

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.10.2017

PRONOUNCED ON : 11.12.2017

CORAM :

THE HONOURABLE MR.JUSTICE P.N. PRAKASH

Crl.A.No.57 of 2016

Natarajan

Appellant

Vs.

The Deputy Superintendent of Police
Sathyamangalam Sub-Division
Erode District

Respondent

Criminal Appeal filed under Section 374(2) Cr.P.C. against the judgment passed dated 28.09.2015 passed in Special S.C. No.130 of 2014 on the file of the Principal Sessions Judge, Erode Division at Erode.

For Appellant : Mr. T. Gowthaman

For Respondent : Mr. T. Madhan
Government Advocate (Crl. Side)

J U D G M E N T

This appeal has been filed against the judgment dated 28.09.2015 passed in Special S.C. No.130 of 2014 on the file of the Principal Sessions Judge, Erode Division at Erode.

2. It is the case of the prosecution that on 08.03.2012, Kumar [P.W.1], belonging to Hindu Adi Dravidar Community, went along with Murugan [P.W.4] to the house of the latter's relative in connection with "mutton party" and after the party, when they were returning by bicycle back to their village, Natarajan/accused came by his motorcycle in the opposite direction. On seeing Natarajan/accused, Murugan [P.W.4] stopped him and demanded the payment of money due to him, on account of which, a wordy quarrel ensued between the two. At that time, Kumar [P.W.1] interfered and when he tried to separate the duo, Natarajan/accused, suddenly took out a knife from a nearby butcher shop and abusing Kumar [P.W.1] by his caste name, cut him in the thoracic region and after dropping the knife on the spot, ran away. Murugan [P.W.4] took Kumar [P.W.1] to a nearby private hospital from where they were referred to the Government Hospital, Sathyamangalam, where Kumar [P.W.1] was admitted as in-patient.

[a] On receiving intimation, K.K.Thangavel [P.W.8], Special Sub-Inspector of Police, Puliampatti Police Station, came to the hospital and recorded the statement [Ex.P.1] from Kumar [P.W.1] and went to the Police Station and registered an FIR [Ex.P.13] in Cr.No.102 of 2012 under Section 307 IPC read with Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for brevity "the SC/ST Act") against Natarajan/accused.

[b] Investigation of the case was taken over by Muthusamy [P.W.9],

Deputy Superintendent of Police, Sathyamangalam, who went to the place of occurrence and prepared an Observation Mahazar [Ex.P.10] in the presence of Babu [P.W.5] and Selvam [P.W.6] and prepared a Rough Sketch [Ex.P.15]. He recorded the statements of various witnesses and obtained a copy of the Accident Register [Ex.P.3] and Wound Certificate [Ex.P.4] after examining Dr.Aravind [P.W.2] who had treated Kumar [P.W.1].

[c] The Investigating Officer also examined Rukmani [P.W.3], Deputy Tahsildar and obtained the Community Certificates [Ex.Ps.7, 5 and 6 respectively] of Kumar [P.W.1], Murugan [P.W.4] and Natarajan/accused. The Investigating Officer arrested the accused on 10.03.2012 and on his confession statement, went to the place of occurrence and recovered the knife [M.O.1] under the cover of Recovery Mahazar [Ex.P.12] in the presence of Gopalakrishnan [P.W.7], Village Administrative Officer.

[d] After completing the investigation, the Investigating Officer filed a final report in P.R.C. No.13 of 2012 before the Judicial Magistrate, Sathyamangalam and on the appearance of Natarajan/accused, he was furnished with the copies of the records under Section 207 Cr.P.C. and the case was committed to the Special Court for SC/ST Act cases in Spl.S.C.No.130 of 2014.

3. The trial Court framed charges under Section 506(ii), 307 IPC and Section

3(1)(x) of the SC/ST Act against Natarajan/accused. When questioned, the

accused pleaded not guilty. In order to prove the case, the prosecution examined 9 witnesses, marked 15 exhibits and 4 material objects. The accused was questioned about the incriminating circumstances under Section 313 Cr.P.C. and he denied the same. No evidence was adduced on behalf of the accused nor any document marked.

4. After analysing the evidence on record and hearing either side, the trial Court, by judgment dated 28.09.2015, convicted the accused for the offence under Section 3(1)(x) of the SC/ST Act and sentenced him to undergo three years Rigorous Imprisonment and pay a fine of Rs.1,000/-, in default to undergo one month Rigorous Imprisonment; under Section 307 IPC, to undergo 5 years Rigorous Imprisonment and pay a fine of Rs.2,000/-, in default to undergo two months Rigorous Imprisonment. The accused was acquitted of the charge under Section 506(ii) IPC. The sentences were directed to run concurrently. Aggrieved by the conviction and sentence, the accused is before this Court.

5. Heard the learned counsel for the appellant/accused and the learned Government Advocate (Crl. Side) appearing for the respondent State.

6. Learned counsel for the accused submitted that even if the entire evidence is accepted in toto, an offence under Section 307 IPC and Section 3 of the SC/ST Act will not arise, inasmuch as even according to the prosecution, the

quarrel was between the accused and Murugan [P.W.4], who was not a Dalit. While so, during their quarrel, Kumar [P.W.1] intervened and in the heat of the fight, the accused had taken a knife from a nearby butcher shop and caused only one injury, after which he dropped the knife at the spot and ran away.

7. Learned counsel for the accused also submitted that Kumar [P.W.1] accepted in his cross-examination that he had gone along with Murugan [P.W.4] for the mutton feast and they also consumed liquor in the feast and were returning by their bicycle at which time the occurrence had occurred. Therefore, learned counsel submitted that Kumar [P.W.1] was under the influence of liquor and even according to him, he intervened in the quarrel between the accused and Murugan [P.W.4] and suffered injuries. Learned counsel further submitted that there was no premeditation at all because the accused did not carry any weapon with him nor did the accused anticipate that he will be seeing Murugan [P.W.4] on that day.

8. Per contra, learned Government Advocate (Crl. Side) refuted the allegations.

9. This Court gave its anxious consideration to the rival submissions.

10. In this case, the prosecution have satisfactorily proved that Kumar [P.W.1] belongs to Hindu Adi Dravidar Community and Murugan [P.W.4] and

Natarajan [accused] belong to backward communities. The prosecution have also satisfactorily established that an incident had taken place on 09.03.2012 involving Kumar [P.W.1], Murugan [P.W.4] and Natarajan/accused, in which Kumar [P.W.1] suffered a cut injury and was admitted to the hospital. From the evidence of Dr.Aravind [P.W.2] and from the Wound Certificate [Ex.P.4], it is seen that Kumar [P.W.1] had suffered a lacerated injury and a contusion in the chest region, which, in the opinion of Dr.Aravind [P.W.2], was simple in nature.

11. On a reading of the cross-examination of Kumar [P.W.1], it is seen that he candidly admitted that he consumed liquor in the mutton feast and while returning with Murugan [P.W.4], they happened to see Natarajan/accused coming in the opposite direction and at that time, Murugan [P.W.4] went and demanded return of loan amount, on account of which, a quarrel ensued. Thus, the quarrel was essentially a money dispute between Natarajan/accused and Murugan [P.W.4], in which, Kumar [P.W.1] intervened and in the fit of anger, Natarajan/accused took a knife from a nearby butcher shop and attacked Kumar [P.W.1] and called him by his caste name. Even in the complaint [Ex.P.1] given by Kumar [P.W.1], he has stated that after the incident, Natarajan/accused dropped the knife at the very place and ran away. Therefore, the police knew where the knife was and hence, the alleged recovery of the knife pursuant to the confession statement of the accused is not saved by Section 27 of the Evidence Act and the same stands vitiated.

12. There is sufficient force in the submission of the learned counsel for the accused that the incident was not a premeditated one and there was no intention to commit the murder of Kumar [P.W. 1] warranting punishment under Section 307 IPC. In the opinion of this Court, the facts proved by the prosecution only disclose the commission of an offence under Section 324 IPC and Section 3(x) of the SC/ST Act.

In the result, this appeal is partly allowed and the conviction and sentence imposed on the accused for the offence under Section 307 IPC is hereby set aside and instead, the accused is convicted for the offence under Section 324 IPC and is sentenced to undergo 18 months Rigorous Imprisonment and pay a fine of Rs.2,000/-, in default to undergo one month Rigorous Imprisonment. As regards the offence under Section 3(x) of the SC/ST Act, the sentence is reduced to 18 months Rigorous Imprisonment. The sentences shall run concurrently. The accused will be entitled to set off, if any.

11.12.2017

gms

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P.N.PRAKASH, J.

gms

To

1. The Deputy Superintendent of Police
Sathyamangalam Sub-Division, Erode.

2. The District Principal Sessions Judge,
Erode Division at Erode.

3. The Public Prosecutor,
High Court, Madras.



Pre-delivery judgment in

CrL.A.No.57 of 2016

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