

(2015) 03 KAR CK 0453
In the Karnataka High Court
Case No : Criminal Appeal No. 221 of 2010

State of Karnataka

APPELLANT

Vs

Puttamadaiah

RESPONDENT

Date of Decision : 31-03-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, 324, 326, 34

Citation : (2015) 2 AKR 798 : (2015) 4 KCCR 3911

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

Bench : Division Bench

Advocate : Vishweshwaraiah, HCGP, for the Appellant; B.S. Prasad, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

Mohan M. Shantana Goudar, J.

1. The judgment and order of acquittal passed by the First Appellate Court i.e., II Addl. Sessions Court, Mysore, in CrI.A. No. 52/2007 dated 01.10.2009 is appealed against by the State. The case of the prosecution in brief is that accused No. 1 was due certain sums of money to PW.5; since the money was not repaid by accused No. 1 to PW.5, he asked accused No. 1 to repay the amount at about 4.00 p.m. on 03.06.2004; accused No. 1 told PW.5 that he has not taken any amount from PW.5 and that he will not return any amount to him; once again accused No. 1 came along with other accused at 6.00 p.m. in front of house of PW.1 and started scolding PW.5 and his family members; PW.1 (brother of PW.5), PWs.2, 3 asked other accused as to why they are scolding; at that point of time, accused Nos. 1 to 4 started quarrelling with PWs.2 to 5; accused No. 2 assaulted on PW.2 with club whereas accused No. 3 assaulted on PW.3 with another club; accused No. 4 fisted PW.3; at that point of time, PW.4-Shivanna intervened to pacify the quarrel and he was assaulted by accused Nos. 1 and 2 with clubs, consequent upon which PW.4 sustained grievous injuries and PWs.2 and 3 sustained simple injuries. PW.6 came to the spot and pacified the quarrel.

PWs.2, 3 and 4 were taken to Nanjangud Hospital, wherein PW.9-Doctor treated PWs 2, 3 and 4; since PW.4 had sustained grievous injuries, he was referred to K.R. Hospital, Mysore for higher treatment. PW.8-Inspector of Police completed investigation and laid the charge-sheet.

2. In order to prove its case, the prosecution in all examined 9 witnesses, got marked 8 exhibits and 3 material objects. The Trial Court on evaluation of material on record convicted all the accused for the offences under Sections 323, 324 and 326 r/w Section 34 of IPC and sentenced them to undergo imprisonment for two years for the offence under Section 326 r/w Section 34 of IPC and lesser sentence for other offences.

Convicted accused filed Crl.A. No. 52/2007 before the II Addl. Sessions Court, Mysore, which came to be allowed fully and consequently all the accused were acquitted. This appeal is filed by the State questioning the judgment and order of acquittal passed by the II. Addl. Sessions Court, Mysore in Crl.A. No. 52/2007.

3. The learned Government Pleader as well as Sri. B.S. Prasad, learned advocate for the defence have taken us through the entire material on record and the judgment of the Court below and they argued in support of their respective contentions.

4. PWs. 1 to 5 are the eye-witnesses. Among them, PW.1 is the complainant. He lodged complaint as per Ex. PI before the Sub-Inspector of Police (PW.8), Badanawalu Police Station; PWs.2, 3 and 4 are the injured eye-witnesses. They have supported the case of the prosecution; PW.5 is one of the eye-witnesses. He has also supported the case of the prosecution. PWs.6 and 7 have turned hostile to the case of the prosecution. PW.8 is the Investigating Officer and PW.9 is the Doctor who treated PWs.2, 3 and 4 and issued wound certificates as per Exs. P5, P6 and P7.

5. On going through the judgment and order of acquittal passed by the Sessions Court, we agree with the conclusion reached by the Trial Court that the case as made out against accused Nos. 2 to 4 is shaky and the case against them is not proved by the prosecution beyond reasonable doubt. It is the specific case of the prosecution that PW.2 was assaulted by accused No. 2, whereas PW.3 was assaulted by accused Nos. 3 and 4. It is further case of the prosecution that PW.4 was assaulted by accused Nos. 1 and 2.

During the course of evidence, though the prosecution witnesses including injured witnesses have deposed about the complicity of accused Nos. 2, 3 and 4 also, their version is not so reliable. PWs.2 and 3 who have allegedly sustained injuries by the assault with the clubs have merely sustained injuries which are tenderness in nature. Such tenderness can occur on the body of agriculturists even in normal course of their agricultural operations. Even otherwise, the evidence of the prosecution witnesses with regard to the assault by accused Nos. 2, 3 and 4 on PWs.2 and 3 is not consistent. Therefore, in our considered opinion, the First Appellate Court is justified in acquitting accused Nos. 2 to 4.

6. It is also relevant to note that though it is the case of the prosecution that accused No. 2 assaulted PW.4 (person who has sustained grievous injuries), the prosecution witnesses including injured eye-witness have not deposed that accused No. 2 assaulted on PW.4. On the other hand, all the prosecution witnesses have confined assault on PW.4 by accused No. 1 only. PWs.2, 3 and 4 as well as 5 have consistently, cogently deposed that it was accused No. 1 who assaulted PW.4 with club on his right shoulder, consequent upon which there was dislocation of bone of right shoulder. Nothing worth is elicited in the evidence of these witnesses insofar as it relates to the assault on PW.4 by accused No. 1. Even PW.4 has confined his evidence relating to assault on him, as against accused No. 1 only. Thus, we find that PW.4 has confined his evidence only against accused No. 1 as the person who assaulted him with club on the right shoulder.

7. The evidence of injured eye-witnesses with regard to the assault on PW.4 by accused No. 1 is supported by the evidence of the Doctor-PW9 who treated injured-PW.4 and issued wound certificate as per Ex. P7. Wound certificate-Ex. P7 clearly discloses that PW.4 has sustained dislocation of right shoulder joint. Contents of wound certificate are supported by the evidence of doctor PW.9.

8. From the aforementioned evidence, it is clear that PW.4 had sustained grievous injuries because of the assault of accused No. 1 with club.

9. The material on record is not sufficient to conclude that these accused had shared common intention for assaulting PW.4. Admittedly, PW.4 had simply intervened in the quarrel to pacify the quarrel. Unfortunately, he was assaulted by accused No. 1. Therefore, it cannot be said that the accused had shared common intention for assaulting anybody, muchless PW.4. Even believing the version of prosecution, it can be said that the accused had come in front of house of PW. 1 for quarrelling with regard to the money transaction not for the purpose of assaulting anybody.

10. In view of the same, we are of the clear opinion that the First Appellate Court is not justified in acquitting accused No. 1. We find that though the Trial Court was justified in convicting accused for the offence under Section 326 of IPC, it was not justified in convicting other accused. Therefore, the judgment and order of acquittal passed by the First Appellate Court needs to be modified to certain extent.

11. We have heard the learned advocates on record on the question of imposition of sentence. Sri. B.S. Prasad, learned advocate appearing for the accused submits that accused No. 1 is about 70 years of age. Hence, leniency may be shown to him. The said submission is opposed by the learned Government Pleader. Having regard to the totality of facts and circumstances of the case, the following order is made.

ORDER

"A) The judgment and order of acquittal passed by the First Appellate Court acquitting accused Nos. 2 to 4 for the offences with which they were charged stands confirmed.

B) The judgment and order of acquittal acquitting accused No. 1 for the offence under Sections 323, 324 of IPC also stands confirmed.

C) The judgment and order of acquittal acquitting accused No. 1 for the offence under Section 326 of IPC stands set aside. Accused No. 1 is convicted for the offence under Section 326 of IPC and sentenced to undergo imprisonment for one month and to pay a fine of Rs. 5,000/-."

In default of payment of fine, accused No. 1 shall undergo further imprisonment for one month. In case of recovery of fine, the entire amount of fine so recovered shall be paid to injured/PW.4-Shivanna, S/o Subbaiah. R/o Kalkunda.

The appeal is allowed in part accordingly.