

(2015) 09 KAR CK 0155
In the Karnataka High Court
Case No : Criminal Appeal No. 100050/2015

State of Karnataka

APPELLANT

Vs

Maruti and Others

RESPONDENT

Date of Decision : 28-09-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 143, 147, 148, 149, 302

Citation : (2015) 09 KAR CK 0155

Hon'ble Judges : Anand Byrareddy and S. Sujatha, JJ.

Bench : Division Bench

Advocate : V.M. Banakar, Additional State Public Prosecutor, for the Appellant;
Ramakrishna G. Dhongadi, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Anand Byrareddy, J.—Heard the learned Additional State Public Prosecutor for admission.

2. The facts of the case are as follows:

The present appeal is by the State against acquittal of the accused. The accused are six in number. It transpires that one Mahadevappa and Shivanand R. Kundi were not on cordial terms. On account of the fact that there was a Janata house constructed and there was a dispute about fixing a window, and it was a bone of contention between the accused and the said Mahadevappa and Shivanand Kundi. There was an open area, i.e., backyard of the house of the deceased and it transpires that the argument between the parties as regards the window and the backyard area was even referred to a Panchayat and the Panchayat had intervened and had measured the properties and had tried to resolve the dispute, but it was not accepted by both the parties.

3. In this background it is stated that, on 11.05.2013, at about 1.00 a.m., accused Nos. 1 to 6 are said to have formed themselves into an unlawful

assembly in front of Kenchannavar Petrol Bunk, on Gadag Laxmeshwar road, with a common object of committing the murder of Mahadevappa and Shivanand Kundi and in order to do so, had armed themselves with deadly weapons and had attacked Mahadevappa and Shivanand Kundi. And had thereby committed the offences punishable under Sections 143, 147, 148 read with Section 149 of the Indian Penal Code, 1860 (hereinafter referred to as "I.P.C.", for brevity). It transpires that, as a result of the assault and use of foul language, in abusing the victims, and also threatening them with their life they had thereby committed the offence punishable under Sections 504 and 506 of IPC. It is alleged that, accused Nos. 1 and 2 had assaulted Mahadevappa with a stick on his head and caused grievous injuries. Accused Nos. 3 and 6 had assaulted Mahadevappa again with sticks on other parts of his body, and accused No. 3 had assaulted Shivanand Kundi with a stick and attempted to murder Mahadevappa. It is in this background, they were charge sheeted.

4. It further transpires that the injured were admitted to hospital and Mahadevappa is said to have died in the hospital at 2.30 a.m. and therefore, they were also charge sheeted for an offence punishable under Section 302 of IPC, as well. The matter having been committed by the Magistrate after taking cognizance, to the Court of Sessions, the Court of Sessions had framed charges for the offences as aforesaid and accused having pleaded not guilty and having claimed to be tried, the prosecution had examined P.Ws.1 to 30 and marked Exs.P1 to P40. After recording the statement of the accused under Section 313 of the Code of Criminal Procedure, 1973 (hereinafter referred to "Cr.P.C.", for brevity), whereby accused had denied the incriminating evidence appearing against them. The Court below had framed following points for consideration.

i) Whether the prosecution proves that on 11.05.2013 at 1.00 a.m. the accused No. 1 to 6 formed an unlawful assembly in front of Kenchannavar Petrol Bunk on Gadag Laxmeshwar road with an common object with an intention to murder deceased Mahadevappa and C.W.1 and in order to commit the rioting and collected deadly weapons by stick beyond all reasonable doubt?

ii) Whether the prosecution proves that accused No. 1 to 6 in furtherance of common object picked up quarrel with the deceased Mahadevappa and C.W.1 in respect of open space on the back portion of the property No. 113A, 114 of Magadipanchayat and abused the said Mahadevappa and C.W.1 in filthy language as Bosadi Magane etc., and gave life threat to the C.W.1 and Mahadevappa, beyond all reasonable doubt?

iii) Whether the prosecution proves that the said accused No. 1 to 6 on the said date, time and place in furtherance of their common object to murder the Mahadevappa and C.W.1, accused No. 1 and 2 assaulted Mahadevappa with stick on his head and caused grievous injuries and A3 and 6 also assaulted the Mahadevappa with sticks on other parts of the body and attempted for murder of the Mahadevappa and C.W.1 and further proves that the said Mahadevappa died in the hospital on 2.30 a.m. and the said accused persons committed murder of

deceased Mahadevappa, beyond all reasonable doubt?

iv) What order or sentence?

And answered point Nos. 1 and 2 in the negative and point No. 3 partly in the affirmative and convicted accused Nos. 1 and 2 and sentenced them to undergo life imprisonment for the offence punishable under Section 302 of IPC and to pay a fine of Rs. 10,000/- each, and in default of payment of fine, to undergo simple imprisonment for six months. Accused No. 3 was sentenced to pay a fine of Rs. 3,000/- and in default of payment of fine, to undergo simple imprisonment for two months. Accused Nos. 4 to 6 were not found guilty and were acquitted. It is this part of the judgment, whereby accused Nos. 4 to 6 having been acquitted is sought to be challenged in the present appeal.

5. The learned Additional State Public Prosecutor would draw the attention of this Court to the following aspects, namely, that the evidence of eye-witnesses, P.Ws.1 and 6 had not been properly appreciated by the trial Court and that these two witnesses had specifically stated about the overt acts of accused Nos. 4 to 6 and it was their testimony that all the respondents had assaulted the deceased. P.W.1 stated that all the accused had assaulted with a club and had caused injuries, as a result of which, the deceased had died. It is further pointed out that examination-in-chief of P.W.1 was recorded on 03.01.2014 and on the same day and as well as on the next day the defence had fully cross examined the witness and thereafter, the witness was discharged. Further on 19.06.2014, i.e., after six months, after the evidence was completed, the defence sought recalling of the witness which was permitted by the Court and the witness was again cross examined, at which time the witness has given a go by to his earlier testimony and it is this variance, which has weighed with the Court in acquitting accused Nos. 4 to 6. Therefore, it is contended that the sequence of events would indicate that the witness had been won over by the defence in seeking to recall the witness six months after his evidence and thereafter, the witness having given a go by to his earlier testimony would speak volumes for his conduct and the possible influence brought on the witness by the counsel for the defence. This aspect of the matter has been glossed over by the trial Court and the very permission granted to the defence to recall the witness and cross examine him further is itself irregular, which ought not to have been permitted.

6. P.W.6 was another eye-witness who had supported the case of the prosecution, and on the same day he was fully cross examined and on 10.07.2014, he was again cross examined with the permission of the Court and he had then turned hostile to the case of the prosecution. This again is an instance of the witness having been won over, which the Court below, in its naivety, has overlooked and has held that the prosecution has failed to establish its case beyond all reasonable doubt. However, it is noticed that these are the primary contentions, on which the present appeal is filed.

7. However, it is to be found that the charges framed against the said accused

Nos. 4 to 6 did not indicate any overt acts committed by them and this was apparently an infirmity which the defence had overlooked and there were no corresponding injuries in the postmortem report to correlate the acts of the said accused. This circumstance certainly had been overlooked by the defence in not cross-examining the witnesses P.W.1 and 6 in the proper manner and on being demonstrated before the Court of this glaring lacuna, the Court has permitted the witnesses to be recalled for cross-examination. In that view of the matter, there is no infirmity to be found in the Court having acquitted the accused. The mere fact that the witness had been recalled six or seven months after they were cross examined as witnesses and the evidence was closed and these witnesses being recalled is not unusual and even if there was any irregularity as sought to be alleged by the State, it was for the State to have questioned the order of the Court below, recalling the witnesses at the appropriate time. The witnesses having been recalled and cross examined and the evidence having been over turned in favour of the defence, it cannot be then be said that the Court below had committed any infirmity. Given the above circumstances, there is no irregularity to be found. Hence the appeal lacks merit and is rejected.