

(2014) 09 KAR CK 0050
In the Karnataka High Court
Case No : Criminal Appeal No. 4 of 2010

State of Karnataka

APPELLANT

Vs

Babu

RESPONDENT

Date of Decision : 08-09-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, 324, 326, 34, 506
Probation of Offenders Act, 1958 — Section 3

Citation : (2014) 09 KAR CK 0050

Hon'ble Judges : P.D. Waingankar, J; Mohan M. Shantana Goudar, J

Bench : Division Bench

Advocate : B.T. Venkatesh, Addl. SPP, Advocate for the Appellant; V.K. Narayana Swamy, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Mohan M. Shantana Goudar, J.—The judgment and order dated 30th April 2009 passed by II Addl. Sessions Court, Kolar in CrI. A. No. 2/2009 is appealed against by the State. By the impugned judgment and order, the I Appellate Court has set-aside the judgment of the Trial Court convicting accused No. 2 for the offence punishable u/s 326 of IPC and consequently has convicted accused No. 2 for the offence punishable u/s 324 of IPC and by the very judgment, convicted accused No. 2 is released by giving benefit of Section 3 of Probation of Offenders" Act, 1958.

2. The case of the prosecution is that while PW-5 was transporting manure in the bullock-cart in front of the house of accused No. 1, the bullock-cart got stuck in the mud; PW-1 went there to lift the bullock-cart in order to help PW-5; at that juncture, accused No. 1 abused PW-1 in filthy language; accused No. 2 and four others also came there; accused No. 2 assaulted PW-1 with a club on his left elbow joint; PW-2 intervened and she was also assaulted by accused No. 3 with hands; accused Nos. 1 to 4 caught hold of PW-1; all the accused dragged PW 1 and fisted on his back.

The incident has taken place at 7.45 a.m. on 24.5.2002; first information came to be lodged by PW-1 at 1.15 p.m., on the very day i.e., on 24.5.2002 before the Malur police station, based on which, Cr. No. 129/2002 came to be registered for the offences punishable u/s 323, 324, 506 of IPC r/w. 34 of IPC.

3. In order to prove its case, the prosecution in all examined 11 witnesses and got marked four exhibits and one material object. The Trial Court convicted accused Nos. 1, 3 and 4 for the offence punishable u/s 323 of IPC and had convicted accused No. 2 for the offence punishable u/s 326 of IPC. They were sentenced to certain extent. Accused Nos. 1, 3 and 4 are acquitted in Crl. A. No. 113/2003. The judgment and order of acquittal of accused Nos. 1, 3 and 4 was confirmed by this Court in Crl. R.P. No. 415/2004. However, the conviction of accused No. 2 was appealed against him in Crl. A. No. 2/2009 before the Sessions Court. By the impugned judgment and order dated 30th April 2009, Crl. A. No. 2/2009 is allowed-in-part and accused No. 2 is convicted for the offence punishable u/s 324 of IPC and is acquitted for the offence punishable u/s 326 of IPC.

4. Sri. Venkatesh, learned SPP taking us through the judgment of the Court below submitted that the I Appellate Court is not justified in acquitting accused No. 2, inasmuch as, the material on record amply proves that he was the cause for grievous injury on PW-1 on his left hand.

5. Admittedly, the incident in question has occurred in between two neighbouring agriculturists. It is not uncommon in our villages to take bullock-carts for transporting the manure. Likewise, when PW-5 was transporting the manure on the bullock-cart, bullock-cart got stuck in the mud in front of the house of Accused No. 1. PW-1 immediately came to the spot to help PW-5. At that point of time, accused Nos. 1 to 5 came to the spot and there was verbal altercations between PW-1 and the accused. None of the accused including PW-1 had come prepared to assault PW-1. At the time of verbal altercation, accused No. 2 suddenly took a club which was lying on the spot and assaulted on the left hand of the victim. According to the case of the prosecution, consequent upon such assault, the victim sustained fracture.

6. The doctor who examined and treated the victim is not examined before the Court. However another Doctor PW-11 is examined and through him Ex-P4 wound certificate issued by PW-11 is marked. The I Appellate Court has suspected the document-wound certificate Ex-P4 produced by PW-11, on the ground that the medical records pertaining to the hospital are not produced and marked before the Court. There is no reason as to why the medical records were not produced. Except the wound certificate, no other material is found supporting the case of the prosecution. The wound certificate Ex-P4 is issued by another Doctor (PW-11) who has not treated the victim. On this score, the I Appellate Court has given the benefit of doubt in favour of accused No. 2. Since the I Appellate Court was of the impression that there is no adequate material to link the assault by accused No. 2 with grievous injury sustained by PW-1, it has

proceeded to convict accused No. 2 for the offence punishable u/s 324 of IPC. Since the view taken by the I Appellate Court is one of the possible views under the facts and circumstances of the case, this Court would be slow in interfering with such view.

7. The incident has occurred on a trivial matter in between two neighbours. The incident is of the year 2002 and 12 years have lapsed. The parties must have forgotten their differences. Moreover, the reasons assigned by the I Appellate Court for acquitting accused No. 2 for the offence punishable u/s 326 of IPC and convicting him for the offence punishable u/s 324 of IPC may be justified under the facts and circumstances of the case. In view of the same, no interference is called for. Appeal fails and the same stands dismissed.