

(2004) 02 MAD CK 0133
In the Madras High Court
Case No : Criminal Appeal No. 915 of 1996

Ranjit Kumar and Thuraikkutty @ Esakki Thevar	APPELLANT
Vs	
State	RESPONDENT

Date of Decision : 23-02-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 386

Citation : (2004) 02 MAD CK 0133

Hon'ble Judges : R. Banumathi, J

Bench : Single Bench

Advocate : M. Sathyanarayanan, for P.N. Radhakrishnan, for the Appellant; A.N. Thambidurai, Government Advocate (Criminal Side), for the Respondent

Final Decision : Allowed

Judgement

R. Banumathi, J.—Accused 1 and 2 in S.C.505/1994 on the file of Principal Sessions Judge, Tirunelveli are the Appellants. By the Judgment dated

28.11.1996, the learned Sessions Judge has convicted the Appellants / accused 1 and 2 for various offences. Aggrieved over the conviction, Appellants have preferred this Appeal.

2. Case of the Prosecution could briefly be stated thus:-

P.W.1 - Murugan, P.W.2 - Mullaivanam are the son and daughter of P.W.4 - Arputhamani. P.W.4 - Arputhamani is looking after the land of P.W.8 - Mariam

Beevi. P.W.1 is cultivating the same.

Prior Occurrence: On 25.07.1994 - 3.30 PM, P.Ws.1 and 2 went to the field, which is under the cultivation of P.W.1. About 20 cattle of the first accused were

found grazing the paddy crops. P.W.1 chased them out. A1 questioned P.W.1 as to why he is chasing them out, which resulted in wordy altercation between them.

Occurrence : On 25.07.1994 - 6.00 PM when P.W.1 was standing in the Mutham of his house, A1 armed with Aruval and A2 armed with Uruttukattai came along with 5 other persons. Calling P.W.1 by his caste, A1 and A2 and other members of the unlawful assembly threatened P.W.1 saying

@taYf;F tlf;Fjhdh tuqk;. cd;id taypy; tug;gpy; btl;o itj;J tpLntd;@/

P.W.1 felt insulted by the abuse hurled at him. The occurrence was witnessed by P.W.3 - Murthy and P.W.4 - Arputhamani - mother of P.W.1. Scene of

occurrence - pathway was in the public view.

Registration of case: P.W.1 went to Pathamada Police Station. On 25.07.1994 - 07.30 PM P.W.1 lodged Ex.P.1 - Complaint. P.W.7 - Constable 1782 attached

to Pathamada Police Station received Ex.P.1 - Complaint and registered the case in Crime No.90/94 under Sections. 147, 148, 506 (II) IPC and 3(1)(x) of The

Scheduled Castes and Scheduled Tribe (Prevention of Atrocities) Act (for short hereinafter referred to as "SC/ST (PA) Act) under Ex.P.6 - First Information

Reports.

Investigation: P.W.10 - Inspector of Police had taken up the investigation. Scene of occurrence - house of P.W.1 and the paddy field under cultivation of P.W.1

were inspected and Observation Mahazars - Exs.P-2 and P-3 respectively and Sketch - Exs.P.8 and P-9 were prepared in the presence of witnesses. On the

damage caused to the paddy crops, Photographs (Ex.P.4 series) were taken by P.W.6 - Photographer. On requisition from the Investigating Officer, P.W.9 -

Tahsildar issued Community Certificate (Ex.P-7) to P.W.1 - Murugan stating that he belongs to Scheduled Caste community. On completion of investigation, charge sheet was filed against accused 1 and 2 for various offences.

3. Findings of the Trial Court: To substantiate the charges against the accused, in the trial court, P.Ws.1 to 10 were examined. Exs.P-1 to P-10 were marked. Upon consideration of the evidence, the learned Sessions Judge found that the Prosecution has proved the extensive damage caused to the crops by the evidence of

P.Ws.1 and 2. On the evidence of P.Ws.1, 3 and 4, it was further held that Accused 1 and 2 and others, who assembled with them, called P.W.1 by his caste and

thereby intentionally abused him. In the view of the learned Sessions Judge, for the cases filed under Scheduled Castes and Scheduled Tribes (Prevention of

Atrocities) Act, normally independent witnesses cannot be expected to be

examined. Finding that the intentional insult and the criminal intimidation is proved against

the accused, the trial court convicted the accused as noted below;

Charge Gist of the offence Against which accused Finding of Trial Court 1 U/s. 148 IPC - Rioting- Armed with deadly weapon.

A1 A1 - convicted. Six months Sentence of R.I.imposed. 2 U/s. 147 IPC

Rioting Armed with Uruttukattai A2 A2 - convicted. Three months Sentence of R.I. imposed.

3 U/s. 3(1)(x) of SC/ST (PA) Act. Intentional insult or Intimidation to witness Murugan (P.W.1)

A1 A1 - convicted. One year sentence of R.I.imposed. 4 -do- A2 -do- 5

U/s. 506(II) IPC. Criminal Intimidation and threatening witness Murugan (P.W.1)

A1 A1 - convicted. Six months Sentence of R.I.imposed.

4. Seriously assailing the reasonings and conviction, the learned counsel for the Appellants submitted that the trial court erred in basing the conviction upon the interested testimony of P.Ws.1 to 4. Main contention urged is that when other members of the unlawful assembly are unidentified, the conviction for charge Nos.1

and 2 cannot be sustained. Identification of the accused is seriously assailed (under Sections 147 and 148 IPC) on the ground of proper identification, it is submitted

that due to differences between the two villagers, a false case has been foisted against the Appellants, which was not properly appreciated by the trial court.

5. Drawing the attention of the Court to the scene of occurrence that it is a cart track which is in the ""public view"", the learned Government Advocate (Criminal Side)

submitted that the Prosecution has well proved the essential ingredients for maintaining the conviction under Sec. 3(1)(x) of SC/ST(PA) Act. It is further submitted

that non-identification of other members of the unlawful assembly would not in any way take away the evidence adduced against the accused, which is well brought

out by the evidence of P.Ws.1 to 4. It is further submitted that the conviction of the Appellants is well balanced and that there is no reason warranting interference.

6. Whether the essential ingredients for various offences against the accused is

proved and whether the guilt of the Appellants is proved beyond reasonable doubt and

whether the finding of guilt and conviction could be sustained are the points that arise for determination in this Appeal.

7. Causing mischief to the paddy crops by about 20 bullocks is said to be the impelling reason / precluding occurrence for the incident. As per Ex.P.10 - Certificate

issued by Village Administrative Officer, it is seen that Survey Nos.82/4 and 82/5 belong to P.W.8 - Mariam Beevi. The lands are under cultivation of P.W.1. P.W.4

- mother of P.W.1 is also assisting P.W.1. Ownership of P.W.8 and cultivation of P.W.1 and that P.W.1 has raised paddy crops are brought out by the evidence of P.Ws.1, 4 and 8.

8. Case of Prosecution is that in July 1994, P.W.1 raised paddy crops in the above fields under his cultivation. At about 3.30 PM, P.Ws.1 and 2 have seen about 20

cattle causing damage to the paddy crops. P.W.1 chased them away. Enraged over the same, A1 is alleged to have stated @ek; khL mg;goj;jhd; nka[k;. khL;ilg; gw;wpdhy; ifia fhiy btl;o tpLntd;;@. Of course P.Ws.1 and 2 have spoken about the damage caused to the paddy field and about the act of A1. But their evidence is

to be tested for its reliability. P.Ws.1 and 2 have stated that about 20 cattle entered into the paddy field causing damage to the paddy crops. Damage caused to the

paddy crops seems to have weighed substantially in the mind of the trial court in accepting the evidence of P.Ws.1 and 2. By careful consideration of Ex.P.4 series -

Photographs, it is seen that damage to the paddy crops is not so extensive. Had there been damage by 20 bullocks, damage would have been more. No foot

symptoms of the bullocks in the field are seen in Ex.P.4 - Photographs. Improbability of this occurrence is further heightened by the fact that no complaint was lodged

on the earlier incident.

9. The wordy quarrel in the paddy field caused ill-will and the differences in the mind of accused 1 and 2. Case of Prosecution is that out of that ill-will and

differences, A1 armed with Aruval, A2 with Uruttukattai gathered 5 other persons and came to Kesavasamudhram Village, where P.W.1 is residing. On the northern

side of his house, is the East - West Mangayarkarasi Street. At about 6.00 PM, while P.W.1 was standing in his Mutham of his house, A1 and A2 and other 5

persons who gathered with the accused calling P.W.1 by his caste and abused with intention to insult him. Thereafter, they have also threatened stating that they

would cause injuries to P.W.1 when he comes to the field. P.W.1 has spoken about the occurrence. Since the alleged damage to the paddy crops is highly doubtful,

on this occurrence also evidence of P.W.1 is to be tested for his reliability and seek for corroboration from independent source.

10. P.W.3 - Murthy is residing in Kesavasamuthram Village, which is part of Pathamadai. On 25.07.1994 - 6.00 PM he is said to have witnessed the occurrence

while he was standing in Mangaiyarkarasi Street. Likewise, P.W.4 - Arputhamani, mother of P.W.1 had also spoken about the act of the accused calling P.W.1 by

his caste and the threat. When the evidence on the prior occurrence in the paddy field is doubtful, can evidence of P.Ws.1, 3 and 4 be accepted to form the basis for

conviction ? Is to be considered.

11. According to the defence version is that there are differences between Thevar community people and the Scheduled Community of the two villages Karisuzntha

Mangalam and Kesavasamuthram, which resulted in frequent quarrel between them. In the light of the defence that there was communal ill-feelings between the two

accused, evidence of P.W.1 is to be carefully scrutinised. P.W.3 is closely related to the family of P.W.1. P.W.4 is the mother of P.W.1. P.Ws.3 and 4 are only

related witnesses. Though the house of P.W.1 is surrounded by other houses and the occurrence is alleged to have been witnessed by several other villagers, no

independent witness is examined. From Ex.P.8 - Rough Plan for the house of P.W.1 - scene of occurrence, it is clear that the house of P.W.1 is surrounded by other

houses. On the northern side is the East - West Mangaiyarkarasi Street. Assembly of more than five persons would have certainly drawn the attention of other

villagers in a small village like Kesavasamuthram. Non-examination of independent witness seriously undermines the Prosecution case.

12. Evidence of P.Ws.1, 3 and 4 does not pass the test of reliability for want of proper identification of the accused. Accused 1 and 2 and others who gathered

belong to Karisuzntha Mangalam Village, which is said to be about 1 km away from Kesavasamuthram. In Ex.P.1 - Complaint, the names of the accused are mentioned. According to P.W.1, he had known the names of the accused only from others. No satisfactory evidence is forthcoming as to how he had come to know

the names of the accused. Absolutely, there is no evidence on this aspect. Further, P.Ws.3 and 4 had not earlier known the accused. No identification parade was

also held. After the occurrence, P.Ws.3 and 4 had identified the accused in the Court nearly after two years after the occurrence. The identification of the accused by

P.Ws.3 and 4 cannot be said to be free from doubt.

13. Charge No.1 and 2 against A1 and A2 - Rioting under Secs. 148 and 147 respectively: P.W.1 has stated that along with accused 1 and 2, five others have gathered and formed themselves into an unlawful assembly. In Ex.P.1 - Complaint, P.W.1 has stated @bgah; bjhpahj. ,dk; bjhphe;j 5 ngh;fs;/////Ex.P.6 - First

Information Report was registered against accused and those 5 persons. During investigation also, the identity of the others, who assembled with A1 and A2, was not

known. Now, the crucial point to be determined in the absence of identification of those five persons, can it be said that there was unlawful assembly of five or more

persons and whether the said persons entertained one or more of the common objects as specified under Sec. 141 IPC.

14. Though the case of Prosecution is that five other persons assembled along with accused 1 and 2, the investigation was not focussed on this direction. No steps

were taken by the Investigating Officer to trace the other five persons. When the Prosecution is silent as to the other members of the unlawful assembly, the

conviction of A1 under Sec. 148 IPC; A2 under Sec. 147 IPC cannot be sustained.

15. Charge No.3 and 4 against A1 and A2 under Sec. 3(1)(x) of SC/ST(PA) Act: Case of Prosecution is that A1 and A2 and others who assembled along with

them called P.W.1 by his caste with intention to insult him. Of course P.W.1 belongs to Adidravidar community as is clear from Ex.P.7 - Community Certificate.

Section 3(1)(x) reads thus:

Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste

or a Scheduled Tribe in any place within public view".

Thus uttering of insultative words must be within "public view" which means the public must view the person being insulted. P.W.3 - Murthy has stated that at the time

of occurrence, about 50-60 persons gathered and prevented them from quarrelling. If the public are so gathered, the question arises as to why the public were not

examined as to the alleged intentional insult calling P.w.1 by his caste.

16. If really A1 was so enraged over P.W.1 by chasing of the cattle, P.W.1 would have called him by his caste even in the field itself. Case of the Prosecution that

A1 gathered men and came from Karisuzntha Mangalam Village to Kesavasamudhram to insult P.W.1 calling him by his caste is quite unbelievable. All the

circumstances throw thick cloud of suspicion around the Prosecution case.

17. Charge No.5 - A1 and A2 under Sec. 506(II) IPC - Criminal Intimidation: Case of the Prosecution is that A1 and A2 and others who assembled with them

threatened P.W.1 stating taYf;F tlf;FjhdLh tuqk;. cd;id taypy; tug;gpy; btl;o itj;J tpLntd;/ Whether this threat would be amount to criminal intimidation attracting the

ingredients of Sec. 506(II) IPC is the point to be determined. As discussed earlier, serious doubts arose as to the occurrence at 6.00 PM on 25.02.1994. Further,

the alleged threat uttered against P.W.1 do not appear to be the threat falling within Sec. 506(II) IPC. A1 and A2 were armed with Aruval and others with

Uruttukattai. All of them gathered in group from Karisuzntha Mangalam to Kesavasamudhram - house of P.W.1. If their intention was to settle score with P.W.1,

they would not have left him with mere threat calling him by his caste. The case of the Prosecution is that A1 and A2 intimidated and threatened P.W.1, suffers from

improbabilities.

18. The entire case of the Prosecution revolves around the interested evidence of P.Ws.1 to 4. Upon careful appraisal, I find that the reasonings of the trial court for

convicting A1 and A2 are unsustainable. Evidence of P.Ws.1 to 4 was not tested for its reliability and credibility. In view of the improbabilities and infirmities in the Prosecution case, it is unsafe to base the conviction on the evidence of P.Ws.1 to 4. Benefits of doubts are to be given to the accused setting aside the conviction.

19. Therefore, the judgment of Principal Sessions Court, Tirunelveli in S.C.No.505/1994 (dated 28.11.1996) convicting the Appellants / A1 and A2 for various

offences is set aside and this Appeal is allowed. Appellants / A1 and A2 are acquitted of all the charges.