

Sankarapandian Vs. The State Represented By

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Court : Chennai

Decided On : Jan-13-2015

Judge : M.Sathyannarayanan

Appellant : Sankarapandian

Respondent : The State Represented By

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED :

13. 01.2015 CORAM THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN Criminal Appeal (MD)No.434 of 2007 Sankarapandian ... Appellant/ Accused Vs. The State represented by The Deputy Superintendent of Police, Tuticorin Rural. (Cr.No.95 of 2004) of Murappanadu Police Station, Tuticorin District. ... Respondent/ Complainant Prayer : Appeal filed under Section 374 of the Code of Criminal Procedure, against the judgment passed in S.C.No.10 of 2005, dated 16.07.2007, by the II Additional Sessions Judge, Tirunelveli, Tirunelveli District. !For Appellant : Mr.V.Kathirvelu, Senior Counsel for Mr.K.Prabhu ^For Respondent : Mrs.S.Prabha, Government Advocate (Crl.Side) :

JUDGMENT

The sole accused in S.C.No.10 of 2005 on the file of the Court of II Additional Sessions Judge, Tirunelveli, Tirunelveli District, stood, charged and tried for the commission of the offences under Sections 341 and 326 I.P.C. and also under

Sections 3(1)(x) and 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act [in short 'S.C & S.T (P&A) Act'].. The trial Court, vide judgment dated 16.07.2007, has acquitted him for the commission of the offences under Sections 341 and 326 I.P.C. and Sections 3(1)(x) and 3(2)(v) of the S.C & S.T (P&A) Act , however, found him guilty for the commission of the offence under Section 326 I.P.C and sentenced him to undergo rigorous imprisonment for four years and to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for six months. The trial Court also ordered set-off under Section 428 of the Code of Criminal Procedure, with regard to the period of incarceration already undergone by him. The accused aggrieved by the conviction and sentence passed by the trial Court, has filed this Criminal Appeal.

2. The facts leading to the filing of this appeal, are briefly stated as follows:

2. 1. P.W.1 is the victim/defacto complainant and she belongs to Hindu- Pallar community. The appellant/accused belongs to Hindu-Maravar (Thevar) community, which is listed as a Backward Class community. Both P.W.1/defacto complainant/victim as well as the appellant/accused are residents of Agaram. P.W.1 used to work in the fields of the people belonging to Thevar community as agricultural coolie. About one month prior to the date of occurrence, i.e. on 30.03.2004, there was a wordy altercation between P.W.1 and the mother of the appellant/accused at the place of work and therefore, the accused has developed animosity and nursed grievance against P.W.1. On 30.03.2004, P.W.1 was returning to home after work in the plantain fields belonging to P.W.2 - Ukirapandi. When she reached the water tank to fetch water at 03.00 p.m. on 30.03.2004, the appellant/accused who was near the water tank, abused her by using her caste name and in the course of the same transaction, assaulted P.W.1 with an aruval (M.O.1) and caused grievous injuries on her left forearm. P.W.1 raised an alarm and it was seen by P.W.6, P.W.7, Pappathi and Chidambaram, who rushed to the spot and castigated the appellant/accused. The appellant/accused ran away from the scene of occurrence. P.W.7 administered the First Aid and subsequently, P.W.1 was taken to the Government Hospital, Palayamkottai and she was treated as inpatient. 2.2. P.W.11 - Sub-Inspector of Police attached to Murappanadu Police Station, on receipt of the information from the Out-post Police Station

attached to Tirunelveli Government Hospital, went there and recorded the statement of P.W.1 at about 19.30 hours on 30.03.2004 and thereafter, returned to the Police Station and registered a case in Cr.No.95 of 2004 at about 21.30 hours for the commission of the offences under Section 324 and Section 3(1)(x) of the S.C & S.T (P&A) Act. The statement recorded/complaint was marked as Ex.P.1 and Ex.P.7 is the registered F.I.R. 2.3. P.W.12 - the Deputy Superintendent of Police, Tuticorin Rural District, on receipt of Ex.P.7 - F.I.R, commenced the investigation and visited the Government Hospital, Palayamkottai on the same day and examined P.W.1 and recorded the statement of P.W.1, P.W.2, P.W.3, Ravi. P.W.12 went to the place of occurrence and examined the witnesses, namely, Chidambaram, P.W.6, P.W.7 and P.W.8. At about 07.00 a.m., on 31.03.2004, P.W.12 visited the water tank at Agaram and prepared the Observation Mahazar in the presence of the witnesses, Chidambaram and Mandiram and also Rough Sketch, which were marked as Exs.P.8 and P.9 respectively. 2.4. P.W.12 also examined P.W.4, Chidambaram and P.W.11 and also Shanthi @ Chellammal, Eswari, Subramanian and recorded their statements. P.W.12 sent a requisition to the Tahsildar, Srivaikuntam for getting the community certificates of P.W.1 as well as the appellant/accused and obtained the community certificates and thereafter, examined P.W.10 and recorded his statement. On 20.04.2004, P.W.12 made a requisition to the learned Judicial Magistrate, Srivaikuntam, seeking police custody of the appellant/accused for interrogation and on securing his custody, the appellant/accused voluntarily came forward to give a confession statement in the presence of P.W.9 and Jeyasankaran and in pursuance of the admissible portion of the confession statement, M.O.1 - aruval was recovered in the presence of the said witnesses. P.W.12 also examined P.W.9 and recorded his statement and on 21.04.2004, he sent back the appellant/accused to judicial custody. 2.5. On 08.06.2004, P.W.12 obtained the wound certificate from the Casualty Medical Officer, who initially treated P.W.1 and examined P.W.5 and recorded his statement and secured Ex.P.3, a copy of the Accident Register. 2.6. P.W.12, after completion of the investigation, filed the final report charging the appellant/accused for the commission of the offences under Sections 326 and 341 I.P.C. and also Sections 3(1)(x) and 3(2)(v) of the S.C & S.T (P&A) Act. 2.7. The Court of the Judicial Magistrate, Srivaikuntam, took the final report on file in

P.R.C.No.13 of 2004 and summoned the appellant/accused and on his appearance, furnished the copies of documents under Section 207 Cr.P.C. The said Court having found that the case is exclusively triable by the Sessions Court, committed the case to the Special Court trying the cases under the S.C & S.T. (P&A) Act. 2.8. The Court of II Additional Sessions Judge, Tirunelveli, upon appearance of the appellant/accused, framed the charges under Sections 326 and 341 I.P.C. and also Sections 3(1)(x) and 3(2)(v) of the S.C & S.T (P&A) Act questioned him and he pleaded not guilty to the charges framed against him and prayed for trial of the case. 2.9. The prosecution in order to sustain their case, examined P.W.1 to P.W.12 and marked Exs.P.1 to P.9 and also marked M.O.1. 2.10. The appellant/accused was questioned under Section 313(1)(b) of the Code of Criminal Procedure, 1973, with regard to the incriminating circumstances made out against him in the evidence tendered by the prosecution and he denied it as false. 2.11. On behalf of the accused, neither oral nor documentary evidence was let in. 2.12. The trial Court on consideration of the oral and documentary evidence, found the appellant/accused guilty and convicted him under Section 326 I.P.C. and imposed the sentences as stated above and and acquitted him for the other offences. Challenging the vires of the same, the appellant/accused filed the present Criminal Appeal.

3. Mr.V.Kathirvelu, learned Senior Counsel appearing for the appellant/accused has drawn the attention of this Court to the testimonies of the witnesses and documents and would submit that admittedly, P.W.5 - Casualty Medical Officer has treated P.W.1 and the copy of the Accident Register - Ex.P.3 came to be marked, however, the Doctors who subsequently took X-ray and further treated P.W.1, have not been examined at all and in the absence of X-ray, it cannot be concluded that the appellant/accused committed the offence under Section 326 I.P.C.

4. It is further contended by the learned Senior Counsel appearing for the appellant/accused that the place of occurrence was also not correctly fixed by the prosecution as there are many versions available with regard to the place of occurrence and motive that since the mother of the appellant/accused was abused by P.W.1, the appellant/accused got enraged and attacked her, appears to be

flimsy. It is further submitted by the learned Senior Counsel appearing for the appellant/accused that P.W.9 - Village Administrative Officer cannot be termed as an independent witness and therefore, the arrest, confession and recovery, are very much doubtful and moreover, the blood stained clothe worn by P.W.1 were not seized and marked by the prosecution and the presence of grass in the scene of occurrence is not mentioned in the Observation Mahazar.

5. In sum and substance, it is submitted by the learned Senior Counsel appearing for the appellant/accused that in view of the above said infirmities pointed out, the trial Court in any event, ought to have awarded the benefit of doubt, however, has chosen to convict the appellant/accused for the commission of the offence under Section 326 I.P.C and imposed the sentence as above with fine and hence, prayed for interference.

6. Per contra, Mr.S.Prabha, learned Government Advocate (Criminal Side) for the respondent would submit that P.W.1 admittedly is an injured witness and her testimony even without corroboration can be acted upon and it can be the sole basis to record conviction and it was precisely done by the trial Court. It is further submitted by the learned Government Advocate (Criminal Side) for the respondent that the motive aspect has been clearly proved by the prosecution as there was a wordy altercation between P.W.1 and the mother of the accused about a month prior to the date of occurrence and therefore, the appellant/accused got enraged by the same and attacked P.W.1 with a lethal weapon - M.O.1.

7. Insofar as the submission of the learned Senior Counsel appearing for the appellant/accused that X-ray reports were not marked and so also, the Doctors, who subsequently treated P.W.1, it is the submission of the learned Government Advocate (Criminal Side) for the respondent that the testimony of P.W.5 and Ex.P.3 - Accident Register, proved beyond any reasonable doubt that P.W.1/defacto complainant has sustained grievous injuries and moreover, P.W.12, the Investigating Officer was not questioned with regard to the non- marking of X-ray and non-examination of the Doctors, who subsequently treated P.W.1.

8. Lastly, it is contended by the learned Government Advocate (Criminal Side) for the respondent that the infirmities pointed out by the learned Senior Counsel

appearing for appellant/accused, in any event, can be termed as trivial and they have not shaken the foundation laid down by the prosecution and therefore, prayed for confirming the conviction and sentence passed by the trial Court.

9. In response to the said submission, the learned Senior Counsel appearing for the appellant/accused alternately pleaded for reduction of sentence of imprisonment for the reason that the occurrence took place about eleven years back and thereafter, nothing had happened between them and the appellant/accused was also not involving in similar offences and the said aspect may be taken into consideration by this Court for reducing the quantum of sentence.

10. This Court paid it's best attention to the rival submissions and also perused the materials available on record.

11. P.W.1 is an injured witness and a perusal of her testimony would clearly disclose the fact that there was a wordy altercation between her and the mother of the appellant/accused and on account of the same, the appellant/accused has developed animosity and on the date of occurrence, he waylaid her and attacked her with M.O.1, which resulted in sustaining grievous injuries by her. Immediately, she was taken to Government Hospital, Palayamkottai. On receipt of the information from the Out-Post Police Station by P.W.11, he recorded statement of P.W.1 at about 19.30 hours on 30.03.2004 which was marked as Ex.P.1 and thereafter, returned to the Police Station and registered the F.I.R at about 21.30 hours on the same day for the commission of the offences under Section 324 I.P.C and Section 3(1)(x) of the S.C & S.T. (P&A) Act. Ex.P.1 - complaint/statement as well as Ex.P.7 - F.I.R have reached the jurisdictional Magistrate Court without any loss of time on 30.03.2004.

12. Though the other eyewitness, namely, P.W.2 turned hostile, his chief examination would disclose that P.W.1 was attacked by the appellant/accused. P.W.2 was examined in chief on 05.01.2007 and cross- examined on 14.03.2007. In the cross-examination, P.W.2 has give a complete go-by to his version in the chief examination and therefore, he was treated as hostile witness.

13. P.W.3 is the son of P.W.1 and his testimony is in corroboration with the oral evidence of P.W.1 and in his cross-examination, nothing has been elicited in favour of the appellant/accused.

14. P.W.5 is the Casualty Medical Officer and Ex.P.3 - Accident Register was through him and the treatment was given to P.W.1 for the following injuries: "An incised injury shaped over dorso lateral aspect of left forearm 10 cm below elbow + 10 cm x 4 cm x bone depth with bleeding."

The said document would also disclose that P.W.1 was admitted on 30.03.2004 and discharged on 26.05.2004 and the Plastic Surgeon also opined that 'Extensor tendon of Left middle and little finger cut with fracture B B left forearm'. Dr. Joseph Selva Kumar, Radiologist (not examined) also opined that 'X-ray left forearm - Fracture middle of both u/na and radius'.

15. The bone grafting was done by Dr. Durai Raj and Dr. Manikandan and ultimately, it was opined that 'the injury noted was grievous in nature'.

16. It is the vehement and forceful submission of the learned Senior Counsel appearing for the appellant/accused that since the Doctors who subsequently treated P.W.1, namely, Dr. Joseph Selva Kumar, Dr. Durai Raj and Dr. Manikandan were not examined and that X-ray was also not marked, the conclusion arrived at by the trial Court that the appellant/accused is guilty under Section 326 I.P.C., on the face of it, is untenable. However, this Court is unable to appreciate the said submission for the reason that without any lapse of time, P.W.1 was taken to the Government Hospital, Palayamkottai and initially, P.W.1 was treated by P.W.5 who also issued Ex.P.3 and the said wound certificate would disclose that P.W.1 sustained grievous injury. As rightly contended by the learned Government Advocate (Criminal Side) for the respondent, with regard to the non-marking of X-ray and non-examination of other Doctors, P.W.12 was not specifically questioned and it is also open to the Investigating Officer to explain in the event of being asked in the cross-examination as to the non-seizure of X-ray and non-examination of the Doctors who subsequently treated P.W.1. Admittedly, it was not done so.

17. The testimony of P.W.1 is amply corroborated by P.W.3 and as already pointed out, the originals of Ex.P.1 as well as Ex.P.7 - F.I.R have reached the jurisdictional Court without any lapse of time.

18. It is the submission of the learned Senior Counsel appearing for the appellant/accused that since P.W.9 - Village Administrative Officer, is a Government Official, he has sailed with the prosecution. However, the testimony of P.W.9 would disclose that nothing useful has been elicited in favour of the appellant/accused or nothing contra against the prosecution and he has cogently spoken about the arrest, confession and recovery of M.O.1 - aruval, in pursuance of the admissible portion of the confession statement of the appellant/accused.

19. This Court has also carefully scanned through the impugned judgment as well as oral and documentary evidence and found that the trial Court, on careful analysis of the oral and documentary evidence, has rightly reached to the conclusion finding the appellant/accused guilty under Section 326 I.P.C and convicted him under Section 326 I.P.C and sentenced him as stated above.

20. This Court finds no infirmity in the reasons assigned by the trial Court in convicting the appellant/accused under Section 326 I.P.C.

21. Insofar as the alternate plea made by the learned Senior Counsel appearing for the appellant/accused, this Court heard the learned Government Advocate (Criminal Side) for the respondent.

22. The occurrence took place on 30.03.2004 and the conviction was recorded on 16.07.2007 and this Criminal Appeal is pending for the past eight years and in the interregnum, no untoward incident happened between P.W.1 and the appellant/accused and he has also not indulged in commission of any of the offences.

23. This Court, taking into consideration the above facts and circumstances of the case, is of the view that the sentence of imprisonment of rigorous imprisonment for four years imposed by the trial Court, requires modification.

24. In the result, this Criminal Appeal is dismissed, confirming the conviction under Section 326 I.P.C. recorded by the trial Court in S.C.No.10 of 2005, dated 16.07.2007, on the file of the Court of the II Additional Sessions Judge, Tirunelveli, Tirunelveli District, however, the sentence of imprisonment of rigorous imprisonment for four years, is reduced to rigorous imprisonment for one year and the sentence of fine with default sentence is maintained. The bail bonds executed by the appellant/accused shall stand cancelled. The respondent/Investigating Officer is directed to take expeditious steps to secure the appellant/accused to undergo the period of sentence of imprisonment. The period of incarceration already undergone by the appellant/accused during the course of the investigation and trial, is to be set off under Section 428 Cr.P.C. Index :Yes/No 13.01.2015 Internet :Yes/No rsb To 1.The Deputy Superintendent of Police, Tuticorin Rural. Murappanadu Police Station, Tuticorin District. 2.The Court of II Additional Sessions Judge, Tirunelveli, Tirunelveli District. 3.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai. M.SATHYANARAYANAN,J.

rsb Criminal Appeal (MD)No.434 of 2007 13.01.2015

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