

(2013) 12 KAR CK 0253
In the Karnataka High Court
Case No : Criminal Appeal No. 1589 of 2007

Rasheed Khan and Others

APPELLANT

Vs

State of Karnataka Magadi Police

RESPONDENT

Date of Decision : 06-12-2013

Acts Referred:

Penal Code, 1860 (IPC) — Section 143, 147, 148, 149, 307
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)(x)

Citation : (2013) 12 KAR CK 0253

Hon'ble Judges : N. Ananda, J

Bench : Single Bench

Advocate : V.G. Ravindra, for the Appellant; B.T. Venkatesh, SPP-II, for the Respondent

Final Decision : Partly Allowed

Judgement

N. Ananda, J.—The appellants (hereinafter referred to as accused no. 1 to 3, 5 to 7, 9 and 11) along with accused no. 4, 8, 10, 12 and 13 were tried for offences punishable under Sections 143, 147, 148, 307, 324 r/w 149 IPC and also for an offence punishable u/s 3(1)(x) of SC/ST (Prevention of Atrocities) Act, 1989.

The learned Sessions judge acquitted accused no. 1 to 13 for offences punishable under Sections 143, 147, 148, 307 r/w 149 IPC and also for an offence punishable u/s 3(1)(x) of SC/ST (Prevention of Atrocities) Act, 1989.

The learned Sessions judge acquitted accused no. 4, 8, 10, 12 and 13 of an offence punishable u/s 324 IPC.

The learned Sessions judge convicted accused no. 1 to 3, 5 to 7, 9 and 11 for an offence punishable u/s 324 IPC and sentenced them to undergo simple imprisonment for a period of three months and pay fine of Rs. 1,000/- each, in default, to undergo simple imprisonment for a period of one month each. Therefore, accused no. 1 to 3, 5 to 7, 9 and 11 are before this court.

2. I have heard Sri. B.G. Ravindra, learned counsel for accused and the learned State Public Prosecutor for the State.

3. The learned SPP would submit that the State has not preferred any appeal against impugned judgment as it relates to acquittal of accused as aforesaid.

4. Therefore, the points that would arise for determination in this appeal "are:

1) Whether the prosecution has proved that accused no. 1 to 3, 5 to 7, 9 and 11 voluntarily caused hurt to PW"s. 1 to 5 by assaulting them with dangerous weapons at about 8.30 p.m., on 12.12.2002 near the house of accused no. 1 in Basappana Doddi village within the limits of Magadi Taluk, thereby committed an offence punishable u/s 324 IPC?

2) Whether the learned trial judge has properly appreciated the evidence on record?

3) To what order ?

5. My findings on the above points and reasons thereon are as follows:

The evidence of PW. 1 and evidence of DW. 1 and documents relied upon by the parties would reveal that; there was long standing dispute between the family members of PW. 1 and DW. 1 in relation to a path way. It is the case of accused that PW. 1 was not allowing them to move on the path way to reach the lands of accused no. 1. In connection with this dispute, several panchayats were held.

6. On 14.09.2000, the elders of village had convened a panchayat in the presence of some of the prosecution witnesses and accused wherein, PW. 1 and other family members had agreed to leave path way to accused no. 1 and his family members.

It is also admitted by PW. 1 that he had initiated proceedings u/s 145 Cr.P.C. Therefore, it can safely be held that the parties, in particular, the injured witnesses and accused were not in cordial terms and there was pre-existing enmity between them. In view of this, the evidence of prosecution witnesses including injured witnesses needs a careful scrutiny before it is accepted.

7. PW. 1-Kemparaju has deposed; that on the date of incident viz., 12.12.2002 at about 8.30 p.m., when he was in the house, PW. 12-Kemparaju, S/o Junjaiah and PW. 13-Mariyappa came to his house and told that PW. 2 can settle the dispute with accused no. 1, so saying, PW. 12 and 13 took PW. 2-Thimma Bovi (father of PW. 1) to the house of accused no. 1 which is at a distance of 150 meters from the house of PW. 1. After sometime, PW. 1 heard the noise of galata near the house of accused no. 1. PW. 1 rushed to the house of accused no. 1. Accused no. 1 and other accused had surrounded PW. 2 (father of PW. 1) and were making galata. When PW. 1 tried to rescue his father (PW. 2), accused no. 9 assaulted on the head of PW. 1 with a chopper. PW. 1 suffered bleeding injuries.

8. The evidence of PW. 8-Dr. V.N. Malali would reveal that he had examined PW.

1 at 11.30 p.m., on 12.12.2002 in Government Hospital at Magadi and found following injuries:

1. Incised wound on the top of the scalp measuring 4 cms x 6 cms
2. Contusion on the back measuring 4 cms x 6 cms PW. 1 has deposed that accused no. 9 had assaulted on his head with a chopper and accused no. 8 had assaulted him on the back with a club. From the evidence of PW. 1 we find that PW. 1 had suffered grievous injury on his head and the injuries were caused due to assault with a chopper. In the circumstances, evidence given by PW. 1 that other accused also assaulted some of the prosecution witnesses cannot be accepted. PW. 1 having suffered aforesaid injuries, could not have witnessed the assault on some of the prosecution witnesses by other accused.

9. The learned counsel for accused would submit that accused no. 8 had been admitted to hospital and accused no. 9 was taking care of him. Therefore, the evidence of PW. 1 that he was assaulted by accused no. 9 cannot be accepted. It is true that accused no. 8 has contended that he had been hospitalized and he has also produced certain documents however, these documents are not sufficient to hold that accused no. 9 was attending accused no. 8 in the hospital, assuming that accused was admitted in the hospital. In the circumstances, evidence of PW. 1 that he was assaulted by accused no. 9 with a chopper and he had suffered injuries to his head cannot be suspected.

During cross-examination, PW. 1 has admitted that there was dispute between the family members of PW. 2 and family members of accused no. 1 with regard to pathway and in this regard several panchayats had been held. PW. 1 was also cross-examined regarding point of time at which different injured witnesses reached the place of incident. PW. 1 has given evidence relating to these aspects however, the evidence is not specific as PW. 1 was injured in the incident of assault. In the circumstances, it is not possible to expect that PW. 1 should have given graphic version of entire incident of assault.

10. As could be seen from the evidence adduced by prosecution, there were 13 persons on the side of accused and 10 persons on the side of prosecution. There was a crowd of assailants. In the circumstances, we cannot expect PW. 1 to give minute details of assault with regard to each of the injured witness and the accused (assailants). Therefore, the evidence of PW. 1 is sufficient to hold that he was assaulted by accused no. 9 with a Machu (chopper).

11. PW. 2-Thimma Bovi is the father of PW. 1. PW. 2 has deposed regarding pathway dispute which existed between PW. 2 and accused no. 1. He has also deposed that there was proceedings u/s 145 Cr.P.C., between the parties in relation to pathway dispute and the parties had entered into compromise in the proceedings u/s 145 Cr.P.C. PW. 2 has deposed; that on 12.12.2002 at about 8.00 p.m., when he was in his house, PW. 13 and PW. 14 came and took him to the house of accused no. 1 to settle the pathway dispute existed between the parties. At that time, he found that accused were armed with weapons. Accused

no. 3 assaulted on the head of PW. 2 with a chopper. Accused no. 2 assaulted on his right ear with a Machu; accused no. 1 assaulted on his waist with a club with a club. PW. 2 fell down and he was semi conscious-. He regained consciousness after he was taken to hospital.

During cross-examination, PW. 2 has admitted that family members of PW. 1 and accused were not on talking terms. He has admitted that efforts were made to settle the pathway dispute. He has denied the suggestion that accused no. 1 to 3 did not assault him and he had not suffered injuries. PW. 2 has deposed; that the incident took place at about 8.00 p.m. They reached the hospital at about 10.00 or 12.00 p.m., in the midnight, PW. 2 has volunteered that he regained consciousness in the hospital during midnight of 12/13.12.2002.

12. PW. 8-Dr. B.M. Malali has deposed; that he had examined PW. 2 at 11.30 or 12.00 p.m., (midnight) on 12.12.2002 in Government Hospital at Magadi and found following injuries:

1. Contusion wound on left pinna of the ear measuring 4 cms x 6 cms
2. Incised wound on the left side of scalp measuring 4 cms x 2 cms x 1 cm PW. 8 has deposed; that injury no. 1 was grievous in nature.

Thus, the evidence of PW. 2 finds substantial corroboration from medical evidence. Therefore, there are no reasons to suspect the evidence of PW. 2 that accused no. 1 to 3 had assaulted him at about 8.30 p.m., on 12.12.2002 and caused aforestated injuries.

13. PW. 3-Doddamma is the wife of PW. 2-Thimma Bovi. She was also injured in the incident of assault. PW. 3 has deposed; that on hearing the noise from the house of accused no. 1, she reached the place of incident. Accused no. 6-Smt. Rahmat Bee assaulted on the head of PW. 3 with a Machu for 3 times. Accused no. 5-Shahar Banu assaulted on the left side of hip of PW. 3 with a knife.

14. The evidence of PW. 8-Dr. V.N. Malali would reveal that on 12.12.2002 he had examined PW. 3 in Government Hospital at Magadi and found the following injuries:

- 1) Multiple incised wounds on the scalp 6 in numbers each measuring 4 cms x 6 cms
- 2) Contusion wound on the back measuring 4 cms x 6 cms
- 3) Incised wound on the left hip measuring 4 cms x 6 cms

He has opined that injuries were simple in nature.

Thus, we find that evidence of PW. 3 finds substantial corroboration from the evidence of PW. 8.

15. The learned counsel for accused would submit that accused no. 5 and 6 are women and they have been falsely implicated. PW. 3 was injured in the incident

of assault.

There is no reason for her to spare the real assailants and substitute accused no. 5 and 6. There are no reasons to suspect evidence of P.W. 3.

16. P.W. 4-Nagaraju is the younger son of P Ws. 2 and. 3. P.W. 4 has deposed, on hearing noise of quarrel from place of incident he reached the place of incident. A.1 assaulted P.W. 4 with a club and A.7 assaulted on his back with a chopper and he fell unconscious. He does not what happened thereafter.

On P.W. 8-Dr. V.N. Malali has deposed that on 12.12.2002 at 11.30 P.M. he examined P.W. 4-Nagaraju and found following injuries:-

(a) An Incised wound measuring 8 Cm x 2 Cm x 1 Cm on the left scapular region; and

(b) A Contusion measuring 4 Cm x 6 Cm on the left hip.

He has deposed that injuries were aged two to four hours prior to the time of examination. P.W. 4 being the injured witness had no reasons to spare the real assailants to substitute accused no. 1 and accused no. 7.

The cross-examination of P.W. 4 would reveal; by and large, evidence of P.W. 4 that he was assaulted by accused Nos. 1 and 7 has remained uncontroverted. Therefore, there are no reasons to disbelieve evidence of P.W. 4.

17. P.W. 5-Chandra is the son of P.W. 2. P.W. 5 has deposed that incident of assault took place from 7.30 to 8.00 P.M. He has deposed when he reached the place of incident, A. 11 assaulted on his head with a chopper and he suffered a bleeding injury. P.Ws. 1 to 4 had also suffered injuries.

18. P.W. 8-Dr. V.N. Malali, has deposed that he examined P.W. 5 at 11.30 P.M. on 22.12.2002 and found following injuries:-

(a) An incised wound on the top of the scalp He has opined that P.W. 5 had suffered simple injuries are aged two to four hours prior to the time of examination.

During his cross-examination, P.W. 5 has reiterated the incident of assault. He has deposed that A. 11 came from the direction of the house of A.1 and assaulted him. The evidence of P.W. 5 is supported by medical evidence and there are no reasons to discredit his evidence.

19. P.W. 6 and P.W. 7 have not supported the case of prosecution so also P.Ws. 12 and 13.

20. P.W. 14 is third among the sons of P.Ws. 2 and 3. He has deposed that when he reached the place of incident he found that his father and brothers had suffered injuries. P.W. 14 had not suffered injuries. P.W. 14 appears to have reached place of incident soon after incident of assault. Therefore, his evidence would lend corroboration to the evidence of injuries witnesses.

21. Accused no. 8 and accused no. 10 have been examined as P.Ws. 1 and 2. They have also examined D.W. 3 to prove that A.8 had been hospitalized and he was an inpatient in Victoria hospital on 12.12.2002. P.Ws. 1 and 2 have given evidence to prove that A.8 had been admitted to hospital and he was not present near place of incident. The learned Sessions Judge has acquitted A.8 so also A. 10. Therefore, there is no need to refer to their evidence.

22. The evidence of D.W. 3-Dr. N. Srinivasan relates to admission of accused no. 8 to Victoria Hospital. His evidence does not provide conclusive proof of alibi. In view of acquittal of accused no. 8, there is no need to examine evidence of D.W. 3 in detail.

Thus, on over all appreciation of evidence, I hold that prosecution has proved that accused no. 1 to 3, 5 to 7, 9 and 11 had assaulted P.Ws. 1 to 5 with deadly weapons and caused injuries. Therefore, findings of the learned Sessions Judge that accused Nos. 1 to 3, 5 to 7, 9 and 11 are guilty of offences punishable u/s 324 of IPC do not call for interference.

23. The learned counsel for the accused submits that Accused no. 1 to 10 have left the village and this fact has been admitted by P.W. 2. There was long standing enmity between the parties. Therefore, accused Nos. 1 to 3, 5 to 7, 9 and 11 be released by extending benefit provided u/s 4 of Probation of Offenders Act.

Considering background of the incident and place and weapons chosen for assault, I hold that Accused Nos. 1 to 3, 5 to 7, 9 and 11 are not entitled to the benefit of Section 4 of Probation of Offenders Act

There were long standing disputes between family members of A.1 and P.W. 1. Accused Nos. 1 to 3, 5 to 7, 9 and 11 have left the village after the incident. Therefore, substitution of sentence of imprisonment with sentence of fine and "grant of compensation to injured would meet ends of justice.

In the result, I pass the following:

ORDER

The appeal is accepted in part. The judgment of conviction of Accused Nos. 1 to 3, 5 to 7, 9 and 11 for offences punishable u/s 324 of IPC is confirmed. However, sentence is modified. The sentence of imprisonment imposed by trial Court is set aside.

Accused Nos. 1 to 3, 5 to 7, 9 and 11 are sentenced to pay fine of Rs. 10,000/- each and in default to undergo S.I. for a period of three months for an offence punishable u/s 324 IPC. Out of fine amount imposed on the accused, a sum of Rs. 10,000/- each shall be paid to P.Ws. 1 to 5. The rest of the impugned judgment is confirmed.