

(2013) 01 MAD CK 0006

In the Madras High Court

Case No : Criminal A. (MD) No's. 297 and 540 of 2006

P. Karthikeyan and Another

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 10-01-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 147, 148, 302, 323, 324

Citation : (2013) 3 MLJ(Cri) 249

Hon'ble Judges : S. Nagamuthu, J; M. Jaichandren, J

Bench : Division Bench

Advocate : S. Ashokkumar, for K.J. Associates, for the Appellant; A. Ramar, Additional Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

S. Nagamuthu, J.—The appellants are the accused Nos. 1 and 3 in S.C. No. 121 of 2003, on the file of the learned Additional District and

Sessions Judge cum Fast Track Court, No. II, Madurai. Altogether, there were seven accused. By judgment dated 12.6.2006, the Trial Court

acquitted the accused Nos. 4 to 7 and convicted the accused Nos. 1 to 3 for offences under Sections 147, 341, 324 and 302 of the Indian Penal

Code and sentenced them to undergo rigorous imprisonment for one year and to pay a fine of Rs. 1,000/-, in default to undergo rigorous

imprisonment for four months for the offence u/s 147 of the Indian Penal Code; to undergo simple imprisonment for one month and to pay a fine of

Rs. 500/-, in default to undergo simple imprisonment for one week for the offence u/s 341 of the Indian Penal Code; to undergo rigorous

imprisonment for two years and to pay a fine of Rs. 2,000/- in default to undergo rigorous imprisonment for three months for the offence u/s 324 of

the Indian Penal Code and to undergo imprisonment for life and to pay a fine of Rs. 10,000/-, in default to undergo rigorous imprisonment for two

years. Challenging the said conviction and sentence, the first accused has come up with Criminal Appeal (MD) No. 297 of 2006, the second

accused has come up with Criminal Appeal (MD) No. 350 of 2006 and the third accused has come up with Criminal Appeal (MD) No. 540 of

2006. During the pendency of these three Criminal Appeals, the second accused died, and so, his appeal in CrI. A. (MD) No. 350 of 2006 was

dismissed today as abated. Thus, Criminal Appeal (MD) Nos. 297 and 540 of 2006 are before this Bench for disposal. The case of the

prosecution, in brief, is as follows:

The alleged occurrence had taken place on 9.3.1999 near Pandi Kovil in Madurai. P.W. 1 is a resident of Indira Nagar in Virudhunagar District.

P.W.2 also belonged to the same area. On 9.3.1999, P.W.2 had arranged for celebrating the religious tonsure ceremony of his children. For the

said function, P.W.2 had invited P.W.1 and Others. P.W.1 to P.W.4 and few other villagers, including the deceased, had come to the said Pandi

Kovil in a lorry driven by P.W.5 from Virudhunagar District. The function was over and food was served for all the participants. After the same,

their children had gone to a nearby ice vendor and purchased ice fruit for eating. This happened at 3.00 p.m. After sometime, the ice vendor came

to P.W.1 and P.W.2 and asked for money for the ice purchased by their children. P.W.2 enquired the children, who, in turn, told him that they had

given money for purchasing the ice to the ice vendor. Therefore, P.W. 1 and P.W.2 declined to give any more money to the ice vendor for the ice

purchased by the children. The first accused Mr. P. Karthikeyan is a member of Pandikovil, and therefore, after sometime, the first accused along

with the accused Nos. 2 and 3, who are also ice vendors came to the spot. The first accused demanded P.W. 1 and P.W.2 to pay money for the

ice purchased by the children to the ice vendor. This resulted in a quarrel. The accused 1 to 3 raised hue and cry in a challenging manner and went

away.

1.1. Fearing that the accused party may return back and attack them, P.W.1 and P.W.2 packed off all their people in the lorry and P.W.5 drove

the lorry. After some distance, the lorry could not proceed further, because, the

road had been cut for some repair work. Therefore, the lorry was taken reverse and it was proceeding towards the temple again. Around, 4.00 p.m., when the lorry neared the temple, the accused were waiting.

The prosecution party were under the impression that the accused party were waiting only to attack them. On seeing them, P.W.5 stopped the

lorry. As soon as the lorry was stopped, it is alleged that the accused 1 to 3 prevented the lorry from proceeding further. Thus, according to the

prosecution, they committed an offence u/s 341 of the Indian Penal Code. The accused 4 to 7 attacked P.W.2 and P.W.4 and caused simple hurt.

Thus, according to the prosecution, the accused 4 to 7 had committed offence punishable u/s 324 of the Indian Penal Code. In the same

occurrence, it is alleged that the accused 1 to 3 attacked P.W.1, and thus, caused simple hurt. Thus, according to the prosecution, the accused 1

to 3 committed an offence u/s 324 of the Indian Penal Code. In the same transaction, it is further alleged that the first accused attacked the

deceased Nagalingam (son-in-law of P.W.1) on his head and fisted him. The accused 2 and 3 attacked him on various parts of his body

repeatedly. He sustained serious injuries. The accused 4 to 7 being the members of the unlawful assembly were responsible for the act of the

accused 1 to 3. In the same occurrence, the accused 4 to 7 caused extensive damage to the lorry to the tune of Rs. 5,000/- and thus, they had

committed an offence u/s 3(1) of the Tamil Nadu Public Property (Prevention of Damage and Loss) Act, 1992.

1.2. After the occurrence, P.W.1 and P.W.2 were taken to the Government Rajaji Hospital at Madurai. P.W.11, Dr. V. Maheswaran, examined

P.W.1, at 6.40 p.m. and he found the following injuries:

1. Lacerated wound right eyebrow 3 X 1/2 cm deep.
2. Lacerated wound below Right Eye 2 X 1/2 cm deep.
3. Hematoma Right forehead 2 cm X 2 cm Bleeding for nose.

Exhibit P-6 is the Accident Register. He opined that the injuries are simple in nature.

1.3. On the same day, at 6.35 p.m., he examined P.W.2 and he found few injuries as follows:

Two lacerated wound back of Right Elbow each 1 cm X 1 cm skin deep.

Exhibit P-5 is the Accident Register. He opined that the injuries are simple in nature.

1.4. Then, he sent an intimation to the police. One Mr. S. Mahalingam, Sub-Inspector of Police, attached to the Karuppayurani Police Station,

proceeded to the hospital and recorded the complaint, Exhibit P-1 from P.W.1. On returning to the Police Station, he registered a case in Crime

No. 88 of 1999 under Sections 147, 148, 341, 323, 324, 427 and 302 of the Indian Penal Code at 10.00 p.m. He forwarded the complaint

(Exhibit P-1) and the First Information Report (Exhibit P-9) to the Court and handed over the case diary to P.W.15 for investigation at 11.00 p.m.

on 9.3.1999. Mr. Mahalingam, Sub-Inspector of Police, who registered the case, died before the trial could commence.

1.5. Taking up the case for investigation, P.W.15 proceeded to the place of occurrence at 11.30 p.m. and prepared an Observation Mahazer,

Exhibit P-3, in the presence of P.W. 10 and another witness. He prepared Exhibit P-10 Rough Sketch, showing the place of occurrence. Then, he

recovered bloodstained earth and sample earth and the broken wind screen pieces of the lorry, cycle with box and five stones from the place of

occurrence, M.O.1 and M.O.3. Then, he proceeded to the hospital at 6.00 a.m., on 10.3.1999. He conducted inquest on the body of the

deceased in the presence of the panchayatdars and prepared Exhibit P-11, Inquest Report. Then, he examined P.W. 1 to P.W.5 and recorded

their statements. On the same day, at 1.00 p.m., he arrested the accused 2, 3, 4, 5 and 6. On such arrest, the second accuse gave a voluntary

confession at 1.15 p.m.. P.W. 15 reduced the same into writing. In the said confession, he disclosed the place, where he had hidden the three

casuarina sticks. In pursuance of the same, he took the police and the witnesses to the said place and produced M.O.1 series, casuarina sticks

from the hide out. The same were recovered. Then, on the orders of the learned Judicial Magistrate No. II, Madurai, he took custody of the

accused 1 to 7, who were undergoing treatment in the Government Rajaji Hospital at Madurai. Thereafter, he forwarded the lorry for examination

by the Motor Vehicle Inspector. P.W.14, conducted autopsy on the body of the deceased and he found the following injuries:

On dissection of scalp, skull and dura:

sub scalp contusion left front to temporo parietal area 10 X 4 cms underlying Temporalis muscle full of blood clots. Contusion right fronto parietal

region 6 X 3 cms. Right temporalis muscle contused. Crack fracture left frontal region extending to left temporal region, 10 cms. Obliquely in

Antero--posterior direction frontal fracture continued in left anterior cranial fossa. Dura is tense. Diffuse sub cerebral hemispheres more on left side

laceration of brain left Temporo-parietal lobe 6 X 3 X 1 cms. With adjoining intracerebral haemorrhage. Laceration brain in right temporal pole 3

X 2 cms. Cerebrospinal fluid increased in volume, bloodstained.

He opined that the deceased would appear to have died of craniocerebral injuries.

1.6. Finally, on completing the investigation, he laid charge sheet against the accused on 10.6.1999. Based on the above materials, the Trial Court

framed charges under Sections 147, 341, 324 and 302 of the Indian Penal Code. The accused pleaded innocence. Therefore, they were put on

trial. In order to prove the case of the prosecution, on the side of the prosecution, as many as fifteen witnesses were examined and thirteen

documents were exhibited, besides three Material Objects.

1.7. Out of the said witnesses, P.W.1, P.W.2 and P.W.4 are the injured eye witnesses and they have vividly spoken to about the occurrence.

P.W.3 is the yet another eye witness, who has also spoken to about the entire occurrence. P.W.5 is the driver of the lorry, who has spoken to

about the occurrence. P.W.6 and P.W.7 have turned hostile.

1.8. When the above incriminating materials were put to the accused u/s 313 of the Code of Criminal Procedure, they denied the same as false.

According to them, in the very same occurrence, the accused Nos. 1, 2, 3, 4 and 5 also sustained injuries. They were also taken to the

Government Rajaji Hospital for treatment. According to them, the deceased party were the aggressors. They further stated that on the complaint of

the sixth accused, a counter case was registered in Crime No. 87 of 1999. But, the said counter case was not properly enquired into by the

investigating Officer. On their side, they examined D.W. 1, Dr. K.V. Maheswaran, who has spoken to about the injuries sustained by the first

accused. Exhibit-D.W.1 is the Accident Register in respect of the first accused.

2. Having considered the above materials, the Trial Court found the accused 1 to 3 guilty and acquitted the accused Nos. 4 to 7. That is how, the

appellants/accused Nos. 1 to 3 are now before this Court with these Criminal Appeals.

3. As we have already stated, during the pendency of these three Criminal Appeals, the second accused died, and so, his appeal in CrI. A. (MD)

No. 350 of 2006 was dismissed today as abated.

4. We have heard the learned counsel for the appellants and the learned Additional Public Prosecutor for the State and also perused the records carefully.

5. From the facts placed before us, it is crystal clear that both the groups sustained injuries in one and the same occurrence. On the side of the deceased party, including the deceased, three persons sustained injuries, whereas on the side of the accused party, including these appellants,

totally, five persons sustained injuries. But, unfortunately, the deceased succumbed to the injuries. In respect of the injuries sustained by the

deceased party, the present case in Crime No. 88 of 2009 was registered for offences under Sections 147, 341, 324 and 302 of the Indian Penal

Code. In respect of the injuries sustained by the five persons on the side of the accused party, on the complaint of the sixth accused, a counter

case in Crime No. 87 of 1999 was registered for offences under Sections 147, 148 and 324 of the Indian Penal Code. Both the cases were

investigated into by P.W.15. According to him, the counter case in Crime No. 87 of 1999 was referred to by him as mistake of fact. But,

unfortunately, neither the complaint in the counter case nor any other document pertaining to the said case has been marked in evidence before the

Trial Court. P.W.15 has not stated that as to why he preferred to refer the counter case as ""mistake of fact"". He has not deposed as to why and on

what basis, he concluded that the accused party were the aggressors. P.W.5 is the driver of the lorry. He has stated that as soon as the lorry was

stopped by him, there arose wordy quarrel between both the groups for about five minutes. He has further stated that the prosecution party alone

developed quarrel. It was only, thereafter, the clash occurred. From this evidence, the possibility that the deceased party alone the aggressors

cannot be ruled out. Further, P.W. 1 to P.W.4, who are the eye-witnesses, have not at all explained the injuries sustained by the accused party. It

is the positive case of P.W. 15 that the accused party also sustained injuries in

one and the same occurrence. If that be so, it becomes the bounden duty of the prosecution to explain the injuries sustained by the accused party.

6. In this regard, we may refer to a judgment of the Hon''ble Supreme Court in Lakshmi Singh and Others Vs. State of Bihar, wherein the Hon''ble

Supreme Court has held as follows:

Where the prosecution fails to explain the injuries on the accused, two results follow;

(i) that the evidence of the prosecution witnesses is untrue; and (2) that the injuries probalise the plea taken by the appellants.

It was further observed that;

In a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of alteration is a

very important circumstance from which the Court can draw the following inferences;

(i). that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version.

(2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore, their evidence is unreliable;

(3) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on

the prosecution case.

7. As has been held by the Hon''ble supreme Court, if the prosecution has not explained the injuries sustained by the accused party, and if the

original records pertaining to the counter case have not been produced before the Court, it becomes crystal clear that the prosecution has not

come forward with true version of the occurrence.

8. In the case on hand also, as we have already pointed out, not only the injuries sustained by the five persons on the side of the accused party

have not been explained away, but the reasons as to why the Investigating Officer concluded that the accused party were the aggressors also have

not been stated. The records, such as the complaint, wound certificates of the accused party etc., also have not been marked in evidence. Above

all, the prosecution has failed to prove that the accused party were the

aggressors. Thus, the possibility that the accused party would have exercised their right of private defence has not been ruled out.

9. In view of the above, in our considered view, it is not safe to sustain the conviction of the accused based on the evidences of these witnesses, as

there was no proper investigation done in respect of the counter case. To put it otherwise, the prosecution has not taken any endeavour to find out

the true version of the occurrence. Thus, we conclude that the prosecution has failed to prove the case beyond reasonable doubt. In the result, the

conviction and sentence dated 12.6.2006 made in S.C. No. 121 of 2003, on the file of the learned Additional Sessions Judge cum Fast Track

Court, No. II, Madurai, shall stand set aside and the Criminal Appeal is allowed. The fine amount, if any, paid by them shall be refunded. The bail

bonds executed by them shall stand discharged.