
(2012) 01 KAR CK 0242
In the Karnataka High Court
Case No : Criminal A. No. 548 of 2006

State	Vs	APPELLANT
Chowrada Malleshappa and Others		RESPONDENT

Date of Decision : 04-01-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378 (1), 378 (3)
Penal Code, 1860 (IPC) — Section 149, 324, 326, 427, 448

Citation : (2012) 01 KAR CK 0242

Hon'ble Judges : V. Suri Appa Rao, J;Mohan Shantanagoudar, J

Bench : Division Bench

Advocate : H.S. Chandramouli, Spp, for the Appellant;

Final Decision : Dismissed

Judgement

Mohan Shantanagoudar, J.—The State has filed this appeal u/s 378 (1) & (3) of Cr. P.C. praying for modification of the judgment and order of conviction passed by the First Appellate Court and consequently has prayed for an order of conviction against the respondents u/s 326 of IPC. According to the State, the First Appellate Court is not justified in reducing the conviction to Section 324 of IPC from 326 of IPC.

2. The case of the prosecution is brief is that accused Nos. 1 to 25 formed themselves into an unlawful assembly on 25.10.1995 armed with deadly weapons came in a group with the object of assaulting the injured witnesses at Karibasaveshwara temple at Belalkatte village. All the accused allegedly assaulted injured witnesses with stones, clubs, axe etc, all over of their body The investigation was earned on based on the complaint lodged by the complainant PW- 1, Chargesheet came to be filed. "The learned Chief Judicial Magistrate (the Trial Court) tried 25 accused and recorded the order of conviction aad sentence for the offences punishable under Sections 148, 323, 324, 326, 448, 427 r/w 149 of IPC, Against the judgment and order of the Trial Court convicting the accused for the aforementioned offences, the accused filed Cr.A. No. 22/2001 before the

Fast Track Court-II, Shimoga. Appeal came to be allowed-in-part, consequent upon which the accused were acquitted for the offences under 326 of IPC. However, they were convicted and sentenced for the offences u/s 324, 448, 427 r/w 149 of IPC and ordered to pay fine. Questioning the same this appeal is filed by the State.

3. Sri. Chandra Mouli, teamed State Public Prosecutor submits that the First Appellate Court is not justified in setting aside the order of conviction for the offence u/s 326 of IPC, inasmuch as, one of the injured (PW-1) has sustained fracture of 3rd and 4th metacarpal bone.

4. It is relevant to note that nine persons have suffered injuries, out of them, 8 persons have suffered simple injuries in the incident in question, PW-1 has suffered fracture of 3rd and 4th metacarpal bone as could be seen from Ex- P6.

5. The evidence on record reveals that scuffle has take place between the people belonging to two communities in a village on petty matter on refuaal by Arohak to offer the food preparations made and brought by accused community on the ground that they have not paid the annual dues, which everyone in the village was expected to pay to the committee, may be for the purpose of arranging special poojaa and functions during festivals. This clearly gives an indication that there was no previous enmity, ill-will or pre - plan to assault the prosecution witnesses. The incident has taken place on the spur of the moment. There was no ill-will between two communities as such The people belonging to accused community were deprived from coming inside the temple by the Archak, only on the ground that the accused community had not paid annual dues to the temple, which everyone in the village was expected to pay to the temple committee.

6. Be that as it may, the evidence on record more particularly the evidence of the injured witnesses is contradictory to each other Though PW-1 has deposed specifically that accused No. 6 has assaulted him, other accused do not specifically depose about accused No. 6 assaulting PW- 1. The incident has taken place in a melee i.e., in a group clash between two communities, Nobody could have been sure as to who assaulted whom. PW-1 has sustained only one injury on the left hand. He has suffered firacture of 3rd & 4th metaparpal bone of the left hand. Except the said injury, he has not suffered any other injury, It is unthinkable that he could sustain only one injury by assault of 25 accused and other injured could sustain simple injuries, though were allegedly assaulted by 25 accused with deadly weapons like sticks, stones, axes, etc., The prosecution has not come out with true facts. The Trial Court has rightly concluded that in the absence of the Doctor's evidence, it cannot be believed that PW-1 had sustained grievous injury. The x-ray films are not produced before the Court. The Doctor who authored Ex-P6 is not examined before the Court. We hasten to add here itself that it is not imperative that the prosecution should produce medical certificate to prove the actual injuries in all matters. Having regard to the material on hand and the facts on record, we are of the opinion that the evidence of the Doctor who treated PW-1 may foe necessary under the facts and

circumstances of the case. In view of the camc, the First Appellate Court is justified in not convicting the accused for the offence u/s 326 of IPC. However, both the Courts below are justified in convicting the accused for the offence u/s 324 of IPC. The sentence of fine imposed by the First Appellate Court is also just and proper under the facts and circumstances of the case. The offence has taken place as back as on 25.10.1995 about 16 years back. The parties must have settled the matter in the village. Accordingly, no interference is called for Appeal fails and the same stands dismissed.