

(2011) 08 MAD CK 0398

In the Madras High Court

Case No : Criminal R.C. No. 902 of 2009

Mani@Veerapathiran, Arumugham @ Kuttaikuzhapi
Arumugam, Vijay @ Vijay Amirtharaj and Kathiravan

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 24-08-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 326, 34, 341

Citation : (2012) 1 MLJ 320

Hon'ble Judges : C.T. Selvam, J

Bench : Single Bench

Advocate : N. Sreenivasulu, for the Appellant; R. Thangavelu, G.A for Pondicherry, for the Respondent

Final Decision : Allowed

Judgement

Honourable Mr. Justice C.T. Selvam

1. This revision is preferred against the judgment in C.A. No. 17/2008 dated 21.08.2009 passed by the Additional Sessions Judge, Puducherry modifying the judgment passed in S.C. No. 82 of 2006 on 11.04.2008 by the Assistant Sessions Judge-cum-Chief Judicial Magistrate, Puducherry.

2. The petitioners herein faced prosecution of offences under sections 341 r/w. 34, 326 and 326 r/w. 34 of IPC in S.C.No. 82 of 2006 on the file of the Assistant Sessions Judge-cum-Chief Judicial Magistrate, Puducherry. The prosecution case was that the 4 petitioners/ accused, harbouring a common intention, wrongfully restrained the defacto complainant and 3 of his friends when they were proceeding to Bahour market at Vedhapurinatham, Bahour West Street Junction, Puducherry at about 8.30 p.m on 04.07.2006. They assaulted the defacto complainant and his friends with iron pipes, and attempted to cause death of one Ravi by causing grievous injury to his left eye resulting in the removal of the same. They also assaulted others. The attack was said to be motivated by

political rivalry. Before the Assistant Sessions Judge-cum-Chief Judicial Magistrate, Pondicherry, the prosecution examined 10 witnesses and marked 14 exhibits, as also 3 material objects. The defence examined 1 witness and marked 1 exhibit.

3. On appreciation of materials before it, the trial Court entered upon a finding of conviction and sentenced the petitioners to one month simple imprisonment for offence u/s.341 IPC; A2 was convicted and sentenced to three years simple imprisonment and fine of Rs.7,000/- in default six months imprisonment for offence u/s.326 IPC; A1, A3 and A4 were convicted and sentenced to three years simple imprisonment and fine of Rs.7,000/- each in default six months imprisonment. It had also ordered the sentence to run concurrently. Out of the total fine amount of Rs.28,000/-, a sum of Rs.16,000/- was ordered to be paid as compensation to PW-2 Ravi. There against, the petitioners moved an appeal in C.A.No. 17 of 2008. Learned II Additional Sessions Judge, Puducherry, while confirming the conviction has modified the sentence of three years imprisonment to one of one year simple imprisonment for offence u/s.326 IPC.

4. Heard learned counsel for the petitioners and learned Government Advocate for Puducherry.

5. On consideration of the rival submissions, this Court would find fault with the prosecution case for the following reasons:

1. PW-5 admits to having found PW-2, the injured Ravi alone at the place of occurrence and having taken him to a private hospital by motor cycle. The Doctor who examined P.W.2 there, had found the nature of injury grievous and asked P.W.5 to take PW-2 to the Government Hospital. He has deposed that thereafter he took PW-2 to Mahatma Gandhi Hospital, where again he was asked to take P.W.2 to an eye hospital. Thereafter, he took PW-2 to the Aravind Eye Hospital, where in turn he was asked to go to Government Hospital. PW-5 informs that he took PW-2 to the Government Hospital at about 10.00 pm. In the course of chief examination, P.W.5 stated that he had not been examined by the police and he has been treated hostile. The Investigating Officer PW-10, has deposed that the injured witness had not informed him of their first having gone to Mahatma Gandhi Medical College and hospital, from there to Aravind Eye Hospital and then to the Government Eye Hospital. This stand is contrary also to the evidence of PW-1.

2. PW-7, the Doctor who examined PWs 1, 3 & 4 at the hospital found no injury on them and recorded the same in Ex.P6, 7 & 8 wound certificates issued by him. This falsified the evidence of PWs 1, 3 & 4 that the petitioners accused 1 to 4 assaulted them and they sustained injuries.

3. DW-1, the Doctor who examined PW-2 has deposed that a friend (PW-5) informed that PW-2 suffered injury due to a fall off a motor cycle and such motor accident took place at about 9.30 p.m. He has issued Ex.D1 Medical report dated 30.03.2007 to such effect. The evidence of DW-1 finds credence when read along

with Ex.P5. Ex.P5 is the accident register for PW-3 and PW-4, issued by the Government General Hospital. Perusal of the same shows that in the column for date and time, it originally read as 24.07.2006 and 10.30 p.m. Again the brief history originally recorded shows an assault by known persons on 24.07.2006 at 8.30 p.m. These stand altered to reflect the date and time as 04-07-2006, 11.30 p.m and the brief history as assaulted by known persons on 04.7.06 at 8.30 p.m. The corrections are apparent.

4. Ex.P6 is the wound certificate issued for PW-4. Therein again, the date is conspicuously altered from 24.07.06 to 04.07.06. Ex.P7, Wound certificate issued for PW-3 again reveals the alterations to reflect the date 04.07.06, as also alterations of the time as 11.35 p.m. The above alterations have been done towards causing the impression that the occurrence wherein PW-2 suffered the eye injury and that wherein Pws1, 3 & 4 stood assaulted were one and the same.

6. The accident register pertaining to PW-1 and the wound certificate issued for PW-1 do not reflect any alteration except that the wound certificate initially recorded as "assault by known persons on 04.07.2006 near Bahour" has been altered to show "V. P. Natham" instead of Bahour. The accident register entry for PWs 3 & 4 bears No. 12201. This, as above informed has been altered to reflect the date 04.07.06 instead of 24.07.2006. The accident register entries for PW-1 is under No. 13999. When the original entry for accident registered under No. 12201 was of the date 24.07.06, the accident registered for alleged occurrence on 04.07.06 cannot be of a later number i.e. 13999. Therefore, the accident entry for PW-1 also is false. The wound certificates bear the relative accident register numbers. When if one is found false, the same would be the case with the other. Though the above discrepancies have been brought to the notice of the courts below and are sufficient to throw out the prosecution case, the courts below have failed to consider them in proper light. PW-7-Doctor, when confronted with the discrepancies as regards the numbers on the accident registers, has sought to explain away the same by informing that the accident registers are not issued in seriatum for use of Doctors. While he has admitted of having altered the dates in the accident registers for PW-4, he has denied the suggestion that having caused the original entry on 24-07-06, he has altered the same, at the request of the police. To say the least, this conduct is not that which is expected of a Doctor and leaves much to be desired.

7. The above reflects very poor and unbecoming conduct on the part of the investigating officer. We are not concerned at whose behest he has so conducted himself. In the course of cross examination he has admitted that Ex.P1, complaint of PW-1 bore no date and the general diary did not inform the registration of the complaint. He has in cross stated that none of the witnesses informed him of having gone to the private hospital as also to the Aravind Hospital before going to the Government Hospital. There is very much more, that is wrong with the prosecution case. However, what is recorded above would suffice to inform the falsity of the prosecution case and to enter a finding of

acquittal.

8. Accordingly, the Criminal Revision shall stand allowed. The judgments of the Courts below are set aside. The petitioners are acquitted of all charges. The fine amount, if any, paid by the petitioners shall be refunded to them.

9. A copy of this order shall be forwarded to the Director General of Police, Puducherry as also the Secretary, Home Department (Govt.). They are required to take suitable action against the investigating officer in the case. They may cause submission of the report of the action taken to the Registrar (Judicial) of this Court within a period of six months from the date of receipt of a copy of this order.