

**(2017) 06 KAR CK 0110**  
**In the Karnataka High Court**  
**Case No : 3626 of 2011**

Neelkantharaya S/o Sharanappa Paspul

APPELLANT

Vs

The State of Karnataka

RESPONDENT

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**Date of Decision :** 19-06-2017

**Acts Referred:**

**Citation :** (2017) 06 KAR CK 0110

**Hon'ble Judges :** B. A. Patil

**Bench :** SINGLE BENCH

**Advocate :** D.S.Patil, N.K.Boob, P.S.Patil

**Final Decision :** Allowed

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## Judgement

1. The present appeal has been preferred by the accused/appellant being aggrieved by the Judgment of conviction passed in Special Case No.69/2010 by District & Sessions Judge Yadgir by its Judgment and order dated: 24-06-2011.

2. The brief matrix of the case of the complainant are that, complainant is working as village accountant of Balkal village. On 09-12-2009 during morning hours, he went to the office of Tahasildar at Shahapur for some work, at that time, Tahsildar informed about illegal construction of house by one Siddaling Reddy of Balkal village and he instructed the complainant to enquire whether he has obtained necessary permission for construction of the house. Complainant went to Balkal village and met the said Siddaling Reddy and when he was asking, whether he has got permission or not to construct the house, the son-in-law of Siddaling Reddy Neelkanth Raya the present accused/appellant, came there and abused him as "VERNACULAR MATTER OMITTED" and by abusing so he slapped thereafter pulled for which he fell down and sustained injuries and by seeing the same one Shivappa, Mallayya, Channappa and others came and pacified the quarrel. Subsequently the complainant went to the police station and filed the complaint as per Ex.P.1. The police registered the case in crime No.254/2009 for the offences punishable U/Sec.353, 332, 504 of Indian Penal Code and also U/

Sec.3(1) (x) of SC/ST (Pa) Act, 1989. After investigation, the charge sheet was came to be filed.

3. After filing of the charge sheet, the learned Sessions Judge who is the trial Judge of such offences, secured the presence of the accused after complying the requirements of Sec.208 & 209, after hearing the accused, the charge was framed, since the accused pleaded not guilty and claimed to be tried. The trial was conducted. The prosecution examined ten witnesses as P.W.1 to P.W.10 and got marked Ex.P.1 to Ex.P.9. After closure of the evidence, the statement of accused was recorded U/Sec.313 of Cr.P.C. He denied the incriminating material put against him and accused did not choose to lead any evidence on his behalf.

4. On hearing, the parties to the lis, the learned Sessions Judge passed the impugned order, whereunder the accused has been convicted. Being aggrieved by the said order the present appellant is before this Court, in this Appeal.

5. The main grounds urged by the learned counsel for the appellant are that the impugned order is not sustainable in law. It is contrary to law and facts of the case on hand. He further contended that eyewitnesses to the alleged incident have not supported the case of the prosecution, they have been treated as hostile. The trial Court only on the interested testimony of PW.1 and PW.2 has wrongly convicted the accused. He also contended that P.W.1 had no right to inspect the panchayat work. This aspect has been admitted by him. This admission has been ignored by the trial Court and has wrongly come to the wrong conclusion and has convicted the accused/appellant without proper appreciation of the evidence. He would further contended that there are no specific allegations made against the accused/petitioner for having committed an offence U/Sec.504 of Indian Penal Code. The trial Court without properly considering the said aspect has convicted the accused. He would also further contended that though the injured P.W.1 had deposed that he has sustained bleeding injuries but he has not taken any treatment and even the pant, which is stained with blood has also not been seized by the police. He would also further contended that there is no corroboration in the evidence of P.W.1 and P.W.2. The conviction of the trial Court is illogical and untenable in law and the same is liable to be set aside. On these grounds he prayed for allowing the appeal by setting aside the impugned order.

6. Per contra, the learned High Court Government Pleader, vehemently argued and contended that there is corroboration in the evidence of P.W.1 and P.W.2. P.W.2 is eyewitness, who was present at the time of alleged incident. He has specifically deposed that the accused/petitioner abused by taking the name of the caste and thereafter slapped and pulled him and as a result of the same he sustained injuries. He would also further contend that PW.8, the Tahsildar has issued Ex.P.8 to go and inspect the construction of the house of Siddaling Reddy, accordingly he has gone there and the contention of the learned counsel for the appellant/accused, that he has gone without there being any instruction is not believable and tenable in law. He would also further contended that the trial

Court after considering all the material on record has rightly come to right conclusion and has convicted the accused/appellant. The accused/appellant has not made out any good grounds so as to interfere with the order of the trial Court. The order of the trial Court deserves to be confirmed. On these grounds he prays for dismissal of the appeal.

7. I have carefully considered the submission and I have also perused the records. In order to prove the case of the prosecution, the prosecution got examined P.W.1 to P.W.10. P.W.1 is the injured complainant he has deposed that, he belongs to Schedule Caste and on 09-12-2009 in the morning hours he went to the office of Tahasildar, there he was instructed by the Tahasildar that, he has to go to Balkal village to prevent one Siddaling Reddy who un- authorisidely constructing the house without getting any permission. He has further deposed that accordingly, he went to meet the said Siddaling Reddy and told him to stop unauthorized construction, at that time the son in law of the said Siddaling Reddy, the present accused, came there and abused him in filthy language and also with reference by taking the name of caste of the accused slapped him and pushed him and as a result of the same he sustained injuries on the left hand elbow and left knee. He has further deposed that at that time C.W.3 to C.W.5 who were present came there and pacified the quarrel. During the course of cross-examination of this witness he has admitted that even any illegal construction comes to the notice, it can be stopped only by the Secretary of the Panchayat and he has got the power. He has also further admitted that he has not been given any written instruction to stop the construction. It has been further elicited in the cross-examination that when accused pulled he fell down and he has sustained abrasion and a bleeding injury and the blood stain was there on the pant and he has also admitted that he has not taken any treatment in the hospital. Other suggestions have been denied by this witness.

8. P.W.2 is an eyewitness he has also deposed that when the complainant told Siddaling Reddy to stop unauthorized construction, at that time accused became angry and abused him in filthy language and also with reference to taking the name of the caste of the accused pushed the complainant on the ground and in that process he sustained injuries on the left hand elbow and left knee. He has further deposed that he was present at that place and he has received the compensation cheque from the complainant and as such he went alongwith the complainant, as he has asked him to come. During the course of cross-examination he has deposed that, he has gone to Balkal village for the first time and other suggestions have been denied. P.W.3 and P.W.4 are the spot mahazar panchas to Ex.P.2. They have not supported the case of the prosecution they have been treated as hostile and even during the course of cross-examination by the learned public prosecutor nothing has been elicited so as to substantiate the case of the prosecution. So also P.W.5 to P.W.7 are the eyewitnesses to the alleged incident. They have not supported the case of the prosecution, they have been treated as hostile. PW.8 is the Sheristedar of Shahapur Tahasildar office, he has deposed that on 31-12-2009 the Investigating Officer asked him to give the

caste certificate of the accused and the complainant and accordingly he issued Ex.P.6 and Ex.P.7 and he has also further deposed that he has also issued letter Ex.P.8 to show that the complainant is working as village accountant at Balkal village. During the course of cross-examination he has deposed that P.W.1 has not been instructed for any special work, except that nothing has been elicited from the mouth of this witness. P.W.9 is the Police Sub Inspector who registered the case and issued the F.I.R. to the Court. P.W.10 is the Dy. S.P. who took further investigation, collected the documents, recorded the statements, draw the panchnama and after investigation he filed charge sheet against the accused / appellant. During the course of cross-examination of these two witnesses nothing has been elicited, so as to substantiate the case of the accused.

9. The only evidence available before this Court is that of P.W.1 PW.2, P.W.8 to P.W.10. It is the contention of the learned counsel for the appellant that there is no corroboration in the evidence of prosecution witness and without there being any material the trial Court has erroneously convicted the accused. In order to convict the accused U/Sec.504 of Indian Penal Code it is not the reaction of the complainant but the intention of the accused to provoke or his knowledge that he is likely to provoke the person insulted to commit an offence. The provisions of Sec.504 of Indian Penal Code are attracted only when the accused insults the complainant, the insult must be of such a nature that it should be a provocation to the complainant and the accused intended or knew that the provocation was likely to cause the complainant to either break public peace or commit any other offence. As per the evidence of PW.1 he has deposed that the accused has abused "VERNACULAR MATTER OMITTED" P.W.2 has also deposed "VERNACULAR MATTER OMITTED" . By going through the said words there is no corroboration of evidence of P.W.1 and P.W.2. The said evidence does not satisfy the ingredients of Sec.504 of Indian Penal Code. If P.W.2 was there at the place of incident, at the alleged time of abusing, then definitely he could have used the same words during the course of his examination in chief. Be that as it may, even there is no clear cut evidence to show that the said abusive words were uttered by accused to insult the complainant and provoke him so as to break the public peace or commit any offence.

10. Leave apart this, the conduct of P.W.2 appears to be not natural. When he is said to be present there, then he has not made any efforts to prevent the accused either abusing complaint nor pulling and lifting him when he fell on the ground. In that light the presence of PW.2 on the spot and he hearing the same creates doubt.

11. The accused is also convicted U/Sec.332 of Indian Penal Code for having caused hurt to a public servant to deter his duties. Though PW.1 has deposed that immediately after abusing accused slapped and pushed him and as a result of the same he fell down and sustained the scratch injuries to his left hand ankle and left leg knee, but PW.2 has not specifically stated to which hand and leg P.W.1 sustained the injuries. Be that as it may even though he has deposed that

he has sustained the injuries he has not taken any treatment by going to any of the hospitals. Though he has deposed that there were bloodstains on his pant but the said pant has also not been produced before the Investigating Officer, nor it has been seized by the Investigating Officer. Leave apart this in order to attract the provisions of Sec.332 of Indian Penal Code the prosecution must establish that the Government servant is on duty on the alleged date of incident. Though Ex.P.8 has been produced to show that the complainant was on duty on 09-12-2009 but the said letter has been issued at the request of Revenue Inspector to the Dy. S.P the Investigating Officer. It is the specific case of the prosecution that the complainant had been to Shahapur, Tahsildar office on 09-12-2009 and at that time Tahasildar called him and asked him to go and ask Siddaling Reddy whether he is constructing the house with permission and to stop the construction. If that being the case then under such circumstances, for the reasons best known to the Investigating Officer and the prosecution the said Tahasildar has not been examined before the Court. The non-examination of material witness creates a doubt in the case of the prosecution. Even the evidence with regarding to the abuse of the complainant by the accused by taking the name of the caste is also very vague and without there being any corroboration. PW.1 has admitted in the cross-examination that he has not been given written instruction to stop the construction. Be that as it may, he further admitted that it is the duty of the Secretary of the Panchayat who has got duty to stop such illegal construction. When it is not the duty of complainant then question of he being on duty and obstructing him also does not arise at all. Under the circumstances question of conviction U/Sec.332 of Indian Penal Code also appears to be wrong. The evidence of P.W.1 and P.W.2 appears to be interested testimony. Further I am conscious of the fact that merely because they are interested witnesses their testimony cannot be discarded and it has to be weighed carefully in that light. It is the specific case of the accused that the complainant is working as a village accountant in Naikal earlier to Belkal and at that time he was kept under suspension at the instance of the accused and as a result of the same to take revenge a false complaint has been registered. Though the suggestion has been denied but it is the specific contention in this behalf. Be that as it may, it is the evidence of PW.1 that, if there is any unauthorized construction, if it is noticed, it is the Secretary of the Panchayat who is having authority to stop such construction. When a Secretary of the Panchayat has been authorized and it is within the knowledge of the complainant who is working as a village accountant, then under such circumstances immediately after the Tahasildar telling him he could have said the said fact to him or else he could have taken the Secretary of the Panchayat alongwith him to stop the illegal construction. In the absence of any such thing it creates suspicion in the case of the prosecution. It is well established principle of the law that if there is any doubt in the case of the prosecution then that benefit of doubt should go to the accused. This aspect of the evidence has not been properly considered and appreciated by the trial Court, in its right perspective and thereby some illegality has been caused and an erroneous Judgment has been passed which requires

interference by this Court.

12. When no independent witnesses have supported, there is no corroboration in the evidence of PW.1 and P.W.2 and even there are so many lacunas in the investigation and material witness has not been examined. It is well established principles of law that from the evidence if there are two probabilities then, one beneficial to the accused has to be given, then under such circumstances, I feel that the Judgment of conviction and sentence passed by the trial Court requires to be set aside. Accordingly the same is set aside and the accused/appellant has been acquitted from the charges leveled against him U/Sec.504. 332 of Indian Penal Code and U/Sec.3(1) (x) of SC/ST (PA) Act.

Keeping in view the above facts and circumstances I pass the following:

ORDER

Appeal is Allowed.

Accused/appellant is acquitted for the offences U/Sec.504. 332 of Indian Penal Code and U/Sec.3(1) (x) of SC/ST (PA) Act in S.C. No.69/2010 by order dated: 24th June 2011.