

(2013) 07 KAR CK 0299
In the Karnataka High Court
Case No : Criminal RP No 396 of 2012

Sri Murkannappa

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 03-07-2013

Acts Referred:

Penal Code, 1860 (IPC) — Section 326, 34, 504, 506

Citation : (2013) 07 KAR CK 0299

Hon'ble Judges : H.N. Nagamohan Das, J

Bench : Single Bench

Advocate : D.L. Jagadeesh, for the Appellant; G.M. Srinivasa Reddy, HCGP, for the Respondent

Final Decision : Allowed

Judgement

H.N. Nagamohan Das, J.—This revision petition is directed against the judgment and sentence dated 22.10.2011 in C.C. No. 861/2010 passed by the Civil Judge and JMFC, Sira and confirmed by the lower appellate Court in CrI.A. No. 105/2011 vide judgment dated 28.2.2012 convicting and sentencing the petitioner to undergo simple imprisonment for a period of two years with fine of Rs. 5000/- and in default to pay fine amount, to undergo simple imprisonment for a term of six months for the offences punishable u/s 326 r/w 34 IPC; one year simple imprisonment with fine of Rs. 1000/- for the offences punishable u/s 504 r/w 34 IPC and in default to pay fine amount, to undergo simple imprisonment for three months; and one year simple imprisonment and Rs. 1000/- fine for the offences punishable u/s 506 r/w 34 IPC and in default to pay fine amount, to undergo simple imprisonment for three months. PW. 3 lodged a complaint with jurisdictional police on 22.02.2010 inter alia contending that the petitioner and his brother abused them in filthy language, assaulted P.W. 2 causing grievous injury and threatened them with dire consequences to their life. The jurisdictional police registered a case in Cr. No. 154/2010. After investigation charge sheet was filed for the offences punishable under Sections 326, 504 and

506 r/w 34 IPC in C.C. No. 861/2010. After framing the charges for the above said offence the prosecution examined 8 witnesses as PW. 1 to 8 and got marked Exs. P1 to P4 and M.O. 1. After hearing arguments, the trial Court framed the following points for its consideration:

i) Whether the prosecution proves beyond all reasonable doubt that on 21.02.2010, at about 7.30 p.m., at Nimbemaradahalli village, in front of the house of one Pathalingappa, when CW. 1 enquired the accused No. 1 in respect of talking with C.W. 2 vulgarly through Mobile phone, in prosecution of common intention, Accused No. 1 and 2 intentionally insulted the CW 1 by abusing in filthy language and committed criminal intimidation to his life. Thereby committed the offences punishable under Sec. 504 and 506 r/w 34 IPC?

ii) Whether the prosecution proves beyond all reasonable doubts that on the above said date, time and place, when Accused No. 1 about to assault C.W. 1 with club, C.W. 2 intervened. At that time, Accused No. 1 assaulted on forehead of C W. 2 with club and caused grievous injury. Thereby committed an offence for the offences punishable u/s 326 r/w 34 IPC?

iii) What Order?

2. On appreciation of the oral and documentary evidence the trial Court convicted the petitioner/accused no. 1 for the offences punishable under Sections 326, 504 and 506 r/w 34 IPC. Further the trial Court held that the prosecution has failed to prove the involvement of Accused no. 2 in the offence and consequently acquitted him. After hearing accused no. 1, the trial Court passed the order of sentence. Aggrieved by the judgment of conviction and sentence passed by the trial Court, petitioner filed an appeal before the lower appellate Court in CrI.A. No. 105/2011. The lower appellate Court on re-appreciation of the entire material on record dismissed the appeal and confirmed the judgment of the trial Court. Hence this revision petition.

3. Heard arguments on both the side and perused the entire record. The following points will arise for my consideration:

i) Whether both the courts below committed an error in holding that the prosecution has proved the guilt against the petitioner for the offences punishable under Sections 326, 504, 506 r/w 34 IPC?

ii) Whether both the courts below are legally correct in convicting and sentencing the petitioner?

4. Admittedly, the incident had taken place on the evening of 21.02.2010. On the next date i.e., on 22.02.2010 the complaint was lodged with the jurisdictional police. There is no explanation for this delay in lodging the complaint. This is one of the circumstances that is required to be taken into consideration while appreciating the evidence on record. Unfortunately, both the courts below committed an illegality in not noticing the delay in lodging the complaint.

5. The genesis of the incident is a conversation in mobile phone 9902858014 belonging to PW 1 and 2 and mobile phone 9141432334 belonging to accused no. 1. In the complaint it is alleged that on 21.02.2010 accused no. 1 gave a call to the mobile phone which was in the custody of PW. 2 and abused her in filthy language. Firstly the mobile phones nor the sim cards referred to in the complaint are seized. Secondly, the prosecution has not made any effort to find out ownership of these mobile phones and also to secure call sheet in respect of above phones on the relevant date i.e. 21.02.2010. This is yet another material circumstance where both the courts below committed an illegality in not considering this aspect of the matter.

6. In the complaint it is alleged that petitioner used filthy language in his mobile phone to PW. 2. What is that filthy language is not specified either in the complaint or in the evidence of PW. 1 and PW. 2. Again this aspect of the matter is not taken into consideration by both the courts below.

7. The complainant and accused are residents of same village and known to each other. The evidence on record discloses that on earlier occasion there was a criminal case between the parties and the same was settled by the jurisdictional police. In the complaint it is specifically stated that accused no. 1 with a wooden log tried to give a blow to accused no. 1 and on his escape, PW. 2 sustained injury to her hand. When PW. 2 went to the hospital the name of accused no. 1 was not disclosed to the Doctor and this is evident from the wound certificate Ex. P3. When both the parties are acquainted with each other then there is no reason as to why PW. 2 failed to mention the name of accused no. 1 before the Doctor who treated her. This is one of the circumstance to be taken into consideration. But both the courts below committed an illegality in not appreciating this aspect of the matter.

8. Both PW. 1 and PW. 2 in their evidence specifically deposed that immediately after the incident on 21.2.2010, PW. 2 was taken to the hospital. But the medical evidence on record specifies that PW. 2 got treated on the next day of incident i.e. on 22.2.2010." This is yet another circumstance which is not considered by the courts below.

9. A reading of Section 326 IPC specifies the following ingredients to constitute an offence:

- a) There shall be voluntarily causing grievous hurt;
- b) That hurt shall be by means of any instrument for shooting, stabbing or cutting, or any instrument which used as a weapon of offence;
- c) That hurt is likely to cause death of a person.

10. In the instant case, the case of the prosecution is that accused no. 1 by using a wooden log attempted to give a blow to PW. 1 and on his escape PW. 2 sustained injury. Firstly, the weapon or instrument that is used by accused no. 1 will not likely to cause death of either PW. 1 or PW. 2. Secondly, as per the

version of the prosecution the target of accused no. 1 was to give a blow to PW. 1 and on his escape PW. 2 sustained injury. On the face of it, PW. 2 who sustained injury in the incident was not the target of accused no. 1. Thirdly, the wound certificate specifies that the injury is grievous in nature. The nature of wound sustained by PW. 2 has not resulted in her death nor fracture. Therefore, this evidence on record manifestly makes it clear that no case is made out u/s 326 IPC. Both the courts below committed an illegality in not noticing the mandatory requirement to constitute an offence u/s 326 IPC. This approach of the courts below resulted in failure of justice.

11. A reading of Section 504 IPC specifies that whoever intentionally insults and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence. In the instant case, there is no allegation of any provocation being caused by the accused. In the complaint it is alleged that accused abused the complainant and his wife in filthy language and threatened them of dire consequences of life. Even if this allegation in the complaint is taken as true it only amounts to threatening and on the other hand, the same will not amount to insult or provocation. In the absence of either insult or provocation no case can be made out u/s 504 IPC. Again both the courts below committed an error in not appreciating the mandatory requirement to constitute an offence u/s 504 IPC. Section 506 IPC specifies that whoever causes criminal intimidation shall be punished. In the instant case, in the complaint it is stated that accused 1 and 2 threatened that they will not stop at this stage, one day or other they will kill the complainant and his wife. Admittedly, the alleged threat by the accused was in front of the house where 30 to 40 persons were assembled. The statement of persons who were present at the scene of offence was not recorded and their names are not mentioned in the complaint and even in the evidence. PW. 1 is the son of complainant, PW. 2 is the daughter-in-law of the complainant and PW. 4 is their close relative. Merely because PW. 1 to PW. 4 are relatives their evidence cannot be rejected. But in a situation like this and particularly when the presence of independent witness are available that gains more important. But unfortunately, in the instant case, the prosecution has not recorded the statement of persons who are present at the time of scene of offence and as already pointed out their names are not specified either in the evidence or in the complaint. In the circumstances, I am of the considered opinion that prosecution has failed to prove and establish an offence punishable u/s 506 IPC. Both the courts below committed an illegality in not noticing this material inconsistency and lack of evidence on record. The prosecution failed to prove and establish the offences alleged against the accused. For the reasons stated above, the following:

ORDER

i) Criminal Revision Petition is hereby allowed.

ii) The judgment and sentence dated 22.10.2011 in C.C. No. 861/2010 passed by the Civil Judge and JMFC, Sira and confirmed by the lower appellate Court in

Crl.A. No. 105/2011 vide judgment dated 28.2.2012 are hereby set-aside.

iii) The accused/petitioner is hereby acquitted.

iv) The bail bonds executed by the petitioner and the surety are hereby cancelled.

v) The fine amount deposited by the petitioner shall be refunded to him.