

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :20.02.2019

CORAM:

The Honourable DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal No.647 of 2011

1.Janardhana Reddy
2.Manjunath
3.Divagar Reddy
4.Venkatasamy Reddy
5.Eramma

..Appellants/Accused 1 to 5

/versus/

State rep.by
Deputy Superintendent of Police,
Denkanikottai,
Krishnagiri District.
(Crime No.151 of 2006)

..Respondent/Complainant

Criminal Appeal has been filed under Section 374(2) of CrI.P.C., against the conviction and sentence imposed on them by the District Principal Sessions Judge, Krishnagiri, made in S.C.No.62 of 2007 by judgment dated 29.04.2011 convicting the A1 to A5 under Section 147 IPC and sentenced to fine of Rs.500/- each in default three months Simple Imprisonment under Section 148 of IPC and sentenced to fine of Rs.500/- in default three months Simple Imprisonment under Section 323 IPC and sentenced to fine of Rs.500/- in default of three months Simple Imprisonment.

For Appellants : Mr.K.Selvarangan

For Respondent : Mrs.Kritika Kamal, P
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J U D G M E N T

The appellants are the accused in S.C.No.62 of 2007. They were tried for offences under Sections 147, 148 and 323 of IPC and Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989(in short "SC & ST Act). The trial Court, considering the depositions of the witnesses and exhibits marked by the prosecution, found them

guilty of offence under Section 147 of IPC and sentenced them to pay a fine of Rs.500/- each, in default to undergo 3 months Simple Imprisonment; guilty of offence under Section 148 of IPC and sentenced them to pay a fine of Rs.500/-each in default to undergo 3 months Simple Imprisonment; and found guilty of offence under Section 323 of IPC and sentenced them to pay a fine of Rs.500/- each in default to undergo 3 months Simple Imprisonment.

2. As far as the charge under Section 3(1)(x) of SC & ST Act is concerned, the trial Court found that the charge not proved beyond reasonable doubt. The benefit of doubt was extended to the accused persons and acquitted them.

3. Aggrieved by the conviction for the offences under Sections 147, 148 and 323 of IPC, the present appeal is preferred.

4. The learned counsel appearing for the appellants would canvas the merits of this appeal on two folds. Firstly, the alleged occurrence took place on 18.09.2006 at about 02.00 p.m. The injured persons got admitted in the hospital on the same day. Intimation about the medical legal cases has also been sent by the hospital authorities to the Hosur Police Station on the same day. But, the First Information Report has been registered only on 21.09.2006. PW-8[Venkatachalam] Head constable attached to Thali Police Station has gone to Hosur Hospital, on receiving telephonic message from Hosur Town Police Station and recorded the statement of PW-1 [Gowrammal] as if they have received the First Information Report about the occurrence only on 21.09.2006. Whereas, the injured witnesses PW-1[Gowrammal], PW-2[Anumakka] and PW-4[Ramachandran] have categorically deposed that even before getting admitted into the hospital, they went to the Thali Police Station and reported about the occurrence. While the police has been informed about the alleged occurrence on 18.09.2000 itself, suppressing the earliest complaint, First Information Report has been registered after lapse of 3 days. Therefore, delay in registering the First Information Report and suppression of the earliest complaint is fatal to the case of the prosecution.

5. The second limb of the argument is that, admittedly, PW-12 [M.Gunasekaran] Deputy Superintendent of Police, who was the Investigation Officer in this case, was also the Investigation Officer in the counter case registered in Crime No.152 of 2006 under Sections 147, 148, 341, 323, 324, 354, 323 r/w 149 IPC and Section 324 r/w 149 of IPC against Ramachandran and 6 others. PW-1, in this case was arrayed as A7 in the counter case for attacking Nethra, Wife of A1[Janardhana Reddy]. The other accused in the counter case are PW-2, PW-3 viz., one Lakshmi,

W/o Venkatesan, Krishnappa, S/o Madhur. While the fact being so, contrary to the police standing order, the investigating officer has not taken any steps to request the Court to try both the case and counter case together.

6. The injuries sustained by the accused persons, at the hands of the prosecution witnesses, were not brought to the notice of the trial Court for proper appreciation of the facts. The suppression of the counter case, violation of the police standing order and delay in registering the First Information Report, cumulatively expose the falsehood of the prosecution, which has not been properly appreciated by the Court below. Hence, sought for acquittal by reversing the judgment of the trial Court.

7. The learned Government Advocate representing the State would submit that PW-1, PW-2 and PW-3 and PW-6 are the injured witnesses. The occurrence was seen by PW-4[Ramachandran]. The injuries sustained by PW-1, PW-2, PW-3 and PW-6 is spoken by PW-10[Dr.Dinesh], who has treated them in the hospital. The accident Registers maintained by PW-10[Dr.Dinesh] for treating these witnesses were marked as Ex.P-10 to Ex.P-13. The weapons used for causing hurt were later recovered by the investigating officer and marked as M.O.1 to M.O.5. The witnesses have deposed that there was dispute on the date of occurrence. The act of aggression by the accused persons deposed by the victims and the eye witnesses. Same is corroborated by the medical evidence. Therefore, having proved the guilt of the accused persons through direct and substantial evidence, the judgment of the trial Court has to be upheld.

8. Regarding the alleged delay in registering the First Information Report, the learned Government Advocate would submit that the injured persons before getting admitted to the hospital have visited Thali Police Station to report the matter. On seeing the injuries, the police has directed them to go to the hospital. No further information was received and recorded by the Thali Police on the date of occurrence. Only after receiving telephonic message from the hospital, the Head Constable attached to Hosur Police Station has proceeded to the hospital. He recorded the statement of the injured person [PW-1] and registered First Information Report on 21.09.2006 at 21.30 hours. The delay in registering the First Information Report is explained by PW-8 and the said delay had no way prejudiced the defence.

9. Regarding the counter complaint given by Nethra, W/o A1 [Janarthana Reddy], the learned Government Advocate would submit that the alleged complaint disclose ingredient of IPC offences triable by Judicial Magistrate. Whereas, the complaint

registered against these accused persons discloses offence under the provisions of Prevention of Atrocities Act, 1989, which is exclusively triable by the Court of Sessions. Therefore, the question of joint trial of case and counter case does not arise.

10. Heard the respective submissions placed by the learned counsel appearing for the appellant as well as the learned Government Advocate representing for the State. Records perused.

11. The incident has taken place on 18.09.2006. From the material evidence placed by the prosecution, it is an admitted fact that there was a dispute between the accused and PW-1's family regarding the passage through the land of PW-4. A civil suit has been initiated by Al. Amina has visited the place of occurrence to serve the summon. At that time, Al has threatened PW-4. PW-1 and PW-2 tried to rescue PW-4. At that time there was fight between both the groups. From the counter case material, which is now circulated by the learned Government Advocate, at the instance of the Court, reveals that both the accused persons as well as the witnesses have sustained injury in the free for all fight. Later, they got admitted to the hospital. The prosecution has thought fit to register the First Information Report lodged by the respective parties, after delay of 3 days i.e on 21.09.2006. While the case against the present appellants was registered in Crime No.151 of 2006 on the file of the Thali Police Station, the complaint against PW-1 and PW-2, PW-4 and others was registered under Crime No.152 of 2006. The reason now stated by the learned Government Advocate for the delay in registering the First Information Report does not satisfy the law or prudence. The possibility of embellishment and distortion of fact due to delay in registering the First Information Report cannot be ruled out.

12. In this case, more particularly, when both the parties have sustained injuries, case and case in counter though registered and investigated, the pendency of the counter case has not been placed before the trial Court. Though the trial Court has discussed about the counter case in its judgment, the reason for prosecution not placing the facts and the material evidence collected in the counter case has not been discussed by the trial Court. Had the prosecution placed before the trial Court the material facts of the counter case and sought for joint trial, the trial Court could have arrived at a right conclusion, after appreciating the entire facts relevant in this case. Since the prosecution has failed to place the material facts connected to the counter case, the trial Court has been deprived of appreciating the full facts involved in this case. This has prejudiced the accused/appellants badly. Therefore, the judgment of the trial Court has to be set aside.

13. Accordingly, the Criminal Appeal is allowed. Judgement of conviction and sentenced imposed by the trial Court is set side. Fine amount if any pay by the accused/appellants shall be refunded to them.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The District Principal Sessions Judge,
Krishnagiri.

2.The Deputy Superintendent of Police,
Denkanikottai,
Krishnagiri District.

3.The Public Prosecutor,
High Court, Madras.

4.The Section Officer,
Criminal Section, Records,
High Court, Madras - 104.

+1cc to Mr.K.Selvarangan, Advocate, Sr.No.15781

Crl.A.No.647 of 2011

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