

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved on: 10.10.2017
Order Pronounced on: 25..10..2017

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Cr1.R.C.No.195 of 2012

1. K.G.Praksh [A1]
2. R.Chandran [A2]
3. N.Suresh [A6]
4. B.V.Ragavendra [A7]
5. B.M.Suresh [A9]
6. R.B.Mahadevaiah [A10]
7. M.Rajagopalakrishnan [A12]

... Petitioners

-Versus-

State by:
The Sub-Inspector of Police,
SIPCOT Police Station,
Hosur,
Krishnagiri District.
[Crime No.99 of 2005]

... Respondent

Revision Case filed under Sections 397 r/w 401 of Cr.P.C. to call for the entire records relating to the case in C.A.No.18 of 2008 on the file of the learned Additional Sessions Judge, Krishnagiri and to set aside the judgement dated 28.04.2011 made in Cr1.A.No.18 of 2008 by the learned Additional Sessions Judge, Krishnagiri, confirming the judgement dated 10.01.2008 made in C.C.No.6 of 2006 by the learned Judicial Magistrate-II, Hosur, Krishnagiri District.

For Petitioners : Mr.P.M.Duraiswamy

For Respondent : Mr.V.Arul, APP

ORDER

The petitioners are Accused Nos.1, 2, 6, 7, 9, 10 and 12 in C.C.No.6 of 2016 on the file of the learned Judicial Magistrate-II, Hosur, Krishnagiri District. There were totally eighteen accused including the petitioners herein. A1 stood charged for offence under Sections 147 and 323 r/w 149 & 109 of IPC and A2 to A20 stood charged for offence under Sections 147, 323 r/w 149 of IPC. After full-trial, the trial court found A1 to A13 guilty of offence punishable under Section 147 and 323 r/w 149 of IPC and sentenced each of them to pay a fine of Rs.200/- in default to suffer simple imprisonment for three months for offence under Section 147 of IPC and sentenced each of

them to a fine of Rs.100/- in default to suffer simple imprisonment for two months for offence under Section 323 r/w 149 of IPC. The trial court, however, found A14 to A20 not guilty of any offence and accordingly acquitted them from the charges. Challenging the conviction and sentence of fine, A1, A2, A6, A7, A9, A10 and A12 alone filed an appeal in CrI.A.No.18 of 2008 before the learned Additional Sessions Judge, Krishnagiri, which was dismissed thereby confirming the conviction and sentence of fine imposed by the trial court. Further, aggrieved by the same, they are before this court with the present revision petition.

2. The case of the prosecution in short is as follows:- A2 to A20 were the employees of one Global Remedies Factory at SIPCOT in Hosur. A1 in this case was the leader of a trade union. There was a wage dispute between the management and the employees and settlement talks were going on between them on 31.03.2005. All the accused were present in the factory premises when settlement talks were going on. At that time, A1 who was the trade union leader and not an employee of the factory also came to participate in the meeting. Since the management put a precondition that outsiders should not be involved in the settlement talks, the management asked A1 not to indulge in the affairs of the factory. When A1 was asked to go out of the factory premises, all the accused formed themselves into an unlawful assembly and A1 abetted the other accused to attack the officers of the factory. Immediately, A6 to A9 attacked P.W.1 who was the Executive Officer of the factory. When P.W.2 another Executive Officer of the factory came to the rescue of P.W.1, A10 and A12 attacked him with hands and kicked him and caused injuries. P.W.1 and P.W.2 were immediately taken to Government Hospital at Hosur by P.W.3 with the help of P.W.5 to P.W.7, where they were admitted as inpatients. On receiving intimation from the hospital, P.W.11, the Sub Inspector of Police, proceeded to the hospital, recorded the statement of P.W.1 and on returning to the police station, based on the statement of P.W.1, he registered a case in crime No.99 of 2015 for offences under Sections 147, 323 and 109 of IPC and prepared the FIR. Then, he proceeded to the scene of occurrence, prepared an observation mahazar, drew a rough sketch and also recorded the statements of few other witnesses in the factory premises including the Security Officers of the factory. In the mean time, some of the accused got themselves admitted in the hospital for treatment alleging that they have been assaulted by the officers of the factory when the settlement talks in respect of wage dispute were going on at the factory premises. In this regard, the accused party filed a complaint and based on the same a case in counter has been registered in Crime No.100 of 2005 for offence under Section 147, 148, 323, 324 of IPC. P.W.11 investigated both the cases and referred the complaint filed by the accused party as "mistake of fact" and filed final report in the other case against the petitioners and others for offence under Section 147, 323 r/w 149 and 109 of IPC.

3. After having considered the above materials, the trial court framed charges as mentioned in the first paragraph of this order. As the accused denied the same, they were put on trial. During trial, on the side of the prosecution, as many as 11 witnesses were examined as P.W.1 to P.W.11 and 7 documents were exhibited as Ex.P.1 to Ex.P.7.

4. Out of the above witnesses, P.W.1 was the Executive Officer of the factory. He had spoken about the fact that there was a wage settlement talk going on in the factory premises on 31.03.2005. At that time, all the accused were present. The management put a precondition that except the employees of the factory, no outsiders will be permitted to participate in the settlement talk. A1 who claimed to be the trade union leader wanted to participate in the settlement talk. But, the management did not accept the request of A1 and wanted him to go out of the factory premises. At that time, A1 along with the other accused formed an unlawful assembly and A1 abetted the other accused to attack P.W.1. Immediately, A1 and the other accused raised slogans against the management and A6 to A9 attacked P.W.1 with hands and kicked him and caused injuries. P.W.2, another Executive Officer of the factory, had spoken that when he tried to intervene and pacify the accused, A10 and A12 attacked him also with hands and caused injuries. P.W.3 was the Assistant Manager of the factory. According to him, on the date of occurrence, A1, A2, A4, A5 and A6 were present at the factory premises on the date of occurrence and by raising slogans against the management, A1 instigated the other accused to attack P.W.1. Immediately, A6, A7, A8 and A9 attacked P.W.1 with hands and P.W.1 sustained injuries on his head and left hand. When P.W.2 came to the rescue of P.W.1, A4, A10 and A12 attacked P.W.2 also with hands. Then, P.W.3 with the help of other witnesses took P.Ws.1 and 2 to the Government Hospital at Hosur, for treatment.

5. P.W.4 was the yet another Executive Officer of the factory. He had spoken about the presence of the accused and the participation of some of the accused in the wage settlement talk and also the attack made by the accused on P.W.1 and P.W.2. P.W.5 was the Manager of the factory. He had also spoken about the presence of some of the accused at the place of occurrence and the attack made on P.W.1 and P.W.2. P.W.6 was the Production Manager of the factory. He had spoken about the very same facts. P.W.7 was the Assistant Manager of the factory and also an eye witness to the occurrence. He had also spoken about the overt acts of A4, A6, A8 and A12. P.W.8 was the Security Officer in the factory. He had also spoken about the occurrence and the overt acts of A6 to A9 and A10 to A13. P.W.9 was the Manager, Human Resources. He had spoken about the preparation of the observation mahazar and the rough sketch by the police at the place of occurrence.

6. P.W.10, was the Doctor, who treated P.W.1 and P.W.2 at Hosur Government Hospital on 31.03.2005 and gave accident registers Ex.P.3 and Ex.P.4. According to him, the injuries found on P.W.1 and P.W.2

were all simple in nature. P.W.11 was the then Sub Inspector of Police attached to SPICOT Police Station, Hosur. He had spoken about the registration of the case, investigation done by him in this case and the filing of charge sheet against the accused.

7. When the petitioners and the other accused were questioned under Section 313 of Cr.P.C. in respect of the incriminating evidences available on record, they denied the same. On the side of the accused, none was examined, however, a copy of the caveat petition was marked as Ex.D1; a copy of caveat petition received through a registered post was marked as Ex.D.2 ; and a copy of caveat petition dated 05.06.2005 filed before the learned District Munsif, Hosur was marked as Ex.D.3.

8. Having considered all the above, the learned Magistrate convicted the petitioner and few other accused and sentenced them accordingly as narrated in the first paragraph of this order. On appeal preferred by A1, A2, A6, A7, A9, A10 and A12, the learned Additional Sessions Judge affirmed the conviction and sentence of fine and further aggrieved by which the convicts are before this court with this revision. A3, A4, A5, A8, A11 and A13 did not challenge their conviction and sentence. Therefore, in the present case I am only concerned with the allegations against the petitioner and not with regard to the other convicts and the evidence against the other convicts will be discussed for the limited purpose.

9. I have heard the learned counsel for the petitioners and the learned Additional Public Prosecutor for the State and also perused the records carefully.

10. The learned counsel for the petitioner submitted that P.W.1 to P.W.9 are Executive Officers, Managers and Security Officers of the factory and they are all interested witnesses and no independent witness was examined by the prosecution to corroborate the testimonies of injured eye witnesses P.W.1 and P.W.2 and the both the courts below have taken into consideration the testimonies of interested witnesses and thus committed error in convicting the petitioners. Even in the evidences of P.W.1 to P.W.8 there are lot of contradictions and their evidence did not corroborate with each other regarding the overt acts of the accused. The evidences of P.W.1 and P.W.2 are not trustworthy and it cannot be relied upon. P.W.9 one of the attesting witnesses to observation mahazar and rough sketch also did not corroborate the eye witness account. The medical evidence does not correspond to ocular evidence of P.W.1 and P.W.2.

11. The learned counsel would further submit that there was a delay in registering the first information and also forwarding the FIR to the court. According to him, even though the occurrence was taken place at about 10.30 a.m. the FIR has been filed at 11.00 p.m. on 31.03.2005, the same had reached the learned Magistrate only on 04.04.2005 and the delay of four days has not been explained by the

prosecution which would ultimately create a strong doubt in the case of the prosecution and thus, the petitioners are entitled for acquittal.

12. The learned counsel would also submit that even though A7 and A8 also sustained injuries in the same occurrence and they were also taken to the hospital and based on their complaint, a crime was registered separately by the respondent police, P.W.11 referred the same as mistake of fact and the prosecution did not explain the injuries found on A7 and A8.

13. The learned counsel would lastly submit that the prosecution has failed to prove that there was an unlawful assembly and all the accused have common intention to attack P.W.1 and P.W.2 as alleged by the prosecution. P.W.11, the investigating officer had categorically admitted in his cross examination that he could not fix the exact place of occurrence. Thus, the learned counsel submitted that the prosecution has suppressed the origin and genesis of the occurrence and the petitioners cannot be convicted either for offence under Section 147 of IPC or with the aid of Section 149 of IPC.

14. Per contra, the learned Additional Public Prosecutor submitted that there are as many as eight eye witnesses in this case. The occurrence took place within the factory premises. P.W.1 to P.W.6 are the Executive Officers and Managers of the factory. P.W.7 and P.W.8 are Security personnels. When it is the consistent version of the eye witnesses that the occurrence took place within the factory premises and the accused in the midst of wage settlement talk all of a sudden, formed themselves into an unlawful assembly and at the instigation of A1, the other accused attacked P.W.1 and thereafter P.W.2 and caused injuries to them, the presence of P.W.3 to P.W.8 is quite natural and their evidence cannot be discarded merely because they are employees of the factory and interested witnesses.

15. So far as the delay is concerned, the learned Additional Public Prosecutor would submit that after the occurrence, P.W.1 and P.W.2 were taken to the hospital and admitted therein as inpatients and on receiving the intimation, P.W.11 rushed to the hospital at 09.00 p.m. and recorded the statement from P.W.1 and on returning to the police station, he registered the case. Insofar as the delay in forwarding the FIR to the court is concerned, that itself would not render the prosecution case untrustworthy and entitle the accused for acquittal when the other available evidences clearly point to the guilt of the accused and both the courts have extensively considered the materials available on record and concurrently held that it was only these petitioners who committed the offence and convicted them for the offence under Sections 147 and 323 r/w 149 of IPC and there is no illegality or irregularity in the judgements of the courts below. Thus, he prayed for dismissal of the revision.

16. I have considered the rival submissions carefully.

17. P.W.1 and P.W.2 are the injured eye witnesses in this case. Both of them are the Executive Officers of the factory. The other eye witnesses namely P.W.3 to P.W.6 are Managers, Assistant Manager and Security Officers of the factory. According to them, on 31.03.2005 at 10.30 a.m. there was a wage settlement talk going on in the factory premises between the management and the employees with a precondition that employees of the factory alone could participate in the settlement talk and no outsiders could be allowed to participate in the wage settlement talk. Admittedly, A1 was not an employee of the factory and he was the leader of a trade union and he wanted to participate in the wage settlement talk, but, the management refused to accede his request and he was asked to go out of the factory premises. Enraged over the same, according to P.W.1, A1 along with other accused formed an unlawful assembly, raised slogans against the management and at the instigation of A1, A6 to A8 attacked P.W.1 with hands and kicked him indiscriminately and caused simple injuries. According to P.W.2, when he tried to intervene and pacify the accused, A10 and A12 attacked him with hands and caused simple injuries. P.W.3 had stated that A6 to A8 attacked P.W.1 with hands and A4, A10 and A12 attacked P.W.2 with hands and caused injuries to them and he took the injured P.W.1 and P.W.2 to the Government Hospital at Hosur for treatment with the help of P.W.4 to P.W.6. P.W.4 yet another Executive Officer in the factory had stated that about the overt acts of A6 to A9 and A14, A10 and A12. P.W.5, the Manager and P.W.6 Assistant Manager in the factory had corroborated the testimonies of P.W.1 and P.W.2 and they had specifically spoken about the overt acts of some of the accused.

18. Even though A1 to A12 have been convicted by the trial court and the same has been confirmed by the appellate court, P.W.1 to P.W.7 had vividly spoken only against A1, A4, A6 to A8 and A12 and there is absolutely no evidence against A2 to show that he was also a member of the unlawful assembly and he participated in the occurrence. From the eye witnesses account, more particularly, P.W.1 and P.W.2, the injured eye witnesses account, it could be seen that all the petitioners were present at the factory premises at the time when settlement talks were going on, but, when the management had refused to accord permission to A1 to participate in the wage settlement talk, he instigated his associates to attack P.W.1 and when P.W.2 came to the rescue of P.W.1, he also sustained injuries. Even though A2 was said to have been present at the place of occurrence at the time when P.W.1 and P.W.2 were assaulted, there is absolutely no evidence against them to show that he had also shared the common object of the unlawful assembly and as such he cannot be convicted with the aid of Section 149 of IPC.

19. P.W.10, the Doctor, had stated that on 31.03.2005 when he was on duty, P.W.1 and P.W.2 were brought before him for treatment at 01.00 p.m. On examining P.W.1, he found contusions on the left side of the head, on both ears. According to him, P.W.2 complained of chest pain. He opined that all the injuries found the injured were of simple in nature. He issued Ex.P.3 and Ex.P.4 to that effect. Thus, the medical evidences corroborate the eye witnesses account, more particularly, the evidences injured eye witnesses. The occurrence had, admittedly, taken place within the factory premises and the presence of P.W.2 to P.W.8 are quite natural and their evidences are cogent and convincing. Merely because they are officers and managers in the factory and they are interested witnesses, their evidences cannot be discarded. There are other evidences convincing evidences to prove the charges against the petitioners.

20. So far as the contention of the learned counsel for the petitioners that there are discrepancies in the eye witnesses account is concerned, a close scrutiny of the entire evidence would go to show that there is absolutely no discrepancy in their evidences and they had clearly spoken about the overt acts of each petitioner. Their evidences are cogent and convincing. The learned counsel for the petitioner is unable to point out any material contradiction to discard the testimonies of the injured and the other eye witnesses account.

21. So far as the delay in registering the first information and forward the first information report to the court is concerned, it is the evidence of P.W.1 and P.W.2 that immediately after the occurrence, they were taken to the hospital by P.W.3 with the help of other witnesses and they were admitted in the hospital as inpatients at about 01.00 p.m. for treatment to injuries sustained by them in the occurrence and after having received intimation from the hospital, P.W.11 rushed to the hospital and recorded the statement from P.W.1 and on returning to the police station, he registered the FIR at 11.00 p.m. on 31.03.2005. The delay in lodging of the FIR would not by itself demolish the prosecution case, if the delay is properly explained. In this case, immediately after the occurrence, P.W.1 and P.W.2 were taken to the hospital and they were admitted as inpatients. On receipt of intimation from the hospital, P.W.11 rushed to the hospital and recorded the statement from P.W.1 and on returning to the police station, he immediately registered the case. Nextly, the learned counsel pointed out the delay in reaching the FIR to the Court. Here also it is not always fatal. It is the settled law that as long as there is cogent and acceptable explanation offered for the delay, it loses its significance. Whether or not the explanation is acceptable will depend upon the facts of each case. There is no cut and dried formula for determining whether the explanation is or is not acceptable. What all the court has to do is that it has to scrutinize the evidence carefully and see whether there is any possibility of introducing concocted or coloured version or replacing another FIR in the place of earlier. The petitioners

never denied their presence in the factory on the date of occurrence. The occurrence has also been proved by the prosecution. The injuries on P.W.1 and P.W.2 have also proved by medical evidence. Further, nothing has been brought on record during cross examination of P.W.11 to doubt the genesis of the FIR or to hold that the allegations in the FIR are unworthy of credence or that the prosecution has falsely implicated the accused in the commission of the crime. Thus, I hold that the delay pointed out by the learned counsel for the petitioner both in registering the FIR and reaching the FIR to the court is not fatal to the prosecution case. Thus, the delay in lodging the FIR as well as the delay in reaching the FIR to the court stand fully explained, from the circumstances and the evidence discussed above. Therefore, both the courts below were right in condoning the delay in which I do not find any perversity.

22. In the light of the above discussions, I am of the considered view that A1, A4, A6, A7, A8, A9, A10 and A12 have formed themselves into an unlawful assembly and at the instigation of A1, A6 to A9 and A4, A10 and A12 assaulted P.W.1 and P.W.2 and caused simple injuries on them. But, so far as A2, concerned, there is no evidence to hold him guilty of offences and as such he is entitled for acquittal and to that extent, the judgements of both the courts below require interference.

23. In so far as , the sentence is concerned, the trial court itself had taken a very lenient view and sentenced the guilty individual only to fine which was confirmed by the appellate court and the same, therefore, does not require any interference.

24. In the result, the criminal appeal is partly allowed. The conviction and sentence of the petitioners 1 and 3 to 7/A1, A6, A7, A9, A10 and A12 recorded by both the courts below are confirmed and the conviction and sentence imposed on the 2nd petitioner/A2 is set aside and he is acquitted from both the charges. Fine amount already paid, if any, shall be refunded to the 2nd petitioner/A2.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Judicial Magistrate-II, Hosur, Krishnagiri District.
 - 2.-Do Thro the Chief Judicial Magistrate Krishnagiri District.
 - 3.The Additional Sessions Judge, Krishnagiri, Krishnagiri District.
 - 4.The Sub-Inspector of Police, SIPCOT Police Station, Hosur, Krishnagiri District.
 - 5.The Public Prosecutor, High Court, Madras.
- +lcc to Mr.P.M.Duraiswamy, Advocate, S.R.No.75915

Cr1.R.C.No.195 of 2012

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