

Valli Vs. the State and ors.

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Court : Chennai

Decided On : Feb-12-2001

Reported in : 2001CriLJ4815

Judge : A. Ramamurthi, J.

Acts : Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Sections 3(1) and 148; Indian Penal Code (IPC) - Sections 427, 395 and 506; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Criminal Case No. 910 of 1997

Appellant : Valli

Respondent : The State and ors.

Advocate for Def. : C.M. Gunasekaran, Govt Adv. and ;M.M. Sundaresan, Adv.

Advocate for Pet/Ap. : P. Rathinam, Adv.

Judgement :

ORDER

A. Ramamurthi, J.

1. Tmt. Valli, P.W.2 in S.C. No. 214 of 1995 on the file of Principal Sessions Court, Thanjavur, has preferred the revision petition aggrieved against the judgment of

acquittal dated 11.7.1997.

2. The case in brief is as follows:

The petitioner's family was residing in Natham poromboke near Alathur Government Hospital in 4 thatched houses for the past 30 years. They belong to Scheduled Caste. The accused except two belong to other community and they forced the petitioner and others to vacate the place. On 20.12.1993 at about 12.00 Noon, they attacked the houses and destroyed the houses and valuable articles were also missing. They escaped from the attack. The Inspector of Police, Pattukkottai laid a charge against the accused and they formed themselves as members of unlawful assembly with common object of destroying the dwelling houses of Vijayapandian and in furtherance of common object, caused damage to the dwelling houses and also threatened their life and they have committed the offences punishable under Sections 148, s. 3(1)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities). Act (hereinafter referred to as S.C. and S.T. Act.) read with 427 IPC and also under Sections 395 and 506(ii) IPC. The prosecution examined 8 witnesses and marked Exs. P.1 to P.4 to prove the case.

3. P.W.1 Vijaya Pandian was residing in Alathur Village and he belongs to Adi Dravidar Community. He is employed in King Chemicals at Vadacheri and his elder brother P.W.3 is employed as Office Assistant in Pattukkottai Polytechnic. P.W.2 is the mother of P.Ws. 1 and 3. P.W.4 is the wife of P.W.3. They were residing in Natham poromboke near Alathur Government Hospital in 4 thatched houses for last 30 years. The accused came there and called upon them to vacate the thatched houses. When they questioned as to why they should vacate the houses, they abused P.Ws. 1. to 4 by their community and the 2nd accused dismantled the roof of the houses and other accused also destroyed the houses. They also threw the dismantled articles in the pond. Apart from that, the bureau, doors and other articles were also thrown out and educational qualification certificates were also torn. The accused were having deadly weapons like crowbar, spades, etc. When they attempted to escape from the place, again they were threatened. Later, they escaped from the place and went in a bus proceeding to Pattukkottai. Since they were afraid of their lives, they did not go to the police

station, but were hiding in Balakrishnan Polyclinic at Pattukkottai. They saw the accused wandering outside the clinic and on the next day morning, P.W.1 went to the police station and gave complaint Ex. P.1.

About 15 sovereigns of gold jewels, cash of Rs. 8000/- silk sarees and other articles were also taken away. P.Ws.2 to 4 were also examined to corroborate the testimony of P.W.1.

4. P.Ws. 5 and 6 who were examined by the prosecution to prove the observation mahazars, turned hostile and did not support the case. P.W.7 the Sub Inspector of Police received Ex. P. 1 from P.W. 1 and registered a case in Crime No. 1787 of 1993 and prepared express first information report under Ex. P.2. and sent the same to the Court as well as to the other officials. P.W. 8 Inspector of Police took up investigation in the case, went to the place of offence and prepared observation mahazar Ex. P. 3 and prepared rough sketch. He also arrested some of the accused. He recorded the statement from the witnesses. His successor Alimuthu took up further investigation in the case and after completing the investigation, laid charge sheet in the case.

5. After the examination of prosecution witnesses, the accused were also questioned under Section 313 of the Code of Criminal Procedure and they denied the evidence and they did not examine any witness on their side. The trial Court came to the conclusion that the charges framed against the accused were not proved and acquitted them and aggrieved against this P.W.2 has come forward with the present revision petition.

6. Learned Counsel for the petitioner contended that the case should have been dealt with by the Special Court constituted under the provisions of SC & ST Act, 1989. The trial Court was misled by the prosecution since accused 17 and 18 belong to Scheduled Caste and they were also prosecuted along with the other accused. The prosecution was acting with an ulterior motive to spoil the case, as no Special Public Prosecutor to handle the matter. Simply because P.W.1 to 4 are related, their evidence cannot be discarded on that score. Only her members of the family can give evidence and the approach of the Court below is only counter productive. The delay in giving the complaint has been satisfactorily explained.

The prosecuting agency had photographs of the damaged house and articles and they were not filed as material object. The prosecuting agency as working against the interest of the victims. The minor discrepancies ought not have been given importance as P.Ws. 1 to 4 are members of the weaker section and they were the victims of atrocities. The prosecuting agency was not doing its duty effectively and it was helping the accused indirectly.

7. learned Counsel for the contesting respondents as well as learned Government Advocate (Criminal Side) contended that the Court below was justified in acquitting the accused on proper and valid reasons. There is no illegality or infirmity in the order passed by the Court below calling for interference and as such, the revision petition has to be dismissed.

8. Heard the learned Counsel of both parties.

9. The point that arises for consideration is whether the order passed by the Court below is proper and correct?

10. Point: The Inspector of Police, Pattukkottai laid a charge sheet against the accused that on 20-12-1993 at Alathur village near Primary Health Centre Hospital, they armed with weapons formed themselves as members of unlawful assembly with a common object of destroying the dwelling houses of P.Ws. 1 to 4, who belonged to Adi Dravidar community and they have caused damage to their dwelling houses and also took away valuables and threatened them with dire consequences. It is admitted that P.Ws.1 to 4 are related. P.Ws.1 and 3 are the sons of P.W.2 and P.W.4 is the wife of P.W.3. They claimed themselves to the residents of Natham poromboke and according to the prosecution, all the accused armed with deadly weapons came there, caused damages to the property and also took away the valuables. The trial Court has elaborately discussed the evidence of P.Ws. 1 to 4 and gave valid reasons for rejecting the testimony. It cannot be said that the occurrence took place inside the premises and as such, except the interested testimony, no other person can depose in the case. The material contradictions in the evidence of P.Ws. 1 to 4 has been highlighted by the trial Court. They have given different versions regarding the specific overt act of the accused and they have not stated about the presence of all the accused. Even

under Exp.I, the wordings alleged to have been used by the accused completely differ from the version of P.Ws.1 to 4.

11. Admittedly the main road is situate at the distance of 200 yards from the place of offence and there are shops on either side. P.Ws.1 to 4 also stated that at the time of occurrence, 20 to 40 people came there and about 100 persons also gathered subsequently and they witnessed the occurrence; but, curiously enough, not even one independent witness was examined by the prosecution. No reasonable explanation has been given by the prosecution for non-examining any one of the independent witnesses. If the occurrence was not witnessed by any other independent witness, then the question of relying upon the evidence of P.Ws. 1 to 4 can be considered. It is a difference one where number of independent witnesses had seen; but for the reasons best known, no one was examined. According to the prosecution, the occurrence took place in a broad day light and as such, if the occurrence as alleged by the prosecution had taken place, naturally some of the independent witnesses might have come forward to speak the truth.

12. P.W.1 stated about the missing of gold jewels as well as cash from the house of P.W.2; but P.W.2 did not state that these articles were removed by the accused at the time of occurrence. Similarly, P.W.4 also did not whisper about the missing of the gold jewels as well as the other valuables. This is one more circumstance to show that if the occurrence as alleged by the prosecution has taken place, there cannot be a material inconsistency in this regard.

13. It is also necessary to point out that none of the alleged dismantled or destroyed portions of thatched houses was recovered by the Police. The investigating agency had also not recovered any other articles from the scene of occurrence and did not find out whether any articles were thrown into the pond. Even assuming for the arguments sake that there is motive for some of the accused against P.Ws. 1 to 4 but nothing has been stated as to why accused 17 and 18 who also belong to Adi Dravidar community have been implicated in the case. Apart from that P.Ws. 1 to 4 have not find any record to show that they are paying property tax to the property to establish their contention. P.W.3 stated that

assused 17 and 18 had not committed any offence, but the case of the prosecution is a completely different one.

14. There is also inordinate delay in giving the complaint to the police under Ex.P. 1 It has been uniformly stated that the occurrence took place at about 12.00 noon on 20-12-1993; but the complaint was given in' Pattukkottai Police Station only on the next day at about 6,00 a.m. The distance between the Police Station and the place of offence is about 8 kms. It has been uniformly stated by P.Ws. 1 to 4 that they were afraid of the accused and therefore they were hiding in the Poly Clinic of Balakrishnan at Pattukkottai and they were able to give complaint only on the next day. Admittedly, P.Ws. 1 to 4 have traveled in a bus to Pattukkottai and they got down in the tower clock stip at Pattukkottai and went to Balakrishnan Polyclinic. They further stated that some of the accused were also wandering outside the polyclinic; but at the same time, the distance to the Police Station is about 200 feet from the Polyclinic. Apart from that, the prosecution witnesses admitted that the very same bus goes to the Police Station and, as much, when they were able to travel in the bus up to the tower clock, they could have traveled directly to the Police Station and given a complaint on the same day. It is also admitted that Pattukkottai Police Station is situate opposite to the bus stand of Pattukkottai and as such, if really they want to give a complaint about the true incident, they could have directly gone to the Police Station and given a complaint. Moreover, nobody from the hospital has been examined to show that, P.Ws. 1 to 4 were hiding in that place due to fear, In the absence of any such material, it can be safely concluded that no occurrence as alleged by the prosecution had taken place and inordinate delay of 18 hours is fatal to the case of the prosecution. Besides, there is also no reference it. Ex.P. 1 that they were staying in the Polyclinic on the previous night,

15. learned Counsel for the respondents relied on the decision reported in Rajnikanta Panigrahi.... v. Pranabandhu Panda 1982 CRi LJ 133 (Ori) that where the prosecution had examined only interested witnesses and the disinterested witnesses were not examined and the prosecution failed to explain satisfactorily the delay in lodging the first information, report, the order of acquittal of accused by the Trial Court on the ground of failure of the prosecution to present true and complete picture of occurrence could not be interfered in revision.

16. It has also been held in Subramanian, In Re 1979 Mad (Cri) 546 that only in exceptional cases the High Court will interfere in revision with an order of acquittal and in revision against acquittal by a private complainant the High Court cannot reappraise evidence for itself as if it is acting as a Court of appeal and then order a re-trial.

17. They also relied on Radhakrishnan Nair v. State of Kerala 1995 SCC 345 that in the prosecution case if there is delay in sending the first information report to the Magistrate the delay rendered the first information report suspicious in the absence of any explanation.

18. They also relied on John v. State 1990 M L W 175 that delayed first information report will give rise to suspicion and will put the Court on guard to look for possible and acceptable explanation for delay, possibility of false implication may loom large.

19. They also relied on Rang Bahadur Singh and Ors. v. State of U.P. that the time tested rule is that acquittal of a guilty person should be preferred to conviction of an innocent person. Unless the prosecution established the guilt of the accused beyond reasonable doubt a conviction cannot be passed on. the accused. A criminal Court cannot afford to deprive liberty of the appellants, lifelong liberty, without having at least a reasonable level of certainty that the appellants were the real culprits,

20. It is therefore, clear from the aforesaid discussion and decision that the Trial Court has rightly appreciated the evidence as well as documents in its proper perspective. There are more than several reasons to discard the evidence of P.Ws. 1 to 4 and it is doubtful whether the occurrence as alleged by the prosecution could have taken place. This being a revision filed by the prosecution witness, I am of the view that the evidence cannot be reappraised and there is no illegality or infirmity in the order passed by the Court below calling for any interference. Hence, the point is answered accordingly.

21. For the reasons stated above, the revision fails and is dismissed.

