

(2017) 07 KAR CK 0114
In the Karnataka High Court
Case No : 3686 of 2011

Allamprabhu S/o Lingappa Nimbarga

APPELLANT

Vs

The State through Station Bazar Police Station

RESPONDENT

Date of Decision : 27-07-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 313](#) - Power to examine the accused

[Indian Penal Code, 1860](#), [Section 34](#), [Section 323](#), [Section 506](#)

Citation : (2017) 07 KAR CK 0114

Hon'ble Judges : B. A. Patil

Bench : SINGLE BENCH

Advocate : Ustad Sadat Hussain, Maqbool Ahmed

Final Decision : Allowed

Judgement

1. This appeal is filed by the appellant-accused by assailing the judgment and order of conviction and sentence dated 2.11.2011, passed by the II Additional Sessions Judge, Gulbarga, in SC.No.212/2010.

2. The brief case as per the prosecution is that while Sangamesh, who was working as Police Constable in Ashoknagar Police Station, Gulbarga, on 12.10.2009, at about 3.00 p.m., he took the oral permission from Sri Nazir Khan who was working as SHO to go to State Bank of Hyderabad at Vidyanagar Branch to draw his salary. While going he also took Kummanna, CPC-118, along with him. When they had been to the said Branch, they noticed Allamprabhu, S/o.Lingappa (accused No.1) making galata with the Field Officer of the Bank. He was abusing him in loud voice. On hearing the same, Sangamesh advised him and also his companion. At that time, the said Allamprabhu picked up quarrel with Sangamesh and he started telling that he knows all the police officials including S.P. and DIG and nobody can take action against him. It is further case of the prosecution that the said Allamprabhu prevented Sangamesh from

moving further. Thereafter, he caught hold of his shirt and slapped. Immediately, the said Sangamesh informed the said fact to Ashoknagar Police Station. Thereafter, Police Constable of the said Police Station also came to the place of incident. Thereafter, Allamaprabhu assaulted the complainant by removing his lathy, as a result of which, the said lathy was broken. Such incident has been pacified by the police. After the incident, the said Sangamesh lodged the complaint. On the basis of the complaint, a case has been registered in Crime No.198/2009. After completion of investigation, charge sheet came to be filed.

3. In order to prove its case, the prosecution has examined 19 witnesses as PWs.1 to 19 and got marked the documents as per Exs.P1 to P17 and also MO.No.1. After closure of the evidence, statement of the accused under Section 313 Cr.P.C. was recorded by putting incriminating materials against the accused. After hearing the parties to the lis, the impugned order came to be passed.

4. Heard the learned counsel appearing on behalf of the appellant-accused and the learned HCGP appearing for the State.

5. The main grounds urged by the appellant's counsel are that the trial Court has not properly appreciated the evidence of the eye witnesses. Though the complainant has turned hostile, only on the basis of the evidence of the other witnesses, without corroboration to the complaint, the trial Court has wrongly convicted accused No.1. The impugned order is capricious and mala fide and therefore it does not stand in law. He has contended that there is no corroboration in the evidence of the complainant-PW.1 and the doctor- PW.8 who has treated the injured. He has further contended that the trial Court only on presumption and assumption has convicted the appellant-accused without proper appreciation of the facts. On these grounds, he prayed for acquittal of the accused by allowing the present appeal.

6. Per contra, the learned HCGP by supporting the impugned judgment, has vehemently argued and contended that though the complainant has turned hostile, eye witnesses who were present at the time of incident, have categorically substantiated the case of the prosecution. The alleged incident has taken place in the presence of all the witnesses. Even with the evidence of one witness, if it reposes the confidence of the Court, the Court can convict the accused without there being any corroboration. He has contended that the appellant-accused has not made out any good grounds so as to interfere with the impugned judgment and order of the trial Court and hence, the same is liable to be confirmed by dismissing the appeal.

7. Keeping in view the aforesaid submissions of the learned counsel for the appellant-accused and the respondent-State, let me consider whether the prosecution has proved the guilt of the accused beyond all reasonable doubt. Since this Court is the first appellate Court, it has to reassess the facts and evidence on record and as such the reference to the evidence is very much essential.

8. As aforesaid, the prosecution has got examined 19 witnesses. PW.1 is the complainant. Though he has admitted his signature on the complaint at Ex.P1 and has deposed that he has signed the same in the Police Station, he does not know the contents of the said complaint at Ex.P1. He has also deposed that both the accused have not abused and assaulted him, so also they have not obstructed him from discharging his duties. In that background, he has been treated as hostile. During the course of cross-examination by the learned Public Prosecutor, nothing has been elicited so as to substantiate the case of the prosecution.

PW.2 is the Field Officer of the Bank. He has also not supported the case of the prosecution.

PWs.3 and 4 are the students who were present in the Bank at the time of the alleged incident. They have not supported the case of the prosecution.

PWs.5 and 6 are the Bank Managers who were present in the Bank. They have also not supported the case of the prosecution and they have been treated as hostile.

PW.7 is the Police Constable who accompanied the complainant to the Bank. He has deposed that the complainant-Sangamesh went inside the Bank; he was standing outside the Bank; he heard the galata and went inside the Bank, where he found that somebody was quarreling with the Field Officer of the Bank, which was also told by somebody; at that time, Sangamesh asked as to why they are making galata; some persons asked Sangamesh as to who is he to ask all these things. PW.7 has deposed that nobody scolded him. He has not supported the case of the prosecution and he has been turned hostile.

PW.8 is also a Police Constable who went to the Bank as per the instructions of SHO after the complainant informed the said fact to the Police Station. He has deposed that outside the Bank, i.e., in the verandah, some galata was going on; about 10 to 15 persons were assaulting the Police Constable Sangamesh; they also pulled his shirt and lathy and assaulted him as well as Ramesh; but he does not know the names of the assailants; he went and pacified the quarrel; at that time, he was also assaulted by the assailants. This witness has also been treated as hostile. During the course of cross-examination, he has admitted that accused No.1-Allamprabhu was telling that who is he; he knows SP and DIG and nobody can question him and also abused him and the complainant. He has also admitted that accused No.1 pulled his Uniform and slapped by saying that he will inform the said fact to SP and get him suspended. PW.8 has also admitted that SBH Branch comes within the jurisdiction of Station Bazar Police Station. If any galata takes place, the information will be given to the said Police Station. He has further admitted that at the time of galata 10 to 15 persons were present and he cannot say as to who abused whom and who assaulted whom as there were 10 to 15 persons.

PW.9 is the doctor who examined the complainant-Sangamesh, Kummanna and

Doddappa. He has deposed that he examined the complainant in respect of the pain on the right side of the head, stomach. He took X-ray and he found that there was no deformity. As the injured have sustained simple injuries, they have been discharged. PW.9 has issued the wound certificates as per Exs.P9 to P11. During the course of cross-examination, nothing has been elicited so as to discard the evidence of this witness.

PW.10 is the Junior Engineer, who prepared the sketch as per Ex.P12.

PWs.11 and 15 are the panchas to spot mahazar at Ex.P13. They have not supported the case of the prosecution and they have been treated as hostile.

PW.12 is also an eye witness who has not supported the case of the prosecution.

PW.13 is the Head Constable working as SHO from whom the complainant-Sangamesh took permission to go to SBH to draw his salary. He has also deposed that after some time, he received the phone call informing in SBH at Vidyanagar Branch, there is galata going on and he informed the same to PSI.

PW.14 is the PSI, who after coming to know about the galata in the Bank went there. By the time he went there the galata was over. He has also been treated as hostile. Even during the course of cross-examination, nothing has been elicited so as to substantiate the case of the prosecution.

PW.16 is also a Head Constable. After receipt of information over the phone about the galata, himself and HC.280-Shashikanth went to the Bank. He has further deposed that Sangamesh, Shanranappa, Doddappa, Kummanna were quarrelling with Allamaprabhu in the Bank and they were abusing each other. At that time, the PSI, Crime Branch came and pacified the quarrel. He has also been treated as hostile.

PW.17 is also a Head Constable who accompanied PW.16. he has reiterated the evidence of PW.16 and he has also been treated as hostile.

PW.18 is the PSI who registered the case on the basis of the complaint and sent the FIR to the jurisdictional Court and thereafter handed over the case for further investigation to PW.19.

PW.19 is the CPI who further investigated the case and laid the charge sheet against the accused.

9. Admittedly, in the instant case, accused Nos.1 and 2 have been acquitted of the offences punishable under Sections 504 and 506 r/w. Section 34 of IPC and the State has not preferred any appeal against such order. Though the prosecution has got examined the injured witnesses PWs.1 and 16, they have not supported the case of the prosecution and they have been treated as hostile. Though the trial Court has convicted accused No.1 under Section 341 of IPC, on careful consideration of the evidence of the witnesses, who have deposed before the trial Court, nowhere they have categorically deposed as to how and who has been wrongfully restrained in a particular place or in a particular thing. In order

to convict the accused under Section 341 of IPC, the person who has been restrained, must have a right to use it or use that area and the accused must restrain his movement, then only the provisions of Section 341 are attracted. If there is no obstruction or prevention by the accused person, in any particular way, then the provisions of Section 341 of IPC are not going to be attracted. In that light, if the evidence of the complainant-PW.1 is scrutinized, he has not supported the case of the prosecution and nowhere he has stated that he has been restrained, so also by the other witnesses. In order to satisfy the ingredients of Section 341 of IPC, no witnesses have deposed that they have been restrained by the accused persons. In that light, the conviction made by the trial Court as against the accused under Section 341 of IPC is not sustainable in law.

10. In so far as the aspect that the accused with a common intention, voluntarily caused injuries to the complainant thereby committed the offences punishable under Sections 323 and 353 of IPC is concerned, the base for the complaint is PW.1 and Ex.P1. As per the case of the prosecution, only after he informed the Police Station, the remaining police officials have gone to the place of the incident. If we peruse the evidence of the complainant-PW.1, he has deposed that he does not know about the case and has not given the complaint. He has also deposed that both the accused have not abused and assaulted him so also have not obstructed him while discharging the duties. Even during the course of cross-examination, nothing has been elicited so as to substantiate the case of the prosecution. Admittedly, as per the case of the prosecution, along with the complainant-PW.1, PW.7-Kummantha went to the said Bank who has deposed that he was standing outside; at that time he heard galata and went inside the Bank, where the Field Officer was quarrelling with some persons; at that time PW.1 asked them as to why they are making galata for which they asked PW.1 as to who is he to ask all these things and for that reason also galata took place. PW.7 has further deposed that nobody has abused him. Even the Field Officer before whom the galata started has also not supported the case of the prosecution by deposing that he does not know about the said galata. When the material witnesses have not supported the case of the prosecution and the complainant himself has stated that no such galata took place and nobody abused and assaulted him, then under such circumstances, the evidence of other witnesses who have come into picture subsequently, does not help to the case of the prosecution. When once the complainant has stated that no galata has taken place and his signature was taken on Ex.P1 in the Police Station and he does not know its contents, then the question of PW.8 and other witnesses going to the spot and witnessing the same, does not arise at all and it cannot be believable and acceptable in law. Though there is no corroboration in the evidence of PWs.1, 7 and 8, the trial Court has wrongly come to the conclusion that the prosecution has established that accused No.1 assaulted PW.1 and caused voluntarily injury to him, so also obstructed PWs.1, 7 and 8 while discharging their duties as Police Constables.

11. In order to bring home the guilt of the accused under Section 353 of IPC, the prosecution has to establish that the Public Servant or Public Officer, was executing his duties as a Public Servant and during the course of such discharge of his duties, if any intervention or obstacle or force or assault has been done, then under such circumstances, it constitutes an offence. But admittedly in the instant case, PWs.1 and 7 have categorically deposed that nobody abused, assaulted and obstructed them while discharging their duties. When the complainant and the material witness PW.7 have stated that nobody assaulted them, then under such circumstances, the evidence of PW.8 also appears to be doubtful. Though he has deposed that when he went to the spot and saw about 10 to 15 persons making galata and assaulting the complainant by pulling his shirt and lathy, it has come in his evidence that he does not know the names of the persons who assaulted PWs.1 and 7. As per the evidence of PW.8, if 10 to 15 persons gathered and assaulted the injured, then under such circumstances, it cannot be believed that accused Nos.1 and 2 were also present at the spot and were assaulting PW.1, that too, when PWs.1 and 7 have not supported the case of the prosecution. In this behalf, the trial Court glaringly erred in appreciating the case of the prosecution. As could be seen from the impugned judgment though there is no cogent, concrete and reliable evidence, the trial Court has wrongly held that the evidence is sufficient to constitute the alleged offences as against the accused and has come to a wrong conclusion.

12. On going through the evidence which has been produced before the trial Court, it reveals that the said evidence is not trustworthy, reliable and there are so many inconsistencies in the case of the prosecution and the said inconsistencies create a doubt about the alleged offences as contended by the prosecution. When the evidence of the prosecution creates a doubt, then the said benefit should go to the accused. In that light, the appellant-accused is entitled for acquittal. In the background of the above discussion, I am of the considered opinion that the learned Sessions Judge without proper appreciation of the evidence on record, has come to a wrong conclusion which appears to be not sustainable in law and therefore the impugned judgment is liable to be set aside. Hence, I pass the following:-

The appeal is allowed. The judgment and order of conviction and sentence dated 2.11.2011, passed by the II Additional Sessions Judge, Gulbarga, in SC.No.212/2010 is set aside. The appellant-accused is hereby acquitted of the offences punishable under Sections, 341, 323, 353 of IPC. The appellant-accused is set at liberty if he is in custody and if he is not required in any other case. The bail bonds executed by the appellant-accused and the sureties stand cancelled.

The fine amount deposited if any, shall be refunded to the accused on proper identification and acknowledgement.