

Iyyakutt Vs. State Rep. By

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Court : Chennai

Decided On : Dec-11-2014

Judge : The Honourable Ms.Justice R.Mala

Appellant : Iyyakutt

Respondent : State Rep. By

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

11. 12.2014 CORAM THE HONOURABLE MS.JUSTICE R.MALA Criminal Appeal (MD)No.247 of 2007 Iyyakutty : Appellant/Accused Vs. State rep. by The Deputy Superintendent of Police, (Ambai Circle), Kallidaikurichi Police Station, Tirunelveli District. Crime No.471/04. : Respondent/Complainant Prayer : Criminal Appeal is filed under Section 374 of the Code of Criminal Procedure praying to call for the records relating to the judgment dated 08.05.2007 made in S.C.No.69 of 2004 passed by the learned Second Additional Sessions Judge, Tirunelveli and set aside the same. !For Appellant : Mr.S.Durai Raj ^For Respondent : Mrs.S.Prabha, Government Advocate (Crl.side) :

JUDGMENT

Challenge in this appeal is to the judgment dated 08.05.2007 made in S.C.No.69 of 2004 on the file of the learned Second Additional Sessions Judge, Tirunelveli.

2. The case of prosecution, in brief, is as follows: (i) One Mariappan, S/o.Isakki is the complainant and the victim. He belongs to Hindu Pallar community of the Scheduled Castes. The accused belongs to Hindu Maravar Community. The complainant Mariappan died on 12.07.2006 during the pendency of the case. To prove the same, the prosecution has produced the death certificate of the complainant. On 03.08.2004 at 11.00 p.m., the deceased complainant along with P.W.3 was coming in front of Muppudathi Amman Temple at Kallidaikurichi, and at that time, the accused came there and due to previous enmity, he abused the deceased complainant as 'gs;sj; Bjtoah kfBd bjd;id kuj;Jz;il Bfl;lh ju khl;BIA;f' and assaulted him with knife and caused injury on his cheek below the left ear. P.W.1 and P.W.3 raised cries and subsequent to that, the accused threatened him and made criminal intimidation and ran away from the place of occurrence. Hence, the deceased complainant gave a complaint Ex.P.8. (ii) On receipt of the complaint, P.W.7 Velu, the Head Constable registered a case in Crime No.471/2004 under Sections 294(b), 324, 506(2) IPC and Section 3(1)(x) of SC/ST (Prevention of Atrocities) Act, 1989. The registered F.I.R. is Ex.P.5. He sent the complainant to hospital with a medical memo, where P.W.2 Dr.Agathiyan examined the complainant on 04.08.2004 at 12.55 hours and gave accident register Ex.P.2. (iii) On receipt of the copy of F.I.R., P.W.8 Selvaraj, the Deputy Superintendent of Police took up the case for investigation and visited the place of occurrence and prepared an observation mahazar Ex.P.4 and rough sketch Ex.P.6. After recording the statement of complainant, he arrested the accused at 06.30 p.m., near Ambai Arch and remanded him to judicial custody. He also obtained Community Certificates of both the complainant and the accused from P.W.4 Vellammal (Tahsildar). The community Certificate of the complainant is Ex.P.7 and the Community Certificate of the accused is Ex.P.3. On completion of investigation, he laid the final report against the accused for the offences as stated above. (iv). The learned trial Judge, after following the procedures, framed necessary charges against the accused. Since the accused denied the same in toto and pleaded not guilty, to prove the charges, P.Ws.1 to 8 were examined and Exs.P.1 to P.8 were marked, on the side of the prosecution. On completion of the examination of the witnesses on the side of the prosecution, the accused was questioned under Section 313 Cr.P.C., as to the incriminating circumstances found in the evidence

of the prosecution witnesses and he denied the same as false. On behalf of the defence, neither the witness was examined nor document was marked. (v). The learned trial Judge, after considering the oral and documentary evidence, acquitted the accused for the offence punishable under Section 506(2) IPC and convicted him for the offences punishable under Sections 294(b), 324 IPC and Section 3(1)(x) of SC/ST (PA) Act and sentenced him to undergo 3 months rigorous imprisonment for the offence punishable under Section 294(b) IPC and to undergo one year rigorous imprisonment, to pay a fine of Rs.500/-, in default, to undergo 2 months simple imprisonment for the offence punishable under Section 324 IPC and to undergo 6 months rigorous imprisonment, to pay a fine of Rs.500/-, in default, to undergo one month simple imprisonment for the offence punishable under Section 3(1)(x) of SC/ST (PA) Act.

3. Being aggrieved over the judgment of conviction and sentence, the appellant is before this Court with the present appeal.

4. Heard both sides.

5. Assailing the conviction and sentence passed against the appellant, the learned counsel for the appellant would raise the points to the effect that the injured person died during the pendency of the case. He is the complainant. P.W.1 Mariappan, S/o.Ramaiah and P.W.3 Murugan were examined as eye witnesses and their evidence is not trustworthy. Hence, he prayed for setting aside the conviction and sentence.

6. Resisting the same, the learned Government Advocate (Criminal side) would submit that it is true that the deceased complainant by name Mariappan , S/o.Isakki died during the pendency of the case. His complaint was marked as Ex.P.8. His statement has been corroborated by the evidence of P.W.1 Mariappan, S/o.Ramaiah and P.W.3 Murugan, who are the eye witnesses. The Trial Court has considered their evidence and came to the correct conclusion. Hence, she prayed for dismissal of the appeal.

7. Considering the rival submissions made by both sides and on perusal of the typed-set of papers, it is seen that the alleged occurrence is said to be taken place

on 03.08.2004 at 11.00 p.m. in front of Muppudathi Amman Temple. When P.W.1, P.W.3 and the deceased Mariappan were chatting, the accused came there and abused the deceased Mariappan by using his caste name and insulted him in public view and made criminal intimidation, and thereby, he committed the offences punishable under Sections 294(b), 324, 506(2) IPC and Section 3(1)(x) of SC/ST (PA) Act. However, after due consideration, the Trial Court has convicted him under Sections 294(b), 324 IPC and Section 3(1)(x) of SC/ST (PA) Act and acquitted him under Section 506(2) IPC. To prove that the appellant is belonging to the Hindu Maravar, P.W.4 -Velammal, Tahsildar has been examined and his community certificate has been marked as Ex.P.3. The community certificate of the deceased has also been marked as Ex.P.7 to prove that the the deceased complainant Mariappan is belonging to Hindu Pallar.

8. Now, this Court has to decide whether there is any evidence to show that the appellant herein has insulted the deceased in public view?..

9. At this juncture, it is appropriate to consider the evidence of P.W.1 and P.W.3, who are the alleged eye witnesses and whether their evidence are reliable?..

10. On a perusal of the evidence of P.W.1, it is seen that the deceased Mariappan was an agriculturist and he was selling the coconut trees. When the appellant wants to purchase the coconut tree, because of bargaining, there was a dispute. Then, the alleged occurrence is said to be taken place.

11. P.W.1 is none other than the brother-in-law of the deceased. At this juncture, it has to be considered, since P.W.1 is a close relative, his evidence has to be discarded. It is well settled dictum of the Apex Court that the interested/related evidence is reliable, provided it must be natural, cogent and also trustworthy and that has to be scrutinized with great care and cation. While perusing the evidence of P.W.1 along with Ex.P.2-Accident Register copy, it is seen that the alleged occurrence is said to be taken place and that the injured was taken to the hospital by P.W.1. Therefore, I am of the view that there is no reason for discarding the evidence of P.W.1.

12. The learned counsel for the appellant has taken me through the evidence of P.W.3 Murugan, wherein in the last three sentence, it was stated that one Periyamurugan, S/o.Sudalaimuthu was not present at the time of occurrence. However, the said Periyamurugan, was not examined before the Court. Hence, no reliance can be placed on that. A perusal of the evidence of P.W.1 and P.W.3 would go to show that they have given natural and cogent evidence, which shows that the appellant herein intentionally insulted the deceased Mariappan with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in public view, since the deceased is belonging to Hindu Pallar Community of the Scheduled Community and that has been proved by the prosecution. Therefore, the Trial Court has rightly held that the appellant is found guilty under Section 3(1)(x) of SC/ST (Prevention of Atrocities) Act, 1989. I do not find any reason to interfere with the said finding.

13. Now, this Court has to decide whether the Trial Court is correct in convicting the accused under Sections 294(b) and 324 IPC?..

14. On a perusal of the evidence of eye witnesses, it is clear that the deceased has not given his coconut tree with paltry sum, for which, the appellant made a quarrel with him and abused him in filthy language and intentionally insulted him by using his caste name in public view. In such circumstances, I am of the view that the prosecution has proved the ingredients of Section 294(b) IPC. That factum was correctly considered by the Trial Court. So, I do not find any reason to interfere with the conviction under Section 294(b) IPC.

15. Now, in respect of the offence under Section 324 IPC, this Court has to consider the evidence of P.W.1 and P.W.2, wherein it was stated that the appellant used the knife and caused injury on his left ear. P.W.2 Dr.Agathiyan was examined and he had stated that the deceased sustained stab injury to the extent of 3 x + x 1 cm on his left cheek 2 cm below anterior to left ear. It is simple in nature. He gave Accident Register copy-Ex.P.2. In such circumstances, I am of the view that the prosecution has proved the guilt of the accused under Section 324 IPC. Therefore, as discussed earlier, the prosecution has rightly proved the guilt of the accused under Sections 294(b), 324 IPC and Section 3(1)(x) of SC/ST

(Prevention of Atrocities) Act, 1989. As such, the conviction under the said provisions does not warrant any interference. Hence, it is, hereby, confirmed.

16. Now, this Court has to decide whether the quantum of sentence passed by the Trial Court is fair and proper or excessive in nature?.

17. The learned counsel for the appellant would submit that the appellant has already spent one month in prison. He is having wife and children. He has to maintain them. He prayed some leniency in respect of sentence.

18. Considering the facts and circumstances and also the fact that the appellant has already spent one month in prison, I am inclined to reduce the sentence. Accordingly, the sentence imposed on the appellant under Section 294(b) IPC is reduced to one month rigorous imprisonment from three months rigorous imprisonment and in respect of 324 IPC, the sentence stands reduced to three months rigorous imprisonment from one year rigorous imprisonment and fine amount awarded on that Section is, hereby, confirmed.

19. Insofar as Section 3(1)(x) of SC/ST (Prevention of Atrocities) Act, 1989 is concerned, the minimum sentence is 6 months. That has been awarded by the trial Court, which, in my considered opinion, is fair and proper and hence, it is, hereby, confirmed. Fine amount awarded on that Section is also, hereby, confirmed. It is reported that fine amount has already been paid. The sentences are ordered to run concurrently. The learned trial Judge is directed to take steps to secure the presence of accused and commit him in jail to undergo the remaining period of sentence. The period of sentence already undergone shall be given set off.

20. In fine, the Criminal Appeal is disposed of with the above modification in respect of the sentence alone. 11.12.2014 Index:Yes/No Internet:Yes/No SML R.MALA, J.

SML To 1.The Second Additional Sessions Judge, Tirunelveli. 2.The Deputy Superintendent of Police, (Ambai Circle), Kallidaikurichi Police Station, Tirunelveli District. 3.The Public Prosecutor, Madurai Bench of Madras High Court, Madurai.

Judgment made in Criminal Appeal (MD)No.247 of 2007 Dated:

11. 12.2014

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