

(2012) 06 KAR CK 0016
In the Karnataka High Court
Case No : Criminal Appeal No. 1607 of 2007

State of Karnataka

APPELLANT

Vs

Chandrappa, Sio. Ajjappanavara Narayanappa and Others

RESPONDENT

Date of Decision : 01-06-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 143, 147, 148, 307, 427
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3 (1) (x)

Citation : (2012) 06 KAR CK 0016

Hon'ble Judges : K. Bhakthavatsala, J;A.S. Pachhapure, J

Bench : Division Bench

Advocate : N.S. Sampangizamaish, HCGP, for the Appellant; M.R. Nanjunda Gomda and Assocs., for the Respondent

Judgement

1. The State, aggrieved by the Judgment and Order acquitting the respondents/ accused for the charges punishable under Sections 143, 147, 148, 448, 427, 324, 307 r/w. 149 IPC and u/s 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 [hereinafter called as "the of 1989" for short] has filed this appeal. The respondents will be referred as per their rank before the trial Court. The facts reveal that on 17.11.1996 at about 9.30 p.m., P.W.13- K. Narpyanaswamy was proceeding on road in his village, at that time accused 1 to 5 abused him referring to his caste and questioned him as to how many times he mould lodge complaint against them. They held him and caused assault with clubs and kicked him. When he escaped and went inside the house of C.W.2, all the accused formed an unlawful assembly armed with deadly weapons like choppers and with an intention to cause his death, damaged the door, windows of the house and wuscad assault on P.Ws.1 to 4, 13, 14 and 16 with choppers, clubs and stones and went away from the place.

At the early hours of 18.11.1996, P.W.13- K. Narayanaswamy approached the Police at 3.30 a.m. and submitted his complaint-Ex.P9 to P.W.20, who registered the case in Crime No.214/1996. During the course of investigation, the injured

were sent to hospital, statements of the witnesses were recorded, mahazars were drawn, required documents were collected and ultimately charge-sheet came to be filed against the accused for the aforesaid offences.

In the trial Court, the prosecution examined P.Ws.1 to 20 and got marked the documents Exs.P1 to 19 and M.Os.1 to 4. Statement of the accused were recorded u/s 313 Cr.P.C. The accused took the defence of total denial. Exs.D1 and D2 are contradictions got marked in the statement of P.Ws,1 and 7.

The Trial Court after hearing and on appreciation of the material on record, acquitted the accused for the aforesaid charges and aggrieved by the same, the present appeal has been filed.

2. We have heard the learned High Court Government. Pleader and the learned counsel for the respondents/accused.

3. The point that arises for our consideration

is;

Whether the appellant has made out any grounds to warrant interference in the impugned Judgment and Order passed by the trial Court acquitting the respondents for the said charges?

4. The learned High Court Government Pleader mould contend that there are injured and other eyewitnesses and that the trial Court has not considered cogent evidence led and rejected their evidence without any basis. He also submit that the evidence of injured witnesses cannot be lightly rejected. Hence, he submits that the trial Court was not justified in granting acquittal.

Per contra, the learned counsel for the respondents/accused would contend that there is no consistent, cogent evidence of the injured and other eye-witnesses and further the prosecution has not examined the doctor and therefore, he claims that the prosecution has failed to prove the incident and therefore, claims that the trial Court was justified in granting an Order of acquittal.

5. We are very much aware of the well established principle that in an appeal against the acquittal, the appellate Court will be slow to interfere with the Order of acquittal and that even if a second view is possible, the one accepted by the trial Court cannot be disturbed. The learned counsel for the respondents has placed reliance on the decision of the Apex Court reported in 2009 AIR SCW 222 [State of Goa Vs. Pandurang Mohite] on the aforesaid principle of law. It is in the context of the aforesaid principle, we have scanned the evidence led by the prosecution.

6. So far as charge for the offence punishable u/s 3(1)(x) of the Act of 1989 is concerned, it is mentioned in the complaint-Ex.P9 about the abusive words said to have used by the accused as against P.W.13- K. Uarayanasmamy. On this aspect of the matter, though it is alleged that the other witnesses were also present, except P.W.13, no other witnesses have referred to the abusive words.

It is relevant to note that at the time of the incident, P.Ws,1 to 4, 14 and 15 were also present. But, any how, there is no reference of the abusive words stated by P.W.13 uttered against him by the accused in the evidence of the said witnesses. Therefore, it is difficult to accept the interested version of P.W.13 on this aspect. Even otherwise, P.W.13 does not say which of the accused abused him and the statement made by P.W.13 is vague and general. Hence, we are of the view that the acquittal of the accused for the charge u/s 3(1)00 of the Act of 1939 does not call for any interference.

7. In the complaint-Ex.P9 that has been filed, there is reference of only 22 persons as accused. But, the charge-sheet was filed by the prosecution against 60 accused. Though all the accused belong to the same village, the non-mention of the names of all the accused in the complaint leads to a serious doubt as against the accused whose name does not find place in the complaint-Ex.P9. Amongst the injured and other witnesses, P.Ws.1, 2 and 7 have turned hostile and therefore, the prosecution relies upon the evidence of P.Ws.3, 4 and 13 to 15. The prosecution has produced injury certificates Ex.P13 of P.W.2, Ex.P14 of P.W.3, Ex.P15 of P.W.4, Ex.P10 of P.W.13 and Ex.P12 of P.W.14. As could be seen from the injury certificates, P.W.4- Narasimhappa has sustained as many as 6 injuries ailed it is stated that injury Nos.1, 2 and 4 are simple, whereas the other injuries are grievous. But, unfortunately, the prosecution neither produced the x-ray to prove the fracture sustained by P.W.4- Narasimhappa nor examined the doctor, who treated him. In such circumstances, as the required documents were not produced and the doctor was not examined, it is difficult to accept the version of the prosecution that P.W.4 sustained grievous injuries.

8. It is well-established principle of law that an injured generally does not implicate an innocent and does not leave a person, who really has caused the harm. So, in the context of the aforesaid well-established principle of law, if we see the evidence of P.W.3-Ramachandrappa, he states that accused No.14 caused assault on his head with club and accused No.47 caused assault with club on the upper arm and right wrist. So far as accused No.47-Nagaraja is concerned, his name does not appear in the complaint and P.N.3 has not retried his name in his statement recorded u/s 161 Cr.P.C. The perusal of evidence of P.N.3 and others reveal that accused NG.14 was holding a club in his hand and said to have caused assault on him. P.W.4 was assaulted by accused No.1 with a club on the head whereas accused Nose.11 and 14 with an axe and club on the back and right leg respectively. The perusal of the injury certificate of P.W.4 produced at Ex.P15 refers to the corresponding injuries.

9. P.W.5-Ramachandrappa speaks regarding the presence of accused Nos.1, 3 and 11, but does not state anything as regards the assault. Likewise, P.W.6 and 7 though referred to the presence of the accused, no specific overt-act with regard to the assault on these witness has been stated.

10. P.W.13-complainant states in his evidence that accused Nos.3, 5 and 15 caused assault on him with club on his legs, back and hands. As could be seen

from Ex.P10-injury certificate, there Jazz corresponding injuries.

11. P.W.14-Muninarayanappa states having sustained injuries due to the assault by accused Nos.1, 3 and 19. His injury certificate is at Ex.P12 and the injuries corresponding injuries, are simple. There are

12. Though P.W.15-Savithramma is an eye witness, she has not stated the overt-acts of each of the accused and her evidence is vague and general.

13. So, if the evidence of the aforesaid insured witnesses is looked into in the context of the principle laid-down, though the prosecution has not examined the doctors, who treated, there is no difficulty in accepting the evidence of these witnesses to conclude that the said injured persons sustained simple injuries at the hands of the accused stated supra. It is relevant to note that the complaint in respect of this incident was filed to the Police at 3.30 a.m. on 18.11.1996 and theca is no delay on the part of P.W.13 in lodging the complaint. Though the learned counsel for the respondents contend that there is no evidence about the existence of night at the time of the incident, it is relevant to note that the witnesses have stated about the assault caused by the respective accused and there is nothing suggested in the cross-examination of the said witnesses about the absence of the light at the time when the incident occurred. The injured were able to see those who caused assault on them. There is clinching evidence in this behalf. Further, the injured witnesses were taken to the hospital immediately after the incident on 17.11.1996 as seen from the injury certificate produced and referred to supra. Therefore, it cannot be said that there was any occasion for the complainant or the witnesses to, falsely implicate the accused. But however, there is no material in the evidence of these witnesses about their intention to cause death either of P.W.13- K. Narayanaswamy or any other injured witnesses. Therefore, so far as accused Nos.1, 3, 5, 11, 14, 15 and 18 [respondent Nos.1, 2, 4, 9, 12, 13 and 16 respectively] being the members of an unlawful assembly armed with deadly weapons, have caused assault on the injured and they suffered simple injuries. Therefore, they are guilty of the offences punishable under Sections 143, 148 and 324 r/w. 149 IPC. Accused Nos.1, 3 and 14 [respondent Nos. 1, 2 and 12] are liable on two counts each as accused No.1 caused assault on P.Ws.4 and 14, accused No.3 on P.Ws.13 and 14 whereas accused No.14 caused assault on P.Ws.3 and 4]. As there is no acceptable evidence for other offences, accused Nos.1, 3, 5, 11, 14, 15 and 18 [respondent Nos.1, 2, 4, 9, 12, 13 and 16 respectively] are guilty of the offences punishable under Sections 143, 148 and 324 r/w. 149 IPC. The State has made out grounds "to interfere with the Judgment and Order of acquittal to the extent stated above. Hence we answer the point partly in negative and partly in affirmative and proceed to pass the following:

ORDER

The appeal is allowed in part. Accused Nos.1, 3, 5, 11, 14, 15 and 18 [respondent Nos.1, 2, 4, 9, 12, 13 and 16 respectively] are convicted for the

offences punishable under Sections 143, 143 and 324 r/w. 149 IPC. They are ordered to pay a fine of Rs.500-00 each, in default to undergo simple imprisonment for one month for the offence punishable u/s 143 IPC; to pay a fine of Rs.1,000-00 each, in details, to undergo simple imprisonment for 2 [two] months for the offence punishable u/s 148 IPC and to pay a fine of Rs.3,500-00 each by accused Nos.1, 3, 5, 11, 14, 15 and 18 [respondent Nos.1, 2, 4, 9, 12, 13 and 16 respectively], out of the above, are...caused Nos.1, 3 and 14 [respondent Nos.1, 2 and 12] on two counts each [fine of Rs.7,000-00 cash], in default, to undergo simple imprisonment for 3 [throe] months for the offence punishable u/s 324 r/m. 149 IPC. On deposit of this amount of compensation, Rs.10,000-00 shall be paid to P.W.2-Muniraju and the remaining amount shall be credit-as to the State as fine. The trial Count is directed to give effect to this Order.