

1.Murugan Vs. the State,

1.Murugan Vs. the State,

SooperKanoon Citation : sooperkanoon.com/965282

Court : Chennai

Decided On : Jan-28-2013

Judge : M.Jaichandren

Appellant : 1.Murugan

Respondent : The State,

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

28. 01/2013 CORAM THE HON'BLE MR.JUSTICE M.JAICHANDREN AND THE HON'BLE MR.JUSTICE S.NAGAMUTHU CRIMINAL APPEAL(MD) No.259 of 2005 1.Murugan 2.Udayakumar 3.Sundar ... Appellants -versus- The State, Rep. By The Inspector of Police, Sembatti Police Station Dindigul District. [Crime No.264 of 2001] ... Respondent Criminal Appeal filed under Section 374 of the Cr.P.C against the Judgement 26.05.2005 in S.C.No.165 of 2004 on the file of the Additional District & Sessions Judge, Fast Track Court, Dindigul. !For Appellants ... Mr.V.Kathirvelu, Senior Counsel for Mr.S.Mahendrapathy ^For respondent ... Mr.A.Ramar Additional Public Prosecutor :JUDGEMENT The Appellants are the Accused 1 to 3 in S.C.No.165 of 2004 on the file of the learned Additional District and Sessions Judge, Fast Track Court, Dindigul. Altogether, there were 16 Accused in the said case including Appellants. They stood charged for various offences as detailed below. The trial court, by judgement dated 26.05.2005 acquitted Accused 4 to 16 under all charges and, however, convicted these three Appellants alone for various offences and accordingly, imposed punishment of

varying terms as detailed below:- Accused Charge Under Section Convicted/ Acquitted Sentenced to under go/to A1 148 of IPC Acquitted -- 302 of IPC Convicted Life Imprisonment and to pay Rs.3000/- i/d to undergo RI for 1 year A2 148 of IPC Acquitted --- 326 of IPC Convicted RI for 5 years and to pay fine of Rs.1000/- i/d to undergo RI for 6 months 302 r/w 109 of IPC Acquitted --- A3 148 of IPC Acquitted --- 326 of IPC Instead convicted under Section 325 of IPC RI for 3 years and to pay fine of Rs.500/- i/d to undergo RI for 3 months 302 r/w 149 of IPC Acquitted --- A4 to A16 Details of the charges are omitted herein as unnecessary as they have been acquitted.

2. Challenging the above conviction and sentence, these three Appellants/Accused 1 to 3 have come up with this criminal appeal. When the appeal was taken up for hearing, the learned counsel for the appellants submitted that A1-Murugan [1st appellant herein] died on 07.10.2010. The said statement is recorded. No interested person has come on record to prosecute this appeal in respect of the 1st Appellant/A1. Therefore, this appeal stands abated as against the 1st Appellant/A1. Therefore, we proceed to dispose of this appeal in respect of Appellants 2 and 3 alone.

3. The case of the prosecution in brief is as follows:- All the 16 Accused belong to Akkaraipatti in Dindigul District. One Nagaraj of the same village had planted betel-nuts in his field along with hummingbird trees. P.W.1-Senthil Kumar was the supervisor under Nagaraj. A14-Kuaral Mani, once stealthily collected greens from the field of Nagaraj. In this regard, a panchayat was convened on 21.07.2001 at about 8.00 p.m. The panchayat was held in front of the house of one Kalimuthu Udayar. When the panchayat talks were in progress, one Gandhi Devar and his group of people expressed dissatisfaction over the panchayat proceedings and boycotted. When they were returning, Gandhi Devar was attacked by the people belonging to the present prosecution party. According to the further case of the prosecution, Gandhi Devar was taken to the hospital. The A1 to A16 are either closely related or friendly towards Gandhi Devar. Because of the said occurrence, in which, Gandhi Devar was attacked, all these Accused got wild. They went to the house of Bala Krishnan by around 8.45 p.m. At that time, A1 and A2 were armed with Aruval and A3 was armed with Stick. A4 to A9 were also armed with Sticks.

The other Accused were unarmed. Thus, they formed themselves into an unlawful assembly with the common object of killing deceased Bala Krishnan. On reaching the house of the deceased Bala Krishnan just in front of his house, A1 attacked the deceased with Aruval on his head; A2 attacked his wife P.W.2- Nachammal on her left hand; A3 attacked P.W.2 on her left hand; A6 to A9 attacked the deceased Bala Krishnan with sticks on various parts of his body; A4 attacked P.W.3 on his left upper arm; A5 attacked P.W.3 on his right shoulder; A6 attacked P.W.1 on his right cheek. A7 attacked P.W.1 on his left shoulder. The other Accused did not attack any body. Then, A6 to A16 attacked the houses of P.W.1, 3 and one Natarajan and caused extensive damages to their properties worth about Rs.50,000/- . On these allegations, the trial court framed charges as detailed above. All the Accused pleaded innocence. Therefore, they were put on trial.

4. In order to prove the charges, on the side of the prosecution as many as 21 witnesses were examined as P.Ws.1 to 21, and 26 documents were exhibited as E.P.1 to P.26 and 18 materials objects were marked as M.O.1 to M.18.

5. Out of the said witnesses, P.Ws.1, 2 and 3 are injured eye-witnesses. They have spoken to about the occurrence vividly. P.Ws.4 to 6 are also eye- witnesses to the occurrence. They have also spoken to about the entire occurrence. P.W.7 is the witness in whose presence, the blood stained dress materials of the deceased were recovered from him in the hospital by the Inspector of Police. P.W.8 has spoken to about the observation mahazar prepared by the investigating officer and the recoveries made. After the occurrence, the deceased was taken to the Government Hospital at Dindigul. On 22.07.2001 at 12.45 a.m. P.W.15 Dr.Ashok Kumar examined the deceased Bala Krishnan in the Government Headquarters Hospital at Dindigul. He found that he was unconscious and his condition was critical. Then, he advised him to be taken to Government Rajaji Medical College Hospital at Madurai. He has spoken to about the same in detail. P.W.15 Dr.Ashok Babu, examined P.W.2 Nachammal on 22.07.2001 at about 1.00 a.m. He found two injuries namely, (1) Contusion 6 x 6 cm left hand; and (2) Incised injury 2 x 1 x 1 cm left index finger. He issued Ex.P.16 Accident Register.

6. P.W.15 was the then Sub Inspector of Police, attached to Sembatti Police Station. On 22.07.2001 at about 0015 a.m. when he was in the police station, P.W.1, after the occurrence had gone straight to the police station and made a complaint. Ex.P.1 is the complaint. Based on the same, he registered a case in Crime No.264 of 2001 for offences under Sections 147, 148, 323, 324 and 307 of IPC. Then, he handed over the case diary to the Inspector of Police for investigation. While so, on 23.07.2001, the deceased Bala Krishnan succumbed to injuries in the hospital. Therefore, he altered the case into one under Section 302 of IPC.

7. P.W.16, Dr.Ashok Babu, on 22.07.2001 at about 5.30 a.m. examined P.W.3 Azhagupillai and found three injuries viz., (1) contusion 4 x 1 cm on right shoulder; (2) Abrasion 2 x 2 cm on the left forearm; and (3) Abrasion 2 x 1 cm on the left 4th toe. Ex.P.17 is Accident Register copy. Then at 12.45 a.m. on the next day, he examined the deceased and found the following injuries:- "1.I.T.6 x 2 x 1 cm left temporal region 2. Abrasion 2 x 2 cm right knee" Ex.P.18 is the Wound Certificate. He has spoken to about the injuries sustained by the above witnesses and the deceased.

8. P.W.17 examined P.W.1-Senthilkumar on 22.07.2001 at about 2.30 p.m. He noticed the following injuries:- "1.lacerated injury on the inner aspect of cheek right side . x . cms.

2. Pain on the left shoulder" Ex.P.19 is the Wound Certificate. P.W.20 is the Investigating Officer who investigated the present case in Crime No.264 of 2001. He prepared Observation Mahazar and Rough Sketch in the presence of the witnesses. He examined P.Ws.1 to 6 and recorded their statements. Later on, he conducted inquest in the hospital and forwarded the body for post-mortem. P.W.10 - Dr.S.Prabakar, conducted autopsy on the body of the deceased on 23.07.2001 at about 1.30 p.m. He found the following ante-mortem injuries :- "1. An incised wound over left side of the scalp in the region of left parietal and temporal region of about size 9 X 2 cm and exposing the skull bone with depressed fracture.

2. An abrasion over the right shoulder of about size 1 x 1 cm in size.

3. An abrasion over right knee of about 2 x 2 cm in size.
4. An abrasion over right wrist joint of about 1 x 1 cm in size.
5. An abrasion over left elbow of about 1 x 1 cm in size.
6. An abrasion over right side of the face of about 3 x 1 in size.
7. An abrasion over right side of the forehead of about 1 x 1 cm in size. and on dissection he found the following internal injuries:- 1. Head - Depressed fracture on the left parietal bone.
2. Brain - subdural haemorrhage with base of skull fracture in left side. Ex.P.12 is the Post-mortem Certificate. He opined that the deceased would appear to have died of head injuries and injuries to vital organs. He has spoken to about the cause of death and the other details. On completing the investigation, P.W.21 filed charge sheet against the Accused.
9. When the above incriminating evidences were put to the accused under Section 313 of Cr.P.C. they denied the same as false. However, they did not chose to examine any witness on their side , nor did they mark any document. Having considered the above, the trial court acquitted A4 to A16. However, convicted these Appellants/A1 to A3 alone under certain charges as detailed hereinabove. That is how, the Appellants are before this court with this criminal appeal.
10. We have heard Mr.V.Kathirvelu, the learned senior counsel appearing for the Appellants/A2 & A3 and Mr.A.Ramar, the learned Additional Public Prosecutor for the Respondent/State and also perused the records carefully.
11. The learned senior counsel appearing for the Appellants would contend that the prosecution in this case has not come forward with the true version of the occurrence. According to him, in respect of the alleged attack made on Gandhi Devar, a case was registered in Crime No.263 of 2001 for offences under Sections 147, 148, 323, 324 and 307 of IPC. The complainant in that case was one Mayee @ Mayadevar son of Papaiah Devar. The present case was registered in Crime No.264 of 2001 for offences under Sections 147, 148, 323, 324 and 307 of IPC.

According to the learned senior counsel, there was a group clash in the panchayat between two opposing groups, in which, on the side of the prosecution party P.Ws.1 to 3 and the deceased sustained injuries and on the other side, the accused party and one Gandhi Devar and others sustained injuries. It is his further contention that both the cases in Crime Nos.263 and 264 of 2001 are cases in counter since the occurrences in both cases had taken place in one and the same transaction. He would further point out that on completing the investigation in Crime No.263 of 2001, charge sheet was filed against two persons by name Muniyappan and Natarajan and the said case was tried in S.C.No.42 of 2003 on the file of the learned Additional District and Sessions Judge, Fast Track Court, Dindigul. By judgement dated 26.05.2005, the trial court convicted them. As against the same, they preferred an appeal in CrI. Appeal [MD] No.244 of 2005 before this Court. The learned senior counsel would further submit that the said appeal was allowed by this Court by judgement dated 19.04.2012 wherein, in paragraph 9 this court has concluded that it is not as though there were two different occurrences giving rise to the registration of cases in Crime Nos.263 and 264 of 2001. It is the specific finding of this Court that both the occurrences were in one and the same transaction in the same place. Thus, according to this Court, they are cases in counter. Relying on the said judgement in CrI. Appeal [MD] No.244 of 2005, the learned senior counsel would submit that the injuries sustained by the Accused party have not been brought on record and explained away properly by the prosecution. Thus, the prosecution has not come forward with the true version. It is on this ground, according to the learned senior counsel, the Appellants 2 and 3 [A2 and A3] are entitled for acquittal.

12. We have carefully considered the above submissions.

13. According to the case of the prosecution, the occurrence relating to the case in Crime No.263 of 2001 was at 8.00 p.m., whereas , the occurrence relating to the present case in Crime No.264 of 2001 was at 8.45 p.m. It is based on this, the learned Additional Public Prosecutor contended before this court that these two cases are not cases in counter since the occurrences were not in the course of the same transaction. Therefore, according to him, the trial court was right in convicting these appellants.

14. In our considered opinion, the contention of the learned Additional Public Prosecutor deserves only to be rejected. As has been pointed out by the learned senior counsel appearing for the Appellants, this Court in CrI. Appeal [MD] No.244 of 2005 has given a very specific finding that both these cases have arisen out of one single occurrence and not out of two different occurrences. Thus, it has already been concluded by this Court that there were no two occurrences and both the parties sustained injuries in one and the same occurrence. But, a perusal of the evidence of P.Ws.1 to 6 would go to show that they have not at all explained away the injuries sustained by the accused party. As a matter of fact, they have disowned knowledge about the occurrence relating to the case in Crime No.263 of 2001. Thus, these witnesses have not come forward with truth. The prosecution has also not fairly produced the records relating to the case in Crime No.263 of 2001 and explained away the injuries sustained by the accused party. In our considered opinion, the Appellants/A2 and A3 are also entitled for acquittal as the prosecution has not come forward with true version of the occurrence. In such view of the matter, we are inclined to acquit the Appellants 2 and 3.

15. In the result, the Criminal Appeal stands abated insofar as it relates to the 1st Appellant/A1 is concerned and so far as the Appellants 2 and 3 [A2 and A3] are concerned, the conviction and sentence imposed upon them by the trial court are set aside and they are acquitted from all the charges. The Bail Bonds executed by them shall stand discharged and fine amount, if any, paid by them shall be refunded to them. 1.The Addl. District and Sessions Judge, FTC, Dindigul District. 2.The Inspector of Police,Sembatti Police Station, Dindigul District. 3.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com