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Criminal Appeal No.786 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Criminal Appeal No.786 of 2015

Ranjith Kumar

....

Appellant

vs.

1.State by Inspector of Police
Cuddalore O.T.Police Station
Cuddalore District
(Crime No.59 of 2013)

2.Raghunathan

3.Kuganathan

4.Valumuni

... Respondents

Prayer: Criminal Appeal under Section 372 of the Criminal Procedure Code, 1973 against the judgment of the 1st Additional Assistant Sessions Judge, Cuddalore made in S.C.No.251 of 2014 dated 14.08.2015 acquitting the respondents 2 to 4 herein for the offence under Sections 341, 294(b) and 307 IPC.

For Appellant : Mr.Prasanna Venkatesh

For Respondents : Mr.L.Baskaran
Government Advocate (Crl.Side) – for R1
Mr.M.Nallathambi
Legal Aid Counsel – for R2 to R4

J U D G M E N T

This Criminal Appeal has been filed against the judgment and order passed by the I Additional Assistant Sessions Court, Cuddalore in S.C.No.251 of 2014 dated 14.08.2015, acquitting the respondents 2 to 4 (A1 to A3) from all charges.



2. The appellant is the victim / complainant who has approached this Court aggrieved by the judgment passed by the Trial Court acquitting A1 to A3 from all charges.

3. The case of the prosecution is that during the year 2011 local body elections took place and two persons viz., Panneer and Anand competed for the post of President. A1 to A3 were working on behalf of Panneer and the appellant along with one Periyandavar was helping Anand during the elections. Ultimately, the said Anand won the post of President. In view of the same, there was enmity between both the sides.

4. On 29.08.2013, when the appellant was going towards the house of one Nagooran (P.W.2) at about 7.15 p.m., he was waylaid by A1 to A3 near the house of one Raju. Thereafter, the accused persons are said to have abused the appellant in filthy language and attacked the appellant indiscriminately with knives (M.O.1 to M.O.3). The appellant sustained serious injuries.

5. The appellant was rushed to the hospital by one Senthamizh and he was admitted at the Government Hospital, Cuddalore. P.W.8, is the doctor who treated the appellant and gave him the first aid and he prepared the Accident Register marked as Ex.P.4 and noted down the following injuries.



- (1) Stab injury 4 x 1 x muscle depth 3 in no. over left upper arm
- (2) Stab injury 2 in no. 3 x 1 x depth not known over left form arm
and right upper arm
- (3) Laceration 4 x 2 x muscle depth over right fore arm bleed
- (4) Stab injury 4 x 1 x depth due to bleed 3 in no. over back on right
side and 3 in no. over back on left side.
- (5) Stab injury 3 x 1 x muscle depth over right buttock
- (6) Cut injury 5 x 0.5 x 0.5 cm over chest on left side.

6. The appellant wanted to take treatment in a different hospital and on the very same day, the appellant got admitted at Kannan Hospital in Cuddalore. The appellant was treated at Kannan Hospital and a treatment certificate dated 29.11.2013 was given by the said Kannan Hospital and it was also placed before P.W.8 and the same is evident from Ex.P.4.

7. P.W.9 received the information from Government Hospital, Cuddalore and when he reached the hospital, by then the appellant had gone to a different hospital to take further treatment and ultimately, P.W.9 recorded the statement of the appellant on 30.08.2013 at about 6.30 a.m at Kannan Hospital. The statement that was recorded by P.W.9 was marked as Ex.P.1. Based on the same, an FIR came to be registered in Crime No.59 of 2013 on 30.08.2013 for offences under Section 341, 294(b), 324 and 307 I.P.C. against A1 to A3.



8. The investigation was taken up by P.W.11 and he went to the scene of occurrence at about 7.30 a.m on 30.08.2013 and prepared the observation mahazar (Ex.P.2) and the rough sketch (Ex.P.6) in the presence of witnesses P.W.6 and one Nagalingam. P.W.11 also seized M.O.4 to M.O.6 from the scene of crime under seizure mahazar marked as Ex.P.3. Thereafter, P.W.11 examined witnesses and recorded their statements under Section 161(3) of Cr.P.C.

9. Based on the information given by one Arun (P.W.5), the knives (M.O.1 to M.O.3) were seized in the presence of witnesses P.W.7 and one Ravi. M.O.1 to M.O.6 were forwarded to the Court under Form 91. In the mean time, A1 to A3 surrendered in the Court on 03.09.2013 and they were remanded to judicial custody. Thereafter, P.W.11 collected the other reports and the final report was ultimately lodged by one Saravanan, Inspector of Police (incharge) on 18.02.2014 before the Judicial Magistrate No.II, Cuddalore.

10. Learned Judicial Magistrate served the copies to the accused persons under Section 207 of Cr.P.C. and the case was committed under Section 209 of Cr.P.C. and made over to the Court below.

11. The prosecution examined P.Ws 1 to 11 and marked Exs.P1 to P8 and identified M.O.1 to M.O.6. Incriminating evidence that was collected in the course of trial was put to the accused persons when they were questioned under Section 313(1)(b) of Cr.P.C. and they denied the same as false.



12. The Trial Court on appreciation of evidence and on considering the facts and circumstances of the case, came to the conclusion that the prosecution has not proved the case beyond reasonable doubts and hence gave the benefit of doubt in favour of the accused persons and acquitted them from all charges. Aggrieved over the same, the victim / complainant has filed the present criminal appeal.

13. Heard Mr.Prasanna Venkatesh, learned counsel for the appellant, Mr.L.Baskaran, learned Government Advocate (Criminal Side) for the 1st respondent and Mr.M.Nallathambi, Legal Aid Counsel for respondents 2 to 4.

14. This Court has carefully considered the submissions made on either side and the materials available on record.

15. In the instant case, the incident has been spoken to by the injured witness P.W.1 and the eye witnesses P.W.2 to P.W.4. In a case of this nature, the evidence of the injured witness gains a lot of significance. If the evidence of the injured witness is entirely reliable, it is not necessary for the Court to look for any corroboration since ultimately it is the quality of evidence that is material than the quantity of evidence. In view of the same, this Court carefully considered the evidence of P.W.1 who is the injured witness.

16. P.W.1 in his evidence has spoken about the previous enmity and the incident that took place on 29.08.2013 at about 7.15 p.m. P.W.1 knows the accused persons



since they worked in the election for one of the candidate. The incident had taken place at about 7.15 p.m and it is evident from the observation mahazar (Ex.P.2) and the rough sketch (Ex.P.6) that there was an electric pole with sodium bulb which was available 10 feet away from the place of occurrence. Therefore, there is no doubt with regard to the availability of light at the time of occurrence.

17. P.W.1 has specifically stated in his evidence that A1 to A3 waylaid him and abused him in filthy language and started stabbing P.W.1 indiscriminately. As a result, P.W.1 had sustained grievous injuries.

18. P.W.2 and P.W.3 are the eye witnesses who were examined on the side of the prosecution and a careful reading of their evidence also shows that it sufficiently corroborates with the evidence of P.W.1.

19. P.W.1 was taken to the Government Hospital at Cuddalore and treatment was given by P.W.8. In the accident register that was marked as Ex.P.4, it has been stated that P.W.8 was informed that two known persons had attacked P.W.1 with knife. The same has also been spoken to by P.W.8 in her evidence. On carefully going through the accident register, it is seen that there are totally six injuries that has been noted down and out of the same, there are four stab injuries in the left upper arm, right upper arm, on the back side and over the buttocks.



20. The injuries that have been noted in Ex.P.4 and which has also been spoken to by P.W.8 sufficiently corroborates the evidence of P.W.1 who has described the incident. The doctor was shown M.O.1 to M.O.3 and she had stated that the injuries sustained by P.W.1 is capable of being caused with those material objects.

21. The Court below while appreciating the evidence, has given the benefit of doubt to the accused persons mainly on the following grounds.

- a) Doubt regarding the place of occurrence
- b) Discrepancy in the number of persons who attacked P.W.1
- c) The unexplained delay in recording the statement of P.W.1 and the delay in registration of F.I.R.
- d) Inconsistency between the medical evidence and the ocular evidence.
- e) Prosecution failing to examine the material witnesses in this case

22. It is clear from the observation mahazar and the rough sketch that the incident had taken place at Therku Theru. There is a reference to Nadu Theru in Ex.P.4. The Court below has literally taken Nadu Theru to be a separate street without appreciating the fact that P.W.1 had informed the doctor that he was attacked in the middle of the street, which is colloquially addressed as Nadu Theru. This Court does not find any major discrepancy in the place of occurrence.

23. The next ground is that there is discrepancy in the number of accused persons. In Ex.P.4, it is noted down as two known persons and whereas in the



statement recorded from P.W.1, he states about three known persons who attacked him. The Court below has made reference to a certificate issued by Kannan Hospital where it is mentioned as six known persons. It is not known as to how the Court below placed reliance upon this document since this document was not even marked in the course of trial. There is no major discrepancy in the number of persons, who attacked P.W.1 and considering the grievous injuries sustained by P.W.1, it is quite possible that he would have informed the doctor / P.W.8 that he was attacked by two persons. That by itself does not in any way affect the credibility of the evidence of P.W.1 who specifically states that he was attacked by A1 to A3.

24. Insofar as the discrepancy between the medical evidence and ocular evidence is concerned, there is absolutely no discrepancy at all. The injuries that have been sustained by P.W.1 is in line with the injuries that have been noted down in Ex.P.4 and in fact it corroborates the version of P.W.1.

25. It is true that there is a delay in recording the statement of P.W.1 and the registration of the F.I.R. The delay by itself cannot be fatal in every case unless such delay has any significance to the facts of a given case. The Courts are very careful about the delay since there is room for deliberation and fixing the accused persons. Whereas in the present case, P.W.9 states that he received the information from the Government Hospital, Cuddalore and he only came to know at a later point of time that P.W.1 had been shifted to Kannan Hospital and ultimately the statement of P.W.1 was recorded at Kannan Hospital at 6.30 a.m on the next day. The same became the



basis for the registration of F.I.R. The F.I.R which was registered on 30.08.2013 at 6.30 a.m reached the Court at 10.30 a.m and this Court does not find any inordinate delay which weakens the case of the prosecution.

26. The Court below has expressed its serious doubt in the manner in which the recovery has taken place in this case. On carefully going through the materials, this Court also finds that the recovery has taken place in this case in a very unnatural manner. While testing the case of the prosecution, it has to be seen if such discrepancy in the recovery of the weapons, by itself will discredit the other evidence available on record. In the considered view of this Court, the evidence available on record cannot be discarded just because the prosecution has committed a blunder in proving the recovery of material objects. At best, it can only be stated that it was a mistake committed by the prosecution and that cannot affect the credibility of the injured witness and other supporting evidence.

27. The Apex Court has time and again held that minor discrepancies or contradictions or embellishments that are pointed out from the evidence should be of such a nature that it causes a dent in the case of the prosecution. Unless it goes to the root of the matter, the Courts cannot acquit the accused persons by pointing out to such discrepancies or contradictions or embellishments. In the instant case, the Trial Court was swayed by the minor discrepancies and contradictions and the Trial Court went ahead to acquit the accused persons by giving the benefit of doubt. Such an adjudication should never be done in a case where there is a clinching evidence of the



the injured witness which is also supported / corroborated by the other evidence available on record. The finding of the Trial Court suffers from infirmity and perversity and hence this Court has to necessarily interfere with the same.

28.In the light of the above discussion, the judgment and order passed by 1st Additional Assistant Sessions Judge, Cuddalore in S.C.No.251 of 2014 dated 14.08.2015 is hereby set aside. The prosecution has clearly proved the case beyond reasonable doubt against A1 to A3 on all the three charges under Sections 341, 294(b) and 307 I.P.C and accordingly A1 to A3 are convicted for all the three charges. The respondent police is directed to produce A1 to A3 before this Court for questioning them on the sentence. Post this case under the caption 'For Questioning on Sentence' on **27.03.2023**. On that day A1 to A3 will be questioned regarding the sentence and final orders will be passed in this Criminal Appeal.

29.This Court by judgment dated 08.03.2023, convicted respondents 2 to 4 (A1 to A3) for offence under Sections 341, 294(b) and 307 I.P.C.

30.The matter was posted today under the caption 'for questioning on sentence'. When the respondents 2 to 4 (A1 to A3), who were present before this Court were questioned on the sentence, they requested this Court to award a lesser sentence and they also said that they are hailing from a poor background.



31.Considering the facts and circumstances of the case and the fact that this is an incident that had taken place in the year 2013 and the respondents 2 to 4 (A1 to A3) had already suffered incarceration, this Court deems it fit to impose sentence of imprisonment on the respondents 2 to 4 (A1 to A3) for the period already undergone by them and they shall pay a total compensation amount of Rs.4,00,000/- [Rupees Four Lakhs only] to the appellant under Section 357 (3) of Cr.PC. The compensation amount was also handed over by A1 to A3 to the *de facto* complainant (appellant), who was present before this Court.

32.In the result, this Criminal Appeal is allowed in the above terms.

23.06.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
KP

To

The I Additional Assistant Sessions Judge,
Cuddalore.



Criminal Appeal No.786 of 2015

N. ANAND VENKATESH, J.

KP

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23.06.2023