

(2014) 11 MAD CK 0554

Madras High Court (Madurai Bench)

Case No: Criminal Appeal (MD) No. 293 of 2007

Ganja Pandi

APPELLANT

Vs

State

RESPONDENT

Date of Decision: Nov. 18, 2014

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 307, 324, 341

Hon'ble Judges: R. Mala, J

Bench: Single Bench

Judgement

R. Mala, J.

The Criminal Appeal is arising out of the judgment of conviction and sentence, dated 11.06.2007 passed in S.C.No. 493 of 2006 by the Additional Sessions Judge, F.T.C.No. I, Madura, whereby the accused were convicted and sentenced as follows:

3. The case of the prosecution is as follows:

(i) P.W.2 Krishnan, injured and P.W.1 Panchavarnam are husband and wife respectively and residing at Thoombakulam village situated near Thirumangalam. P.W.3 Selvam is their son. There was a criminal case pending between Sethuraman, who is the brother of P.W.2 Krishnan and A1 Kanjapandi for the reason that A1 Kanjapandi kidnapped the daughter of Sethuraman viz., Jothi and married her. A3 Palaniammal supported Kanjammal and P.W.2 Krishnan supported Sethuraman. Hence, whenever, A1 Kanjapandi met with P.W.2, he made criminal intimidation.

(ii) Due to that reason, on the date of occurrence, viz., 02.03.2006, P.W.2 Krishnan, who gone to Manthai at 7.00 p.m. has not returned back upto 8. 00 p.m. and hence P.W.1 and 3 searched him. At that time, P.W.1 seen that A1 Kanjapandi armed with Aruval, A2 Krishnan armed with spear and A3 Palaniammal armed with knife and when P.W.1 called her husband P.W.2, A1 Kanjapandi cut P.W.2 on his head with arrival and A2 Krishnan stabbed on his left leg with spear and A3 Palaniammal

stabbed on his right hand with knife and on seeing the same, P.W1 and her son made noise for rescue and on hearing the same, the guests, who came to the house of P.W.1 rushed there and the accused flee from the place of occurrence with weapons. P.W.2 was taken to Government Hospital, Thirumangalam by the van belongs to P.W.6 Pandiyan. Thereafter, P.W.6 taken him to Government Rajaji Hospital, Madurai.

(iii) P.W.10 Dr.Rose Asunthamary examined P.W.2 Krishnan, who was brought by his wife and was alleged to have been attacked by four known persons using Aruval and knife and found the following injuries.

1. A cut injury size 7x7x5 cm in the forehead (left).
2. A cut injury size 8x8x6 cm at the parieto occipital junction left
3. A cut injury size 6x6x6 cm at the occipital region.
4. A cut injury 4x4x4 cm size right arm.
5. A cut injury 5x5x3 cm left thigh.

(iv) On 02.03.2006, P.W.9 Dr.Veerarajkumar examined P.W.2 Krishhan, who was alleged to have been attacked by four known persons with wooden log and sustained injuries and he treated and found the following injuries.

1. Two cut injuries 10x1x1 cm on the left side forehead.
2. Injury 7x1x1 cm on the left side forehead.
3. Lacerated injury 5x2x1 cm on the right hand.
4. Lacerated injury 3x1x1 cm on the left hand.
5. Lacerated injury 4x2x2 cm on the left thigh. He issued Ex.P6 wound certificate. He took CT scan on his head and since he found a fracture in the left side skull, he opined that the head injury is grievous in nature and other injuries are simple in nature.

(v) On 02.03.2006, P.W.8, Nagarajan, Head Constable, Koodakovil Police Station, received the intimation from the Government Hospital, gone there and recorded the complaint Ex.P4 and registered a case in crime No. 22 of 2006 for the offence under Section 307 of I.P.C. and prepared Ex.P5, printed first information report and sent the same to the Court.

(vii) P.W.11, Mr.Pathamuthu, Inspector of Police, took up the case for investigation and visited the place of occurrence and prepared Ex.P.4 observation mahazer and drew Ex.P7 rough sketch in the presence of P.W.7 Gurusamy and Bagavathy. He examined the witnesses Panchavarnam, Selvam, Pagathal, Balu, Ramar, Gurusamy and Bagavathy and recorded their statements.

(viii) On 09.03.2006, at about 12.00 noon, he arrested the accused A1 Kanjapandi in the presence of P.W.4 Ramar and P.W.5 Balu and recorded his confession statement, on the basis of which, he recovered sickle M.O.1, spear M.O.2 and Knife M.O.3 under Ex.P3 seizure mahazer. He also sent the material objects to the concerned court under Form 95 and sent the accused to the Court for judicial custody. After completion of due investigation, he filed the charge sheet against the accused under Sections 341 and 307 of I.P.C. On 07.06.2006.

4. The learned Judge after following the procedures, framed necessary charges against the accused. Since the accused pleaded not guilty, to prove the charges, P.W.1 to P.W.11 were examined and Exs.P.1 to P.7 and M.O.1 to M.O.5 were marked. Accused were questioned under Section 313 Cr.P.C. about the incriminating evidence and circumstances. Accused denied the same and stated that a false case has been foisted against them.

5. On considering the oral and documentary evidence, the learned Sessions Judge convicted the accused and sentenced him as stated above.

6. Challenging the conviction and sentence passed by the trial Court under Section 341 and 307 of I.P.C. against the first appellant and Sections 341 and 324 of I.P.C. against the 2nd and 3rd appellants, learned counsel for the appellants would submit that the scene of occurrence has not been properly established and there are contradictions between the medical evidence and ocular evidence. He would further submit that there is a motive for the commission of offence and there is a delay in dispatching the first information report to the Court, which shows that after consultation only, the first information came into existence and there are discrepancies in the evidence of Doctors P.W.9 and 10. P.W.10 Dr. Rose Asuanthamary, who has given first aid, mentioned that she was informed P.W.2 was alleged to have been attacked by Aruval and knife, whereas, P.W.9 Dr. Veera Rajkumar, who treated him and issued wound certificate has mentioned that he was informed that P.W.2 was alleged to have been attacked by wooden log and for this discrepancy, the prosecution has not given any explanation and that factum was not considered by the trial Court.

7. He would further submit that even though in the first information report, the name of Kandasamy, who is the brother's son of P.W.2 has been mentioned, in the charge sheet, he was dropped without assigning any reason and hence, he prayed for setting aside the judgment of conviction and sentence and acquitting the appellants.

8. Resisting the same, Mrs. S. Prabha, the learned Government Advocate (Crl. Side) would submit that there is motive behind the appellants to commit the offence and that factum was rightly considered by the trial Court. The scene of occurrence has been correctly mentioned and the evidence of P.Ws. 1 to 3 would show that the place of occurrence is "Manthai" and the same has been mentioned in the rough sketch.

She would further submit that the defective investigation would not vitiate the entire case and the conviction and sentence. To substantiate the same, she relied on the decision reported in [Bai Radha Vs. The State of Gujarat](#), . She would further submit that even though in Ex.P6, P.W.10 has mentioned that the injured was attacked by Aruval and knife, whereas P.W.9 Dr.Veera Rajkumar, who has given further treatment has stated that P.W.2 was attacked by wooden log, it will not vitiate the conviction and sentence. She would further submit that the deletion of the name of Kandasamy in the charge sheet will not a ground for setting aside the conviction and sentence, and hence, she prayed for the dismissal of the appeal.

9. Considering the submissions made by both sides and on perusal of the typed set of papers, the admitted case is that P.W.2 is the injured victim. His wife is P.W.1 and his son is P.W.3. P.Ws.4 and 5 are the brothers of P.W.1 and brothers-in-law of P.W.2. Admittedly, P.W.2 is having one brother viz., Sethuraman and one Sister viz., Thangasamy @ Bagavathy ammal. The daughter of Sethuraman has married A1 eight years and hence, there was an enmity. Kandasamy is the son of Sethuraman. Even though his name has been found place in the complaint given by P.W.1, subsequently, at the time of filing of the charge sheet, his name has not been found place. Admittedly, the marriage has been happened eight years back. The case of prosecution is that due to that enmity only, the alleged occurrence is said to have been taken place. Admittedly, A1 and the prosecution witnesses P.Ws.1 to 3 are residing in the same village. A1 is residing in West street, whereas P.W.1 to 3 are residing in North street. The enmity is a double edged weapon. The case is based on eye witnesses. The enmity is not played a vital role for deciding the case, since eye witnesses are available.

10. Now, this Court has to be decided as to whether the scene of occurrence has been properly mentioned by the appellants. Before going into the merits of the case, it is the duty of the Court to consider the decision relied on by the learned Government Advocate (criminal side) reported in [Bai Radha Vs. The State of Gujarat](#), wherein, it was held that the defective investigation is not a ground for acquittal. It is appropriate to incorporate the same, which reads as follows:

"Unless the irregularity or the illegality in the investigation or trial can be shown to have brought about a miscarriage of justice, the result is not affected."

11. Now this Court has to consider as to whether the defective investigation would cause the miscarriage of justice or not? It is appropriate to consider Ex.P1, complaint and Ex.P5 First Information Report. As alleged by the prosecution, the place of occurrence is "Manthai", whereas, in Ex.P7 rough sketch, it was stated that the place of occurrence is North street. Perusal of evidence P.W.10 Dr.Rose Asunthamary, would show that the injured was alleged to have been attacked on 02.03.2006 at 8.30 p.m. in front of his house. Hence, there are three versions given by the prosecution in respect of the place of occurrence. P.Ws.1 to 3 has stated that the occurrence has been taken place in "Manthai" and in Ex.P7 rough sketch, it was

mentioned that the alleged occurrence has been taken place in the north street and as per the evidence of P.W.10 and Ex.P6, the alleged occurrence has been taken place in front of the house of P.W.2. Hence, the prosecution has not failed to prove the scene of occurrence beyond all reasonable doubt. Hence, the argument advanced by the learned counsel for the appellants that the scene of occurrence was doubtful is accepted one.

12. Now this Court has to decide as to whether the evidence of P.W.1 is reliable or not? P.Ws.1 and 3 are the chance witnesses. According to the evidence of P.Ws.1 and 3, P.W.2, after taking dinner, left the house and gone to "Manthai", where the alleged occurrence is said to have been taken place. P.W.1, in her evidence has stated that since P.W.2 did not return back to the house till night 8"0 clock, she searched him and gone to "Manthai" and at that time, her son P.W.3 and her daughter Bagathal asked her as to where she was going and then only, they accompanied P.W.1 and witnessed the occurrence, whereas, P.W.3, son of P.W.1 has stated in his evidence that since the relatives came to their house, P.W.1 was searching her husband and came to the place of occurrence. Hence, the evidence of P.Ws.1 and 3 has falsified the evidence of each other. Furthermore, P.Ws.4 and 5 are the brothers-in- law of P.W.2 and brothers of P.W.1 and they are not eye witnesses. P.W.4 is the attesor of the confession and recovery. In such circumstances, I am of the view that the only available evidence is P.W.2, who is the injured witness.

13. It has been held by the Apex Court, that the conviction can be based on the sole testimony of the prosecutrix, if found to be worthy of credence and reliable and for that no corroboration is required. It has often been said that oral testimony can be classified into three categories, viz., (I) wholly reliable, (ii) wholly unreliable, and (iii) neither wholly reliable not wholly unreliable. IN case of wholly reliable testimony of a single witness, the conviction can be founded without corroboration. This principle applies with greater vigour in case the nature of offence is such that it is committed in seclusion. In case, prosecution is based on wholly unreliable testimony of a single witness, the Court has no option that to acquit the accused. Therefore, this Court has to scrutinize the evidence of P.W.2.

14. P.W.2 is the injured. In his evidence, in the chief examination, he has stated that when his wife, son and daughter called him, he turned and at that time, A1 Kanjapandi armed with M.O.1 sickle and A2 Krishnan armed with M.O.2 spear and A3 Palaniammal armed with M.O.3 knife and assaulted him. According to the oral evidence of P.W.2, A2 stabbed him with M.O.2 spear on his left leg. On perusal of Ex.P6, he has sustained a cut injury 5x5x3 cm in his left thigh. Hence, the injuries sustained by P.W.2 itself is contradictory with medical evidence. Here, the evidence of P.W.2 is only partly reliable, which needs corroboration. But, in the present case, there is no corroborating evidence and There are contradiction between the medical evidence and ocular evidence. Therefore, it is unsafe to convict the appellants only on the basis of partly reliable evidence of P.W.2, which was not corroborated by

either oral evidence of other witnesses or by medical evidence.

15. It is also pertinent to note that P.W.9 Dr.Veera Rajkumar has given treatment to P.W.2 and mentioned the injuries. But, he has stated in his evidence that P.W.2 sustained two head injuries on the forehead, whereas other injuries are only lacerations. The sharp edge weapon only would cause cut injury and incise wound. But M.O.2 spear would cause stab injuries. In such circumstances, I am of the view that the prosecution has miserably failed to prove that the injuries sustained by P.W.2 would have been caused by M.Os.1 to 3 beyond all reasonable doubt.

16. Furthermore, P.W.10 Doctor Rose Asunthamary, who had first seen the injured has stated that he was alleged to have been attacked by four known persons with Aruval, spear and knife on 02.03.2006 at 8.30 p.m. in front of his house, whereas, P.W.9 Dr.Veerarajkumar, in his evidence has stated that the injured was alleged to have been attacked by four known persons with wooden log and hence, there are contradictions between the evidence of both doctors in respect of the weapon used by the appellants for the commission of offence. It is true that the laceration injury would have been caused by using of wooden log only. Therefore, the prosecution has miserably failed to prove that the injury sustained by P.W.2 had been caused by M.Os.1 to 3 beyond all reasonable doubt.

17. It is a settled canon of criminal jurisprudence that the conviction of an accused cannot be founded on the basis of inference. The offence should be proved against the accused beyond reasonable doubt either by direct evidence or even by circumstantial evidence if each link of the chain of events is established pointing towards the guilt of the accused. The prosecution has to lead cogent evidence in that regard so far as it satisfies the essentials of a complete chain duly supported by appropriate evidence. As already stated, in the present case also, the evidence of P.W.2/injured is partly reliable, which need corroborating evidence and admittedly, there is no corroboration evidence and hence, I am of the view that the prosecution has not proved the charges beyond reasonable doubt and hence, the benefit of doubt to be given in favour of the appellants.

18. At this juncture, this Court has to consider the decision of the Apex Court relied on by the learned Government (criminal side) in CrI.A.No. 1179 of 1997, wherein, the Supreme Court has held as follows:

"It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The Sections makes a distinction between the act of the accused and its result, if any. The Court has to see whether the act, irrespective of its

result, was done with the intention or knowledge and under circumstances mentioned in the Section. Therefore, it is not correct to acquit an accused of the charge under Section 307 I.P.C. merely because the injuries inflicted on the victim were in the nature of a simple hurt."

There is no quarrel over the proposition laid down by the learned Government Advocate (criminal side). But the said decision is not applicable to the facts of the present case. Because, here two different version are available in respect of the nature of injuries sustained by P.W.2. P.W.10 Dr.Rose Asunthamary has stated that all the injuries are cut injuries, whereas P.W.9 has stated that first injured alone is cut injury and all other injuries are lacerated injuries. As already stated, since the evidence of P.Ws.1 and 3 are not reliable and the scene of occurrence has not been proved by the prosecution beyond all reasonable doubt and the evidence of Doctors P.Ws.9 and 10 itself are contradiction with the weapon used by the appellants/accused for the commission of offence and hence, the prosecution has failed to prove that the injuries sustained by P.W.2 had been caused by M.Os.1 to 3 beyond all reasonable doubt and I am of the view that the trial Court has committed an error by convicting the appellants/accused for the offences under Sections 341, 307 and 324 of I.P.C. and the appellants are entitled to the benefit of doubt and the conviction and sentence passed against them are liable to be set aside.

19. In fine,

The Criminal Appeal is allowed.

Judgment of conviction and sentence dated 11.06.2007 passed in S.C.No. 493 of 2006 by the Additional Sessions Judge, F.T.C.No. I, Madurai, is set aside. The appellants/accused acquitted from all the charges framed against them. The fine amount already paid by the appellant/accused is ordered to be refunded. The bail bonds executed by appellants, if any, shall stand cancelled.