

(2016) 06 KAR CK 0121

In the Karnataka High Court

Case No : Criminal Appeal No. 1262 of 2012 connected with Criminal Appeal No. 796 of 2012

State by Malayalli Rural Police Station

APPELLANT

Vs

Mahadevaswamy

RESPONDENT

Date of Decision : 15-06-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154
Penal Code, 1860 (IPC) — Section 307, Section 324

Citation : (2017) 171 AIC 767 : (2016) 6 KantLJ 621

Hon'ble Judges : Mohan M. Shantanagoudar and Budihal R.B., JJ.

Bench : Division Bench

Advocate : Sri S. Rachaiah, High Court Government Pleader, for the Appellant;
Sri H.B. Chandrashekar, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Mohan M. Shantanagoudar, J. - The judgment and order dated 22-6-2012 passed by the Additional Sessions Judge, Mandya in Sessions Case No. 105 of 2011 is called in question in these two appeals.

The four accused were tried before the Trial Court for the offences punishable under Sections 341, 504, 307 and 114 read with Section 34 of Indian Penal Code, 1860. The Trial Court acquitted accused 4-Kantharaju, S/o. late Rachaiah of all the offences with which he was charged and acquitted accused 1 to 3 of the offences punishable under Sections 341, 504, 307 and 114 read with Section 34 of IPC. However accused 1 to 3 were convicted for the offence punishable under Section 324 read with Section 34 of IPC and were sentenced to pay a fine of Rs. 15,000/- each with a default clause.

2. Criminal Appeal No. 796 of 2012 is filed by convicted accused 1 to 3 questioning the judgment and order of conviction convicting them for the offence under Section 324 read with Section 34 of IPC. Consequently, they have sought for total acquittal. Whereas Criminal Appeal No. 1262 of 2012 is filed by the

State questioning the judgment and order of acquittal of accused 1 to 4 for the offences punishable under Sections 341, 504, 307 and 114 read with Section 34 of IPC. Consequently, State has prayed for conviction of all the accused for the offences with which they were charged.

3. Case of the prosecution in brief is that house of the complainant and the house of the accused were abutting each other; all was not well between the two families and they were quarrelling inter se on various issues including the issue of user of pathway; they were not in talking terms; P.W. 3 is mother of P.W. 2 (complainant); P.W. 4 is the younger sister of P.W. 2; P.W. 5 is younger brother of P.W. 2; all these witnesses were residing under the same roof; accused 1 is husband of accused 2 and father of accused 3 and accused 4 is a friend of accused 1.

At about 3.30 p.m. on 14-10-2010, accused 2 and her sister (not an accused) scolded P.Ws. 3 to 5 and was telling them that they would be done to death on that day and that she had invited many other people to do the said job; since P.W. 2 felt danger for her life and the lives of other family members, she was proceeding to Police Station along with family members and at that point of time accused 3 and 4 came on the scooter and waylaid P.W. 2 and her sister; accused 1 to 3 started assaulting P.Ws. 3, 4 and 5; accused 4 instigated accused 1 to 3 to commit the said crime; in the meanwhile, P.W. 2 and one Billaiah (C.W. 5) started raising hue and cry and consequently the people at large came to the spot and pacified the quarrel. Based on these allegations, the complaint came to be lodged at 8.00 p.m. on 14-10-2010 which came to be registered in Crime No. 164 of 2010 of Malavalli Rural Police Station for the offences punishable under Sections 341, 324, 504, 307 and 114 read with Section 34 of IPC. P.W. 8-the Sub-Inspector of Police registered the complaint and sent the First Information Report to the jurisdictional Magistrate. He completed the investigation and laid the charge-sheet.

4. In order to prove its case, the prosecution in all examined 8 witnesses and got marked 8 Exhibits and 7 Material Objects.

5. As mentioned supra, Trial Court acquitted accused 4 of all the offences with which he is charged; convicted accused 1 to 3 for the offence under Section 324 read with Section 34 of IPC and acquitted them of the other offences with which they were charged.

6. Sri H.B. Chandrashekhar, learned Advocate appearing on behalf of accused not only argued supporting the judgment and order of acquittal passed by the Trial Court, but also argued for setting aside the judgment of the Trial Court under which accused 1 to 3 are convicted for the offence under Section 324 read with Section 34 of IPC.

He submits that though the incident has taken place at about 3.30 p.m, and though the Police Station is situated near the place of incident in Malavalli, the complaint came to be lodged by P.W. 2 only at 8.00 p.m. i.e., after the lapse of

4? hours of the incident; If really P.W. 2 is the eye-witness to the incident in question, she should not have missed to lodge the complaint within a reasonable period after the incident; though the injured were admitted to hospital at 4.30 p.m., then is lot of delay in sending the Medico Legal Case Intimation to the Police Station by the doctor; The evidence of P.W. 2 clearly reveals that she herself handed over the weapons to the Police and executed panchanama-Ex. P. 3 and hence according to the learned Advocate, the so-called recovery sought to be made out by the prosecution falls to the ground. He further draws the attention of the Court to variations in the evidence of the injured eye-witnesses as well in the evidence of P.W. 2; that all the witnesses have tried to exaggerate the case by deposing falsely against the accused; the evidence of P.Ws. 2 to 5 suffers from embellishments, material improvements and omissions. According to him, the evidence of the eye-witnesses is not consistent and cogent; the place of incident itself is wrongly shown; the origin and genesis of case of the prosecution is suppressed by the Investigating Officer. On these among other grounds, he prays for allowing Criminal Appeal No. 796 of 2012.

Per contra, Sri Rachaiah, learned High Court Government Pleader contends that the case falls under Section 307 of IPC inasmuch as the injuries sustained by the victim are on the vital portions of the body though are simple in nature; it is not necessary that the victim should sustain the grievous injuries in order to bring home guilt against the accused for the offence under Section 307 of IPC; since the intention of accused 1 to 3 is clear and as they had pronounced that the victim should be done to death, the Trial Court ought to have convicted them for the offence under Section 307 of IPC.

7. Before proceeding further, we would like to narrate the evidence in brief in respect of each of the witnesses."

P.W. 1 is the eye-witness to the incident. However he has turned hostile to the case of the prosecution. Even in the cross-examination by the Public Prosecutor, he did not give any favourable answers to the prosecution so also his evidence is of no use to the defence also.

P.W. 2 is the eye-witness to the incident. She has lodged the complaint as per Ex. P. 2, based on which crime came to be registered. She is the daughter of the injured P.W. 3 and sister of injured P.Ws. 4 and 5.

P.Ws. 3, 4 and 5 are the injured eye-witnesses. All of them have supported the case of the prosecution.

P.W. 6 is the doctor. He treated all the three injured - P.Ws. 3, 4 and 5 and issued the wound certificates as per Exs. P. 4, 5 and 6. He subjected the injured to radiological examination and has finally opined that all the injuries are simple in nature.

P.W. 7 is the witness for mahazar-Ex. P 3. She has turned hostile to the case of the prosecution.

P.W. 8 is the Sub-Inspector of Police. He received the complaint and registered the crime. He conducted the investigation and laid the charge-sheet.

8. From the aforementioned narration, it is amply clear that the case mainly rests on the ocular testimony of P.Ws. 2 to 5 and among them, P.Ws. 3 to 5 are the injured witnesses. Though it is contended by Sri Chandrashekar, learned Advocate for the accused that P.Ws. 2 to 5 are interested witnesses and their evidence will have to be weighed cautiously, we are unable to persuade ourselves to agree with his submission. It is no doubt true that the evidence of any witness including injured witnesses has to be scrutinised carefully. However P.Ws. 3, 4 and 5 cannot be treated as interested witnesses, more particularly when they are the injured eye-witnesses.

9. The incident has taken place at 3.30 p.m. in the broad daylight in Malavalli Town. Malavalli is a taluka place. It is but natural that number of persons would be there in and around the scene of offence. Moreover, the incident has taken place about 300 feet away from Kanakapura Main Road and 100 feet away from the house of P.Ws. 2 to 5. So also it is clear from the material on record that the incident has taken place on public place i.e., the pathway. Immediately after the incident, the injured were admitted to Government Hospital, Malavalli at about 4.05 p.m. At the time of admission of P.W. 3, the history was recorded by the concerned doctor to the effect that the injuries are said to have been caused due to assault by Revathi (accused 2) with knife and assault by Ashwini (accused 3), Kantharaju (accused 4) and one Nandini by reaper at about 3 30 p.m. near Somanna Hotel situated on Kanakapura Main Road. While admitting Rajammanni (P.W. 4) in the hospital at 4.20 p.m., the doctor has recorded the history that he was assaulted by Mahadevaswamy (accused 1) with knife on her back, neck and shoulder near her house at 3.30 p.m. on 14-10-2010. Similarly, the history was recorded while admitting P.W. 5 in the hospital. From the above, it is amply clear that the injured were admitted to hospital in between 4.05 p.m. and 4.20 p.m. i.e., within one hour of the incident in question. The doctor who was attending P.Ws. 3, 4 and 5 in the hospital, has recorded the history as mentioned supra, which contains the names of all the accused. Most important is that each of the injured witnesses has given the history naming the assailant who had assaulted him in the incident. Thus it is clear that the history given by the injured witnesses is not omnibus, but the same was specific. Even the place of incident the weapons used by the accused, time of the incident as well as the name of the assailants were recorded in the history by the doctor. Consequently, it is clear that within one hour, all the injured witnesses have disclosed about the incident before the public authority i.e., Doctor attached to the Government Hospital. In view of the same, it cannot be made much of by the accused that the complaint came to be lodged belatedly at 8 p.m.

Moreover the patients are required to take treatment at the earliest. It is not expected of them to approach the Police Station with bleeding injuries ignoring their health. It is natural that the injured would be immediately shifted to

hospital for saving their lives instead of approaching the police station to lodge the complaint. Same has been done in this case also. Thus in our considered opinion, virtually (here is no delay in lodging the complaint and the delay, if any is explained under the facts and circumstances of the case.

10. We have gone through the depositions of P.Ws. 2, 3, 4 and 5 meticulously. All these witnesses have deposed naming the assailants who assaulted them. These witnesses have also deposed about the weapons used for commission of the offence by the accused. The versions of P.Ws. 2 to 5 fully corroborates the version as found in the complaint-Ex. P. 2 lodged by P.W. 2.

11. It is specifically deposed by all the injured eye-witnesses that accused 2-Revathi assaulted with knife; accused 1 also assaulted with the knife, whereas other accused have assaulted them with clubs. The aforementioned facts are consistently deposed by the injured eye-witnesses as well as P.W. 2.

As mentioned supra, P.Ws. 3,4 and 5 are the injured eye-witnesses. P.W. 3 has deposed that on account of fear, when herself and her husband proceeded towards Police Station to lodge the complaint against the accused, accused 3 and 4 waylaid P.W. 3 and her husband; accused 4 told them that they need not go to Police Station and that the disputes can be resolved outside the Police Station; so saying he held the hand of P.W. 3; in the meanwhile, accused 3 assaulted P.W. 4 with hands and legs and thereafter she was assaulted with the help of club; meanwhile, P.W. 5 intervened and he was also assaulted; immediately accused 1 came with a knife in his hand and stabbed on her (P.W. 3); accused 2 assaulted on her back and neck with a knife; accused 2 and 3 once again assaulted on the backside of the neck of P.W. 4; meanwhile, public came and intervened and pacified the quarrel. Though P.W. 3 was subjected to lengthy cross-examination, nothing worth is elicited by the defence to raise suspicion in the mind of the Court about the veracity of the evidence of P.W. 3.

The evidence of P.W. 3 is fully corroborated by the evidence of other two injured eye-witnesses-P.Ws. 4 and 5 as well as the eye-witness-P.W. 2. The evidence of these witnesses is also almost similar to the evidence of P.W. 3. All of them have deposed about the complicity of accused 1, 2 and 3. The overt acts of these accused are in detail and specifically deposed by the injured witnesses including the eye-witnesses.

12. The Trial Court, in detail, has gone into the depositions of each of the witnesses and has rightly concluded that the versions of these witnesses is consistent and cogent. On going through the judgment as well as the depositions of these witnesses, we fully agree with the conclusion reached by the Trial Court that the versions of these witnesses is consistent, cogent and reliable. There is no reason as to why the injured witnesses should implicate innocent persons by leaving the real assailants.

13. The prosecution has proved the circumstance of motive also. Admittedly, it is the case of the prosecution that litigations are going on between the accused as

well as P.Ws. 2 to 5 with regard to the pathway and other issues. With the said motive, the incident has taken place. Even on reconsideration of the entire material on record, we find that the evidence of the injured witnesses is consistent, cogent and reliable. The evidence of P.W. 2 fully supports the versions of the injured.

14. The case of the prosecution is further fortified by the Forensic Science Laboratory report-Ex. P. 8. Ex. P. 8 discloses that seven articles were sent for FSL examination, which include one wooden club, two knives and clothes of the injured. The FSL report discloses that all the seven items sent for examination contain human blood.

15. Since we find that the ocular testimony of P.Ws. 2 to 5 is believable and trustworthy and their evidence is fully supported by the medical evidence of the doctor-P.W. 6 and the wound certificates-Exs. P. 4 to P. 6, the Trial Court is justified in convicting accused 1 to 3.

However the evidence on record does not disclose ample and reliable material as against accused 4. It is vaguely stated in the complaint-Ex. P. 2 that along with him (P.W. 2), accused 2 came on the scooter to the scene of offence and at that point of time, accused 4 tried to tell P.W. 2 that he would solve the disputes between the two groups. Same is the version of the eyewitness. Hence it is dear that accused 4 has not taken any active role in commission of the crime. On the other hand, he has tried to pacify the quarrel between the two groups by amicable settlement. Therefore in our considered opinion, the Trial Court is justified in acquitting accused 4, more particularly when the material on record collected by the prosecution is not sufficient to bring home guilt against him.

16. The evidence of the doctor-P.W. 6 and the wound certificates-Exs. P. 4 to P. 6 reveal that all the three injured have sustained simple injuries. Among them, P.W. 3 has sustained severe injury though technically it is not a grievous injury. She was admitted to Vikram Hospital at Mysore and she was in-patient for four days. However the doctor having found that P.W. 3 has not sustained any fracture or any grievous injury, has issued the certificate as per Ex. P. 4 that she has sustained simple injury. So also P.Ws. 4 and 5 have sustained simple injuries. The evidence of P.Ws. 2 to 5 is not sufficient to conclude that the accused has got intention to commit murder of any of the injured. Admittedly, P.Ws. 3 to 5 were unarmed. Even according to the prosecution, the accused were armed with knife and club. Had there been any intention on the part of the accused to do away with the life of any of the injured, they would not have left them, more particularly when the injured witnesses are in helpless condition and were unarmed. The very fact that the injured were left with the simple injuries by the accused, more particularly when the injured unarmed, would clearly reveal that they did not have any intention to commit murder of any of the injured. It seems accused wanted to curtail P.W. 2 from going to the Police Station to lodge the complaint and in that regard, the incident has taken place. In view of the same, we are of the clear conclusion that the Trial Court is justified in acquitting the

accused for the offence under Section 307, IPC.

17. Though the Trial Court is justified in not imposing sentence of imprisonment under the facts and circumstances of the case, it ought to have imposed higher amount of fine as part of sentence. As mentioned supra, P.W. 3 has sustained serious type of injury and she was admitted to Vikram Hospital, which is a major hospital at Mysore and she has taken treatment as in-patient for four days. She must have spent lot of money for getting herself recovered. In order to compensate her adequately, the Trial Court ought to have imposed sentence of fine to a higher extent. Having regard to the totality of facts and circumstances and having heard the learned Advocates on record on the question of sentence, we proceed to pass the following order :

1. The impugned judgment and order of acquittal acquitting accused 1 to 4 for the offences punishable under Sections 341, 504, 307, 114 read with Section 34 of IPC stands confirmed.
2. The impugned judgment and order of conviction convicting accused 1 to 3 for the offence under Section 324 read with Section 34 of IPC stands confirmed.
3. The impugned judgment of the Trial Court not imposing sentence of imprisonment against accused 1 to 3 also stands confirmed.
4. The sentence of fine imposed on accused 1 to 3 by the Trial Court is modified and the same is enhanced to Rs. 20,000/- (Rupees Twenty Thousand only). Each of the accused 1 to 3 shall pay fine of Rs. 20,000/-. In default, accused 1 to 3 shall undergo imprisonment for a period of four months.
5. The fine amount of Rs. 20,000/- shall be deposited by each of accused 1 to 3 within two months from this date. The fine, if any already deposited shall be adjusted while paying the remaining fine amount. In case of deposit of entire fine amount of Rs. 60,000/- (Rs. 20,000/- x 3), an amount of Rs. 35,000/- shall be paid as compensation to P.W. 3-Chandramma; an amount of Rs. 10,000/- shall be paid as compensation to the injured P.W. 4-Rajammanni (Rajamani); an amount of Rs. 10,000/- shall be paid as compensation to the injured P.W. 5-Raghuveera; and the remaining amount of Rs. 5,000/- fine shall vest with the State.
6. Accordingly, Criminal Appeal No. 1262 of 2012 is allowed in part and Criminal Appeal No. 796 of 2012 is dismissed.