

(2013) 09 KAR CK 0401

In the Karnataka High Court

Case No : Criminal Revision Petition No. 2155 of 2010

Raju Pandu Teli and Others

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 03-09-2013

Acts Referred:

Citation : (2014) 2 AKR 342 : (2013) 6 KarLJ 639 : (2014) 3 KCCR 2102

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : Jagadish Patil, for the Appellant; Vinayak S. Kulkarni, High Court Government Pleader, for the Respondent

Judgement

Anand Byrareddy, J.—Heard the learned Counsel for the petitioners and the learned Government Pleader. The petitioners were accused of having committed offences punishable under Sections 341, 324, 326 and 506 read with Section 34 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC for brevity"). According to the complainant, one Mahadev Teli, the petitioners, and his family were related and there was a long-standing dispute between them over their respective lands. It transpires that on 20-5-2003 at about 2 p.m. when the complainant was returning from his land and while passing by the house of the accused, all the accused with ill intention had picked up a quarrel with the complainant and his uncle and hand attacked them with an iron rod, badige and stone, whereby it was alleged that accused 1 had assaulted Bhima Teli with a badige on his left cheek, lower rib and the complainant, on his left-hand. Mahadev Teli was attacked on his right-hand and also on his head. Accused 2 is also said to have assaulted Mahadev Teli with an iron rod on his left hand, head and on his back. Accused 2 had assaulted Mahadevi Teli with a stone on his back and face. Accused 3 had assaulted C.W. 6, the mother of the complainant, with a stone. Accused 4 is said to have restrained Bhima Teli enabling the others to assault him and they were all abused in foul language. As a result of this attack all the injured witnesses having suffered several injuries had initiated criminal

proceedings after obtaining medical treatment. On the basis of the complaint, further proceedings were taken by the police and a case had been registered against the accused. On completion of the investigation the petitioners had been charge-sheeted and ultimately when charges were framed the petitioners had pleaded not guilty and claimed to be tried. The prosecution examined P.Ws. 1 to 11 and had got marked Exs. P. 1 to P. 12a and for the defence-Exs. D. 1 to D. 5 had been marked. After recording the statement of the accused u/s 313 of the Code of Criminal Procedure, 1973 (hereinafter referred to "Cr.P.C.", for brevity) and after hearing the respective parties the Trial Court had framed the following points for consideration:

1. Whether the prosecution proves beyond all reasonable doubt that accused 4 has caught hold C.W. 4 and restrained him from moving in any direction and thereby committed an offence punishable u/s 341 read with Section 34 of IPC?
2. Whether the prosecution proves beyond all reasonable doubt that accused have abused complainant and his uncle Bhima Teli in filthy language and thereby gave provocation and thereby committed an offence punishable u/s 504 read with Section 34 of IPC?
3. Whether the prosecution proves beyond all reasonable doubt that accused 3 assaulted C.W. 6 with stone and thereby caused simple injuries and committed an offence u/s 324 read with Section 34 of IPC?
4. Whether the prosecution proves beyond all reasonable doubt accused 1 assaulted C.W. 4 on left forehead and complainant on left-hand and accused 2 assaulted C.W. 5 on left-hand with iron rod causing them grievous injuries and thereby committed an offence punishable u/s 326 read with Section 34 of IPC?
5. What order?

2. The Trial Court answered Point Nos. 1 and 2 in the negative and Point Nos. 3 and 4 in the affirmative and on a discussion of the evidence on record had convicted accused 3 and sentenced him to simple imprisonment for a period of six months for the offence punishable u/s 324 read with Section 34 of IPC and to pay a fine of Rs. 2,000/- and in default of payment of fine to undergo simple imprisonment for a period of one month. Accused 1 and 2 were convicted and sentenced to undergo simple imprisonment for two years for the offence punishable u/s 326 read with Section 34 of IPC and to pay a fine of Rs. 2,000/- each and in default to undergo simple imprisonment for a period of one month for the offence that having been challenged in appeal, the Appellate Court had confirmed the judgment of the Trial Court. It is that which is sought to be challenged in the present revision petition.

3. The learned Counsel for the petitioners would contend that there was a long-standing dispute, admittedly, between the complainant's family and the petitioners' family and even in the alleged incident there was a case and a counter case. Though the accused, in the case lodged by the petitioners, had

been acquitted the fact remains that the altercation was spontaneous and there was no premeditated attack as the quarrel had broken out while the complainant was passing by the house of the accused and he would submit that the manner in which the prosecution has sought to ascribe particular overt acts to each of the accused is not capable of acceptance as the attack even if it were to be accepted could not be recounted with such precision, as to which accused had attacked which particular injured witness. Since the scuffle would have ensued in quick succession and the prosecution seeking to make out a case as if the entire incident had taken place in slow motion, for each witness to record the scene and recount the same in attributing particular overt acts to each of the petitioners, and therefore, would submit that it cannot be said that the prosecution had proved its case beyond all reasonable doubt. In any event the learned Counsel would point out that apart from one grievous injury suffered by P.Ws. 1, 4 and 5 each there are no other serious injuries which require the Court to take a strict view in imposing the punishment of imprisonment of two years on petitioners 1 and 2. While imposing a punishment of six months for the offence punishable u/s 324 of IPC insofar as accused 3 is concerned the learned Counsel would submit that as already contended it is difficult to ascribe particular overt acts to each of the petitioners and the punishment imposed on the petitioners therefore is unjust and results in a miscarriage of justice. Accused 4 having been acquitted the benefit of doubt that was extended in favour of the said accused ought to have been extended against all the petitioners. In the circumstances of the case, and therefore, seeks reconsideration of the concurrent findings of the Court below.

4. While the learned Government Pleader would point out that there has been concurrent findings of fact, the scope for interference of this Court in revision is hardly available and that there is no warrant for re-appreciation of the evidence, which cannot be seriously disputed.

5. The fact that each of the three witnesses have suffered grievous injuries is not in serious dispute. Therefore, the offence punishable u/s 326 of IPC is clearly attracted. The Court below has restricted the punishment to two years when the punishment that could have been imposed was much greater and hence the Courts below have proceeded with extreme prudence even in imposing punishment and even on the question of proportionality there is no warrant for interference in revision, insofar as the quantum of punishment is concerned and hence seeks dismissal of the petition. Given the facts and circumstances as rightly pointed out by the learned Government Pleader there is little scope for interference by this Court in revision in a case where there are concurrent findings of fact. There is hardly any dispute of the injuries suffered by the several witnesses and grievous injuries having been certified insofar as three of the witnesses are concerned, the imposition of punishment on the basis of the evidence that is available on accused 1 to 3 is justified. However, the fine being restricted to Rs. 2,000/- while there is substantial punishment of imprisonment of two years insofar as accused 1 and 2 are concerned for the offence punishable u/s 326 of IPC does not provide any solace to the injured witnesses. Similar is

the case insofar as accused 3 is concerned for the offence punishable u/s 324 of IPC. Therefore, having regard to the circumstances of the case as there was a long-standing dispute between the two families which has resulted in the scuffle where even the present accused-petitioners were also injured in the scuffle, the petitioners having caused greater damage ought not to absolve the other side completely, they having retaliated in causing injuries to the present petitioners. The Courts below having proceeded on the footing that the petitioners were the aggressors as they have caused greater damage and that they ought to be punished on the footing that they are common criminals. On the other hand, they were motivated by enmity in respect of a dispute over lands and that would be on a different footing than the injuries having been caused on account of any other criminal motive. Therefore, in the opinion of this Court and in the interest of justice the sentence of punishment by way of imprisonment requires to be substantially modified in order to ensue that while the petitioners are made aware of their responsibility as citizens to maintain peace and in order to provide some solace by way of monetary compensation to the injured-complainant and other witnesses, the punishment by way of imprisonment insofar as petitioner 3 is concerned shall stand reduced to one month for the offence punishable u/s 324 read with Section 34 of IPC and he shall pay a fine of Rs. 10,000/- and in default to undergo simple imprisonment for one month and accused 1 and 2 shall undergo simple imprisonment for six months and shall pay a fine of Rs. 10,000/- each, for the offence punishable u/s 326 read with Section 34 of IPC and in default of payment of fine shall undergo simple imprisonment for a period of three months. The amount paid as fine shall be paid to each of the injured witnesses namely P.Ws. 1, 4 and 5 in a sum of Rs. 10,000/- each as compensation u/s 357 of Cr.P.C. With that modification, the petition stands allowed in part.