
(2002) 07 MAD CK 0227

In the Madras High Court

Case No : Criminal Revision Case No. 654 of 1994 and Criminal Appeal No. 877 of 2002

Marudha Kandar, M. Natesan, Emayee, Dhanam, Mani,
Thulasiammal, Manjula and Banumathi

APPELLANT

Vs

Subramanian, Thangarasu, Balasubramanian, Sakthivel,
Eswaran, Nallusamy, Panneer @ Panneer Selvam, Aachi
Kandar, Thangavelu and State
V. Subramaniam and
Nallusamy Vs S.I. of Police, Velayuthampalayam

RESPONDENT

Date of Decision : 19-07-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 374(3), 397, 401

Citation : (2002) 07 MAD CK 0227

Hon'ble Judges : A.K. Rajan, J

Bench : Single Bench

Advocate : A. Ilango, for the Appellant; A. Ilango, for Respondents 1 to 9 and O. Srinath, Assistant Public Prosecutor for Respondent 10, for the Respondent

Judgement

A.K. Rajan, J.—The criminal revision case is filed to call for the records in C.C.No.16 of 1994 on the file of the Judicial Magistrate-I, Karur and to set aside the judgment dated 15-09-1994. The Criminal Appeal is against the order of conviction of A1 and A6 in the same case.

2. The accused who were nine in number, were charged for the offences under Sections 147, 148, 149, 248(1), 323 and 325 of Indian Penal Code before the trial Magistrate. The trial Court after careful consideration of the prosecution evidence and the materials available on record, convicted the first accused for the offence u/s 323 of I.P.C. and imposed the fine of Rs.500/- and also sentenced him to undergo R.I. for a period of one month and also convicted the sixth accused for the offence u/s 325 of I.P.C. and imposed the sentence of one month R.I. and also a fine of Rs.200/-; the accused No.2, 3, 4, 5, 7, 8 and 9 were acquitted of all the charges levelled against them.

3. The case of the prosecution is that the accused and the prosecution witnesses are known to each of them as they belonged to the same village. There was a dispute between the accused and the prosecution party for certain reasons. On the date of occurrence, when the grand-daughter of P.W.1 namely, Sampoornam, and P.W.1's near relation Kamalam, Vijaya, Manjula went to take bath. The accused 1 to 9 teased them and as a result of it they returned home without taking bath. At about 7.00 P.M. On the day of occurrence when all the the accused came near the house of P.W.1, his son Natesan questioned them as to why they teased the girls in the morning. At that time, quarrel arose between them and the accused 1, 2, 3 and 9 were armed with rod. The ninth accused beat P.W.1's wife and his son with a rod on their forearm hand and caused injuries. P.Ws.4, 5 and 6, who were also at the scene of occurrence have also sustained injury by the other accused.

4. P.W.2 has stated that on the date of occurrence around 7.00 P.M. in front of the house of his house, he was assaulted by the first accused with a rod. In that process his left hand fractured. The second accused also hit him with road on his back. P.W.3, who is the wife of P.W.1 has stated that A6 beat on her left hand and as a result of it her left hand fractured. P.Ws.6, 7 and 8 were also injured during the incident.

5. P.W.13, the Assistant Medical officer at Karur has stated in his evidence that on 11-04-1990 at about 8.45 A.M. he examined P.W.7 and found a simple injury of 3 " cm. deep incised wound on her right fore-head. P.W.4 is the wound certificate. He also examined P.W.3 around 9.10 P.M. and found her right hand forearm fractured; a lacerated wound of 1 cm. length on the forearms of left and right hand was also found. M.O.1, x ray relates to the injury sustained by P.W.3. Ex.P.5 is the wound certificate issued by him. On the same day, he also examined P.W.2 and found his left forearm fractured. M.O.2 is the x ray relating to the injury sustained by P.W.2. The doctor certified this injury as grievous in nature and issued the wound certificate Ex.P.6.

6. Though the other prosecution witnesses namely, P.Ws.4 to 10 have stated that they have also sustained injury, there is no medical evidence to prove that. From the medical evidence it is proved that P.Ws.2 and 3 sustained grievous injury. P.W.2 has categorically stated that the injury suffered by him was caused by the first accused. P.W.3 has stated that the injury suffered by her was caused by the sixth accused. There was not even a suggestion put either to P.W.2 or P.W.3 that accused 1 and 6 did not cause the injuries found on them. Therefore, as far as the evidence of P.Ws.2 and 3 is concerned, their evidence proves that it was the accused 1 and 6 who caused the injury on them, which resulted in fracture of their hand. Therefore, offence u/s 326 of Indian Penal Code is made out against the accused 1 and 6.

7. Learned Magistrate in his judgment has stated that the prosecution witnesses do not speak that the injury was caused by the first accused; it is caused by the second accused. So far as the second accused is concerned, he has also hit on

the back of P.W.2 with a rod. Therefore, there is a doubt as to whether the injury found on P.W.2 was caused by the first accused or not. Further, the weapon used by the accused for committing the offence alleged by the prosecution have not been produced and therefore the offence u/s 326 of I.P.C. has not been proved, but only offence u/s 323 of I.P.C. was proved. With reference to the injury found on P.W.3, the learned Magistrate has stated that the prosecution has not proved his case regarding the weapon by which the injury was caused. The learned Magistrate therefore came to the conclusion that the sixth accused cannot be convicted for the offence u/s 326 of I.P.C., but the offence committed by him would fall under Sec. 323 of I.P.C. The reason given by the learned Magistrate for convicting the accused 1 and 6 is not legally valid on the evidence available on record. P.W.2 has categorically stated in his evidence that it is the first accused who hit him with a rod and while he attempted to ward off the attempt of the first accused his left hand suffered with severe fracture. The second accused hit him on his back with a rod. Therefore, on going through the evidence of P.W.2 it is proved that the grievous injury sustained by him was caused by the first accused. The sixth accused caused injury only on his back. The reasoning given by the trial Magistrate for acquitting the accused 2 to 5, 7 to 9 from the charges levelled against them is not sustainable. The injured witnesses speak as to which accused attacked them; those witnesses also have sustained injuries. Therefore, the findings of the trial Court is liable to be set aside.

8. In so far as the injury sustained by P.W.3, the learned Magistrate has stated that the sixth accused hit her with a rod and thereby her left hand suffered with severe fracture. There was no cross-examination; not even a suggestion was put on P.W.3 that the sixth accused did not cause injury on her in the manner alleged by the prosecution. In the circumstances, the finding of the trial Magistrate that there was no evidence on the side of the prosecution regarding the weapon by which the injuries were caused and this finding is contrary to the evidence on record. Further there is no reason for the trial Magistrate to reduce the offence to one u/s 325 of I.P.C. Hence this finding is also perverse. Therefore, the finding of the trial Magistrate is set aside and CrI.R.C.No.654 of 1994 is allowed.

9. So far as the appeal against the conviction of the first and sixth accused is concerned, for the reasons aforementioned, there are ample evidence to show that the sixth accused has committed an offence which resulted in P.Ws.2 and 3 suffering with severe fracture injury. Therefore, the appeal against the conviction is dismissed.

10. In view of the fact that the revision filed by P.W.1 is allowed, the entire judgment of the trial

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Magistrate is set aside and the matter is remitted back to the trial Magistrate for fresh disposal according to law and on the basis of the evidence available on record.

11.In the result, the Criminal Revision Case No.654 of 1994 is allowed and the Criminal Appeal No.877 of 2002 is dismissed.