

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19-11-2020

CORAM

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

CRIMINAL APPEAL No. 418 of 2017

Rajan

..Appellant/Accused

Vs.

State represented by
The Deputy Superintendent of Police,
Tirupattur Sub-Division,
Tirupattur Taluk Police Station,
Vellore District.
(Crime No. 124 of 2014)

..Respondent

Prayer: Criminal Appeal as against the judgment dated
04.07.2017 in Special S.C. No. 23 of 2015 on the file of
Principal Sessions Judge, Vellore.

For Appellant :: I.Periaswamy

For Respondent :: K.Prabhakaran,
Addl. Public Prosecutor

J U D G M E N T

(Judgment of the Court was delivered by M.M. SUNDRESH,J.)

This appeal has been preferred by the appellant/accused No.1, who has been charged for the offences punishable under Sections 341 and 302 IPC read with Section 3(1)(r) of SC/ST (Prevention of Atrocities) Act, 1989. The Trial Court convicted the appellant for the offences punishable under Sections 341 and 302 IPC while acquitting him of the charge under Section 3(1)(r) of SC/ST (POA) Act, 1989. For the offence under Section 302 IPC, the appellant was sentenced to undergo life imprisonment and pay a sum of Rs.5000/- as fine, in default to undergo 3 months simple imprisonment and for the offence under Section 341 IPC, he was sentenced to undergo 6 months simple imprisonment.

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Both the sentences were directed to run concurrently. The other accused was convicted only for the offence under Section 341 IPC for which he was sentenced to undergo 6 months simple imprisonment.

2. BRIEF FACTS:

(i) The deceased belonged to Scheduled Caste community. He married a person belonging to the community of the appellant. On 30.03.2014, at about 4p.m., the deceased and P.W.1, who is his brother-in-law, were travelling in a two-wheeler. They were waylaid and stopped by the appellant and the second accused. The deceased referred the appellant as his brother-in-law. As both of them belonged to different communities, enraged over the words spoken by the deceased referring him as his brother-in-law, the appellant took M.O.1, which is a billhook and attacked the deceased indiscriminately. When the deceased tried to escape, he followed him and pursued his attack. It was witnessed by P.W.1, who was hiding in a bush after escaping from the scene of occurrence. P.W.1, thereafter, went to Tirupattur Taluk Police Station and gave a complaint under Ex-P1. On receipt of the complaint, Ex-P25 - FIR came to be registered in Crime No. 124/2014 for offences under Sections 341, 302 and Section 3(2)(v) of SC/ST (POA) Act by P.W.20, the Inspector of Police.

(ii) The occurrence was seen by other witnesses, who subsequently turned hostile. P.W.s 18 and 21, Head Constables, saw the accused running with blood-stains on their clothes. P.W.23 is the District Superintendent of Police, who conducted investigation. Upon completing the same, she laid the charge sheet. The jurisdictional Magistrate namely, learned Judicial Magistrate No.II, Tirupattur, took it on file in PRC No. 08/2014. After complying with the mandate of Section 207 Cr.P.C., the case was committed to the Court of Sessions. It was numbered as Special S.C.No.23 of 2015. The charge against the appellant/first accused was under Sections 341 & 302 IPC and Section 3(1)(r) of SC/ST (POA) Act, 1989 while the second accused was charged only with respect to Sections 341 & 302 IPC.

(iii) Before the Trial Court, the prosecution examined 23 witnesses while marking Exs-P1 to P34. Material objects M.Os 1 to 11 were also marked on the side of the prosecution. The appellant did not let in any witness nor produced any document in his defence. After putting the appellant through the questioning under Section 313 Cr.P.C. and upon examining the materials coupled with the arguments made, the appellant was found guilty of the offences punishable under Sections 341 and 302 IPC and Section 3(1)(r) of SC/ST (POA) Act, 1989. Seeking

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to set aside the same, the present appeal has been filed.

3. WITNESSES AND EXHIBITS:

P.W.1 is the brother-in-law of the deceased. He deposed that the appellant stopped the vehicle of the deceased and attacked him. When the deceased, in an attempt to escape, entered one of the houses, the appellant followed him, dragged him from inside the house and once again attacked him indiscriminately with M.O.1 billhook. P.W.1 is the author of the complaint under Ex-P1. He has stated that there is no enmity between the accused on the one side and the deceased and himself on the other. However, in his cross-examination, he deposed that at the time of giving the complaint, he saw the accused at the Police Station.

(ii) P.W.2 is the brother of the deceased, who thereafter saw him in the Government Hospital upon information furnished. P.W.3 is the Village Administrative Officer, who witnessed the arrest and signed as a witness in the recovery mahazars Exs-P2 & P3. He also signed as a witness in Ex-P4, Observation Mahazar apart from Exs-P7 to P9, Seizure Mahazars.

(iii) P.W.s 4 to 8 are the witnesses, who turned hostile. These witnesses were introduced either as eye-witnesses or those who had seen the deceased after the occurrence. Of these witnesses, P.W.6 is the owner of the house in which the deceased entered to escape from the appellant. P.W.12 is the Doctor, who examined the appellant, who incidentally sustained injuries while committing the offence. Ex-P16 is the Accident Register issued by him pertaining to the appellant. It shows that the appellant had stated before P.W.12 that the injuries were sustained by him when was involved in the act of murdering the deceased.

(iv) P.W.13 is the Doctor, who conducted postmortem and issued Ex-P18, postmortem certificate. He found about 20 injuries, which were lacerated injuries in nature. P.W.15 is the one who conducted viscera test and P.W.16 is the author of Exs-P22 and P23, which are biological and serological reports respectively. P.W.s 18 and 21 are the Police Officers, who were on duty on the date of occurrence namely, 30.03.2014. According to them, they saw the accused running with blood-stained clothes. P.W.19 is the witness who signed the inquest report. As already stated, P.W.20 is the Inspector of Police, who registered the FIR.

(v) P.W.1 gave a statement under Section 164 Cr.P.C before P.W.22, who was the Judicial Magistrate, Tirupattur, at the relevant point of time. It has been marked as Ex-P28. Under Ex-P28, P.W.1 has narrated the occurrence attributing specific overt act against the appellant.

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4. The learned Trial Judge rendered conviction by placing reliance upon the evidence of P.W.s 1, 12, 18 and 21 along with the document marked as Ex-P23 (Serological Report), recoveries made supported by other evidence. Challenging the said conviction by the Trial Court, the present appeal has been preferred.

5. SUBMISSIONS:

(i) The learned counsel for the appellant submitted that the occurrence happened in the main area. Therefore, there would have been other witnesses as well. The witnesses, other than P.W.1, turned hostile. P.W.1 is an interested witness. Arrest and Recovery have not been proved. P.W.1 has stated that the accused were in Police custody at the time of lodging the complaint. The place of occurrence, as stated by the prosecution, cannot be true. In the complaint, P.W.1 has stated that the deceased fell in the same place. The evidence of P.W.s 18 and 21 ought not to have been accepted by the Trial Court being that of Police Officers. The Serological Report under Ex-P23 does not indicate human blood in all the material objects recovered. Thus, there are serious infirmities in the case projected by the prosecution.

(ii) On the other hand, learned Additional Public Prosecutor appearing for the State submitted that the occurrence took place on a Sunday. Therefore, the presence of others would not have been possible. A mere statement by P.W.1 that the accused were present at the Police Station when he went to lodge the complaint itself would not be sufficient enough to eschew his evidence. He cannot be termed as an interested witness. The evidence of P.W.1 is supported by that of P.W.12 along with Ex-P16. The postmortem certificate Ex-P18 and the evidence of P.W.13 would clearly show that there were multiple injuries on the body of the deceased. The Observation Mahazar, Ex-P4 and Sketch Ex-P30 would clearly indicate the place of occurrence. It tallies with the evidence of P.W.1. The Serological Report shows the presence of human blood in the clothes worn by the appellant and M.O.1, billhook. Insofar as others are concerned, it merely says "disintegrated". Merely because P.W.s 18 and 21 are Police Officers, their evidence cannot be eschewed. The Trial Court considered the relevant materials while rendering conviction. Thus, the appeal requires to be dismissed as there is no apparent error warranting interference.

6. DISCUSSION:

(i). P.W.1 cannot be termed as an interested witness. An interested witness is one, who is interested in getting a conviction. P.W.1 has stated that there is no prior enmity

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either between the deceased and the appellant or between himself and the appellant. According to P.W.1., the occurrence took place in two different places. Upon stopping the vehicle of the deceased, the appellant attacked him and while he was running for his life, he was recaptured, dragged and again attacked. Ex-P30 sketch is in tune with the evidence of P.W.1. Merely because a stray statement has been culled out in the cross-examination of P.W.1 that he saw the accused when he went to the Police Station to lodge the complaint, the entire version of the prosecution case will not become unacceptable, especially when there are other evidence available. We may note, there is no delay in the FIR reaching the Court.

(ii). P.W.12 is the Doctor, who treated the appellant. The appellant also sustained injuries which were fresh in nature. There is no explanation forthcoming from the appellant on this aspect during his questioning under Section 313 Cr.P.C. In the Accident Register under Ex-P16 pertaining to the appellant, P.W.12 has recorded that the appellant had attacked the deceased and in that process, suffered injuries on his person. There is nothing to discredit the evidence of P.W.12. That apart, the evidence of P.W.s 18 and 21 cannot be discarded merely because they happen to be Police Officers. Though the learned counsel for the appellant submitted that there is a motive behind the depositions of P.W.s 18 and 21 as there is a case registered against the appellant for attacking the Police, there is no personal grudge for P.W.s 18 and 21 as against the appellant. More so, when the appellant is said to be having a number of cases against him of which only one case has been registered for attacking the Police. The evidence rendered by P.W.s 1, 12, 18 and 21 is corroborated by the scientific evidence under Exs-P22 and P23. Recoveries have been made in pursuant to the information furnished by the appellant. M.O.1, billhook and M.O.s 6 and 7, blood-stained clothes recovered from the appellant were found to contain human blood belonging to that of the appellant.

7. The Trial Court, in our considered view, has rightly considered the evidence placed before it. We are satisfied that the prosecution has proved its case beyond reasonable doubts. Accordingly, we do not find any reason to allow this appeal and it stands dismissed. No costs.

Sd/-
Assistant Registrar(CS-VI)

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Sub Assistant Registrar

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To

1.The Principal Sessions Judge,
Vellore.

2.The Deputy Superintendent of Police,
Tirupattur Sub-Division,
Tirupattur Taluk Police Station,
Vellore District.

3.The Superintendent,
Central Prison, Vellore.

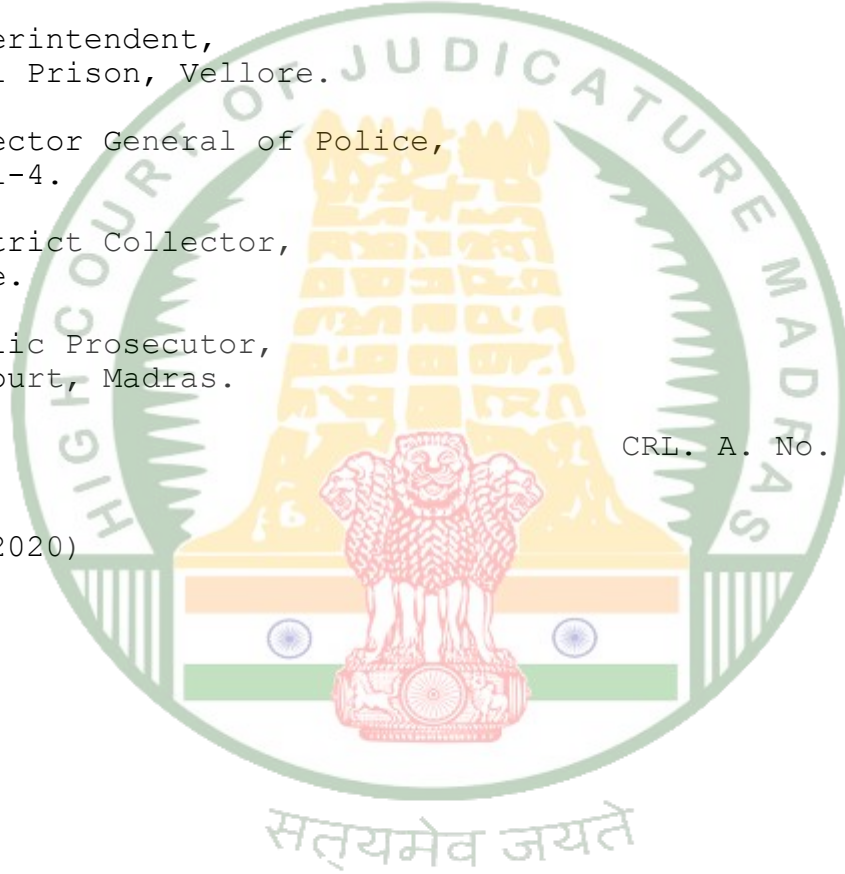
4.The Director General of Police,
Chennai-4.

5.The District Collector,
Vellore.

6.The Public Prosecutor,
High Court, Madras.

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