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Court : Chennai

Decided On : Aug-26-1959

Reported in : (1959)2MLJ463

Appellant : In Re: Esakki thevar and ors.

Judgement :
ORDER

Anantanarayanan, J.

1. This is a Revision Petition by the five accused in a criminal case, who were originally convicted by the learned District Magistrate of Tirunelveli under Sections 147, 148, 149 and 326 of the Indian Penal Code, and sentenced to several periods of imprisonment. This matter was taken up in appeal to the learned Additional Sessions Judge of Tirunelveli, who considered the facts of evidence in his appellate judgment and confirmed the convictions and sentences.

2. At the outset itself, when these proceedings in revision were argued, the limits of the propriety of interference in criminal revision by the High Court in a case of this kind, where there are concurrent findings of fact by two Courts below, were canvassed as I felt that it was essential that this should be clarified. The matter has now been argued at some length by learned Counsel for the revision petitioners, and also the learned Public Prosecutor, with reference to the available authorities, both of the Madras High Court, other High Courts and the Supreme

Court. It is not necessary for the purpose of the present judgment to make an exhaustive review of the case-law cited before me. But certain of the decisions have necessarily to be referred to, at the outset, itself, so that the broad landmarks of the applicable principle may be illustrated.

3. In a very early Full Bench decision of the Madras High Court in National Bank of India, Ltd. v. Kothandarama Chetty and Anr. (1913) 21 I.C. 129 the proposition was laid down that the High Court possesses plenary powers of interference even in a criminal revision, even upon a question of fact, though, of course, such power should be exercised with circumspection, and only where interference is called for in the broadest interest of justice. In a subsequent decision of this Court in K.V. Ramaswami Naik and Anr. v. Rangaswami Chettiar : AIR1937 Mad968 King, J., observed, that, even in criminal revision, where the Courts below had not approached the case either with a clear appreciation of the, issues involved, or clear understanding of the principles of criminal law, interference by the Court of revision would be just and appropriate. Of the decisions of the Supreme Court, it may be necessary to refer to the decision in Arjun Lal Misra v. The Stale : AIR 1953 SC411 where Fazl Ali, J., observed that though the powers of the High Court to interfere on findings of fact in criminal cases are indisputable, before that is done, the relevant facts upon which the findings are based should be carefully scrutinised and weighed. In a decision of the Madras High Court in S.R. Raja Rao, In re there is an observation in passing by Leach, C(1944) 2 M.L.J. 183.J., to the effect that the High Court would not interfere in criminal revision upon the merits, unless the record shows that the evidence is not capable of sustaining the conviction. In Periakaruppan Chettiar v. Chidambaram Chettiar 1937 M.W.N. 11 Pandrang Row, J., pointed out that the case for interference in criminal revision with the finding of fact by a Magistrate, was stronger where a non-appealable sentence had been given. Finally, my attention has been drawn to a recent decision of Ramaswami, J., in Criminal R.C. No. 256 of 1959 (so far unreported) where the principle has been discussed at some length. To quote the learned Judge:

Where a case arises for going into the facts of the case, the High Court will not interfere, unless the conscience of the Court is aroused to such an extent as to

compel the Court to expressly say that the appellant ought not to have been convicted on the evidence.

The decision then proceeds to enumerate certain categories, where the High Court would be justified in interference in criminal revision, even upon a question of fact. But I take it that it is the broad principle, as stated above, which governs this matter, and that the categories may not be exhaustive. Hence, the conclusion-upon this aspect would be that the High Court could and does interfere in criminal revision, even upon findings of fact, and even though they may be concurrent findings of two Courts below, where the conscience of the Court is satisfied that, in the broad interests of justice, the conviction is not sustainable; or where, as in this case, the conviction is not sustainable in certain respects, because vital evidence has been overlooked, or has not been given due considerations.

4. Now, coming to the facts of the present case, I have been taken through the record of evidence, and the judgment of the two Courts below. I desire to say very little upon the broad aspects of this offence which undoubtedly did occur, as a result of faction and ill-will, and during the course of which the complainant (P.W. 1) sustained certain punctured and incised wounds, as shown by the medical evidence. A certain difficulty in this case is that the first information was a bald oral report furnished by the son of the complainant, who has not been examined, to the effect that A-1 and other assailants caused injuries to his father (P.W. 1). In that view, the learned Additional Sessions Judge in appeal rightly excluded the subsequent recorded first information report (P-1) from consideration, as within the mischief of Section 162 of the Code of Criminal Procedure. Another difficulty in the present case is that A-4 also sustained some injuries, and that he furnished a counter version of this incident (P-8), though belatedly.

5. However this might be, upon the merits of the evidence, I see no reason at all to interfere in revision, as far as the convictions of A-1, A-2 and A-4 are concerned. The learned Counsel for the 4th accused has stressed the difficulty that the dying declaration of the complainant (P-2) ascribes to A-4 only some kind of attack with a stick or vel (it is not all clear which weapon), without giving any more specific detail. But the oral evidence definitely shows that A-4 cut the complainant on the

right foot with an arrival, and this is consistent with the record of investigation (P-1), though that is not the first information report, and is not substantive evidence. If it did not contain anything contradictory to the oral evidence regarding the part played by A-4, that would undoubtedly have been elicited in defence.

6. But with regard to A-3 and A-5, I have no doubt whatever that they were not present, and that they were falsely implicated in the present case, which may be true enough in other particulars. Actually, from the very first, there seems to have been some difficulty and hesitancy in ascribing any specific overt acts to these accused, or even in affirming their presence. This consideration applies with all the stronger force, because A-3 seems to have been the leader of this opposite group, and if he had been presented and had inflicted the injuries, undoubtedly that would have been affirmed even in the very first complaint. On the contrary, the Circle Inspector, P.W. 9 concedes that both P.W. 1 and P.W. 2 at one stage of the interrogation, were not prepared to say that A-3 and A-5 were there. Even more importantly, we have the striking fact that the medical evidence is totally inconsistent with the parts now ascribed to those two assailants (A-3 and A-5), of inflicting injuries with sticks. This is a vital aspect of the evidence which the lower appellate Court as well as the trial Court has virtually overlooked. It is true that the learned Sessions Judge, in appeal, refers to this difficulty in the evidence. But he appears to think that such injuries might have been caused, and may, nevertheless, have subsequently disappeared. I see no grounds for any such assumption, and this is clearly against the well-known facts of medical jurisprudence. Since there was not even a single injury due to a blunt weapon on the person of the complainant, it is abundantly clear that A-3 and A-5 did not beat him with sticks as alleged, and that this is a belated and false development of the case. Where the record shows this, Court of revision would be certainly justified in interference, upon substantial grounds of justice.

7. Under the circumstances, I allow this revision petition to the partial extent of setting aside the conviction and sentence upon A-2 and A-5 respectively. As regards A-4, I note that he has been convicted only under Section 326, Indian Penal Code, read with Section 149 of the Indian Penal Code, without any specific overt act of hurt being proved against him, and he has been sentenced to rigorous

imprisonment for one year. Under the particular circumstances, I direct that the sentence upon him be reduced to rigorous imprisonment for six months. The other sentences are confirmed. The revision petition is otherwise dismissed.

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