
(2006) 06 MAD CK 0244
In the Madras High Court
Case No : Criminal Appeal No. 1060 of 2002

Rajendran and Others

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 14-06-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 323

Citation : (2006) 06 MAD CK 0244

Hon'ble Judges : M. Karpagavinayagam, J; A.C. Arumuga Perumal Adityan, J

Bench : Division Bench

Advocate : C.M. Gunasekaran, for the Appellant; V.R. Balasubramanian, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

M. Karpagavinayagam, J.—Appellants/A-1 to A-5 have been convicted by the trial Court for the offences under Sections 147, 148, 302

read with 149, 323, 324, 326 and 302 IPC. Challenging the same, this appeal has been filed.

2. The short facts, leading to the conviction, are as follows:

(i) Both the accused and the prosecution party belong to the same party.

(ii) On 04.07.1995, one day prior to the date of occurrence, there was a funeral procession of one Sriramulu, who belonged to M.D.M.K. Party.

During the procession, the M.D.M.K. people asked the shopkeepers to close their shops. When some of the local shopkeepers objected to the

same, the crowd beat one Lakshminarayanan. Due to the incident, the local area people entertained a grudge against those who were involved in

the attack made on Lakshminarayanan.

(iii) The occurrence had taken place on 05.07.1995 at about 08.45 p.m. When the deceased Ravi and the witnesses P.W.2 Venkatesh and P.W.4

Nagesh were coming along the road, all the accused came in a group and questioned them as to why they attacked Lakshminarayanan. There was

a wordy quarrel between them. A-1 Rajendran took a broken soda bottle and stabbed P.W.5 Venkatesh on the left side of the face. A-3 Sudhi

and A-5 Seluvappa caught hold of P.W. 4 and A-2 Chandran attacked P.W. 4 with a knife, causing injury on the left side of the stomach. P.W.4,

on receipt of injuries, fell down on the floor. Then, both Ravi, the deceased, and P.W. 1 Ramesh tried to lift P.W. 4. At that point of time, A-1

came with a knife M.O.1 and stabbed on the left flank of the deceased; A-3 stabbed P.W.1 with a knife and caused injury on his left shoulder; A-

2 stabbed P.W. 6 Rajagopal on his left side stomach and left back with knife and A-4 Rajappa beat P.W. 7 Ramalingam on the face.

(iv) After the occurrence was over, the accused left the scene. The deceased and the injured witnesses P.Ws.1 and 4 were taken to St.John

Hospital at Bangalore. (v) P.W. 16, doctor, examined P.Ws. 1 and 4 on 05.07.1995 at 11.00 p.m. and sent intimation to Koramangala Police

Station.

(vi) On receipt of telephonic information, P.W.14, Sub-Inspector of Police, Berigai Police Station, went to St.John Hospital, Bangalore, and

recorded the complaint Ex.P-1, given by P.W.1 at 02.00 a.m. on 06.07.1995. He registered a case in Crime No. 100 of 1995 for the offences

under Sections 147, 148, 323 and 324 IPC against the accused, A-1 to A-5. On that day at 09.30 a.m., P.W.14 got death intimation of the

deceased. Therefore, he altered the case into Section 302 IPC and sent message to the superior officers.

(vii) On the same day i.e., on 06.07.1995, at about 10.30 a.m., P.W.17, Inspector of Police, went to St. John Hospital, Bangalore, and

conducted inquest over the dead body of the deceased Ravi. Ex.P-19 is the inquest report. He also examined other witnesses.

(viii) Dr. Patil of Victoria Hospital conducted post-mortem and issued post-mortem certificate, Ex.P-18, which was marked through P.W.16,

doctor, as the doctor, who conducted post-mortem, was not available in India.

(ix) On 07.07.1995, P.W.18, Inspector of Police, took up further investigation,

went to the scene and observed all formalities. He also seized the blood stained clothes of the deceased. At about 01.00 p.m., he went to the hospital, in which A-5 was admitted, recorded the complaint at about 01.30 p.m., and registered the same in Crime No. 101 of 1995 for the offences under Sections 147, 148, 323, and 324 IPC against one Sampangi, P.W.3, P.W.4 and four other named persons. On 12.07.1995, he arrested A-2 and A-3 and, on their confessions, recovered M.O.1 and M.O.6, knives. On 01.08.1995, he arrested A-1 and A-4 and, on their confessions, recovered M.O.7, knife. He also arrested A-5 on 02.11.1995.

(x) Then, the successor officer of P.W.18, namely, Paramasivam took up further investigation, examined all the witnesses and sent the material objects for chemical examination. After completion of investigation, he filed charge sheet on 25.07.1995 against all the accused.

(xi) During the course of trial, on the side of prosecution, P.Ws.1 to 18 were examined, Exs.P-1 to P-32 were filed and M.Os.1 to 7 were marked.

(xii) In order to substantiate their defence, on the side of defence, D.Ws. 1 to 6 were examined and Exs. D-1 to D-20 were filed. (xiii) When the

accused were questioned u/s 313 Cr.P.C. with regard the incriminating material available on record, they stated that A-1 to A-3 and A-5

sustained injuries, due to the attack made by the prosecution party, and for those injuries they got treatment from Hosur Government Hospital,

attended by D.Ws.1 and 5, doctors, and since they have not committed any offence, as alleged by the prosecution, they are liable to be acquitted.

(xiv) The trial Court, having analysed the evidence available on record, accepted the case of the prosecution and convicted the accused, for the

offences referred to above. (xv) Hence, this appeal.

3. Mr. C.M. Gunasekaran, learned Counsel for the appellants, took us through the entire evidence and would contend that the entire case of the

prosecution would bristle with infirmities, as the prosecution has failed to place all the materials, collected during the course of investigation, before

the trial Court and also it suppressed the origin and genesis of the occurrence, besides the fact that it has failed to investigate into the counter

complaint, which has been registered in this case. He also cited the decisions in

Krishnamoorthi v. State 1989 L.W.(Cri.) 415, and Balwan Singh

v. State of Haryana 2006 (1) SCC (Cri.) 108 .

4. On these aspects, we have heard Mr. V.R. Balasubramanian, learned Government Advocate (Crl. Side), appearing for the State.

5. We have carefully considered the submissions made by the learned Counsel on either side and gone through the records.

6. According to the prosecution, on 05.07.1995, at about 08.45 p.m., all the accused, namely, A-1 to A-5 waylaid the witnesses and attacked

them. A-1 attacked both the deceased and P.W.5, A-2 attacked P.W.4 and P.W.6, A-3 attacked P.W.1, A-4 attacked P.W.7 and caused injuries.

7. There is no dispute in the fact that the witnesses P.Ws. 1,4,5,6 and 7 sustained injuries, during the course of occurrence. To prove the same,

Accident Registers are produced and the witnesses and doctors have been examined. But, the fact remains that the materials collected by the

prosecution, in the form of oral and documentary evidence, would not indicate that the prosecution has placed all the relevant materials, to enable

the Court to decide, as to who is the aggressor.

8. It cannot be debated that both the parties indulged in the attack against each other.

9. According to P.W. 18, Investigating Officer, he received a counter complaint from A-5, who was hospitalised. The complaint, which was

received from P.W.1, was registered in Crime No. 100 of 1995 and the counter complaint, which was received from A-5, was registered in

Crime No. 101 of 1995. It is not disputed that both the cases are cases in counter.

10. On going through the medical records and the evidence of the doctors and the defence witnesses, it is clear that A-5 sustained very serious

injuries of fracture in the legs and A-1 to A-3 also sustained injuries on the vital parts of the body. Though some prosecution witnesses would state

that the accused were attacked by the people, who gathered there during the course of occurrence, the prosecution has not placed those materials

to show how those injuries have been caused and who are all the assailants. Even though P.W.18 recorded the counter complaint from A-5 and

registered the same in Crime No. 101 of 1995, he has not cared to investigate

into the same, in order to find out, who is the aggressor, and how the occurrence had started. On the other hand, the counter complaint has not been marked by the prosecution.

11. The agonising feature that could be noticed is that even though the counter complaint was received and recorded by P.W.18 on 07.07.1995

itself, the said complaint and the F.I.R. were not sent to the Court immediately. However, it is noticed from the records that the complaint received

from P.W.1, which was registered in Crime No. 100 of 1995, was received by the Court on 06.07.1995 itself, but the counter complaint was

received by the Court only on 12.07.1996 and the same was ultimately dismissed by the Judicial Magistrate, since the final report was not filed

within time. This has been spoken to by D.W.2, Court Clerk. Further, it is seen that the complaint, which was given by P.W.1 and registered on

06.07.1995, has been investigated into by one Paramasivam, successor of P.W. 18, and final report was also filed on 25.07.1995 itself.

Admittedly, the F.I.R., which was registered on 07.07.1995 and which was received by the Court on 12.07.1996 was pending then. Even though

the counter F.I.R. was pending, P.W.18 or the other successor officer had not cared to investigate into the same and file a final report. Therefore,

it is clear that the investigating agency not only has not placed the relevant materials to assist the Court to come to the conclusion as to who is the

aggressor, but also shown lack of bona fides, by sending the complaint and the F.I.R. to the Court belatedly after one year i.e., on 12.07.1996 and

did not care to investigate into the matter and file a final report subsequently.

12. In the above circumstances, we are unable to accept the case of the prosecution, even though there are seven eye-witnesses. As a matter of

fact, P.Ws.1 and 4 to 7 are injured eye-witnesses.

13. A perusal of Ex.P-1, given by P.W.1, and Ex.D-14, given by A-5, would indicate that the occurrence had taken place in some other manner

and, definitely, not as projected by the prosecution. Further, it is noticed that P.W.1, who is the author of the F.I.R., has given a complete go-bye

to the contents of the complaint, when he was cross-examined. In fact, he admitted that he did not know what Ex.P-1 contains. According to him,

he gave a complaint in Telugu, but Ex.P-1 would show that it is in Tamil. Further, as indicated above, he admitted that he did not know anything

about the occurrence and he gave a complaint to the police, only after he was informed about the details of the occurrence. Ultimately, P.W.1, unfortunately, did not support the case of the prosecution.

14. Therefore, this Court is constrained to conclude that the prosecution has not come with clean hands and it suppressed the relevant materials

and also the genesis of the occurrence, making the case doubtful. 15. For all the reasons stated above, we are of the view that all the

appellants/accused are entitled to be given the benefit of doubt. Consequently, the conviction and sentence, imposed on the appellants, are set

aside. Bail bonds, executed by them, shall stand cancelled. Fine, if any paid, shall be refunded.

16. Appeal is allowed.