

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.375 of 2004

and CrI.M.P.No.3018/2004 M.P.No.1/2014

1.Gowthaman
2.Sekar
3.Murugesan
4.Mani

... Appellants/Accused 1 to 4

vs.

State by Inspector of Police
E3 Teynampet Police Station
Chennai
Crime No.324/1998

... Respondent/Complainant

Criminal Appeal filed under Section 374 of Criminal Procedure Code, 1973 against the order passed in S.C.No.269 of 2001 dated 26.02.2004 on the file of III Additional Sessions Judge, Chennai.

For appellants : Mr.S.Ravichandran

For respondent : Mr.P.Govindarajan
Additional Public Prosecutor

JUDGMENT

This Criminal Appeal has been directed against the convictions and sentences dated 26.02.2004 passed in Sessions Case No.269 of 2001 by the III Additional and Sessions Court (City Civil Court, Chennai).

2. The case of the prosecution is that on 14.01.1998, at about 7 p.m., in Thiru.Vi.Ka.Colony, near Door No.11, due to previous animosity that existed in between all the accused and Jaisankar, with intention to murder him, all the accused have attacked him by using deadly weapons and thereby, caused fatal injuries. After occurrence, the said Jaisankar as defacto complainant has given a complaint to the Investigating Officer (P.W.8) and the same has been registered in crime No.324/98. The complaint alleged to have been given by the defacto-complainant has been marked as Ex.P.1.

3. On receipt of Ex.P.1, P.W.8, Investigating Officer has taken up investigation, examined all the connected witnesses and after

completing the same, laid a final report on the file of 18th Metropolitan Magistrate, Chennai-15 and the same has been taken on file in P.R.C.No.4500/98.

4. The concerned Judicial Magistrate, after considering the fact that the offences alleged to have been committed by all the accused are triable by Sessions Court has committed the case to the court of Principal Sessions Court, Chennai and taken on file in Sessions Case No.269/2001 and subsequently, made over to the trial court.

5. The trial court, after hearing both sides and upon perusing relevant records has framed the charge against all the accused under Section 307 read with 34 of the Indian Penal Code (hereinafter called as "IPC") and the same has been read over and explained to them. The accused have denied the charges and claimed to be tried.

6. On the side of the prosecution, Prosecution Witnesses 1 to 8 have been examined and Exhibits P.1 to P.11 and Material Objects 1 to 6 have been marked.

7. When the accused have been questioned under Section 313 of the Code of Criminal Procedure, 1973 as respects the incriminating materials available in evidence against them, they denied their complicity in the crime. No oral and documentary evidence have been let in.

8. The trial court, after hearing argument of both sides and also after evaluating the available evidence on record has found the accused 1, 2 and 4 guilty under Section 324 of the IPC and sentenced them to undergo 6 months Simple Imprisonment and also imposed a fine of Rs.500/- upon each of them with usual default clause. The trial court has found the 3rd accused guilty under Section 326 of the IPC and sentenced him to undergo 1 year Simple Imprisonment and also imposed a fine of Rs.500/- with usual default clause. Against the convictions and sentences passed by the trial court, the present criminal appeal has been preferred at the instance of the accused as appellants.

9. The consistent case put forth on the side of the prosecution is that due to previous enmity, with intention to murder the defacto complainant by name Jaisankar, all the accused have come to Thiru.Vi.Ka.Colony and in front of the house bearing Door No.11, they attacked the defacto complainant by using deadly weapons and thereby, caused fatal injuries on his person.

10. On the side of the prosecution, the defacto complainant has been examined as P.W.1 and other eyewitnesses have been examined as P.Ws.2 to 4. The doctor, who initially admitted the defacto complainant in Government Hospital has been examined as P.W.6 and the doctor, who treated him has been examined as P.W.7 and the concerned Investigating Officer has been examined as P.W.8.

11. The trial court, after considering the evidence adduced by the prosecution witnesses, coupled with documents has found the accused 1, 2 and 4 guilty under Section 324 of the IPC and also found the 3rd accused guilty under Section 326 of the IPC and awarded sentences against them as noted down earlier.

12. The learned counsel appearing for the appellants/accused has raised the following points so as to set aside the convictions and sentences passed by the trial court against the appellants/accused:-

(i) On the side of the prosecution, P.Ws.1 to 4 have been examined for the purpose of proving alleged occurrence and in fact in the evidence adduced by them, lot of contradictions are available with regard to weapons alleged to have been used by the accused and further P.W.5 has clearly admitted in his evidence that the Police have obtained his signature only from his house and the trial court has failed to consider the inconsistent evidence given by those witnesses;

(ii) The alleged witnesses are nothing but related witnesses and their evidence cannot be believed in;

(iii) In the evidence given by P.W.6, Dr.Periasamy, it is clearly stated that some injuries sustained by the defacto complainant would not have been caused by using cudgel;

(iv) The Investigating Officer (P.W.8) has clearly admitted in his evidence that blood stained clothes seized from the defacto complainant have not been sent for chemical examination.

13. In order to disprove the contentions put forth on the side of the appellant/accused, the learned Additional Public Prosecutor has meticulously contended that in the instant case, the injured witness has been examined as P.W.1 and his specific case is that in the place of occurrence, all the accused have attacked him by using deadly weapons and his evidence has been corroborated by the other witnesses viz., P.Ws.2, 3 and 4. The evidence given by P.Ws.1 to 4 has been clearly corroborated by medical evidence and the trial court, after considering the overall evidence available on record has rightly found the accused 1, 2 and 4 guilty under Section 324 of the IPC and 3rd accused guilty under Section 326 of IPC and therefore, the convictions and sentences passed by the trial court do not require any interference.

14. The defacto complainant has been examined as P.W.1 and his specific evidence is that in the place of occurrence, all the accused have indiscriminately attacked him by using deadly weapons. The other witnesses viz., Sathish, Gowri and Kuppan have been examined as P.Ws.2 to 4 and they have also adduced evidence to the effect that in the place of occurrence all the accused have attacked P.W.1.

15. It is true that in between the testimonies given by P.Ws.1 to 4, some flimsy contradictions are available with regard to weapons alleged to have been used by all the accused in the place of occurrence. Simply because some flimsy contradictions are available with regard to that aspect, the court cannot belittle the evidence given by P.Ws.1 to 4.

16. As rightly pointed out on the side of the prosecution, P.W.1, defacto complainant, is an injured witness.

17. It is a settled principle of law that much credence can be given to testimonies of an injured witness. In the instant case, except flimsy contradictions with regard to weapons alleged to have been used by all the accused in the place of occurrence, no vital contradictions are available in the evidence given by P.Ws.1 to 4 so as to disbelieve the version of the prosecution. Further, it has already been pointed out that since P.W.1 is an injured witness, his evidence cannot be discarded merely on the ground of flimsy contradictions available with regard to weapons alleged to have been used by all the accused. Therefore, the first contention put forth on the side of the appellants/accused is sans merit.

18. The second contention urged on the side of the appellants/accused is that all the eye-witnesses are interested witnesses and therefore, their evidence cannot be believed in.

19. It is a settled principle of law that evidence of interested witness can very well be looked into and further, there is no embargo in the Evidence Act in accepting their evidence. Therefore, the second contention put forth on the side of the appellant/accused cannot be accepted.

20. The third contention put forth on the side of the appellants/accused is that the doctor, who initially admitted P.W.1 in Government Hospital has opined that some of the injuries sustained by P.W.1 would not be possible, if he has been attacked by using a cudgel.

21. It is an archaic principle of law that if there is any contradiction in between the evidence of ocular witness and medical witness, evidence given by ocular witness should prevail. In the instant case, P.W.1 is an injured witness, therefore, much weight can be given to the evidence adduced by him and in such circumstances, the third contention put forth by the appellants/accused also goes without merit.

22. The last contention put forth on the side of the appellants/accused is that the Investigating Officer (P.W.8) has clearly admitted in his evidence that some blood stained clothes have been recovered from P.W.1, but the same have not been sent to chemical examination.

23. It is an admitted fact that P.W.1 has sustained some blood injuries, but, P.W.8 has not sent all the blood stained clothes for chemical examination and the same is nothing but an omission on his part and that itself would not militate the case of the prosecution. Further a faulty investigation would not affect the root of the matter.

24. The learned counsel appearing for the appellants/accused has drawn the attention of the court to the decision reported in 2014 SC 186 [GANESH DATT VS. STATE OF UTTARAKHAND], wherein, the Honourable Apex Court has held if material contradictions are available in between the evidence of ocular witness and medical witnesses, the court can very well disbelieve the case of the prosecution. Further, it is held that if there is no consistent evidence with regard to place of occurrence and also use of weapons, the court can disbelieve the evidence of the prosecution.

25. In the instant case, such a situation has not arisen. Even at the risk of repetition, the court would like to point out that P.Ws.1 to 4 have given consistent evidence with regard to occurrence, even though some flimsy contradictions are available in their evidence with regard to use of weapons by the accused. Therefore, it is quite clear that the decision referred to earlier cannot be attained in the present case.

26. In view of the foregoing narration of both factual and legal premise, this Court has not found any considerable force in the contentions put forth on the side of the appellants/accused.

27. Now, the court has to look into the nature of offences alleged to have committed by all the accused and also quantum of punishment awarded by the trial court.

28. As stated earlier, the occurrence has taken place in the year 1998 and now more than 17 years have elapsed. The trial court has found the accused 1, 2 and 4 guilty under Section 324 of the IPC and sentenced them to undergo 6 months Simple Imprisonment. Likewise, the trial court has found the 3rd accused guilty under Section 326 of the IPC and sentenced him to undergo 1 year Simple Imprisonment.

29. Considering the nature of injuries sustained by P.W.1 and also considering the efflux of time, this Court is of the view to award lesser punishment to the appellants/accused as stated infra.

In fine, this Criminal Appeal is allowed in part. The convictions passed against the appellants/accused under Section 324 and 326 of the IPC by the trial court are confirmed and the sentences imposed against them are modified as follows:-

" The accused 1, 2 and 4 are sentenced to undergo 2 months Simple Imprisonment under Section 324 of the IPC and 3rd accused is sentenced

to undergo 4 months Simple Imprisonment under Section 326 of the IPC. No modification in fine amounts."

30. If the appellants/accused are on bail, the trial court is directed to take appropriate steps so as to immure them in prison to serve out the remaining period of sentence. Consequently, connected Crl.M.P.No.3018/2004 and M.P.No.1/2014 are closed.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

nvsri

To

- 1.18th Metropolitan magistrate,
Saidapet, Chennai.
 - 2.-do-thro' The Cheif Metropolitan Magistrate
Egmore, Chennai - 8.
 - 3.The III Additional Sessions Judge, Chennai.
 - 4.-do-thro' The Chief Metropolitan, Magistrate,
Egmore, Chennai - 8.
 - 5.The Inspector of Police
E3 Teynampet Police Station
Chennai
Crime No.324/1998
 - 6.The Public Prosecutor High Court,
Madras.
- +1 cc to Mr.J.Balagopal, Advocate, sr.42859.

tej(co), kra(31/08)

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