

(2021) 07 KAR CK 0029

In the Karnataka High Court

Case No : Criminal Appeal No. 100294 Of 2016

State Of Karnataka

APPELLANT

Vs

Ranajeet Anand Chauhan

RESPONDENT

Date of Decision : 23-07-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 313, 378(1), 378(3), 465

Indian Penal Code, 1860 — Section 34, 323, 324, 504, 506

Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 — Section 3(1)(x)

Citation : (2021) 07 KAR CK 0029

Hon'ble Judges : R. Devdas, J;J.M. Khazi, J

Bench : Division Bench

Advocate : V.M. Banakar, Nitin R. Bolabandi, Shweta Kulkarni Nitin

Final Decision : Dismissed

Judgement

J.M. Khazi J

1. This appeal filed under Sections 378(1) and (3) of the Code of Criminal Procedure ("Cr.P.C." for short) by the State is directed against the

judgment and order of acquittal dated 05.03.2016 in Spl.C.No.39/2014 on the file of Special Court (POCSO) and (SC/ST) (Prevention of Atrocities against SC/ST) and III Addl. District and Sessions Judge, Belagavi.

2. Vide the impugned judgment and order, the Trial Court has acquitted accused Nos.1 to 4 of all the charges punishable under Sections 323, 324, 504,

506 read with Section 34 of IPC and Section 3(1)(x) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 ('the SC/ST

Act', for short).

3. The delay in filing the appeal is condoned. Vide order dated 25.03.2021, the

complainant Shahu Bheemrao Mane is arrayed as respondent No.5.

4. For the sake of convenience, the parties are referred to their rank before the Trial Court.

5. At the trial, in support of the prosecution case, 14 witnesses are examined as PWs.1 to 14, Exs.P1 to 21 and MOs.1 to 5 are marked.

6. During the course of the statement under Section 313 of Cr.P.C., accused Nos.1 to 4 have denied the incriminating material arising in the evidence

against them. They have not chosen to lead evidence on their behalf. Vide the impugned judgment and order the trial Court has come to the conclusion

that the charges levelled against the accused are not proved and consequently accused Nos.1 to 4 are acquitted.

7. We have heard the learned Addl. SPP for the appellant/State and the learned counsel for accused Nos.1 to 4 and perused the record.

8. The learned Addl. SPP representing the appellant / State has submitted that the impugned judgment and order is contrary to the law, facts and

evidence on record.

9. PW.1 who is the complainant and PW.3 who is the injured have clearly supported the prosecution case and their evidence reveal that the accused

persons abused them by referring to their caste and their evidence also prove the overt act committed by all the accused persons.

10. Even PWs.4 to 7 who are eyewitnesses to the incident have supported the prosecution case and their evidence corroborate the testimony of

PWs.1 and 3. The evidence of PW.13 Tahasildar, who has issued the caste certificate in respect of accused as well as the complainant prove the fact

that the complainant belong to a community enlisted under the presidential order attracting the provisions of SC/ST Act. The testimony of official

witnesses corroborate with the evidence given by the injured as well as the eyewitnesses. In spite of such over-whelming evidence, the trial Court has

erred in acquitting the accused persons solely on the ground that PWs.1, 3 and 4 are interested witnesses. The trial Court's finding is contrary to the

principles laid down by the Hon'ble Supreme Court.

11. He would further submit that, the trial Court has also acquitted the accused persons on the ground that there are material contradictions and

omissions in the evidence of the prosecution witnesses. The minor contradictions and omissions are natural, especially when the witnesses are coming

from rural background and much importance cannot be given to the same. The trial Court has also acquitted the accused persons on the ground that

the witnesses from the neighbourhood are not examined. The non-examination of the neighboring witnesses is not fatal to the prosecution case, as it

has succeeded in proving the allegations against accused Nos.1 to 4 based on the evidence placed on record. He would submit that, viewed from any

angle, the impugned judgment and order are not sustainable and prays to allow the appeal and convict the accused persons for the offences punishable

under Sections 323, 324, 504, 506 read with Section 34 of IPC and Section 3(1) (x) of the SC/ST Act and impose appropriate punishment.

12. On the other hand, the learned counsel representing the accused persons argued that, the based on the oral and documentary evidence placed on

record, the trial Court has come to a correct conclusion that on account of the ill-will between the parties and the dispute with regard to a vacant land

adjacent to their houses, the trial Court has rightly acquitted the accused persons and prays to dismiss the appeal.

13. It is not in dispute that the complainant Sri.Shahu Bheemrao Mane and his brother Raosaheb Bheemrao Mane, who are examined as PWs.1 and 3

belong to Hindu Mang and it comes under Schedule Caste category, whereas the accused persons belong to Hindu Maratha community. Exs.P16 and

P17 establish this fact. It is also not in dispute that the complainant and accused persons are resident of Chikkodi Taluk, Belagavi District and they are

neighbours.

14. The allegations against the accused are that, there is a dispute between the complainant and the accused persons, with regard to a vacant site in

Re.Sy. No.247 of Kharadaga Village which is situated in between the house of complainant and accused and this dispute arouse after the accused

persons put up fence around the said vacant site. In this background, it is alleged that, on 30.11.2013 at around 07:20 p.m., while the complainant was

speaking to CW.4 standing by the side of the road situated in front of the plots in Sy.No.247, all the accused persons formed themselves into an

unlawful assembly and knowing well that the complainant belong to schedule caste, referring him as belonging to Madar community, abused him in

filthy language demanding that he should not come to the vacant site. Accused No.1 assaulted the complainant with a sickle on his left shoulder and

left elbow. Accused No.2 with a sickle assaulted the complainant on his head and when CW.4 intervened and came to the rescue of the complainant,

accused No.2 assaulted him with Koyta on his left shoulder and head. Accused Nos.3 and 4 assaulted complainant and CW.4 with hands and gave

threat to their life saying that, if they fail to vacate the site, they are going to do away with their life.

15. The incident in question has taken place on 30.11.2013. The learned counsel representing the accused persons submitted that, on the same day, the

complainant and his supporters assaulted the accused persons and in respect of the said incident, they have filed a complaint and though their

complaint was first in point of time, the police have registered the same in crime No.188/2013 whereas, they have registered the subsequent complaint

i.e., the present case in Crime No.187/2013. The learned counsel representing the accused submitted that, in the matter of case and counter case, the

investigation is required to be conducted by the same Investigating Officer and file charge sheet. He would further submit that both cases are required

to be conducted by different prosecutors, but before the same judicial officer. He would further submit that, after concluding the trial of the first case,

it is to be reserved for judgment and thereafter the recording of the evidence in the other case should commence and after completing the trial, same

judicial officer is required to dispose of both cases simultaneously by two separate judgments. The learned counsel submitted that, in respect of the

counter case, the charge sheet is filed before the regular Court at Chikkodi and the same is also disposed of acquitting the complainant and his

supporters. He would further submit that, since the mandatory requirement of deciding both cases by the same Court is not complied with, before

deciding the merits of the case, it is necessary to examine whether on account of the said lapse, the accused has suffered any prejudice.

16. On this aspect, the learned Addl. SPP concede that the mandatory requirement of conducting case and counter case by the same court is not

followed. However, he would submit that no prejudice has been caused to the accused persons by the said lapse. In this regard, he has relied upon the

decision of the Full Bench of this Court in the matter of State of Karnataka by Circle Inspector of Police Vs. Hosakeri Nagappa and another reported in

ILR 2012 Kar 509 (Circuit Bench at Dharwad). It was a reference made by the Division Bench to the Larger Bench for consideration of the

following questions:

(1) Whether the proceedings are vitiated if the case and counter case are not tried as held by the Hon'ble Supreme Court in Nathi Lal vs. State of

U.P. reported in 1990 SCC (Cri) 638 and Sudhir and others vs. State of M.P. reported in 2001 SCC (Cri) 387 ?

(2) Whether the evidence recorded in one case can be looked into in the other case? If so, when and to what extent?

(3) If the Trial Court disposes of case and counter case on different dates acquitting the accused therein and no appeal is preferred in one of the

cases and appeal is preferred in the case decided later whether the proceedings in the later case are vitiated?

17. At para 16 of the judgment, the Hon'ble Full Bench has summed up the procedure to be adopted in case and counter cases, by holding that the

investigation should be conducted by the same Investigating Officer and the prosecution should be conducted by two different public prosecutors, but

the trial should be conducted by the same court. It is further held that, after recording the evidence and after hearing the arguments, the judgment

should be reserved in one case and thereafter the evidence should be recorded and argument should be heard in the other case. It is needless to

observe that the arguments in both matters shall be heard by the same learned Judge and the judgment should be pronounced by the same Judge

simultaneously i.e., one after the other. However, at para 17, it was held that, if the Trial Court by not adopting the salutary procedure mentioned

supra i.e., in para 16 and disposes of the case and counter case in different proceedings, acquitting the accused therein and where no appeal is filed in

one case and appeal is preferred against the other case, the proceedings in the later case are not vitiated.

18. The Hon'ble Full Bench has held that the Court cannot compel the State to file an appeal in any given case as it is left to the wisdom of the State

to decide as to whether the judgment passed by the Court needs to be questioned or not. If the State is satisfied about the judgment passed in one

case, it may choose not to file appeal in that case. However, the State may feel that in another case i.e., the counter case appeal may be necessary.

In such an event, nobody can prevent the State from filing the appeal. It is further held that, in case and counter case where trial is conducted by the

same Court, the trial Judge may choose to acquit the accused in both cases or may choose to convict the accused in both the cases or he may even

convict accused in one case and acquit the accused in another case. His decision would depend upon the facts and circumstances of each case. In

such case, it is for the accused to establish that he is prejudiced and it cannot be laid down as a proposition of law that the appeal filed in second case

by the State questioning the judgment and order of acquittal needs to be dismissed in limine on the ground that the proceedings in the later case is

vitiated.

19. Accordingly, the Hon'ble Full Bench of this High Court, has answered the questions referred to it as under:

(a) If the case and counter case are not tried simultaneously as held by the Supreme court in the case of NATHI LAL vs. STATE OF U.P. (Supra)

and in the case of SUDHIR AND OTHER vs. STATE OF M.P. (Supra) the proceedings ipso facto do not get vitiated. But, where the irregular

procedure adopted by the Trial court has caused prejudice to the accused and has occasioned failure of justice, the proceeding and the trial vitiates.

Otherwise, the proceedings are protected under section 465 of the code.

(b) The evidence recorded in one case cannot be looked into in the other case. The Trial Judge can only rely upon the evidence recorded in that

particular case and the evidence recorded in the cross case cannot be looked into. Each case must be decided on the basis of the evidence which has

been placed on record in that particular case. However, if the evidence recorded in one case is brought on record in accordance with procedure

known to law in the other case, then , such evidence which is legally brought on record can be looked into.

Otherwise, the evidence recorded in one case cannot be looked into in the other case.

(c) If the Trial court disposes of the case and counter case on different dates acquitting the accused therein and no appeal is preferred in one of the

cases and the appeal is preferred in the case decided later, the proceedings in the later case do not automatically get vitiated. Each case has to be

judged on its own merits. Unless prejudice is shown to have been caused to the accused, the proceedings in the later case do not get vitiated.

20. In the present case, in respect of the incident dated 30.11.2013, while

complaint is filed against the accused herein by the complainant, accused

No.1 herein has filed complaint against complainant and other witnesses of this case. Admittedly, the other case is tried before the regular court of

Chikkodi and the complainant and others herein have been acquitted. The complaint filed against the accused herein was tried before the Special

Court as the complainant and CW.4 belong to schedule caste and they are also acquitted.

21. Though the learned counsel representing the accused persons raised a question regarding the maintainability of this appeal, having regard to the

principles enunciated in the decision reported in ILR 2012 Kar 509 by the Full Bench of this High Court, the learned counsel conceded that no

prejudice has been caused against the accused persons.

22. The main grounds against the impugned judgment and order are that the trial Court has disbelieved the evidence of PWs.1, 3, 5 and 6 on the

ground that they are related. Similarly, PWs.4 and 7 are the friends of PW.1 and belonging to the same community and as such the Trial Court has not

believed their evidence. The other ground urged is that a minor omissions and contradictions which are natural are being highlighted to acquit the

accused persons and on these grounds, the impugned judgment and order is liable to be reversed.

23. However, perusal of the impugned judgment and the oral and documentary evidence placed on record indicates that, these are not the only two

grounds on which the trial Court has disbelieved the case of the prosecution. According to the complainant and other injured witnesses, the incident

has taken place in front of their house. The sketch in respect of the place of occurrence reveal that the house of the complainant and accused are

situated diagonally to each other and there is a vacant space adjacent to their houses. It appears with regard to this vacant space, there is a dispute

between the parties. It has come in the evidence of the prosecution witnesses that accused has fenced this area. While PW.1 has stated that, the

incident took place while he and his brother i.e., PW.3 Rao Saheb were standing in front of their house, whereas, PW.5, who is the son of PW.3 and

nephew of PW.1 has stated that the incident took place behind the house of complainant and near the Ganapati Temple. PW.7 Satappa Gunda Dange

is acquaintance of the complainant. He has stated that the incident took place

near Ganapati Temple. From the sketch at Ex.P18 it is evident that Ganapati Temple is not to be seen anywhere near the houses of either the complainant or the accused persons. He has specifically stated that when the incident took place, he was standing in front of the Ganapati Temple. If according to the complainant, PW.4 and other eyewitnesses, the incident has taken place in front of the house of complainant or in front of or behind the house of complainant or near the house of the accused persons, then PW.7 was not present at the said spot and consequently it is doubtful whether he has seen the incident.

24. The trial Court has also observed that, the fact that when incident took place, several persons had gathered and apart from the interested witnesses, the Investigating Officer has not chosen to examine any independent witness. In view of the dispute between the complainant and the accused persons regarding the vacant site adjoining their house and also in view of the previous litigation between them, the trial Court observed that it would have been better if some independent witnesses were also examined so as to lend support to the interested testimony of PWs.1, 3, 5 and 6 and also PWs.4 and 7, who are the friends of PW.1. Similarly PW.2 a seizure mahazar witness is also an interested witness and therefore the trial Court wanted to have support from neutral witnesses to lend credence to the testimony of interested witnesses.

25. It is also observed by the trial Court that in respect of the same incident, accused No.1 has lodged a compliant against the complaint herein and other witnesses and a charge sheet was filed and in that case the accused persons and his supporters have deposed against the complainant and others. In view of this, out of the total persons who were present, the witnesses are divided into two groups speaking one against the other. In such circumstances, the trial Court has rightly disbelieved the uncorroborated testimony of the interested witnesses.

26. According to the prosecution, MO.4 Koyta and MO.5 Khurpi are the weapons used by the accused persons to assault the complainant and his brother. However, during the course of examination-in-chief itself, PWs.1 and 3 who are the injured have disputed that MOs.4 and 5 are the weapons used by the accused persons. Therefore, the identity of the weapon of offence is not established and consequently a very important piece of evidence

to connect the accused persons with the alleged crime is lost.

27. The trial Court has also observed that earlier the complainant has lodged one more similar complaint in Special Case No.76/2010 against the

accused Nos.3 and 4 who are accused Nos.1 and 2 in the said case and after trial, the said case came to be dismissed by acquitting the accused

persons.

28. From the contents of the complaint as well as the evidence of PWs.1 and 3 it is evident that there is dispute between the complainant and the

accused persons with regard to the vacant space adjoining their residence and that is the root cause for quarrel between the parties. The witnesses to

the recovery of blood stained clothes of the injured also not whole heartedly supported the prosecution case. He has deposed that, by the time he

came to the spot, already the mahazar was written and he has affixed his signature. The trial Court has also found that the evidence of PW.3 with

regard to the weapon used by accused Nos.1 and 2 is contradictory going to the root of the case. Trial Court has also observed that it is doubtful

whether the injury sustained by PWs.1 and 3 are possible if assaulted with MOs.4 and 5. On the overall appreciation of the case of the prosecution,

the trial Court has come to the conclusion that the charges levelled against the accused are not proved beyond reasonable doubt and it is not for the

simple reason that PWs.1, 3, 5 and 6 are interested witnesses and also PWs.4 and 7 being the friends of PW.1 that the Trial Court has rejected the

case of the prosecution.

29. In this regard, the learned Additional SPP has relied upon the decision in the matter of Baleshwar Mahto and another Vs. State of Bihar and

another reported in (2017) 3 SCC 152, wherein the Hon'ble Supreme Court ruled as to how medical evidence is to be appreciated with regard to the

ocular evidence and that minor variations between medical evidence and ocular evidence do not take away the primacy of the ocular evidence. It is

further held that unless the medical evidence in its term goes so far as to completely rule out all possibilities whatsoever of injuries taking place in the

manner stated by the eyewitnesses, the testimony of eyewitnesses cannot be thrown out. As discussed earlier, in the present case, the trial Court has

not rejected the testimony of the injured as well as the eyewitnesses not only on the ground that there is discrepancy in the nature of the injuries

sustained and the medical evidence, but also for the various other reasons. Hence, the prosecution cannot press into service this decision.

30. We have gone through the oral and documentary evidence placed on record by the prosecution and also the judgment of the trial Court and we

find that the trial Court has rightly rejected the case of the prosecution and insisted upon corroboration of the evidence of PWs.1 and 3, who are

injured as well as PWs.5 and 6 who are related to PWs.1 and 3. We find no perversity in the conclusions arrived at by the trial Court and

consequently the appeal fails and the same is dismissed.