

(2015) 01 KAR CK 0142

In the Karnataka High Court

Case No : Criminal Appeal Nos. 105 and 386/2011

State of Karnataka and Others

APPELLANT

Vs

Praveen Kumar Shetty and Others

RESPONDENT

Date of Decision : 29-01-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 307, 320, 324, 326, 506

Citation : (2015) 01 KAR CK 0142

Hon'ble Judges : P.S. Dinesh Kumar, J.; Mohan M. Shantana Goudar, J.

Bench : Division Bench

Advocate : B.T. Venkatesh, Addl. S.P.P., for the Appellant; S. Vishwajith Shetty, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Mohan M. Shantana Goudar, J.—The judgment and order of acquittal passed by the Sessions Judge, Udupi in Sessions Case No. 89/2008 dated 26.11.2010, is appealed against, in these appeals.

Crl.A. No. 386/2011 is filed by the State. Whereas, Crl.A. No. 105/2011 is filed by the complainant (examined as PW.1).

The accused were charged, tried and acquitted of the offences punishable under Sections 324, 326, 307 and 506 of IPC.

2. Case of the prosecution in brief is that, Complainant (PW.1); his elder brother - Purandara and his elder brother's wife - Shashikala and his sister -Shobha are living together; number of quarrels ensued between the villagers on one side and accused Nos. 1 to 3 on the other in the matter of extracting sand from the river; accused and his friends as well as the villagers were prohibiting PWs. 1 to 3 from extracting sand illegally from the river; on the date of the incident i.e., on 1.1.2008 at 11.45 a.m., the accused allegedly came in front of the house of the complainant and called complainant's sister -Shobha to come out of the house; when Shobha (PW.2) came outside the house, the accused pushed her aside;

immediately thereafter complainant rushed to the spot; before the complainant could interfere, the accused took out a small chopper and assaulted on the left hand of PW.2; consequently PW.2 fell on the ground; the accused also assaulted on PW.1 with the very chopper; since the neighbours arrived at the spot, the accused fled from the scene; immediately thereafter, the complainant and his sister - Shobha (PWs.1 and 2, respectively) were shifted to KMC Hospital, Manipal, who took treatment as in- patients. It is also alleged in the complaint that PWs.1 to 3 had stopped the accused and public at large from using a pathway by putting up a gate and thus the accused and other villagers could not pass through the pathway; and an ill will had developed between the accused and his friends on the one side and the villagers on the other.

3. PW.1 lodged a complaint as per Ex.P1. PW.13 - Sub Inspector of Police registered the case in Crime No. 2/2008 based on Ex.P1 and thereafter sent the FIR to the jurisdictional JMFC, as per Ex.P9. The Inspector of Police, Manipal Police Station completed the investigation and laid the charge sheet.

4. In order to prove its case, the prosecution in all examined 13 witnesses; got marked 11 exhibits and 5 material objects. On behalf of defence, two witnesses are examined and 4 documents are got marked.

The trial Court on evaluation of the material on record, as aforementioned, acquitted the accused.

5. PWs.1, to 3 and PW.12 are the eyewitnesses to the incident. Out of them, PWs. 1 and 2 are the injured eyewitnesses and PW.12 is a child witness.

PW.4 - Sub Inspector of Police conducted the investigation in part and handed over the investigation reports to PW.11.

PW.5 is the friend of PWs.1, 2 and 3 and he took the injured PWs.1 and 2 to the Hospital for treatment.

PW.6 is the Doctor, who treated the injured - PWs.1 and 2 and issued Wound Certificate as per Exs.P7 and P6, respectively.

PW.7 is the Police Constable, who carried the FIR to the jurisdictional Magistrate.

PW.8 is the witness for Spot Mahazar and Seizure Mahazar - Exs.P2 and P3, respectively. Ex.P2 is the scene of offence of Panchanama and Ex.P3 is the Panchanama relating to seizure of blood stained clothes of PWs.1 and 2.

PW.9 is another eyewitness. However, he has turned hostile to the case of the prosecution.

PW.10 is a witness for panchanama - Ex.P5. In the said Panchanama, nothing is seized. However, it is mentioned, in the said panchanama that the attempt was made by the police to search the weapon allegedly used for the commission of the offence which was thrown by him to the river immediately after the incident.

As aforementioned, PW.11 is the Investigating Officer, who completed the

investigation and laid the charge sheet.

PW.13 is another investigating officer, who registered the case based on Ex.P1 and investigated the offence to certain extent.

DW.1 is a Doctor working in District Hospital, Udupi. He treated the accused at 11.50 a.m. on 1.1.2008 and issued the Wound Certificate as per Ex.D2. The evidence of DWs.1 and 2 disclose that accused also sustained 4 simple injuries.

DW.2 is none other than the accused. He has also deposed about the incident and the motive behind lodging the complaint against the accused.

Ex.D4 is the complaint lodged by the accused at Manipal Police Station on 1.1.2008 at 5.30 p.m. Ex.D3 is the case sheet pertaining to the accused issued by the hospital.

6. Exs.D1 to D4 coupled with the evidence of DWs. 1 and 2 make it clear that two cases arose out of the same incident, which occurred at about 11.45 a.m. on 1.1.2008. Complaint lodged by the accused is at Ex.D4 and the same is registered in Crime No. 1/2008 at 5.30 p.m. in Manipal Police Station on 1.1.2008. The complaint lodged by PW.1 is at Ex.P1, the same is lodged at 8.30 p.m. in the very police station, which is registered in Crime No. 2/2008. Thus, the complaint lodged by the accused is first in point of time.

Be that as it may, both the complaints are relating to the very incident, which occurred at about 11.45 a.m. on 1.1.2008 at Shettibettu, Herga Village, Udupi Taluk. Accused as well as PWs.1 and 2 have sustained injury. However, the police after investigation in Crime No. 1/2008 laid the "B" Report. The case on hand arises out of Crime No. 2/2008, wherein, the charge sheet came to be filed and the accused is tried.

7. Before proceeding further, it would be relevant to consider as to whether PWs.1 and 2 in the matter on hand have sustained grievous injury or not. The Wound Certificates are at Exs.P6 and P7. The Wound Certificate of PW. 1 is at Ex.P7 and whereas of PW.2 is at Ex.P6. Both of them were medically examined and treated by PW.6 - Dr. Hithesh Shah, attached to KMC Hospital, Manipal. He is an orthopaedic surgeon.

The Wound Certificate - Ex.P7 reveals that PW.1 has sustained two simple injuries. The Doctor has also deposed that P.W.1 has sustained simple injuries. However, the Wound Certificate - Ex.P6 pertaining to PW.2 discloses that PW.2 has sustained two grievous injuries i.e., injury Nos. 6 and 7. However, it is made clear by Dr. Hithesh Shah - PW.6 during the course of his deposition before the Court that the injuries are wrongly mentioned as injury Nos. 6 and 7 but they ought to have been treated as injury Nos. 4 and 5. It is also relevant to note that PW.2 has sustained only 5 injuries and not 7 injuries. The Doctor has opined that injuries Nos. 4 and 5 (wrongly mentioned as injuries No. 6 and 7) are grievous in nature. The details of the injuries sustained by PW.2 are mentioned in Ex.P6 - Wound Certificate and described in the evidence of the Doctor. Though it is

mentioned in the Wound Certificate that injuries No. 4 and 5 are grievous in nature and PW.6 in his deposition has stated that injuries No. 4 and 5 are grievous in nature, we find that those injuries cannot be considered as grievous in nature having regard to the provision i.e., Section 320 of IPC. The Doctor has admitted that there is no permanent disfiguration of head or face; there is no fracture or dislocation of a bone or tooth etc. If and only if an injury sustained by any person falls within one of the 8 heads mentioned in Section 320 of IPC, such an injury can be classified as a grievous injury for the purpose of deciding the criminal cases. Since none of the 5 injuries sustained by PW.2 fall within any of the 8 heads mentioned in Section 320 of IPC, those 5 injuries cannot be classified as grievous injuries, but they should be treated as simple injuries. Therefore, we are of the clear opinion that the trial Court is justified in concluding that PWs.1 and 2 have sustained simple injuries.

8. We have gone through the evidence of PWs. 1 to 3 and 12 - eye witnesses. The evidence of these witnesses appear to be consistent and cogent. Their evidence also corroborates the case of the prosecution as found in Ex.P11. However, the evidence of these witnesses will have to be considered along with the entire material on record. The Court cannot ignore the evidence let-in on behalf of the accused. Accused himself is examined as DW.2.

9. It is the specific case of the prosecution as well as the versions of the eyewitnesses - PWs.1 to 3 and 12 that accused came in front of their house; armed with chopper and assaulted PWs.1 and 2 with the chopper and ran away from the scene. But none of the injuries sustained by PWs.1 and 2 is an incised wound.

Per contra, the injuries sustained by PWs.1 and 2 are either contusions; lacerations or abrasions. There is not even a single "cut" injury. If really a chopper was used for commission of the offence as deposed by the eyewitnesses at least one "cut" injury - incised wound ought to have been found on the body of PWs. 1 and 2.

In addition to the same, the chopper allegedly used by the accused is not seized by the investigating officer during the course of investigation.

In view of the same, it is clear that the accused has not used the chopper as alleged by the prosecution. It is suggested to each of the eyewitnesses that injuries have been sustained by PWs.1 and 2 while there was a fight between the villagers on the one side and PW.1 and PW.2 on the other. It is also suggested that the witnesses -PWs. 1 and 2 fell on the ground, consequent upon which injuries are sustained by PWs.1 and 2. It is relevant to note that DW.2 - accused has also has sustained injuries. The injuries sustained by him are also of the similar nature as that of the injuries sustained by PWs.1 and 2.

In these circumstances, the defence of the accused that the accused as well as PWs.1 and 2 have sustained injuries in the quarrel which ensued in the village because of the illegal act of PW.1 and PW.2 in extracting sand from the river

deserves to be accepted. In the cross-examination, PW.1 as well as DW.1 have admitted that there used to be frequent quarrels between the villagers on the one side and PWs. 1 and 2 on the other, in as much as the villagers were prohibiting PWs.1 and 2 from extracting sand from the river. It seems the accused was leading the team of villagers and consequently he has also sustained injuries.

10. The prosecution has suppressed the injuries sustained by the accused. It has also suppressed the complaint lodged by the accused, which came to be registered in Crime No. 1/2008. Thus, in our considered opinion, the origin and genesis of the case of the prosecution is suppressed before the Court. Since the material on record is not clear as to who are the aggressors and how the incident ensued, the trial Court is justified in acquitting the accused by giving benefit of doubt in his favour.

11. Even on re-considering the material on record, we do not find any ground to interfere with the judgment and order of acquittal passed by the trial Court. We find that the view taken by the trial Court is the only possible view in the facts and circumstances of the case.

Hence, no interference is called for. Accordingly, appeals fail and the same stand dismissed.