

(1969) 12 KAR CK 0005
In the Karnataka High Court

Devendrappa and Another

APPELLANT

Vs

The State of Mysore

RESPONDENT

Date of Decision : 17-12-1969

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, 34, 447, 504

Citation : (1970) CriLJ 1188

Hon'ble Judges : C. Honniah, J

Bench : Single Bench

Judgement

C. Honniah, J.—The petitioners were charged for having committed offences under Sections 447, 504 and 323 read with Section 34 of the Indian Penal Code in the Court of the Judicial Magistrate, First Class (II Court), Hubli. The case of the prosecution was that the two petitioners trespassed into the land bearing R. S. No. 228 of Tadasa village in Dharwar District belonging to Thirakappa (P. W. 1) and caused hurt to him and his servant Ghouse Sab (P. W. 7) on 30-9-1967. The defence of the petitioners was that they and P. W. 1 had a right to take water from a tank to their lands which were adjoining each other; that on 29-9-1967 P. W. 1 had taken water to his land; that on the date of the incident when they went to the land in order to take water, they found P. W. 1 taking water to his land though he was not entitled to take water on that day. Therefore they diverted the flow of water to their land. In the meanwhile, according to them, P. W. 1 came there and stopped flow of water to their land. Thereafter, there was exchange of words between them and in that process one caught the other and there was a scuffle between them and thereafter they and P. W. 1 and his servant P. W. 7 went away from the field.

2. The prosecution has mainly relied on the evidence of P. W. 1 and P. W. 7 to prove their case. The petitioners did not examine any witness on their behalf. The learned Magistrate, after considering the evidence came to the conclusion that the prosecution has not made out a case against the petitioners for the offences under Sections 323 and 504, I. P. C, and accordingly he acquitted them

of those offences. However, he was of the view that the evidence established that the petitioners had committed offences punishable under Sections 447 and 324, I. P. C. and accordingly he convicted them for those offences. He did not impose on them any substantial sentence of imprisonment or fine, but released them u/s 4 (1) of the Probation of Offenders Act, directing them to execute a bond for Rs. 500/- each for good behaviour for a period of three years with a surety each. The petitioners, aggrieved by this decision, filed an appeal to the Court of the Sessions Judge, Dharwar. The learned Sessions Judge acquitted the petitioners of both the offences but convicted them u/s 323 read with Section 34, I. P. C. and reduced the period of probation to four months. This revision petition is directed against the order of the learned Sessions Judge.

3. The facts proved and admitted are these : P. W. 1 Thirakappa was the owner of the land bearing R. S. No. 228 of Tadasa village. The petitioners were the owners of the land adjoining to R. S. No. 228. It is admitted that both P. W. 1 and the petitioners were entitled to take water from a common tank to their lands. The evidence in this case shows that P. W. 1 had taken water to his land on the previous day, On the next day when the petitioners went to the land with a view to take water to their land, they found, P. W. 1 though had taken water to his land on the previous day, was continuing to take water on that day also. The incident admittedly took place in the afternoon. Therefore it is clear that P. W. 1 must have taken water to his land even on that day from morning.

4. The petitioners, who undoubtedly had a right to take water to their land, went near their land to take water. There is no evidence in this case that they went there knowing that P. W. 1 had continued to take water on that day also and with a view to commit any offence. But they went to their land in the usual course to take water to their land and there they found P. W. 1 taking water to his land. The petitioners therefore stopped the flow of water to the land of P. W. 1 and allowed the water to their land. At that point of time, P. W. 1 questioned the petitioners and in that behalf there was exchange of abuses between them. While this was going on, : P. W. 7 who was working at some distance came to the rescue of P. W. 1. The evidence shows that A-1 rushed towards him and attempted to assault him with a sickle but P. W. 7 caught hold of A-1 and a scuffle ensued and in the process P. W. 7 sustained some scratches on the forearm. There is no evidence in this case that P. W. 1 had sustained any injuries at all.

5. On this evidence, it is difficult to hold that the petitioners, in furtherance of their common intention, assaulted P. W. 1 and P. W. 7 and thereby committed an offence punishable u/s 323 I. P. C., as held by the learned Sessions Judge.

6. Mr. Deshpande, learned Counsel for the petitioners contended that on the facts proved by the prosecution itself the petitioners should not have been convicted even assuming that they had caused harm to P. W. 1 and P. W. 7 as it was slight. Section 95 of the Indian Penal Code is one under general exceptions (Chapter IV). It provides that:

Nothing is an offence by reason that it causes, or that it is known to be likely to cause any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm.

The law does not in this section concern itself with matters too trivial to demand its notice about which men in their ordinary frame of mind do not complain. As a matter of fact, it is common experience that men living in society must suffer some inconveniences and transgressions without which no society is possible. That being so, it would be travesty of law to deal with such trivial matters as if they were crimes. It is because of this the law rightly exempted such trivial actions from the category of crimes. A close examination of the provisions of this section shows that even the intentional causing of harm specified in that section is excused because of its triviality. The word "harm" no doubt means injury of any kind, including injury to mind, body or property. It provides that in the normal circumstance even if the injury to mind, body or property is caused and if the harm is so trivial, no person of ordinary sense and temper would complain of it.

7. The harm complained of in the instant case is so trivial that such incidents do happen almost every day in life particularly in rural parts. Taking into consideration the society in general and particularly the society to which P. W. 1 and P. W. 7 belonged and taking into consideration the circumstances under which there was a quarrel between them in which some minor injury was caused to P. W. 7, it would be accepted that in the normal course either P. W. 1 or P. W. 7 would not have complained of it, It is difficult to visualise how the machinery of the investigating agency was moved to take up this case and more difficult to comprehend why the investigating agency took up this matter for investigation and then filed a charge sheet against the petitioners. It is said that petitioner No. 2 is a student. Taking all these circumstances into consideration, if the investigating agency had properly applied its mind to the facts of the case, I think they would not have filed this case against the petitioners.

8. Even assuming that the prosecution case is wholly true, the crime that the petitioners committed is so trivial it falls within the scope of Section 95. I. P. C. This section is intended to exempt from criminality offences which, from their triviality do not deserve the name of crimes even though in one sense they are crimes because they fall within the definition of crimes, and but for this section the said crimes are punishable. Therefore advisedly the framers of law have thought of this section as an exemption and cases of the types specified therein.

9. For the reasons stated above, I allow this petition and set aside the conviction passed against the petitioners and acquit them.