

(2015) 08 KAR CK 0268
In the Karnataka High Court
Case No : Criminal Appeal Nos. 637 and 64 of 2011

State	Vs	APPELLANT
Siddasetty and Others		RESPONDENT

Date of Decision : 10-08-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 307, 323, 324, 34, 341

Citation : (2015) 08 KAR CK 0268

Hon'ble Judges : Mohan M. Shantana Goudar, J;Budiha R.B., J

Bench : Division Bench

Advocate : P.M. Nawaz, S.P.P., for the Appellant; K.A. Chandrashekar,
Advocates for the Respondent

Final Decision : Disposed off

Judgement

Mohan M. Shantana Goudar, J—The judgment and order dated 27.12.2010 passed by the I Addl. Sessions Judge, Mysore in Sessions Case No. 81/2008 is the subject matter of these two appeals. By the said judgment and order, the Trial Court acquitted the accused for the offence punishable under Section 307 IPC, but convicted the accused for the offence punishable under Sections 341 and 323 read with Section 34 IPC.

The State has filed Crl. A. No. 637/2011 being aggrieved by the acquittal of accused for the offence under Section 307 IPC, whereas Crl. A. No. 64/2011 is filed by the convicted accused seeking their acquittal from all the offences to which they are charged.

2. Case of the prosecution in brief is that the injured P.W. 1 as well as the accused are all agriculturists of Kebbepura village, Nanjangud Taluk, Mysore District. With the previous enmity, all the accused persons quarreled with the victim on a flimsy ground that the victim asked the accused to give way for the victim to proceed further, all of them assaulted the victim with the clubs and damaged the cycle of the victim. The incident has occurred in the house

belonging to accused No. 3 near borewell at about 5.30 p.m. on 15.12.2007. On hearing the cries, P.Ws. 2 and 3 have arrived at the scene and pacified the quarrel. During the incident, the victim has sustained six injuries. The victim took treatment in Nanjangud Government Hospital at about 7.00 p.m. on 15.12.2007. P.W. 6 the doctor attached to Nanjangud hospital treated the victim and referred him to K.R. Hospital, Mysore. The injured took treatment in K.R. Hospital and was discharged.

3. In the meanwhile, the injured P.W. 1 lodged the complaint at 10.00 p.m. on 15.12.2007 in the Rural Police Station, Nanjangud, which came to be registered in CR. No. 496/2007. P.W. 5 - the Sub Inspector of Police of Nanjangud Rural Police Station registered the crime and he completed the investigation and laid chargesheet.

4. In order to prove the case of prosecution, in all examined six witnesses and got marked five exhibits and two material objects and one material object was got marked on behalf of the accused. After hearing the parties, the Trial Court acquitted all the accused for the offence under Section 307 IPC and convicted them for the offence under Sections 323 and 341 IPC read with Section 34 IPC.

5. Sri. K.A. Chandrashekar, learned Counsel for the accused and Sri. P.M. Nawaz, learned State Public Prosecutor taking us through the entire material on record, convinced us and argued in support of their respective cases.

6. P.W. 1 is the victim. He sustained six injuries. Ex. P. 5 is the wound certificate issued by the doctor P.W. 6 based on the report received by him in the K.R. hospital, to the effect that injury No. 1 sustained by the victim is grievous in nature. P.Ws. 2 and 3 are the eye witnesses. P.W. 4 is the witness for scene of offence, the mahazar (Ex. P. 2), in which MOs. 1 and 2 were seized. P.W. 5 is the investigating officer, he registered the crime and completed the investigation also. P.W. 6 is the doctor who did first aid to the victim in the Government Hospital and thereafter referred to K.R. hospital, Mysore. He issued the wound certificate (Ex. P. 5).

7. The evidence of P.Ws. 1 to 3 i.e., injured and two eye witnesses is consistent, cogent and reliable. The injured P.W. 1 has sustained six injuries. The incident has taken place in the middle of the village near borewell. The presence of P.Ws. 2 and 3 on the spot is natural and the presence of P.W. 1 cannot be disputed in as much as he himself is the injured witness. The injured as well as eye witnesses have in detail deposed about the incident in question and the manner in which each of the accused assaulted the victim. There are minor variations in their evidence with regard to the involvement of each of the accused. But looking to the entire evidence, the ocular testimony of these witnesses, it is clear that all the accused assaulted the victim with the club. Therefore, in our considered opinion, the Trial Court is justified in relying upon the evidence of P.Ws. 1 to 3 for coming to the conclusion. Though it is the case of prosecution that the iron rod is used by the accused, the said theory put forth by the prosecution appears to be

exaggerated. It is deposed by P.W. 3 that he had snatched the iron rod and the club from the hands of accused and that he produced the same before the investigating officer.

Be that as it may, the material on record further reveals that the accused have assaulted the victim with club. On the basis of Ex. P. 5 and the evidence of P.W. 6, the prosecution argues that the first injury sustained by the victim is grievous in nature in as much as he has sustained dislocation of left shoulder joint. Though in the wound certificate Ex. P. 5, it is mentioned by the doctor P.W. 6 that the victim was subjected to x-ray on 15.12.2007 in K.R. hospital, Mysore and that the certificate is issued by K.R. hospital, Mysore on 05.02.2008, the said report is not produced before the Court. The x-ray film is also not produced. P.W. 6 has deposed that he has issued Ex. P. 5 based on the report of K.R. Hospital and that consequently, he does not have personal knowledge that the victim "sustained fracture.

8. In the absence of certificate issued by the K.R. hospital on record, the Trial Court in our considered opinion is justified in concluding that the prosecution has not proved that the victim has sustained dislocation of left shoulder, beyond reasonable doubt. We agree with the said conclusion arrived by the Trial Court. However, in our considered opinion, the Trial Court ought to have convicted the accused for the offence punishable under Section 324 IPC and not under Section 323 IPC in as much as one club is employed in the commission of offence. Since all the accused with common intention assaulted the victim, they are rightly convicted by the Trial Court taking recourse to Section 34 IPC. However, the Trial Court ought to have convicted all the accused for the offence punishable under Section 324 read with 34 IPC. We also concur with the conclusion reached by the Trial Court that the accused have committed the offence under Section 341 IPC.

9. The records reveal that the accused have already suffered imprisonment for 36 days. They are agriculturists. According to learned Counsel Sri. K.A. Chandrashekar, the accused and victim are from the same village and they are living amicably foregoing the difference. The offence is of the year 2007. Having regard to the aforementioned facts and circumstances of the case, the sentence of imprisonment already suffered by the accused may be held sufficient.

Accordingly, the following order is made:

ORDER

a) Both the appeals are disposed of accordingly with the modification of the order of conviction and sentence. Accused are hereby convicted for the offence under Sections 341, 324 read with Section 34 IPC. They are sentenced to undergo the imprisonment for the period which they have already undergone. However, they shall be imposed with fine of Rs. 3,000/- each, in default of payment of fine, the accused shall undergo further imprisonment for one month for the offence under Section 324 IPC.

b) The sentence imposed by the Trial Court in respect of Section 341 IPC stands confirmed.

c) Both the sentences shall run concurrently. Hence, the accused shall not be imprisoned once again for the aforesaid offences. (except for default sentence, if any).

d) In case of recovery of fine, the sum of Rs. 10,000/- shall be paid to the injured/P.W. 1 namely Suresh. The remaining amount shall vest with the State.

The bail bond stands cancelled.