

1.Ramakrishnan Vs. State Represented By

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Court : Chennai

Decided On : Dec-09-2014

Judge : The Honourable Ms. Justice R.Mala

Appellant : 1.Ramakrishnan

Respondent : State Represented By

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED: 09.12.2014 CORAM THE HONOURABLE Ms.JUSTICE R.MALA Criminal Appeal (Md.No.245 of 2004 1.Ramakrishnan 2.Ganapathi .Appellants/A1 and A2 versus State represented by The Inspector of Police Manur, Cr.No.67/2001 Tirunelveli District .Respondent Prayer:Criminal Appeal filed under Section 374(2) Cr.P.C., against the judgment of conviction and sentence dated 26.10.2004 passed in S.C.No.175of 2002 by the Additional Sessions Judge, F.T.C.No.I, Tirunelveli, to set aside the conviction and sentence and acquit the appellants.

!For Appellants : Mr.V.Kathirvelu, learned senior counsel for Mr.K.Prabhu ^For Respondent : Mrs.S.Prabha, G.A.(Crl.

Side) :

JUDGMENT

The Criminal Appeal is arising out of the judgment of conviction and sentence dated 26.10.2004 passed in S.C.No.175of 2002 by the Additional Sessions Judge,

F.T.C.No.I, Tirunelveli, whereby the accused/appellants were convicted and sentenced as follows: Name of Accused Charges Finding Sentence 1.

Ramakrishnan/A1 307 and 326 of I.P.C.Found guilty under Secs.324 and 326 of I.P.C.324: one year R.I.326:3 years R.I and fine Rs.5,000/- in default 2 years S.I.2.Ganapathi/A2 307 r/w 34 and 326 r/w 34 of I.P.C.Found guilty under Sec.

324 and 326 r/w 34 of I.P.C.324: one year R.I.326 r/w 34: 3 years R.I and fine Rs.5,000/- in default 2 years S.I.3.The case of the prosecution is as follows: (i)P.W.1 Velankanni was residing at Karambai, Manur.

P.W.2 Chellappa is his paternal uncle.

There was enmity between the group of P.W.1 and the accused's group in respect of drawing water through oil motor pump.

Due to that previous enmity, on 21.05.2001 at about 11.00 a.m.while P.W.1 Velankanni, P.W.2 Chellappa, P.W.3 Palavesam, Arumugam and Kumar were talking in front of the pump set belongs to one Sivanpandi, the accused came there armed with aruvals and attacked P.W.2 Chellappa with aruval by saying ",njhL bfhd;W tpLfpnwhk;", as a result of which, his left earlobe was cut and caused blood injury on the left shoulder.

A2 Ganapathi attacked P.W.2 with aruval by saying that ",njhL brj;Jj; bjhiy" and caused injuries on his left side forefinger, ring finger and small finger.

A3 Paramasivan attacked him with aruval by saying ",njhL brj;Jj; bjhiy" and caused injuries below the right chest.

A2 Ganapathi attacked P.W.1 with aruval on his forehead and left shoulder and caused injuries and A3 Paramasivan attacked P.W.1 with aruval above the left knee and all the accused ran away from the place and all the injured were taken to Tirunelveli Medical College Hospital by P.W.4 Balasingh.

(ii)On 21.05.2001 at about 01.30 p.m.P.W.5 Dr.ArumugaPandian treated P.W.2 Chellappa and issued Ex.P2 A.R.Copy, opining that the injuries 1 to 4 are simple in nature and the fifth injury is grievous in nature.

On the same day, he treated P.W.1 Velankanni and issued Ex.P3 A.R.copy, opining that the injuries are simple in nature.

(iii)On 21.05.2001 at 1.15 p.m.P.W.7 Madasamy, Sub Inspector of Police, received the intimation and went to Tirunelveli Medical College Hospital at 2.30 p.m.and recorded the complaint Ex.P1 from P.W.1 Velankanni and registered a case in crime No.67 of 2001 for the offences under Sections 307, 326 and 324 of I.P.C.and prepared Ex.P5 fiRs.information report and sent the same to the Court and higher officials.

(iv)P.W.9 A.Subramanian, Inspector of Police took up the case for investigation and went to the place of occurrence and prepared Ex.P6 observation mahazer and Ex.P10 rough sketc.in the presence of P.W.6 Thangaraj and P.W.8 Rajarathinam.

On the same day evening at 6.30 p.m., he recovered the bloodstained earth and sample earth under Ex.P4 seizure mahazer.

On 22.05.2001, at 10.00 a.m.he arrested A1 Ramakrishnan and A2 Ganapathi and recorded their confession statements.

The admissible portion of A1's confession statement is Ex.P7 and the admissible portion of A2's confession statement is Ex.P8 and on that basis, he recovered the aruvals under Ex.P9 seizure mahazer and sent the accused for judicial custody.

(v)P.W.10 Rajavelu, Inspector of Police took up the case for further investigation and after due completion of the investigation, he filed charge sheet against the accused on 24.07.2001 for the offences under Sections 307, 326 and 324 read with 34 of I.P.C.4.The learned trial Judge after following the procedures, framed necessary charges against the accused.

Since the accused pleaded not guilty, to prove the charges, P.W.1 to P.W.10 were examined and Exs.P.1 to P.10 and M.O.1 to M.O.5 were marked.

Accused were questioned under Section 313 Cr.P.C.about the incriminating evidence and circumstances.

Accused denied the same and stated that a false case has been foisted against them.

No witness was examined on the side of the defence.

5. On considering the oral and documentary evidence, the learned Sessions Judge convicted the accused and sentenced him as stated above, against which A1 and A2/the appellants herein filed the present appeal.

6. Challenging the conviction and sentence passed by the trial Court, Mr. V. Kathirvelu, the learned senior counsel would submit that since the appellants and P.W.1 are close relatives, they are having common electric motor pump set and since the motor pump set was repaired, the accused have taken water by using oil pump set and that has been questioned by P.W.1 and hence a false complaint has been given and that factum has not been considered by the trial Court.

7. He would further submit that the scene of occurrence is doubtful and as per the prosecution, the place of occurrence is in front of Sivanpandiyar's pump set and that has not been properly proved.

He would further submit that P.W.5 Dr. Arumugapandiyar in his evidence has deposed that P.Ws.1 and 2 were taken by two different persons i.e. P.Ws.3 and 4, whereas, P.W.4 has deposed in his evidence that he alone has taken them to hospital and hence, there are contradictions.

8. He would further submit that to prove the offence under Section 326 of I.P.C., no X-ray has been marked and there is a delay in despatching the fiRs. information to the Court and while framing of charges, the manner in which, the injured were assaulted has not been properly mentioned and hence they are entitled for acquittal and he prayed for setting aside the judgment of conviction and sentence.

9. Resisting the same, the learned Government Advocate (criminal side) would submit that in respect of framing of charges is concerned, as per Section 212 Cr.P.C., the place, time and date has been clearly mentioned and the weapons used for the commission of offence also has been mentioned and merely because

the non mentioning of the parts, where the injured were assaulted is not fatal to the case of prosecution.

10.She further submitted that the motive is a double edged weapon and since eye witnesses are available, motive is not played a vital role.

The scene of occurrence has been clearly proved by examination of P.Ws.1 to 4 and P.W.3 Palavesam is the son of Sivanpandiyar and hence, the evidence of P.Ws.1 to 4 has clearly proved the scene of occurrence and that factum was rightly considered by the trial Court.

She would further submit that since P.W.2 Chellappa has lost his left lobe of the ear, the nature of injury would come under grievous and hence to prove the charge under Section 326 of I.P.C., there is no necessity for filing any X-ray and that factum has also been correctly considered by the trial Court.

11.She would further submit that there is no delay in sending the fiRs.information report to the Court and even though the occurrence has been taken place on 21.05.2001 at 11.00 hours and the complaint has been given at 16.00 hours and it reached the Court on 05.50 p.m.on 22.05.2001, the fiRs.information report contains the name of the appellants and hence, she prayed for the dismissal of the appeal.

12.Considering the rival submissions made on either side and perusal of the typed set of papeRs.the case of the prosecution is that P.W.1 Velankanni and A1 to A3 are having common right in the well, from which, they are entitled to take water through electric motor pump set.

Admittedly, since the electric motor pump set was found repaired, the appellants herein have used the oil motor pump set and draw the water to the lands and hence, the alleged occurrence has been taken place.

13.It is well settled dictum of the Apex Court that the motive is double edged weapon.

But, in the cases based on eye witnesses, the motive is not played a vital role for deciding the case.

Hence, I am of the view that the argument advanced by the learned senior counsel for the appellants that because of the motive, false complaint has been given against the appellant does not merit acceptance.

14.The second limb of argument advanced by the learned senior counsel for the appellant is that the scene of occurrence has not been proved by the prosecution beyond all reasonable doubt.

Here, as per the prosecution, in front of the Sivanpandiyan's pump set, the alleged occurrence has been taken place and that has been corroborated by the evidence of P.Ws.1 to 4, who are eye witnesses.

P.W.3 is the son of Sivanpandiyan, who himself has deposed as to how the occurrence has been taken place.

Now, this Court has to be decided as to whether the evidence of P.Ws.1 to 4 are reliable or not?.

15.It has been held by the Apex Court that the conviction can be based on the sole testimony of the victim, if found to be worthy of credence and reliable and for that no corroboration is required.

It has often been said that oral testimony can be classified into three categories, viz., (I) wholly reliable, (ii) wholly unreliable, and (iii) neither wholly reliable nor wholly unreliable.

In case of wholly reliable testimony of a single witness, the conviction can be founded without corroboration.

Therefore, this Court has to scrutinize the evidence of P.Ws.1 and 2 with great care and caution and to decide whether their evidence are reliable?.16.Perusal of the evidence of P.W.1 and 2, who are injured witnesses would show that they are close relatives of the appellants and they are having enmity between them in respect of drawing water from the well and in such circumstances, I am of the view

that their evidence are partly reliable, which needs corroboration.

Hence, this Court has considered the evidence of P.Ws.3 and 4 to find out as to whether their evidence are reliable or not?.

17.On perusal of the evidence of P.Ws.1 to 4 has clearly narrated as to how the occurrence has been taken place.

Admittedly, P.W.4 in his evidence has stated that he has taken P.Ws.1 and 2 to the hospital, where P.W.5 Dr.Arumugapandiyan treated them and issued Ex.P.2 and 3 to P.Ws.2 and 1 respectively.

It is true, in Ex.P2, it has been stated that P.W.2 Chellappa was taken by P.W.4, wherein, in Ex.P3, it has been stated that P.W.1 Velankanni was taken by P.W.3 Palavesam, but, it will not be a reason for setting aside the conviction.

Perusal of Ex.P2 would show that P.W.2 was alleged to have been assaulted with aruval by two known persons at his field at about 11.00 a.m.on 21.05.2001 and he was treated by him at 01.30 p.m.Likewise, at 1.40 p.m.P.W.1 Velankanni was treated by him wherein, it was mentioned that P.W.1 was alleged to have assaulted with aruval by two known persons at his field at about 11.00 a.m.on 21.05.2001.

Merely because, in the A.R.Copy, the doctor has mentioned that they were assaulted by two persons at their field.

18.At this juncture, it is appropriate to consider the complaint.

The complaint has been given on 21.05.2001 at 16.00 houRs.wherein, the name of three persons have been mentioned as accused.

Admittedly, as per Ex.P2 and P3, the injured were conscious.

Therefore, it is clear that during the time of treatment at 1.30 p.m.on 21.05.2001, they have stated that they were assaulted by two known persons.

Whereas, in the complaint, which was given at 04.00 p.m. on the same day, they have stated that they were assaulted by three persons.

Furthermore, the fiRs.information has been reached the Court at 05.50 p.m. on 22.05.2014 only and hence, there is a delay of more than a day has been occurred.

19. It is well settled dictum of Apex Court that the delay in reaching the fiRs.information and registering the complaint is the meeting of the minds by several persons and deliberately when they are implicating others in the complaint.

Here, the fiRs.documents are Ex.P2 and Ex.P3.

The doctor has seen P.Ws.2 and 1 at 01.30 p.m and 1.40 p.m. respectively on 21.05.2001.

At that time, they have mentioned that they were assaulted by two known persons.

Whereas, in the complaint which was given at 04.00 p.m. P.W.1 was stated that they were assaulted by three persons and there is a delay in despatching the fiRs.information to the court.

Therefore, the prosecution has failed to prove that which two accused had assaulted P.Ws.1 and 2.

Hence, considering the cumulative effect that the complaint has been prepared in a later point of time after deliberating with meeting of several minds and implicating the persons, who had enmity with them, I am of the view that the argument advanced by the learned senior counsel appearing for the appellants that the delay in despatching the fiRs.information to the Court is fatal to the case is prosecution is an acceptable one.

20. To prove the confession and recovery, P.W.6 Thangaraj has been examined.

But, he turned hostile.

However, P.W.8 Rajarathinam has deposed about the confession and recovery.

But, the prosecution has failed to prove that which two accused had assaulted P.W.1 and 2 beyond all reasonable doubt.

P.W.9 Subramanian and P.W.10 Rajavelu, who are the investigating officers has not concentrated on the point of A.R.Copy.

It is true, P.Ws.1 and 2 had sustained injury and P.W.2 Chellappa has lost his earlobe.

21.As per the criminal jurisprudence, no conviction has been passed on the basis of inference.

There are contradictions between the complainant and A.R.Copies as to the involvement of the accused for the commission of offence and there is a delay in despatching the fiRs.information to the Court.

The prosecution ought to have proved the guilt of the accused beyond all reasonable doubt and those factum was not considered by the trial Court and hence, I am of the view that the benefit of doubt shall be given to the appellants/A1 and A2 and the judgment of conviction and sentence passed by the trial Court is liable to be set aside and the appeal is liable to be allowed and the appellants/A1 and A2 are liable to be acquitted from the charges levelled against them.

22.In fine, The Criminal Appeal is allowed.

judgment of conviction and sentence dated 26.10.2004 passed in S.C.No.175of 2002 by the Additional Sessions Judge, F.T.C.No.I, Tirunelveli, is set aside.

The appellants/A1 and A2 are acquitted from all the charges framed against them.

The fine amount already paid by the appellants/A1 and A2 is ordered to be refunded.

The bail bonds executed by appellants/A1 and A2, if any, shall stand cancelled.

09.12.2014 Index:Yes Internet:Yes arul To 1.The Inspector of Police Manur, Tirunelveli District 2.The Additional Sessions Judge, F.T.C.No.I, Tirunelveli, 3.The

Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.

R.MALA,J.

arul judgment made in Criminal Appeal No.245 of 2004 09.12.2014

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