

(2010) 04 KAR CK 0005
In the Karnataka High Court
Case No : Criminal Appeal No. 1813 of 2007

State of Karnataka

APPELLANT

Vs

Nanjundagowda, Dharmegowda, Jayarama and Vasantha

RESPONDENT

Date of Decision : 08-04-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 143, 147, 148, 323, 324

Citation : (2010) 04 KAR CK 0005

Hon'ble Judges : K.N. Keshavanarayana, J

Bench : Single Bench

Advocate : B. Balakrishna, Addl. HCGP, for the Appellant; Praveen P. Tarikar, for Venkatesh R. Bhagat, for the Respondent

Final Decision : Dismissed

Judgement

K.N. Keshavanarayana, J.—This appeal by the State is directed against the judgment and order dated 18.8.2007, passed by the Civil Judge (Sr. Dn.) and CJM, Kolar in CC. No. 417/2002, acquitting the respondent - accused of the charges levelled against them for offences punishable under Sections 143, 147, 148, 323, 324, 504, 506 r/w Section 149 of IPC.

2. The respondent - accused were charge sheeted for the aforesaid offences by the Kolar Rural Police. The case of the prosecution in brief is as under:

On 31.10.2001 at about 11.00 a.m. when PW. 1-Munegowda, PW. 2-Manjunatha, PW. 3-Chowdappa and PW. 4-Chowdamma were working in their land in Yelachipura Village, Kolar Taluk, respondent - accused 1 to 4 sharing common intention, came to the land of PWs. 1 to 4 armed with cycle chain, club etc. and in furtherance of the common intention, they picked up quarrel with PWs. 1 to 4 and committed acts of assault on PWs. 1 to 4 and caused them injuries and also threatened with injury to their lives, thereby they committed the aforesaid offences. In respect of this incident, PW. 1 lodged complaint at about 2.30 p.m. on the same day based on which, the Police registered case in Crime No.

302/2001 for the aforesaid offences and took up investigation. During the investigation, the Investigating Officer visited the scene of occurrence, drew up spot mahazar as per Ex. P. 2, seized Neelagiri clubs said to have been used by the accused persons and recorded the statement of the witnesses. Before lodging the complaint, PWs. 1 and 4 had taken treatment in SNR Hospital Kolar. PW. 7- Dr. B.S. Nagaraj who treated PW. 1, issued wound certificate as per Ex. P. 4 in respect of PW. 1. After completing the investigation charge sheet came to be filed.

3. It is strange that though even according to the contents of the charge sheet, there were only 4 accused persons, the Investigating Officer filed charge sheet alleging offences punishable under Sections 143, 146, 147, 323, 324, 504 and 506 r/w 149 IPC. To term an assembly as an "unlawful assembly" within the meaning of Section 141 of CPC, there should be 5 or more persons in the assembly and they should share a common object. As even according to the contents of the charge sheet, there were only 4 accused persons. The alleged assembly of the accused Nos. 1 to 4 could not be termed as an unlawful assembly as such, offence punishable under Sections 143, 147, 148 were not attracted. If the assembly was not an unlawful assembly, the members of such assembly cannot be prosecuted and punished with any other offence with the aid of Section 149 of the Act. In spite of the same, the learned Magistrate had taken cognizance of the offences alleged in the charge sheet. This shows that the learned Magistrate before taking cognizance had not even applied his mind to the case pleaded by the prosecution. However, upon appearance of the accused, the learned Magistrate in the light of the contents of the charge sheet, rightly did not frame any charge for the offences punishable under Sections 143, 147 and 148 of IPC. The learned Magistrate framed charges for the offences punishable under Sections 324 r/w Section 34 IPC, 323 r/w Section 34 IPC, 504 r/w Section 34 IPC and 506 r/w Section 34 IPC. The accused persons pleaded not guilty for those charges and claimed to be tried. To bring home the guilt of the accused the prosecution examined PWs. 1 to 9 and got marked Exs. P. 1 to P. 4 and MOs. 1 to 3.

4. The accused persons did not choose to lead any defence evidence. The defence of the accused was one of denial and false implication in view of ill will and animosity between them on one hand and PWs. 1 and 2 on the other hand in the background of pendency of civil dispute between them in relation to the land. The learned Magistrate, on appreciation of the oral and documentary evidence, by the judgment under appeal, acquitted all the accused persons of all the charges levelled against them on the ground that the evidence of PWs. 1 to 4 is full of inconsistency, discrepancy and contradictions and their evidence do not inspire the confidence of the Court nor their evidence is corroborated by any medical evidence, therefore, it is highly unsafe to place reliance on their testimony. The learned Magistrate also noticed that there is delay in lodging the complaint. Aggrieved by the acquittal of the accused persons, the State has presented this appeal.

5. Upon service of notice of this appeal the respondents have appeared through their counsel. I have heard Sri. B. Balakrishna, learned Additional Government Pleader appearing for the appellant-State and Sri. Praveen P. Tarikar, learned Counsel appearing for the respondents - accused Perused the records and the judgment under appeal.

6. Perusal of the judgment under appeal indicates that the learned Magistrate after referring to the oral evidence of PWs. 1 to 4, has opined that there is no consistency in their testimony inasmuch as their evidence is not consistent as to the nature of the weapon said to have been used by the accused, part of the body chosen for assault and with regard to the individual overt acts by each of the accused. Thus according to the learned Magistrate, the evidence of PWs. 1 to 4 is highly inconsistent, discrepant and each one contradicts the other. Further, the learned Magistrate has noticed that the evidence of PWs. 1 to 4 do not corroborate with the medical evidence inasmuch as though even according to PW. 1 he was not assaulted by any one, he was found having sustained 3 injuries and there is absolutely no explanation as to how PW. 1 sustained these injuries, while the other injured persons have not been examined by any Doctor and there is no medical evidence in respect of PWs. 2 to 4, therefore, the testimony of PWs. 1 to 4 does not inspire confidence of the Court. The learned Magistrate has observed that there is serious doubt as to whether the alleged incident occurred in the land since PWs. 1 to 4 are not in a position to state as to the identity of the land where they were said to have been working on the date of the incident, and since admittedly civil dispute was pending between the accused and PWs. 1 to 4 there must be ill will and animosity between them as such, in the back ground of this ill will and animosity, it is highly probable that PW. 1 has lodged a complaint. It is further observed by the learned Magistrate that there is unexplained delay in lodging the complaint, therefore, the case of the prosecution is highly doubtful and the assertion of PWs. 1 to 3 is not satisfactorily established and the cycle chain said to have been used in the commission of the offence has not been seized and produced before the court. Thus according to the learned Magistrate, the case of the prosecution is not satisfactorily established, therefore, the prosecution has failed to prove the guilt of the accused for the charges levelled against them.

7. Perusal of the judgment further indicates that though there was no charge levelled against the accused persons for offences punishable under Sections 143, 147, 148 of IPC and for offences punishable under Sections 323, 324, 504, 506 r/ w 149 IPC, the learned Magistrate has proceeded to consider the question whether the prosecution has proved the guilt, of the accused for those offences. Obviously, the learned Magistrate has not looked into the charges framed against the accused persons by his predecessor. The learned Magistrate who disposed of the matter, appears to have looked into the contents of the charge sheet and the offences mentioned therein. Nevertheless, the learned Magistrate after referring to the oral evidence of prosecution witnesses in extenso, has found that their testimony does not inspire the confidence of the Court and they are unreliable.

To satisfy myself as to the correctness of the said finding, I have scrutinised the oral evidence of PWs. 1 to 4 and other material witness in the case on hand. I am satisfied that the learned Magistrate is justified in discarding their testimony.

8. Though the alleged incident said to have occurred at about 11.00 a.m. on 31.10.2001 and as per the evidence of PW. 7 and contents of Ex. P. 4-wound certificate, PW. 1 was examined by the Doctor in SNR Hospital Kolar at about 12.00 noon, the complaint was stated to have been lodged at 2.30 p.m. on 31.10.2001. Though as per the endorsement made on Ex. P. 1, the complaint was received at 2.30 p.m. on 31.10.2010, as per the endorsement made by the learned Magistrate on the original FIR available in the records, the complaint was received at 3 p.m. on 1.11.2001, that is little over 24 hours from the purported time of registration of the case. This delay in delivery of the FIR to the jurisdictional Magistrate has not been explained by the prosecution. The Police Officer who registered the case on the basis of the Ex. P. 1 and dispatched the FIR has not been examined before the Court. Thus there has been no explanation for the delay in delivering the FIR to the jurisdictional Magistrate. Under these circumstances, it is reasonable to infer that the complaint as per Ex. P. 1 was not lodged at 2.30 p.m. on 31.10.2001 and therefore, it must have been ante timed. This circumstance certainly creates great amount of suspicion about the case of the prosecution. In fact, in the cross-examination of PW. 1. it is suggested to him on behalf of the accused that at about 10.30 a.m. on 31.10.2001, PWs. 1 and others caused damage to the house where accused No. 2 was rearing silk worms and also committed acts of assault on the inmates of the house and in respect of the said incident accused No. 2 had filed a complaint and after coming to know of accused No. 2 lodging the complaint, he (PW. 1) as counter blast went to the police and lodged a belated complaint as per Ex. P. 1. Of course, PW. 1 has denied those suggestions. Nevertheless, the unexplained delay in delivering the FIR to the jurisdiction Magistrate would certainly create suspicion in the case of the prosecution. Therefore, rightly the learned Magistrate has viewed the case of the prosecution with suspicion.

9. The perusal of the testimony of PWs 1 to 4 indicates that there is no consistency in their evidence with regard to the individual overt acts of each of the accused, the nature of the weapon held by each of them and the part of the body on which PWs. 1 to 4 were assaulted. PWs. 1 to 4 are not in a position to state as to in which land they were working at the time of the alleged incident. No evidence is collected by the Investigating Officer about the identity of the land where the incident said to have been occurred.

10. Even in the spot mahazar-Ex. P. 2, there is no mention about the Survey No. of the land where the incident said to have occurred. Therefore, the learned Magistrate has rightly doubted the place of the alleged incident. According to the prosecution, only PW. 1 took treatment in the hospital. PW. 7 in his oral evidence has stated he examined PW. 1 in SNR Hospital. Kolar at 12,00 noon on 31.1.2001. According to PW. 7. and the contents of Ex. P. 4, PW. 1 at the time of

examination in the hospital was found sustaining, (1) cut injury over medial aspect of middle phalanx of left hand middle finger and medial aspect of right foot. (2) 2" x ? contusion over right side scapular region". If the evidence of PW. 1 is perused, it indicates that PW. 1 was not assaulted by any one. Even as per the contents of the complaint, the complainant was only bitten by one Dharmegowda-accused No. 2. In the complaint, there is no allegation that the complainant was assaulted on any part of the body. Likewise, even in his evidence, PW. 1 does not say that he was assaulted by any one nor he has stated that he was bitten by accused No. 2. Of course, PWs. 2 to 4 have stated that PW. 1 was bitten by accused No. 2. Even PWs. 2 to 4 have not stated that accused PW. 1 was assaulted on any other parts of the body. Thus there is no explanation as to how PW. 1 had sustained the other two injuries, namely cut injury on the medial aspect of right foot and contusion over the right side scapular region. This circumstance would highly probabalise the defence theory about the earlier incident. Though according to the prosecution PWs. 2 to 4 were also assaulted and they also sustained injuries but they have not taken any treatment. Therefore, their say that they were assaulted and they sustained injuries is not corroborated by any medical evidence. Thus the evidence of PWs. 1 to 4 being highly inconsistent and discrepant has been rightly disbelieved by the learned Magistrate. Under these circumstances, I find no error in the judgment of the learned Magistrate acquitting the respondent - accused. The learned Magistrate has properly evaluated the evidence on record and has come to the right conclusion that evidence of the witnesses are not reliable and do not inspire the confidence of the court. The judgment of the court below, in my opinion, do not suffer from any illegality or irregularity as such, does not CALL for interference by this Court. Therefore, there are no merits in this appeal accordingly, the appeal is dismissed.