

(2016) 01 MAD CK 0222
In the Madras High Court
Case No : Crl. A. No. 770 of 2008

Kuppuraj and Others

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 21-01-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 294(b), Section 307

Citation : (2016) 1 MLJ Criminal 533

Hon'ble Judges : A. Selvam, J.

Bench : Single Bench

Advocate : R. Sankarasubbu, for the Appellant; P. Govindarajan, Additional Public Prosecutor, for the Respondent

Final Decision : Partly Allowed

Judgement

A. Selvam, J.—1. The conviction and sentence dated 29.10.2008 passed in Sessions Case No. 326 of 2007 by the Additional District and Sessions Court (Fast Track Court), Vellore are being challenged in the present Criminal Appeal. The case of the prosecution is that on 2.9.2006 at about 2.30 p.m., in TAS-MAC shop, both the accused berated the defacto complainant by using filthy words and subsequently attacked him with an intention to murder and thereby caused injuries. After occurrence, the defacto complainant has given a complaint and the same has been registered in Crime No. 761 of 2006.

2. On receipt of the complaint, the Investigating Officer, viz., P.W.9 has taken up investigation and examined connected witnesses and after completing the same, laid a final report on the file of Judicial Magistrate Court No. 3, Vellore and the same has been taken on file in P.R.C. No. 17 of 2006.

3. The Judicial Magistrate No. 3, Vellore, after considering the facts that the offences alleged to have been committed by the accused are triable by Sessions Court, has committed the case to the court of Sessions, Vellore Division and the same has been taken on file in Sessions Case No. 326 of 2007.

4. The trial court, after hearing arguments of both sides and upon perusing relevant records has framed a charge against both the accused under Sections 294(b) and 307 of the IPC and the same have been read over and explained to them. The accused have denied the charge and claimed to be tried.

5. On the side of the prosecution, P.Ws. 1 to 9 have been examined and Exhibits P. 1 to 8 and Material Objects 1 and 2 have been marked.

6. When the accused have been questioned under Section 313 of the Criminal Procedure Code, as respects the incriminating materials available in evidence against them, they denied their complicity in the crime. On the side of the accused, D.W. 1 has been examined and Ex. D.1 and D.2 have been marked.

7. The trial court, after hearing arguments of both sides and also evaluating the available evidence on record has found both the accused guilty under Section 307 of the IPC and sentenced them to undergo 10 years Rigorous Imprisonment and also imposed a fine of Rs. 1,000/- with usual default clause. Against the conviction and sentence passed by the trial court, the present Criminal Appeal has been filed at the instance of the accused as appellants.

8. The learned counsel appearing for the appellants/accused has contended that the specific case of the prosecution is that the occurrence has taken place on 2.9.2006 at about 2.30 p.m. But, Ex. P.1, Complaint has come into existence on 6.9.2006 and it has reached the court on 13.9.2006 and further, the Investigating Officer has started to investigate the matter on 30.9.2006 and the trial court, without considering the lapses on the part of the prosecution, has erroneously invited conviction and sentence against the appellants/accused and therefore, the conviction and sentence passed against the appellants/accused are liable to be set aside.

9. Per contra, the learned Additional Public Prosecutor has contended that the defacto complainant is nothing but an injured witness and he deposed evidence to the effect that in the place of occurrence, both the accused have attacked him by using beer bottles and thereby caused injuries on his person. Apart from the evidence given by P.W.1, on the side of the prosecution, the other eye witnesses, namely P.Ws.2 to 4 have given clear evidence to the effect that both the accused have attacked P.W. 1 in the place of occurrence and the evidence given by P.Ws.1 to 4 have been clearly corroborated by the Doctor, who has been examined as P.W.8 and he filed Ex. P.7 and the trial court, after considering the evidence adduced on the side of the prosecution, has rightly invited conviction and sentence against the appellants/accused under section 307 of IPC and therefore, the conviction and sentence passed by the trial court need not be set aside.

10. It is seen from the records that P.W.1 is an injured witness to the occurrence and his specific evidence is that in the place of occurrence, both the accused have attacked him and thereby caused injuries on his person. The evidence given by P.W. 1 has been clearly corroborated by the evidence given by P.Ws.2 to 4. Apart from their evidence, the Doctor, who has examined P.W.1, filed Ex. P.7,

wherein it has been clearly mentioned that P.W.1 has sustained some injuries on his person. Therefore, from the evidence given by P.Ws. 1 to 4, 7, coupled with Ex. P.7, the Court can easily come to a conclusion that in the place of occurrence, both the accused have attacked P.W.1 and thereby caused injuries found in Ex. P.7.

11. The first and foremost contention put forth on the side of the appellants/accused is that the occurrence has taken place on 2.9.2006 at 14.30 hrs., whereas Ex. P.1, Complaint has come into existence on 6.9.2006.

12. In fact, this Court has perused the evidence given by P.W. 1 and his specific evidence is that after occurrence, he has been admitted in CMC Hospital, Vellore. Considering the fact that for the purpose of saving of life of P.W1, immediately after occurrence, P.W.1 has been admitted in CMC Hospital, Vellore. Mere delay in giving Ex. P.1, Complaint on 6.9.2006, would not affect the case of the prosecution. Further, it is a well known principle of law that the delay in sending FIR or Material Objects to the Court would not militate the case of the prosecution.

13. The next contention put forth on the side of the appellants/accused is that the Investigating Officer has started to investigate the matter on 30.9.2006, even though the complaint has been lodged on 6.9.2006. It is nothing but a fault on the part of the Investigating Officer. Since it is nothing but a delay on the part of the Investigating Officer, the Court cannot brush aside the consistent evidence given by P.Ws.1 to 4 with regard to occurrence. Therefore, the contentions put forth on the side of the appellants/accused cannot be accepted.

14. The learned counsel appearing for the appellants/accused has advanced the residual argument to the effect that the entire occurrence has taken place on the spur of moment and no previous motive has been made on the part of the accused to attack P.W.1. Therefore, considering the circumstances under which the occurrence has taken place, some leniency may be shown in awarding sentence. As pointed out earlier, the entire occurrence has taken place on the spur of moment and in fact there is no previous motive on the part of the appellants/accused to attack P.W.1. Considering the aforesaid factual aspects, this Court is of the view to give lenient punishment to the appellants/accused as stated infra.

In fine, this Criminal Appeal is allowed in part. The conviction passed against the appellants/accused in S.C. No. 326 of 2007 by the trial court is confirmed. However, the quantum of sentence imposed against them under section 307 of IPC is modified as follows:

"The first appellant/first accused is sentenced to undergo one year rigorous imprisonment and the second appellant! second accused is sentenced to undergo six months rigorous imprisonment, instead of ten years rigorous imprisonment. No modification in respect of fine amounts. If the appellants/accused are not in duress, the trial court is directed to take appropriate steps to immure them in

prison."