learned Appellate Judge failed to consider the vital contradictions found in the testimonies of the prosecution witnesses and also the improbabilities found in the case of prosecution; that therefore, the conviction of the revision petitioner/accused by the trial Court, which was confirmed by the appellate Court, for the offence under Section 307 IPC could not be sustained in law and that this Court should acquit the revision petitioner/accused by holding that the prosecution had failed to prove its case beyond reasonable doubt.

8. In addition the following contentions were also raised by the learned counsel for the the revision petitioner/accused:- (i) There was delay in registering the case and delay in forwarding the complaint and the FIR to the Judicial Magistrate; (ii) The Courts below failed to take into account the fact that a civil suit was pending between the revision petitioner/accused and the defacto complainant and that the same provided the motive for the defacto complainant to prefer a false complaint against his own son namely, the revision petitioner/accused; (iii) The evidence adduced on the part of the prosecution would reveal that all the injuries found on the victim Sundaramoorthy (P.W.1) were not on the vital parts and those injuries were not sufficient in the ordinary couRs. of nature to or likely to cause death even in the event of absence of proper treatment; AND (iv) The prosecution case did not reveal the intervention of any third force to prevent the accomplishment of the alleged intention of the revision petitioner/accused to cause the injury with necessary intention or knowledge that the death would ensure from his act.

If the nature of injuries found on Sundaramoorthy (P.W.1) were taken into account, in the absence of any evidence to the effect that there was any other force which prevented the revision petitioner/accused from causing the death, his conviction for the offence under Section 307 IPC could not be sustained.

9.Learned counsel for the revision petitioner/accused based his arguments on the above said grounds, contended that even if this Court would come to the conclusion that the occurrence as spoken to by the prosecution witnesses could be true, the same would attract a lesser offence and not the offence of attempt to commit murder punishable under Section 307 IPC.

10.On the other hand, learned Government Advocate (Criminal Side) would submit that the so called contradictions sought to be relied on by the learned counsel for the revision petitioner/accused are not material contradictions affecting the veracity of the prosecution witnesses and the prosecution theory and that the minor discrepancies which are quite natural due to passage of time are sought to be projected as contradictions to challenge the conviction.

Learned Government Advocate (Criminal Side) also contended that there was no delay in lodging the complaint and as soon as the receipt of the intimation from the hospital, the police came to the hospital and recorded the statement of P.W.1; that though the complaint and the FIR were received in the Court of the Judicial Magistrate two days later namely, on 04.02.2008, the prosecution case could not be disbelieved merely on the ground of delay in dispatching the FIR to the Magistrate, unless the Court can draw an inference that the delay was utilised for concocting the case or substituting the complaint or embellishing prosecution version.

11.It is also the contention of the learned Government Advocate (Criminal Side) that since the injuries were grievous in nature and there was a threat to life of the victim and the accused are closely related to each other (father and son).the Courts below have rightly held that the delay would not affect the prosecution version.

Learned Government Advocate (Criminal Side) also contended that the nature of the weapon used and the number of cut injuries found on Sundaramoorthy (P.W.1) would definitely give rise to an inference that the attack was made with an intention to cause death or at least with the knowledge that he would cause the death of Sundaramoorthy (P.W.1) and that therefore, the conviction of the revision petitioner for the offence of attempt to murder punishable under Section 307 IPC could not be said to be defective or erroneous warranting interference by this Court in its power of revision.

12.Learned Government Advocate (Criminal Side) further contended that when the Courts below, on appreciation of evidence and re-appreciation of evidence, rendered a concurrent finding, the High Court should require a stronger ground for interference with the same and that the High Court should not interfere in such cases unless it considers the finding of the Courts below to be perverse.

As an alternative argument, the learned Government Advocate (Criminal Side) submitted that even if the case would not fall under the definition of attempt to murder punishable under Section 307 IPC, the same would fall under Section 326 IPC in which event also the punishment awarded could be confirmed after converting the conviction into one for offence under Section 326 IPC, from an offence punishable under Section 307 IPC and no interference with the quantum of sentence would be justified.

13.Learned Government Advocate (Criminal Side) submitted that the admission of the existence of a civil dispute itself will amount to the proof of motive and the same would support the case of the prosecution rather than supporting the defence theory that the case was foisted by Sundaramoorthy (P.W.1) against his own son namely, the revision petitioner/accused.

14.This Court paid its anxious consideration to the above said submissions made on both sides.

The judgments of the Courts below and the materials available on record were also perused.

15.The defacto complainant/victim and the revision petitioner/accused are father and son.

The case of the prosecution is that due to dispute over an immovable property, namely a residential house, the revision petitioner/accused, with an intention to eliminate the defacto complainant/victim, made an attempt on his life by inflicting indiscriminate cut injuries on various parts of his body using a billhook.

The prosecution has alleged a motive for the occurrence.

The existence of such motive is not at all disputed and on the other hand, it has been admitted.

According to the prosecution version, the property belongs to P.W.2, wife of P.W.1- Sundaramoorthy who is none other than the mother of the revision petitioner/accused and the revision petitioner/accused along with his wife was residing in the said house whereas his parents (P.Ws.1 and 2) along with his sister (P.W.3) were residing in a rented house.

When they demanded the revision petitioner/accused to vacate and hand over the vacant possession of the said house to Sundaramoorthy (P.W.1).As the demand was not conceded by the revision petitioner/accused, his father namely, Sundaramoorthy (P.W.1) made arrangements for getting the house tax paid in the name of his wife which provoked the revision petitioner/accused and provided the motive for the revision petitioner/accused to make an attempt on the life of Sundaramoorthy (P.W.1).In this regard, P.Ws.1 to 3 have spoken in one voice without any material contradiction regarding alleged motive.

In addition, the revision petitioner/accused has also admitted the fact that there was a dispute regarding the right to enjoy residential house claimed by P.Ws.1 to 3 to be the property of P.W.2.

Hence, the Courts below have committed no error in arriving at a conclusion that there was a motive for the occurrence.

However, motive shall not be A to Z in a prosecution and it is one of the factors in the path of proving the charge against the accused.

While the existence of such a motive is held to be proved, the Court must keep in mind that motive is a double edged weapon capable of being used far and against the accused.

16. In this case, the dispute regarding the house has been proved by the prosecution and admitted by the accused.

Apart from proving the said motive, P.Ws.1 to 3, who are none other than the parents and sister of the revision petitioner/accused, have given clear testimonies regarding the occurrence.

They have given a clear account of the fiRs. part of the occurrence namely the threat made by the revision petitioner/accused while Sundaramoorthy (P.W.1) was chatting with his wife (P.W.2) and his daughter (P.W.3) in front of the house in which they were residing as tenants.

They have made clear statements in their testimonies that on 02.02.2008 at about 6.00 p.m, the said occurrence took place in front of the house in which they were residing as tenants.

They have also stated in clear terms that the revision petitioner/accused came with a billhook and argued with Sundaramoorthy (P.W.1) and adumbrated that Sundaramoorthy (P.W.1) could demand the house only if his life was spared; that Sundaramoorthy (P.W.1) replied politely that they needed the house for their residence; that thereupon the revision petitioner/accused attempted to cut Sundaramoorthy (P.W.1) with billhook which made Sundaramoorthy (P.W.1) run away from the place to save his life and that the revision petitioner chased Sundaramoorthy (P.W.1) to a place in front of the hotel run by Velusamy (P.W.4) and cut him indiscriminately.

Of course, Velusamy (P.W.4) has turned hostile and pleaded absence of knowledge regarding the occurrence that took place in front of his hotel as he was engaged in operating a grinder in the hotel.

The mere fact that P.W.4 did not support the case of the prosecution will not be enough to arrive at a conclusion that no such occurrence, as projected by the prosecution, took place in front of the hotel run by Velusamy (P.W.4).17.No doubt P.Ws.5 and 6 who happened to be the attestors of observation mahazor(Ex.P.15) and recovery mahazor(Ex.P.4) have turned hostile.

But the same does not in any way affect the veracity of the evidence of P.Ws.1 to 3 regarding the occurrence.

P.Ws.2 and 3, the mother and sister of the accused who are the wife and daughter of P.W.1 have clearly spoken about the occurrence and nothing in favour of the accused or to make the case of the prosecution improbable has been elicited from them.

The evidence of P.Ws.2 and 3 who are the close relatives of P.W.1 as well as the revision petitioner/accused cannot be rejected as interested or embellished.

18.P.W.7-Dr.Santhi is the Medical Officer, who admitted the victim in the Government Hospital, Virudhunagar and issued Ex.P.6-wound certificate.

The following injuries were noted by P.W.7 as the injuries found on P.W.1: ?.(i) a cut injury measuring 10cmx4cmx3cm above the ankle in the middle of left lower leg; (ii) a cut injury measuring 6cmx2cmx3cm in the region of lower right middle leg; (iii) a cut injury measuring 3cmx2cmx3cm exposing the bone just above the second injury; (iv) a cut injury measuring 2cmx2cmx1cm on the lateral part of the left forearm; (v) a cut injury measuring 2cmx1cmx1cm on the left upper forehead; (vi) a cut injury measuring 3cmx2cm on the right wrist; (vii) a cut injury measuring 2cmx1cmx1cm over the left thumb; (viii) a cut injury measuring 3cmx2cmx1cm on the left dorsum of the hand ; (ix) a cut injury measuring 2cmx1cmx1cm on the left side of the forehead; AND (x) a cut injury measuring 1cm x 1cm with fracture on the left hand?.19.For the above said injuries, P.W.1 was initially treated at Government Hospital, Virudhunagar.

Thereafter, he was referred to Government Rajaji Hospital, Madurai for better management.

There a number of surgeries, including plastic surgeries, were conducted besides treating for the bone injuries.

Dr.V.R.Ganesan (P.W.10) who treated P.W.1 at Government Rajaji Hospital, Madurai produced the treatment file and gave evidence to the effect that the following injuries were sustained by P.W.1 for which he was given treatment:-
?.(i).lacerated injury measuring 10cmx2cm exposing the bone just above the ankle of the right leg.

The said injury proceeded upwards and had resulted in the fracture of bone besides swelling'; (ii).lacerated injury measuring 5cmx2cm on the lateral part of the left hand just 5cm above the wrist; (iii)an abrasion measuring 5cmx1cm just below the left elbow (iv)an incised wound on the base of the left thumb; (v)an injury just below the right elbow measuring 5cm x 1 cm leading from the anterior aspect towards posterior aspect; AND (vi)An incised wound on the lower part of the left thumb measuring 3cm x 1 cm?.20.For the above said injuries, P.W.1 had been given treatment as in- patient for more than three months from 02.02.2008 to 13.05.2008.

The evidence of the Medical Officer who treated him and the documents evidencing the injuries found on him and the treatment given to him clearly indicate that those injuries could not have been self inflicted or could not have been sustained in any other way like accident.

The said injuries, as rightly held by the Courts below, were proved to be the injuries caused with billhook.

Therefore, the finding of the trial Court which was confirmed by the Appellate Court, that the injuries found on Sundaramoorthy (P.W.1) were made by another person using a weapon like billhook does not suffer from any defect or infirmity warranting interference by this Court in the revision.

21.Though the mahazor witnesses turned hostile, the collection of sample earth and blood stained earth from the scene of occurrence and the preparation of Ex.P.1.5-observation mahazor and Ex.P.16-rough sketc.stand proved by the

evidence of other witnesses that are cogent and reliable.

Nothing has been canvassed on the part of the revision petitioner/accused so as to discredit the evidence of the Investigating Officer and the other witnesses regarding the recovery of M.O.1-blood stained dhoti from P.W.1 and recovery of M.O.4-billhook on the information furnished by the revision petitioner/accused.

Clear evidence has also been adduced to the effect that the injuries found on Sundaramoorthi (P.W.1) could have been caused by another person using a weapon like M.O.4-billhook.

The opinion of the Medical Officer in this regard, coupled with the unshakeable oral testimony of the victim as well as eye witnesses namely P.Ws.1 to 3, will make it clear that the occurrence, as alleged by the prosecution, stands proved beyond reasonable doubt; that the revision petitioner/accused in an attempt to deter Sundaramoorthi (P.W.1) from claiming right to the house in which the accused was living and from getting the house tax assessed in the name of his wife (P.W.2) threatened him when P.Ws.1 to 3 sitting on the pial of their house and that when Sundaramoorthi (P.W.1) ran from the said place to escape he was chased by the revision petitioner/accused intercepted at a place near the hotel of Velusamy (P.W.4) and cut him indiscriminately with the billhook on various parts of his body.

To the said extent the prosecution was able to prove the occurrence beyond reasonable doubt.

The prosecution has also proved that it was the revision petitioner/accused who caused the said injuries to P.W.1 who is none other than the father of the revision petitioner/accused.

Hence, the concurrent findings of the trial Court as well as lower appellate Court holding that the prosecution has established its case by reliable evidence beyond reasonable doubt that the assailant of P.W.1 was none other than his son, namely the revision petitioner/accused and that he caused the injuries found on P.W.1 using M.O.4 billhook pursuant to a property dispute as indicated supra.

The said finding does not require any interference as there is no defect or infirmity in it.

22.We have seen that the occurrence in which the revision petitioner/accused caused the injuries found on P.W.1 using a billhook stands proved beyond reasonable doubt.

It is also clear that immediately after the occurrence, the injured P.W.1 was taken to the Government Hospital, Virudhunagar for treatment in an attempt to save his life as P.Ws.2 and 3 apprehended danger to his life.

At Government Hospital, Virudhunagar his statement was recorded by the police and the case was registered.

Finding some of the injuries to be grievous in nature P.W.1 was referred to Government Rajaji Hospital, Madurai for better management and P.W.1 took treatment as in-patient for more than three months.

Advanced treatments for the injuries and the lacerations were given.

Due to loss of skin, plastic surgery was also conducted fixing the healthy skin removed from the other parts, on the wounds which occasioned loss of skin.

A consideration of the evidence and the Medical Officer who treated P.W.1 and the wound certificate besides the discharge summary will show that fracture on the right leg alone was grievous and other injuries were simple, but were caused by a weapon like billhook.

It is pertinent to note that except one injury all other injuries were found on various parts of the body which are not vital parts so that the injury caused on such part was likely to cause the death of P.W.1 injured.

23.The evidence adduced through the Medical Officers do not support the case of the prosecution that P.W.1 was likely to die, had he not been attended to medically.

There is no evidence to prove that any of the wounds if unattended, would have in all probability resulted in the death of the injured (P.W.1). The nature of injuries and the parts of the body on which the injuries were found will make it clear that the intention was to scare P.W.1 by causing such injuries and thereby deter him from making any claim against the revision petitioner/accused.

Therefore, it cannot be held that the act of causing such injuries would amount to the commission of an offence of attempt to commit murder, more so when it is not the evidence of the prosecution witnesses that any third force intervened and prevented the revision petitioner/accused from accomplishing his intention, if any, of causing the death of the injured (P.W.1). The evidence shows that, after causing the injuries, he withdrew himself from the place of occurrence which will support the inference indicated supra.

24. The Courts below have committed an error in holding that the prosecution had proved its case that the revision petitioner/accused by his act committed the offence of attempting to commit murder.

The said finding, according to the considered view of this Court, is on an erroneous appreciation of evidence and application of the provisions of law.

A proper appreciation of evidence and correct application of the provisions of law would have resulted in holding that the injuries found on P.W.1, some of which were grievous in nature, would not have caused death in the ordinary course of nature, if left unaltered and hence, the act proved on the part of the revision petitioner/accused would not fall under the definition of attempt to commit murder punishable under Section 307 IPC.

The nature of injuries caused, the weapon used for causing such injuries and the manner in which such injuries were caused will make it clear that the revision petitioner/accused caused simple and grievous injuries using a billhook in a dangerous manner.

Hence the offence proved to have been committed by the revision petitioner/accused would squarely fall under Section 326 IPC rather than 307

IPC.

The offence under Section 326 IPC is punishable with a sentence of imprisonment for life or with imprisonment of either description for a term which may extend to ten years and also with fine.

25.If the various factors like motive, the nature of injuries, the way in which the injuries were caused and also the relationship of the parties are taken into consideration, awarding a sentence of 2 + years rigorous imprisonment and also a fine of Rs.2,000/- with a default sentence of three months simple imprisonment shall be the punishment that can be imposed on the revision petitioner/accused for the offence punishable under Section 326 IPC.

Such a punishment shall meet the ends of justice.

26.For all the reasons stated above, the Criminal Revision Case is partly allowed.

The conviction of the revision petitioner/accused is altered into a conviction for an offence under Section 326 IPC from the conviction for an offence punishable under Section 307 IPC.

Consequently, the sentence awarded by the trial Court is reduced to 2 + years rigorous imprisonment with a fine of Rs.2,000/- and with a default sentence of three months simple imprisonment.

To 1.The Additional District Sessions Court (Fast Track Court).Virudhunagar 2.The Assistant Sessions Court, Virudhunagar

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