
(2000) 09 KAR CK 0056
In the Karnataka High Court
Case No : Criminal Appeal No. 521 of 1996

B.M. Suresh

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 13-09-2000

Acts Referred:

Penal Code, 1860 (IPC) — Section 307, 324, 34

Citation : (2001) CriLJ 36 : (2000) 4 KCCR 2926

Hon'ble Judges : M.F. Saldanha, J

Bench : Single Bench

Advocate : R.B. Deshpande, for the Appellant; N.V. Prakash, Addl. S.P.P., for the Respondent

Judgement

M.F. Saldanha, J.—This criminal appeal has been preferred by the original accused No. 2 assailing the convictions recorded by the learned Sessions Judge, Chikmagalur in Sessions Case No. 11/92. It was alleged that on the evening of 26-6-1990 at about 5 p.m., the original accused No. 1 Chandra (since deceased) and the present accused got into an altercation with one Ramachandra Gowda. They are alleged to have questioned him about a complaint lodged by him with the police about three months earlier to the incident alleging that the accused were involved in sandal wood thefts. Accused No. 1 was armed with a spade and accused No. 2 had a knife with him and it is alleged that A-1 dealt a blow on the head of Ramachandra Gowda which caused a serious injury to him and was ultimately detected to have caused a fracture of the skull. Accused No. 2 caused a bleeding injury on the hand of Ramachandra Gowda's son who is PW-2. The injury is relatively minor and accused No. 2 has been held liable u/s 324, IPC. The trial Court after evaluating the evidence recorded the finding that both the accused were acting in furtherance of their common intention and since the head injury inflicted on Ramachandra Gowda was relatively serious the trial Court convicted the appellant for the offence punishable u/s 307, IPC and directed that he should undergo R.I. for 2 years and pay a fine of Rs. 1,000/-, in default S.I. for 2 months. For the offence punishable u/s 324 read with 34, IPC, he was

sentenced to suffer R.I. for one year and to pay a fine of Rs. 500/-, in default to suffer S.I. for 1 month. The substantive sentences were directed to run concurrently. The present appeal is directed against the aforesaid convictions and sentences.

2. At the hearing of the appeal, the appellants' learned counsel Sri Deshpande after a review of the evidence on record, advanced the submission that the oral evidence in this case which consists essentially of the depositions of PWs-1 and 2 does not conclusively establish the offence because, admittedly the prosecution witnesses belonged to the camp of the injured Ramachandra Gowda and he submitted that on their own admission, there appears to be some background of hostility between the parties because of the earlier complaint to the police regarding the sandal wood thefts. It was his submission that in a situation such as this, some independent evidence would have inspired confidence in the mind of the Court and that consequently, the appellant must be given the benefit of doubt.

3. The learned Government Advocate has opposed this submission and he points out that the evidence on record clearly establishes the participation of the present appellant and that even though accused No. 1 is dead, since the material before the Court indicates that both the accused had come together, they were armed with weapons and since they had participated in the assault though to different degrees, that the legal liability, under both the heads of charge would render the present appellant liable to the same extent as original accused No. 1. It is his submission that no interference is called for in this case.

4. The appellants' learned Counsel did advance an alternate submission whereby he contended that even though the evidence makes out a common accusation against the accused Nos. 1 and 2 that it is very clear that the main thrust of the attack came from accused No. 1 who has inflicted the injury of considerable seriousness and that on a strict construction of the evidence there is nothing to establish that they had worked according to a pre-determined plan. Also, what the learned counsel submits is that unless there is very clear evidence of implication of accused No. 2 to the extent that the Court will have to hold that he shared the common intention with accused No. 1, that as far as the main head of conviction u/s 307, IPC is concerned, that the Court will have to draw a distinction even if the conviction u/s 324, IPC is maintained. Again the learned Government Advocate has opposed any such dissection because he points out that the incident was one of short duration and that from the facts it can certainly be concluded that the two accused were motivated by a common objective which is obvious from the fact that accused No. 2 was carrying a weapon and has used it.

5. I have very carefully assessed the evidence in this case in the light of the submissions that have been canvassed. Section 34 of the IPC is not to be loosely invoked insofar as undoubtedly in criminal cases where more than one accused is involved, and where the accused jointly participate in an assault the Court may

legitimately infer from the facts that the different accused were acting in furtherance of their common intention or common objective. The legal ingredient of meeting of minds is a matter of inference and to this extent the learned Government Advocate is right when he submits that it is not necessary for the prosecution to demonstrate that the accused at a particular point, had hatched a particular plan and that they executed it pursuant to that objective because a Court could draw identical inferences from the manner in which the accused have behaved. The evidence on record does support the plea put forward by the defence that the assault was essentially one that emanated from accused No. 1 and we do find specific individual evidence incriminating accused No. 2 only to the limited extent of the injury caused by him to PW-2. In this view of the matter, though accused No. 1 would normally have faced a conviction u/s 307, IPC, it was incorrect for the trial Court to have concluded that accused No. 2 would be liable for conviction u/s 307 read with 34, IPC. It is true that the two of them had come together, but the role played by accused No. 2 was minimal insofar as he has not assaulted Ramachandra Gowda who was the real target but he has only inflicted the injury on PW-2. In this view of the matter, the conviction u/s 307 read with 34, IPC will have to be set aside. The appellant who is accused No. 2 is liable to be convicted of the offence punishable u/s 324, IPC simpliciter. I have taken into consideration the submissions canvassed by the learned counsel on both sides on the question of sentence and I do uphold the view canvassed by the learned Government Advocate that even though the injury is not one of grave seriousness that it was inflicted with a deadly weapon and consequently, the punishment will have to be relatively heavy even after the modification of the sentence imposed by the trial Court. While this Court upholds the conviction u/s 324, IPC recorded against the appellant, this Court directs that he shall undergo R. I. for the period already undergone and that he shall pay a fine quantified at Rs. 5,000/-. No in default sentence is awarded. The appellant is granted time of 12 weeks to deposit the fine amount in the trial Court failing which the trial Court to recover the same from the appellant. The appeal partially succeeds and stands disposed of. The bail bond of the appellant to stand cancelled on the fine amount being recovered from him.