

Mariadasan And Ors. vs State Of Tamil Nadu on 17 January, 1980

Equivalent citations: AIR1980SC573, 1980CRILJ412, (1980)3SCC68, 1980(12)UJ300(SC), AIR 1980 SUPREME COURT 573, 1980 UJ (SC) 300, 1980 CRI APP R (SC) 115, 1980 SCC (CRI) 523, (1980) SIM LC 279, (1980) SC CR R 178, 1980 (3) SCC 68

Author: S. Murtaza Fazal Ali

Bench: A.D. Koshal, S. Murtaza Fazal Ali

JUDGMENT

S. Murtaza Fazal Ali, J.

1. This is an Appeal under Section 2 of the Enlargement of Supreme Court (Appellate) Jurisdiction Act, by the Appellant Mariadasan who was accused No. 2 in the Trial Court. The other four accused persons, namely A-1 (Varuvel), A-3 (Ambrose), A-4 (Prakasan and A-5 (Maria Sebastbiyan; have filed a petition for Special Leave against the order of conviction and sentence recorded by the High Court, The trial Court acquitted the accused of all the charges, namely Sections 302/149, 307/149, 148, 147 etc. The State filed an appeal before the High Court which reversed the judgment of the trial Court and convicted Maridasan, Accused No. 2, under Section 302 to imprisonment for life, under Section 324/149 to 3 years R.I., under Section 148, also to three years R.I. (sentences to run concurrently).

2 So far as the other accused were concerned the High Court convicted accused No. 1 under Section 324 to three years' R.I. and to the same sentence under Section 148; Accused No. 3, under Section 324/149 to three years R.I. Accused No. 4 was also convicted similarly. A5 was convicted under Section 147 to two years' R.I. and under Section 324/149 to 3 years. The Special Leave Petition filed by Accused Nos. 1, 3, 4 and 5 were ordered to be heard along with this Appeal and hereby grant special leave so that the applications of A1, A3, A4 and A5 may be disposed of also by this judgment.

3. We have heard the Counsel for the parties and have also gone through the judgment of the trial Court and the High Court. Mr. B.P. Singh, with his usual fairness, brevity and ingenuity has frankly conceded that in the state of evidence it is not possible for him to press the case of accused No. 1 and So far as the accused No. 2. was concerned he argued that conviction under Section 302 was wrong as his case squarely falls under Section 304, Part I or Part II of IPC.

4. As regards Accused Nos. 4 and 5, the learned Counsel submitted that there was no legal evidence against them. The occurrence took place on the 27th of December, 1970 and was a result of an earlier dispute between the parties in which certain threats are said to have been given. A report was made regarding the threats before the police station and some time in the afternoon, while PW1 was returning from the Church he was surrounded by the five accused but nothing of such consequence happened at that time. In the evening, at 6 p. m. on the date of occurrence, it appears that there was a sudden altercation between PW1 and the accused in which the deceased Francis tried to intervene as a result of which A2 assaulted him with knife on several parts of the body and caused a serious injury on the chest. According to the evidence, A1 is said to have assaulted PW1 with knife and inflicted knife injuries to him. According to the evidence of PW1, A3 had beaten him on the shoulder with a stick and A4 had given a beating to PW1 on the left knee. No overt act was ascribed to A5, Reading the evidence of PW1 as also the allegations made in the FIR we are satisfied that there was no satisfactory evidence to prove the formation of any unlawful assembly at any time with the common object of assaulting or killing either the deceased Francis or PW1. The whole fight started suddenly on the spur of the moment in a heat of passion and, therefore, the accused could only be liable for the individual acts committed by them. For these reasons, therefore, we agree with Mr. Singh that there is no evidence to support the conviction of rioting under Secs 149, 148 or 147 IPC as recorded by the High Court.

5. Coming to the individual acts, So far as A2 is concerned the medical evidence of PW9 shows that one of the injuries caused by A2 was on the chest which cut a part of the thoracic Aorta which was main portion of the heart and also, fractured 8th and 9th rib on the right side of the chest, According to the doctor this injury was sufficient in the ordinary course of nature to cause death. Having regard, therefore, to the nature of the injury and the vital and delicate part of the body at which it was aimed, we are unable to agree with Mr. Singh that the act of A2 could in any way fall under Section 304, Part I or Part II. The High Court was, therefore, absolutely correct in holding that A2 was guilty of committing murder of the deceased Francis Particularly in view of the brutal injury caused on the chest of the deceased.

6. As regards A2, Mr. Singh conceded that if the charge of unlawful assembly failed he would be only liable for having caused simple hurt by sharp cutting instrument, namely knife and would have to be convicted under Section 324. In fact his conviction under Section 324 by the High Court and sentence of 3 years R.I. has not been challenged by the learned Counsel for the appellant and we uphold the same.

7. As regards A3, there is clear evidence of PW1 which is supported by other witnesses also that A3 had beaten him on the back and shoulder with stick. The doctor also found the injuries on the back and shoulder of PW1 only in the nature of abrasions and were, therefore, simple.

8. We, therefore, uphold the conviction of A3 under Section 323 but reduce the sentence to the period already served and in lieu of the sentence remitted we impose a fine of Rs. 500/- and in default one month's rigorous imprisonment. The entire fine, if realised, shall be paid to PW1 as compensation.

9. As regards A4 and A5, there is really no evidence to connect them with the assault either on the deceased or on the injured witness PW1. No overt act has been ascribed to A5. So far as A4 is concerned it is alleged by PW1 that he had beaten him with a stick on the left knee but the doctor does not find any such injury. In the FIR also PW1 did not at all mention that he was assaulted by A4 on the knee. For these reasons, therefore, we agree with Mr. Singh that accused no Section 4 and 5 cannot be convicted. In view of our finding that there is no evidence to substantiate the charge regarding the evidence to unlawful assembly of the accused persons we acquit all of them of the charges under Sections 149, 148 and 147. A4 and A5 are also acquitted of all the charges. Conviction and sentence of A2 under Sections 302, IPC are affirmed and those of A1 under Section 324, IPC are also confirmed. Appeals arising out of Special Leave Petitions are accordingly allowed in part and the appeal is disposed of accordingly.