

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 09-11-2016

CORAM

THE HONOURABLE DR.JUSTICE P.DEVADASS

Criminal Appeal No.920 of 2007

Nanjappan

.. Appellant

vs.

State of Tamil Nadu

By its Inspector of Police,
Kadathur Police Station,
Gobichettipalayam Taluk

... Respondent

Criminal Appeal preferred under Section 374 (2) of Cr.P.C., against the judgment and sentence dated 29.6.2007 in S.C.No.10 of 2006 passed by the learned Additional Sessions Judge FTC No.2), Gobichettipalayam.

For Appellant : Mr.A.V.Arun

For Respondent : Mr.R.Sekar,
Government Advocate (Criminal Side).

J U D G M E N T

A-1 in the Sessions Case in S.C. No.10 of 2006 on the file of the learned Additional Sessions Judge (Formerly FTC No.2), Gobichettipalayam is the appellant.

2. PW-1 is the complainant in this case. According to him, he had reported the occurrence to the police since they have not taken proper action, he has initiated private prosecution. He filed a private complaint under Section 200 Cr.P.C., as against A-1 to A-7 in the Court of the learned Judicial Magistrate No.II, Gobichettipalayam. The learned Magistrate entertained the complaint, conducted enquiry under Section 202 Cr.P.C., took cognizance thereon and summoned the accused under Section 204 Cr.P.C.

3. After complying the requirement under Section 208 Cr.P.C., the learned Magistrate having found that an offence under Section 307 IPC is exclusively triable by a Court of Sessions has committed the case to the Court of Principal Sessions Judge, Erode. The learned Principal Sessions Judge made over the case to the learned Additional Sessions Judge (Formerly FTC No.2), Gobichettipalayam for trial.

4. The Trial Court framed multiple charges for various IPC offences with respect to the accused. They have pleaded not guilty to the charges. To establish the charges, the complainant examined PWs-1 to 10, marked Exs.P-1 to P-11 and exhibited MOs-1 and 2.

5. Appreciating the said evidence, the Trial Court acquitted A-2 to A-7 from all the charges, however, convicted A-1 under Section 324 IPC and fined him Rs.2,500/- with a default sentence. A-1 has paid the fine amount.

6. The brief version of the prosecution case may be put as under:-

A-1 and PW-1 belongs to the same village. They have strained relationship with respect to a property dispute. In this backdrop of the matter, on 21.1.2004, at about 1 Noon, when PW-1 came on the Cart Track in Pallathotta Colony, A-1 tried to assault PW-6 Devarajan with an Aruval. PW-6 took umbrage under PW-1. A-1 assaulted PW-1 with the Aruval. PW-1 tried to ward off the assault by raising his hands. PW-1 sustained injury on his inner left palm. He was bleeding. This incident was witnessed to by PWs-2 to 5. PW-7/Doctor at the Government Hospital, Gobichettipalayam, treated PW-1 and noticed on his inner left palm one lacerated injury of 4 cm x 1.5 cm x skin deep (see Ex.P-11 Wound Certificate).

7. The Trial Court appreciating the above evidence and more particularly, relied on the evidence of the injured PW-1 eye-witness PW-5 and the medical evidence of Doctor/PW-7, convicted A-1 under Section 324 IPC, while acquitting him from all other charges and punished him as already stated.

8. The learned counsel for the appellant/A-1 contended that PW-1 is already having motive towards A-1 and thus his evidence cannot be relied on. PW-5 has not seen the actual occurrence as he came to the scene of occurrence only after hearing the sound. Further, there is inconsistency in the evidence of PWs-1 and 5. PW-5 had stated that PW-1 had swelling over his head. However, there was no corresponding medical evidence in the evidence of PW-7. Thus, there is inconsistency between oral evidence and medical evidence. In such circumstances, the evidence of PWs-1 and 5 and other witnesses cannot be relied on.

9. The learned Government Advocate would submit that PW-1 is the injured witness. His evidence has been substantiated by the evidence of other eye-witnesses and the medical evidence of PW-7. In such circumstances, the Trial Court has rightly convicted the appellant under Section 324 IPC and punished him.

10. I have anxiously considered the rival submissions, perused the judgment of the Trial Court and the entire materials on record.

11. Now the question is whether an offence under Section 324 IPC has been established by the prosecution as against A-1/appellant beyond all reasonable doubts.

12. PW-1 and the appellant/A-1 are not strangers. Already there was no love lost between them. Under the circumstances, the complainant/PW-1 alleges that on the occurrence day, when he was walking on the Cart Track in his village, A-1 had assaulted him on his left inner palm with an Aruval.

13. In his evidence, PW-1 had substantiated this aspect. The other ocular witnesses also spoken about this aspect of the prosecution version of the case. PW-5, an ocular witness, after hearing the sound, rushed to the place and he had seen PW-1 with injury on his left inner palm and there was bleeding from the wound. PW-7/Doctor noticed such an injury on the left inner palm of PW-1. PW-1 is the injured witness. He is victim in this case. He having been found with injury on his left inner palm, has been noticed by PW-5 and other eye-witnesses and the evidence of injured and the other witnesses also stand corroborated by the medical evidence. Of course, PW-5 and certain other witnesses stated that they have seen a swelling over the head of PW-1 and PW-7/Doctor did not say so. But we must see the substratum of the prosecution case. The evidence adduced shows that PW-1 had sustained injury on his left inner palm on that day. The ample evidence adduced establishes the same. In such circumstances, the evidence of PW-1 and other ocular witnesses, including the evidence of PW-5, cannot be brushed aside. Prosecution has established an offence under Section 324 IPC beyond all reasonable doubts.

14. In the circumstances, the Trial Court has rightly convicted the accused under Section 324 IPC and taking into account the various aspects, the Trial Court deem it fit to punish him only with a fine upto Rs.2,500/- with default sentence. In the facts and circumstances, we have no occasion here to interfere with the judgment of the Trial Court.

15. In view of the foregoings, this Criminal Appeal fails and it is dismissed.

Sd/-
Asst.Registrar (J)

/true copy/
Sub Asst. Registrar

Svn

To

1. The Additional Sessions Judge
(FTC No.2),
Gobichettipalayam.
2. do thro the Principal Sessions Judge
Tiruppur
3. Judicial Magistrate No.II,
Gobichettipalayam.
4. do thro the Chief Judicial Magistrate
Erode
5. Inspector of Police,
Kadathur Police Station,
Gobichettipalayam.
6. The Public Prosecutor,
High Court, Madras

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