
(2017) 02 MAD CK 0198
In the Madras High Court
Case No : 578 of 2014

Vivekanandan @ Dinesh & anr.

APPELLANT

Vs

Union Territory of Puducherry

RESPONDENT

Date of Decision : 02-02-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 428](#) - Period of detention undergone by the accused to be set off against the sentence of imprisonment
[Indian Penal Code, 1860](#), [Section 320](#)

Citation : (2017) 02 MAD CK 0198

Hon'ble Judges : M.Venugopal

Bench : SINGLE BENCH

Advocate : M.Venugopal

Judgement

1. The Appellants have preferred the instant Criminal Appeal before this Court as against the Judgment dated 31.10.2014 in S.C.No.17 of 2014 passed by the Learned Additional Sessions Judge, Karaikal.

2. The Learned Additional Sessions Judge, Karaikal while passing the Impugned the Judgment in S.C.No.17 of 2014 dated 31.10.2014 at Paragraph No.19 among other things had observed as under: "...From the evidence collected in the above case, P.W.1 has not sustained grievous injury but only a simple injury. The other two ingredients are well available in the evidence let in by the prosecution through the witnesses P.Ws. 1, 2, 5, 6, 7, 8 and 9 in this case. The evidence of the prosecution witnesses are cogent and convincing. Hence this court has come to the conclusion that the prosecution has proved beyond reasonable doubt in this case that the accused have voluntarily caused simple hurt to P.W.1 and deterred him from discharging his official duty as Public Servant. The accused have not shattered the evidence of the prosecution. The defence taken by the accused that the present case has been falsely registered against them. But they could not say as to why the false case was registered against them either in the cross examination made with the witnesses or at the time of answering the

questions framed and put by the court u/s 313 Cr.P.C. The doctor P.W.4 denied the suggestion put by the learned counsel for the accused saying that the injury noted by him on P.W.1 could not have been caused by falling and dashing with rough object. This suggestion was also put with P.W.1 by the learned counsel for the accused during cross-examination. In the above circumstances, the prosecution has failed to prove that the accused have committed the offence punishable under Section 333 IPC r/w 34 IPC . But at the same time, the prosecution has proved its case beyond all the reasonable doubt that the accused have committed the offence punishable under Section 332 IPC r/w 34 IPC."

and resultantly found the Appellants / A.1 and A.2 guilty in respect of an offence under Section 332 read with 34 of IPC and convicted the Appellants/ Accused by sentencing them to undergo Simple Imprisonment for a period of One Year each and further directed them to pay a fine of Rs.1,000/- each, in default of payment of said fine amount, they were directed to undergo default sentence of Simple Imprisonment for a period of three months each. As a matter of fact, the period of sentence already undergone by A.1 and A.2 was directed to be set off in terms of Section 428 of Cr.P.C.

3. Challenging the Judgment dated 31.10.2014 in S.C.No.17 of 2014 passed by the trial court, the Appellants / A.1 and A.2 have filed the instant Appeal by taking a stand that the trial court had failed to take into consideration of the material contradictions in the prosecution case especially, in regard to a person who wrote Ex.P.1, Complaint which formed the basis of the First Information Report.

4. The Learned Counsel for the Appellants urges before this Court that P.W.1 (Complainant) had categorically admitted that he was in an unconscious stage at the time of signing the Ex.P.1, Complaint and in fact P.W.7, Head Constable, (who registered the case) had deposed in his evidence that he received the written complaint from P.W.1.

5. That apart, the Learned Counsel for the Appellants brings it to the notice of this Court that P.W.1 had deposed (in cross-examination) that when he was in the Government Hospital, in an unconscious state and at the time of treatment, he was conscious, that the police came there and obtained a complaint and that the said complaint was written by a police man and that he does not remember whether it was written by Inspector of Police or an Head Constable.

6. The Learned Counsel for the Appellants further submits that P.W.1 in his evidence had stated that at 7.45 or 8.00 hrs (P.M.) the complaint was received by the police and that since he was in an unconscious stage, he does not know what was written in the complaint (Ex.P.1). Moreover, it is the evidence of P.W.1 that he had not mentioned to the Doctor specifically as to who had beaten him. Furthermore, P.W.1 had stated that when he affixed his signature in the complaint (Ex.P.1), he was in semi conscious stage.

7. Advancing his arguments, the Learned Counsel for the Appellants refers to the

evidence of Nurse of the Government Hospital to the effect that the complaint was written by the Police Head Constable when Mohan gave the complaint she know about the same and at that time, the said Mohan (P.W.1) was in an unconscious stage and further that only on the basis of the complaint given herself and one Anitha, the complaint was written and she does not remember whether her signature was obtained in the said complaint. In effect, the stand of the Appellants is that there is discrepancies in regard to the evidence of P.Ws.1 and 2 about the authorship of the complaint and when P.W.3 had categorically deposed (in his cross examination) that the complaint (Ex.P.1) was written by Head Constable then, the trial court was wrong in ultimately convicting the Appellants / Accused under Section 332 IPC r/w 34 IPC by imposing necessary punishment.

8. The Learned Counsel for the Appellants points out before this Court that P.W.5 (Ward Attender) in his evidence (in cross examination) clearly stated that the complaint was written by the Police Man, but he does not know whether the said Police Man was the S.I. Of Police or an Head Constable. Further, the Learned Counsel also proceeds to state that at the time of giving complaint, P.W.5 was not there along with the complainant and therefore, he does not know about the details of the complaint.

9. The Learned Counsel for the Appellants submits that when the occurrence allegedly said to have been taken place in a Government Hospital at Karaikal, there were no independent witnesses in the case to support the prosecution, (except the staff members of the Hospital) and in the absence of an examination of independent witnesses by the prosecution, the version of the prosecution creates a strong suspicion against them.

10. Finally, it is the plea of the Appellants that in the absence of available satisfactory evidence in favour of the prosecution to appreciate the ingredients of offence under Section 332 of IPC, then, the trial court was not correct in convicting the Appellants.

11. Per contra, the Learned Public Prosecutor for the Respondent contends that before the trial court in the main case, on behalf of the Respondent / Prosecution, Witnesses P.W.1 to P.W.9 were examined and Exs.P.1 to P.6 were marked and the trial court on an appreciation of entire oral and documentary evidence available on record came to a resultant conclusion that the Appellants / A.1 and A.2 were guilty in respect of offence under Sections 332 of IPC r/w Section 34 of IPC and imposed a punishment of Simple Imprisonment for a period of one year each to them, besides imposing a fine of Rs.1,000/-, coupled with default sentence and the same need not be dislodged by this Court sitting in Appellate Jurisdiction.

12. At this stage, this Court pertinently points out that in Ex.P.1, Complaint, the Complainant (P.W.1) had affixed his signature. Although Ex.P.1, Complaint, proceeds to the effect that the complainant (P.W.1) was beat by the 1 st

Appellant / A.1 and another person whose name was not known, considering the evidence of P.W.1 that Ex.P.1 - Complaint was written by a police man and further since at the time of affixing the signature in the complaint he was in a semi conscious state and also this Court bearing in mind, the evidence of P.W.2 (in cross examination) to the effect that Ex.P.1 - Complaint was written based on the complaint given by herself and one Anitha and that the complaint was written by the Head constable, this Court comes to an irresistible conclusion that the Evidence of P.W.1 and P.W.2 in regard to the writing of Ex.P.1- Complaint do contradict the evidence of P.W.7 (Head constable) who had stated in his cross examination that he does not know who had written the complaint. Further, P.W.7 in his evidence had stated that P.W.1 had submitted a written complaint to him and that P.W.1 was in a conscious state when he gave the complaint and that he was not in an unconscious state.

13. In the instant case, the evidence of P.W.7 (Head constable) runs contrary to the evidence of P.W.1 (Complainant) and the contradiction between the evidences of P.W.1, P.W.2 and P.W.7 affects the credibility of the prosecution case, in the considered opinion of this Court.

14. The origin of Ex.P.1- Complaint is in simmering doubt in the present case. The contradictions in regard to the evidences of P.W.1, P.W.2 and P.W.7 unerringly point out to the crumbling of the prosecution case.

15. Besides the above, this Court pertinently point out that the charges levelled against the Appellants / A.1 and A.2 by the Respondent / Prosecuting Agency is that on 30.08.2012 at about 20.00 hrs at Community Health Centre, Thenur, Thirunallar voluntarily caused grievous hurt to one Mohan / Complainant, a public servant, in the discharge of his duty and thereby committed an offence punishable under Section 333 read with Section 34 of IPC.

16. P.W.4 (Doctor) in his evidence had deposed that on 30.08.2012 when he was on duty, Mohan aged about 30 son of Kasinathan (P.W.1- Complainant) came to his hospital at 7.50 hrs and he examined him and on his examination he found that blood was coming out from his nose and he provided treatment to him and further that he informed who had beat him and the son of Senthamarai residing at Serumavilangai (Nedunkadu main road) beat him and issued Wound Certificate, Ex.P.3 and gave an intimation, Ex.P.4 to Police and he further stated that the injury that had taken place would occur based on the punches with hands.

17. It is the evidence of P.W.4 (in cross-examination) that only after the complainant informing him about the manner of occurrence of injury, he came to know about it and in the wound certificate, first four lines were returned by one Dr.Rekha and later two lines were returned by him and again three lines were returned by one Rekha and in short, the Ex.P.3 was returned by two Doctors.

18. It is the evidence of P.W.6 that when nurse was giving treatment to another person by hearing a noise she came out and saw two accused (Appellants) were

beating Mohan (Complainant) with hands and they beat P.W.1 (Complainant) on his face, as a result of which the driver, Mohan (P.W.1) had sustained blood injury on his eyebrow and on the nose since the blood came out, stitches were put to P.W.1.

19. P.W.7 in his evidence (in Chief Examination) had stated the Written Complaint (Ex.P.1) was given by P.W.1 (Complainant) and on the basis of that, he came to the police station and registered a case and the printed FIR is Ex.P.6 in Crime No.126 of 2012 under Section 332 r/w 34 of IPC and placed the same for perusal of Sub-Inspector of Police etc.,

20. It is to be pointed out that Section 332 of IPC deals with an offence of causing Hurt to a public servant under the circumstances mentioned therein. As a matter of fact, Section 333 of IPC is an aggravated form of offence which Section 332 comes with the plus factor that the Hurt caused to such public servant ought to be a grievous one. That apart, an offence under Section 332 of IPC can be committed not only when a person is assaulted when he is discharging public duty but also when he is assaulted in consequence of discharge of his duty, undoubtedly a public servant is a servant of society.

21. Coming to the aspect of an offence under Section 333 of IPC, it is to be pointed out that to constitute the said offence, it should be proved that (1) The accused had caused grievous hurt voluntarily. (2) That the individual who sustained injury (hurt) was a public servant 3. Such public servant at that time was discharging his duty or that the accused did so with an intend to prevent or deter such public servant or any other public servant, for discharging his duty or the accused did so in consequence of something done or attempted to be done such public servant in the lawful discharge of his duty.

22. It is to be pertinently pointed out the "Burden of Proof" is also on the prosecution. In fact, the accused are presumed to be innocent unless proved guilty. Moreover, the benefit of deficiency as proof would be available to the persons charged.

23. It cannot be forgotten that the same evidence, which is required to be established to prove an offence under Section 332 of IPC is required to be proved to establish an offence under Section 333 of IPC, except with an intent of establishing that the Accused caused "Simple Hurt", it is to be proved that the accused caused voluntarily "Grievous Hurt". Moreover, the term of "Grievous Hurt" is defined under Section 320 of IPC and "Voluntarily causing Grievous Hurt" is explained under Section 322 of IPC.

24. Be that as it may, as far as the present case is concerned, on the careful consideration of the respective contentions advanced on respective sides and also this Court considering the material contradictions in regard to the evidence of prosecution witnesses comes to an resultant conclusion that the Appellants/ A.1 and A.2 have made out a case for interfering with the Judgment of conviction rendered by the trial court in S.C.No.17 of 2014 dated 31.10.2014. Viewed in

that perspective, this Court holds that the Respondent / Prosecution had not established its case against the Appellants / A.1 and A.2 beyond reasonable doubt. Therefore, this Court to prevent an aberration of justice and in furtherance of substantial cause of justice sets aside the Judgment of the trial court dated 31.10.2014 in S.C.No.17 of 2014 passed by the Learned Additional Sessions Judge, Karaikal. Consequently, the Appeal succeeds.

25. In fine, the Criminal Appeal is allowed. The Judgment of the Learned Additional Sessions Judge, Karaikal in S.C.No.17 of 2014 dated 31.10.2014 in convicting the Appellants / A.1 and A.2 under Section 332 read with Section 34 of IPC is hereby set aside for the reasons assigned in this Appeal. The Appellants / A.1 and A.2 are acquitted.

26. Further, the Appellants are at liberty to file Miscellaneous Petition before the trial court to claim the refund of Fine of Rs.1,000/- each paid by them in S.C.No.17 of 2014 upon such petition being filed, the trial court shall dispose of the said Petition at an early date, of course in the manner known to Law. The Bail Bond executed by the Appellants and the sureties shall stand terminated.