

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 21.06.2018

CORAM :

THE HON'BLE MR. JUSTICE R.PONGIAPPAN

Crl.A.No. 214 of 2009

Raghupathy

.. Appellant (Accused No.1)

Vs.

State represented by
The Inspector of Police,
Cuddalore O.T. Police Station,
Cuddalore District.
(Cr. No.338/2007)

.. Respondent/Complainant

Prayer: Appeal filed under Section 374 (2) of the Criminal Procedure Code against the Judgment of conviction and sentence dated 21.04.2009 made in S.C.No.18 of 2009 by the learned Additional Sessions Judge (Fast Track Court No.2), Cuddalore.

For Appellant : Mr.D.Gubendra Gunabalan

For Respondent : Mrs.T.P.Savitha
Government Advocate (Crl.Side)

JUDGMENT

This appeal is directed against the Judgment dated 21.04.2009 in S.C.No.18 of 2009 on the file of the Additional Session Court (Fast Track Court No.II), Cuddalore.

2. In the above said case, the appellant is the first accused. After concluding the trial, the learned Additional Sessions Judge (Fast Track Court No.II), Cuddalore, convicted him for the offence under Section 307 of IPC and sentenced to undergo 5 years rigorous imprisonment and to pay a fine of Rs.10,000/- and in default, to undergo 1 year Rigorous Imprisonment. Now, against the said conviction and sentence, the first accused approached this Court, praying to set aside the conviction and sentence.

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

(i). P.W.1 (Barani) is the resident of Vazhisodhanai palayam, Cuddalore, P.W.3 (Arul) is his brother. On 13.07.2007 due to previous enmity, the appellant and three others had quarrelled with P.W.3 (Arul) by using the weapons viz., wooden rod, iron rod and knife. After hearing the noise from P.W.3's house, P.W.1 went to the scene of occurrence and advised the appellant and other accused to go out from the house. Meanwhile, the appellant, by using koduval, attacked P.W.1 on his head and the other accused have also attacked P.W.1 by using iron rod. Due to the attack made by the appellant and the other accused, P.W.1 fell down and thereafter P.W.3 admitted the P.W.1 in the Government Hospital, Cuddalore.

(ii). On 13.07.2007, at about 10.45 p.m, P.W.8 (Mr.Sivasubramani), the Doctor attached with the Government Hospital, Cuddalore, treated P.W.1 and on examination, he found the following injuries:

- " 1. A Lacerated wound in the size of 5x2x0.5 cm on the forehead.
2. A contusion over the left leg."

(iii). After getting the treatment, P.W.1 went to his house against the medical advise. According to the Doctor, Injury Nos.1 and 2 are grievous in nature.

(iv). In the meanwhile, when P.W.1 was in the hospital, the Head Constable, Mr.Jayakumar (P.W.6), recorded the statement from P.W.1 and registered a case in Cr.No.338 of 2007 for the offences punishable under Sections 294, 326 and 506(2) IPC under Ex.P.3. Ex.P1 is the statement given by P.W.1. After registering the case, P.W.6 handed over the entire case records to P.W.9 (Mr.Sekilar) for investigation.

(v). On 17.07.2007, P.W.9, (Mr.Sekilar), the then Sub Inspector of Police, Chidambaram Town Police Station received the case records from P.W.6 for investigation. On the same day, he went to the scene of the occurrence and recorded the statements of the witnesses. After examination, he altered the Section of law as 295, 294, 506(ii) and 307 IPC. Ex.P9 is the alteration report. After altering the Section of law, he handed over the case records to P.W.10 for further investigation.

(vi). After taking up the case for investigation, P.W.10, the then Inspector of Police, Navalore had proceeded to the scene of occurrence and in the presence of witnesses, he prepared the Observation Mahazar and rough sketch (Ex.P.2 and Ex.P.4). Thereafter, he recorded the statements given by P.W.s 1 to 4 and

altered the offence as 307 IPC. He submitted the alteration report to the Magistrate concerned. On 24.07.2007 at about 18 hours, he arrested the accused Loganathan and recorded the confession statement in the presence of witness. In the statement, the accused disclosed the place where he had hidden the weapons which were used for the commission of offence.

(vii). As per the confession statement, P.W.10, the Inspector of Police recovered Material Objects. After completing the investigation, P.W.10 laid a charge sheet against the appellant and as against three other accused.

(viii). Based on the above materials, the Trial Court framed the charges for the offence under Section 294(b), 307, 352, 506 (Part-II), 307 r/w 34 IPC against the accused. All of them denied the same and opted for trial.

(ix). In the Trial Court, on the side of the prosecution, 10 witnesses were examined as P.W.1 to P.W.10. Besides, 11 documents were marked as exhibits P.1 to P.11. Thereafter, the material objects were also marked as M.O.1 and M.O.2. On the side of the appellant, none have been examined as defence witness.

(x). Out of the said witnesses, P.W.1 who is the brother of P.W.3 (Arul) is a victim in the occurrence, stated in his evidence about the assault made by the appellant and other accused. Further, he stated about the treatment given to him and about the lodging of complaint before the Police Officers. P.W.2 is the friend of P.W.1, gave evidence with regard to the compromise made between the appellant and P.W.1. P.W.3 is an eye witness deposed at the time of occurrence. The appellant assaulted P.W.1 by using the knife. P.W.8 is the Medical Officer who treated the P.W.1 and found the injuries already stated above.

(xi). P.W.9 and P.W.10 are the Police Officers stated in their evidence about the registration of the case, manner of investigation and in regard to filing of final reports.

(xii). The learned Trial Judge, with reference to the incriminating materials adduced by the prosecution, questioned the accused under Section 313 Cr.P.C., and for which, he pleaded not guilty. On the side of the accused, 5 documents alone were exhibited as D1 to D5.

(xiii). After concluding the Trial, the learned Sessions Judge convicted the appellant for the offence of 307 IPC and acquitted the other accused from the charges framed against them.

4. Today, when the appeal is taken up for consideration, I have heard the arguments advanced by Mr.D.Gubendra Gunabalan, learned counsel for the appellant and Mrs. T.P.Savitha, learned Government Advocate (Crl.Side) for the respondent and also perused the records carefully.

5. The first and foremost contention raised by the learned counsel for the appellant is that, in the same transaction alleged in this case, P.W.1 attacked the appellant and the other accused, further, he assaulted the other persons, who were all present in the scene of occurrence, he had further contended that due to the assault of P.W.1, some of the accused sustained injury. Usually in a case of case in counter, the Investigation Officer had necessarily register the both case and made investigation for finding out the aggressor, for which, under Rule 588-A of the Madras Police Standing Orders, regulate the procedure, but in this case, the said procedures had not been followed.

6. Now on considering the said submission, it is true, on the same day at about 10.30 a.m., P.W.8, Doctor has given the treatment to the Loganathan and Sivagami (A2 and A4) for the injuries sustained by them alleged to have been caused due to assault made by P.W.1 and others in the same transaction. In the Trial Court, the AR copy pertaining to them were marked as Ex.D1 to Ex.D3. Further, the copy of the F.I.R, which was registered based on the complaint given by the accused and the charge sheet have been marked as D4 and D5 respectively.

7. At this juncture, it is relevant to refer to a Judgment recorded in Dandapani and others vs. State, by Sub-Inspector of Police reported in 2001 (2) TLNJ 262, wherein, this Court has observed the manner of investigation in a case arising out of a complaint and the counter complaint. The said observation made by this Court reads as follows:

"Rule 588-A of the Madras Police Standing Order stipulates that in a complaint and counter complaint arising out of a same transaction, the investigation officer has to enquire into both of them and adopt one or the other of the two courses, namely (1) to charge the case where the accused were the aggressors or (2) to refer both the cases if he finds them untrue. If the investigation officer finds that either of the course is difficult, he should seek the opinion of the Public Prosecutor and act accordingly. A final report should be sent in respect of the case referred as mistake of law and the complainant or the counter complainant, as the case may be, should be advised about the disposal

by a notice in Form-96 and to seek remedy before the specified Magistrate if he is aggrieved by the disposal of the case by the police."

8. Further, in the Judgement of Ananda Shetty and another v. Aiuthu Poojary and others, High Court of Karnataka reported in 1999 Cr1.L.J.177, held as follows:

"As per general principle, it is always desirable that the case and counter case be tried by the same Court to avoid conflicting decisions. In a trial having case and counter case arising from same incident and the one is exclusively triable by the Court of Session, the Magistrate cannot try both the cases. The one which is exclusively triable by the Court of Session ought to be committed under S.209 and therefore, it follows that the case which could be tried by the Magistrate Court should also be committed to the Sessions Court which has the power to try both the cases in view of S.26 of the Cr.P.C. Thus where a Magistrate after coming to the conclusion that the case which is to be committed and the case pending before him are treated as a case and counter case and it is desirable that both the cases be tried by the Court of Session and therefore, while acting under S.209 r/w S.347 Cr.P.C. commit the same and not when the offences alleged against them should be tried exclusively by the Court of Session or that the accused deserve more punishment than what he can impose. It cannot be said that the Magistrate has erred in committing the case on hand to the Court of Session. More particularly because he has taken into consideration the purpose and object of trying both the cases together by the same Court."

9. Now, the said procedure as stated above has not been adopted either by the Investigation Officer or by the learned Magistrate. According to the evidence given by P.W.19, Investigation Officer, the counter case was kept pending in the Magistrate Court. Therefore, in the above circumstances, even the evidence put forth by the prosecution with regard to the assault made by the appellant is convincing one. In view of the mistake committed by the Investigation Officer as well as by the Magistrate, this Court is not in a position to accept the case of the prosecution entirely.

10. In the light of the above discussion, this court holds that the Judgment and sentence awarded to the appellant is liable to be set aside.

11. In the result, this Criminal Appeal is Allowed. The conviction and sentence imposed upon the appellant in S.C.No.18 of 2009 on the file of the Additional Session Court (Fast Track Court No.II), Cuddalore is set aside and the appellant/accused is acquitted of the charges. The bail bond, if any, executed by the appellant/accused shall stand cancelled. The fine amount, if any, paid by appellant/accused shall be refunded to him.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1.The Additional Sessions Court,
Fast Track Court No.2,
Cuddalore.

2.The Judicial Magistrate No.2.
Cuddalore.

3.The Chief Judicial magistrate,
Cuddalore.

4.The Inspector of Police,
Cuddalore Cuddlore Police Station,
Cuddalore.

5. The Public Prosecutor,
Madras High Court,
Madras.

+1cc Mr.D.Gubendra Gunabalan, Advocate sr.no.39431

CrI.A.No. 214 of 2009

nm(co)
nr 05/09/2018