

(2018) 06 KAR CK 0028

In the Karnataka High Court

Case No : Criminal Appeal No. 905 of 2013

**Sri Santhosha and Ors @APPELLANT@Hash State by Maddur Police
Station**

Date of Decision : 22-06-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 313, 374(2)

Indian Penal Code, 1860 — Section 143, 148, 149, 302, 307, 324

Citation : (2018) 06 KAR CK 0028

Hon'ble Judges : BUDIHAL R.B, J;B.A. PATIL, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The present appeal is preferred by accused Nos.1 to 5, challenging the judgment and order of conviction and sentence dated 24.6.2013 passed by

the II Additional District and Sessions Judge, Mandya in SC.No.205/2002 along with SC.Nos.135/2005, 49/2007 and 189/2008.

2. The sum and substance of the case of the prosecution is that complainant Kamaraju gave a statement as per Ex.P1 alleging that there was a

dispute with regard to Site No.26 of Valagerehalli Village between Manchiaiah and Laxmaiah and there were two groups pertaining to the said

dispute. Accused were supporting Laxmaiah, whereas the complainant and injured CWs.1 to 5 were supporting Manchiaiah. In that light, there existed

animosity between the said two groups. In this background, on 12.6.2002 at about 10.00 p.m., when the complainant was talking with Kamalamma in

front of the house of one Chunchamma, accused persons by constituting an unlawful assembly in furtherance of their common object, came there by

holding deadly weapons and abused the complainant and his wife in filthy language. Accused No.6-Shivananda told to finish Kamaraju as there would

be a single case if they kill one person or several persons and instigated accused No.1. Accused No.1 with an intention to kill Kamaraju, assaulted on his head with chopper and as a result of the same, Kamaraju sustained grievous injuries. Accused No.2-Sathisha assaulted the complainant Kamaraju with knife on his right arm and caused the injuries. Accused Nos.3 and 4 assaulted the complainant when he fell down, Kamalamma who was standing nearby, questioned the accused persons, for which accused No.1 assaulted on her head with chopper and accused Nos.3 and 4 assaulted on her back, left side of stomach. On hearing the same, Raju, the brother of the complainant came there and when he questioned the accused, in order to kill him, accused No.1 assaulted him with chopper on his head and as a result of the same, he sustained grievous injury on his left eye and at that time, CWs.3 to 5 came and pacified the quarrel. Thereafter, accused No.5 snatched the club from accused No.3 and assaulted CW.3 Nirmala on her left elbow and accused No.1 assaulted CW.4 Bhanuprakash, S/o.Nirmala on his head. Accused No.2 also tried to assault Bhanuprakash with knife and when he escaped, it caused injury to left side of stomach and at that time, accused No.2 by taking a stone assaulted on left eye of CW.5. Accused No.7 who was also present there, threatened them with dire consequences if they support Manchaiah in the dispute in question. Raju, the brother of the complainant who sustained the injuries was shifted to NIMHANS Hospital for treatment and subsequently on 16.7.2002 at about 2.30 p.m., he succumbed to the injuries sustained by him. When the complainant was in the hospital, his statement was recorded as per Ex.P1 and a case was registered in Crime No.294/2002. After completion of investigation, the Investigating Officer filed the charge sheet against the accused persons.

3. After filing of the charge sheet, accused Nos.1 to 3 absconded and split up case was committed as against accused Nos.4 to 7 to the Sessions Court. Subsequently, accused Nos.1 to 3 were apprehended and their case was also committed separately and in that light, these four cases have been separately registered and tried by the Sessions Judge. The learned Sessions Judge after committal took cognizance and after hearing the learned counsel for the parties, framed the charge. Accused persons pleaded not guilty and they claimed to be tried as such the trial was fixed.

4. In order to prove its case, the prosecution has got examined 28 witnesses as PWs.1 to 28 and got marked the documents at Exs.P1 to P33 in

SC.No.205/2002; 26 witnesses as PWs.1 to 26 and marked Exs.P1 to 21 in SC.No.49/2007; 21 witnesses (PWs.1 to 21) and marked Exs.P1 to P26 in

SC.No.189/2008; 7 witnesses (PWs.1 to 7) and marked Exs.P1 to P3 in SC.No.135/2005. The prosecution has also got marked MO.Nos.1 to 12.

During the course of cross-examination, accused got marked Exs.D1 to D4. Thereafter the statement of the accused came to be recorded under

Section 313 of Cr.P.C. by putting incriminating material as against them, which they denied. However, they have not led any evidence. But, accused

No.2 in SC.No.189/2008 filed the written say along with his statement recorded under Section 313 Cr.P.C. After hearing the parties, the impugned

judgment and order of conviction and sentence came to be passed by the trial Court convicting accused Nos.1 to 5 for the offences punishable under

Sections 143, 148, 324, 307, 302 r/w. Section 149 of IPC. However, accused Nos.6 and 7 are acquitted of the offences with which they were

charged. Aggrieved by their conviction and sentence, accused Nos.1 to 5 have preferred this appeal.

5. The main grounds urged by the learned counsel Sri Rajanna B.C. appearing for the accused that the witnesses examined before the Court are

related and interested witnesses. Though independent witnesses were available, the Investigating Agency has not recorded their statements. The

place of incident is stated to be in front of the house of Kamaraju, but the panchanama which has been drawn shows that it is in front of the house of

Chunchamma, hence there is contradiction in the spot mahazar at Ex.P3 and the evidence placed before the Court. Though such evidence was

available, the trial Court has not properly considered and appreciated and wrongly convicted the accused-appellants herein. PW.10, the wife of the

deceased Raju is an eye witness to the incident who has deposed that the alleged incident has taken place and completed by midnight 12.00 or 1.00

Oâ??clock. Thereafter, they went to the hospital in an autorickshaw at about 2.00 a.m., and she was there in the hospital up to 4.00 a.m, but the

complaint came to be registered earlier to the said dates and time. It is the version of the complainant-PW.1 that the alleged incident has taken place

at about 10.00 p.m., on 12.6.2002 and Ex.P1 complaint was got registered at about 12.35 p.m. by recording the statement of PW.1 In that light, he

submitted that there is inconsistency of the statements and the evidence produced by the prosecution. Though the prosecution has utterly failed to

prove the guilt of the accused, the trial Court has wrongly convicted the accused-appellants herein. He further submitted that the medical records produced before the Court do not disclose as to who brought the injured to the hospital and who assaulted the injured and at what place and other details. If really the injured witnesses were conscious, definitely they could have given the history of assault and who actually assaulted them. In the absence of such material, it can be inferred that the said documents have been concocted and created only to implicate the accused persons in this case. There is no motive proved by the prosecution. Even the trial Court by relying on the evidence of the prosecution has wrongly convicted the accused. He further submitted that the FIR has reached the jurisdictional Court belatedly, which itself goes to show that there was a debate and discussion and thereafter the case has been registered against the accused persons. No persons came forward when the alleged incident took place either to save the deceased Raju or other injured witnesses. On these grounds, he prayed for allowing the appeal by setting aside the judgment and order passed by the trial Court.

6. Per contra, Sri Vijayakumar Majage, learned Additional SPP appearing for the respondent-State vehemently argued by contending that PWs.1, 2, 3, 5, 6 to 8 and 10 who are the eye witnesses to the alleged incident have categorically deposed that the accused persons by constituting an unlawful assembly came to the place where they were talking and assaulted the complainant and when deceased Raju came there, they have also assaulted him with deadly weapons and caused grievous injuries who ultimately succumbed to the said injuries. When there is an evidence of the eye witnesses, motive need not be proved by the prosecution. He further contended that the evidence of PW.21 and other witnesses clearly goes to show that there was a dispute regarding a site and in that light, there were two groups, one group attacked another and caused the injuries. Hence, there is no question of falsely implicating the accused persons in this case. He further submitted that the defence which was taken by the accused is that as the deceased consumed alcohol and fell down he sustained the injuries. But the defence has not explained as to how and where other injured persons have sustained the injuries. In the absence of such explanation, the version of the injured witnesses can be relied upon by the Court for the purpose of conviction. He

further submitted that as the medical certificates are issued by the Government Hospital there is no question of issuance of false certificates in respect of the victims. Even the prosecution has also produced MLC Register extracts before the Court and during the course of cross-examination, the said document has not been denied. Under such circumstances, the appellants cannot contend that the medical certificates are falsely created by the complainant and other injured. He further submitted that there is a recovery of weapons and blood stained clothes at the instance of the accused persons. If really no such incident has taken place, they could not have produced the said articles. He further submitted that if the accused persons have not been involved in the alleged incident, they ought not to have absconded, but as per the evidence of PW.19, it indicates that the accused persons were absconded and subsequently apprehended which is also one of the circumstances to show the involvement of the accused in the alleged incident. On these grounds, he prayed for dismissal of the appeal by confirming the judgment and order passed by the trial Court.

7. We have carefully and cautiously gone through the submissions made by both the parties and also perused the records including the impugned judgment and order. Though it is the contention of the learned counsel for the appellants that all the witnesses are related witnesses and PW.3 is the relative of the injured who is also a panchayat member by using her position and foist a false case has been registered against the accused, it is well established principle of law that merely because the witnesses are related to each other, their testimony cannot be discarded. It is the duty of the Court to scrutinize the evidence carefully and cautiously. As could be seen from the evidence of PW.3 she is a relative of PW.1 and she is also a member of Taluka Panchayat. Merely because she is related to other witnesses and she is the member of Maddur Taluka Panchayat, no inference can be drawn that a case has been registered against the accused persons by using her power and position. Even if we peruse the evidence of the said witness, she went to the place of incident after hearing the galata and she has also asked as to why they were quarrelling, PW.1-Kamaraju and Kamamma explained and at that time the accused persons assaulted PW.1 with macchu and other accused persons also assaulted the other injured including the deceased Raju. When PW.3 went to the spot after galata has started, there is no question of falsely implicating the accused persons by

using her power. Even if we peruse Exs.P7 to P12 they clearly go to show that the injured have gone to the hospital and they got treated. Exs.P13 to

18 are the extracts of MLC Register which is kept in the ordinary course of business and there is an entry existing in respect of the injuries suffered

and the assault committed by the accused persons. With regard to the first contention about the admissibility of the evidence of related and closely

related witness to the injured and deceased, there is no bar in considering the evidence of relatives. On close analysis of the evidence of those

witnesses, it is clear, cogent and without much contradictions. When such evidence is consistent and duly corroborated with medical evidence, it is not

possible to discard the same only on the ground that they are related and interested witnesses. Even no such material is placed to discard their

evidence. In that light, the contention taken up by the learned counsel for the accused is not acceptable in law. It is the second contention of the

appellantsâ?? counsel that no independent witnesses came forward when alleged incident took place, though so many houses were situated in that

area. It is true that no independent witnesses came to pacify the galata when alleged incident took place. But generally no other persons try to come

and involve in the case that too in a criminal case when two groups are fighting with regard to a site in the same village. It is only related and

interested witness who comes forward and gives the evidence. In the light of the above discussion, we are of the considered view that there is no

force in the contention raised by the learned counsel for the appellants and hence, the same is rejected.

8. It is the contention of the appellantsâ?? counsel that nobody came forward to save the injured and to pacify the quarrel. But during the course of

cross-examination of PW.1, he has deposed that when accused persons assaulted, he made hue and cry and nobody came forward only because of

the reason that the accused persons threatened the said persons that they would also finish them if they come forward to save the injured. As such the

persons who were residing near by the place of incident did not come and rescue them. The said evidence appears to be natural and probable. When

a galata is taking place between two groups and if accused persons threaten them that if they come to rescue the injured they would be finished, then

under such circumstances, no persons would come forward to take risk of their life and get an assault from the accused persons.

9. As could be seen the records and the paper book, PWs.1 2, 3, 5 to 8 and 10 are the eye witnesses to the alleged incident. They have categorically deposed that when PW.1 and other injured were in front of the house of Chunchamma and were talking about at 10.00 p.m. the accused persons by constituting an unlawful assembly came and scolded them in filthy language and at that time, accused No.1-Ananda assaulted the complainant on his head with macchu and accused No.2-Sathisha stabbed with knife on his right shoulder and Shekhar and Santhosh assaulted with club on his leg and other parts of the body. They further deposed that when PW.4- Kamalamma asked the accused persons as to why they are assaulting, accused persons also assaulted her with macchu and club and also threatened her with dire consequence. In the meanwhile, the deceased Raju also came there and asked as to why they are assaulting, at that time the accused persons assaulted him on his head and other parts of the body and as a result of the same, he fell down and became unconscious. They further deposed that when Nirmala, Madhukar, Bhanuprakash came to pacify the quarrel, accused persons also assaulted them and caused injuries. On going through the evidence of all these witnesses, there is consistency and corroboration in so far as the overt acts of each of the accused in assaulting PW1, the complainant and the deceased Raju and other injured witnesses. Even they have also categorically deposed that there was a dispute with regard to site No.26 of Valagerehalli Village between Manchaiah and Lakshmaiah and accused were supporting Lakshmaiah whereas the injured were supporting Manchaiah. In that light, there was a dispute and the accused persons by constituting an unlawful assembly brought the deadly weapons and assaulted the injured witnesses as well as the deceased Raju. When there are eye witnesses to the alleged incident, motive is not relevant. In the case on hand, the prosecution has also established that the accused and injured persons were having animosity in respect of the dispute regarding the site.

10. It is well established principle of law that testimony of injured witnesses has to be given a greater weight and much weight has to be given to their presence at the time of alleged place of occurrence and it cannot be doubted. It is also now well settled that it is not likely to spare the real assailant and implicate the innocent person in order to discard the evidence of the injured witnesses. There must be cogent evidence before the Court, then only

the testimony of the injured witnesses can be discarded. In that light, defence has not brought any material and as such, the evidence of the injured

witnesses is acceptable and reliable. This proposition of law has been laid down by the Honâ??ble Apex Court in the case of Chandrasekar &

another Vs. State reported in (2017)13 SCC 585, wherein at paragraph-10, it is observed thus:-

â??10. Criminal jurisprudence attaches great weightage to the evidence of a person injured in the same occurrence as it presumes that he was

speaking the truth unless shown otherwise. Though the law is well settled and precedents abound, reference may usefully be made to Brahm Swaroop

v. State of U.P. observing as follows: (SCC p 302.para 28)

â??28. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very

reliable, as he is a witness that comes with an in-built guarantee of his presence at the scene of the crime and is unlikely to spare his actual

assailant(s) in order to falsely implicate someone.â??â?!.â??

11. The aforesaid principle of law has been reiterated by the Honâ??ble Apex Court in the case Mohd. Ishaque & others Vs. State of West Bengal

& others, reported in (2013) 14 SCC 581 at Head Note-A, which reads as under:-

â??A. Criminal Trial â?" Witnesses â?" Injured witness â?" Credibility â?" Criteria of appreciation â?" PWs.1, 2 and 4 in the present case sustained

serious injuries and their evidence was believed by the court â?" Testimony of injured witnesses is entitled to great weight â?" It is unlikely that they

would spare the real culprit and implicate an innocent person â?" Of course, there is no immutable rule of appreciation of evidence that evidence of

injured witnesses should be mechanically accepted, it should also be in consonance with probabilities â?" Whether witnesses are interested persons

and whether they had deposed out of some motive cannot be sole criterion for judging credibility of a witness â?" Main criterion would be whether

their physical presence at the place of occurrence was possible and probable.â??

12. Keeping in view the ratio laid down in the aforesaid decisions if we peruse the evidence of PW.15-Dr.K.S.Vinaykumar, who has examined the

injured including the deceased who sustained the injuries in the alleged incident on 13.6.2002, he has deposed that injured Raju, Kamalamma,

Madhukara, Bhanuprakash, Nirmala and the complainant came to him with the

history of the injuries due to assault at about 10.30 p.m. on 12.6.2002.

He examined them and issued the wound certificates at Exs.P7 to P12. He has also produced MLC Register extracts which are marked as Exs.P13

to P18. Even the injuries sustained by all the injured correspond to the evidence of the eye witnesses. Even as could be seen from the evidence of the

doctor-PW.14 who has conducted the postmortem examination over the body of the deceased who died subsequently on 16.7.2002, he has opined that

death was on account of assault with club at 10.00 p.m. on 12.6.2002 at Valagerehalli Village. Though the learned counsel for the accused-appellants

would contend that there is inconsistency in the evidence of PW.14 and the eye witnesses, eye witnesses have deposed that accused No.1 assaulted

with macchu on the deceased and the doctor has stated that assault was with club, on careful and close scrutiny of the evidence of PW.15, he has

deposed that he has sustained those injuries on account of assault with same weapon as stated above. In that light, he has also seen chopper, macchu,

club and stone. As could be seen from the evidence of the eye witnesses, they have categorically and consistently stated the overt acts of each of the

accused with which weapon they have assaulted the deceased and the injured. In that light, if there is any inconsistency in the evidence of the eye

witnesses and the medical evidence, the Court has to believe the evidence of the eye witnesses. In other words, ocular evidence prevail over the

medical evidence. Even the evidence of PW.14 does not help the accused-appellants since he has neither seen the said deceased Raju when he was

brought with the injuries in a coma condition to NIMHANS hospital. Under such circumstances, the history which is said to have been given for the

death does not take away the case of the prosecution. The main criterion would be whether their physical presence at the place of occurrence was

possible and probable. Injuries sustained by them would probablize their presence. The testimony of the injured eye witnesses is corroborated with the

evidence of other witnesses including PWs.14 and 15 and recovery of the weapons by the Investigating Officer. Even it is the case of the prosecution

that the accused persons immediately after the incident they threw the weapons at the spot and ran away and the same have been collected by one

person by name Nagaiah. Though it is the contention of the learned counsel for the appellants-accused that Nagaiah had accompanied the injured and

there is inconsistency in the evidence of the witnesses and the recovery of the said weapons, naturally the witnesses will leave the scene of offence

as it is, but in the in case on hand, the said weapons have been taken by Nagaiah and kept into his house and subsequently he produced. Merely

because he collected the weapons and kept the same in his house, the evidence of eye witnesses cannot be thrown to wind. In that light, the

contention taken up by the learned counsel for the accused-appellants is not sustainable in law and the same is rejected.

13. The next contention of the appellantsâ?? counsel is that though the complaint is registered as per Ex.P1 on 13.6.2002 at about 1.10 a.m., PW.28

carried the FIR and handed over the same to the jurisdictional Magistrate at about 11.00 a.m., on 13.6.2002. On going through the evidence of PW.28,

it reveals that at about 1.40 a.m. on 13.6.2002, the FIR has been entrusted and given possession to PW.28 and as he was orderly working in Court

was directed to take the FIR he carried and submitted the same at 11.00 a.m. personally. When the FIR is registered at about 1.10 a.m. and handed

over at 1.40 a.m. to hand over it to jurisdictional Court, then under such circumstances there is no delay at all in issuing the FIR by the concerned

police. It is only in carrying and delivering, the delay has been caused. In that light, no adverse inference can be drawn that there is a delay and there

is every possibility of tampering and concocting the case of the prosecution.

14. Be that as it may, even as could be seen from the evidence of PW.28, he has deposed that the FIR has been handed over to the jurisdictional

Court at 11.00 a.m. on 13.6.2002. This witness has not been cross-examined by the defence for the reasons best known to them. When this witness

has not been cross-examined, then under such circumstances, the appellants-accused cannot now contend that there is a delay in sending the FIR to

the jurisdictional Court and there is possibility of concocting the case of the prosecution. The said plea is not having any force and as such we are of

the considered opinion that the same is not sustainable and it deserves to be rejected and accordingly the same is rejected.

15. Even as could be seen from the conduct of the accused, immediately after the incident, accused Nos.3 and 5 were absconding. As per the

evidence of PW.19 they were arrested on 4.7.2002 and even PW.19 is not cross-examined regarding the apprehension of the accused. When there is

consistency in the evidence to the effect that the accused persons have assaulted and subsequently they absconded from the place of incident, an

inference can be drawn that the accused persons after committing the offence in order to conceal themselves have absconded.

16. Learned counsel for the accused by drawing our attention to the evidence of PW.26 contended that PW.26 has deposed that MO.No.1-knife was

having a plastic handle, but the other witnesses have deposed that the knife was having wooden handle. There is inconsistency in the evidence in this

behalf. No doubt as could be seen from the cross-examination of PW.26, he has deposed that the said knife was recovered as per Ex.P3 and

MO.No.1-knife was having plastic handle. When the accused persons by constituting an unlawful assembly came and assaulted the deceased and the

injured that too, at about 10.00 p.m., then under such circumstances, it is but natural that at the time of assault nobody would observe very keenly as to

what was the type of handle of the knife with which accused assaulted and their concentration would be towards galata. The said contradiction

appears to be a minor which cannot take away the case of the prosecution and testimony of the eye witnesses. In that light, the contention raised by

the appellants's counsel in this regard is rejected.

17. Alternatively, the learned counsel for the appellants submitted that the accused persons were not having any intention or motive at the time of

alleged incident so as to cause the death of the deceased Raju and deceased died in the hospital after lapse of one month, under such circumstances,

the trial Court ought to have convicted the accused for the lesser offence. But as could be seen from the evidence of the eye witnesses and the

evidence of the doctor-PW.15, the deceased sustained severe concussive head injury, split lacerated injury on the left side of skull extending from

frontal region till occipital region and even the evidence of the eye witnesses clearly goes to show that the accused No.1 assaulted the deceased Raju

on his head when he tried to pacify the quarrel. At the time of assault, he uttered while assaulting PW.2-Kamamma to die and when he assaulted

the deceased he also uttered the words "I will also cause the same and smash him" which clearly go to show that he was having an intention to

cause the death of the deceased. Be that as it may, it is the case of the prosecution that the accused persons by constituting an unlawful assembly

came with deadly weapons, near the house of Chunchamma where Kamaraju, Kamalamma were talking with an intention to assault them. When they carried the weapons along with them that too deadly weapons, then under such circumstances, it cannot be held that the incident has taken place in a spur of moment without any intention to cause the death. In that light, the contention raised by the appellants's counsel in this regard does not stand to any reason so as to extend the benefit of convicting the accused and reducing the sentence for lesser offence.

18. We have gone through the judgment and order passed by the trial Court. We have also gone through the entire material on record including the lower Court records with exhibits. The trial Court after considering the entire material on record which is consistent with the evidence of the eye witnesses has come to a right conclusion and has rightly convicted the accused-appellants herein. Even on reappreciation of the entire evidence on record, we are of the considered opinion that it is not a case where another view is reasonably possible so as to give the benefit to the accused. The accused-appellants herein have not made out any good grounds so as to say that the impugned judgment and order is perverse and not in accordance with law.

Hence, the appeal being devoid of merits, deserves to be dismissed and accordingly the same stands dismissed.