

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL APPEAL No.987 OF 2010

JUDGMENT:

This Criminal Appeal, under Section 374 (2) of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.'), is filed by the appellant/A.1 aggrieved by the judgment, dated 30.07.2010, passed in S.C.No.561 of 2008 by the learned III Additional District and Sessions Judge, Fast Track Court, Ranga Reddy District at L.B. Nagar, whereby and whereunder, the appellant/A.1 was convicted and sentenced to undergo rigorous imprisonment for a period of ten years and to pay fine of Rs.1,000/-, in default to suffer simple imprisonment for three months for the offence punishable under Section 307 of IPC and also sentenced to undergo rigorous imprisonment for a period of three years for the offence punishable under Section 332 of IPC and further sentenced to suffer rigorous imprisonment for a period of three years and to pay fine of Rs.1,000/- in default to suffer simple imprisonment for a period of three months for the offence punishable under Section 24(1) of Indian Arms Act. All the sentences were ordered to run concurrently.

2. Heard the learned counsel for the appellant/A.1, the learned Additional Public Prosecutor representing the respondent/State and perused the record.

3. Learned counsel for the appellant/A.1 would contend that a false case is foisted against the appellant and he is not responsible for any of the offences. The police went to the house of the appellant in civil dress. There is no document of arrest, etc.

Moreover, the injuries alleged to have been suffered by P.Ws.1 to 3 are simple in nature. There are no ingredients to constitute the offences under Sections 307 and 332 of IPC as well as Section 24(1) of the Indian Arms Act and ultimately prayed to set aside the conviction and sentence imposed against the appellant.

4. Learned Additional Public Prosecutor representing the respondent/State would contend that there are direct witnesses to the alleged offences. The appellant was required in another criminal case. So, the police went to his house. When they made an attempt to arrest him, the appellant stabbed them with a dagger with an intention to do away their life. All the requirements for the offences under Sections 307 and 332 of IPC and Section 24(1) of the Indian Arms Act were proved. The trial Court had rightly analysed the entire evidence and convicted the appellant/A.1. There is no evidence to take a different view and ultimately, prayed to dismiss the appeal.

5. In view of the submissions made by both sides, the points that arise for determination are as follows:

1. Whether the appellant/A.1 obstructed the police officials on 10.11.2007 at about 8.30 p.m. from discharging their duties?
2. Whether the appellant/A.1 attacked the police personnel with an intention to kill them on that day?
3. Whether the prosecution proved the guilt of the appellant/A.1 for the offences punishable under Sections 307 and 332 of IPC and Section 24(1) of the Indian Arms Act?

Points 1 to 3:-

6. The specific case of the prosecution is that the appellant was wanted in Crime No.171/2007 of Pratapnagar Police station, Jodpur City. On 10.11.2007 around 8.30 p.m., when the police personnel went to the house of the appellant, he attacked them with a dagger, abused and obstructed from discharging their duties.

7. To substantiate the accusation against the appellant/A.1, the prosecution examined P.Ws.1 to 10 and got marked Exs.P.1 to P.6 and M.O.1 dagger. Neither oral nor documentary evidence was adduced on behalf of the appellant/A.1.

8. The evidence of P.W.1 P.Ramulu, the Sub-Inspector of police, reveals that on 10.11.2007 around 8.00 p.m. he along with PW.6, Mahaveer Singh (L.W.6), the Sub-Inspectors of Jodhpur Police Station and P.W.2 (P.Madhav Reddy), Constable went to the house of the appellant/A.1 situated at Srinagar colony, Bharatnagar area, Ramanthapur. A.1 asked them to show their identity cards and in the meantime, he went inside the house, brought a dagger and assaulted them. P.W.1 received bleeding injury on the back of his left shoulder. P.W.2 also received injury to the little finger of his left hand. PW.6, the *de facto* complainant (Manish Dev) in this case also received injuries to his left hand. There are also allegations of stabbing against A.2 and A.3, but the trial Court disbelieved the case against them and acquitted them.

9. P.W.2 corroborated with the evidence of P.W.1 with regard to the incident. He also stated that the accused asked them to show their identity cards.

10. The evidence of P.W.3 reveals that he is a private employee and he owns a house at Ramanthapur. The appellant/A.1 and other accused i.e., A.2 and A.3 are the tenants of his house and they are paying rent at Rs.1,400/- per month. He further deposed that on 10.11.2007, there was some galata in the house of the appellant/A1. He saw P.Ws.1 and 2 along with two other police officials of Rajastan in the portion of appellant/A.1. It is also stated that the appellant attacked them with a knife and they received bleeding injuries. The police recorded his statement. He identified M.O.1 dagger, which is said to have been used by the appellant in the commission of offence.

11. The evidence of P.W.4 reveals that he also belongs to Srinagar colony. The incident took place around 8.00 or 8.30 p.m. in the house of P.W.3-G.Balaiah. He also stated that some galata took place in between the police party and the tenants of P.W.3.

12. Admittedly, P.W.4, who is a neighbour of P.W.3, did not support the case of prosecution. He stated that there was galata in between the tenants of P.W.3 and police. He did not identify the accused in this case.

13. The evidence of P.W.5, who is also a neighbour of P.W.3, reveals that A.1 to A.3 joined as tenants in the house of P.W.3 in the month of November, 2007. He also stated that there was some galata in the house of tenants of P.W.3. He further stated that the

police informed him that when they went to the house of the appellant for investigation, the appellant attacked them. He is not an eye witness to the alleged attack made by the appellant with knife and he is only hearsay witness.

14. The evidence of P.W.6 reveals that on 10.11.2007, he also visited the house of the accused around 8.30 p.m. He deposed that he informed A.1 that he was the Sub-Inspector of Police of Rajasthan and he came to enquire the case registered against A.1. A.1 became furious, went inside the house, brought dagger and tried to assault him. P.Ws.1 and 2 received injuries. He further stated that he also suffered injury on the left side of forehead.

15. The evidence of P.W.7-doctor reveals that he examined P.W.6, who is said to have been beaten by A.1. He stated that P.W.6 was brought with injuries on his left side of forehead, left side of nose and left hand little finger. He gave first aid to P.W.6. Ex.P4 is the medical certificate.

16. The evidence of P.W.8 reveals that he was the Inspector of police. On 10.11.2007 at 9.30 P.M., he received complaint from P.W.6. Based on that, he registered a case against the accused for the offences under Sections 132 and 307 of IPC. Ex.P5 is the FIR issued by him.

17. P.W.9-the Sub-Inspector of Police, deposed with regard to recording of 161 Cr.P.C. statements of witnesses in this case. There is also confession of the accused and recovery of M.O.1 dagger pursuant to the confession made by A.1 under the cover of

panchanama. He also stated with regard to conduct of scene of offence panchanama in the presence of P.W.4 and L.W.9.

18. Though it is contended that the appellant/A.1 is required in Crime No.171 of 2007 for the offences under Sections 457, 380 and 411 of IPC of Pratapnagar Police station, Jodpur City, no record pertains to the said crime was filed and got marked by the trial Court. Furthermore, there is no evidence of the police personnel having arrest warrant against the appellant/A.1 on that day. It has also come up in the cross-examination of witnesses that the police personnel were in civil uniforms.

19. The cardinal principle is to obtain the warrants and arrest the person concerned, but the same is lacking in this case. In the evidence of police personnel, it came to light that they informed the appellant/A.1 that they are police personnel. It is not sufficient to hold that the acts of the police personnel, reaching the house of A.1 and making efforts to arrest him are in consonance with the provisions of Cr.P.C. Atleast the police personnel would have filed the warrant or copy of the same to establish that they were discharging their lawful duties in a lawful manner.

20. Furthermore, P.W.7-doctor, in his evidence stated that P.W.6-S.I. of Police suffered injuries. Those injuries were only simple injuries. It is alleged that the victims were attacked by M.O.1 dagger. If it was so, the victims could have suffered bleeding injuries. As per the evidence and the medical record, there were no bleeding injuries. Though P.W.4 said to be the witness to the seizure of M.O.1, he did not support the case of

prosecution. He simply stated that Ex.P2-sketch map and Ex.P1-scene of offence panchanama was conducted. Except the evidence of P.W.6, S.I. of Police with regard to seizure of M.O.1 dagger, there is no independent evidence. There is evidence of galata at the house of the appellant as spoken to by P.Ws.3 and 5. As per the evidence of P.W.7-doctor, P.W.6-S.I. of Police suffered simple injuries i.e., left side of forehead, left side of nose and left side of little finger. He was provided first-aid by P.W.6. In Ex.P4 medical certificate, simple injuries are only mentioned. Except the police officials, there are no independent witnesses to establish that the injuries mentioned in Ex.P4 as deposited by P.Ws.1, 2 and 6 were caused by the appellant/A.1.

21. There are no independent persons, who saw the appellant/A.1 causing the injuries to police personnel except P.W.3. P.W.3 did not specifically corroborate the other witnesses. There are two more accused, who have also caused injuries to the police personnel. They were acquitted by the trial Court. Under these circumstances, the prosecution failed to prove that the appellant/A.1 had an intention to do away the life of police personnel i.e., P.Ws.1, 2 and 6 and in that process, the appellant caused injuries to them. Furthermore, when there is no warrant of arrest and the police personnel were in civil dress, it cannot be said that the appellant had voluntarily deter them from discharging their duties. If M.O.1 dagger was used in causing the injuries, the injuries would not have been simple. The police person would not have been discharged after first aid. The true

prosecution case is not projected. The seizure of M.O.1 dagger is also not established while leading cogent and convenient evidence.

22. Under these circumstances, the conviction and sentence imposed against the appellant/A.1 for the offences under Sections 307 and 332 of IPC and Section 24(1) of Indian Arms Act are liable to be set aside.

23. In the result, the Criminal Appeal is allowed setting aside the judgment dated 30.07.2010 passed in S.C.No.561 of 2008 by the learned III Additional District and Sessions Judge, Fast Track Court, Ranga Reddy District at L.B. Nagar and consequently, the appellant/A.1 is acquitted for the offences punishable under Sections 307 and 332 IPC and Section 24 (1) of the Indian Arms Act.

Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

Dr. SHAMEEM AKTHER, J

Date: 07.02.2019
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