SUPREME COURT OF INDIA

Madhavan

Vs.

The State of Tamil Nadu

Cr.A.No.1360 of 2017

(Dipak Misra and A.M.Khanwilkar,JJ.,)

14.08.2017

JUDGMENT

A.M. Khanwilkar,J.,

SLP(Crl.)No.7068/2016

1. The appellants (Accused Nos. 1 to 5, respectively) were tried for an offence punishable under Sections 147, 324, 324 r/w 149, 355 r/w 149, 506 (ii), 506 (ii) r/w 149, 302 and 302 r/w 149. The appellant no. 2 is the wife of appellant no. 1. The appellant nos. 3 and 5 are the sons of appellant nos. 1 and 2. The appellant no. 4 is the wife of appellant no. 3. According to the prosecution, on 4.12.2004, at about 7.00 a.m., near the house of PW1-Saradha, due to previous enmity in connection with some land dispute between the appellants' family and the family of the deceased, the appellants with the common object of causing the death of the deceased Periyasamy (husband of PW1) and causing hurt to witnesses Saradha (PW1) and Tamil Selvan (PW2), formed themselves into an unlawful assembly and committed riot. The appellant no. 1 assaulted PW1 and PW2 with "Thadi" (wooden log) on their left leg knee and chest respectively, causing simple injuries. During the altercation, appellant no. 2 caught hold of PW2 and appellant no. 4 pulled the tuft of PW1 and dishonored her. The appellant nos. 1 to 4 criminally intimidated PW2 and also assaulted deceased Periyasamy indiscriminately on his chest with thadi. The appellant no. 5 also assaulted Periyasamy with thadi on his left side chest and left leg. Resultantly, Periyasamy suffered injuries and was rushed to the hospital in a serious condition. Finally, whilst in hospital Periyasamy was declared dead on 9th December, 2004.

2. In this background, the appellants were charged and tried for the aforementioned offence. The prosecution examined 18 witnesses to prove the charges against the appellants. The defense of the appellants, as can be discerned from the written statement filed by the appellants purported to be under Section 313 of the Criminal Procedure Code, was that the complainant party was the aggressor. They started the fight and assaulted the appellants. The appellants had suffered injuries. However, the prosecution failed to explain the injuries

sustained by the appellants. The prosecution also failed to explain as to why the complaint made by the appellants was not pursued to its logical end after investigation. According to the appellants, the genesis of the crime has been suppressed by the prosecution. Further, the evidence produced by the prosecution was contradictory and did not establish the guilt of the appellants. The appellants, however, did not produce any oral evidence.

3. The Additional District and Sessions Judge, Krishnagiri, who tried the appellants in Sessions Case No. 62 of 2006, after analyzing the evidence produced by the prosecution and adverting to each of the contentions raised by the appellants vide judgment dated 19th November, 2008, found all the appellants guilty of the stated offence. The operative part of the judgment of the Trial Court reads thus:--

> "In the result,
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> **In respect of 1st charge:**
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> A.1 to A.5 are found guilty for the offence punishable u/sec. 147 of PC, convicted and sentenced to undergo RI for TWO years each and shall pay a fine of Rs. 500/- each ID to undergo SI for SIX months.
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> **In respect of 2nd charge:**
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> A.1 and A.4 are found guilty for the offence punishable u/sec. 334 (2 counts) of PC, convicted and sentenced to undergo SI for ONE month each and shall pay a fine of Rs. 500/¬each. ID SI for 20 days each.
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> **In respect of 3rd charge:**
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> A.1, A.3 and A.5 found not guilty for the offence punishable u/sec. 324 r/w. 149 of PC, and they have acquitted from their charges u/sec. 235(1) of CrPC,
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> **In respect of 4th charge:**
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> A.2 and A.4 found not guilty for the offence punishable u/sec. 355 of PC, and they have acquitted from their charges u/sec. 235(1) of Cr.pc.
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> **In respect of 5th charge:**
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> A.1, A.3 and A.5 found not guilty for the offence punishable u/sec. 355 r/w.149 of PC, and they have acquitted from their charges u/sec.235(1) of Cr.P.C,
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> **In respect of 6th charge:**

A.1, A.3 found not guilty for the offence punishable u/sec.506(ii) of PC, and they have acquitted from the charges u/sec.235(1) of Crpc,

In respect of 7th charge:

A.2, A.4 and A.5 found not guilty for the offence punishable u/sec.506(ii) r/w 149 of PC, and they have acquitted from the charges u/sec.235(1) of Crpc.,

In respect of 8th charge:

A.3 and A.5 found guilty for the offence punishable u/sec.304 Part (2) of PC, convicted and sentenced to undergo RI for TEN Years each and shall pay a fine of Rs. 1000/- each ID SI for 12 months.

In respect of 9th charge:

A.1 is alone found guilty for the offence punishable u/sec.304 Part (2) of PC., convicted and sentenced to undergo RI for TEN Years and shall pay a fine of Rs. 10000/-ID SI for 12 months.

A.2 and A.4 found not guilty for the offence punishable u/sec.304 part (2) r/w.149 of IPC A.2 and A.4 acquitted from their charges u/sec.235(1) of IPC.

Substantive sentences of imprisonment are ordered to run concurrently. Period of detention undergone if any by the A.1 to A.5 to be set off against the sentence of imprisonment imposed on them. M.O.1 is destroyed after the appeal time is over."

4. The appellants challenged the decision of the Trial Court by way of Criminal Appeal No. 832 of 2008 before the High Court of Judicature at Madras. In this appeal, five main points were urged by the appellants, as noted in paragraph 14 of the impugned judgment. These contentions were a reiteration of the points urged before the Trial Court on behalf of the appellants. The same have been appropriately considered by the Trial Court and rejected, being devoid of merits. The High Court was pleased to affirm the view taken by the Trial Court as just and proper and rejected the said contentions. In other words, both the Courts have concurrently found that the evidence of eye witnesses, in particular, PWs 1, 2 and 5, was credible and sufficient to bring home the guilt against the appellants for the concerned offences. The evidence clearly shows that on 4.12.2004 in the morning at 7 o' clock when PW1 was erecting fence around the nursery, at that time appellants gathered on the spot and smashed the fence. When PW1 questioned them, she was assaulted by appellant no. 4 and also by appellant nos. 1 and 3. Her husband, deceased (Periyasamy) rushed to support and rescue PW1. The appellant nos. 1, 2 and 5 assaulted Periyasamy on left side of his head, chest and cheek with thadi. The injuries caused to the members of the complainant party have been proved by the prosecution including by examining Dr. Chandrasekaran PW 11. He had not only examined PW1 and PW2 immediately after the incident but also the appellants.

The injuries suffered by the appellants were, however, found to be simple injuries. The nature of injuries caused to deceased Periyasamy has been corroborated by Dr. R Vallinayagam PW16, who conducted his post mortem. He has opined that about eleven ante mortem external injuries and rigor marks were present all over the body of deceased Periyasamy. The internal injuries caused to him have also been noted in the post mortem report (Ex. P10). He opined that deceased succumbed to death due to injury sustained on his head. The Trial Court rejected the contention of the appellants that the true genesis of the offence is not forthcoming and in fact has been suppressed by the prosecution by not offering explanation for pursuing the Crime No. 375 of 2004 registered at the instance of the appellants. The Trial Court held that there was no tangible reason to discard the evidence of PWs 1, 2 and 5 which was truthful and reliable. The Trial Court also held that the evidence establishes that a free fight started between the family of the appellants and the family of the complainant party in which Periyasamy suffered injuries caused by thadi to which he finally succumbed. The Trial Court rejected the contention raised by the appellants that the prosecution bypassed the earlier report and the statement given by PW1 in Krishnagiri Government Hospital. The Trial Court also rejected the plea taken by the appellants that the place of occurrence was doubtful. The High Court has agreed with the conclusions reached by the Trial Court on each ground urged by the appellants.

5. We have heard the learned counsel for both sides. We have perused the evidence adverted to by the two Courts below to record the finding of guilt against the appellants. After careful consideration of the said evidence, we have no hesitation in taking the view that the finding and conclusion reached by the two Courts below for convicting the appellants for the concerned offence is unexceptionable. The evidence clearly shows the manner in which the incident took place. Even though the appellants have taken a stand in the written statement purported to be filed under Section 313 of the Code, they did not produce any evidence but merely chose to rely on the infirmity of not pursuing Crime No. 374 of 2004 to its logical end. That infirmity cannot belie the evidence produced by the prosecution which has been found to be truthful and reliable. We are not inclined to interfere with the concurrent findings of facts as recorded by the two Courts below. The involvement of the appellants has been spoken by the eye witnesses including the injured eye witnesses PW1 and PW2. Much ado was made by the appellants about the failure of the prosecution to explain the injuries suffered by the appellants (accused party) and to contend that the real genesis of the crime was not forthcoming. This contention has been rejected by the Trial Court as well as the High Court, having found that the injuries suffered by them were simple injuries and would not make any difference to the case established by the prosecution. We have no reason to deviate from the concurrent view so taken by the two Courts below. Suffice it to observe that the finding of guilt recorded against each of the appellants is in conformity with the evidence produced by the prosecution. Hence, the order of conviction against the appellants needs no interference.

6. Learned Counsel for the appellants, alternatively, contended that the sentence awarded to the appellants is excessive. For, the Courts below have found that the incident occurred due to sudden fight in the heat of passion upon a sudden quarrel and without the accused having taken undue advantage or acted in a cruel or unusual manner and that the appellants had used

only thadi which was easily available on the spot, it was not a pre-meditated crime committed with the intention to cause death or to cause such bodily injury as is likely to cause death. Besides, there was previous enmity between the two families due to a pending dispute which led to the incident. He submits that neither the Trial Court nor the High Court has analysed the issue regarding quantum of sentence, keeping in mind the principle of nature of offence as also the circumstances in which the offender committed the crime and other mitigating circumstances. The learned counsel for the State fairly submits that on the quantum of sentence, he would leave it to the Court to take appropriate view.

7. In the first place, it be noted that the Trial Court, whilst awarding sentence to the respective appellants, has not made any analysis of the relevant facts, as can be discerned from paragraph 67 of the judgment of the Trial Court. The same reads thus:-

> "67. When the A.1, A.2 and A.5 were questioned u/sec. 235 (2) of Crpc., with regard to the quantum of sentence which may be imposed on them; they have replied as follows:
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> A1: Give minimal sentence.
> A2: Give minimal sentence.
> A3: Give minimal sentence.
> A4: Give minimal sentence.
> A5: Give minimal sentence.
>
> Question of sentence heard. Their replies have been recorded. The reply of the accused persons and their family circumstances are considered carefully. They have committed the above said offence. Their conduct in this regard have also been considered deeply."

8. Notably, the High Court has not considered the issue of quantum of sentence at all, but mechanically proceeded to affirm the sentence awarded by the Trial Court. From the factual position, which has emerged from the record, it is noticed that there was a pre-existing property dispute between the two families. The incident in question happened all of a sudden without any premeditation after PW1 questioned the appellants about their behavior. It was a free fight between the two family members. Both sides suffered injuries during the altercation. The fatal injury caused to Periyasamy was by the use of thadi (wooden log) which was easily available on the spot. The appellants, on their own, immediately reported the matter to the local police alleging that the complainant party was the aggressor. No antecedent or involvement in any other criminal case has been reported against the appellants. Taking oral view of the matter, therefore, we find force in the argument of the appellants that the quantum of sentence is excessive.

9. We may usefully refer to the decision of this Court (one of us, Justice Dipak Misra speaking for the Court) in the case of *Gopal Singh Versus State of Uttarakhand*[1] enunciated

the necessity to adhere to the principle of proportionality in sentencing policy. In paragraphs 18 and 19 of the said decision, the Court observed thus:

> "18. Just punishment is the collective cry of the society. While the collective cry has to be kept uppermost in the mind, simultaneously the principle of proportionality between the crime and punishment cannot be totally brushed aside. The principle of just punishment is the bedrock of sentencing in respect of a criminal offence. A punishment should not be disproportionately excessive. The concept of proportionality allows a significant discretion to the Judge but the same has to be guided by certain principles. In certain cases, the nature of culpability, the antecedents of the accused, the factum of age, the potentiality of the convict to become a criminal in future, capability of his reformation and to lead an acceptable life in the prevalent milieu, the effect - propensity to become a social threat or nuisance, and sometimes lapse of time in the commission of the crime and his conduct in the interregnum bearing in mind the nature of the offence, the relationship between the parties and attract ability of the doctrine of bringing the convict to the value-ba.sed social mainstream may be the guiding factors. Needless to emphasize, these are certain illustrative aspects put forth in a condensed manner. We may hasten to add that there can neither be a strait-jacket formula nor a solvable theory in mathematical exactitude. It would be dependent on the facts of the case and rationalized judicial discretion. Neither the personal perception of a Jud.ge nor self-adhered moralistic vision nor hypothetical apprehensions should be allowed to have any play. For every offence, a drastic measure cannot be thought of. Similarly, an offend.er cannot be allowed to be treated with leniency solely on the ground of discretion vested in a Court. The real requisite is to weigh the circumstances in which the crime has been committed and other concomitant factors which we have indicated hereinbefore and also have been stated in a number of pronouncements by this Court. On such touchstone, the sentences are to be imposed. The discretion should not be in the realm of fancy. It should be embedded in the conceptual essence of just punishment.
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> 19. A Court, while imposing sentence, has to keep in view the various complex matters in mind. To structure a methodology relating to sentencing is difficult to conceive of. The legislature in its wisdom has conferred discretion on the Judge who is guided by certain rational parameters, regard been had to the factual scenario of the case. In certain spheres the legislature has not conferred that discretion and in such circumstances, the discretion is conditional. In respect of certain offences, sentence can be reduced by giving adequate special reasons. The special reasons have to rest on real special circumstances. Hence, the duty of Court in such situations becomes a complex one. The same has to be performed with due reverence for Rule of the collective conscience on one hand and the doctrine of proportionality, principle of reformation and other concomitant factors on the other. The task may be onerous but the same has to be done with total empirical rationality sans any kind of personal philosophy or individual experience or any a-priori notion."

10. Considering the above and keeping in mind the facts of the present case, the nature of the crime, subsequent conduct of the appellants, the nature of weapon used and all other attending circumstances and the relevant facts including that no subsequent untoward incident has been reported against the appellants and the mitigating circumstances, we are inclined to modify the sentence period in the following terms:-

> "a) The sentence period awarded to appellant nos. 2 and 4 for offences punishable under Sections 147 and 334 respectively of IPC will stand reduced to period already undergone without disturbing the fine amount specified by the Trial Court and affirmed by the High Court.
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> b) The sentence period awarded to appellant nos. 1, 3 and 5 for offences punishable under Sections 304 part (2) r/w 149 and 304 part (2) of IPC respectively will stand reduced to five years each without disturbing the fine amount awarded by the Trial Court and affirmed by the High Court.

11. In other words, this appeal partly succeeds to the extent of modification of quantum of sentence period as noted above.

12. Accordingly, the appeal is partly allowed in the aforementioned terms. Appellant nos. 1, 3 and 5, are already in custody. They shall undergo the remaining sentence period in terms of this order after providing them set-off. Bail bonds of appellant nos. 2 and 4 stand discharged.

Judgment Referred…

[1]*(2013) 7 SCC 0545*