

Rengasamy Vs. State Rep. By

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Court : Chennai

Decided On : Dec-04-2014

Judge : The Honourable Ms. Justice R.Mala

Appellant : Rengasamy

Respondent : State Rep. By

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED: 04.12.2014 CORAM THE HONOURABLE Ms.JUSTICE R.MALA Criminal Appeal (Md.No.273 of 2007 Rengasamy .Appellant versus State rep.

by The Inspector of Police Orathanadu Police Station Thanjavur District Crime No.307 of 2003 .Respondent Prayer:Criminal Appeal filed under Section 374 Cr.P.C., against the judgment of conviction and sentence dated 08.06.2007 passed in S.C.No.4 of 2007 by the Additional Sessions Court (FTC II).Pattukottai, to set aside the conviction and sentence and acquit the appellants.

!For Appellants : Mr.A.Arun Prasad ^For Respondent : Mrs.S.Prabha, G.A.(Crl.

Side) :

JUDGMENT

The Criminal Appeal is arising out of the judgment of conviction and sentence, dated 08.06.2007 passed in S.C.No.4 of 2007 by the S.C.No.4 of 2007 by the

Additional Sessions Court (FTC II).Pattukottai, whereby the accused was acquitted for the offences under Sections 307 and 506(2) of I.P.C.and he was found guilty for the offence under Section 324 of I.P.C.and convicted and sentenced to under go three years rigorous imprisonment and to pay a fine of Rs.1,000/- in default to undergo three months rigorous imprisonment.

3.The case of the prosecution is as follows: (i)P.W.1 Murugaiyan was residing at Melayoor village at Orathanadu.

Two days prior to the occurrence, since the son of the appellant had picked groundnut in the field of P.W.1, there was a quarrel between the appellant and P.W.1 and hence, there was an enmity.

Due to the said enmity, on 14.06.2003, at 08.00 p.m., while P.W.1 was going through the house of the appellant/accused, the appellant assaulted the accused on his middle head with pole by saying ",j;njhL bjhiye;J nghlh" and caused blood injury.

On hearing the noise, P.W.4 Pavunammal, who is the sister of P.W.1 and P.W.5, Ravi, who is the sister's husband rushed there and taken him to the Orathanadu Police Station, where P.W.1 has given complaint, Ex.P1.

(ii)On 16.06.2003 at about 9.30 p.m., Head Constable Venugopal received Ex.P1 complaint and registered a case in crime NO.307 of 2003 for the offence under Sections 325 and 506(ii) of I.P.C.and prepared Ex.P7, fiRs.information report and he sent the injured to the Tanjore Medical College Hospital for taking treatment along with medical memo.

Thereafter, P.Ws.4 and 5 have taken P.W.1 to the Tanjore Medical College Hospital.

(iii) 16.06.2003 at about 22.10 p.m.P.W.9 Dr.Ramu examined P.W.1 and took x-ray and issued Ex.P5, A.R.Copy and Ex.P6 medical legal opinion opined that the injury sustained by him is simple in nature.

(iv) P.W.10, Selvam, Inspector of Police, took up the case for investigation and visited the place of occurrence and prepared Ex.P2 observation mahazer and Ex.P8 rough sketc.in the presence of P.W.5 Ravi and P.W.6 Muthuramalingam and recovered M.O.1 casuarina pole, which was used by the appellant for the commission of offence, under Ex.P9 seizure mahazer in the presence of same witnesses.

Thereafter, she examined the witnesses and recorded their statements, on the basis of which, he altered the offence into under Sections 325, 506(ii) and 307 of I.P.C.and the alteration report is Ex.P11.

After completion of due investigation, P.W.11, Mr.Ramesh, Inspector of Police, filed the charge sheet against the accused under Sections 307 ad 506(ii) of I.P.C.4.The learned Judge after following the procedure, framed necessary charges against the accused.

Since the accused pleaded not guilty, to prove the charges, P.W.1 to P.W.11 were examined and Exs.P.1 to P.11 and M.O.1 were marked.

On completion of the prosecution witnesses, the accused was 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.

6.Challenging the conviction and sentence passed by the trial Court under Section 324 of I.P.C., the learned counsel appearing for the appellant would submit that the independent eye witnesses were turned hostile and the sister and brother-in-law of P.W.1 alone were deposed about the occurrence.

P.W.3 is his cousin brother and except these related witnesses, no other witness is available.

He would further submit that the motive as alleged by the prosecution that when the son of the accused was picking groundnut in the field of P.W.1, the same was questioned and hence, the alleged occurrence had been taken place is false.

But, as per the defence, P.W.1 misbehaved with the daughter of the accused and that has been questioned by the ladies when P.W.1 went through the house of the appellant and at that time, he has fallen down from the cycle and sustained injuries and since he wanted to escape from the clutches of law, he gave a false complaint and the injury sustained by him was possible, when he fallen down from the cycle and that has been conceded by P.W.9 Dr.Ramu and Ex.P6 A.R.Copy and that factum was not considered by the trial Court.

7.He would further submit that the material object itself is doubtful.

P.W.10 in his evidence has stated that it is casuarina pole, whereas, it has been stated in the Form 95 as Eucalyptus pole and that factum has not been considered by the trial Court and hence, because of the motive, a false complaint has been given.

8.He would further submit that the complaint has been given against one person, whereas, in the A.R.copy, it was stated that the accused was alleged to have been attacked by known persons and not by a single person and that factum also has not been considered by the trial Court and hence, he prayed for setting aside the judgment of conviction and sentence and acquitting the appellant.

9.Resisting the same, Mrs.S.Prabha, the learned Government Advocate (Crl.

Side) would submit that the vary of material object is not fatal to the case of prosecution and P.W.10 has given explanation as to why it was wrongly mentioned as Eucalyptus pole instead of casuarina pole.

She would further submit that even though charges were framed against the appellant for the offence under Sections 307 and 506(ii) of I.P.C., the trial Court, after considering the oral and documentary evidence, convicted him only for the offence under Section 324 of I.P.C.and hence, she prayed for the dismissal of the appeal.

10. Considering the submissions made by both sides and on perusal of the typed set of papers, now, the point to be decided as to whether the discrepancies in the FIRs, information and A.R. copy is fatal to the case of prosecution?

Admittedly, the alleged occurrence was said to have been taken place on 14.06.2003 at 08.00 p.m. and the case was registered at 09.30 p.m., wherein, the only name of the appellant was mentioned as accused.

The injured was seen by P.W.9 Dr. Ramu at 11.20 p.m. and in A.R. Copy it was mentioned that the injured was alleged to have been attacked by known persons.

In such circumstances, I am of the view that there are discrepancies in the FIRs, information report and the A.R. copy and the same is fatal to the case of prosecution.

11. The second limb of argument of the learned counsel for the appellant is that there are discrepancies in the material object.

Considering the evidence of P.W.10, Selvam, Inspector of Police, he seized casuarina pole, which was used by the appellant for the commission of offence and he sent the same to the Court under Form 95.

But, perusal of Form 95 would show that only the Eucalyptus pole was produced before the Court.

Admittedly in Ex.P10, Form 95, there was correction in respect of the width of the material object.

In such circumstances, it creates a doubt in the minds of the Court and hence, the argument advanced by the learned counsel for the appellant that there is discrepancy in the material object is an acceptable one.

12. The third point raised by the learned counsel appearing for the appellant is that the motive as alleged by the prosecution is false.

As per the prosecution, when the son of the accused was picking groundnut in the field of P.W.1, the same was questioned and hence, the alleged occurrence had

been taken place.

P.W.1 injured has possessed land and that has been proved by way of examining P.W.8, V.A.O and Ex.P4, patta.

But, as per the defence, P.W.1 was alleged to have misbehaved with the daughter of the accused and that has been questioned by the ladies, while he was crossing the house of accused in cycle and at that time, he fell down from the cycle and sustained injuries and since he wanted to escape from the clutches of law, he gave a false complaint .

As per the dictum of the Apex Court, the prosecution ought to have proved the guilt of the accused beyond all reasonable doubt.

But, here, in the present case, the accused has probablised his defence and the prosecution has not proved his guilt beyond reasonable doubt.

13.Now, this Court has to decide as to whether the defence raised by the appellant/accused has probablised by way of cross examination.

P.W.1 is an injured eye witness and other eye witnesses were turned hostile.

It is well settled dictum of the Apex Court that the evidence of hostile witnesses cannot be rejected in toto and that can be relied upon, if it supports either the case of prosecution or proboblise the evidence of defence.

On perusal of P.W.2's evidence would show that he has not totally discarded the occurrence and hence, his evidence is partly reliable.

P.Ws.3 to 5 are close relatives and hence, as per the dictum of the Apex Court, the evidence of related interested witnesses can be reliable, provided it must be scrutinised with great care and caution.

14.Perusal of the evidence of P.Ws.3 to 5, it is clear that they are all residing in the same village.

P.W.3 Appu in his evidence has stated when he heard the noise, he gone to the place of occurrence and at that time, the accused flee from the place of occurrence.

But, he has not stated that he witnesses the assault made by the appellant.

P.W.4 Pavunammal, who is the sister also has not stated that she witnessed the same and she has stated that when she went to the place, her brother laid down with injury.

P.W.5 Ravi has also corroborated the same .

In such circumstances, I am of the view that the prosecution has not proved the guilt of the accused beyond all reasonable doubt.

15.Now, this Court has to scrutinize the evidence of P.w.1, who is injured witness.

He has deposed in his evidence that two days prior to the occurrence, there was a quarrel in respect of taking groundnut in the field of P.W.1 by the son of the appellant.

In his chief examination, he has stated that due to the said previous enmity, the accused assaulted P.W.1.

But, in his cross examination, a suggestion was posed to him that since he was misbehaved with the daughter of the appellant and the same has been questioned by the ladies and at that time, she fell down and sustained injuries and he denied the same.

16.At this juncture, this Court has to consider the medical evidence to find out as to whether the ocular evidence has been corroborated the evidence of P.W.9.

P.W.9 Dr.Ramu has deposed in his evidence that P.W.1 sustained injury in 8x3x2cm bone depth over the left temporal region and he was admitted in the hospital.

In his cross examination, he has deposed that there was a change to get injured by falling down on one side from the cycle.

The learned counsel appearing for the appellant has taken me through the evidence of P.W.1, wherein, he has deposed that he was assaulted in the middle of the head, but, he has not sustained any injury on his middle head.

As per the evidence of P.W.9 also, no injury has been found place on his middle head.

In such circumstances, I am of the view that the evidence of P.W.1 is partly reliable, which required corroboration.

P.W.2 in his evidence has deposed that when he gone to the place of occurrence, the accused/appellant gone away from the place and no one has witnessed that the appellant/accused assaulted P.W.1, injured.

In such circumstances, there is no corroboration for the evidence of P.W.1.

Per contra, the defence has been probalised by the evidence of P.W.1 at the time of cross examination.

The doctor has also given opinion that the injury was possible when a person fallen down from the cycle on one side.

17.For the forgoing reasons, I am of the view that the prosecution has not proved the guilt of the accused beyond all the reasonable doubt and hence, the benefit of doubt shall be given to the appellant/accused and the appeal is liable to be allowed and the judgment of conviction and sentence is liable to be set aside and the appellant/accused is liable to be acquitted from the charge levelled against him.

18.In fine, The Criminal Appeal is allowed.

Judgment of conviction and sentence dated 08.06.2007 passed in S.C.No.4 of 2007 by the Additional Sessions Court (FTC II).Pattukottai, is set aside.

The appellant/accused is acquitted from all the charges levelled against him.

The fine amount already paid by the appellant/accused is ordered to be refunded.

The bail bonds executed by appellants, if any, shall stand cancelled.

04.12.2014 Index:Yes Internet:Yes arul To 1.The Inspector of Police Orathanadu Police Station Thanjavur District.

2.The Additional District and Sessions Judge, F.T.C.No.III, Pudukkottai.

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

R.MALA,J.

arul judgment made in Criminal Appeal No.273 of 2007 04.12.2014

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