

(2011) 12 KAR CK 0315
In the Karnataka High Court
Case No : Criminal Appeal No. 1881 of 2005

Jayaram@Jayaramappa and Others

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 14-12-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 143, 147, 148, 149, 307
Probation of Offenders Act, 1958 — Section 4

Citation : (2011) 12 KAR CK 0315

Hon'ble Judges : Subhash Badi, J

Bench : Single Bench

Advocate : C.H. Hanumantharaya, for the Appellant; G.M. Srinivasa Reddy, HCGP, for the Respondent

Final Decision : Allowed

Judgement

Subhash Badi

1. This appeal is by the accused Nos. 1, 5, 6, 7 and 9 against the judgment of conviction in S.C. No 22/2003, dated 09.09.2005. on the file of the Fast Track Court III. Kolar.

2. Maasti Police Station. Malur Taluk, Kolar District had charge sheeted the accused Nos. 1 to 18 for the offences punishable under Sections 143, 147, 148, 323, 324, 506 and 307 r/w Section 149 of IPC. However, the accused were tried for the offences punishable under Sections 148 and 307 r/w Section 149 of IPC.

3. The case of the prosecution was that, in Pedavanahalli Village, Malur Taluk, there was a friction of two political parties, one lead by Janathadal (S) party and another by Congress. All "he accused belongs to the Janathadal (S) party and PW 1 and other injured belongs to Congress Party. In the village, there is a Muthanuru Bhyrappaswamy Temple, where a customary pooja is performed by the villagers. In this regard, on 20.01.2002, PW1-the complainant and some of the villagers had gone to temple for performing pooja. After returning from

pooja, while complainant PWs. 1, 3, 4, 5, 6, 9 and others were sitting in front of the house of PW 1 and distributing "Prasadam" of the deity, at about 9.30 p.m., the accused Nos. 1 to 18 holding weapons like club and stones came and assaulted PW1 and others. PW1 and other injured were taken to the SNR Hospital at Kolar at about 3.00 a.m. i.e., on the intervening night of 20/21.01.2002.

4. PW2-the doctor examined PWs. 1, 3, 4, 5, 6 and 9. Since the injuries suffered by PW-9 were grievous in nature and it was head injury, he was referred to NIMHANS Hospital, Bangalore and other injured were treated in SNR Hospital at Kolar. PW2 issued intimation to the Maasti Police Station as per Exs. P7 to P11, informing that, PW1 and others have been admitted to the hospital for the injury suffered in the assault. PW19-Sub inspector of Police, went to the hospital: and recorded the statement of PW1 as per Ex. P1 and registered the case in Crime No. 14/02 for the offences punishable under Sections 143, 147, 148, 324 and 506 r/w Section 149 of IPC/ PW19 went to the spot and conducted spot mahazar as per Ex. P13 and seized material objects. He also recorded the statement of witnesses. PW14 along with PW 16. arrested the accused Nos. 1, 3, 4, 5, 7 and 8. It appears that other accused were on anticipatory bail, they appeared before the police. PW 19 on completion of the investigation. filed the chargesheet.

5. Learned Magistrate committed the case to the learned Sessions Judge. On committal, learned Sessions Judge secured the presence of the accused and framed the following charges for the offences punishable under Sections 148 and 307 of IPC:

1. That you the above said accused, on 20.01.2001 at about 9.30 p.m. in front of the house of complainant-P.M. Venkateshappa. situated at Pedanahalli village in Malur taluk, were members of an unlawful assembly, and did, in prosecution of the common object of such assembly, viz., used unlawful force on complainant- P.M. Venkateshappa, Sreenivasappa, Muniyappa, Subramani, Ramakrishnappa and Muniraju, committed the offence of rioting and at that time were armed with deadly weapons to wit stones, choppers and clubs, and thereby committed an offence punishable u/s 148 of the Indian Penal Code.

2. That you the above said accused, on the above said place, date and time, voluntarily caused. hurt to complainant -P.M. Venkateshappa. Sreenivasappa, Muniyappa, Subramani, Ramakrishnappa. and Muniraju, with such intention and under such circumstances, that if by that act you had caused the death of above said persons, you would have been guilty of murder, and that you thereby committed an offence punishable u/s 307 of the Indian Penal Code.

Thus, you the above said accused committed the offences punishable u/s 148 & 307 of the Indian Penal Code, in prosecution of the common object of your unlawful assembly. Therefore, I hereby direct that, you be tried by this Court on the said. charges read with Section 149 of the Indian Penal Code, within the cognizance of this Court.

6. Prosecution in order to prove the guilt of the accused examined PW1 to PW21. marked Exs. P1 to P21 and produced MO1-MO 10-Clubs, MO11-MO 18-Stones, MO 19-MO 21-Mufflers, MO 22-Towel. MO 23-MO 25-Banians and MO26-Knickers.

7. The trial Court on appreciation of the entire evidence on record found that the prosecution has established that the accused Nos. 1, 5, 6, 7 and 9 have committed an offence punishable u/s 143 and 307 of IPC and accordingly it sentenced two years Rigorous Imprisonment for the offence punishable u/s 148 of IPC and four years Rigorous Imprisonment with fine of Rs. 1.000/-. In default, to undergo six months Simple Imprisonment for an offence punishable u/s 328 of IPC. However, the trial Court found that the prosecution has failed to establish the charge against the other accused and accordingly, they were acquitted. It is against the said judgment of conviction, the accused Nos. 1, 5, 6, 7 and 9 are before this Court.

8. Heard Sri. C.H Hanumantharaya, learned counsel for the accused-appellants and Sri. G.M. Srinivasa Reddy. learned High Court Government Pleader for the State.

9. Learned counsel for the accused submitted that, according to Ex. P1 the statement given by the PW 1 to the police, PW 1 has not alleged any over acts against accused No. 6. PW2-doctor who examined PWs. 1, 3, 4, 5, 6 and 9 and who has issued Exs. P2 to P6 does not mention the name of the assailants. In Ex. P2 to Ex. P6. PW 2 has mentioned that one Anasuyamma had brought the injured to the Hospital. Except PW9 all other injured were conscious. However, neither Anasuamma nor PWs. 1, 3, 4, 5 and 6 have given the names of the assailants in the history of the incident. In turn. PW2 while sending MLC as per Exs. P7 to P11 he refers to the names of the assailants though such a material was not before him nor any of the injured witnesses or persons who brought the injured had given the information.

10. Learned counsel also referred to Ex. P1 and submitted that, according to PW1 the incident occurred at about 9.30 p.m. on 20.1.2002. However, the complaint is registered at 8.00 p.m. on 21.1.2002 and the FIR reached the learned Magistrate at 10.55 a.m. on 22,1.2002. He submitted that there is a delay of nearly 23 hours in registering the case and there is further delay of nearly 14 hours in sending the FIR. Learned Counsel submitted that even according to PW-1, there are two rival political groups in the village and the inordinate delay in registering the case has given room for deliberation and discussion to falsely implicate the accused in the crime.

11. He also referred to the overt acts alleged by PWs. 1, 3, 4, 5, 6 and submitted that according to these witnesses accused No. 1 assaulted with the club on the right hand of PW6, on the head of PW3 and on the head of PW9. Accused No. 5 assaulted with the club on the head of PW 1. Accused No. 9 assaulted with the club on the head of PW4 and accused No. 7 assaulted on the head and right hand of the PW5. The weapons alleged to have used by the accused are clubs and

stones. PW2 has stated that PW3 has suffered four injuries and the said injuries are simple in nature, and that PW5 has suffered four injuries and from amongst four injuries, injury No. 2 is a grievous in nature, based on the X-ray, however, no X-ray has been produced. Even in the wound certificate--Ex. P3 there is no reference to X-ray, but clinically it is stated that there is a fracture. In respect of PW6, injury No. 1 was stated to be as grievous in nature. However, neither radiology report nor X-ray report has been produced by the PW2. In respect of PW1, injury No. 3 is stated to be grievous in nature however, injury No. 3 is cut injury on the left little finger. It does not show any fracture or there is no evidence which, shows that PW1 was admitted to the hospital for more than 20 days, In terms of provision of Section 320 of IPC. the injury No. 3 which is stated to be grievous in respect of PW 1, also cannot be treated as grievous injury.

12. Referring to the evidence of PW2, the learned counsel submitted that, though doctor stated that PW5, 6 and 1 have suffered grievous injuries but they are neither supported by the X-ray nor by radiology report. Prosecution has not established that there was a fracture or a grievous injury and in the absence of such material the injury on the body of PWs. 5, 6 and 1 cannot, be held as grievous injury.

13. He referred to the evidence of PW21-Doctor who treated PW9, wherein he has stated that PW9 the injured had suffered the fracture of scalp and he was admitted to the hospital for more than one month. However, PW9-the injured in his evidence has stated that on the date of incident, at a distance about 100 feet from his house, near the school, there was a quarrel and about 200 people had gathered, when he went there, he was assaulted by Angadi Muniyappa on his head and he suffered bleeding injury and lost his consciousness. In the cross-examination, he has stated that Angara Muniyappa-PW 3 and Venkateshappa-PW 1 assaulted him. The learned counsel submitted that PW 9 is an injured witness and he has been examined by the prosecution, this witness has not been treated as hostile, Hence, PW9 has not alleged the involvement of the accused but he has categorically stated that it is PW1 and PW3 assaulted him. Hence, even if the PW9 has suffered grievous injury. but the said injuries are not caused by the accused but by the PW1 and PW3. The prosecution has failed to explain the same.

14. In this regard, he also relied on the evidence of PW19 to point out that. PW19 in examination chief itself has admitted that, when he went to the hospital to record the statement of PW1 he saw accused Nos. 1, 3, 5, 4 and 7 were also admitted to the hospital and he also pointed out that the accused were also injured in the incident. Evidence of PW9 also shows that there were about 200 people, it was dark and it was not possible to see which of the persons assaulted to whom.

15. In this regard, he also relied on Ex. P13-spot mahazar and pointed out that in the spot mahazar place shown is the place between boundaries of east where there is water system towards west there is one Narayanappa's house and towards south an electrical pole is found. There is no reference to the house of

PW1 whereas, in Ex. p 1 complainant specifically alleges that incident occurred in front of his house. If the place of occurrence is not in front of the house of PW1, if it is elsewhere, the accused cannot be said to have been the aggressors. If there is quarrel between PW1 and others and it was at different place, and if the accused have also suffered injuries, it cannot be said that the accused had come with a common object to assault PW1 and others.

16. He submitted that evidence led by the prosecution shows that the place of occurrence is not in front of the house of PW1. It also shows that the accused had also suffered injuries and were admitted to the same hospital and the evidence of PW9 shows that there were 200 people gathered and he was assaulted by PW1 and PW3. This clearly shows that the prosecution has not disclosed the genesis of the offence, in turn. It has suppressed as to how the accused had sustained injury. It is suppressed overt act of PW1 and PW3 on the PW9. If the genesis of the offence is doubtful, the whole prosecution must fail.

17. He also submitted that if injury sustained by PWs. 1, 3, 4, 5, and 6 are simple in nature and have suffered in a quarrel between two groups and when the prosecution ease that the incident had occurred in front of the house of PW1 is doubtful, the accused Nos. 1, 4, 5, 6, 7 and 9 being the resident of same village and incident had occurred on account of the political rivalry in the village and the said incident had occurred nearly about 10 years ago and all the accused were being age of 20 and 30s and thereafter in the village there has been no incident for last 10 years between these groups. Groups also have been dissolved and they have taken different: political parties and there is no rivalry. Hence, if the accused were sentenced it will harm them, and the case be considered u/s 4 of Probation of Offenders Act by releasing them on execution of bond, instead of sentencing, as there is no previous conviction or no incident alleged by the prosecution against these accused. He also submitted that even otherwise also they have undergone pre-trial detention for about 1 month 25 days and after the conviction one month's, hence the same may be treated as sufficient sentence for the offence.

18. On the other hand, learned High Court Government Pleader submitted that the prosecution has examined PWs. 1, 3, 4, 5, 6 and 9. All these witnesses are injured witnesses and their evidence is corroborated by the evidence of PWs. 7, 8, 10 and 12 eye-witnesses. Though, PWs. 4 and 11 have turned hostile, there is no reason to doubt the credibility of the injured witnesses. He also submitted that even though there is some discrepancy in Ex. P13 as regard to the place of occurrence of the incident, evidence of PW 10 clarifies that the incident occurred in front of the house of PW1. i.e., near the house of Narayanappa which is near the house of PW1. The place of occurrence could not be treated as different places, He also submitted that though there is delay in filing the complaint but the evidence of PWs. 1, 3, 4, 5, 6 clearly shows that the incident had occurred at 9.30 p.m. on 20.1.2002. All the injured were taken to the hospital, they were examined at 3.00 a.m. i.e., on the night of 20/21.1.2002. The doctor-PW2 in his

evidence stated that he sent the intimation i.e.. Exs. P1 to 11 to the Police Station, immediately PW19 has recorded the statement of PW1. Even if there is some delay, but it is on account of the several injured witnesses being treated and in this process there is delay and it is not deliberate. He also submitted that FIR has reached at 10.55 a.m. on 22.01.2002. Since the complaint itself is lodged at 8.00 p.m. on 21.01.2001. on 22.01.2002 at 10.55 a.m. the learned Magistrate has received the FIR. Hence, it cannot be treated as delay in filing the complaint and sending the FIR. There is no reason for the complainant to falsely implicate the accused when they have suffered grievous injury.

19. As far as grievous injury is concerned, learned counsel submitted that the doctor has clinically examined PWs. 5, 6 and 1 and all these three witnesses have suffered grievous injury, PW9 has suffered grievous injury, it is clear from Exs. P19, 20, 21. Though PW9 has alleged that the PWs. 1 and 3 assaulted him, but his evidence has to be read with other evidence. The weapons used for causing the assault being clubs which seized under the spot mahazar are deadly weapons. The trial Court on proper appreciation of the evidence on record has held that the accused have committed an offence under 326 of the IPC, Since the accused were more than five in number they have formed unlawful assembly, had come with deadly weapons. The prosecution has proved the offence punishable u/s 148 and 307 of IPC. He supported the findings of the trial Court.

20. In the light of the submission made by the learned counsel on both side, the point that arise for my consideration is;

Whether the judgment of conviction passed by the trial Court calls for interference?

21. The evidence of PW1, 3, 4, 5, 6 and 9 categorically shows that they have sustained injury. To prove that they have sustained injuries, PW2-Doctor has been examined. PW2 in his evidence has stated that, on 21.01.2002 he treated PW9 at 3.00 a.m., at 3.10 a.m. he treated PW3. Thereafter he treated PW5, 6 and 1. His evidence shows that all these persons had suffered injuries. The evidence of PW19-I.O. also shows that the accused were also injured in the incident. This evidence shows that, both PW1, 3, 4, 5, 6 and 9 and some of the accused have sustained injuries. The evidence of these witnesses is also supported by the evidence of PW7, 8, 10, 12 who have also supported the prosecution case that in the incident. PWs. 1, 3, 5, 6 and 9 have suffered injuries.

22. No doubt. there is delay in recording the statement of PW1 but it is not in dispute that PW1 and other injured were taken to the hospital by three persons on the night of 20.01.2002. the incident had occurred at 9.30 p.m. on 20.01.2002 and immediately the injured were taken to the hospital. There is no delay in reaching the hospital. The distance between the place of occurrence and the hospital is 25 km reaching at 3.00 a.m. does not show that there is any delay. PW2 in his evidence stated that he has sent the intimation as per Ex. P7 to 11, if the intimation was given to the police and if the police has reached the

hospital at 8.00 p.m. on 21.01.2002, though there is delay but that delay can not be attributed as a reason to deliberation and discussion to falsely implicate the accused. PW2 in his evidence, he directed PW9 to be shifted to NIMHANS Hospital. These circumstances do show that PW1 and others could not have gone to the Police Station to give complaint instead of taking treatment and also giving treatment to PW9. In my opinion, no doubt, there is some delay but that itself, does not stand to reason that the complainant has falsely implicated the accused.

23. However, PW2 in so far as injuries on the body of PWs. 1, 3, 4, 5, 6, he has issued Exs. P2 to 6. Now. in his evidence, he has stated that PW9 had suffered head injury- and he was shifted to NIMHANS hospital but in respect of PW3 he has stated that injuries are simple injury. In respect of PW5 though injury No. 2 is stated to be grievous in nature, in his evidence he has stated that PW5 had suffered fracture of ulna and he found it from the X-ray. Prosecution has not produced X-ray to prove that PW5 had suffered fracture. Hence, in the absence of the production of the X-ray, it cannot be held that the injuries sustained by the PW5 is a grievous injury.

24. Similarly injury on the body of PW6 is concerned, injury No. 1 is stated to be grievous in nature and it is also based on the X-ray and radiology report. However, neither X-ray nor radiology report is produced. The injury on the body of PW1 is concerned doctor has stated that injury No. 3 is grievous injury but it is cut injury there is no evidence to shows that PW1 was treated as inpatient for more than 20 days. In view of the non-production of the X-ray and radiology report the injuries cannot be held as grievous in nature. Further there is a rivalry between these two groups. It that is so. the prosecution should have produced the necessary evidence to prove the injuries as grievous injuries. If the grievous injury is not proved by the prosecution then by these injuries have to be treated as simple injury as there is no other evidence to prove the same.

25. As far as evidence of PW21 who treated PW9 is concerned, no doubt, he has stated in his evidence though PW9 suffered fracture of scalp and naturally it is grievous injury. It is also supported that he treated for one month. It also supports the case of the prosecution that PW9 has suffered grievous injury. However, PW9 in his evidence has not alleged any overt act against the accused and in turn in the examination chief itself he has stated that PW3 assaulted on his head and he suffered bleeding injury and injury found by the PW21 is also head injury. If the head injury is caused by PW3 and there is no allegations against any of the accused assaulting PW9. This evidence also does not show that there was any common intention on the part of the accused to assault PW9 or others Further there is no reason to doubt the evidence of PW9 as he is not only prosecution witness but he is not treated as hostile. PW9 has also stated that there were 200 people and there was a galata. If he had suffered injury on account of the assault by PW3. and it was mob of 200 persons, it is difficult to hold that they had the common intention.

26. Except PW9, other injured have not suffered grievous injuries. PW9 has not

alleged that the accused assaulted him. Hence, if the injuries on the body of PW9 is excluded then others have only suffered simple injuries. The trial Court while considering the evidence of these witnesses to held that PWs. 5, 6 and 1 have suffered grievous injury, has not appreciated the evidence in proper perspective. It has committed an error in holding that the accused have caused the grievous injuries, when there is no evidence to support.

27. In my opinion, the prosecution though has proved that PWs. 2, 3, 4, 5 and 6 have suffered injury, it cannot be termed as "grievous injury"", as the evidence of PW2 does not prove the same nor it amounts to grievous injury within the meaning of Section 320 of IPC.

28. The evidence on record shows that, the injured witnesses, viz., PWs-1, 3, 4, 5 and 6 were assaulted by clubs by the accused Nos. 5, 9 and 7. No doubt. PW-15 and PW-20, who have been examined as panch witnesses to the spot mahazar, have not supported the ease of the prosecution. however, there is no reason to disbelieve the evidence of the injured witnesses, who have suffered the injury and in their evidence, they have specifically stated that these accused assaulted them with the clubs and there is no reason to doubt the credibility of their evidence. If the evidence of PWs- 1, 3, 4, 5 and 6 being the injured is reliable, it also proves that" they have suffered injuries, as a result of assault by the accused with the club. However, the club seized under Ex. P13 is stated to be 2 1/2 feet long, which can come within the meaning of "weapon" referred to u/s 324 of IPC.

29. The evidence clinchingly proves that the accused assaulted PWs-1, 3, 4, 5 and 6 and it is also corroborated by the evidence of the eyewitness. In these circumstances, if the prosecution has proved the injuries on these injured witnesses, though they are simple in nature but caused by the clubs, the evidence fully proves the case of the prosecution for an offence punishable u/s 324 of IPC.

30. However, insofar as the evidence of PW-9, it does not show that the accused forming unlawful assembly, holding weapons came and assaulted. The evidence of the prosecution also does not prove that the accused had formed an unlawful assembly and committed the offence, in turn, the evidence of PW-19 shows that the accused were also injured in the incident. The evidence of PW-9 shows that, PW-3 assaulted him and in the cross-examination. he also states that, PW-1 also assaulted him. Ex. P13 also creates doubt as to the place of occurrence. These evidence only suggest that both the groups quarreled with each other and in the incident. PWs-1, 3, 4, 5 and 6 have suffered injuries. Since there is serious contradiction as to the place of offence and PW-9 states that, PW-3 and PW-1 assaulted him in my opinion, the offence punishable u/s 148 IPC is not supported by any evidence much less any legal and acceptable evidence.

31. However the evidence do prove that, PWs-1, 3, 4, 5 and 6 have suffered injuries, it also proves that, the accused assaulted them with the club. The

evidence does not show that the accused assaulted on vital part, as such, there is no evidence for offence punishable u/s 307 or Section 326 of IPC. But the evidence proves the prosecution case for offence punishable u/s 324 of IPC. Hence, the judgment of conviction of the accused for an offence punishable under Sections 148 and 326 of IPC requires to be set aside, but accused are liable to be convicted for an offence punishable u/s 324 of IPC Accordingly, I pass the following;

Appeal is partly allowed. The judgment of conviction for an offence punishable under Sections 326 and 148 of IPC, is hereby set aside. The accused are convicted for an offence punishable u/s 324 of IPC.

ORDER

Heard the learned Counsel on sentence.

Learned Counsel appearing for the accused submitted that, the incident had occurred about 10 years ago and the relationship between the accused and the complainant and other witnesses is now cordial and there is no antecedent against the accused nor there is any incident even after the alleged incident. He also submitted that, no such political friction is there in the village and they were all aged about 30 years at the time of incident and after 10 years, if they are again sentenced with imprisonment, it would harm not only the accused, but also the family of the accused, who are depending on them.

On the other hand, learned Government Pleader submitted that, since the Court has found that the accused have been convicted for an offence punishable u/s 324 of IPC, reasonable punishment be imposed.

During trial, accused Nos. 1 to 5 and 7 have undergone pretrial detention for a period of one month 25 days and they have served the sentence for a period of one month after conviction and accused Nos. 6 and 9 have served sentence for a period of one month.

Having regard to the nature of incident having taken place 10 years ago and all the injured as well as the accused quarreled with each other in connection with political friction in the village and thereafter there has been no incident of any nature between the accused and the complainant and they were aged about 30 years at the time of incident taking these circumstances into consideration and after 10 years again sentencing them to serve imprisonment may not serve any purpose, however, at the same time, reasonable fine could be imposed to subserve the purpose.

Accordingly the accused are sentenced with imprisonment for the period for which they had undergone pretrial and post-conviction imprisonment for the offence punishable u/s 324 of IPC with fine of 20,000/- each, in default, to undergo further sentence of three months" S.I. each. Out of the fine amount. PWs-1, 3, 4, 5 and 6 be given Rs. 15,000/- each and the remaining amount be appropriated to the State account towards fine.