
(1961) 06 KAR CK 0002
In the Karnataka High Court

Government of Karnataka

APPELLANT

Vs

Mallappa Shivappa Jadar and Another

RESPONDENT

Date of Decision : 21-06-1961

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 342, 438, 537
Penal Code, 1860 (IPC) — Section 323, 34, 447

Citation : (1962) CriLJ 562

Hon'ble Judges : M. Sadasivayya, J

Bench : Single Bench

Judgement

M. Sadasivayya, J.

1.This reference u/s 438 of the Criminal Procedure Code has been made by the learned Sessions Judge, Bijapur, under the following circumstances:

2. The two respondents were the accused before the Judicial Magistrate First Class, Bagewadi, in Criminal Case No. 36/57 on the file of that Magistrate. The case against them was to the effect that they both trespassed into the land of P.W. I Rachappa and had caused hurt to him. Both the accused pleaded not guilty; the learned Magistrate, after trial, found that both the accused persons were guilty of offences Under Sections 447 and 323 of the Indian Penal Code; he convicted them for both the offences and sentenced them to pay a fine of Rs. 25/- in respect of each offence and in default to undergo Rigorous Imprisonment for a period of ten days.

Against the said conviction and sentence, both the accused persons preferred revision to the Sessions Judge, Bijapur; that was In Criminal Revision Application No. 10/00 on the he of the learned Sessions Judge. The learned Sessions Judge, on a consideration of the evidence which had been adduced before the learned Magistrate. took the view that both the petitioners before him should not have been convicted for an offence u/s 447 of the Indian Penal Code; he also came, to the conclusion that so far as the first accused is concerned, he ought not to have been convicted for an offence u/s 323 of the Indian Penal Code. In consequence

of taking such a view, the learned Sessions Judge has made the present reference recommending that the conviction of both the accused in respect of the offence u/s 447 of the Indian Penal Code be set aside and so far as the first accused is concerned the conviction for an offence u/s 323 of the Indian Penal Code also be set aside.

3. Sri Naik has appeared for the two accused persons who were the petitioners before the learned Sessions Judge. Sri B. S. Keshava Iyengar the learned High Court Government Pleader has appeared for the State and he has contended that the reference made by the learned Sessions Judge is liable to be rejected.

4. After hearing the arguments of the learned advocates. I am satisfied that this reference is not entitled to acceptance. It is mainly upon a fresh assessment of the evidence that the learned Sessions Judge has taken the view that both the accused persons were not liable to be convicted for an offence under, Section 447 of the Indian Penal Code and that the first accused was not liable to be convicted for an offence u/s 323 of the IPC. The learned Sessions Judge was not justified in attempting to re-assess the evidence, as if he was a court of appeal. The sentence which had been imposed upon the accused persons, was not an appealable sentence. A court while acting u/s 438 of the Criminal Procedure Code ought not to exercise its power so as virtually to give a right of appeal, even though the sentence imposed by the trial court is a non appealable one. The discretion that is given to the Sessions Judge or the District Magistrate, u/s 438 of the Criminal Procedure Code, though wide, ought to be sparingly used and a reference ought not to be made to "the High Court merely because the Sessions Judge" or the District Magistrate thinks that on the evidence a view different from that taken by the trial Magistrate, is possible. Ordinarily, when there is no error of law or any irregularity in procedure which is not curable u/s 537 of the Criminal Procedure Code and when no question of principle is involved, the Sessions Judge or the District Magistrate ought not to invoke the power of the High Court by making a reference u/s 438 of the Code of Criminal Procedure.

5. In the present case, the evidence of the complainant P.W. 1, which has been accepted by the trial Magistrate, is sufficient to justify the conclusion reached by him. The evidence of P.W. 1 is also strengthened to some extent by the circumstance that in the course of his cross-examination "it was suggested on behalf of the accused persons that the murder of P.W. 1 might have been caused on account of the bullocks which were being taken by the accused, having got frightened and, "the yoke or sees" striking against the complainant. According to the contention of Mr. Naik, the learned Magistrate has not made a proper approach in the appreciation of evidence and that he has begun with a reference to the statement made by the accused rather than to the evidence on the side of the prosecution.

It is no doubt true that it would have been much better if the learned Magistrate had discussed the evidence of P.W. 1 in greater detail, before proceeding to consider the statement made by the accused u/s 342 of the Criminal Procedure

Code. The accused in the course of their statements u/s 342 of the Cr.PC denied their presence at the scene of occurrence. The suggestions made during the cross-examination of "P.W. 1 to the effect that the injury to him was caused as a result of the bullocks becoming frightened when P.W. 1 obstructed the accused persons, imply the presence of the accused on P.W. 1's land, at the time of the incident; these suggestions were not quite consistent with the stand subsequently taken by the accused, in the course of their statement u/s 342 of the Cr.PC

Sri Naik tried to contend that the trial Magistrate ought not to have attached much importance to the said suggestions made during the course of the cross-examination of P.W. 1. I find it difficult to accept this contention of the learned advocate. The learned Magistrate was justified in taking into consideration the suggestions which had been made during the course of the cross-examination of P.W. 1, indicating that the injury could have been caused in a manner different from that alleged by the prosecution. Having regard to the probabilities in the case and the evidence of P.W. 1 the Magistrate took the view that the plea of the accused that they were not present at the scene of occurrence, was not true. It may be, that on this evidence and material another Court might have reached a conclusion different from that arrived at by the trial Magistrate. But, when the learned Sessions Judge was sitting as a court of Revision, he was not justified in making a reference invoking the power of the High Court u/s 439, merely because a different view in regard to the merits of the case was possible, on the material before the trial Magistrate.

6. Sri Naik also pointed out that according to the evidence before the trial Magistrate, it was only accused No. 2 that had dealt the blow which caused the bleeding injury and that in the absence of Section 34 IPC being mentioned in the charge, the first accused would not be liable to be convicted u/s 323 of the IPC. This contention appears to have been urged before the learned Sessions Judge also and he seems to have found it acceptable. What has been overlooked by the learned Sessions Judge is, that in the course of his evidence P.W. 1 has clearly stated that the first accused came and caught hold of his arms and that then the second accused dealt a blow. In exhibit 5 which is the complaint report given by P.W. 1 to the Police Station House Officer it is stated that the complainant had been caught hold of "forcibly. Therefore, it cannot be said that there is no material to convict the first accused for an offence u/s 323 of the Indian Penal Code.

7. So far as the offence u/s 447 is concerned, the evidence of P.W. 1 is sufficient to show that this occurrence took place in his land. Under these circumstances, it cannot be said that the conclusion of the trial Magistrate was one which could not at all have been properly reached on the evidence before him.

8. I find that there was not sufficient justification for the learned Sessions Judge, in the present case, to have made this reference. The conviction and sentence given by the learned trial Magistrate do not call for any interference in

revision. Consequently. This reference is reference, is rejected.