

(2015) 01 KAR CK 0297
In the Karnataka High Court
Case No : Criminal Appeal No. 57/2011

S.P. Shivaraju

APPELLANT

Vs

Basavaraju

RESPONDENT

Date of Decision : 08-01-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 34, 436

Citation : (2015) 3 AKR 551 : (2015) 3 CCR 351 : (2015) 2 KarLJ 575 : (2015) 4 KCCR 4006

Hon'ble Judges : P.S. Dinesh Kumar, J.; Mohan M. Shantana Goudar, J.

Bench : Division Bench

Advocate : T.V. Nanje Gowda, for the Appellant; K.P. Yoganna, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Mohan M. Shantana Goudar, J.—The Judgment and Order of acquittal dated 12.10.2010 passed by the Prl. Sessions Judge, Mandya in S.C. No. 40/2010 is called in question in this appeal filed by the original complainant.

The accused/respondents were tried and acquitted for the offence under Section 436 read with 34 of IPC.

2. Case of the prosecution in brief is that the accused, at an earlier point of time had cut the branches of mango trees which are standing in the public area of the village; on the request of village elders, the complainant had drafted the complaint against the accused and lodged the same before the jurisdictional Tahsildar; being enraged by that, the accused set fire to the petty shop of the complainant at 1.30 a.m. on 7.7.2005; the petty shop is situated in the village; the incident is witnessed by P.Ws. 2 and 7 at about 1.30 a.m.; due to the fire in the shop, the complainant has suffered loss to the tune of Rs. 75,000/-; the complaint dated 7.7.2005 as per Ex. P1 came to be lodged by P.W. 1 at 3.30 p.m. on 7.7.2005 before the Kikkeri Police Station, which came to be registered

by then Police Inspector - P.W. 4. The Police after investigation laid the charge sheet.

3. Sri Nanje Gowda, learned advocate for the appellant taking us through the material on record submits that the entire approach of the trial Court while coming to the conclusion is erroneous; the trial Court has not appreciated the material on record in proper perspective; the approach of the trial Court is too technical inasmuch as the evidence of the eye-witnesses P.Ws. 2 and 7 is wrongly disbelieved; that the ample material on record would clearly reveal the complicity of the accused in the crime.

4. In the matter on hand, the defence does not dispute that P.W. 1/complainant owned petty shop in the village and that was burnt in the midnight intervening between 6.7.2005 and 7.7.2005. However according to the defence, the accused are not culprits, but it was the complainant only who is to be blamed for the mischief. It is the specific case of the defence that P.W. 1 had tapped electricity unauthorisedly from the direct line and due to defective tapping of electricity, the accident has occurred and the shop is burnt due to such fire accident.

5. It is not in dispute that the shop of P.W. 1 was burnt at 1.30 a.m. on 7.7.2005. Immediately thereafter P.Ws. 2 and 7 rushed to the spot and have extinguished the fire. Information was sent to P.W. 1, who also run to the spot. Thus P.W. 1 knew very well about the incident at 1.30 a.m. on 7.7.2005 itself. However he choose to lodge the complaint as per Ex. P1 before the Sub-Inspector of Police at 3.30 p.m. on 7.7.2005, which means the complaint is lodged with the delay of 14 hours. Ex. P3 is the first information report sent to the jurisdictional Magistrate. The same is sent to the jurisdictional Magistrate at 12.20 p.m. on 8.7.2005. Thus it is clear that there is long delay in lodging the complaint and so also in sending the FIR to the Court. Such delay has remained unquestioned. However P.W. 1 has tried to explain the delay during the course of evidence by deposing that he went to the Police Station during night, but the Police Inspector was not available and therefore he was told by the Police Constable to come on the next day and accordingly he went to the Police Station on the next day i.e., on 7.7.2005. Such explanation offered by P.W. 1 is contradicted by the Sub Inspector (P.W. 4) who has deposed that P.W. 1 never came to Police Station till 3.30 p.m. on 7.7.2005. Thus it is clear that there is delay in lodging the FIR before the Police as well as there is delay of one day in sending the FIR to Court. The same has remained unexplained. If really the shop of P.W. 1 was set on fire by the accused, he would not have kept quite without lodging the complaint against the accused immediately after the accident.

6. The Investigating Officer - P.W. 4 admits that there was unauthorized connection of electricity to the shop in question, which means P.W. 1 has drawn the electricity unauthorisedly without taking permission of the department. Ex. D1 and Ex. D2 are the vital documents which destroy the case of the prosecution. Ex. D1 and Ex. D2 clearly depict that it was P.W. 1 who committed the crime and not the accused. Ex. D1 is the copy of the letter addressed by the

Police Inspector to the Assistant Engineer of KPTCL. The same reveals that the shop caught fire from within. He requested the Electricity Department officials to investigate into the matter. Accordingly, the officers of the Electricity Department inspected the shop and gave the report as per Ex. D2 dated 23.7.2005 stating that it is a case of unauthorized electricity connection. It is also specifically mentioned in Ex. D2 that in case of unauthorized electricity connection, there will be no grounding or electricity controlling equipment would not be employed; since the wires are improperly drawn in such cases, there is every likelihood of fire mischief.

7. From the material on record, more particularly from Ex. D1 and Ex. D2, it is clear that P.W. 1 drew electricity connection unauthorisedly and had not taken adequate measures to safeguard his interest by employing electricity controlling equipment etc., Impliedly it means that it is a case of short circuit because of the fault of the complainant.

8. Ex. P2 is the scene of offence mahazar, which clearly reveals that the shop caught fire from within and not from outside. Only the internal portions of the shop are burnt, which means the fire mischief has occurred not because of the outsider, but because of the wrong electricity connection drawn by the complainant. The very fact that fire mischief has occurred at 1.30 a.m. would clearly go to show that there was none in the shop at that point of time. Even according to P.Ws. 2 and 7, the eyewitnesses, they came to the spot accidentally inasmuch as at the relevant point of time, P.W. 2 came outside the house to answer the calls of nature and P.W. 7 came to switch on his pumpset.

9. The trial Court has elaborately discussed and concluded that P.Ws. 2 and 7 could not have been there on the spot at that point of time inasmuch as their presence is highly unnatural and improbable. Though it is the say of P.W. 2 in his deposition that he had gone to his father-in-law's house at the relevant point of time to collect water to answer the call of nature, such deposition appears to be improbable in view of the fact that there was a public borewell near the spot wherein he wanted to answer the call of nature. So also P.W. 7 admits during his deposition that he had employed automatic pumpset which would switch on immediately after the start of electricity supply. However he has added that if the electricity supply is for the single phase, then he will have to go to the place wherein the pumpset is placed and switch on the pumpset. But there is no material to show as to whether the electricity supply during the relevant period is single phase or three phase.

Even otherwise, we find that the evidence of P.Ws. 2 and 7, the eye-witnesses is motivated. Because of the complaint lodged by the accused against P.W. 2, he is facing criminal case. P.W. 2 was in judicial custody for 75 days on the basis of the complaint lodged by the accused. So also the civil litigation is pending consideration between the accused and P.W. 2 with regard to the boundaries of the agricultural land; in that regard criminal case is also pending between the parties. In view of the same, the trial Court is justified in concluding that P.Ws. 2

and 7 are interested witnesses inasmuch as they have got axe to grind against the accused. Since prima facie it appears that the incident has taken place because of unauthorized electricity connection drawn by P.W. 1, the trial Court is justified in acquitting the accused. The view taken by the trial Court is the only possible view under the facts and circumstances of the case. Accordingly, no interference is called for.

Appeal fails and the same stands dismissed.