

(2011) 01 KAR CK 0097
In the Karnataka High Court
Case No : Criminal Appeal No. 1341 of 2005

G.N. Krishnappa, K. Prakash and K. Raveendra

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 19-01-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 324, 325, 34, 341, 504

Citation : (2011) 01 KAR CK 0097

Hon'ble Judges : B.V. Pinto, J

Bench : Single Bench

Advocate : M. Gayathri, C.H. Hanumantharaya and Assts, for the Appellant;
Viyakumar Majage, HCGP, for the Respondent

Final Decision : Allowed

Judgement

B.V. Pinto, J.—This appeal has been filed by the accused challenging the judgment dated 28.6.05 passed in S.C. No. 1 19/02 by the Fast Track Court II, Shimoga convicting them for offence under Sections 325, 341, 504, 324 r/w 34 IPC and sentencing them to pay a fine of Rs. 500/- for offence u/s 341 r/w 34 IPC: pay fine of Rs. 500/- each for offence u/s 504 r/w 34 IPC and to pay a fine of Rs. 800/- each for the offence u/s 324 r/w 34 IPC and to undergo simple imprisonment for one year and to pay a fine of Rs. 500/- for the offence u/s 325 r/w 34 IPC with default clause.

2. The case of the prosecution is that the accused 1 to 6 on 21.11.01 at about 9 p.m., at RMC yard, Sagar town formed themselves into an unlawful assembly with common object of murdering CW-1 in the background of earlier ill-will between CW-1 and A-1 and thereafter holding lethal weapons like clubs and cycle chain assaulted CW-1 stopping him going further and insulted him and criminally intimidated and caused grievous and simple injuries thereby they are alleged to have committed offences under Sections 143, 147, 148, 341, 504, 506, 324 r/w 149 IPC. It is further charged against the accused that on the aforesaid date, time and place, the accused intentionally assaulted the complainant CW-1 with

an intention to cause his death and thereby they are alleged to have committed an offence under Sections 307 r/w 149 IPC.

3. In order to prove the case, the prosecution has examined in all 7 witnesses and got marked Ex.P 1 to P-17 and produced M Os.1 to 5. The defence of the accused was one of total denial and they have got marked Ex.D-1 to D-3 being the portion of statement of the complainant. After hearing the prosecution and defence, the learned Sessions Judge was pleased to hold that A-1 to A-3 have committed an offence as mentioned above and convicted and sentenced them while acquitting A4 to A6 of the offence as levelled against them. The convicted accused have filed this appeal.

4. Heard Smt. M. Gayathri, learned Counsel for the Appellants and Sri Vijayakumar Majage, learned HCGP for State. The learned Counsel for the Appellants submits that the prosecution has not proved that the complainant has suffered grievous injury since no X-ray has been produced and Dentist who has examined the injured PW-1 has not been examined before the court. Under the circumstances the offence u/s 325 IPC is not proved. She further submits that there is bitter enmity between the complainant and the accused as on the date of the offence. However, when CW-1 went to the doctor on the date of the incident at about 10 p.m., i.e. within one hour from the lime of occurrence, he has not disclosed either weapons used nor the names of the assailants to the doctor which is most unnatural in view of the fact there was enmity between the accused and PW-1 and PW-1 had identified the accused. Hence, in this case non mentioning of the names of the accused in the wound certificate is fatal to the prosecution case. She further submits that PW-1 has stated that one accused has assaulted on him on the head and that there was internal injury consequent upon his wearing helmet but no injuries has been found by the doctor. Therefore, the narration of the incident by the complainant is not according to the facts and is not corroborated by the medical evidence. Hence, she submits that the evidence of the injured is not supported by the medical evidence and hence, the Appellants are entitled for an order of acquittal. She further submits that other witnesses viz., P Ws.2, 3 and 6 have turned hostile to the case of the prosecution and therefore, the version of PW-1 is not corroborated by any eye witness. Under the circumstances, she submits that the accused may be acquitted by allowing this appeal.

5. Learned HCGP submits that the version of PW-1 is corroborated by the evidence of the doctor PW-5 who has stated that PW-1 has sustained injury as mentioned by him in the wound certificate and the injured PW-1 has been examined by him at 10 p.m, and he has stated that he was assaulted at 9 p.m., on the same day. He further submits that the complaint has been registered at 11'o clock on the same night. Therefore, he submits that it is not necessary for an injured to give entire story of the incident to the doctor and it is not the duty of the doctor to record the entire case of the complainant in the wound certificate. Under the circumstances, he submits that the judgment of conviction

may be sustained and the appeal may be dismissed.

6. PW-1 Nagappa had given statement as per Ex.P-1 on 21.11.01 before Sagar Police Station. In the said complaint, he has stated he is a timber contractor and on 20.11.01 at about 6 p.m., there was some quarrel between himself and A-1 Krishnappa of Sagar in respect of the purchase of forest produce of one Budyappagowda. In this connection, there was oral quarrel between them and because of this reason on 21.11.01 at about 9 p.m., when he was going after completing his work from Sagar to his house in Belur on his motorcycle bearing No. KA-31-E-5434, one green Maruthi car overtook him and stopped in front of the motor cycle. Then he saw A-1 to A-3 and three others, all of them obstructed him from going further and felled him down. He has stopped the motor cycle by putting stand. The accused formed themselves into a group and abused him and thereafter threatened that they would finish him. Thereafter they started assaulting him by means of hands and legs. By that time, Prakasha assaulted him by means of club on his head forcibly and since he was wearing helmet on his head, he sustained internal injury. Ravindra was holding a cycle chain and he assaulted him on front side of his face which caused bleeding injury and at that time, A-1 Krishnappa assaulted him by means of club on his back. He started screaming. At that time, watchman of RMC Yard came there and started shouting. The accused ran away throwing cycle chain and club and went in their car. He has stated that because of this incident his tooth became shaking. He has also stated that certain papers, cash of Rs. 1000/- which was in his pocket are missing. Thereafter he was taken by the RMC people in an auto to Sagar Govt. hospital. Therefore, he has requested for action.

7. The Sagar Police on receipt of this complaint from PW-1 registered the same in Crime No. 308/01 for offence under Sections 143, 147, 148, 341, 323, 324, 504, 506 r/w Section 149 IPC and transmitted the FIR to the court. After conducting investigation, the police found in all six persons involved in the incident and therefore, charge-sheet is filed against A-1 to A-6.

8. PW-1 has stated before the court in the same manner as mentioned in the complaint given by him. He has further stated in his evidence that Krishnappa was holding a club, Prakash was holding club, Ravindra was holding cycle chain. The other 3 persons were not holding any weapons. Prakash assaulted him by means of club on his head. Krishnappa assaulted on his back side by means of a club. Ravindra assaulted on his face which caused injury in his nose and teeth. The other three accused assaulted by hands and legs. Since he was wearing helmet he suffered internal injury. He fell down and at that time Nagaraja, Chandrashekhara and Manjappa came. Thereafter he was removed to Govt. hospital at Sagar. He has slated the names of three persons while giving complaint since he remembered their names. He came to know about other three accused and the said names of the accused were given by him to the Police. He has identified the weapons as MO. 1 cycle chain, M Os2 and 3 clubs. In the cross examination, he has admitted that A-1 is also carrying on the same business as

himself and there is competition between himself and A-1 in respect of business. He has admitted that on 20th there was some quarrel between them in respect of business between himself and Budyappagowda. However, he has admitted that he had assaulted on the previous day and there is a case pending against him in JMFC court, Sagar in connection with the said incident. He has further stated in cross examination that he has not stated that three accused persons are unknown to him, but he can identify them if shown. It is suggested to him that since there was darkness he cannot identify the persons who assaulted him on that night. PW-3 speaks regarding the incident but does not speak about the assailants. PW-4 is a signatory to Ex.P-2 mahazar. PW-5 Dr. Vishwanatha Naik has stated that on 21.11.01 at about 10 p.m., he examined PW-1 who was brought by one Basavarajappa with the history of assault at 9 p.m., near RMC yard, Sagar. He has stated that the injured had suffered two injuries and was complaining about pain in the left incisor part and there was bleeding in the light nostril. He has opined that injury No. 1 is grievous in nature since Denial Surgeon has given opinion that there was hairline fracture in the middle incisor tooth. He has issued Ex.P7 the wound certificate. He has opined that MO-1 can cause such injury. In the cross examination he has stated that such injuries as found on the person of PW-1 can be caused while one is riding on a motor cycle and falling down.

9. PW-7 R. Shankaramurthy, was PSI, Sagar Police Station, during the relevant period. He has stated that on 21.11.01, he has recorded the statement of the injured in the hospital and then-after prepared FIR and transmitted the same to the court. On 22.11.01 he has arrested A-1 to A-4 and seized the car used for the commission of offence. Thereafter, he recorded the statement of witnesses. On the basis of the statement of the witnesses, Section 307 IPC is added to the earlier FIR and after completion of investigation, he filed charge sheet before the court.

10. It is from the evidence of these witnesses, the learned Sessions Judge has found A-1 to A-3 guilty of the offences mentioned above.

The learned Counsel for the Appellants filed death certificate of A-3 Raveendra. Hence, the case against R-3 has abated.

11. In so far as the offence committed by A-1 and A-2 who are accused found guilty by the Trial Court, it is seen that the case of PW-1 is that A-1 has assaulted PW-1 on the back by means of a club and A-2 assaulted on the head of PW-1. However the wound certificate Ex.P-7 does not contain any injury either on the back or on the head. Therefore, the case of the prosecution that A-1 and A-2 have assaulted PW-1 on the back and head is not proved by medical evidence. So far as assault on the face is concerned PW-1 says that A-3 had assaulted on his face by means of a cycle chain. However the case against him has abated due to his death. So far as the probability of the case of the complainant PW-1, he has stated that there was enmity between himself and A-1 and A-2 and there was quarrel on the previous day. He also says that there was

competition between himself and A-1 regarding timber business. A-2 is lather of A-1. Under the circumstances, in view of the fact that PW-1 has not lost consciousness when he went to the hospital, nothing prevented him from disclosing the names of either A-1 or A-2 as being the cause of injury so also the weapons. Though the wound certificate is not an encyclopedia regarding the incident and the doctor is not bound to question regarding the history of the incident, it is most natural that when the person receives injury from a known person with whom he had long standing enmity, he would have given the names of the assailants while going to the hospital at about 10 p.m., on the same day, coupled with the fact that FIR has been received by the Magistrate at 10.15 am on the next day, though the distance between scene of occurrence and the police station is only two Kms. whereas the distance between the hospital and police station is within one Km. The learned Counsel for the Appellants submits that there is a delay of almost 12 hours in transmitting the FIR to the Magistrate. Under the circumstances, it may not be safe to believe the version of PW-1 in so far as involvement of A-1 and A-2 are concerned in the commission of the offence.

12. I have gone through the judgment of the trial court. The reasoning assigned by the learned Sessions Judge in convicting the accused are not sound and proper and they are not based on the evidence on record, more particularly the oral evidence does not tally with the medical evidence adduced in the case. Under the circumstances. I am of the opinion that the prosecution has not proved the case against Appellants 1 and 2 beyond reasonable doubt. Therefore, there is no alternative but to allow this appeal and accordingly, the appeal is allowed. The conviction and sentence passed against the Appellants is hereby set aside. The accused are acquitted of the offence levelled against them. Bail bonds, if any, executed by them are cancelled. The line amount if any deposited, shall be refunded to them.

The appeal is accordingly allowed.