

1.Sethulingam Vs. The State Through

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Court : Chennai

Decided On : Apr-09-2015

Judge : S.Nagamuthu

Appellant : 1.Sethulingam

Respondent : The State Through

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

09. 04.2015 CORAM THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
CRIMINAL APPEAL(MD)No.604 of 2005 1.Sethulingam 2.Ragunathan :
Appellants/Accused 1 and 2 Vs. The State through The Inspector of Police,
Keelavalavu Police Station, Madurai District, (Crime No.107 of 1993). :
Respondent/ Complainant PRAYER: Appeal is filed under Section 374(2) of the
Code of Criminal Procedure, against the Judgment and conviction passed by the
learned Additional District and Sessions Judge [Fast Track Court No.II]., Madurai,
in S.C.No.396 of 2002, dated 11.11.2005. !For Appellants : Mr.J.M.Hassanul
Bazari ^For Respondent : Mr.C.Mayil Vahana Rajendran, Additional Public
Prosecutor. :

JUDGMENT

The appellants are the accused 1 and 2 in S.C.No.396 of 2002, on the file of the
learned Additional District and Sessions Judge, Fast Track Court No.II, Madurai.

The third accused, in the case, was one Mr.Mani. The first appellant herein stood charged for the offence under Sections 147, 148, 307 and 324 read with 149 I.P.C and the second appellant stood charged for the offence under Sections 147, 148 and 324 read with 149 I.P.C. The third accused also stood charged for the offence under Sections 147, 148 and 324 read with 149 I.P.C. The Trial Court, by Judgment, dated 11.11.2005, acquitted the third accused Mr.Mani, but convicted these appellants under Sections 147, 148 and 324 read with 149 I.P.C. For the offence under Section 147 I.P.C., they have been sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rs.500/- each, in default, to undergo simple imprisonment for two months, for the offence under Section 148 I.P.C., they have been sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.1,000/- each, in default to undergo simple imprisonment for two months and for the offence under Sections 324 read with 149 I.P.C., they have been sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.2,000/- each, in default, to undergo rigorous imprisonment for six months. Challenging the said conviction and sentence, the appellants are before this Court, with this Criminal Appeal.

2. Before, further elaborating the facts of the case, let me state the following facts also. Originally, in this case, there were five accused, including the appellants. The first accused was one Mr.Mahendran and the second accused was one Mr.Senthilkumar. The third accused was the first appellant herein and the fourth accused was the second appellant herein and the fifth accused was the acquitted accused Mr.Mani. When all the five were jointly tried, the said Court framed as many as four charges. The first charge was under Section 147 I.P.C. against all the accused; the second charge was against all the accused under Section 148 I.P.C.; the third charge was under Section 307 I.P.C. against the accused 1 to 3 and the fourth charge was under Sections 324 read with 149 I.P.C. against all the five accused. This case was split up and the case against the first accused Mr.Mahendran was tried in S.C.No.161 of 2004 and the case against the second accused Mr.Senthil was tried in Sessions Case No.430 of 2003. So far as the present case is concerned, as I have already pointed out, only three accused were tried after rearrangement of the accused and in the present case, the appellants herein were shown as accused 1 and 2 and the acquitted accused Mr.Mani was

shown as accused No.3.

3. The case of the prosecution, in brief, is as follows:- The prosecution party and the accused belong to the same village. On 22.04.1993, there was a wordy quarrel between the sister of P.W.1 and the wife of the first accused herein over taking water from the public tap. In that quarrel, one Mr.Pandivel, the sister's son of P.W.1, Mr.Gandhi intervened. This developed into a big quarrel and at the intervention of some people, the parties disbursed. This is stated to be the motive for the present occurrence.

4. On 29.04.1993, at about 02.15 p.m., P.W.6, Mr.Sankar, came to the petty shop run by P.W.1 and informed him that village panchayat had been convened in respect of the above stated quarrel and the panchayatdars wanted him to come and participate in the panchayat. P.W.8, Mr.Sundaram, was the panchayat head. P.W.1 alongwith his son P.W.3 had gone to the panchayat, as directed by the panchayat head. The panchayat held in a place known as manthai. There were number of people present in the place of occurrence, including the head of the panchayat. The first accused herein Mr.Sethulingam, the other accused Mr.Senthilkumar, the second accused Mr.Ragunathan and few more persons were also present in the panchayat. The panchayatdars heard both parties in respect of the above quarrel and finally said that it was not proper for a male to intervene in the quarrel, when two females were fighting on a petty matter, namely, to take water from the public tap. The panchayatdars gave the verdict that P.W.1 should apologize. Accordingly, he apologized.

5. At that point of time, P.W.1's son Mr.Balaguru (P.W.2) and his another son Muthuraman, had come to the spot. P.W.2 climbed on the dais. At that time, Mr.Mahendran, one of the accused, told that Mr.Balaguru (P.W.2) was solely responsible for the whole problem. This resulted in further quarrel. P.W.2 climbed down the dais and proceeded towards his house. At that time, the accused Mahendran and the first appellant herein attacked P.W.2, with hands. P.W.1 rushed to rescue P.W.2. At that time, the accused Mahendran, took up a knife from his waist and stabbed P.W.2 on the back of his chest. Again P.W.2 started running. The accused Mahendran and the first appellant herein and the accused

Senthilkumar chased him with knives. The appellants herein also suddenly appeared with aruval in their hands. All of them followed P.W.2. P.W.1 and his son Muthuraman were trying to save P.W.2. At that time, the accused Mahendran stabbed him on the back and also Muthuraman. He pushed Balaguru down. The accused Senthilkumar stabbed Balaguru on his neck. The first appellant herein pecked on the left leg of Balaguru with aruval. The people, who were in the panchayat, arrived and on seeing them, all the accused fled away from the scene of occurrence.

6. After the occurrence, the injured were taken to the Government Hospital at Melur. P.W.14, Dr.Veeraraghavan, examined P.W.1 and found the following injury: ?A stab injury measuring 2 c.m. x + c.m. x 1 c.m. on the right side of the back of the chest?.. This injury, according to the doctor, is simple in nature. Ex.P.7 is the Accident Register.

7. On the same day, at about 03.30 p.m., P.W.14 examined Mr.Muthuraman, the son of P.W.1 and he found the following injury: ?A stab injury measuring 6 x 6 x 2 cms. on the upper part of the back of chest?.. The injury was simple in nature. Ex.P.8 is the Accident Register.

8. On the same day, at about 03.40 p.m., he examined P.W.2 and found the following injuries: ?(i)A lacerated injury measuring 4 x 2 x + c.m. on the right shoulder. (ii)A stab injury on the right shoulder measuring 4 x 2 cms and the injury had gone upto the lung. (iii)A scratch measuring 1+ x 3 cms on the left leg. (iv)An abrasion measuring 1 c.m. of diameter on the left ankle?.. The second injury found on the right shoulder, was grievous. The other injuries were simple. Ex.P.9 is the Accident Register.

9. When P.W.1 was in the hospital, on due intimation from the hospital, P.W.16, the then Sub Inspector of Police, attached to Keelavalavu Police Station, arrived in the hospital and recorded the statement of P.W.1, under Ex.P.1. On returning to the Police Station, he registered a case in Crime No.107 of 1993, under Sections 147, 148, 324 and 307 I.P.C. Ex.P.11 is the First Information Report. He forwarded the First Information Report and the complaint to the Court and handed over the Case Diary to P.W.14, the then Inspector of Police, Keelavalavu Police Station.

10. At 08.35 p.m., P.W.15, proceeded to the place of occurrence, prepared Observation Mahazar and also Rough Sketch, showing the place of occurrence. Then, he examined P.W.2 and his brother Mr.Muthuraman and recorded their statements. He recovered the bloodstained clothes worn by the injured. Then, he examined the witnesses Gandhi, Palanivel, Pachaimuthu and others and recorded their statements. On 02.05.1993, he examined few more witnesses and recorded their statements. On 03.05.1993, at about 06.15 a.m., he arrested the second appellant in the presence of P.W.10 and P.W.11. On such arrest, he made a voluntary confession, which was reduced into writing. In the said confession, he disclosed that he had hidden the aruval behind his house. In pursuance of the same, he took the witnesses and the police to the said place and produced the said weapon and the same was recovered under a mahazar. Thereafter, when P.W.15 was investigating the case, he was transferred and therefore he handed over the investigation to P.W.17.

11. P.W.17 took up the case for investigation on 19.12.1995. He collected the medical records, examined few more witnesses and finally laid charge sheet.

12. Based on the above materials, the Trial Court framed appropriate charges as detailed in the first and second paragraphs of this Judgment. When the accused were questioned in respect of the charges, they denied the charges. So far as the present case is concerned, in order to prove its case, the prosecution examined as many as 17 witnesses and marked 11 documents. No Material Object was marked. When the Trial Court examined the accused under Section 313 of the Code of Criminal Procedure in respect of incriminating evidences available against them, they denied the same as false. However, they did not choose to examine any witnesses nor to exhibit any documents.

13. Having considered all the above materials, the Trial Court found that the case against the third accused Mr.Mani, had not been proved beyond reasonable doubt and accordingly acquitted him. The appellants herein alone have been convicted under Sections 147, 148 and 324 read with 149 I.P.C. That is how, the appellants are now before this Court with this Criminal Appeal.

14. I have heard the learned counsel appearing for the appellants, the learned Additional Public Prosecutor and I have also perused the records carefully.

15. The learned counsel appearing for the appellants would submit that since the third accused Mr. Mani was acquitted, there is no scope to convict the rest of the accused by invoking either under Section 147 I.P.C. or under Section 148 I.P.C. or under Section 149 I.P.C.

16. The learned Additional Public Prosecutor would submit that though the third accused Mr. Mani was acquitted, even then, the conviction under Sections 147 and 148 I.P.C., by invoking Section 149 I.P.C., is maintainable, because apart from these five accused, there were other accused also in the assembly. In my considered opinion, this argument of the learned Additional Public Prosecutor deserves a simple rejection, because, the charges framed against the accused are so definite that there were only five accused in the unlawful assembly having the common object. Out of these five accused, one person has been acquitted, as it had not been proved that he was involved in the crime and that he was the member of the unlawful assembly. That acquittal had become final. Therefore, there are only four people, who were involved in the crime and thus there is no scope to convict these accused either under Section 147 I.P.C. or under Section 148 I.P.C. or by invoking Section 149 I.P.C. The trial Court has committed a serious error/irregularity in framing charges both under Sections 147 and 148 I.P.C., since 148 I.P.C. is a major offence. Therefore the conviction both under Sections 147 and 148 I.P.C. is illegal. Apart from that, since, as I have held, there was no unlawful assembly satisfying Section 143 I.P.C., the conviction of these appellants under Sections 147 and 148 I.P.C. as well as by invoking Section 149 I.P.C. under Section 324 I.P.C. are not sustainable.

17. The next question is whether the appellants could be convicted by invoking Section 34 I.P.C. Though the learned Additional Public Prosecutor argued that the said course is possible, in my considered view, it is not possible in this case, because, absolutely, there is no evidence in this case that there was any pre-concert or pre-meeting of mind between the four accused including these appellants. Therefore, there is no scope to even infer that there was common

intention to commit any crime. Apart from that, the narration of facts, would go to show that the occurrence itself was only in the spur of moment and thus there was no occasion to have any pre-meeting of mind. In such view of the matter, I hold that the accused cannot be convicted by invoking Section 34 I.P.C. as well. Therefore, the appellants are responsible only for their individual overt-acts.

18. Now turning to the individual overt-acts of fourth accused/second appellant, even according to the charge, he was only present, at the time of occurrence, as a member of the assembly and there was no overt-act attributed to him at all. Since, the assembly itself has not been proved, considering that a mere presence will not make out any offence and since there is no overt-act attributed to him, he is entitled for acquittal from the charge under Sections 324 read with 149 I.P.C. also.

19. Now, turning to the individual overt-act of the first appellant, Sethulingam. The allegation is that with an aruval, he stabbed P.W.2 on his left leg as well as on his shoulder. But, no witness has stated that he stabbed with aruval on the shoulder, instead, the only evidence available, is that he pecked P.W.2 with aruval tip, on the left leg. But, there is no corresponding stab injury on the left leg. There was only one scratch found on the leg. Thus, the medical evidence does not corroborate the eye witness account of P.W.2. Therefore, going by the overt-acts also, the first appellant is entitled for acquittal from the charge, under Section 324 I.P.C. As a result, I hold that the conviction and sentence imposed on the appellants are not sustainable and they are entitled for acquittal.

20. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellants in S.C.No.396 of 2002, by the Trial Court, are set aside and they are acquitted. The bail bonds executed by them, shall stand terminated. The fine amount, if any, paid by them, shall be refunded to them. 09.04.2015 Index : Yes Internet : Yes smn To 1.The Additional District and Sessions Judge Fast Track Court No.II, Madurai. 2.The Inspector of Police, Keelavalavu Police Station, Madurai District. 3.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai. S.NAGAMUTHU, J.

smn

JUDGMENT

MADE IN CRIMINAL APPEAL(MD)No.604 of 2005 09.04.2015

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