

(2001) 11 MAD CK 0011

In the Madras High Court

Case No : Criminal R.C. NO. 497 of 1997

Balasubramaniam, Mohan Kumar and Karthi @ Karthikeyan APPELLANT
Vs

State by Inspector of Police, Dharapuram Circle Police Station RESPONDENT
(Crime No. 579/93)

Date of Decision : 09-11-2001

Acts Referred:

Citation : (2002) 2 LW(Cri) 758

Hon'ble Judges : A. Packiaraj, J

Bench : Single Bench

Advocate : S. Shanmugavelaytham and Mr. K.V. Sridharan the Appellants, for the Appellant; V.M.R. Rajendran, APP for the Respondents, for the Respondent

Final Decision : Dismissed

Judgement

A. Packiaraj, J.—This revision has been filed by A-1, A-2 and A-4 in S.C.No.109 of 1995 on the file of the Assistant Sessions Judge,

Dharapuram who had been convicted as follows :

i) A-1 had been convicted for an offence under Sections 447, 324, 307 and 436. In respect of offence under Sections 447 and 324 A-1 has been

sentenced to undergo rigorous imprisonment for a period of three months and three years respectively and with regard to the offences under

Sections 307 and 436 he has been sentenced to undergo seven years rigorous imprisonment and to pay a fine of Rs. 5000/-, in default to undergo

three months rigorous imprisonment respectively.

ii) A-2 had been convicted for offence under Sections 447 and 323 and has been sentenced to undergo rigorous imprisonment for a period of

three months and one year respectively.

iii) A-4 had been convicted for offence under Sections 447 and 325 I.P.C. and has been sentenced to undergo imprisonment for a period of three months and three years and to pay a fine Rs. 1,000, in default to undergo three months imprisonment respectively.

The sentences were directed to run concurrently. The petitioners herein who have been arrayed as A-1, A-2 and A-4 before the Court below have been tried along with A-3, A-5, A-6 and A-7 of whom A-5 and A-6 died during the trial and A-3 and A-7 acquitted by the Trial Court.

Aggrieved by the said judgement and conviction they preferred an appeal in C.A. No. 129 of 1996 on the file of the First Additional Sessions

Judge cum Chief Judicial Magistrate, Erode which has also been confirmed. Against the said appeal the present revision has been filed.

2. This being a revision against conviction and two courts have gone into the evidence and had given concurrent findings, it may not be necessary

for me to develop into the facts and circumstances of the case. Suffice it for the purpose of this revision to narrate the prosecution case in a

nutshell. The prosecution party as well as A-1 were having lands adjacent to each other. There is a pathway in between the same and it is also an

admitted fact that there are civil litigations pending between the two parties. On 3-5-93 at about 7.00 P.M. it is stated that when P.W. 1 and his

associates were present in the garden lands at Poonapuram Village, A-1 to begin with lighted a hut in the above said place. On seeing the same

P.W.I shouted at the aggressors and at that time A-1 followed by the order accused went near him and picked up a quarrel and all of a sudden A-

1 attacked P.W. 1 on the neck with an aruval and tried to attack him again which was warded off by his hand and consequently, P.W. 1 sustained

a lacerated injury in the neck and two injuries on the hand. During the course of the same transaction, it is further alleged that A-1 attacked P.W. 2

with a stone on the rear side of her head and thereby she also sustained injuries. A-4 is said to have also attacked P.W.1 on his hand and then they

all ran away from the scene of occurrence. The occurrence had been witnessed by P.W.4 and P.W.5 also apart from P.W.1, P.W.2 and P.W.3

who were the injured person. All the five went to the Government Hospital, Dharmapuram enroute the Dharmapuram Police Station. But however,

it is stated that they did not give any report. The Doctor at Dharmapuram sent intimation to the police and P.W. 16 the Sub Inspector of Police on

receipt of the said intimation reached the Hospital at 2.30 in the night, recorded a statement from P.W.I which has been marked as Ex.P-1.

Thereafter, he examined all the witnesses and the injured in the case and after obtaining the necessary certificates laid the charge against all the accused.

3. When the accused were examined u/s 313 Cr.P.C. with reference to the incriminating materials found against them, they denied having committed any offence and their complicity in the offence.

4. This being a revision and two courts have already gone into the evidence and have given concurrent findings with regard to the factual aspect is

concerned, it may not be proper for me to reanalyze the evidence. But broadly speaking, we see that A-1 had sustained serious injuries namely

one laceration on the neck collar bone and two other injuries. As to how he sustained the injuries has not been referred in the First Information

Report, but however in evidence the explanation has been sought to be given as if A-6 tried to attack P.W.1 and P.W.2 moved away as a result of

which the blow fell on A-1 and he sustained an injury. I am afraid that it is too big a pill to swallow and consequently I am not prepared to accept

this explanation. There is absolutely no evidence as to how A-2 and A-7 are connected with A-1 and infact the Investigating Officer has been

specifically cross examined and he denies knowledge about their connection with A-1.

5. The counsel would then seriously argue that the earliest version to the Doctor is that the incident had taken place near the residence and they

were residing about 15 kms away and consequently what comes to light is that the occurrence had not taken place where it was alleged to have

taken place I am afraid that this argument has to necessarily be rejected outright, since the observation Mahazar and the other records clearly

establishes that the hut was situated only at that place and the burning remanence were available. There cannot be any two opinion about the place

of occurrence especially so when it has been clearly established through photographs and Observation Mahazar which have not been challenged.

6. The other contention is that none of the witnesses have spoken to about the attack of A-2 stones to the Doctor. It is true that including P.W. 2

who was assaulted by a stone has not spoken to about stones being used during

the incident to the Doctor. But however, we have to visualize the situation that the witnesses who have gone straight to the Doctor immediately after the occurrence and moreover all the witnesses would have been in an agitated mood and would not have come forward in detail with minute particulars and consequently we cannot reject their evidence solely on this ground.

7. Yet another ground raised by the learned counsel appearing for A-1 is that Section 436 relates to setting fire to a dwelling house, but however there does not appear to be any evidence that the hut which was burnt was a dwelling house. I see that there is consideration force in it, since the mahazar is totally silent about what was inside the hut and the photographs which had been marked as material objects in the case also disclose certain rubbish were kept inside the thatched shed. Hence what was burnt is a thatched shed, but nevertheless Section 436 is attracted.

8. The learned counsel for A-4, Mr. Sridharan would further argue that there was only one fracture on P.W.I, on the left hand. This according to the Doctors opinion could be either an attack by force with a weapon like M.O. 1 and according to the prosecution both A-1 and A-4 are said to have attacked on the arm of P.W.I and consequently the benefit of doubt should be given to A-4. But the fact remains that all the witnesses have categorically stated that A-4 had attacked P.W. 1.

9. On going through the evidence, I find that the prosecution has clearly established the case beyond all reasonable doubt. The injury on the accused need not always be explained by the prosecution, but however taking into the totality of the circumstance and facts of the present case, I see that the prosecution has come forward with a unclear version as to how A-1 sustained the injuries. The prosecution has not come forward with the entire truth with regard to the injuries sustained by A-1. Considering this, I find that A-1 had not gone to the place with an intention of causing the murder and consequently he may not liable for an offence u/s 307 I.P.C. At best he may be liable for an offence u/s 326 I.P.C.

10. Considering the facts that the occurrence had taken place in the year 1993 and eight years have lapsed and it has been brought to my notice that both the parties are living peacefully and as such it may not be necessary to pass such stringent sentence in the circumstance of the case, I alter

the conviction passed in respect of A-1 from one u/s 307 IPC. to 326 I.P.C. and while I confirm the conviction and sentence of three months

imposed on 447 I.P.C. and of offence u/s 324 and sentence of 3 years, and u/s 436, sentencing him to undergo RI for 3 years, I modify the

conviction from one u/s 307 I.P.C. to 326 I.P.C. and reduce the sentence from 7 years to 3 years and in addition to pay a fine of Rs. 10,000 in

default to undergo rigorous imprisonment for six months.

11. I confirm the conviction of A-2 of offence u/s 447 and the sentence of three months and confirm the conviction u/s 323 and in so far as

Appellant No. 2 namely Mohan Kumar is concerned, I have to consider the sentence likely to be imposed on him separately, in view of the fact

that it has been brought to my notice that A-2 is a paralytic attacked person and he is not able to move without the help of another person.

Consideration this ill health, I am constrained to reduce the sentence as undergone by him and in respect of A-4, I confirm the conviction u/s 447

and the sentence of 3 month is confirmed. I also confirm the conviction of A-4 u/s 447 I.P.C. but reduce the sentence imposed on 447 I.P.C. to

one year in addition to pay a sum of Rs. 1,000/- to the already existing fine of Rs. 1,000/- in default to undergo rigorous imprisonment for three

months. From the fine amount that has been awarded, I direct a sum of Rs. 20,000/- in all to be paid to P.W.I. All the sentences to run

concurrently. With this modification in conviction and sentence, I dismiss the revision.