

Ramesh Alias Ramesh Babu and ors. Vs. State

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Court : Chennai

Decided On : Dec-20-2011

Judge : M.Jaichandren; S.Nagamuthu, Jj.

Acts : Indian Penal Code (IPC) - Sections 148, 324, 302, 326, 147, 323, 307, 427;
Code of Criminal Procedure (CrPC) - Section 313

Appeal No. : Criminal Appeal(MD)No.12 of 2011

Appellant : Ramesh Alias Ramesh Babu and ors.

Respondent : State

Advocate for Def. : Mr.C.Ramesh, Adv.

Advocate for Pet/Ap. : Mr.K.Thirumalairaj, Adv.

Judgement :

The appellants are the accused 1 to 7 in S.C.No.72 of 2009 on the file of the learned Additional District and Sessions Judge, Fast Track Court, Periyakulam. Originally there were nine accused. One Chinnaiah @ Sivakumar was arrayed as first accused in the final report, died during trial. Therefore, the order of these accused who were arrayed originally as accused 2 to 8 was rearranged as accused 1 to 7. The eighth accused, one Thayammal, was acquitted by the Trial Court.

2.By judgment dated 20.12.2010, the Trial Court convicted the appellants 1 and 2 under Sections 148 and 324 IPC and sentenced them to pay a fine of Rs.500/- each, in default, to undergo R.I. for one month for offence under Section 148 IPC, and to pay a fine of Rs.1,000/- each, in default, to undergo R.I. for 6 months for offence under Section 324 IPC. The third appellant has been convicted under Section 148 IPC and sentenced to pay a fine of Rs.500/-, in default, to undergo R.I. for 3 months. The fourth appellant has been convicted under Sections 148, 302 and 326 IPC and sentenced to pay a fine of Rs.500/-, in default, to undergo R.I. for 3 months for offence under Section 148 IPC, and to undergo imprisonment for life and to pay a fine of Rs.1,000/-, in default, to undergo R.I. for 6 months, for offence under Section 302 IPC, and to undergo R.I. for 3 years and to pay a fine of Rs.2,000/-, in default, to undergo R.I. for 6 months for offence under Section 326 IPC. The fifth appellant has been convicted under Sections 148 and 324 (2 counts) IPC and sentenced to pay a fine of Rs.500/-, in default, to undergo R.I. for 3 months for offence under Section 148 IPC, and to pay a fine of Rs.1,000/- for each count, in default to undergo R.I. for 6 months for each count for offence under Section 324(2 Counts) IPC. The appellants 6 and 7 have been convicted under Sections 147 and 323 IPC and sentenced to pay a fine of Rs.100/- each, in default to undergo S.I. for one month for offence under Section 147 IPC and to pay a fine of Rs.500/- each, in default, to undergo S.I. for one month, for offence under Section 323 IPC.

3.Challenging the conviction and sentence, the appellants have come up with this Criminal Appeal.

4.The case of the prosecution, in brief, is as follows:- The deceased in this case was one Selvam. P.W.1 is his wife. P.Ws.2 and 3 are the mother and brother, respectively of P.W.1. P.W.4 is the sister of P.W.1. P.W.5 is the brother of the deceased. P.W.1 and her husband were residing at Pattalamman Koil Street at old Vathalagundu. P.Ws.2, 3 and 4 were residing at Periyakulam, Ambedkar Street. The father of P.W.1, Karuppaiah had taken on lease a Guava thope from Periyakulam Municipality. The fourth accused Kamaraj was working as a Bill Collector in the said Municipality. After the demise of Karuppaiah, the thope was in the possession of P.W.2 and her family members. The fourth accused-Kamaraj did

not like it. The chicken in large numbers, belonging to Kamaraj, spoiled the crops planted in the said thope sometime before. This has resulted in a quarrel between the two families. This is stated to be the motive between the parties.

5.As far as the accused are concerned, the first accused is the son of the fourth accused. The fifth accused is yet another son of the fourth accused. The accused 2 and 3 are the relatives of the first accused. The seventh accused is the son of the second accused, and the sixth accused is the daughter-in-law of the fourth accused. The eighth accused is also related to the other accused. They were also residing in the very same locality.

6.On 02.09.2008, a temple festival was celebrated in Ambedkar Nagar in Periyakulam. On the invitation from P.W.2, the deceased, P.W.1, P.W.5 and P.W.7 had come as guest to the house of P.W.2 for the said festival. At about 9.00 p.m., the deity was taken in a procession through the street. The deceased-accused Chinnaiah @ Sivakumar was carrying karagam and he was dancing in the procession. At that time, the deceased Selvam objected to the manner in which the deceased accused Chinnaiah was dancing. This had resulted in a pell-mell and quarrel between the parties. The people who were in the crowd, passified them. Thereafter all these accused came with armed weapons to the place of occurrence, viz. near the house of P.W.2. They had aruvals, veecharuvals, knife, crow-bar and bamboo sticks in their hands. Suddenly, they started attacking the deceased party. The first accused attacked P.W.3 on his right upper arm with aruval. The second accused attacked P.W.3 on his head with aruval. The third accused attacked P.W.3 on his left shoulder with knife and caused injuries. The fourth accused attacked P.W.2 on her right knee with aruval. The fourth accused attacked the deceased on the back of his head and the fifth accused attacked the deceased on the left middle finger. The deceased fell down, profusely bleeding. The third accused caused damage to the house of P.W.2. The sixth accused attacked P.W.1 on her right palm and the eighth accused attacked P.W.5 on his hand and leg with a bamboo stick. The seventh accused attacked P.W.4 on the left side of her head with bamboo stick. After having caused these injuries, all the accused fled away from the place of occurrence. P.Ws.7 and 9 witnessed the occurrence.

7.The occurrence was witnessed by P.W.9 also. Thereafter, in the auto driven by P.W.6, all the injured were taken to the Periyakulam Government Hospital. At 9.30 p.m., when P.W.22 Dr.Peter Swaminathan was in the casualty of the Government Hospital, Periyakulam, P.Ws.1, 2, 3 and 4 came for treatment. On examining P.W.3, he noticed the following injuries:-

1)A lacerated injury measuring 5 x 1 x 1 cm on the on the right upper arm. 2)A lacerated injury measuring 7 x 3 x 1 cm on the left fore arm. 3)A cut injury measuring 10 x 2 x 5 cm on the left palm. 4)A 'V' shape cut injury measuring 10 x 1 x 3 cm on the head. 5)A lacerated injury measuring 3 x 1 x 1 cm on the right shoulder.

8.After giving first aid and after entering the injuries in the Accident Register, P.W.22 referred him for further treatment to Rajaji Medical College Hospital at Madurai. Ex.P12 is the Wound Certificate issued by him. As per the findings given by the doctor at the Government Rajaji Medical College Hospital, Madurai, the third injury was a grievous injury. Accordingly, he gave an opinion that Injury No.3 was grievous and others were simple injuries.

9.On examining P.W.2, he noticed the following injuries: 1)A lacerated injury measuring 1 cm on the right knee. 2)Patella was visible as it was exposed.

P.W.22 forwarded her also to the Government Rajaji Medical College Hospital, Madurai for further treatment. From the findings of the doctor at Government Rajaji Medical College Hospital, Madurai, there is fracture of tibia and femur on the right leg of P.W.2. Therefore, he gave an opinion that the said injury was grievous. Ex.P13 is the Wound Certificate.

10.Then he examined P.W.4 and noticed the following injury:- A lacerated injury measuring 7 x 1 x 5 cm on the left side of her head. P.W.22 forwarded her to the Government Rajaji Medical College Hospital, Madurai for further treatment. The injury sustained by her was simple in nature. Ex.P14 is the Wound Certificate issued to her.

11. Then he examined P.W.1 and noticed the following injuries:- 1) A lacerated injury measuring 2 x 1 x 0.5 cm on the left thumb. 2) A lacerated injury measuring 2 x 1 x 0.5 cm on the left fore arm. 3) A lacerated injury measuring 1 x 2 cm on the right palm. All the said injuries were simple in nature. Ex.P15 is the Accident Register issued by him.

12. P.W.26-Dr.Thanappan, treated P.W.2 at the Government Rajaji Hospital, Madurai and gave an opinion that the injuries sustained by her were grievous in nature.

13. While in the hospital, P.W.1 narrated the occurrence to P.W.8, and P.W.8 reduced the same into writing. Thereafter, P.W.1 went to Thenkarai Police Station and presented the said complaint (Ex.P1) to the Police.

14. P.W.25, who was the then Sub-Inspector of Police attached to Thenkarai Police Station received Ex.P1-complaint from P.W.1 and registered a case at 11.15 p.m., in Crime No.491 of 2008 under Sections 147, 148, 323, 324, 427, 307 and 302 IPC. Ex.P26 is the First Information Report. He forwarded Ex.P1 and Ex.P26 to the Court and then handed over the case diary to P.W.27 for investigation.

15. Taking up the case for investigation, P.W.27 proceeded to the place of occurrence at 12.45 a.m. on 03.09.2008 and prepared an Observation Mahazar in the presence of P.W.10 and another witness. Then he recovered blood stained earth and sample earth from the place of occurrence in the presence of the very same witnesses under a mahazar. Then he recovered blood stained earth and sample earth from the place near the house of one Chinnaponnu under a mahazar. Then he examined the witnesses, including the injured witnesses. From 7.00 a.m. onwards, on 03.09.2008, at the hospital, he conducted inquest on the body of the deceased in the presence of witnesses. He examined few more witnesses and recorded their statements. He recovered blood stained clothes from the injured persons under mahazar.

16. On 05.09.2008, at 6.00 p.m., he arrested the accused 1, 3, 4, 5 and 8 in the presence of witnesses. On such arrest, they gave confessional statements voluntarily and they were all recorded independently by P.W.27. On the disclosure

statements made by each accused, the weapons used in the crime by the respective accused, were all seized. On 11.09.2008, P.W.27 arrested the second accused and on such arrest, he gave a confession out of which M.O.22 was recovered. P.W.27 requested the Court to forward the material objects for chemical examination. Thereafter, he handed over the case diary for further investigation, to P.W.28. On completing the investigation, P.W.28 laid charge sheet against all the accused including the deceased accused Chinnaiah.

17. Based on the above materials, the Trial Court framed as many as 7 charges, as follows:-

The first charge is under Section 148 IPC against all the eight accused. The second charge is under Section 307 IPC against the accused 1 to 4. The third charge is under Section 302 IPC against the accused 4 and 5. The fourth charge is under Section 427 IPC against the third accused. The fifth charge is under Section 324 IPC against the accused 6 and 8. The sixth charge is under Section 324 (2 counts) IPC against the seventh accused. The seventh charge is under Section 302 r/w 149 against the accused 1, 2, 3, 6, 7 and 8.

18. When the accused were questioned in respect of the charges, they pleaded innocence. Therefore, they were put on trial. Before the Trial Court, on the side of the prosecution, as many as 28 witnesses were examined and 35 documents were exhibited, besides 22 material objects. Out of the said 28 witnesses, P.Ws.1 to 5 are the injured witnesses and P.Ws.7 and 9 are the eye-witnesses to the occurrence. All these witnesses have stated about the participation of all these accused in the occurrence and their respective overt acts.

19. When the accused were questioned under Section 313 Cr.P.C., in respect of the incriminating evidences against them, they denied the same as false. According to them, the deceased party were the aggressors. In the procession which was a part of the festival, the deceased Selvam intercepted and indulged in violence. Because of the act of the deceased, there was commotion which resulted in a free-for-all in which the accused were also attacked and they also sustained injuries. On the side of the accused, D.W.1-Dr.K.Eswaran was examined to speak about the injuries sustained by the deceased accused-

Chinnaiah, the fifth accused-Maharajan and the fourth accused-Kamaraj.

20.Having considered the above materials, the Trial Court convicted the accused under various penal provisions as detailed in the earlier paragraph of the judgment and acquitted them from the other charges. The eighth accused- Thayammal was acquitted from all the charges framed against her. That is how these appellants are before this Court, with this appeal.

21.We have heard the learned Senior Counsel appearing for the appellants and the learned the Additional Public Prosecutor for the respondent, and perused the records carefully.

22.The foremost contention of the learned counsel for the appellants is that the prosecution has not come forward with clean hands and the genesis of the occurrence has been suppressed. To substantiate his contention, the learned counsel would submit that the injuries sustained by some of the accused, as spoken to by D.W.1 have been completely suppressed by the prosecution. He would further submit that the prosecution has not come forward with true version of the occurrence and the prosecution has suppressed the case projected by the accused. Therefore, according to the learned Senior Counsel, the accused are entitled for acquittal.

23.But the learned Additional Public Prosecutor would submit that from the evidence of the injured eye-witnesses, viz. P.Ws.1 to 5 and the other eye- witness, viz. P.W.7, the prosecution has clearly established the case against these accused. Therefore, the conviction imposed on them by the Trial Court needs only to be confirmed, he contended.

24.We have considered the above submissions. Admittedly, the prosecution party and the accused party were in inimical terms. It is the further admitted case that at the time of occurrence, the procession of the deity, as a part of the festival, was in progress. It is in evidence that when the procession was nearing the house of P.W.2, the deceased who was sitting in the said house, came out and developed quarrel. Thereafter, it is stated by P.W.1 and all the other eye-witnesses that these accused suddenly emerged with weapons and attacked the deceased and the

injured eye-witnesses. Now, the question is, whether the said version of these eye-witnesses can be believed. Admittedly, all these injured persons who have spoken to about the occurrence, and the other eye-witnesses, belong to one and the same family. Thus they are partisan in nature. They are also closely related to each other and highly inimical towards the accused party. With this backdrop, we have to analyse as to whether these witnesses can be believed and whether they have come forward with the true version of the occurrence.

25. At this juncture, we may refer to the evidence of P.W.9, who is an independent eye-witness to the occurrence. He is the resident of Ambedkar Street. According to him, at 9.00 p.m., when the procession was in progress, there was a clash between the two groups in front of the house of P.W.2. In the said clash, the house of P.W.2 was also attacked and at that time, according to him, the accused 3 and 4 attacked the deceased. He has not said anything about the rest of the accused. During cross-examination, he has stated that the fifth accused-Maharajan also sustained injuries in front of the same house. From the evidence of this independent eye-witness, it is crystal clear that there was a clash and there was free-for-all between the two groups. From this evidence coupled with the evidence of P.W.25, it could be seen that it was only the deceased who rushed out of his house and developed quarrel. Therefore, there are reasons to infer that the deceased party would have been the aggressors. Whatever be the case, according to P.W.27, when he arrested the accused, the deceased accused-Chinnaiah and the accused Maharajan and Kamaraj, had injuries. D.W.1 has spoken to about the same. The accused were forwarded to the Government Hospital only by P.W.27. According to D.W.1, the injuries were simple in nature, but, there were injuries on the head which were all cut injuries. Therefore, the said injuries cannot be neglected as minor injuries. The presence of injuries on these three accused, would clearly go to show that in the said clash, they also sustained injuries. The said injuries would have been certainly notified by the prosecution witnesses. But, during cross-examination, they have disowned knowledge in respect of the injuries sustained by all the accused. That means, the prosecution witnesses are lying on an important part of the occurrence. It is not known as to why they have been hesitant to speak about the injuries sustained by the accused. This shows that they have not come forward with true versions.

26. Apart from that, though P.W.27 found injuries on the accused, though the accused on interrogation stated about the injuries that they sustained injuries in the same occurrence, P.W.27 did not investigate into the allegations made by the accused so as to find out the truth as to whether the deceased party were the aggressors or the accused party were the aggressors. P.W.27 has simply omitted to investigate into the case projected by the accused and injuries sustained by them. This shows that P.W.27 himself had not taken any endeavour to find out the true version and to place the same before the Court.

27. It is needless to point out that it is the settled law that in the event, the prosecution fails to explain the injuries sustained by the accused sustained in the very same occurrence, it will give an inference that the prosecution has not come forward with the true version. At this stage, we may refer to the judgment of the Hon'ble Supreme Court in Lakshmi Singh v. State of Bihar, reported in AIR 1976 SC: Page 2263, wherein, while dealing with identical facts, the Hon'ble Supreme Court held as under:-

“It seems to us that in a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the Court can draw the following inferences:

(1) That the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version; (2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable;

(3) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case.

The omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one.”

From the aforesaid discussions, and applying the settled position of law as extracted above, we are able to come to the conclusion that though P.Ws.1 to 5 are the injured witnesses and their presence in the occurrence and their participation is true, still, we are not in a position to place implicit reliance on their evidence besides the evidence of P.W.7, since they have not come forward with true version of the occurrence, explaining away the injuries sustained by the accused. As we have already pointed out, the investigation is also tainted inasmuch as P.W.27 has not taken any steps to investigate into the injuries sustained by the accused in the very same occurrence. As we have already pointed out, as per the evidence of P.W.9, it has been clearly established that there was a clash between two parties in which both the parties sustained injuries. When there is such a clash, it is always the duty of the prosecution to project and prove the genesis of the occurrence. As has been contended by the learned Senior Counsel for the appellants, the prosecution has failed to do so. For these reasons, we are of the view that it is too difficult to accept the eye witnesses' account of P.Ws.1 to 5 and 7, as gospel truth so as to sustain the conviction. In our considered opinion, in view of the above infirmities in the case of the prosecution, it will not be safe to sustain the conviction of the appellants.

28. Before parting with this case, we want to make the following observations in respect of the charges framed by the Trial Court. Time and again, this Court has been pointing out that nowadays, adequate attention is not bestowed by the Trial Courts in the matter of framing charges. The case on hand is one such case where the charges have not been properly framed. For instance, according to the case of the prosecution, all the accused came armed with weapons, with a common object of committing the crime. The Trial Court has therefore, rightly framed charge under Section 148 IPC (Charge No.1). The second charge is under Section 307 IPC as against the accused 1, 2, 3 and 4 in respect of the injuries caused on P.W.3. When there is charge under Section 148 IPC, we are not able to understand as to why the Trial Court failed to frame charge against the rest of the accused under Section 307 r/w 149 IPC. The fourth charge is under Section 427 IPC against the third accused. Here again, why the Trial Court has failed to frame charge against the other accused under Section 427 IPC r/w 149, is not known. The fifth charge is under Section 324 IPC against the accused 6 and 8 for having

caused simple injury on P.W.1. Here again, we are unable to understand as to why the Trial Court had not framed charge against the rest of the accused under Section 324 r/w 149 IPC. The sixth charge is under Section 324 (2 counts) IPC, against the seventh accused. Here again, we are unable to understand as to why the Trial Court had not framed charge against the rest of the accused under Section 324 (2 counts) r/w 149 IPC. The third charge is under Section 302 IPC against the accused 4 and 5. The seventh charge is under Section 302 r/w 149 against the rest of the accused. In our considered opinion, the third charge framed is not correct. The third charge is against the third and fourth accused. Therefore, the charge should have been framed under Section 302 r/w 149 IPC.

29. Now coming to the conviction recorded by the Trial Court, the first accused has been convicted under Sections 148 and 324 IPC. He has been acquitted of the charge under Section 302 r/w 149 IPC. When the Trial Court has not found him guilty under Section 148 IPC, we are not able to understand as to why the Trial Court acquitted this accused from the charge under Section 302 r/w 149 IPC. When it is the finding of the Trial Court that the first accused shared a common object with the rest of the accused, so as to be a member of the unlawful assembly, quite naturally, for the act of crime of murder committed by the other accused, he should have been held liable under Section 302 r/w 149 IPC. Similarly, the accused 2, 3 and 5 have been convicted under Section 148 IPC, but strangely, they have been acquitted from the charge under Section 302 r/w 149 IPC. The accused 6 and 7 have been found guilty under Section 147 IPC, but strangely, they have been acquitted from the charge under Section 302 r/w 149 IPC. From the way in which the accused have been convicted under various penal provisions, we are constrained to feel that the Trial Court has not properly understood Section 149 IPC in its letter and spirit. There are many more defects which we do not want to elaborate further. Suffice it for us to say that in this case, not only the charges are defective, but the Trial Court has acquitted the appellants under various penal provisions, without understanding the charges and the penal provisions, and also convicted the accused under various penal provisions, without having fuller understanding.

30. In the result, we are constrained to allow the appeal. Accordingly, the Criminal Appeal is allowed, the conviction and sentence imposed on the appellants are set aside and they are acquitted of all the charges levelled against them. The fine amount, if any, collected from them, shall be refunded to them and they shall be set at liberty forthwith, if the detention is not required in connection with any other case. The bail bonds, if any, shall stand discharged.

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