

(2016) 02 KAR CK 0317

In the Karnataka High Court

Case No : Criminal Revision Petition No. 77 of 2011.

Ayanna alias Venkatesh and Others

APPELLANT

Vs

State by Konanuru P.S. Represented by S.P.P., Bangalore

RESPONDENT

Date of Decision : 23-02-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 326

Citation : (2016) 2 AirKarR 521

Hon'ble Judges : A.V. Chandrashekara, J.

Bench : Single Bench

Advocate : L. Sudharshan, Advocate, for the Appellant; S. Rachaiah, Advocate, for the Respondent

Final Decision : Allowed

Judgement

A.V. Chandrashekara, J. - The petitioners have filed this Revision Petition under Section 391 of Cr.P.C. as they are aggrieved by the judgment of conviction passed by Civil Judge (Sr.Dn.), Arakalagud in C.C.No. 44/2008 (Old No.1325/2007) and the affirmation of the same by the learned Fast Track Court, Arakalagud in CRL.A. No. 47/10. The petitioners have been sentenced to undergo simple imprisonment for a period of 1? years and to pay a fine of Rs. 5,000/- each for the offence punishable under Section 326 r/w 34, IPC and also to pay a fine of Rs. 500/- each for the offence punishable under Section 341 of IPC. The judgment of conviction dated 17.5.2010 is upheld in the appeal tiled under Section 374 of Cr.P.C. in Crl.A. No. 47/2010. Hence concurrent findings are called in question in this petition.

2. The allegation against these petitioners is that with the common intention of causing grievous hurt to CW.2-Dinesh examined as PW.2, they assaulted him at 9.30 p.m. on 9.4.2007 in Hampapura village with stone and caused grievous hurt to his left ear which was witnessed by CW. 1-Lokesh brother of injured who is examined as PW. 1 and Subramanya-CW.3 who is examined as PW.3 respectively before the trial court. Swamy Gowda-CW.4 examined as PW.4 is stated to have

persuaded the injured and his brother not to lodge any complaint against the accused assuring them and that he would settle the matter by convening a panchayat at the earliest. The offence is stated to have been committed on 9.4.2007 in Hampapura village at about 9.00 p.m.

3. First information was lodged on 18.4.2007 at about 1.00 p.m. and FIR was lodged before the jurisdictional JMFC. PW.5-D.K. Somashekara and PW.6-Mallaiah conducted investigation and filed charge-sheet for the aforesaid offences. PW.7-Dr. Lokesh is the Doctor who treated in Government Hospital. PW. 1 and CW.2 are stated to be eye - witnesses to the incident in question in the charge-sheet.

4. Sri. S. Rachaiah, learned HCGP has vehemently argued that nothing is elicited from these material witnesses to support the case of the accused and therefore the judgment of conviction is justified. He has further argued that evidence of Swamy Gowda cannot be ignored since he had pacified the injured and had made an attempt to settle the dispute. Hence, he has argued that delay in lodging the first information cannot be blown out of proportion.

5. PWs. 1 and 3 have deposed that injured was taken to Government Hospital where he was treated by Doctor who is examined as PW.7. He has issued wound certificate Ex.P4 which discloses that the injured had sustained one simple injury i.e., tenderness of left precavicular region and Traumatic perforation of left tympanic membrane which is grievous in nature. He has placed reliance upon the opinion given by ENT Surgeon on 13.11.2007. The said information sent by ENT Surgeon is not placed before the Court. Mere marking of Ex.P4 would be insufficient. Learned Civil Court has chosen to convict the petitioners for the offence punishable under Section 326, IPC on the basis of the evidence given by PW.7, who in fact, has relied on the report of ENT Surgeon, of Govt. Hospital, Hassan. Without that evidence being placed on record, the trial Court could not have placed much reliance on the Ex.P-4 to convict them for offence punishable under section 326 of IPC.

6. There is no presumption that evidence of a doctor should be considered as gospel truth and his evidence should also be assessed as that of the evidence of any other witness. This is explained by the Supreme Court in the case of Mayur v. State of Gujarat reported in 1982 Cr.L.J. 1972.

7. Court ought not to have attached much credence to the Ex.P-4 without the report of ENT Specialist. Normally, delay caused in lodging the first information should be explained. Non-explanation of the delay will weaken the substratum of the case as laid down by the Hon"ble Apex Court in the case of Ishwar Singh and others v. State of U.P. reported in AIR 1976 SC 2423.

8. First information submitted by Lokesh examined as PW. 1 is marked as Ex.P. 1. It is mentioned in Ex.P. 1 that he wanted to lodge the first information to the Police and when he was about to go to Police Station, Swamy Gowda examined as PW.4 persuaded him that he would convene a panchayath and settle the dispute and therefore, he requested him not to lodge complaint. In this view of

the matter, he is stated to have lodged the complaint belatedly. Whether such reason inspires confidence in the mind of the Court is the question which requires to be answered.

9. It is the case of Swamy Gowda examined as PW.4 that he was not present when the incident of assault took place. He came to see the injured in Konanuru Hospital and told both them not to give any complaint as he would settle the matter in the panchayath. One week after the accident, a panchayath was convened. Though they were present, nobody attended the said panchayath. Thereafter they instructed the injured and his brother to take further action. He is cross-examined by the learned Public Prosecutor with the permission of the Court. During the course of cross-examination conducted by Public Prosecutor, PW.4 has admitted the suggestion that he had told both sides that he would convene a meeting and the matter could be amicably settled. He has admitted that if one were to go to Government Hospital at Konanur from Hampapur one will have to pass in front of Police Station itself.

10. It is the case of the prosecution that although Swamy Gowda came to see injured in Konanur Hospital on the same day, nothing came in the way of injured or his brother to lodge complaint immediately. Even otherwise, nothing is placed on record to show that immediately on getting admitted to the Hospital medico legal information was given by the Hospital to the police if the case of assault was really true. Even otherwise, Swamy Gowda is closely related to CWs. 1 to 3. When exactly Swamy Gowda came to the Konanur Hospital and convinced the injured and his brother not to give complaint is not forthcoming.

11. Admittedly PWs. 1 and 2 were at logger-heads with the accused viz., the petitioners herein. To this effect certain information is elicited. PW.2 has deposed in cross-examination that they were not talking to the accused since past two years.

12. When there is admittedly enmity between the injured and accused persons, evidence has to be cautiously evaluated. As already stated supra, there was delay of 9 days in lodging the first information before the police by the brother of the victim. The first information was admittedly received on 18.4. 2007. But FIR was lodged on 19.4.2007 at about 12.20 p.m. at Arakalagudu which is hardly 25 kms away from Konanur. There is a delay of 23 hours in lodging the FIR before the Court by the Police. Apart from this, the weapon stated to have been used to assault was not shown to the doctor to draw his attention to ascertain whether such injuries could be caused by said weapon.

13. According to the decision of the Supreme Court in the case of Kartarey and Ors. v. the State of Uttar Pradesh reported in AIR 1976 SC 76, it is the duty of the prosecution, and no less of the Court, to see that the alleged weapon of the offence, if available, is shown to the medical witness and his opinion invited as to whether all or any of the injuries on the victim could be caused with that weapon. Failure to do so may, sometimes, cause aberration in the course of

justice. In addition to that, the delay in lodging first information report to the police has not at all been evaluated in the right perspective. The admitted enmity between the accused and the material witnesses is also not taken into consideration properly. Taking all these for consideration, this Court is of the considered opinion that the trial court and the First Appellate Court have virtually ignored the material evidence and thus committed serious illegality and perversity. Accordingly, exercising the revisional jurisdiction vested in this Court under Section 397, Cr.P.C., the petition requires to be allowed. Hence, the following:

ORDER

14. Accordingly, the petition allowed. The judgment of conviction dated 17.5.2010 passed by the Civil Judge (Sr.Dn.) JMFC, Arakalagud in C.C.No.44/2008 and confirmed by the Presiding Officer, FTC, Arakalagud in CrI.A. No. 47/10 by order dated 4.1.2011 are set aside. The petitioners are acquitted of all the offences alleged against them.