

(2014) 04 KAR CK 0036

In the Karnataka High Court

Case No : Criminal Revision Petition No. 533 of 2009

Kumar

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 24-04-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, 324, 34, 341

Citation : (2014) 4 AKR 798 : (2014) 5 KarLJ 92

Hon'ble Judges : N. Ananda, J

Bench : Single Bench

Advocate : M. Sharass Chandra, Advocate (Absent), Advocate for the Appellant;
Nasrulla Khan, High Court Government Pleader, Advocate for the Respondent

Judgement

N. Ananda, J.—The petitioners (accused 1 and 2) were tried and convicted for offences punishable under Sections 323, 324, 341 read with Section 34 of Indian Penal Code, 1860 by the learned Trial Judge. Therefore, they were before the First Appellate Court. The learned Judge of the First Appellate Court on re-appreciation of evidence, acquitted accused 1 and 2 of offence punishable u/s 323 of IPC and confirmed the conviction for Sections 324 and 341 of IPC. The learned Counsel for petitioners is absent. In a decision in the case of Surya Baksh Singh Vs. State of Uttar Pradesh, , the Supreme Court has held:

(a) That the High Court cannot dismiss an appeal for non-prosecution simpliciter without examining the merits; (b) That the Court is not bound to adjourn the matter if both the Appellant or his Counsel/Lawyer are absent; (c) That the Court may, as a matter of prudence or indulgence, adjourn the matter but it is not bound to do so; (d) That it can dispose of the appeal after perusing the record and judgment of the Trial Court; (e) That if the accused is in jail and cannot, on his own, come to Court, it would be advisable to adjourn the case and fix another date to facilitate the appearance of the appellant/accused if his Lawyer is not present, and if the Lawyer is absent and the Court deems it appropriate to appoint a Lawyer at the State expense to assist it, nothing in law would preclude

the Court from doing so; and (f) That if the case is decided on merits in the absence of the appellant, the Higher Court can remedy the situation".

2. I have heard learned Government Advocate for State.

3. The prosecution has relied on evidence of P.Ws. 1 to 8. P.W. 1-Chinnaswami Naika had not witnessed the incident of assault. He had learnt the incident of assault at 8.30 p.m. on 21-6-2004. He had lodged first information on the basis of information conveyed to him. P.W. 2-Papanaika stated to be the eye-witness has not supported the case of prosecution. He was declared as hostile witness. P.W. 3-Nagesh has attested the spot inspection mahazar. He has not given incriminating evidence against accused. P.W. 4-Nagaraju has attested the mahazar under which weapons viz. chopper and club, were seized.

4. P.W. 5-Dr. M. Mahadeva Murthy had examined the injured, namely, P.W. 6-Somanna Naika at 10.35 p.m. on 21-6-2004 in Government Hospital at Nanjangud. On examination, P.W. 5 had noticed following injuries:

(i) a contusion present over the left thigh, measuring 6 cm. x 4 cm., red and tender;

(ii) an abrasion present over the left thigh, measuring 4 cm. x 3 cm., red and tender;

(iii) a contusion present over the right thigh, measuring 5 cm. x 4 cm., red and tender;

(iv) an abrasion present over the left ear (pinna) measuring 2 cm. x 1 cm., red and tender;

(v) a contusion 3 cm. x 3 cm. over the right forearm, red and tender;

(vi) a contusion 3 cm. x 2 cm. over the left lumbar area, red and tender;

(vii) tenderness present over the right knee joint, movements painful.

5. The evidence of P.W. 7 and P.W. 8 relates to investigation of case. In the circumstances, the entire case of prosecution rests upon the evidence of P.W. 6-Somanan Naika who was the victim of assault.

6. P.W. 6-Somanna Naika has deposed that on the date of incident at 8.00 p.m., he was proceeding towards bus stand of Kupparahalli Village from his house. At that time, accused 1 and 2 came on a scooter from his behind and assaulted him. P.W. 6 has deposed that accused 2 assaulted him with a club and accused 1 was holding P.W. 6. P.W. 6 has categorically deposed that he was assaulted with a club and no other weapon was used to assault him. P.W. 6 was declared as a hostile witness.

During cross-examination by the learned Public Prosecutor, P.W. 6 has deposed that both the accused assaulted him and fisted him. P.W. 6 has deposed that he did not see accused 2 assaulting him with chopper from behind.

During cross-examination by learned Counsel for accused, P.W. 6 has admitted that distance between bus stand and his house is about one furlong. P.W. 6 has not given evidence to a specific question of assault by accused 1 and 2. He has deposed that accused 1 and 2 fisted him. Accused 2 assaulted him with a club.

7. The medical evidence reveals that P.W. 6 had suffered contusions and abrasions. He had not suffered injuries which would be caused if a person is assaulted with a chopper. P.W. 6 has not deposed that he was wrongfully restrained by accused 1 and 2. The Courts below have not noticed these material discrepancy in the evidence adduced by prosecution. The evidence of P.W. 6 is hardly sufficient to hold accused guilty of offences punishable under Sections 324 and 341 of IPC. The evidence of P.W. 6 would reveal that he was confronted by accused 1 and 2 and they fisted him. P.W. 6 has deposed that accused 1 and 2 were proceeding on a scooter. It looks improbable that they were carrying weapons like chopper and club. It looks probable that accused 1 and 2 had picked up quarrel with P.W. 6 and fisted him. Therefore, accused 1 and 2 cannot be held guilty of offences punishable under Sections 341 and 324 of IPC. The Courts below without noticing the basic material discrepancies in evidence adduced by prosecution have held the accused guilty of the aforestated offences.

8. In a decision in the case of Sheetala Prasad and Others Vs. Sri Kant and Another, , the Supreme Court has held that this Court can exercise revisional jurisdiction when the findings are recorded by overlooking material evidence or by considering irrelevant evidence.

9. In the case on hand, apart from evidence of P.W. 6, we do not have evidence of other eye-witnesses as they have turned hostile. P.W. 6 who is stated to be an injured witness has not given consistent evidence about assault by accused 1 and 2 with a club and chopper. The medical evidence also does not support the case of prosecution that accused 1 and 2 assaulted P.W. 6 with a club and chopper. Therefore, I hold accused 1 and 2 guilty of an offence punishable u/s 323 of IPC. In the result, I pass the following:

ORDER

The petition is accepted. The impugned judgments are modified.

The conviction of accused 1 and 2 for offences punishable under Sections 324 and 341, is set aside.

Accused 1 and 2 are convicted for an offence punishable u/s 323 and sentenced to pay a fine of Rs. 10,000/- each, in default to undergo simple imprisonment for a period of one month.

Out of the fine amount, a sum of Rs. 5,000/- shall be paid as compensation to P.W. 6 as held by the Trial Court.