

Chellappa Vs. the State

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Court : Chennai

Decided On : Aug-19-1999

Reported in : 2000CriLJ1276

Judge : A. Ramamurthi, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 323, 324 and 326; Protection of Civil Rights Act - Sections 7(1)

Appeal No. : Cri. R.C. No. 795 of 1999

Appellant : Chellappa

Respondent : The State

Advocate for Pet/Ap. : Bhagirathi Rangarajan, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

A. Ramamurthi, J.

1. Petitioner/first accused in C.C. 15 of 1996 has preferred the revision aggrieved against the conviction and sentence imposed by the learned Additional Sessions Judge, Tirunelveli by an order dated 4-11-98.

2. The case in brief is as follows : The Inspector of Police, Ambasamudhram laid a charge-sheet against the petitioner as well as two other persons for offences Under Sections 326, 324 and 323, IPC. On 16-6-95 at about 7-15 p.m. in Idaikal Road, Kovilkulam near the Godown belonging to one Rajalingaraja, the accused with common intention to cause hurt to witnesses, the 1st accused armed with Aruval cut one Periyasamy and caused grievous injury. The second accused with Aruval caused simple hurt to one Selvakumar and the 3rd accused beat one Natesan with stick and caused simple injury. P.W. 1 Periyasamy is the father of P.Ws. 3 and 4, P.W. 2 Selvakumar is the nephew of P.W. 1. P.Ws. 1 to 4 have lands in the village at Kovilkulam. On 16-6-95 at about 7.00 p.m. P.W. 1 was watering his field. P.Ws. 2 and 3 were with him. The first accused came there and diverted the water flowing to the land of P.W. 1. He requested the petitioner to wait for sometime, so that his lands could be watered as he wanted to plant saplings on the next day. Immediately the petitioner retorted and abused his community and diverted the water also. Then the petitioner left the place. P.Ws. 1 to 3 were returning to the village. While they were near Rajalingaraja's godown, P.W. 4 also came there. There was tube light burning near the godown. At that time the petitioner with Aruval ran to cut P.W. 1 and when he attempted to ward it off, the cut fell near the right eye and as such, he sustained injury. P.W. 2 and P.W. 3 went to the Police Station and P.W. 1 gave a statement, which was recorded by P.W. 9 under Ex. P. 1. A case in Crime No. 25/95 was registered under Sections 323, 324, IPC and under Section 7(1)(d) of Protection of Civil Rights Act. Ex. P. 8 is the first information report. The injured were sent to the doctor for treatment.

3. P.W. 8 Dr. Ulagammal, examined P.W. 1 and found one grievous injury on him, for which she gave the wound certificate Ex. P. 6. He was also referred to Tirunelveli Medical College Hospital where one doctor Andrew Jebakumar took X-ray photograph for P.W. 1 and found that there was fracture in the upper part of naxilla and for which he sent a report Ex. P. 4. M.O. 1 is the X-ray. Since Dr. Andrew Jebakumar had gone to foreign country, P.W. 7 doctor Muthukumar, tutor in Radiological department was examined. On the strength of M.O. 1 and Ex. P. 4, the doctor P.W. 8 issued Ex. P, 6.

4. P.W. 10 took up investigation in the case and examined P.Ws. 1 to 4. He went to the scene of occurrence and prepared observation mahazar Ex. P. 2 and also recovered blood-stained (sic) that under a cover of mahazar Ex. P. 3. After completing the investigation, he filed the final report.

5. On behalf of the prosecution, P.Ws. 1 to 10 were examined. Exs. P.1 to P. 9 were marked and M.O. 1 was produced. No witness was examined and no document was marked on the side of the defence. The trial Court found the petitioner guilty Under Section 326, IPC and sentenced him to suffer rigorous imprisonment for two years and also to pay a fine of Rs. 500/-. The petitioner was also found guilty under Section 7(1)(d) of Protection of Civil Rights Act and sentenced to suffer rigorous imprisonment for one month. Aggrieved against this, he preferred C.A. 79/98 on the file of the Sessions Court and the conviction of the petitioner for the offence under Section 326, IPC was confirmed but the sentence of imprisonment was set aside and imposed a further fine of Rs. 2,000/-. The conviction under Section 7(1)(d) of P.C.R. Act was also set aside. Aggrieved against the conviction imposed under Section 326, IPC the present revision is filed.

6. Learned counsel for the petitioner contended that the Appellate Court failed to note the delay in filing the first information report, which is fatal to the case. The learned Sessions Judge also erred in completely believing the evidence of P.Ws. 1 to 3 and the conviction under Section 326, IPC is not proper and correct.

7. Heard the learned counsel for the petitioner.

8. P.W. 1 gave an oral statement with P.W. 9 at 8-30 p.m. and on the basis of which, a case was registered in Crime No. 215/95. P.W. 2 stated that he gave a statement to the Sub-Inspector at 8-00 p.m. and because of this, the learned counsel contended that there is some discrepancy. It has come out in evidence that P.Ws. 1 to 4 went to the Police Station and only on the basis of the statement of P.W. 1, the case was registered. The Appellate Court has explained the discrepancy in the evidence of P.Ws. 1 and 2 and there is no reason to take a different view. The evidence of P.Ws. 1 to 4 is consistent in all material particulars. The delay is only negligible and because of the delay, the case of the prosecution

cannot be thrown out. No doubt, the Police Station as well as the Court are situated in one and the same complex and the delay in first information report reaching the Court will not be fatal to this case. Three persons have sustained injuries and they were also examined in Court and before that, they were examined by the doctor. There is no reason to discard the testimony of P.Ws. 1 to 3.

9. The learned counsel next contended that the witnesses are interested. The occurrence took place at about 7-15 p.m. and as such, persons available alone could speak about the occurrence. There is absolutely no reasons to implicate falsely. There is also no reason to leave the real culprits and implicate the accused. Learned counsel further stated that some material objects were not sent to the Court. At best, it is only a flaw in the investigation and for this, the evidence of the witnesses cannot be brushed aside. The evidence of P.W. 1 is fully corroborated by the evidence of the doctor also and the evidence of the Radiologist established that P.W. 1 had sustained fracture. Under the circumstance, I am of the view that the trial Court as well as the Appellate Court rightly came to the conclusion that the petitioner is guilty under Section 326, IPC.

10. Learned counsel stated that it was only a wordy quarrel and as such, the punishment is severe. It is necessary to state that the petitioner was sentenced to suffer rigorous imprisonment for two years and to pay a fine of Rs. 500/- by the trial Court and the same was modified by the Appellate Court after setting aside the imprisonment and imposing an additional fine of Rupees 2,000/-. Considering the fact that the petitioner was guilty under Section 326, IPC the fine of Rs. 2,500/-, in my view is very lenient and there is no reason to interfere in the punishment also.

11. For the reasons mentioned above, the revision fails and is dismissed.