

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.03.2018
DELIVERED ON : 09.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Criminal Appeal No.283 of 2011

1.Mangai
2.Karthik
3.Raji @ Rajesh
4.Kamalakannan
5.Ulli @ Marimuthu
6.Jai @ Jaiganesh

...Appellants/A1 to A6

Vs

The State Rep. by
Inspector of Police,
Thiruvotriyur Police Station,
Thiruvotriyur,
Chennai.
(Cr.No.1200/2006)

...Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code, to call for the records in S.C.No.45 of 2009 on the file of the Additional District Sessions Judge (Fast Track Court No.IV), Ponneri and to examine the same and to set aside the judgment of conviction pronounced by the Additional District Sessions Judge (Fast Track Court No.IV), Ponneri on 07.03.2011 in S.C.No.45 of 2009 and to acquit the appellants.

For Appellants : Mr.C.M.Gunasekaran
For Respondent : Mrs.T.P.Savitha
Government Advocate (Crl.Side)

JUDGMENT

As against the judgment of conviction passed in S.C.No.45 of 2009 dated 07.03.2011 by the learned Additional District Sessions Judge, Fast Track Court No.IV, Ponneri, the appellants who are Accused Nos.1 to 6 have preferred the instant appeal by raising several grounds.

2.The perusal of the judgment of the learned Trial Court has disclosed that the 1st appellant was convicted for the offence under Sections 147, 341, 307 r/w 149 IPC. The 2nd to 6th Appellant/Accused were found guilty for the offence under Sections 148, 341, 307 of IPC. Accordingly, for the offence under Section 147 of the 1st Appellant/Accused was imposed a fine of Rs.200/-, in default he has to undergo one month of imprisonment. For the offence under section 341 a fine of Rs.100/- was imposed with a default sentence of two weeks. For the offence under Section 307 r/w 149 the 1st Appellant/Accused was convicted by imposing 3 years of rigorous imprisonment and a fine of Rs.700/- with a default sentence of 3 months of simple imprisonment. As against the 2nd to 6th Appellants/Accused, an offence under section 147 of IPC each was imposed a fine of Rs.200/- with a details of 1 month of simple imprisonment and for the offence under section 341 of IPC., each of them was imposed a fine of Rs.100/- with a default sentence of 2 months simple imprisonment and for the offence under section 307 of IPC a sentence of three years rigorous imprisonment with a fine of Rs.700/- was imposed along with three months simple imprisonment as default sentence.

3.It is seen from the records that the prosecution has examined PWS-1 to PW-16 and marked Exhibits P-1 to P-12. Apart from that material objects MO-1 to MO-11 were produced. On the side of the Accused/Appellant no oral or documentary evidence was let in.

4.According to the prosecution that PW-1 is the wife of PW-2. On the date of the occurrence that is on 17.09.2006 at about 18.15 hrs when PW-1 was standing near her house in Thiruvetriyur, her husband PW-2 came along with the multitude of the Karagam festival in her locality. At that time the 1st Appellant/Accused came along with the other accused and she instructed her henchmen by identified PW-2 to cut him. Immediately all other accused chased the PW-2 but he entered into the residence of one Kuppamal which is a small hut, however, all the accused trespassed into the house by causing damage to the thatched roof and also the door of the hut. Further, in the hut itself, PW-2 was indiscriminately assaulted and cased cut injuries. Immediately PW-2 was taken to a hospital namely a Subam Hospital along with one Parthiban (PW-2). Thereafter PW-1 lodged complaint and the case in Cr.No.1200 of 2006 on the file of the Thiruvetriyur Police Station was registered by PW-15. Subsequently, investigation was commenced by PW-15 followed by registration of First Information Report

Exhibit P-10. Pursuant to the registration of First Information Report, the rough sketch and observation mahazar were prepared in the presence of PW-10 and PW-11. The blood stained earth was also recovered in mahazar. The blood stained clothes worn by the injured PW-2 was also recovered.

5. After the completion of the investigation, final report was filed as against the Appellant/Accused for the offence under sections 147, 148, 448, 341 and 307 of IPC before the learned Judicial Magistrate, Thiruvettriur, wherein P.R.C.No.18 of 2007 was assigned and the copies were furnished which are relied on by the prosecution. Since the offence committed by the accused triable by the Court of Sessions, the case was committed to the file of the learned Principal District Judge of Thiruvallur District and Sessions Case No.185 of 2009 was assigned and the same was made over to the file of the learned Trial Court. Where new Session Case number was assigned as S.C.No.45 of 2009 and charges were framed as against Accused No.1 under sections 147, 341, 307 r/w 149 of IPC and as against 2 to 6th Accused/Appellant charges were framed under sections 148, 341, and 307 of IPC.

6. In order to prove the case, the prosecution has heavily relied on the evidence of PW-1 and PW-2 and other official witnesses. At the conclusion of the trial, the learned Trial Court found the Appellant/Accused were guilty and they were convicted as stated above.

7. Feeling aggrieved over the judgment of conviction all the accused filed the instant appeal by raising several grounds. According to the learned counsel for the appellant, the case of the prosecution is not been proved beyond reasonable doubts, but the learned Trial Court was miserably failed to consider the totality of the case. Moreover, the motive alleged by the prosecution has not been proved and the evidence of the PW-4 namely Kuppumal has not helped the prosecution to prove the case. Though it is the prosecution case that inside the house of PW-4, PW-2 was indiscriminately assaulted, by damaged the house, the learned counsel for the appellant would contend that no damaged material was recovered from the residence of PW-4 in spite of the allegation that the thatched roof of the house was damaged. Further the evidence of PW-1 and PW-2 are not reliable to record conviction. At the same time PW-2 did not speak about the presence of PW-1 and witnessed the occurrence, hence he prays this court to allow the appeal.

8. Per contra, the learned Government Advocate (Criminal Side) would submit that the motive for the instant case has been

clearly narrated by PW1 and PW2 and the injuries inflicted upon PW-2 are grievous in nature as per Exhibit P-8 the Accident Register and Wound Certificate Exhibit P-9. Further immediately after the occurrence, PW-2 was admitted in private hospital where 11 injuries were found on the body of PW-2. The evidence of the doctor, PW-14 would prove the case of the prosecution beyond all reasonable doubts. Apart from that it is also pointed out by the learned Government Advocate Criminal Side that the evidence of the prosecution clearly pointed out the accused who alone are responsible for the commission of offence. The finding of the learned Trial Court based on the evidence and the well considered judgment of the conviction needs no interference by this court, hence he prays for the dismissal of the appeal.

9.I heard Mr.C.M.Gunasekaran, learned counsel for the appellants and Mrs.T.P.Savitha, learned Government Advocate (Criminal Side) for the respondent and the material available on records are perused.

10.It is the case of the deadly assault upon PW-2 by the Appellant/Accused. The prosecution has relied on the evidence of PW-1 and PW-2 since PW-3, PW-4, PW-7, PW-9, were turned hostile. However, though the evidence of PW-5 and PW-6 would disclose that they themselves claimed as eye witnesses. But their claim has been disproved by the evidence of PW-15, the Investigation Officer. According to him PW-5 and PW-6 are not eye witnesses. So, it is quite clear that the evidence of PW-1 and PW-2 alone are the witnesses and the prosecution case is resting upon their evidence. Hence this court carefully considers their evidence.

11.According to PW-1, the occurrence said to have happened in her presence and her claim in this regard is that she witnessed the occurrence. However, the evidence of PW-2 has not supported the evidence of PW-1 and he did not mention in anywhere that his wife PW-1 witnessed the occurrence. Therefore, PW-1 cannot claim that she witnessed the occurrence. Though PW-14 the doctor attached with Subam Hospital would depose that PW-2 was admitted by PW-1 that would not suffice to hold that PW-1 witnessed the occurrence. Therefore the evidence of PW-2 is suffered with lack of corroboration. Apart from that PW-1 is not able to depose that what weapons were used during the occurrence. Though PW-2 was sustained several injuries that alone will not fix the liability upon the Accused/Appellants.

12.In the instant case though the occurrence said to have taken place in the residence PW-4 Kuppammal she has not supported the case of prosecution. At the same time for the

damage of the house of the PW-4 not even section 427 of IPC was incorporated in the final report. Therefore the place of occurrence itself would become doubtful.

13. Apart from that, though PW-5 and PW-6 claimed themselves as eye witness, the perusal of the records would show that they did not witness the occurrence. Moreover, it is alleged that the property dispute would be motive for the occurrence, the Investigation officer miserably failed to have investigation in that regard. He has not collected any materials in respect of legal notice caused by the 1st Appellant/Accused allegedly. On the other hand, it was suggested that as against the PW-2 several cases are pending, though it was denied by them, the Investigation Officer has deposed that criminal cases are pending as against PW-2.

14. Therefore for the forgoing discussions, since the evidence of PW-2 has not ascertained the presence of PW-1 and the failure of the prosecution to prove the motive and the damages caused by the Appellant/Accused allegedly upon the house of PW-4 is not able to prove by the prosecution are constrained this court to come to the conclusion that the Appellant/Accused have made out the case for consideration. Being the appeal is the continuation of trial, the appreciation of the evidence is in favour of the Appellant/Accused.

15. In the result:

(a) the Criminal Appeal is allowed by setting aside the conviction and sentence imposed on the appellants/accused in S.C.No.45 of 2009 dated 07.03.2011 on the file of the learned Additional District Sessions Judge (Fast Track Court No.IV), Ponneri;

(b) the appellants/accused are acquitted from all the charges and the fine amount, if any, paid by the appellants/accused shall be refunded;

(c) the bail bond, if any, executed by the appellants/accused are hereby cancelled.

-s/d-

Assistant Registrar (CS-II)

True Copy

Sub-Assistant Registrar

vs

To

- 1.The Additional District Sessions Judge
(Fast Track Court No.IV), Ponneri.
 2. The Inspector of Police
Thiruvotriyur Police Station
Thiruvotriyur, Chennai.
 - 3.The Judicial Magistrate
Thiruvotriyur.
 4. The Chief Judicial Magistrate
Thiruvotriyur.
 5. The Superintendent
Central Prison, Puzhal.
 6. The Director General of Police
Mylapore, Chennai.
 7. The District Collector, Chennai.
 8. The Public Prosecutor
High Court, Madras 104.
 9. The Section officer
Criminal Section, High court, Madras 104.
- +1 CC to Mr.C.M.Gunasekaran, Advocate sr 76574.

Criminal Appeal No.283 of 2011

KJ(CO)
SP(29/11/2018)