

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2017

C O R A M

THE HONOURABLE Mr. JUSTICE C.T. SELVAM

Criminal Appeal No. 636 of 2003

M. Narasiah

...Appellant/Accused 1

Versus

State by Inspector of police,
D.3.Ice House police station,
Chennai.

...Respondent/Complainant

Criminal Appeal filed under Section 374 of Criminal Procedure Code praying to set aside the conviction and sentence passed by the learned Additional District and Sessions Judge-cum-Fast Track Court No.3, Chennai, 31.03.2003 and acquit him from the charges.

For Appellant : Mr.Vinobha Gandhi

For Respondent : Mr.C. Iyyaparaj,
Additional Public Prosecutor

J U D G M E N T

This appeal arises against the judgment of learned Additional District and Sessions Judge-cum-Fast Track Court III, Chennai, passed in S.C.No. 364 of 2001 on 31.03.2003, convicting the appellant herein for offences under sections 148, 341 and 307 I.P.C and sentencing him to 3 years R.I. for offence

u/s.148 IPC, fine of Rs.500/- i/d 3 months R.I. for offence u/s.341 I.P.C and 6 years R.I. and fine of Rs.5000/- i/d 3 months R.I. for offence u/s. 307 I.P.C.

2. The case of prosecution is that on 08.12.1999 at around 06:15 p.m, P.W.2, Mangammaal was returning home after watching a movie. When she was near the Public Toilet at First Street of Ice House, Chennai, accused 1 and 2, along with accused waylaid her owing to previous enmity, A1 and A2 attacked on her head with a vettukathi and caused injuries. At the same time, the other accused attacked her using sticks, iron pipes and hands.

3. On 08.12.1999, at around 11:00 p.m, P.W.12, Inspector of Police, went to the Government General Hospital and recorded the statement of P.W.1 and registered a case in Crime No. 809/99 on the file of respondent under Sections 147, 148, 323, 341, 324 and 307 IPC. Ex.P.8 is the First Information Report. At around 12:00 a.m, he took up investigation and went to Ram Nagar, the place of occurrence. He prepared observation mahazar - Ex.P6 and rough sketch - Ex.P7 in the presence of P.Ws 4 and 10. He examined P.Ws 1 to 11 and recorded their statements. On 09.12.1999, P.W.12 arrested accused 1 to 5 at Korukkupettai Kamarajar Nagar and recorded confession statements of A1 and A2. On 09.12.1999, at around 09:00 a.m, A1, handed over the knife hidden by him to P.W.12. P.W.12 seized the knife in the presence of the mahazar witnesses, A2 and P.W.7. Ex.P.9 is the Seizure Mahazar. Ex.P.10 is the admissible portion of the confession statement of A1.

P.W.12 recorded the statement given by A2. P.W.12 seized a knife from A2 under Ex.P12 - seizure mahazar. Ex.P.11 is the admissible portion of the confession statement of A2. On 09.12.1999, at around 11:00 a.m, P.W.12 brought accused 1 to 5 to the Police Station and then produced them before the XIII Judicial Magistrate for judicial custody. PW-12 submitted Form-95 before the Court regarding material objects under Ex.P13. On 02.02.2000, at 08:00 a.m, PW-12 arrested A6, brought to the Police Station and then took him to the XIII Judicial Magistrate, Chennai. P.W.12 obtained the wound certificate of P.W.2 and examined the Ward Doctor, P.W.8 and recorded his statement. On completion of investigation on 15.03.2000, P.W.12 filed a charge sheet informing commission of offences under Sections 147, 148, 323, 341, 324, 307 of I.P.C. On committal, the case was taken on file in S.C.No. 364 of 2001 by learned Additional Sessions Judge-cum-Fast Track Court III, Chennai.

4. Before the trial Court, the prosecution examined P.Ws 1 to 12 and marked 13 exhibits and 2 material objects. None were examined on behalf of the defence nor were any exhibits marked.

5. On appreciation of materials before it, trial Court, under judgment dated 31.03.2003, convicted the appellant/A1 herein for offences under sections 148, 341 and 307 I.P.C and sentenced him to 3 years R.I. for offence u/s.148 IPC, fine of Rs.500/- i/d 3 months R.I. for offence u/s.341 I.P.C and 6

years R.I. and fine of Rs.5000/- i/d 3 months R.I. for offence u/s. 307 I.P.C. There against, the present appeal has been filed.

6. Heard learned counsel for appellant and learned Additional Public Prosecutor for respondent.

7. Learned counsel for appellant submitted that of the six accused, the second accused had absconded and thus, the case against him having been split up, A1 and A3 to A5 faced trial. Appellant/A1 was convicted for offences under sections 148, 341 and 307 I.P.C and the other accused were convicted for the offences under sections 341 and 147 IPC and sentence of fine was imposed upon them. Such accused have paid the fine amount. Presently, it is only first accused who is before this Court by way of this appeal. Learned counsel for appellant/A1 submitted that P.W.2 had suffered two injuries. Ex.P5 is the Accident Register of the Government General Hospital relating to P.W.2 and the same informed that she had been sent to such hospital from the Government General Hospital, Royapettah and that she suffered two lacerated injuries, one to the front of the head and one to the back thereof. Ex.P.4 was the opinion of PW-8 - Dr. Govindhabaabu, wherein he had informed that the X-ray revealed a fracture to the right temporal bone. In his testimony before the Court when examined as P.W.8 he had not specifically spoken to any fracture suffered by P.W.1. The X-ray, apparently upon which P.W.8 had issued Ex.P.4,

had not been marked as an exhibit in the case. Learned counsel submitted that though the prosecution would have it that the injury suffered by P.W.1 was owing to an attack with a vettukathi, in Ex.P.5, the hospital authorities, have recorded information of assault by two known persons with a wooden log. Learned counsel submitted that of the two injuries suffered to the head by P.W.2, there is no definiteness as to which injury was caused by A1 and which by A2. Learned counsel submitted that the prosecution case as revealed through P.W.1 was that angered by the complainant party having succeeded in a civil litigation, they having obtained an order of injunction in their favour, the accused party mounted an attack. P.W.1 was an eyewitness and P.W.2 was the injured. P.W.4, who attested the topo sketch, Ex.P.7 and P.Ws.3, 5 and 6, alleged to have witnessed the occurrence had turned hostile. P.W.8 is the Doctor, who had given information regards the nature of injuries suffered by PW-2 in Ex.P.4. P.W.9 was a witness to recovery while P.W.10 also was a mahazar witness. PW-10 had turned hostile. P.W.11, Doctor, had recorded Ex.P5 - Accident Register. PW-12 was the investigating officer. Learned counsel submitted that there was no definiteness about injury to the front of the head and fracture having been caused by the appellant and in any event, the sufferance of fracture by PW-2 had not been proved through the marking of X-ray as an exhibit. The appellant ought to have been given the benefit of doubt and acquitted. Learned counsel for appellant placed reliance on the judgment of Supreme Court in **Ramesh Kumar @ Bala Versus State of Punjab 2016 SCC**

(Criminal) 669, to invoke the application of The Probation of Offenders Act, should this Court consider conviction proper.

8. Learned Additional Public Prosecutor submitted that the prosecution case stood proved through the testimony of P.W.2, injured witness as also P.W.1, an eyewitness. The mere fact that the other eyewitnesses have turned hostile cannot work against the prosecution. P.W.8, Doctor, in Ex.P.4 and through perusal of the material record by way of X-ray had informed injury to be grievous in nature. P.W.9 had spoken to his sister, P.W.2 having been in critical state and all the accused making a get away using an auto. The recoveries of a knife and wooden log at the residence of the accused have also been spoken to by such witness. P.W.2, injured witness, specifically has named the appellant as the person who caused injury to the front of the head. In the circumstances, the finding of conviction for offences u/s. 148, 341 and 307 I.P.C. and did not call for any interference. Learned Additional Public Prosecutor also submitted that the appellant/A1 has no bad antecedents.

9. This Court has considered the rival submissions and perused the materials on record.

10. Taking into consideration the position that alleged eyewitnesses to the occurrence, PWs.3, 5 and 6 have turned hostile and the admitted dispute over property between the complainant and the accused party and further the

fact that neither P.W.1 nor P.W.2 have spoken to any utterances by the accused as would inform their intent to do away with PW-2, this Court is of the view that conviction under section 307 IPC is improper. P.W.2, injured witness, has spoken to the attack upon her and P.W.1, her niece, has also spoken to the same. This Court would hold that the accusation against the accused stands well made. However, offence attracted would be one u/s.326 IPC if the sufferance of grievous injury by P.W.2 had been proved thorough appropriate material. In the absence of prosecution marking the X-ray which would be conclusive of the nature of injury suffered by P.W.2 and no definite deposition of Doctors, PWs.8 and 11 before Court, the offence only can be read to be one u/s.324 IPC i.e. voluntarily causing hurt as distinct from voluntarily causing grievous hurt.

11. This Court, while confirming the finding of conviction for offences u/s.148 and 341 and sentence thereon, would alter the conviction u/s.307 IPC to one u/s.324 IPC and impose sentence of three years R.I. and fine of Rs.5,000/- i/d 3 months R.I. and invoke Section 4 of the Probation of Offenders Act. This Court directs that the petitioner be released on probation of good conduct, on his executing a bond in a sum of Rs.10,000/- (Rupees Ten Thousand only) with one surety in a like sum to the satisfaction of the trial Court viz., Additional Sessions Judge-cum-Fast Track Court III, Chennai, within one month from the date of receipt of this order, undertaking to appear and

receive sentence when called upon to do so, during a period of two years of the date of the bond and in the mean time to keep the peace and be of good behaviour. It is made clear that on expiry of the bond period and in keeping with Section 12 of the Probation of Offenders Act, the petitioner shall not suffer disqualification, attaching to this conviction.

The Criminal Appeal is disposed of with the above modification.

24.07.2017

Index: Yes / No

Internet: Yes

mrr/gm

To

1.The Additional District and Sessions Judge,
Fast Track Court No.3,
Chennai.

2.The Inspector of police,
D.3.Ice House police station,
Chennai.

3.The Public Prosecutor,
High Court, Madras.

C.T. SELVAM, J

mrr/gm



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