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Court : Chennai

Decided On : Aug-03-2012

Judge : The Honourable Ms. Justice R. Mala

Appeal No. : Crl.A.No.219 of 2005

Appellant : Rupesh and Another

Respondent : State by Inspector of Police

Advocate for Pet/Ap. : For the Appellants: K. kannan, Advocate. For the Respondent: C. Emalias, Govt. Advocate (Crl. Side).

Judgement :

(Prayer: Appeal is filed under Section 378 of Cr.P.C. against the Judgment dated 23.02.2005 made in S.C.No.22 of 2005 on the file of III Fast Track Court, Additional District Sessions Court, Chennai - 600 001.)

1. The appeal arises out of the Judgment of conviction and sentence made in S.C.No.22 of 2005 on the file of the III Fast Track Court, Additional District Sessions Court, Chennai, whereby, the accused were convicted for the offences under Sections 341 and 307 r/w.34 IPC. For the offence under Section 341 IPC, they were imposed to pay a fine of Rs.500/- in default to undergo one week Rigorous imprisonment and for the offence under Section 307 r/w. 34 IPC, they were sentenced to undergo six years Rigorous imprisonment with fine of Rs.25,000/-, in default, to undergo six months Rigorous imprisonment.

2. The respondent Police filed a charge sheet against the appellants stating that on 30.06.2004 at 3.30 p.m. while P.W.1 and P.W.2, who are brothers, were on their way to the opposite of Balaji Fast Food through Thiyagappa Street, A1 and A2, wrongly restrained them and abused them in filthy language by assaulting with Cooldrinks Bottles, thereby, committed offence under Sections 341 and 307 r/w. 34 IPC.

3. The learned Sessions Judge, after following the procedure, framed necessary charges against the accused and questioned the accused. Since the accused pleaded not guilty, on the side of the prosecution, P.W.1 to P.W.10 were examined and Exs.P1 to P15 were marked. On the side of the accused, no oral and documentary evidence was marked.

4. The case of the prosecution, based on the evidence, is as follows:

(i) P.W.1-Appas and P.W.2-Fakrudeen, who are brothers, are doing Scrap Iron business with his father / P.W.3. A1 and A2 are brothers and they are having Balaji Fast Food Hotel. On the fateful day, i.e. 30.06.2004, when P.W.1 and P.W.2 were on their way to the opposite of the Balaji Fast Food through Thiyagappa Street, A1 and A2 abused them in filthy language. A2 took Cooldrinks bottles from nearby shop and assaulted P.W.1 with a bottle on his shoulder, head and forehead. A1 assaulted P.W.2 with the broken bottle on his neck. Immediately, father of P.W.1 and P.W.2 came there and took them to Stanely Government Hospital, where, P.W.4-Dr.Rajan Babu treated them at 4.40 p.m. and examined P.W.1, at that time, he stated that he was assaulted with bottles at 3.30 p.m. P.W.4 pointed out the external injuries of P.W.1 and issued Ex.P2-Accident Register for P.W.1. He also examined P.W.2, who also stated that he was assaulted with broken bottle and pointed out the injuries sustained by him and issued Ex.P3-Accident Register for P.W.2.

(ii) Mr.Sugumar, Sub Inspector of Police, on receiving information, went to the Stanely Govt. Hospital, where, he examined P.W.1 and recorded his statement. Thereafter, he registered a case in Crime No.653 of 2004 under Sections 341, 323, 307 and 506 (ii) IPC and prepared Ex.P11-FIR.

(iii) P.W.10-Inspector of Police received Ex.P11-FIR and took up the matter for investigation. Thereafter, he went to the place of occurrence, where he preferred Ex.P12-observation mahazar and Ex.P13-Rough sketch in the presence of P.W.7 and P.W.9. He also seized the broken Cooldrinks bottles under Ex.P14-Seizure Mahazar. The signature of P.W.9 in the observation mahazar was marked as Exs.P8 and P9. Thereafter, he went to the Stanely Govt. hospital, where he examined P.W.1 and P.W.2 and recorded their statements. He also examined P.W.4-Dr.Rajan Babu, who treated P.W.1 and P.W.2 and recorded his statement. Further, he sent the material object to the concerned Court under Form-95, i.e. Ex.P15. On 01.07.2004, at 11.00 a.m. he arrested the accused, at that time, A1 gave confession statement. He recorded the same in the presence of Muthiah and Palani and placed the accused for judicial custody. Thereafter, he examined P.W.8-Dr.Durai and obtained wound certificate, i.e. Exs.P6 and P7. After concluding investigation, he filed a charge sheet against the accused.

5. The learned Sessions Judge placed the incriminating evidence against the accused. But, the accused denied the same in toto. After considering the oral and documentary evidence, the learned Sessions Judge convicted the appellants for the offences punishable under Sections 341 and 307 r/w. 34 IPC and sentenced as stated above. Aggrieved against the same, the present appeal has been filed by the appellants.

6. Challenging the conviction and sentence, the learned counsel for the appellants raised the following points:

a) The prosecution had not proved the scene of occurrence.

b) P.W.1 and P.W.2 had sustained only simple injuries.

c) When P.W.1 and P.W.2 were treated by P.W.4-Dr.Rajan Babu, they had not stated before P.W.4 as to who assaulted them. In the Accident Register also, the history of assault was stated, but, P.W.1 and P.W.2 had not stated as to whether they have been assaulted by known or unknown persons. Therefore, Ex.P1-complaint has been foisted against the appellants.

d) There is a delay in preferring the complaint and despatching the complaint and FIR, therefore, the complaint has been given with due deliberation. He further submitted that the prosecution has not proved the guilt of the accused beyond all reasonable doubt, hence, he prayed for allowing of this appeal.

7. Resisting the same, the learned Government Advocate (Crl. Side) submitted that since P.W.1 and P.W.2 are injured eye-witnesses, their evidence is trustworthy and reliable and the scene of occurrence had been properly explained by the prosecution in Ex.12-observation mahazar that the occurrence took place on 30.06.2004, at 3.30 p.m. He further submitted that P.W.1 and P.W.2 were treated by P.W.4-Dr.Rajan Babu at 4.40 p.m. and subsequently, the complaint had been registered at 5.30 p.m. Therefore, there is no delay in preferring the complaint and despatching the complaint and FIR. He further submitted that the other witnesses P.W.5 and P.W.6 were turned hostile, therefore, the same will not vitiate the conviction. Hence, he prayed for dismissal of this appeal.

8. Considered the rival submissions made on both sides and perused the records.

9. P.W.1 and P.W.2 are sons of P.W.3. While they were on their way to the opposite of Balaji Fast Food through Thiyagappa Street and came to the opposite of Balaji Fast Food, A1 and A2 wrongfully restrained them and abused them in filthy language and also assaulted them with cooldrinks bottles, thereby, they attempted to commit murder. Therefore, A1 and A2 were charge sheeted for the offences under Sections 341 and 307 r/w. 34 IPC.

10. The argument of the learned counsel for the appellants is that there is a delay in preferring the complaint and dispatching the complaint and FIR, which shows that the complaint had been preferred after due deliberation only. Even though P.W.4-Dr.Rajan Babu treated P.W.1 and P.W.2 at 4.40 p.m., they had not stated as to who assaulted them.

11. Now, this Court has to decide whether there is a delay in preferring the complaint? As per Ex.P1-complaint given by P.W.1, the alleged occurrence is said to have taken place on 30.06.2004 at 3.30 p.m. Ex.P2-Accident Register was issued by P.W.4 for P.W.1, wherein, it was stated that "alleged to have assaulted

with bottles at 3.30 p.m. today near Kannan Road, Railway Station". But, P.W.1, who was admitted in the Stanely hospital by P.W.3-father of P.W.1, had not stated as to whether he was assaulted by known or unknown persons. After receiving the information about the occurrence, the Sub Inspector of Police went to the Hospital, where he recorded the statement of P.W.1 and returned back to the Police Station at 5.30 p.m. and registered a case in Crime No.653 of 2004, i.e. Ex.P11. So, I am of the view that there is no delay in preferring the complaint. While perusing Ex.P11-FIR, it reached the Court only on 01.07.2004 at 4.30 p.m. So, there is a delay of 24 hrs. in despatching the complaint and the same was not properly explained by the prosecution. Considering the same, the argument of the learned counsel for the appellant that after due deliberation, the appellants' name had been included, is acceptable one. So, the delay in dispatching the complaint is fatal to the case of prosecution.

12. The another point raised by the learned counsel for the appellants is that the scene of occurrence had also not been proved by the prosecution. In Ex.P1-complaint, it was stated that while P.W.1 and P.W.2 were on their way to the opposite of Balaji Fast Food shop through Thiyagappa Street, the alleged occurrence is said to have taken place.

13. At this juncture, this Court has to peruse Ex.P2-Accident Register issued for P.W.1. In Ex.P2, it was stated that he was assaulted with bottles today at 3.30 p.m. near Kannan Road, Railway Station. But, in Ex.P13-Rough sketch, wherein, it was mentioned the street name as Thiayagappa Street and not as Kannan Road, Railway Station. Furthermore, P.W.5 and P.W.6, who are eye-witnesses were turned hostile. It is true that the evidence of single interested eye-witness is reliable provided it must be natural, cogent and trustworthy. Further, in Ex.P2-Accident Register for P.W.1, wherein, it was stated that P.W.1 has sustained injury at the level of 6 x 3 c.m. in left side scalp. In Ex.P3-Accident Register for P.W.2, wherein, it was stated that P.W.2 has sustained laceration in right side neck at the level of 4 x 3 x 0.5 c.m. Whereas in Ex.P1-Complaint, P.W.1 had stated that he was assaulted on his left side head and left shoulder. He further stated that his brother was assaulted by A1 on his right side, but, he has not stated in which part of the body, which shows that since they are unable to identify the accused, a

false complaint has been foisted against the accused. But, the Doctor has not mentioned any injury on his left shoulder. So, the documents, i.e. Ex.P1-complaint and Exs.P2 and P3-Accident Register Copy and Exs.P6 and P7-wound certificates falsified the evidence of P.W.1.

14. On perusal of the evidence of P.W.1 and P.W.2, I am of the view that the evidence of P.W.1 and P.W.2 is not trustworthy and there is no evidence available to corroborate the same, since the occurrence took place at 3.30 p.m. in a busy locality. So, the prosecution has miserably failed to prove that the accused assaulted P.W.1 and P.W.2.

15. Therefore, I am of the view that the prosecution has failed to prove that the accused are guilt of offence under Section 341 and 307 r/w. 34 IPC beyond all reasonable doubts. Hence, the benefit of doubt is given in favour of the appellants and they are entitled for acquittal. Therefore, the Judgment of conviction and sentence passed by the Sessions Judge under Sections 341 and 307 r/w.34 IPC is hereby set aside.

16. In fine:

a) the appeal is allowed;

b) the Judgment of conviction and sentence passed by the learned Additional District Sessions Court under Sections 341 and 307 r/w.34 IPC is hereby set aside;

c) the appellants are acquitted from the charges levelled against them for the offence under Section 341 and 307 r/w.34 IPC;

d) Bail bond, if any executed by the accused shall stand cancelled;

e) Fine amount paid by the accused is ordered to be refunded.

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