

(2015) 08 KAR CK 0368

In the Karnataka High Court

Case No : Criminal Appeal Nos. 2666, 2667 and 2906 of 2011

Goraknath and Others

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 17-08-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 428
Penal Code, 1860 (IPC) — Section 143, 147, 148, 149, 304

Citation : (2015) 08 KAR CK 0368

Hon'ble Judges : Anand Byrareddy, J;S. Sujatha, J

Bench : Division Bench

Advocate : Mrutyunjaya Tata Bangi, Advocate for Sachin S. Magadam, for the Appellant; V.M. Banakar, Additional State Public Prosecutor, Advocates for the Respondent

Final Decision : Allowed

Judgement

Anand Byrareddy, J—The appeal in Criminal Appeal No. 2666/2011 is filed by accused Nos. 7, 14 to 20 and 24. The appeal in Criminal Appeal No. 2667/2011 is filed by accused Nos. 1 to 6 and 8 to 13 and 21 to 23. The appeal in Criminal Appeal No. 2906/2011 is filed by the State questioning the acquittal of the very accused for the offences punishable under Sections 323, 326, 307 read with Section 149 of The Indian Penal Code, 1860 (hereinafter referred to as the "I.P.C.", for brevity).

2. Heard the learned counsel for the appellants-accused and the learned Additional State Public Prosecutor. The brief facts of the prosecution case, as per the charge sheet and the complaint filed by one Srikant S/o Shivappa Munje of Adihudi village is to the following effect:

3. It was alleged by the prosecution that, on 24.04.2008 at about 1.00 p.m., in the land bearing Sy. No. 153/1A/1 of Adihudi village, measuring about 30 guntas, situated within the jurisdiction of Savalagi police station, the accused, namely, accused Nos. 1 to 24, had formed themselves into an unlawful assembly

with a common object to cause harm. The brother of the complainant one Ashok Shivappa Mujne had purchased the said 30 guntas of land from one Nagappa Kambar under a registered sale deed and that accused No. 1 had also purchased the land measuring 2 acres 5 guntas from one Siddappa Kambar under a registered sale deed from the complainant and his brother. There was a dispute insofar as an extent of 30 guntas of land was concerned, which was the subject matter of the sale deed made in favour of Ashok Shivappa Munje and that the land measuring 2 acres 5 guntas overlapped the said 30 guntas of land. It transpires that, there was a civil case instituted insofar as the controversy was concerned and therefore, on the fateful day, when the complainant and P.Ws. 3, 6, 7, 8 and 9, who are said to be the relatives of the complainant, were engaged in ploughing the said 30 guntas of land, accused Nos. 1 to 24, armed with deadly weapons such as, axes, koytas, sickles and sticks had descended on the complainant and others and abusing them in foul language, it was alleged, that accused No. 1 had assaulted Rayappa Munje, P.W.3, with the aid of a sugarcane cutting koyta, over his right neck. Rayappa was also said to have been assaulted by accused Nos. 19 and 20 with sickles. It further transpires that, accused No. 8 had assaulted the complainant with a club and accused Nos. 2 and 6, with their hands and accused No. 24 with the aid of a sickle. Accused No. 13 is said to have assaulted P.W.6 with a club and accused No. 7 is also said to have assaulted Bhimappa with a sickle. Accused Nos. 14 and 18 are said to have assaulted with clubs and accused No. 15 had assaulted with his hands. Accused No. 2 is said to have assaulted C.W.8 Vittal, with a sickle. Accused Nos. 3 and 6 with sticks and accused No. 8 with his hands and C.W.9 Laxman S/o Shivappa Munje, who was assaulted by accused No. 8 and 12 with a Koyta and accused No. 23 with a stick and C.Ws. 1 to 6 and 9 suffered grievous and bleeding injuries to the head and other parts of the body, while the remaining accused were instigating the above named accused to go on assaulting the complainant and other witnesses.

4. It is in this background and on the basis of a complaint and with reference to the injuries suffered by the several victims, the Savalagi Police Station had registered a case in Crime No. 47/2008 and took further steps in arresting accused Nos. 8, 11, 16, 20 and 22, on 24-25.04.2008 and the other accused were said to have been arrested on 24.06.2008. They were however, said to have been released on bail. After completion of the investigation, the Investigating Officer had filed a charge sheet against accused Nos. 1 to 24 and held that there was no incriminating evidence available against accused No. 21- Dharappa S/o Ramappa Guggari and deleted him from the array of the accused in the charge sheet and accordingly, C.W.15, is said to have taken over further investigation and after completion of the investigation, had filed a charge sheet against the accused before the competent Court on 11.08.2008, which had taken cognizance and directed the registration of a criminal case in C.C. No. 32/2008. Subsequently, it was committed to the Sessions Court, Bagalkot for trial. The Sessions Court had made over the case to the Fast Track Court, Jamkhandi.

5. The accused had appeared before the Court and obtained regular bail.

Thereafter charges were framed against the accused. The accused denied the same and claim to be tried. The prosecution had then tendered evidence of P.Ws. 1 to 14 and had got marked exhibits P1 to P12 and other material objects, M.Os. 1 to 15. The accused having been examined under Section 313 of Code of Criminal Procedure, 1973 (hereinafter referred to as the "Cr.P.C.", for brevity) for the purpose of enabling the accused to explain the incriminating evidence appearing against them, the accused had denied the statements and they did not choose to tender any evidence. However, accused No. 1 had produced documents in respect of civil suits in O.S. No. 97/2007, O.S. No. 196/2007 and also O.S. No. 223/2007 on the file of the Civil Judge (Jr.Dn.) Jamkhandi. However, the Court held that, since the accused did not choose to lead any evidence, mere production of those documents did not advance their case and thereafter, had framed the following points for consideration:

- 1) Whether prosecution proves beyond reasonable doubt that accused persons No. 1 to 24 on 24.04.2008 at 1.00p.m. in the land Sy. No. 153/1A/1 of Adihudi village these accused by forming un-law-full assembly to prosecute their common object entered the land of complainant with an intention to assault C.W.1 and C.W.6 to 9 and as such accused have committed an offence punishable U/s 143 of r/w 149 of IPC?
- 2) Whether prosecution proves beyond reasonable doubt that these accused persons No. 1 to 24 the above said date, time and place being members of un-law-full assembly had gathered in the land of C.W. 1 of Adihudi village and committed an offence of rioting punishable U/s 147 of IPC r/w 149 of IPC?
- 3) Whether prosecution proves beyond reasonable doubt that the accused persons on the above said date, place and time entered the land of complainant and quarreled with C.W. 1 and 6 to 9 and accused had holded deadly weapons as they were armed with Axe clubs, Iron Koyata in their hands and accused have used these weapons as weapon of offence and as such accused for guilty of offence punishable U/s 148 of IPC r/w 149 of IPC?
- 4) Whether prosecution proves beyond reasonable doubt that on the above said date, time and place, the accused persons had picked up quarrel with C.W. 1 and his brothers C.W.6 to 9 in connection with purchase of land its cultivation in Sy. No. 153/1A/1 of Adihudi village and assaulted CW.1, CW.6 to 9 by hands and caused bodily pain and injury and also assaulted CW.1, 6 to 9 with the aid of weapons like, Iron rod, Koyta, Axe, Clubs, and Axe and according accused have committed an offence punishable U/s 323 and 324 of IPC?
- 5) Whether prosecution proves beyond reasonable doubt that accused persons on the above said date place and time entered into complainants land Sy. No. 153/1A/1 of Adihudi village and picked-up quarrel with C.W.1 and his brothers C W.6 to 9 and assaulted them with seized weapons M.Os. 1 to 15 and caused simple and grievous injuries to C.W. 1 and his brothers and as such accused are guilty offence punishable U/s 326 of IPC?

6) Whether prosecution proves beyond reasonable doubt that on the above said date place, and time the accused persons being members of un-law-full assembly armed with deadly weapons entered the land of C.W.1 in R.S. No. 153/1A/1 and quarreled with complainant and his brothers in connection with cultivation of purchased land of 30 guntas and accused have assaulted C.W. 1 and C.W.6 to 9 with the aid of seized weapons M.Os. 1 to 15 with an intention to kill C.W. 1 and his brothers and caused grievous bleeding injuries and there by accused have committed an offence punishable U/s 307 of IPC r/w 149 of IPC?

7) Whether prosecution proves beyond reasonable doubt that on the above said date place and time accused persons picked up quarrel with C.W.1 and his brothers in connection with cultivation of purchased land i.e., 30 guntas of Adihudi village and abused the complainant, C.W. 1 and C.W.6 to 9 in filthy language so as to cause insult to them and gave provocation to them to commit breach of peace and there by they are guilty of offence punishable U/s 504 r/w 149 of IPC?

8) Whether prosecution proves beyond reasonable doubt that on the above said date, place and time the accused persons being members of un-law-full assembly and to prosecute, their common object entered the land of C.W. 1 and quarreled with C.W.1 and C.W.6 to 9 and assaulted them with seized weapons and accused have threatened to the life of C.W. 1 & 6 to 9 with dire consequences of killing them and hence accused are guilty of offence punishable U/s 506(2) of IPC?

6. The Court below has answered points 1 to 4 and 7 and 8 in the affirmative and points 5 and 6 in the negative and point 9 as per the final order and accordingly, convicted the accused and passed following sentence of imprisonment and fine against the accused.

Accused Nos. 1 to 24 were sentenced to undergo simple imprisonment for a period of six months for the offence punishable under Section 143 of IPC. Accused Nos. 1 to 24 were also sentenced to undergo simple imprisonment for 1 year and fine of Rs. 500/-, each, for the offence punishable under Section 147 of IPC and simple imprisonment for 1 year and fine of Rs. 500/-, each, for the offence punishable under Section 148 IPC and also simple imprisonment for six months for the offence punishable under Section 323 of IPC and 3 years simple imprisonment and fine of Rs. 1000/-, each, for the offence punishable under Section 324 of IPC and simple imprisonment for six months for the offence punishable under Section 504 of IPC and simple imprisonment for a period of 3 years and fine of Rs. 1000/-, each, for the offence punishable under Section 506(2) of IPC. The sentences awarded were to run concurrently. Set off was given for a period of two months under Section 428 of Cr.P.C. It is that which is sought to be questioned in these appeals, as already stated, by the accused as well as the State.

7. The learned counsel for the appellants would primarily contend that the evidence tendered does not indicate the sequence of events, which could be

reconciled with the alleged assault caused by each of the accused and the alleged injuries suffered by the alleged victims. The attack as alleged by a group of 24 persons, many of them armed with weapons and some of them without weapons and the same being narrated sequentially, as to the manner in which the accused are said to have allegedly assaulted each of the victims, is not readily acceptable. The learned counsel would seek to emphasize that any such attack by a large group of persons would happen in quick succession, where the victims who would not be able to consistently state as to who attacked him first and which of the accused attacked which of the victims and with what weapon. The very circumstance that the witnesses are able to narrate the manner in which the incident is said to have occurred, as if they were bystanders is itself is dramatic and obviously intended only to implicate the accused.

8. It is pointed out that any human being attacked by large number of persons would be under stress and grave apprehension and he would be intent on protecting himself and would not be watching the others being assaulted to be able to state with any clarity as to how, and who attacked the other victims. However, in the present case on hand, each witness has stated as to which of the accused attacked which victim and with what weapon and how the injuries were caused. This itself is unnatural and ought to have been viewed with suspicion, when the injuries said to have been caused to the victims cannot be reconciled with the kind of weapon with which, they were allegedly attacked. Therefore, it cannot be said that the prosecution had discharged the primary burden of proof in establishing the case beyond all reasonable doubt. Therefore, the Court was not justified in mechanically accepting the evidence though it was not presented in the manner which could be readily accepted.

9. As for instance, it is sought to be pointed out that, insofar as accused No. 1 is concerned, it is stated that he had assaulted Rayappa with a sugarcane cutting axe, on his neck, whereas, P.W.3 who has tendered evidence, in his examination-in-chief has claimed that the husband of P.W.3 was assaulted with a cane axe on the right neck. In cross-examination, it is sought to be improved upon, in stating that the accused No. 1 had assaulted the husband of P.W.3 with a cane axe on the right neck and right forearm. P.W.5 in his examination-in-chief has stated that accused No. 1 assaulted Rayappa with an axe on the left neck, left shoulder and on his waist. P.W.7 in turn in the examination-in-chief has stated that, accused No. 1 assaulted him with an axe on the left neck and P.W.8 in his examination-in-chief has claimed that accused No. 1 had assaulted with an axe on the left neck. P.W.9 in examination-in-chief has stated that Rayappa assaulted with a cane axe on his left neck.

10. The learned counsel would submit that, from the medical examination report, it is seen that, he had suffered minor cut injuries on the left side of his neck and the major injury he had suffered was on his elbow. He had suffered a dislocation of his elbow, which could not have been caused by a cane axe. The cut injuries on his neck were too minor to have been caused by a weapon, such as a cane

axe. This inconsistency is not explained by any of the witnesses. Though there is variation as to which side of his neck Rayappa was injured, the majority of the witnesses have referred to his left neck and left shoulder, whereas, there were minor injuries found on the left neck, and his left arm was dislocated. Therefore, the evidence of these witnesses could not have been readily accepted by the Court.

11. Similarly, the learned counsel would point out that insofar as accused Tippanna Bhimappa Bannennaver is concerned, the allegation is to the effect that, he had assaulted the complainant with his hands and Vittal with a sickle. Whereas, the evidence of P.W.1, in his examination-in-chief is that, he had assaulted P.W.1-complainant on his back with his hands. P.W.3 had stated that he had assaulted the husband of P.W.2 with a stick on his right leg. P.W.8 has stated that he had assaulted with a sickle on his head. Therefore, there is total inconsistency in the manner in which the assault had taken place and the weapon that was allegedly used.

12. Accused No. 3 is alleged to have assaulted Vittal with a stick, whereas, P.W.8 who is the sole witness, has spoken to the alleged assault and has stated that he saw this accused assaulting Vittal with his hands.

13. As far as accused No. 4 is concerned, P.W.3 had stated that he had assaulted Bhimappa with a sickle on the head, right hand and right leg, whereas, no injuries were suffered by Bhimappa. The only injury suffered was commutated fracture of the left ulna and if he was assaulted with a sickle on his head, right hand and right leg, he would not have suffered a fracture, but serious cut and lacerated wounds.

14. Insofar as accused No. 5 is concerned, there is no evidence of any allegation, except that he had instigated the other accused. No witness has spoken about any such act on the part of the said accused.

15. Insofar as accused No. 6 is concerned, the allegation and the charge is to the effect that he had assaulted Vittal with a stick. Whereas, P.W.8 the sole witness who has spoken about his alleged involvement has stated that he assaulted him with his hands.

16. Insofar as accused No. 7 is concerned, the allegation is that, he had assaulted Bhimappa with a sickle. The evidence of P.W.3 is to the effect that he had assaulted Bhimappa with a stick or a rod. P.W.5 has stated that he assaulted him with a sickle on the forearm and left hand. There is inconsistency insofar as the weapons said to have been used and if a sickle had been used, it would not have caused a fracture, but certainly cut and lacerated wounds. Hence, the said evidence was also not consistent.

17. Insofar as accused No. 8 is concerned, the charge was to the effect that he had assaulted Rayappa with a stick and Vittal with hands. P.W.3 has stated that he was holding an axe and had assaulted Vittal with the axe. In the cross-

examination, he has changed his version to state that he assaulted Vittal with a stick. P.W.7 in his evidence had claimed that the said accused had assaulted him with a club and stick on his leg. P.W.8 has also stated that, he had assaulted him with his hands and P.W.9 had given a completely different version claiming that he had assaulted Rayappa with a club on his waist. These varying statements could not have been accepted by the Court below in finding that the said accused had committed any of the offences.

18. Insofar as accused No. 9 is concerned, the evidence of P.W.3 is to the effect that he had assaulted the complainant with his hands and a stick on his head and shoulder. However, he had suffered cut and lacerated injuries, which could not have been caused with his hands or a stick.

19. Insofar as accused No. 10 is concerned, there is no charge framed and no evidence tendered, insofar as his alleged involvement.

20. Accused No. 11 is charged with having assaulted Vittal with an axe. P.W.3 in his cross-examination has stated that he assaulted Vittal with a stick. P.W.8 has stated that the said accused had assaulted him with an axe on the right neck and right shoulder. The injuries however, found to be simple injuries.

21. Accused No. 12 is said to have assaulted Laxman with a cane axe. P.W.3 however has claimed that this accused had assaulted Bhimappa with a sickle on his right shoulder and leg. P.W.9 had also tendered evidence to claim that he was assaulted with a cane axe on the left hand and forearm.

22. Similarly, insofar as accused No. 13 is concerned, he was charged with having assaulted the complainant with a stick. In his examination-in-chief, P.W.3 has stated that the accused assaulted the complainant with a stone and slapped him and hit him with a stone on the head and back. In cross-examination, he had also claimed that he assaulted Bhimappa with a sickle on his right shoulder and leg. The learned counsel would point out that, insofar as the complainant is concerned, there are a large number of accused who are said to have assaulted him, simultaneously; he would point out that it is physically impossible for such a large number of persons to attack one person at the same time and the above inconsistency would clearly demonstrate that the complainant has merely sought to implicate the accused in a false case, by roping in all of them of having committed the alleged violent acts without there being any consistent evidence.

23. Accused No. 14 is said to have assaulted Bhimappa with a stick. There is no evidence by any witness as far as this accused is concerned.

24. Accused No. 15 is said to have assaulted Bhimappa with his hands. Again, there is no evidence insofar as the said assault having been committed.

25. Accused No. 16 is not charged with any offence whatsoever, except of being part of an unlawful assembly and hence, could not have been visited with any sentence that was imposed. Though there is evidence tendered by P.W.3 claiming that he had assaulted C.W.6 with a stick on his leg and hands and also of having

slapped him. While P.W.5 had claimed that he had assaulted with a club and a stick on his back, there is no charge framed against this accused in this respect. Hence, the evidence tendered was clearly false evidence to merely implicate the said accused.

26. Insofar as accused No. 17 is concerned, he is claimed to have assaulted Bhimappa with a stick. However, there is no evidence tendered in this regard.

27. Insofar as accused No. 18 is concerned, he is said to have assaulted Rayappa with a sickle. The evidence of P.W.3 is to the effect that, he assaulted the husband of P.W.3 on the right shoulder. In cross-examination, it is claimed that he had assaulted her husband with his hands and a stick and assaulted Laxman with a stick and sickle. P.W.5 in his evidence has claimed that, he had assaulted Rayappa with a sickle on the right shoulder. P.W.7 claimed that he has assaulted with a sickle on the left hand and elbow and P.W.8 has stated that he had assaulted with a sickle. P.W.9 has claimed that he assaulted Rayappa with a sickle on his head and left hand. But the injuries said to have been suffered by Rayappa, as shown in the medical certificate was that he has suffered a commutated fracture of the left elbow, where as the majority of the witnesses having claimed that Rayappa was assaulted with a sickle and the charge also being to that effect, the injuries that are recorded in the medical certificate, is not consistent as being an injury, which could have been caused by the said weapons. If he was assaulted with a sickle, it would have left a cut lacerated wound and not a fracture.

28. Accused No. 19 is charged with the assault of Rayappa with a sickle. P.W.3 has stated that he had assaulted Laxman with his right hand and C.W.9's hand was fractured. In cross-examination, he has changed his version to state that Laxman had attacked him with a stick and sickle. P.W.7 has compounded this inconsistency while claiming that he assaulted him with a sickle on his back. P.W.8 in his evidence has stated that he assaulted Rayappa with a sickle. P.W.19 has claimed that he had assaulted Rayappa with a sickle on his neck and hand. It is therefore, pointed out that, as can be seen from the above evidence, many of the injured witnesses have tendered evidence of the injuries being caused to other injured witnesses and as to which of the accused was attacking which of the injured witnesses. Thus, the learned counsel would submit that it is an unnatural circumstance and could not be readily accepted by the Court, which would require much naivety. Since it was a mob attack where several persons were milling around, wielding deadly weapons, it was impossible for the witnesses to have recorded the sequence of events, as if it was happening in slow motion. When the witnesses were being attacked, it was also not possible for them to note the attack that was taking place against other injured witnesses and of all the accused involved. Therefore, he would seek to demonstrate the falsity of the cases brought against the accused.

29. Insofar as accused No. 20 is concerned, the charge is that, he had assaulted Laxman with a cane axe. The medical evidence would indicate that he had

suffered a fracture of the metatarsal bone of the left hand. The evidence tendered is that, he was assaulted with an axe on his head. There is a difference between the head and arm or hand of a person. Therefore, the charge, injury and the evidence are totally contrary.

30. It is stated that, insofar as accused No. 21 is concerned, he is no more and therefore, the charge against him is rendered infructuous and therefore, the appeal abates insofar as the said accused is concerned.

31. Accused No. 22 is said to have assaulted the complainant with a sickle on his head. However, P.W.3 has stated that he had assaulted Laxman, the brother-in-law of the said complainant-Srikant, with a sickle and P.W.5 has claimed that he had assaulted the injured with a sickle on his head. Whereas, the injuries as indicated in the medical certificate are simple in nature and could not have been caused with a sickle.

32. Insofar as accused No. 23 is concerned, there is no charge against him and there is no evidence tendered. It is therefore inexplicable that the Court has found that the charge against the said accused has been proved and he has also been sentenced on various counts. Therefore, there is clearly an indication of non-application of mind by the Court below.

33. Insofar as accused No. 24 is concerned, he is said to have assaulted the complainant with his hands. The complainant in his evidence has stated that, he was assaulted with a stick on his back and all over his body. There is no charge framed in this regard and there is no witness who has spoken of any such attack by the said accused.

34. In this fashion, the learned counsel seeks to demonstrate, while taking this Court through the record, in toto, to demonstrate the above inconsistencies. He would also submit that, there was a case and counter-case and it so transpires that both the case and counter case were tried together and insofar as the counter case instituted by these very accused is concerned, there was an amicable settlement whereby the complainants undertook that they would not support the case of the prosecution and accordingly did not tender any evidence. But when the present case was taken up, it so happened that the complainant and his witnesses broke their promise and tendered evidence against these accused, on the basis of which, the accused have been convicted and sentences imposed. He would submit that therefore, there is grave injustice caused not only for want of evidence and total inconsistency in the evidence, but also on the above circumstance. In that, the accused were fooled in to a settlement for the sake of peace in their village and having had to suffer the punishment, now sought to be imposed, and therefore, seeks that the appellants were certainly entitled to honourable acquittal having regard to the grave inconsistencies and discrepancies that are replete in the evidence on record.

35. While the learned Additional State Public Prosecutor would seek to justify the judgment, on the other hand, would emphasize that there can be no denial of

the fact that all the witnesses have suffered injuries and some of them have suffered grievous injuries, which warrants stringent punishment against the accused, whereas the Court below was leniently reduced the punishment to a mere three years only, for the offences punishable under Sections 324, 506 of IPC, while imposing minor punishment in respect of the offences punishable under other provisions of the IPC and hence, seeks that the sentence be enhanced and that they be convicted under Sections 326 and 304 of IPC.

36. From a perusal of the record and the grave inconsistencies that are highlighted by the learned counsel for the accused, it is evident that the prosecution has miserably failed to establish its case at all. It certainly cannot be said that it has established its case beyond all reasonable doubt. Due to the above discrepancies, that are large in number, it cannot be said that the prosecution had made out a case at all, and therefore, the Court was not justified in imposing punishment uniformly against all the accused and there was no evidence tendered against some of them, as already pointed out. Therefore, it cannot be said that the prosecution had established its case beyond all reasonable doubt. Hence, the judgment of the Court below is set aside and the accused are acquitted and the bail bonds furnished stand cancelled. The fine amount collected, from each of the accused, shall be refunded. Insofar as the appeal filed by the State is concerned, in view of the appeals filed by the accused having been allowed, the appeal by the State stands dismissed.