
(2003) 07 MAD CK 0120
In the Madras High Court
Case No : C.A. No. 801 of 1997

P. Rathinam

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 02-07-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 374

Citation : (2003) 07 MAD CK 0120

Hon'ble Judges : M. Chockalingam, J

Bench : Single Bench

Advocate : R. Amarnath Rao, for R. Dhanapal Raj, for the Appellant; V. Jaya Prakash Narayanan, Government Advocate (Crl. Side), for the Respondent

Final Decision : Allowed

Judgement

M. Chockalingam, J.—The appellant/A-4 herein who stood charged and tried along with four others under Ss 148, 447, 324, 365 and 342 of I.P.C. and S. 3(1) (x) of SC/ST (Prevention of Atrocities) Act and found guilty under Ss 147, 447, 342 and 365 of I.P.C. and sentenced to pay a fine of Rs. 500/- under S. 147 in default of which to undergo 3 months R.I. and to pay a fine of Rs. 100/- under S. 447 in default of which to undergo 15 days R.I. and to pay a fine of Rs. 500/- in default of which to undergo 3 months R.I. and to undergo 1 day imprisonment along with a fine of Rs. 1,000/- in default of which to undergo 6 months R.I. has brought forth this appeal.

2. The short facts necessary for the disposal of this appeal can be stated as follows:

P.W.6 Ponnusamy was carrying on his crushing business by name Senthil Raja Jalli Crusher at Vaiyamalai. P.W.1 Balakrishnan, P.W.2 Kandasamy, P.W.3 Tmt. Chinthamani, P.W.4 Viswanathan and P.W.5 Shanmugam were employed under him. On 30.1.1993, P.Ws.1, 4 and 5 took two loads of jalli in two lorries bearing Registration Nos. TN 33-5004 and TN 28 Y-8856 to a person at Konganapuram.

At the time of loading the jalli at 1.00 A.M., there was a wordy quarrel between the said prosecution witnesses and the local area people there, as a result of which both the parties were attacking each other. Afterwards, P.Ws.1, 4 and 5 returned to the Crusher Mill. At about 3.00 A.M., the accused 1 to 5 accompanied by 30 persons came in a Toyota Van bearing Registration No. TCH 3648 and trespassed into the Crusher Mill. They abused P.W.2 the watchman of the Mill by using filthy language referring to his cast. The second accused drove the Crusher Lorry No. TN 33-5004, dashed against the Office and caused damage to the tune of Rs. 15,000/-. Thereafter, the accused kidnapped P.W.2 to their place and kept him under wrongful confinement. A-1 threatened P.W.6 Ponnusamy that he should surrender the two lorry drivers namely P.Ws.4 and 5, if he was to release P.W.2 from the confinement. At 10.00 A.M. P.W.1 came to the Police Station and lodged Ex.P1 complaint, on the strength of which P.W.11 Ganesan, Sub Inspector of Police registered a case in Crime No. 95/93 under Ss 147, 148, 341, 364, 427 and 447 of I.P.C. Ex.P5 F.I.R. was despatched to the concerned Magistrate's Court. P.W.11 took up the further investigation, proceeded to the scene of occurrence, prepared Ex.P6 rough sketch, examined P.Ws.1, 3 and 6 on 31.1.93 at 8.15 P.M. and recorded their statements. P.W.2 came to the Police Station and gave a statement to P.W.11. P.W.11 Investigation Officer sent P.W.2 to the Government Hospital, Thiruchengode for treatment. P.W.8 Dr. Nalliappan, attached to Government Hospital, Thiruchengode, gave treatment to P.W.2, found four injuries on him and issued Ex.P2 wound certificate. On the basis of the statement of P.W.2, P.W.11 added S. 7(1)(d) of PCR Act and sent Ex.P7 report to the Court concerned. The Investigation Officer seized the vehicle No. TN 33-5004 and sent the same for expert's opinion. He also seized the other vehicle TCM Toyota bearing Registration No. 3468, marked as M.O.3 in the presence of P.W.10 Kandasamy and one Mohan under Ex.P4 mahazar. The Investigation Officer examined P.Ws.2, 4, 5 and 10 and recorded their statements. P.W.12, who took charge of the respondent Police Station on 28.9.93, examined the other witnesses, and on completion of the investigation, he filed the charge sheet against the accused before the Judicial Magistrate, Thiruchengode on 30.9.1993.

3. In order to prove the case, the prosecution examined 12 witnesses and marked 7 exhibits and 3 material objects. After the evidence of the prosecution was over, the accused were questioned under S. 313 Cr.P.C. as to the incriminating circumstances found in the evidence of the prosecution witnesses, and they flatly denied the same as false. No defence witness was examined. After considering the rival submissions and scrutiny of the available materials, the trial Court found the appellant/A-4 along with the other accused guilty of the offences. The lower Court convicted the appellant and sentenced him to imprisonment as stated supra.

4. Advancing the arguments on behalf of the appellant, the learned Counsel made the following submissions:

The prosecution has not placed before the lower Court, the first part of the

occurrence, in which the accused were assaulted. The occurrence, according to the prosecution, has taken place at 3.00 A.M. in the Crusher Mill of P.W.6 at Vaiyamalai, following an incident that took place at Konganapuram at 1.00 A.M., in which P.Ws.1, 4 and 5 were involved. Thus, the prosecution has not unfolded the genesis of the crime. P.W.1 has given the first complaint, on the strength of which a case was registered in Crime No. 95/93 by the respondent police. P.W.2 has also given another statement, which was also acted upon. The lower Court has not believed the evidence of P.W.2. It is pertinent to point out that the first complaint was given by P.W.1, wherein he has stated that A-1 and 30 others armed with deadly weapons came to the place of occurrence and committed the crime in question. It remains to be stated that the occurrence has taken place during night hours, and the witnesses have clearly spoken to the fact that the accused were not known to them previously, and hence, without knowing the accused earlier, the witnesses, who could not see the assailants on the day of occurrence, could not identify them properly. It has to be noted that no identification parade was also conducted, and the name of the appellant/A-4 was nowhere mentioned in the F.I.R. P.W.1 has stated that the accused have climbed over a tamarind tree and witnessed the occurrence. But, the investigation has not revealed the existence of the tamarind tree. Therefore, for all these reasons, the judgment of the lower Court has to be set aside, and the appellant be acquitted of the charges.

5. Countering to the above contentions of the appellant's side, the learned Government Advocate (Criminal Side) would urge that the lower Court has considered the evidence carefully and found the accused guilty of the said charges; that it is pertinent to note that P.W.2 was kidnapped by the accused, and he was examined; that there are no two complaints as alleged by the appellant; that P.W.2 went to the Police station and gave a statement, which was recorded and acted upon; that it is true that there were two information in this case, one by P.W.1 on the strength of which the said case was registered in Cr. No. 95/93, and the other by P.W.2, on the basis of which P.W.11 added S. 7(1)(d) of PCR Act; that the prosecution witnesses have clearly and cogently narrated the incident, and hence, the minor discrepancies will not affect the prosecution case; and therefore, the judgment of the trial Court has to be sustained.

6. This Court paid its full attention on the available materials, as a result of which the Court is of the considered opinion that the appeal has got to be allowed.

7. The specific case of the prosecution was that the appellant, ranked as A-4 along with four other accused, who stood charged before the lower Court, and 25 others constituted into an unlawful assembly and came to the place of occurrence at about 3.00 A.M.; that they attacked P.W.2 with sticks and caused injuries; that they caused damages to the Office of P.W.6 to the tune of Rs. 15,000/-; that they abused P.W.2 by making a reference to his community; that they kidnapped P.W.2; and that they threatened P.W.6 that he should surrender his two lorry drivers namely P.Ws.4 and 5, if the accused were to release P.W.2.

On the strength of the complaint given by P.W.1, a case was registered by P.W.11 Sub Inspector of Police against the accused 1 to 5 and investigation has proceeded. It is quite evident from the testimony of P.Ws.1 to 5 that the incident in question was preceded by an incident that took place at Konganapuram, wherein P.Ws.1, 4 and 5 were involved. P.Ws.1, 4 and 5 took two loads of jalli in two lorries to be supplied at Konganapuram, where following a wordy quarrel, an incident of attack between P.Ws.1, 4 and 5 on the one side and the accused party on the other side had taken place at about 1.30 A.M. This fact was also spoken to by the complainant P.W.1 by stating that the incident of attack had taken place at two places, and one such incident took place at Konganapuram; and that since the incident at Konganapuram took place during night hours, he could not say who were all involved. Thus, it would be clear that the prosecution has placed evidence only as to the second part, but not as to the first incident that took place at Konganapuram. The incident in question at Vaiyamalai has taken place. But, neither the investigation was done in respect of the first part of the incident, nor the same was unfolded at the time when the case was placed before the lower Court at the time of trial. Under the stated circumstances, it would be very difficult to appraise of the entire case to arrive at a correct conclusion and take a decision in the matter. In short, it can be well stated that the prosecution has not brought before the Court below the genesis of the occurrence.

8. It is not the case of the prosecution that all the accused, who came to the place of occurrence, were not already known to P.W.1. But, in the earliest information given by P.W.1, he has stated the names of the first accused and 30 others. He has not whispered anything about the appellant anywhere. According to him, due to fear he just climbed over a tamarind tree and witnessed the occurrence. As rightly pointed out by the learned Counsel for the appellant, no tamarind tree is shown in Ex.P6 rough sketch. From the evidence of P.Ws.1 to 5, it would be clear that the occurrence has taken place at about 3.00 A.M. during darkness, and they could not pinpoint the acts committed by the culprits, in particular when they were about 30 or 35 in number. P.W.11 the Investigation Officer, has categorically admitted in his evidence that he recorded the statement of P.W.2 from which he came to know that an incident had taken place at Konganapuram Bus Stand at 1.00 A.M., wherein the prosecution witnesses were involved, but, he has not enquired anything about the same. According to the Investigation Officer, he has not prepared the observation mahazar, though he claimed that he made an inspection of the site of occurrence. The non-preparation of the observation mahazar by the Investigation Officer and the non-existence of the tamarind tree, as per Ex.P6 rough sketch prepared by the Investigation Officer would cast a doubt whether the Investigation Officer had really made an inspection of the site of occurrence. In view of all the infirmities and doubts in the prosecution case, it would be highly unsafe to hold that the appellant/A-4 was guilty of the offences under Ss 147, 447, 342 and 365 of I.P.C., and hence, he is entitled for an acquittal.

9. In the result, this criminal appeal is allowed, setting aside the judgment of the

lower Court in respect of the appellant/A-4. The appellant/A-4 is acquitted of the charges against him. The bail bond, if any executed by the appellant/A-4, shall stand cancelled and the fine amounts, if any paid, shall be refunded to the appellant/A4.