

(2016) 07 KAR CK 0008
In the Karnataka High Court
Case No : Criminal Appeal No. 3674 of 2010

Shivasharanappa

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 01-07-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 143, 148, 149, 323, 324, 325
Probation of Offenders Act, 1958 — Section 4A

Citation : (2016) 3 AirKarR 796 : (2016) 3 Crimes 299 : (2016) 4 KCCR 3715

Hon'ble Judges : Anand Byrareddy, J.

Bench : Single Bench

Advocate : Shri Gururaj Rao Kakkeri, Advocate, for the Appellant; Shri P.S. Patil, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Anand Byrareddy, J.— Heard the learned counsel for the appellant and the learned Government Pleader.

2. The appellants were arraigned as accused nos. 1, 5 and 6 in Crime No. 27/2009 and it was later numbered as Special Case No. 86/2009 before the court below.

3. The background was that on 21.2.2009, at about 9 a.m., in Dhuttargoan village, when one Parmeshwar was going along the road after playing volley ball, it transpires that Nagendra, who was present there, saw the accused forming themselves into an unlawful assembly attacked PW.3 and when the complainant intervened, they continued to attack the complainant and when again, the complainant tried to intervene, he was in turn assaulted by accused no. 3. There were six accused in all. On the basis of the complaint, they were arrested and enlarged on bail. Thereafter, they were charge-sheeted for offences punishable under Sections 143, 147, 148, 323, 324, 326, 504 and 506 read with Section 149 of the Indian Penal Code, 1860 (Hereinafter referred to as the "Indian Penal Code, 1860", for brevity) and Section 3(1)(x) of the Scheduled Castes and

Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Hereinafter referred to as the "SC & ST Act", for brevity)

The accused having pleaded not guilty of the charges that were framed and having claimed to be tried, the prosecution had examined 14 witnesses and got marked several exhibits. On the basis of the evidence, the court below has framed the following points for consideration:

1. Whether the prosecution proves beyond all reasonable doubt that on 21.02.2009 at 9.00 A.M. on the road near Gram Panchayat office all the accused persons have formed themselves into an unlawful assembly with the common object of commit an offences and each accused was the member of such unlawful assembly and there committed an offence punishable under section 143 read with Section 149 of Indian Penal Code?
2. Whether the prosecution further proves beyond all reasonable doubt that on the above said date, time and place, all the accused, persons being the members of unlawful assembly and, in prosecution of the common object of committing offence rioting armed with deadly weapons like stone and there committed an offence punishable under section 148 read with Section 149 of Indian Penal code?
3. Whether the prosecution further proves beyond all reasonable doubt, that an the above said date, time and place, all the accused persons being the members of unlawful assembly and in prosecution of the common object the accuse No. 4 and 5 caught hold of the complainant tight and caused him bodily pain and accused No. 3 and 4 assaulted C.W. 8 with hands and caused him bodily pain and there committed an offence punishable under Section 323 read with section 149 of Indian Penal Code?
4. Whether the prosecution further proves beyond all reasonable doubt, that on the above said date, time and place, all the accused persons being the members of unlawful assembly and in prosecution of the common object the accused No. 1, 2 and 6 assaulted the complainant C.W. 1 with stone and caused him injures and there committed an offence punishable under section 324 read with section 149 of Indian Penal Code?
5. Whether the prosecution further proves beyond all reasonable doubt, that on the above said date, time and place, all the accused persons being the members of unlawful assembly and in prosecution of the common object the accused persons being the members of unlawful assembly and in prosecution of the common object the accused No. 1, 2 and 6 assaulted the with stone on his mouth and head and caused him grievous injuries and there committed an offence punishable under section 325 read with section 149 of Indian Penal Code?
6. Whether the prosecution further proves beyond all reasonable doubt, that on the above said date, time and place, all the accused persons being the members of unlawful assembly and in prosecution of the common object of committing offence intentionally insulted the complainant and C.W.8 and gave provocation to

them knowing that the said provocation is likely to make them to commit an offence and there committed an offence punishable under section 504 read with section 149 of Indian Penal Code?

7. Whether the prosecution further proves beyond all reasonable doubt, that on the above said date, time and place, all the accused persons being the members of unlawful assembly and in prosecution of the common object criminally intimidated C.W. 1 and 8 by giving a threat to kill and caused alarm to them and there committed an offence punishable under section 506 read with Section 149 of Indian Penal Code?

8. Whether the prosecution further proves beyond all reasonable doubt, that on the above said date, time and place, all the accused persons have intentionally insulted C.W. 1 and 8 by abusing them in filthy language knowing well that they are the members of the SC touching their caste in order to humiliate them in the public view and there committed an offence punishable under section under section 3(1) (x) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act-1989?

9. what order?

The court below has answered points no. 1 to 7 in the affirmative and point no. 8 in the negative and sentenced accused nos. 1, 5, 6 to pay fine and also to undergo imprisonment for offences punishable under sections 143, 148, 323, 324 and 325 of the Indian Penal Code, 1860. While insofar as accused nos. 2, 3 and 4 are concerned, the court below has thought it fit to invoke Sections 4 and 6 of the Probation of Offenders Act, 1958 and has ordered that instead of sentencing them for any term, they may be released on probation for keeping good conduct for one year subject to certain conditions. It is that which is under challenge in the present appeal.

4. The learned counsel for the appellants, while pointing out that there is much discrepancy as between the complaint and the evidence tendered, especially as regards the injuries that were alleged to have been caused. There were only two injuries, one of which was of course, was termed as a grievous Injury. However, the Wound Certificate reflected only two injuries. It is this and other infirmities which are sought to be highlighted in questioning the judgment of the Court below.

Incidentally, the learned counsel would point out that two of the appellants are in their 20s where as appellant no. 3 is a 50 year old man and having regard to the nature of the case and since it did not involve any danger to the life of the victims and the trial court itself having thought it fit that accused nos. 2, 3 and 4 ought to be released under the provisions of the Probation of Offenders Act, 1958, the learned counsel would plead that the appellants no. 1 and 2 are students and appellant no. 3 is a middle aged man and if they are also extended the benefit of the PO Act, interests of justice would be met, as it is necessary that they be given a chance to turn over a new leaf of life and realise that such

conduct, as alleged on their part, should be avoided and that they should live a useful life. And since the appellants are students, who are pursuing their studies and if they are incarcerated along with other criminals, would be counter-productive and that this could be avoided if alternative punishment is imposed. The learned Counsel would therefore plead that this court exercise its power in tempering the punishment imposed by the trial court with conditions and therefore seeks modification of the judgment of the court below, if not a honourable acquittal.

5. Given the circumstances of the case and the fact that two of the appellants are young men and appellant no. 3 is major enough to mend his ways, even if he had committed any such acts, as was alleged and after which, he is convicted, it would serve the ends of justice if the sentence imposed by the court below insofar as the present appellants are concerned is modified. In view of the modification, the appellants are not to be given the impression that they are absolved of their acts. Hence, to bring home to the appellants, the gravity of their action for which they are convicted, it would be appropriate to mulct the appellants with stiffer penalty of fine.

6. Therefore, if each of the appellants are sentenced to pay a fine of Rs. 10,000/- for the offences punishable under Sections 143, 148, 323, 324, and 325 of the IPC, for which there are varying periods of imprisonment and fine imposed by the court below and if that amount is paid over to Nagendra, PW. 1 as compensation under Section 357 of the Code of Criminal Procedure, 1973, it would certainly meet the ends of justice.

7. Accordingly, the sentence imposed by the court below insofar as the present appellants are concerned stands modified. Instead of confirming the sentence of imprisonment, this court exercising power under Section 4 of the PO Act, release them on probation of good conduct for a period of one year, subject to the condition that they shall execute a bond for a sum of Rs. 20,000/-, each along with a Surety to the satisfaction of the Registry of this court, undertaking to appear before the court as and when called upon to receive the sentence during such period. However, in the meanwhile, they would keep peace and be of a good behaviour.

8. The appeal is partly allowed.