
(2010) 04 KAR CK 0228
In the Karnataka High Court
Case No : Criminal Appeal No. 260 of 2004

Smt. Venkatamma and Others	Vs	APPELLANT
The State of Karnataka		RESPONDENT

Date of Decision : 12-04-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 143, 148, 324, 326, 436

Citation : (2010) 04 KAR CK 0228

Hon'ble Judges : A.S. Pachhapure, J

Bench : Single Bench

Advocate : K.V. Narasimhan, for the Appellant; Raja Subramanya Bhat, HCGP, for the Respondent

Judgement

A.S. Pachhapure, J.—The appellants have challenged their conviction and sentence for the offences punishable u/s 143, 148, 324, 326, 506 and 436 r/w 149 IPC, on a trial held by the Sessions Judge, Mysore.

2. The facts relevant for the purpose of this appeal are as under:

PW1 Siddamma, the resident of Byadamudlu Village submitted a complaint to the police on 15.10.1997. She was residing in her parental house after the death of her husband. Her brother Huchasetty, PW2 had borrowed an amount of Rs. 100/- from accused No. 1 and on the date of the incident at about 5.30 p.m., when the complainant and her brother PW2 and his wife PW4 were sitting in front of their house, accused No. 2 came to their house and asked PW2 to return the loan amount borrowed from his mother and at that time PW2 said that he had no money with him at present and requested for some time to repay. Meanwhile, accused No. 1 and her another son accused No. 3, their relatives i.e., accused No. 4 and 5 came in a group forming an unlawful assembly, armed with weapons like choppers and clubs. Accused No. 1 instigated the other accused and that she would look after that nothing happens, and at that time accused No. 3 caused assault to PW2 with club and when PW1 intervened, accused No. 2 caused assault with the chopper to the PW2 and caused bleeding injuries. He

gave a threat of danger to their lives and thereafter all the accused together set fire to the shed and meanwhile, the villagers PW3 and PW5 and others came and intervened. In these circumstances, PW1 approached the police and submitted a complaint, which came to be registered in Crime No. 163/97 for the offences punishable u/s 143, 147, 148, 149, 326, 506 and 436 r/w 149 IPC.

3. PW6, who registered the crime, sent the FIR to the Magistrate and sent the injured to the hospital. He visited the scene of occurrence and held the spot mahazar and seized MO's. 1 to MO's. 4. and found that there was a damage to an extent of Rs. 5,000/-. He recorded the statement of the witnesses. He made a search for the accused and later he collected the injury certificates, Ex. P6 and Ex. P7 and arrested the accused. He also collected the property extract produced at Ex. P. 8 and on completion of the investigation, filed the charge sheet against the accused.

4. During the trial, the prosecution examined PW1 to PW7 and the documents Ex. P1 to Ex. P8 were marked in the evidence and MO. 1 to MO. 4, the material objects. The statement of the accused were recorded u/s 313 Cr.P.C. They have taken the defence of total denial and have not lead any defence evidence.

5. The Trial Court on appreciation of the material on record convicted the appellants for the offences punishable u/s 143, 148, 324, 326, 506 and 436 r/w 149 IPC and ordered to undergo imprisonment for 7 years for the offences punishable u/s 436 IPC, 4 years for the offences punishable u/s 326 IPC and lesser sentence for other offences.

6. Aggrieved by the conviction and the sentence, the accused have approached this Court in appeal.

7. I have heard learned Counsel for the appellants and the learned High Court Government Pleader. The point that arise for my consideration is:

1) Whether the judgment and order convicting the appellants for the offences punishable under Sections 143, 148, 324, 326, 506 and 436 r/w 149 IPC is illegal and perverse?

8. It is the contention of the learned Counsel for the appellants that the prosecution has not proved the formation of unlawful assembly by the accused and that there is no material as to who set fire to the shed and it is his further contention that the Doctor has not mentioned the names of the accused and that there is no part played by accused Nos. 1, 4 and 5. So far as accused Nos. 2 and 3 are concerned he submits that there are many discrepancies and their evidence cannot be relied upon to sustain the order of conviction and sentence. Under the circumstances, he submits that the judgment and order convicting the appellants is illegal and perverse.

9. Per contra, the learned High Court Government Pleader supports the judgment and the order of the Court below.

10. I have scrutinized the evidence led by the prosecution, documents submitted in evidence and also the statement of accused. PW1 and PW2 are the injured witnesses. PW3 has turned hostile to the prosecution. PW4 is the wife of PW2 and PW5 the independent witness has also turned hostile. In the circumstances, it is the oral evidence of PW1, 2 and 4 that has to be looked into to find as to whether the prosecution has failed to establish the guilt of the accused beyond the reasonable doubts. So far as the injuries suffered by PW1 and PW2 are concerned, prosecution examined PW7 Doctor, who has issued injury certificates at Ex. P6 and Ex. P7. And on perusal of the injury certificates at Ex. P6 reveals that PW1 has sustained simple injuries. The Doctor, in the column of history states that there was assault by known people on 15.10.1997 at about 5 p.m. in the Village. PW1 has sustained minor abrasions over the right eye, left elbow and left knee. The Doctor has certified that the injuries are simple in nature. So far as PW2 is concerned, the history mentioned is the same. PW2 has suffered the incised wounds, two in number, one over the right zygomatic region measuring 6x1 cms. and 2x1 cms., small laceration over medial end of upper lid near the canthus. There was a fracture of the metacarpal shaft of the 5th left finger. Her injury certificate has been produced at Ex. P7.

11. Now as could be seen from the evidence of PW1, she states about the loan transaction and accused No. 2 having come to demand the loan amount, and later accused No. 3 having caused assault with the chopper and accused No. 2 having caused assault with the club. The perusal of her evidence does not reveal any act of instigation on part of accused No. 1, except that PW1 was present on the scene of occurrence. Nothing is stated against the accused No. 1, about the instigation and later in para 2 of the chief examination, she states that all the accused set fire to the shed. So far as the setting of fire is concerned, as to who lit the fire using the matchstick has not been stated by PW1. It cannot be said all the accused together used the matchstick and set fire to the shed. There are no details as to how the accused set fire to the shed. Apart from this, so far as accused No. 1, 4 and 5 are concerned, nothing has been stated by PW1 as to who set the fire to the shed except stating that all the accused together set fire to the shed and it is probable.

12. So far as PW2 is concerned, he has been partly treated hostile. He states that accused No. 2 quarreled and assaulted with the club. He became unconscious and he does not know what happened later. In the chief-examination, he does not support the version of the prosecution, as far as the assault by accused No. 3 and also the part played by the accused. So far as setting fire to the shed is concerned, in the cross-examination he says he does not know who set fire to the shed. As stated earlier, PW3 has turned hostile to the prosecution and his statement before the police has been contradicted by Ex. P2.

13. PW4 is the wife of PW2 and she states in her evidence with regard to the quarrel for the loan of Rs. 100/- and that the accused having come to their house

with chopper and club, and she stated that her husband was assaulted with the club. Accused assaulted PW1 with the chopper and set fire to the shed. In the evidence of PW4, there is no specification as to who set fire to the shed and as far as accused Nos. 4 and 5 are concerned, in the cross-examination she states that she did not see as to which accused set fire to the shed. PW5 is an independent evidence and has not supported the prosecution and his statement before the police has been contradicted at EX.P4.

14. So the scrutiny of the evidence reveals that no specific part is attributed to the accused so far as offence punishable u/s 436 IPC is concerned. As far as accused No. 1, 4 and 5 are concerned none of the witnesses state the part played by them. As regards accused Nos. 2 and 3, it is the specific version of PW1 and PW2 about the assault with the club and chopper. Ex. P6 is the injury certificate of PW2 and that of PW1 is at Ex. P7. PW1 has sustained grievous injuries. In the circumstances, as far as the assault on PW1 and PW2 is concerned there is a cogent and acceptable material in the evidence of the prosecution. So far as accused Nos. 2 and 3 are concerned, the evidence of PW1 and PW2 will have to be accepted and the Trial Court is justified so far as the conviction of accused Nos. 2 and 3 for the offence punishable u/s 326 and 324 of IPC.

15. But so far as the other accused are concerned, except the mere presence of the accused and the general statement that all the accused set fire without revealing which of the accused set fire to the shed, there is nothing to show any part played by them, as the members of the unlawful assembly. Accused Nos. 1, 4 and 5 were not holding any arms and weapons at the time of the incident. There is no specific material against them as to who set the fire. From the evidence of PW1 and PW2, they state that they did not see who set the fire to the shed. In such circumstances, I do not think that the evidence of PW1, PW2 and PW4 is of any help to the prosecution to hold guilty accused Nos. 1, 4 and 5 only because they were present at that time. In such circumstances, I am of the opinion that accused Nos. 1, 4 and 5 are entitled to an order of acquittal.

16. So far as accused No. 2 is concerned, he has caused assault on PW1 who sustained grievous injuries with the chopper, which is a dangerous weapon. Accused No. 3 caused assault on PW2 with the club and thereby caused simple injuries and therefore the conviction of accused No. 2 and 3 by the Trial Court is just and proper.

17. So far as sentence is concerned, the learned Counsel submits that the accused are facing the trial since the year 1997 and further that the enmity has come down due to lapse of time and in such circumstances, if a severe sentence is ordered, the relation may again strain. Taking into consideration, the nature of the offence and the punishment provided, I think that the sentence has to be reduced. Hence, I answer the point partly in affirmative and partly in negative.

18. In the circumstances, the conviction of the appellant Nos. 1, 4 and 5

(accused Nos. 1, 4 and 5) for the offences punishable u/s 143, 148, 324, 326, 506 and 436 r/w 149 IPC has to be set aside confirming the conviction of the accused No. 2 and 3 (appellants 2 and 3) for the offences punishable u/s 326 and 324 respectively and setting aside conviction for other offences. For the offences of which conviction is set aside, the accused are acquitted of the said charges. Accused No. 2 is ordered to undergo rigorous imprisonment for a period of 2 years and to pay fine of Rs. 10,000/- in default to undergo simple imprisonment for a period of 1 year. Accused No. 3 shall undergo rigorous imprisonment for a period of 6 months and fine of Rs. 5,000/-and in default to undergo simple imprisonment for 6 months. On deposit of the fine amount, the amount of Rs. 10,000/- shall be paid to PW1 and the remaining amount shall be credited to the State. The Trial Court is directed to secure the presence of the accused No. 2 and 3 (Appellants 2 and 3) to undergo the sentence.