

Alagarsamy and Others Vs. the State and Another

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Court : Chennai

Decided On : May-03-1995

Reported in : 1995CriLJ3414

Judge : Rengasamy, J.

Acts : Indian Penal Code (IPC) - Sections 147, 148, 149 and 326

Appeal No. : Crl. R.C. No. 506 of 1990 and Cri R.P. No. 504 of 1990

Appellant : Alagarsamy and Others

Respondent : The State and Another

Advocate for Def. : D. Veerasekaran, Adv.

Advocate for Pet/Ap. : T. Munirathna Naidu, Adv.;P. Govindarajan, Govt. Adv.

Judgement :

ORDER

1. This revision is against the conviction and sentence imposed by the learned Sessions Judge, Ramnad at Mudurai in C.A. No. 147/88 confirming the order of conviction passed by the learned Assistant Sessions Judge, Sivaganga, in SC No. 96/82 to undergo rigorous imprisonment for one year, four years and Rs. 1,500 (except for first accused) and one month respectively for the offences under Ss. 148, 326 and 326 read with S. 149, IPC. For the offence under S. 147, IPC also

against some of the accused, one year rigorous imprisonment is imposed. The first accused has been convicted to undergo rigorous imprisonment for five years and to pay a fine of Rs. 1,000 for the offence under S. 326, IPC. Even though the second accused was convicted under S. 326, IPC for three counts, the learned Sessions Judge convicted him only for two counts.

2. P.W. 1, is a resident in Madhavarayanpatti Village whereas the accused are the residents of Iyyapatti the adjacent Village. There was previous enmity between P.W. 1 and the accused. On 16-1-81, there was festival in the adjacent Village Siravayal where bulls were let out in connection with the Pongal festival. P.W. 1 and his son P.W. 2 also had been to Siravayal to see the bull-fight. The fourth accused, son of the first accused, also was found in the group. P.W. 2 asked him as to how he could tether his cattle in their cattle-shed for which the fourth accused replied that he did not tether his cattle. Immediately P.W. 1 told his son not to speak anything to him and it could be talked to his father. On the next day morning. by about 7-30 a.m. all the accused and others armed with deadly weapons like velstick, katthi, Kambu, sticks, aruval etc. came shouting, 'stab them and kill them' and all of them surrounding the house of P.W. 1 damaged the tiles with the sticks. P.W. 1's wife P.W. 4 coming out of the house, begged the first accused not to damage the house and everything could be talked in Panchayat. But the first accused first revision petitioner directed others to cut her. Immediately, the second accused cut her with aruval and the 5th and the 11th accused beat her on her right hand and the 10th accused beat her in the hip. P.W. 5 the daughter of P.W. 4, came out imporing the accused persons not to beat her mother. The first accused shouted that in spite of beating the womenfolk, coward males did not come out and directed to beat P.W. 5 also. Immediately, the second accused cut on her head and the fifth accused beat her on her right hand with strick. The accused 2 and 3 and the 9th accused snatched her jewels. Seeing this attack on the mother and sister, P.W. 2 came out of the house. Immediately, the Seventh accused/sixth revision petitioner cut him on his neck. The second revision petitioner cut him on his right hand and the first and ninth revision petitioners also cut him on the left hand and left leg. Seeing this development, P.W. 1 and his other son P.W. 3 also came out of the house. The first accused cut P.W. 3 on the left leg below the knee and the accused 14, 17, 24 and 25, while holding legs of

P.W. 3 the sixth accused/fifth revision petitioner cut him on his backside of the neck. The Second accused and the 20th accused/12th revision petitioner cut P.W. 1 on the head and right hand while sixth accused, seventh accused, first accused and ninth accused cut him on his leg and head with aruvals. As the persons from the neighbouring places came there, these revision petitioners and others left the scene of occurrence. The neighbours who came there took the injured persons namely P.Ws. 1 to 5 to Thirupathur Hospital in a bullock-cart where P.W. 8 gave the treatment. As the injuries on P.Ws. 2 and 3 were serious in nature, all these injured persons were taken to Madurai where they were admitted in Rajaji Government Hospital for intensive treatment. The left leg below the knee of P.W. 3 was completely amputated. From the message received from the hospital, P.W. 12 the Inspector of Police, deputed P.W. 11 to record the statement of P.W. 1 in the hospital and P.W. 12 took up the investigation.

3. On the side of the accused, the third accused was examined as D.W. 1 and the Court below, having considered the evidence on record, has found the revision petitioners guilty of the offences mentioned above.

4. The learned counsel for the petitioners Mr. Munirathna Naidu submitted that though the revision petitioners/accused have admitted the occurrence, it was in a different place, namely near the bus stand in Iyyapatti and there is inordinate delay in registering the case for nearly 10 hours and the evidence also discloses that earlier to Ex. P. 1, the Statement was received from P.W. 1 and P.W. 12, the Investigating Officer, had started investigation on the basis of the information, he received from the witnesses to the occurrence but both the courts below have completely ignored these infirmities, which are affecting the prosecution case. The learned counsel further argues that when there is delay of more than 10 hours in giving the complaint, there is every possibility for implicating the unwanted persons as already there were ill-feelings between the these two groups and therefore when 25 persons have been implicated in this case and some of them have been acquitted by the Court below on the ground that the evidence against them is not acceptable, the courts below are not correct in finding these revision petitioners guilty for the offences alleged.

5. The occurrence has taken place at 7-30 a.m. on 17-1-81 and the accused persons also admit the occurrence of group attack. It appears from the evidence of prosecution witnesses as well as D.W. 1 who is the third accused, that there had been some quarrel between P.W. 1 and the men of the first accused. Even though P.W. 1 has stated in his evidence that his son P.W. 2 had simply questioned the fourth accused as to how he tethered his cattle in their cattleshed and on account of this, as these petitioners and some others came with dangerous weapons to attack him, the evidence of D.W. 1 is that on 16-1-1981, P.W. 1 and his men had attacked Muthumani and Velu in the bull-fight festival in Sirayaval, that he came to know about this attack only on that night, that on the next day to complain to the police about the previous day's incident, when he and others were waiting in Iyyapatti Bus Stop on their way to the Police Station, P.W. 1 and others, who came with weapons attacked them. The question whether the accused party or the prosecution party were the aggressors, is a matter to be considered from the available evidence. Soon after the occurrence, second accused has given a complaint in S. V. Mangalam Police Station about this occurrence and Ex. P. 10 is the First Information Report prepared by the Police In Ex. P. 10, the second accused has stated that on account of the incident. On 16-1-81 in Siravayal Village on the next day, that is on 17-1-81 at about 7-30 a.m., he and other accused along with some others went to Madhavarayanpatti to enquire P.W. 1 and settle the dispute between them. He has also stated in Ex. P. 10 that when they were asking P.W. 1 softly that why he quarrelled on the previous day in the place where the festival was going on, he and his family members attacked them with aruval and other weapons. In Ex. P. 10, the second accused has specifically admitted that on 17-1-81 at 7-30 a.m. the accused party went to the house of P.W. 1. Therefore, it is very clear that the occurrence had taken only outside the house of P.W. 1

6. If really, the accused party went to the house of P.W. 1 only for the reconciliation of the ill feelings between them, they need not have carried the weapons in their hands. But the injuries on P.Ws. 1 to 5 prove that the assailants came with dangerous weapons and they had brutally attacked the family members of P.W. 1 on account of which the left leg below the knee of P.W. 3 has been amputated. All other family members except one had sustained grievous injuries. To suppress the aggression on the part of the accused party, the third accused in

his evidence has stated that when he and others were waiting near the bus stand in Iyyampatti they were attacked by the prosecution party. As P.W. 1 is residing in Madhavarayanpatti whereas the accused party are residing in Iyyampatti, P.W. 1 might not have even known the arrival of the accused party to the bus stand on their way to the police station and further when the accused party was in a group, P.W. 1 would not have dared to go to Iyyampatti Bus stand to attack the accused party. Therefore, the version of the third accused that the prosecution party came to Iyyampatti to attack them is nothing but cock and bull story. From Ex p. 10 it can be easily understood, that the accused party came to the house of P.W. 1 with lethal weapons to attack him and family members and to suppress this fact, the complaint was given by the second accused as though they went to the house of P.W. 1 to settle the dispute between them. Therefore, the Courts below have rightly concluded that the accused party is the aggressor for this occurrence.

7. It was argued for the revision petitioners that accused Nos. 2, 3 and 7 had sustained injuries and the injury on the second accused was grievous in nature but the prosecution has not explained the injuries on the accused. P.W. 3 has stated in his evidence that when he saw his sister, mother and brother P.W. 2 being attacked by the accused, he cut the second accused with an aruval while coming out from his house and he had to use the weapon against the assailants in private defence. As mentioned above, when the accused party armed with dangerous weapons came to the house of P.W. 1 and also had attacked the family members, naturally P.W. 3 might have used the weapons against the assailants in self-defence and therefore the courts have accepted this explanation for the injuries on accused Nos. 2, 3 and 7. Therefore, nothing turns out against the prosecution case for the injuries on the accused persons.

8. Learned counsel for the petitioners argued that there is delay of more than 10 hours and the complaint itself has been prepared only after consultation and deliberation and therefore the accused have been falsely implicated to wreck vengeance against all these revision petitioners whom P.W. 1 had thought as his enemies. It is true that there is delay in registering the case. But on a perusal of the evidence, we are able to see that after the occurrence, the injured persons were taken in a bullock-cart to Thirupathur Government Hospital and thereafter

from there to Rajaji Hospital at Madurai. P.W. 12 the Inspector of Police has stated in his evidence that by about 9-00 O'Clock in the morning of 17-1-1981, he received a wireless message about this occurrence and therefore, he went to the scene of occurrence at about 12-30 p.m. According to P.W. 12 as the Sub-Inspector of Police of S. V. Mangalam, P.W. 11, had been to Madurai, he sent a message to him to come back to S. V. Mangalam Police Station and P.W. 11 who came to his police station, met P.W. 12 who directed him to go to Madurai to record the statements from the victims as all the victims were sent to Madurai for treatment and thereafter by 5-30 p.m., he recorded the statement of P.W. 1. After obtaining the statement by 5-30 p.m., P.W. 11 came to S. V. Mangalam Police Station by 7-30 p.m. to register the complaint. As the victims were taken to Madurai, the Sub-Inspector of Police had to go to Madurai to obtain the statement from the victim and thereafter returned to the Police Station for the registration of the case it appears that the delay has occurred. But it was argued by the learned counsel for the revision petitioners that the evidence of P.W. 12 reveals that he had started the investigation even by 11-30 a.m. long before the statement of P.W. 1 and therefore there should have been a complaint from someone in the village earlier to Exp. 1 and as that complaint has been suppressed, the prosecution has not come out with true facts. Even though P.W. 12 the Inspector of Police would say that he went to the scene of occurrence by 12-30, as all the injured persons were taken to Madurai Hospital, he was not able to carry out any investigation in the absence of a written complaint but had to wait till the case was registered. For the reason that he had been to Iyyampatti Village, it cannot be taken that he had started the investigation even by the time when he went to the village. P.W. 12 has specifically mentioned that by the time when he reached the village, as all the men in the village went away out of fear, he did not record the statement or recover anything from the scene of occurrence. From the explanation offered by P.W. 12, it cannot be stated that there was any other complaint prior to Ex. P. 1 and the delay in this case cannot be said to be an infirmity in the prosecution case. This aspect has been considered by the courts below.

9. As mentioned above, apart from the evidence of the prosecution witnesses, as the complaint given by the accused party shows that the accused themselves were the aggressors, naturally we have to look into the overt act against each of

the accused for this occurrence. It is true that the witnesses who have spoken about this occurrence are the family members of P.W. 1. But as all of them except one have sustained grievous injuries due to the cut with aruval and also use of the stick, there is nothing to totally reject their testimony. It is true that the trial Court has acquitted accused Nos. 4, 8, 12, 13, 15, 16, 18, 19 and 21 to 23. The trial Court, after assessing the evidence of the prosecution witnesses, has found that there was no specific overt act against these persons. Therefore, the acquittal of those accused persons will not in any way enure the benefit to those revision petitioners also, when there is specific overt act against these revision petitioners. The evidence discloses that P.W. 1 was cut by the second accused on his head and the 20th accused cut him on his right hand in 2 or 3 places. P.W. 1 has stated that accused Nos. 6, 7, 3 and 9 also attacked him on his head and leg with aruval. The wound certificate Ex.P.2 shows that there were as many as 9 cuts on his heads and there was fracture of tibia and ulna bones in the legs and hands. P.W. 2, his son also had fracture of the bone as seen from Ex. P. 3 wound certificate and the evidence discloses that the second accused cut him on his right hand while first accused cut him on his left hand and 7th accused cut him on the neck. Ninth accused also had cut him on his left leg. P.W. 3 was cut by sixth accused on the backside of his neck and the first accused cut him on his left leg below the knee resulting in the amputation of the left leg. P.W. 4, wife of P.W. 1 also had cut injuries as seen from Ex. P. 5 wound certificate and the evidence of these witnesses is that on the command of the first accused, the second accused cut her with aruval and accused Nos. 5, 10 and 11 beat her with the stick portion of the katti kambu in their hands. Her daughter P.W. 5 also had sustained grievous injuries as seen from Ex.P.6 and all these witnesses have stated that she was cut by the second accused on her head and the fifth accused beat her with stick. As all the accused came together forming unlawful assembly, carrying weapons, they have been convicted under S. 149, IPC for the activities of the other members in the assembly.

10. The only overt act against the accused Nos. 14, 17, 24 and 25 who are the revision petitioners 10, 11, 13 and 14, is that they were holding the leg of P.W. 3 when he was cut by the first accused. They did not carry any weapons with them and when accused 1 and 6 were attacking P.W. 3 with lethal weapons, there was

no necessity for accused, 14, 17, 24 and 25 to hold the legs of P.W. 3. Therefore, I suspect whether the version against these four accused could be true. Further, holding the legs of P.W. 3 by all these persons seems to be unnatural also P.W. 3 has stated in his evidence that as his mother, sister and brother were attacked, he came out with aruval in his hand to attack the second accused. Therefore, if really accused 14, 17, 24 and 25 intended to prevent the activity of P.W. 3, they might have held his hand or attempted to snatch the aruval in his hand and they would not have been holding his leg jointly. If that was the overt act against them, P.W. 3 would have easily cut them with the aruval in his hand, but these accused persons did not sustain any cut injury in spite of the fact that P.W. 3 was having an aruval in his hands. Therefore, I feel that the overt act alleged against these accused namely accused 14, 17, 24 and 25 (revision petitioners 10, 11, 13 and 14) that they were holding the legs of P.W. 3 tightly, cannot be true. Therefore, they have to be acquitted.

11. As against the other revision petitioners, the evidence is abundant to prove the overt act alleged against them and therefore, certainly they are guilty of the offences mentioned above, and the conviction of these revision petitioners deserves to be confirmed.

12. So far as the punishment is concerned, the lower court has awarded five years imprisonment for the first revision petitioner for the offence under S. 326, IPC and 4 years imprisonment for the same offence for the other accused. As the cut inflicted by the first accused in the leg of P.W. 3 had caused a severe injury leading to the amputation of the leg, it appears that the lower courts have awarded five years imprisonment to the first accused/first revision petitioner.

I feel that when they came in a group and attacked the prosecution, witnesses, taking the law in their own hands, the deterrent punishment has become a necessity to prevent such recurrence. Therefore, I feel that no interference is warranted in the punishment. Therefore, the sentence also has to be confirmed as against these revision petitioners.

13. In the result, the revision is allowed in part and in so far as accused Nos. 14, 17, 24 and 25 (revision petitioners 10, 11, 13 and 14) are concerned the conviction

and sentence on them are set aside and they are acquitted. In other respects regarding others, the revision is dismissed confirming the conviction and sentence.

14. Order accordingly.

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