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1.Pandy Vs. State Represented By,

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Court : Chennai

Decided On : Dec-02-2014

Judge : The Honourable Ms.Justice R.Mala

Appellant : 1.Pandy

Respondent : State Represented By,

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

02. 12.2014 CORAM THE HONOURABLE MS.JUSTICE R.MALA Criminal Appeal (MD)No.279 of 2007 1.Pandy 2.Asairaja 3.Sankar : Appellants/Accused Nos.1 to 3 Vs. State represented by, The Inspector of Police, Mathichiyam Police Station, In Crime No.939 of 2004, Madurai 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.65 of 2007 on the file of the learned Additional District and Sessions Judge -cum- Fast Track Court No.I, Madurai, dated 29.05.2007 and allow this appeal and acquit the appellants from the charge levelled against them. !For Appellants :: Mr.V.Nagendran ^For Respondent :: Mrs.S.Prabha, Government Advocate (Crl. Side) :

JUDGMENT

The appellants/accused have come forward with this appeal challenging their conviction and sentence passed by the learned Additional District and Sessions Judge -cum- Fast Track Court No.I, Madurai, dated 29.05.2007 made in S.C.No.65 of 2007, whereby and whereunder, the appellants were convicted for the offence punishable under Section 353 IPC and sentenced to undergo 3 months RI, to pay a fine of Rs.500/- each, in default, to undergo 1 month RI and the second appellant/accused No.2 was convicted for the offence punishable under Section 324 IPC and sentenced to undergo 6 months RI, to pay a fine of Rs.1,000/- in default, to undergo 1 month RI.

2. The case of prosecution, in a nutshell, is as follows: (i) P.W.1 Balasubramanian was working as Supervisor of TASMAC Shop No.5125 on 10.07.2004. P.W.2 Pandian was the Supervisor. P.W.3 Manavalan and P.W.4 Sivakumar were working there at the time of occurrence. On that day at 11.15 a.m., when the accused came to TASMAC shop for drinking liquor, they bought the omelet from outside. When P.W.2 questioned about the same, the occurrence had taken place and A-2 attacked him on his forehead. Then, P.W.1 gave a complaint. (ii) On receiving the same, P.W.8 Lakshmi Latha, Sub-Inspector of Police registered a case in Crime No.939 of 2004 for the offences under Sections 324, 353, 506(2) of IPC and Section 3(1) of TNPPDL Act. The printed F.I.R. is Ex.P.7. Thereafter, she went to the place of occurrence and prepared an observation mahazar Ex.P.8 and rough sketch Ex.P.9 in the presence of witnesses P.W.5 Ravi and Pandi. He seized the broken piece of glass under Ex.P.10. She arrested the accused in the presence of P.W.6 Nagulan. On the basis of the confession statement given by the second accused, he recovered the iron scale, the weapon used for the commission of offence and on 11.07.2004, on the basis of the confession statement given by the first accused, he seized the auto under Ex.P.11. She also recorded the statement of P.W.7 Dr.Jayaraj, who gave treatment to the injured P.W.2 and issued a copy of the accident register Ex.P.5. Then, she referred the case to P.W.9 Ashok Kumar, Inspector of Police, for further investigation. (iii) P.W.9, after recording the statement of doctor and completing the investigation, laid the final report against the accused under Sections 324, 353, 506(2) of IPC and Section 3(1) of TNPPDL Act. (iv) The learned trial Judge, after following the procedures, framed necessary charges against the accused. Since the accused

denied the same in toto and pleaded not guilty, to prove the charges, P.Ws.1 to 9 were examined and Exs.P.1 to P.11 were marked on the side of the prosecution. On completion of the examination of witnesses on the side of the prosecution, the accused were questioned under Section 313 of 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, neither witness was examined nor document was marked.

3. The learned trial Judge, after considering the oral and documentary evidence, convicted and sentenced the appellants as stated above, against the which, the present appeal has been preferred.

4. Assailing the judgment of conviction and sentence, the learned counsel for the appellants would submit that A-1 to A-3 were convicted for the offence punishable under Section 353 IPC. The ingredients of Section 353 IPC have not been made out. P.W.2 ?. Pandian is not a Government servant and he is working as Supervisor in a Bar, which was run by the private individual. Even though he is the complainant, he disowned his complaint. Even, as per the evidence of P.W.2, there is no evidence to show that the appellants herein have prevented the public servant from discharging his official duty, since P.W.2 is not a public servant. The Trial Court, without considering the same, convicted the appellants under Section 353 IPC.

5. The second limb of argument is that A-2 was convicted for an offence under Section 324 IPC. Neither P.W.1 nor P.W.2 has deposed that A-2 has assaulted P.W.2. P.W.2 has gone to the extent of saying that somebody assaulted him and he do not know who is he. Even though P.W.3 and P.W.4 have been examined, they were not supported the case of the prosecution and they were not treated hostile. There is no evidence to show that A-2 assaulted P.W.2. P.W.7-Dr.Jeyaraj, in his evidence, has stated that P.W.2, the injured person told him that four persons assaulted him with iron scale, but whereas in the complaint, it was stated that A-2 alone assaulted P.W.2 with iron scale. There is a contradiction between the medical evidence and ocular evidence. That factum was also not considered by the Trial Court. Hence, he prayed for setting aside the conviction and sentence.

6. Resisting the same, the learned Government Advocate (Criminal side) would submit that even though charges have been framed against Accused Nos.1 to 3 under Sections 353, 506(2) IPC and Section 3(1) of TNPPDL Act and against the second accused under Section 324 IPC, the Trial Court, after considering the oral and documentary evidence, viz., P.Ws.1 to 9 and also Exs.P.1 to P.11, has acquitted them under Section 3(1) of TNPPDL Act and Section 506(2) IPC and convicted them under Section 353 IPC and 324 IPC (second accused) and hence, she prayed for dismissal of the appeal.

7. Considering the rival submissions made on both sides and on perusal of the typed-set of papers, it is seen that A-1 to A-3 were convicted for the offence punishable under Section 353 IPC and hence, it is the duty of the prosecution to prove that P.W.2, who is the Supervisor of the bar, is a public servant. However, in the case on hand, the evidence of P.W.1 and P.W.2 and P.W.8, has clearly deposed that P.W.2 is only the Bar Supervisor and he is not a public servant. It is pertinent to note that P.W.1, who is the complainant, has given go by to the earlier version. He has gone to the extent of saying, besides admitting his signature, he do not know as to whether the complaint has been given by him. In such circumstances, complaint and F.I.R. are not substantial piece of evidence and that can be used for corroboration and contradiction. Here, the evidence of P.W.1 has not been corroborated with the averment found in Ex.P.6 (complaint) and Ex.P.7 (F.I.R). In such circumstances, the evidence of P.W.1 has not supported the case of the prosecution, even though he was not treated as hostile. Therefore, I am of the view that there is no evidence before this Court to show that P.W.2 is a public servant and he was assaulted or prevented by A-1 to A-3 from discharging his official duty. Hence, the prosecution has failed to prove the ingredients of Section 353 IPC beyond all reasonable doubt. Hence, they are entitled to acquittal under Section 353 IPC, by giving the benefit of doubt.

8. Now, this Court has to decide whether the conviction against the second accused under Section 324 IPC is sustainable?..

9. As already stated, P.W.1 has given go by to the earlier version, even though in the complaint, it was specifically mentioned that A-2 assaulted him with iron scale

and he has not supported the case of the prosecution during the trial. As mentioned earlier, F.I.R. and complaint are not substantial piece of evidence and that can be used for corroboration and contradiction. P.W.1 has gone to the extent of saying, he do not know whether he has given a complaint, besides admitting his signature. The complaint has been marked as Ex.P.6. The averment in Ex.P.6 has not been corroborated by the evidence of P.W.1. Hence, reliance cannot be placed on Ex.P.6.

10. P.W.2, who is the injured person, has also not supported the case of the prosecution. In chief, he had stated that 4 persons had assaulted him. But, in his cross, in the first line, he had stated that he could not identify as to who attacked him in the mob. P.W.3, who is an Assistant in Bar, has not spoken anything about the injury sustained by P.W.2. P.W.4 has also not supported the case. In such circumstances, there is no iota of evidence to show that A-2 assaulted P.W.2 and caused simple injury. It is pertinent to note that P.W.7 Dr.Jayaraj, who treated P.W.2 at 02.20 p.m., on 10.07.2004, in his evidence, had stated that the injured was assaulted by four known persons with iron scale at 11.20 a.m. on 10.07.2004 opposite to Anna Bus Stand near Maharaja Hotel. However, in the complaint, it was stated that A-2 assaulted him and that has not been corroborated by either the evidence of the complainant/P.W.1 or by the injured/P.W.2. So, there is no evidence before this Court to show that the injury sustained by P.W.2 has been caused by A-2 and that factum was not considered by the Trial Court. The conviction under Section 324 IPC against A-2 is unsustainable. Hence, it is, hereby, set aside.

11. In fine, the Criminal Appeal is allowed and the conviction and sentence passed by the learned Additional District and Sessions Judge -cum- Fast Track Court No.I, Madurai, dated 29.05.2007 made in S.C.No.65 of 2007, are set aside and the appellants are acquitted from the charges levelled against them. The fine amount, if any, paid by the appellants shall be refunded to them. R.MALA, J.

SML The bail bond, if any, executed by the appellants shall stand cancelled. 02.12.2014 Index:Yes/No Internet:Yes/No SML To 1.The Additional District and Sessions Judge -cum- Fast Track Court No.I, Madurai. 2.The Inspector of Police,

Mathichiyam Police Station, In Crime No.939 of 2004, Madurai District. 3.The Public Prosecutor, Madurai Bench of Madras High Court, Madurai. Judgment made in Criminal Appeal (MD)No.279 of 2007

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