
(2017) 02 KAR CK 0049

In the Karnataka High Court

Case No : 383 of 2012 C of W CRIMINAL APPEAL No 106 of 2012

STATE BY NEW TOWN POLICE BHADRAVATHI

APPELLANT

Vs

STANY LOUIS S/O PHYLIOMINARAJ

RESPONDENT

Date of Decision : 03-02-2017

Acts Referred:

Indian Penal Code, 1860, Section 34, Section 307, Section 504 - Acts done by several persons in furtherance of common intention - Attempt to murder - Intentional insult wit

Citation : (2017) 02 KAR CK 0049

Hon'ble Judges : H.G.Ramesh, John Michael Cunha

Bench : DIVISION BENCH

Advocate : S.RACHAIAH, PRUTHVI WODEYAR

Judgement

1. CrI.A.106/2012 is filed by the convicted accused No.1 challenging the order of conviction dated 26.12.2011 in S.C.No.82/2011 whereunder he is sentenced to undergo rigorous imprisonment for a term of two years and a fine of Rs.1,000/- for the offence punishable under section 307 of Indian Penal Code.

2. CrI.A.No.383/2012 is filed by the State seeking enhancement of the sentence.

3. We have heard the learned counsel for the appellant/accused No.1 and the learned HCGP.

4. The case of the prosecution is that on the request of the mother of the complainant, Sagayi(PW-5), dropped her two daughters by name Rashmi and Madhu to the railway station. In that connection, on 9.10.2009, at about 10.30 a.m., when complainant (PW.1), her mother (PW.2) were in the house, accused Nos.1 to 3 came to the house of the complainant and questioned her mother as to why she sent her daughters with Sagayi - the son-in-law of accused No.1. It is alleged that the accused abused the mother of the complainant saying that she had sent her daughters with the aforesaid Sagayi to have illicit relationship with him. When the mother of the complainant objected to the abusive language of

accused No.1, the accused threatened to take them to the house of their uncle George (PW-4) for resolution of the dispute and at that time, accused No.1 assaulted (PW-2) the mother of the complainant on her face and hands and squeezed her neck and when PW-1 the complainant came to her rescue, the accused persons assaulted her and abused both of them in filthy language issuing threat of life.

5. Regarding this incident, PW.1 Manjushree lodged a complaint before the New Town Police, Bhadravathi and on its basis, FIR was registered against accused Nos.1 and two others and after investigation, charge-sheet was laid against all the three accused for the offences punishable under sections 504 and 307 r/w. section 34 of Indian Penal Code. Before the Trial Court , the prosecution examined 14 witnesses and produced in evidence Ex.P1 to Ex.P10. On hearing the parties, by the impugned judgment, the learned Fast Track Court Judge convicted only accused No.1 for the offence punishable under section 307 of Indian Penal Code and sentenced him as above.

6. The main contention of the learned counsel for the appellant/accused No.1 is that the evidence of the complainant and her mother are contradictory to each other and the statements made by both these witnesses before the Court are opposed to the contents of complaint-Ex.P1. The wound certificate produced by the prosecution discloses that the mother of the complainant PW.2 had sustained tenderness over anterior part of her neck which according to PW.10 - the Doctor is only a simple injury. Under the said circumstances, the Trial Court has committed grave error in convicting accused No.1 under section 307 of Indian Penal Code. The learned HCGP however has argued in support of the impugned judgment and has tried to persuade the court to enhance the sentence.

7. On going through the evidence of the material witnesses examined by the prosecution, we find irreconcilable contradictions and glaring inconsistencies in the evidence of the prosecution witnesses. In this regard, it is relevant to note that PW.1 - the complainant has stated before the Court that on 9.10.2009, when she and her mother were in the house, all the three accused persons came there and questioned her mother as to whether she sent her daughter Rashmi for carrying on illicit relationship with Sagayi? The English translation of her further evidence reads as under:

"When I requested them not to abuse my mother, all the three accused persons assaulted me on my hands and face. When my mother questioned the accused as to why they were abusing her, the accused assaulted my mother. Thereafter, the accused took all the five of us to the house of our uncle George for settlement of the dispute. But George could not settle the dispute. When he was trying to mediate, accused No.1 abused my mother and assaulted her on her chest and squeezed her neck and when I tried to rescue her, accused Nos.2 and 3 assaulted me."

8. The above evidence on the face of it is contrary to the case set up by the

prosecution in the complaint -Ex.P1. In Ex.P1, it is stated that on 9.10.2009 at about 10.30 a.m., when PW.1 and her mother were in the house, accused Nos.1 to 3 came to their house and questioned her mother as to why she sent her daughters Rashmi and Madhu with their son-in-law Sagayi. In the complaint it is further stated that when the accused were threatening to take them to the house of their uncle George for settlement, accused No.1 abused her mother and assaulted her on her hands and face and squeezed her neck, threatening to kill her. The allegations made in the complaint indicate that the incident had taken place in the house of the complainant at about 10.30 a.m. on 9.10.2010, whereas in her evidence, PW.1 has stated that accused took them to the house of George and when the matter was being mediated by George, accused No.1 assaulted on the chest of the mother of the complainant and squeezed her neck. This discrepancy creates a serious dent in the case of the prosecution.

9. Added to that, in the spot mahazar, Ex.P2, it is mentioned that the spot of occurrence was in front of the house of George on a public road. But contrary to the contents of Ex.P2, the mother of the complainant (PW-2) has unequivocally stated in her chief examination that the incident took place when they had been to their building which was under construction. She is very specific in her evidence that when they were standing near their building under construction, all the accused came there and abused her. Further, according to PW.2, the incident took place at 3.00 p.m. These inconsistencies totally demolish the case of the prosecution and throw doubt not only about the time and place of the incident, but also about the manner of the incident. In this context, it is also pertinent to note that according to PW.2, during the occurrence, accused Nos.2 and 3 held her tuft and took her near the house of George and at that time, accused No.1 squeezed her neck. This evidence is once again contradictory to the contents of the complaint wherein it is stated that PW.2 was assaulted in her house. All these inconsistencies and contradictions seriously affect the credibility of the testimony of the prosecution witnesses leading to the inevitable conclusion that the entire case foisted against the accused is false and fabricated.

10. The prosecution has also examined PW.3 - Rashmi, one of the daughters of PW.2. But unfortunately, even the evidence of this witness does not help the prosecution to prove the charges levelled against the accused for the offence punishable under section 307 of Indian Penal Code. This witness has wholly contradicted the case of the prosecution stating that on the date of the incident at about 10.30 a.m., all the accused came near their house and abused PW.2 and took her near the house of George and at that time, quarrel ensued and accused No.2 - Ammu squeezed the neck of her mother and thereafter, accused No.1 felled her to the ground and placed his knee on her chest and squeezed her neck. This evidence does not find any corroboration either in the evidence of other witnesses or in the medical opinion. Thus, there is no consistency whatsoever in the evidence let in by the prosecution. The Trial Court has acquitted accused Nos.2 and 3 of all the charges including the charge under Section 307 r/w Section 34 of Indian Penal Code.

11. The circumstances brought out in the cross-examination of the prosecution witnesses point out that at every stage, the prosecution witnesses have tried to improve and exaggerate the case of the prosecution and have ended up in denting the case of the prosecution. In this context, it may be relevant to refer to the cross-examination of PW.1 wherein she has asserted that the quarrel took place for about 45 minutes near their house and after about 5 or 10 minutes, all of them went near the house of George. She has answered in her cross-examination that when they were inside the house, accused No.1 dragged her mother out of the house and accused No.3 bit on the left arm of PW.2 and PW.2 had to take injection in Bhadravathi Government Hospital. Unfortunately, there is no medical evidence in support of this version nor does it find any corroboration either in the complaint or in the evidence of any other witnesses, thereby exposing the falsity of the evidence given by these witnesses before the court. In appreciating the evidence of the above witnesses, it is also necessary to note that all the material witnesses examined by the prosecution are interested witnesses. The circumstances discussed above clearly go to show that out of some family feud or grudge, all the material witnesses namely PW.1, PW.2, PW.3 and PW.8 who are said to be related to the accused have given evidence before the court. Therefore, no credence could be given to the testimony of PW-1, PW-2, PW-3 and PW-8.

12. It is unfortunate to note that without considering the apparent contradictions and inconsistencies in the evidence of the prosecution witnesses, the Trial Court has convicted accused No.1 under section 307 of Indian Penal Code. On reassessing the material on record, we do not find any worthwhile and reliable material making out the ingredients of the offence charged against the accused. The material witnesses examined by the prosecution in our opinion are unreliable and untrustworthy. The medical evidence produced by the prosecution namely the wound certificate at Ex.P7 indicates that only a tenderness was found on the anterior part of neck of PW.2 when she was examined by PW.8 at 1.00 p.m. on 9.10.2009. PW.10 who examined PW.2 has unequivocally stated before the court that PW.2 came to the hospital with a history of assault at Zinc Line, Bhadravathi. He has certified that the injury found on PW.2 was simple in nature and the patient was treated as out-patient. There is nothing in the entire evidence to suggest that either accused No.1 or the other accused caused any injury to PW.2 with the intention or knowledge of causing death of PW.2. On the other hand, the circumstances discussed above lead to doubt the very genesis of the incident. In the face of the glaring inconsistencies and irreconcilable contradictions highlighted above, the Trial Court should not have convicted the accused for any offence much less for the offence under section 307 of Indian Penal Code. The evidence let in by the prosecution does not establish the ingredients of section 307 and section 504 of Indian Penal Code. The prosecution has failed to prove its case beyond reasonable doubt. The Trial Court has failed to consider the evidence on record in proper perspective. Therefore, the impugned judgment and order cannot be sustained in law.

13. Accordingly, we pass the following order:- CrI.A.No.106/2012 filed by the appellant/accused No.1 is allowed and the impugned judgment and order passed by the Presiding Officer, Fast Track Court, Bhadravathi in S.C.No.82/2011 convicting the appellant/accused No.1 for the offence punishable under section 307 of Indian Penal Code and the sentence imposed on him is hereby set-aside.

The appellant/accused No.1 is acquitted of the charge under Section 307 Indian Penal Code. The bail bond of accused No.1 is cancelled.

The fine amount, if any, deposited by the appellant/ accused No.1 shall be refunded to the appellant/accused No.1.

Consequent to the above order, CrI.A.No.383/2012 filed by the State seeking enhancement of sentence stands dismissed.