SUPREME COURT OF INDIA

Vadamalai

Vs.

Syed Thastha Keer

Crl.A.No.342 of 2002

(Dr. Arijit Pasayat and Dr. Mukundakam Sharma JJ.)

11.02.2009

JUDGMENT

Dr.Arijit Pasayat, J.

1. Aggrieved by the judgment of a learned Single Judge of the Madras High Court allowing the appeal filed by the complainant- the respondent herein, this appeal has been filed.

2. By the impugned judgment the High Court found that the two accused persons were guilty of offences punishable under Sections 323 and 342 of the *Indian Penal Code, 1860* (in short the `IPC'). The conviction as recorded by learned Judicial Magistrate, Chinglepet, was set aside by first Appellate Court i.e. learned Second Additional Sessions Judge, Chennai Division. There were two appellants involved. Ranganathan (A-1) was Sub- Inspector of Police and the present appellant (A-2) was Head Constable. It was alleged that they had committed offences punishable under Sections 323, 342, 384, 386 and 388 read with Section 34 IPC. The trial Court convicted them for offences punishable under Sections 323, 324 and 342 IPC and in appeal their conviction was set aside and the first Appellate Court directed their acquittal.

3. Background facts in a nutshell are as follows:

> "The complainant was running a Gilt Shop in Madurantakam. On 10.5.1988 around 12.00 noon, Vadamalai (A2), the Head Constable, the present appellant came to the shop and asked the complainant to come to the Police Station, as he was wanted by the Sub-Inspector of Police. Accordingly, the complainant went to the Police Station.
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> In the Police Station, Ranganathan (Al), the Sub Inspector of Police enquired from a woman by the name Selvi in the Police Station about the complainant. Then the Sub Inspector of Police asked the complainant as to what happened to the jewels sold by the said Selvi to him. The complainant said he neither received nor purchased any jewels from her. Then, Al beat him with lathi on the back of his neck, back, etc. and A2 also beat him with lathi on his left thigh, back etc. Thereupon, as directed by Al,

A2 put marble on the palm of the complainant and the same was pressed with force. Despite the torture, the complainant maintained that he was innocent. He was detained in the Police Station for about four days illegally.

In the meantime, telegrams were sent to the higher police officials about the conduct of these police officers. On 13.5.1988, the complainant was paraded hand-cuffed in the streets of Madurantakam. He was made to stand near the Mosque. He was asked by Al to admit his having received the jewels from the said Selvi. The complainant still pleaded innocence stating that it being the month of Ramzan, he would not utter lies.

Thereafter, he was brought back to the Police Station. On knowing this, his other three brothers came to the Police Station and requested Al to release him. Al stated to them that unless the jewels were returned, the complainant would not be released and they would also be detained. On that day also, the complainant was beaten.

Unable to bear the cruelty and humiliation, his brothers went to the house of the complainant and obtained the jewels like Jemikki, tops, etc., of
the complainant's wife and delivered the same to Al on 13.5.1988. Then, the complainant was released.

Thereafter, the complainant got admitted in the Madurantakam Government Hospital on 14.5.1988 and for ten days, he was hospitalised. Despite report to the higher officials about the incident, no action was taken against the accused officers. Therefore, the complainant filed a private complaint against the accused.

Though the complaint was filed for various offences, charges were framed against Al for the offences under Sections 342 IPC and 324 IPC against A2 for the offences under Sections 342 and 323 IPC. The trial Court convicted them and sentenced Al to undergo RI for three months for the offence under Section 342 IPC and to undergo RI for 3 months with a fine of Rs.500/- for the offence under Section 324 and sentenced A-2 to undergo RI for three months for the offence under Section 342 and RI for 2 months with a fine of Rs.100/- for the offence under Section 323. The appellate Court set aside the same and acquitted the appellant.

Challenging the order of the trial Court the appeal was filed and the appellate Court directed acquittal of the appellant and the co-accused. The appellate Court recording the following findings to direct acquittal:

(1) Telegrams Exts. P-1 to P-4 though were sent on 12.5.1988 do not refer about the illegal detention of the complainant in the police station.

(2) According to the defence, on the complaint for theft registered on 14.4.1988 the complainant was interrogated on being identified by Selvi, the accused in that case at his shop and he voluntarily gave the gold ingot and the same was recovered from him

in the presence of mahazar witnesses and as such there is no torture. This is the submission of A1 who was examined himself as DW1.

(3) Though it is the case of the complainant prosecution that he was detained from 10.5.1988 at the Madurantakam Police Station, PW 4 the father of the complainant sent telegrams only on 12.5.1988. There is no reason as to why he did not send such telegram immediately.

(4) PW-5 doctor would state that the complainant (PW-1) told him that he was attacked by two persons on 13.5.1988 evening. Therefore, the complainant did not tell the doctor that he was tortured from 10.5.1988 onwards.

(5) Though there are materials that he was taken to the police station and beaten, it has not been established that the complainant was detained and tortured at the police station from 10.5.1988 onwards.

(6) Even though the complainant was released on 13.5.1988 he did not get immediate treatment from the hospital and according to PW-1 he got admitted in the hospital only on 14.5.1988. Therefore, the reason for the delay in getting treatment has not been properly explained.

In appeal filed by the complainant the High Court took the view that even if the informant has not sustained injuries on 10.5.1988 yet he was taken to the police station and beaten up on 13.5.1988. The High court felt that the reasoning of the Appellate Court was erroneous and directed conviction as noted above."

4. In support of the appeal, learned counsel for the appellant submitted that the first Appellate Court at para 9 had recorded as follows:

"...Moreover, in his evidence about the time he was sent out of Police Station, PW-1 has given contradictory statement. In his complaint he stated that he was let out only in the evening of 13.5.1988 but in his evidence he said only at 11 p.m. on 13.5.1988 he was let out. If he was let out in the evening of 13.5.1988 there was no restriction for him to go to the hospital and take treatment in the evening itself. But, in his statement he stated that in the night at 11 O'clock he went to the hospital and since the doctor was not there, he was lying on the verandah and the next day 8 O'clock he met the doctor. This statement is not acceptable one. Because the house of PW-1 is in the same town and if his statement is to be true that doctor was not available at 11 p.m. he could not have come to his house and stayed the night and the next day morning he could have gone to the hospital. Had he said like that it could have been accepted. Instead in spite of his house in the same place, he stayed in the verandah of the hospital is not believable one. Moreover, PW-6 during his cross examination stated that when PW-1 went to the hospital the next day, he also accompanied him. Hence, PW-1 visited the hospital on 14.5.1988 is the statement of witness No.6. So the statement of witness No.1 that he went on 13.5.1988 in the night at 11 O'clock to the

hospital and since the doctor was not there he stayed there and met the doctor the next day is proved to be false. If the statement of PW-1 is true that he was attacked by accused Nos. 1 and 2 and other policemen, the moment he was let out, he could have gone to the doctor for treatment. So on the basis of the evidence of PW-6 that on 13.5.1988 no injury was inflicted on him is seen clearly."

5. Similarly, in para 10 it was held as follows:

> "so the offences against the accused under Sections 323, 324 IPC and offence under Section 342 IPC were not proved beyond reasonable doubt. Hence, I decide the allegations against the appellants have not been proved beyond reasonable doubt."

6. It is submitted that there was no mention of beating by the appellant. In fact right from the beginning such a stand was taken. The High Court's conclusions are primarily based on surmises. It appears that the first Appellate Court's order was erroneously read as recorded in para 17 of High Court's order is concerned.

7. It is pointed out that the Appellate Court found that the appellant was taken to custody on 13.5.1988 and, therefore, the question of taking him in prison on 10.5.1988 does not arise. It is to be noted that no effort was made to analyse this aspect in detail. As rightly submitted, the factors which weighed with the First Appellate Court cannot be stated to be without substance. High Court in para 20 observed as follows:

> "20. On the materials available on record, even as per the finding of the appellate Court, which acquitted the accused, that the complainant was taken to the Police Station on 13.5.1988 and he was beaten in the Police Station by these accused on 13.5.1988 and thereafter he was released."

8. Aforesaid finding of the High Court is wrong. The First Appellate Court only stated that even if it is true that on 10.5.1988, PW1 was taken to Police Station, there is no sufficient evidence to show that he was kept for four days in the police station. It also recorded that the telegrams sent on 12.5.1988 did not refer to any illegal detention. The complainant got admitted to hospital on 14.5.1988.

9. Learned counsel for the respondent has submitted that the co-accused has not preferred an appeal though he was then a high official. There is no reason to treat the same as a factor against the appellant. There may be several reasons for which A-1 had not preferred an appeal but that does not in any event take away the right of A-2 to file an appeal. In the circumstances, the conviction as recorded by the High Court cannot be maintained. The appellant be set at liberty forthwith. The appeal filed by the appellant is allowed and the conviction as recorded stands set aside. The bail bonds executed to give effect to the order dated 8.3.2002 stands discharged.