

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 09.07.2018

CORAM :

THE HON'BLE MR. JUSTICE R.PONGIAPPAN

Crl.A.No. 170 of 2010

1.Rathinam

2. Durai

.. Appellants

Vs.

State

represented by the Inspector of Police,
Thoppur Police Station,
Dharmapuri District.

Crime No:242/2007

... Respondent

Prayer: Appeal filed under Section 374 (2) Cr.P.C., against the conviction and sentence dated 03.02.2010 made in S.C.No.26 of 2009 on the file of the learned Additional Sessions-cum-Fast Track Court, Dharmapuri.

For Appellants : Mr.K.Gandhikumar

For Respondent : Mr.G.Ramar
Government Advocate(Crl.Side)

JUDGMENT

The appellants 1 and 2 are arrayed as A.1 and A.2 in S.C.No.26 of 2009 on the file of the learned Additional Sessions Judge, Dharmapuri. In the trial court, the first appellant stood charged for the offences under section 294(b) and 307 of IPC. Further, the charges under section 307 of IPC has been framed against the second appellant. Both the accused denied the charges and opted for trial. Therefore, they were put on trial on the charges. After full-fledged trial, the learned Additional Sessions Judge, Dharmapuri, found the appellants are guilty under section 307 of IPC. Accordingly, both the accused were convicted and sentenced to undergo 3 years of rigorous imprisonment with a fine of Rs.2,000/- in default to undergo 6 months imprisonment each. Further, the first appellant is convicted and sentenced to undergo 3 months simple imprisonment under section 294(b) of IPC. Challenging the said conviction and

sentence the accused are before this Court with the present appeal.

2. The case of the prosecution in brief is as follows:

(i). The first accused (Rathinam) is the father of the second accused. P.W.1 (Govindan) is the brother of the first accused. Prior to the occurrence, P.W.1 (Govindan) was working as a Veterinary Inspector. Due to the dispute over ancestral property, he is having an enmity with the appellants. On the date of occurrence, when P.W.1 was standing in a bus stand, the appellants came and abused the P.W.1 by using the filthy language. Further, by using the knife, the first appellant attacked the P.W.1 and at the same time, the second accused by using the wooden log attacked the P.W.1 on the head. Due to the assault made by the appellants, P.W.1 sustained injury on his right wrist, right knee and in the left hand. Further, he fell down and blood was oozed from the injury. After seeing the same, both the accused were ran away from the scene of occurrence. Thereafter, P.W.2 (Vajaravel) admitted the P.W.1 in Government Hospital, Dharmapuri for treatment.

(ii). On receipt of the information from the hospital, the police attached with Thopur Police Station came to the hospital and recorded the statement from P.W.1. Ex.P.1 is the statement given by the P.W.1. In the meanwhile, on 07.06.2007, P.W.7 (Dr.Chandrasekaran) gave treatment to the P.W.1 and found out the following injuries:

- "1. Lacerated wound 6cmx1cmxsoft tissue depth over right forehead just above right eyebrow.
2. 'L' shape lacerated cut injury over left forearm size of 8x1/2cmxsoft tissue depth
3. An abrasion 1/2x1/4cm over left cheek
4. C/o right nasal bleed.
5. A contusion 3x4cmx1/2cm over right elbow."

According to him, in the above injuries serial nos.1 to 4 are simple in nature and the injury no.5 is grievous in nature. For that, he issued a accident register copy under Ex.P.7.

(iii). While so, on 08.06.2007, P.W.8 (Lakshmi) the then Inspector of Police, Thopur Police Station received the complaint pertaining to this occurrence. Based on the said complaint, she registered a case in Crime No.242 of 2007 for the offences under sections 294(b), 323 and 307 of IPC. Ex.P.9 is the FIR. After registration of the case, she took the case for investigation and went over to the scene of occurrence. In the presence of P.W.3 (Mathi), she prepared an observation mahazar under Ex.P.10. Further she drawn a rough sketch under Ex.P.11. After preparation of those documents, she handed over the case records to P.W.9 for further investigation.

(iv). P.W.9 (Mr.Manivannan), the then Inspector of Police, Thopur Police Station has received the case records on 08.06.2007 at about 14.30 hours and thereafter he immediately went over to the scene of occurrence, examined the witnesses and recorded their statements.

(v). On 11.06.2007, in the presence of P.W.6 (Mr.Samikannu), he arrested the appellants and recorded the confession statements separately from each accused. In a confession statement given by the first accused he admitted the guilt and willing to hand over the weapons used in the commission of offence. After recording the said confession statement, P.W.9 recovered the two wheeler bearing Registration No.TN4216 under the cover of mahazar (Ex.P.5). Pursuant to the confession statement given by the first accused all of them went to the land belonging to one Munusamy and on identification by the accused P.W.9 recovered the knife and wooden log under the cover of mahazar Ex.P.6. The admitted portion of the confession statement given by the first accused and the second accused are marked as Ex.P.3 and Ex.P.4 respectively.

(vi). In continuance of the investigation, he received the accident register copy of P.W.1 and on completion of investigation he came to the positive conclusion that the accused committed the offences under Sections 294(b) and 307 of IPC and laid a final report against the accused.

3. Based on the above materials, the trial court framed the charges and the accused denied the same. In order to prove the case on the side of the prosecution as many as 9 witnesses were examined as P.W.1 to P.W.9 and 11 documents were marked as Ex.P.1 to Ex.P.11, besides 3 material objects.

4. Out of the said witnesses, P.W.1 (Govindan) who is the victim as well as the injured in this case has stated in his evidence that he is having enmity with the accused due to the dispute over the common property. He has further stated as at the time of occurrence, the first accused by using aruval attacked him on his head by saying the word ",d;nwhL brj;Jnglhl". Further, he has stated that he resisted the attack made by the accused thereby he sustained injury on his right leg. Further, when he was attempted to ran away from the scene of occurrence the second accused by using the wooden log assaulted on his head. Due to the attack made by both the accused, he sustained multiple injuries over the head and in the right wrist. He has further stated while he was in Dharmapuri Government Hospital, the Head Constable attached with Thopur Police Station came and recorded the statement given by him.

5. PW2 to PW5 alleged to be the eye witnesses to the

occurrence had not stated anything in support of the prosecution. So, they were all treated as hostile witnesses.

6. P.W.6 is the village administrative officer has stated that on 07.06.2007 in his presence the investigating officer in this case arrested the both accused and recorded the voluntarily disclosure statement given by them separately from each accused. Further, he stated pursuant to the confession statement, the investigating officer has recovered the two wheelers, knife and aruval which are all used for the commission of offence.

7. PW7 (Dr.Chandrasekaran) working as Assistant Surgeon in Government Hospital, Dharmapuri has stated in his evidence about the injury sustained by PW1. According to him, PW1 found with 5 injuries in which only one injury is grievous in nature.

8. PW8 and PW9 are the police officers deposed about the receipt of complaint, registration of the case, details of investigation and about the filing of final report.

9. When the above incriminating materials were put to the both accused under section 313 Cr.P.C. they denied the same as false. On the side of the accused, Dr.Chandrasekaran examined as D.W.1, he has stated in his evidence that on 07.06.2007 at about 12.30 hours, when he was working as Assistant Surgeon in Dharmapuri Government Hospital, he examined the first accused and found the following injuries:

"1. Right side of the head, contusion in the size of 2x2 cms.

2. An abrasion in the upper lip in the size of 2x1/2 cms." According to him, 1st accused left the hospital against the medical advice. Hence, the opinion in respect to the injury sustained by the first accused should not be given.

10. Having considered the above, the learned Additional Sessions Judge found that both the accused guilty of attempting to murder, further it was held that the first accused is found guilty of creating public nuisance, thereby both are convicted and sentenced as indicated in the first paragraph of this judgment. Aggrieved by the conviction and sentence, both the accused are come up with the present criminal appeal.

11. Today, when the appeal is taken up for consideration, I have heard Mr.K.Gandhikumar, learned counsel for the appellants, Mr.G.Ramar, learned Government Advocate (crl.side) for the respondent and also perused the records carefully.

12. The learned counsel appearing for the appellants would contend that in the trial court in respect to the receiving of

complaint, two set of evidences are let in by the prosecution. Further he contended that the injuries sustained by the first appellant is not explained by the prosecution, which would show that the investigating officer has not completed the investigation within the ambit of legal frame work. He would further submit that the above contradictions would create a doubt on the case of prosecution.

13. Per contra, the learned Government Advocate (crl.side) would contend that PW1 and the accused are having the previous enmity, thereby on the day of occurrence, both the accused with an intention to kill the PW1 assaulted him. The evidence given by the PW1 and the evidence given by the medical officer has proved the occurrence. Therefore there is no need to interfere with the conviction and sentence passed by the trial court.

14. I have considered the rival submissions made on either side.

15. Admittedly, it is true that the witnesses examined on the side of prosecution did not say anything about the injury sustained by the first appellant. However, the evidence given by DW1 discloses that the first appellant sustained two injuries in the alleged incident. Since he left the hospital against the medical advice, this Court is not in a position to hold that the injury sustained by the first accused is simple or grievous in nature. However, according to the particulars available in Ex.D.1, he sustained contusion in head and abrasion in the upper limb. So, the said injuries are nothing but superficial in nature.

16. In this regard, it is necessary to go through the judgment of our Hon'ble Apex Court in Dashrath Alias Jolo and another vs. State of Chhattisgarh reported in (2018) 4 SCC 428, in which it was observed as follows:

"8.The next contention urged by learned counsel is that the prosecution has not chosen to explain the injuries on the person of the appellants and this is fatal to case of prosecution. It cannot be held as a matter of law or invariably a rule that whenever the accused sustained an injury in the same occurrence, the prosecution is obliged to explain the injury and on the failure of the prosecution to do so, the prosecution case should be disbelieved. Before holding that non-explanation of the injuries on the persons of the accused persons by the prosecution witnesses may affect the prosecution case, the court has to be satisfied of the existence of two conditions:

(i) that the injury on the person of the accused was of a serious nature; and

(ii) that such injuries must have been caused at the time of the occurrence in question (Vide Takhaji Hiraji v. Thakore Kubersing Chamansing) "

17. So considering the principle laid in the above judgment since the injury sustained by the accused is superficial in nature, it is not necessary for the prosecution to explain the details of the injury sustained by the accused. Accordingly, the first contention raised by the learned counsel for the appellants is not having any merits for allowing this appeal.

18. Secondly, in respect to the registration of the case in the FIR, it was mentioned that the case has been registered based on the statement given by P.W.1. Further, it was mentioned that the said statement was received by the investigation officer through post. Contrary to that PW1 has stated in his chief examination as when he was in the hospital, the head constable from Thopur Police Station came to the hospital and recorded the statement from him. In the said circumstances, in order to clarify the said contradiction, it is necessary for the prosecution to examine the head constable, who recorded the statement from PW1. But in the trial court, the head constable who recorded the statement from PW1 has not been examined.

19. If really, the evidence given by PW1 in respect to the recording of the statement is true, necessarily this case has been registered only based on the said statement given by PW1. But according to the evidence given by the Investigation Officer the complaint has been received by him through post. So, the statement given by PW1 before the Head Constable was suppressed by the prosecution. In fact as per the evidence of PW1, the said statement has been recorded by the head constable immediately after the occurrence. So the said statement could be the earliest document to this case.

20. In the said circumstances, in order to show the real picture, the prosecution has not taken any effective steps, by means of examining the head constable, who recorded the statement from PW1. So, the said lapse is nothing but fatal to the prosecution. More than that, PW8, the then sub inspector of police, who registered the FIR has stated in his evidence that in the complaint received from the Government Hospital, Dharmapuri a word 'knife was erased. She has also stated that the name of the police station has also corrected. Further she admitted after the registration of the case, on 08.06.2007, the

same has been received by the Magistrate only on 11.06.2007 at about 6.00p.m. Accordingly, FIR has not send to Magistrate immediately after the registration. So, the evidence given by the Investigation Officer create a suspicious circumstances over the registration of the case itself. The trial court without considering these aspects in perspective manner and based on the evidence given by PW1, convicted the accused which needs interference.

21.In the result, this Criminal Appeal is allowed. The conviction and sentence imposed upon the appellants in S.C.No.26 of 2009 passed by the learned Additional Sessions Judge, Dharmapuri is set aside and the appellants/accused are acquitted of the charges. The bail bond, if any, executed by the appellants/accused shall stand cancelled. The fine amount, if any, paid by appellants/accused shall be refunded to them.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Additional Sessions-cum-Fast Track Court,
Dharmapuri.
2. The Inspector of Police,
Thoppur Police Station,
Dharmapuri District.
(Crime No:242/2007).
- 3.The Public Prosecutor,
Madras High Court,
Madras.
- 4.The Judicial Magistrate No.II,
Dharmapuri.
- 5.The Cheif Judicial Magistrate,
Dharmapuri @ Krishnakiri.

+1 cc to Mr.K.Gandhikumar, Advocate in Sr.No.44444

Cr1.A.No.170 of 2010

RSV(CO)
CSL/22.10.2018