

1.Sankar Vs. State Represented By,

1.Sankar Vs. State Represented By,

SooperKanoon Citation : sooperkanoon.com/1172115

Court : Chennai

Decided On : Nov-26-2014

Judge : The Honourable Ms.Justice R.Mala

Appellant : 1.Sankar

Respondent : State Represented By,

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

26. 11.2014 CORAM THE HONOURABLE MS.JUSTICE R.MALA Criminal Appeal (MD)No.382 of 2007 1.Sankar 2.Muthu 3.Arumugam 4.Pitchai : Appellants/Accused Nos.1to4 Vs. State represented by, the Inspector of Police, Periyakulam Police Station, in Crime No.185 of 2003, Theni District. : Respondent/Complainant Prayer : Criminal Appeal is filed under Section 374(2) of the Code of Criminal Procedure, praying to call for the records and set aside the order of conviction and sentence passed in S.C.No.420 of 2004, dated 31.07.2007 on the file of the learned Additional District Sessions Judge -cum- Fast Track Court No.IV, Periyakulam and allow the appeal and acquit the appellants from the charge levelled against them. !For Appellants :: Mr.AK.Azagarsami ^For Respondent :: Mrs.S.Prabha, Government Advocate (Crl. Side) :

JUDGMENT

This appeal is directed against the conviction and sentence passed in S.C.No.420 of 2004, dated 31.07.2007 on the file of the learned Additional District Sessions Judge -cum- Fast Track Court No.IV, Periyakulam.

2. The case of prosecution in brief is as follows: (i) P.W.1 Sekar is working as Head Constable at Thenkarai Police Station. On 15.07.2003, after attending bundopast duty, he returned to home. The mother-in-law of P.W.1 informed him about the dispute between her and the accused regarding the tieing of cattle as well as cloudy mass of smoke spread all over his residence. When P.W.1 questioned the said act, the first accused attacked him with aruval on his right side of forehead by saying that 'nBjhL bjhiye;J Bghlh'. The second accused attacked him with fire wood on his middle of his head. Due to blood injury sustained, when P.W.1 fell down, the third and fourth accused attacked him with wooden log on his right shoulder, right and left knee and right and left back. P.W.2, the wife of P.W.1, P.W.3 and P.W.4 have seen the occurrence. When they raised noise, the accused ran away by leaving the weapons. (ii) P.W.15 Manivel asked P.W.1 to sit nearby his house. P.W.10 Edward @ Chinnan took the injured P.W.1 to Periyakulam Government Hospital by auto. P.W.12 Arumugam, the writer of Tenkarai Police Station, received the information regarding the admission of P.W.1 at hospital. P.W.9 Yusoof, Sub- Inspector of Police, went to the hospital on 15.07.2003 at 8.00 am., and obtained a complaint Ex.P.1 from P.W.1 and registered a case in Crime No.185 of 2003 for the offences punishable under Sections 323, 324 and 307 IPC. He registered an F.I.R.-Ex.P.8. (iii) P.W.18 Kamaraj took up the case for further investigation. He went to the place of occurrence and prepared an observation mahazar in the presence of witnesses P.W.5 Samuvel and P.W.16 Yahoof. That has been marked as Ex.P.11. He also prepared rough sketch-Ex.P.12. P.W.6 Dr.Thirunavukkarasu gave him treatment. The copy of accident register given by P.W.6 has been marked as Ex.P.5. P.W.7 Dr.Vijaya, after giving treatment, issued the wound certificate Ex.P.6. On 15.07.2003 at about 15.00 hours, P.W.18 arrested the accused and on completion of investigation, laid a final report under Sections 307 and 333 IPC. (iv). Before the trial Court, on behalf of the prosecution, P.Ws.1 to 18 were examined and Exs.P.1 to P.13 were marked along with M.Os.1 to 5. On completion of the examination of the witnesses on the side of the prosecution, the accused were questioned under Section 313 Cr.P.C., as to the

incriminating circumstances found in the evidence of the prosecution witnesses and they denied the same as false. On behalf of the defence, D.Ws.1 and 2 were examined and Exs.D.1 to D.4 were marked. (v). The learned trial Judge, after considering the oral and documentary evidence, convicted and sentenced the accused as follows: Rank of the accused The offence under which the accused was convicted Period of sentence 1st accused U/s.326 IPC5years R.I. and a fine of Rs.3,000/-, in default, to undergo 6 months RI. 2nd accused U/s.323 IPC1year R.I. 3rd accused U/s.324 IPC3years R.I. 4th accused U/s.324 IPC3years R.I.

3. Aggrieved over the conviction and sentence, the appellants are before this Court.

4. Heard the submissions made on either side.

5. During the pendency of the appeal, A-1 and A-4 died. To prove the same, death certificates and a memo of Investigating Officer have been filed. Recording the same, the appeal against the first and fourth appellants/A-1 and A-4 stands dismissed as abated.

6. Assailing the conviction and sentence imposed against the second and third appellants/A-2 and A-3, the learned counsel for the appellants would raise the following points in his argument that there is a delay in despatching the complaint. The alleged occurrence is said to be taken place on 15.07.2003 at 07.00 a.m. But the complaint has been received at 09.00 a.m. It reached the Court at 06.15 p.m. The distance between the Court and the police station is s km and that factum has not been considered by the Trial Court. He would further submit that this is a case and counter case. Police Standing Order 588-A has not been followed. On the basis of the complaint given by the second appellant/A-2, a case in Crime No.184 of 2003 has been registered for the offence under Section 324 IPC and that has been closed as mistake of fact on the same day without examining the other witnesses and that factum has not been considered by the Trial Court. It is the duty of the prosecution to prove the fact as to who is the aggressor and as to how the accused have caused injury.

7. Adding further, he would submit that there is a discrepancy in the oral evidence of P.W.1 and Ex.P.5-Accident Register copy. In Ex.P.5-copy of Accident Register, it was stated that five persons assaulted him with knife, axe, aruval and fire wood, but whereas in the oral evidence of P.W.1, it was stated that only four persons assaulted him and those aspects have not been clarified by the prosecution. Due to previous enmity, a false complaint has been lodged and that factum was not considered by the Trial Court. He would further submit that A-3 has used the fire wood, which is not a deadly weapon and in such circumstances, he shall be convicted only for the offence punishable under Section 323 IPC and not under Section 324 IPC. Hence, he prayed for setting aside the conviction and sentence imposed by the Trial Court.

8. Resisting the same, the learned Government Advocate (Criminal side) would submit that the alleged occurrence is said to be taken place at 07.00 a.m. The complaint has been given at 09.00 a.m. It reached the Court at 06.15 p.m. The name of the accused have been mentioned and the delay in despatching is not fatal to the case of the prosecution. She would further submit that A- 3 was convicted under Section 324 IPC, since he possessed fire wood, which is a deadly weapon. It is a sharp-edged tool, which will cause fatal injuries. Therefore, the Trial Court has correctly convicted him under Section 324 IPC. She would further submit that not following the Police Standing Order 588-A is not fatal to the case of the prosecution. She would further submit that none of the accused has sustained any injury. Hence, she prayed for dismissal of the appeal.

9. Considering the rival submissions made by both sides and on perusal of the typed-set of papers, it is an admitted fact that both the family of P.W.1 and the accused are neighbours and the avocation of the accused family is milk vending and they are having milch-cow and so, it is the case of P.W.1 that then and there, he has given warning to the accused not to use the lane for tying the cattle. On the fateful day i.e., on 15.07.2003, P.W.1, who is none other than the police head constable, after attending bundopast duty, returned to home and then only, he saw A-1, who cut down the wooden log, which was questioned and thereafter, the alleged occurrence is said to be taken place. As already stated, the charges against A-1 and A-4 have been dismissed as abated, since they died.

10. Now the Court has to decide whether the conviction under Section 323 IPC against A-2 and Section 324 IPC against A-3 is sustainable?.
11. To prove the same, the injured was examined as P.W.1 and his wife Kalaivani was examined as P.W.2. One Mary and Saraswathi were examined as P.Ws.3 and 4 and P.W.11 Samundi Ammal, P.W.13 Avudaiammal, P.W.14 Murugeswari and P.W.16 Yahooob were examined. But, except his wife, Mary and Saraswathi, others are not supported the case of the prosecution and they were turned hostile.
12. It is the well settled dictum of the Apex Court that the evidence of the sole injured eye witness is sufficient to fascinate conviction. However, before that, this Court has to scrutinize the same and find out as to whether the evidence of P.W.1 is wholly reliable as per the dictum of the Apex Court. There are three types of evidence. One is wholly reliable, which is not required any corroboration. Another is partly reliable, which requires corroboration and third one is not fully reliable.
13. Now the Court has to scrutinize the evidence of P.W.1. A perusal of the chief and cross-examination of P.W.1 would reveal that there is a previous enmity between both family in respect of tying the cattle in the lane near the house of P.W.1, and tying of cattle by the accused had caused damage to the wall. Therefore, then and there, there was a quarrel between both family, which shows that there is a previous enmity. While considering 313(1)(b) Cr.P.C., questioning, all the four accused had stated that except A-4, all are not in the place of occurrence and they have gone for the avocation. However, the said stand has been falsified by the evidence of P.W.3 and P.W.4. Therefore, on going through the evidence of P.W.3 and P.W.4 along with the evidence of P.W.1 and P.W.2, I am of the view that the evidence of P.W.1 is partly reliable, which has been corroborated by the evidence of P.W.2 and P.W.3.
14. Furthermore, P.W.6 Dr.Thirunavukkarasu, who gave treatment to P.W.1, issued the Accident Register-Ex.P.5 and CT scan report-Ex.P.4 and the injuries mentioned therein have been corroborated with the evidence of P.W.1. Except the first head injury, others are simple in nature. It has been proved that the first injury was caused only by A-1 and hence, he was convicted under Section 326 IPC. Therefore, from the above, it is evident that A-2 and A-3 caused simple injury to

P.W.1. Considering the same, the Trial Court has rightly convicted A-2 under Section 323 IPC.

15. Now, this Court has to decide as to whether A-3 has caused simple injury to P.W.1 with deadly weapon?..

16. As per the evidence of P.W.1 and other corroborating evidence, it is clear that he has used only fire wood (tpwF rpwh), which is not a lethal weapon. The Trial Court, without considering the same, has convicted him under Section 324 IPC. In such circumstances, I am of the view that conviction under Section 324 IPC is not sustainable, since he has caused simple injury by using fire wood, which is not a lethal weapon. Therefore, A- 3 is liable to be convicted under Section 323 IPC instead of Section 324 IPC. As narrated above, A-2 and A-3 found guilty under Section 323 IPC.

17. Now, this Court has to decide whether the sentence imposed by the Trial Court is fair and proper or excessive in nature?..

18. The Trial Court has sentenced A-2 to under one year rigorous imprisonment for the offence under Section 323 IPC. Now, in this appeal, conviction of A-3 under Section 324 IPC has been modified into one under Section 323 IPC. According to the learned counsel for the appellants, the accused were in custody for more than a month. Hence, the period of sentence already undergone is treated as sentence. However, A-2 and A-3 are directed to pay a fine of Rs.1,000/- each in default, to undergo simple imprisonment for a period of two weeks. Fine amount should be paid within 15 days from the date of receipt of a copy of the judgment.

19. The Criminal Appeal is disposed of with the above modification. 26.11.2014
Index:Yes/No Internet:Yes/No SML To 1.The Court of Additional District Sessions Judge -cum- Fast Track Court No.IV, Periyakulam. 2.The Inspector of Police, Periyakulam Police Station, in Crime No.185 of 2003, Theni District. 3.The Public Prosecutor, Madurai Bench of Madras High Court, Madurai. R.MALA, J.

SML Judgment made in Criminal Appeal (MD)No.382 of 2007 Dated:- 26.11.2014

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com