

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1813 OF 2009

R. VAIRAVAN . . . APPELLANT (S)

VERSUS

THE STATE OF TAMIL NADU . . . RESPONDENT (S)

O R D E R

1. This appeal is directed against the judgment and order passed by the High Court of Judicature at Madras in Criminal Appeal No.8 of 2006, dated 27.06.2008, whereby and whereunder the High Court by its well reasoned judgment and order has modified the order of conviction and sentence imposed by the Sessions Court and has convicted the appellant-herein for the offence punishable under Section 323 of the Indian Penal Code, 1860 (for short, "the IPC") and sentenced him to undergo rigorous imprisonment for one year, along with payment of fine of Rs.1,000/-.

2. The brief facts of the prosecution case are that the four accused persons including the appellant-herein were serving as Head Constables. On 31.10.1999 at 5:00 p.m.

the appellant along with the accused persons went to the Karur Vegetable Market where they inflicted injuries on a vegetable vendor by kicking him with their shoes and beating him with lathis and thereafter took him to the police station and inflicted further injuries, as a result of which the vegetable vendor died.

3. A complaint was lodged by the brother of the deceased before the District Superintendent of Police, and a case was registered against the appellant/ accused persons by the Inspector of Police. Later, an enquiry was conducted by the Revenue Divisional Officer as per a Government Order, and on that basis a complaint was made against the appellant/ accused persons under Section 302 read with Section 34 of the IPC before the Judicial Magistrate. Since the Sessions Court was alone competent to enquire, the Judicial Magistrate committed the case to the Sessions Court.

4. The Sessions Court took the case on file, considered the documents on record and heard arguments on behalf of both parties. Thereafter, charges were framed for the offence punishable under Section 302 of the IPC. The charges were read over and explained to the appellant/

accused persons who pleaded not guilty. Accordingly, the case was committed to Trial.

5. In order to substantiate the charges framed against the appellant/ accused persons, the prosecution examined 13 witnesses and presented 44 documents. After the completion of prosecution evidence, the statements of the accused persons were recorded under Section 313 of the Code of Criminal Procedure, 1973 (for short, "the Code"). Two documents were presented in defense of the appellant/ accused persons.

6. Upon a detailed examination of the evidence on record, the Sessions Court found that the guilt of the appellant/accused for the offence under Section 302 of the IPC was proved beyond reasonable doubt. Accordingly, by judgment and order dated 13.12.2005 the Sessions Court convicted the appellant/ accused persons for the offence punishable under Section 302 of the IPC and sentenced them to life imprisonment, along with payment of fine of Rs.1,000/- each, and in default imprisonment for a period of three months.

7. Being aggrieved by the said judgment and order passed by the Sessions Court, the appellant/ accused persons preferred an appeal before the High Court.

8. The High Court examined the material on record including the judgment and order of the Sessions Court and held that the death of the deceased resulted from the injury caused by Accused No.1 on the head of the deceased. The High Court further held that the Accused No.1 intended to aggressively interrogate the deceased, but did not intend to cause the death of the deceased, and nor did he have knowledge that his act was so imminently dangerous that it must in all probability cause the death of the deceased. However, considering the number and gravity of injuries on the deceased, the High Court was of the considered view that the Accused No.1 had the knowledge that his act was likely to cause the death of the deceased. Accordingly, the High Court acquitted the Accused No.1 for the offence punishable under Section 302 of the IPC, but convicted him for the offence punishable under Section 304 Part II of the IPC and sentenced him to undergo rigorous imprisonment for five years, and also maintained the fine amount imposed

by the Sessions Court.

9. However, on consideration of the evidence on record, the High Court held that the Accused Nos.2 - 4, including the appellant-herein, inflicted injuries only with hands and thereby were guilty of causing voluntary simple injuries on the person of the deceased. Accordingly, the High Court convicted the Accused Nos.2 - 4 for the offence punishable under Section 323 of the IPC and sentenced them to undergo rigorous imprisonment for a period of one year each, and also maintained the fine amount imposed by the Sessions Court.

10. Further, the High Court awarded a sum of Rs.1,00,000/- as compensation to the legal heirs of the deceased for the act of custodial violence committed by police officials. The Accused No.1 was directed to pay a sum of Rs.55,000/-, and the Accused Nos.2 - 4 including the appellant-herein were directed to pay a sum of Rs.15,000/- each towards the compensation.

11. Being aggrieved by the said judgment and order passed by the High Court, the appellant is before us in this appeal.

12. We have heard learned counsels for the parties to the *lis*.

13. The learned counsel for the appellant would submit that the High Court has failed to consider that none of the eye witnesses had cogently stated as to the particular injuries caused by the appellant. The learned counsel for the appellant would further submit that the conviction is based on the testimonies of interested witnesses that have not been corroborated by independent witnesses. Apart from arguing on merits of the case, learned counsel for the appellant would submit that the appellant has already undergone 10 months of his sentence, and that no justification was provided by the High Court for imposing the maximum possible sentence provided under Section 323 of the IPC.

14. *Per contra*, the learned counsel appearing for the respondent-State would support the order of conviction and sentence passed by the High Court.

15. After going through the judgment and order passed by the High Court and the Courts below as well as the

material available on record, we are of the considered opinion that the impugned judgment passed by the High Court needs no interference by this Court. The evidence on record as proved by the eye witnesses and corroborated by independent witnesses proves the guilt of the appellant beyond reasonable doubt. Further, this is a case of custodial violence committed by police officials, no occasion arises for reducing the sentence imposed by the High Court. Accordingly, the Criminal Appeal is dismissed.

16. The appellant-herein was exempted by this Court from surrendering by order dated 03.12.2008.

17. Since the appeal is dismissed, the appellant be taken into custody forthwith to serve out the remaining period of sentence, if not already served.

Ordered accordingly.

.....CJI.
(H.L. DATTU)

.....J.
(ARUN MISHRA)

NEW DELHI,
SEPTEMBER 08, 2015.

ITEM NO.16

COURT NO.1

SECTION IIA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No(s). 1813/2009

R.VAIRAVAN

Appellant(s)

VERSUS

STATE OF T.NADU

Respondent(s)

(with office report)

Date : 08/09/2015 This appeal was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN MISHRAFor Appellant(s) MR.S.Beno Bencigar, Adv.
Mr. M. A. Chinnasamy,Adv.

For Respondent(s) Mr. M. Yogesh Kanna,Adv.

UPON hearing the counsel the Court made the following
O R D E RThe appeal is dismissed and the appellant is directed to
be taken into custody forthwith, in terms of the signed order.(G.V.Ramana)
AR-cum-PS
(Signed order is placed on the file)(Vinod Kulvi)
Asstt.Registrar