

(2008) 01 KAR CK 0064
In the Karnataka High Court
Case No : Criminal A. No. 227 of 2001

State of Karnataka

APPELLANT

Vs

Richard @ Aruldas and Chakravarthi @ G. Gopal

RESPONDENT

Date of Decision : 30-01-2008

Acts Referred:

Penal Code, 1860 (IPC) — Section 333, 442, 452

Citation : (2008) CriLJ 2200 : (2008) ILR (Kar) 1352 : (2008) 5 KarLJ 707 : (2008) 2 KCCR 606

Hon'ble Judges : V. Jagannathan, J

Bench : Single Bench

Advocate : Honnappa, HCGP, for the Appellant; Appireddy, V., for the Respondent

Judgement

V. Jagannathan, J.—This appeal has been heard after the matter was remanded to this Court by the Hon'ble Supreme Court in CrI A. No. 969/2007. This Court on the earlier occasion disposed of this appeal by its judgment dated 6.7.2006 and the matter was taken to the Apex Court by the second respondent (accused No. 4 before the trial Court), as this Court had convicted him for the offence punishable under Sections 333 and 452 of IPC and sentenced, him to one year R.I., and to pay a fine of Rs. 10,000/-. Following the order passed lay the Apex Court remanding the matter, this Court heard the teamed Counsel for the parties on 25.1.2008 and posted the matter for further hearing today.

2. The learned Government Pleader Shri Honnappa completed the arguments on behalf of the appellant/state, Learned Counsel for the respondents Submitted his reply.

3. While remanding the matter to this Court, the Apex Court had observed thus:

Learned Counsel for the respondent does not object to setting aside of the order in terms of order dated 14.3.2007. Accordingly, the order is set-aside and the case is remitted back to the High Court for the passing of appropriate order in accordance with law after affording due opportunities of hearing to the counsel

for the parties.

4. The facts in brief are to the effect that the police officials who were on duty to the RPF post of Cantonment police station on 27.4.1992 on getting information that certain persons had committed theft of the asbestos sheets put on the water tank in the Railway colony, were able to apprehend accused No. 1 Jhonson, after chasing the culprits. While the police officials led by Siddappa and accompanied by Chandra Naidu, Samanna and Naganna, all who were on duty were able to catch hold of accused No. 1 Jhonson and brought him to the police station for enquiry, the other accused persons also came there and Accused No. 4 Chakravarthi is said to have given a blow on the face of the complainant Siddappa with his head and this led to one tooth of Siddappa being broken and the injured-complainant was taken to the hospital for treatment Complaint of Siddappa was recorded by P.W.4 Shakar R. Nimbalker, PSI on 38.4.1992 at about 4.30 A.M. and based on the said complaint of Siddappa (P.W.2) as per Ex.PI, case was registered and FIR was sent as per Ex.P2. After collecting blood stained shirt and broken tooth under the spot mahazar Ex.P3, the injured complainant was sent to the doctor for examination. PW.8 Dr. Channakeshava identified the wound certificate issued by the dental doctor and it is Ex.F5. After recording statement of the eyewitnesses to the occurrence, and on completion of the investigation, P.W.7 Mohammed Ghouse submitted his chargeaheet chargesheet

5. A1 to A4 were put on trial in respect of the charge levelled against them for having committed the offence punishable under Sections 333 and 452 read with Section 34 of the IPC. During the course of trial, accused No. 1 was found absconding and accused No. 3 was found dead. Therefore, only against accused Nos. 2 and 4 the trial proceeded. In order to fix the guilt of the accused, the prosecution examined P.Ws 1 to 8 and documents PI to P6 were marked. M.O.1-shirt and M.O.2- broken tooth were also produced. The accused who took the trial denied the case of the prosecution when they were questioned u/s 313 of the Cr.P.C. they chose to lead no evidence. The learned trial Judge after appreciating the evidence on record, found that the prosecution case was not free from reasonable doubt in as much as though 50 to 60 persons had gathered near the police station, yet only police officials were examined before the trial Court and therefore, in the absence of independent witnesses being examined, it was unsafe to rely on the testimony of official witness including the injured complainant. Apart from this, the trial Court also found certain discrepancies in the history of assault given before the doctor and accused No. 1 was also found injured in the accident but the prosecution did not offer any explanation for the said injury being caused to accused No. 1. It is on these reasonings, the trial court acquitted the accused Nos. 2 and 4 of the offence with which they were charged. Aggrieved by the acquittal of the accused Nos. 2 and 4, the State has preferred this appeal.

6. I have heard the learned Government Pleader for the State Shri Honnappa and learned Counsel Shri Appireddy V. for the respondents and perused the entire

material on record.

7. The learned Counsel for the appellant/State Shri Honnappa submits that the trial Court's judgment deleted cannot be sustained in law because, the prosecution has examined not only the injured complainant P.W.2 Siddappa but other eyewitnesses who are also police officials namely P.W.I, P.W.3 and 5 and all of them deposed consistently about accused No. 4 assaulting P.W.2 with his head on the face which led to a tooth of complainant being broken and felling down apart from other injuries. Therefore, when all eyewitnesses deposed in support of the testimony of the injured complainant P.W.2 and wound certificate produced also corroborates the evidence of the eyewitnesses, there was no reason for the trial Court not to have accepted the eyewitness account of the accident. But unfortunately,, the trial Court disbelieved the prosecution case only on the ground that no independent witness was examined and therefore, the said approach of the trial Court is contrary to the law laid down by the Apex Court. Once the eyewitness account of the incident finds corroboration from the medical evidence as well as the testimony of the injured complainant, end when the eyewitnesses including the complainant were all police officers, there was no justification in not accepting the testimony of police officers merely because they were the police officials, therefore, the learned Government Pleader submitted that the acquittal of the accused No. 4 is improper and evidence appreciation is totally perverse and unreasonable and there has been miscarriage of justice in as much as the trial Court has acquitted the guilty persons. As far as lapses in the investigation are concerned,, it was submitted that though there is some discrepancy with regard to the shirt M.O.1 which was produced before the trial Court and also Ex.P5 wound certificate, yet, in the eyewitness account of the incident there is a ring of truth in it and therefore merely because of certain defects in the investigation, the case of the prosecution could not have been disbelieved by the trial Court Placing reliance on a ruling of this Court reported in State of Karnataka Vs. Mohammed Sadiq, it was submitted that acquittal of the accused No. 4 in particular was improper when the prosecution had proved its case through the testimony of the eyewitness and corroborated by medical evidence. Therefore, the learned Government Pleader submitted that the accused be convicted of the offence with which they were charged.

8. On the other hand, learned Counsel Shri Appireddy for the respondents-accused Nos. 2 and 4 by supporting the judgment of the trial court contended that there are several discrepancies and infirmities in the prosecution case, giving rise to doubt the case of the prosecution. It was pointed out that the complaint Ex.P1 was a written complaint whereas according to P.W.2, he only gave oral statement. Secondly, it was submitted that Ex.F5 is the wound certificate was issued not by P.W.8 but it was Issued by a dental doctor and therefore no importance can be attached to the wound certificate Ex.P5 which in fact is the extract of the MLC register. The next defect pointed out is with regard, to the seizure of the shirt M.O.I and tooth M.O.2, and whether it wan produced by P.W.2 or whether they were seized at the spot is not clear. Further more,

M.O.1 is a kaki shirt Another error pointed out by the learned Counsel for the respondents is that the statements of some of the witnesses were recorded long after the incident, i.e., incident occurred on 27.4.1992 whereas the statement was recorded on 8.8,1992. Thus, the delay in recording the statement of the witnesses also gives raise to doubt the prosecution case. Therefore, lay referring to all these defects and pointing out that P.W.2 Siddappa was not on duty when the incident occurred, it was argued that the above defects in the prosecution case therefore, entitles the accused being given the benefit of doubt Hence, acquittal of the respondents-accused 2 and 4 by the trial court does not call for any interference. In support of the above submission, learned Counsel for the respondents also placed reliance on a decision reported in 2000(4) CRIMES 150.

9. Having thus heard the above submissions of both sides and taking note of the rulings cited, the only point that arises for consideration is;

Whether the State has made out a case for this Court to interfere with the judgment of acquittal passed by the trial Court.

10. Before I proceed to examine the evidence, it is necessary to keep in view the law laid down by the Apex Court with regard to the scope of the Appellate Court and interference with the order of acquittal. In the case of Anil Kumar v. State of U.P. 2005 SCC Cri. 178, the Apex Court has observed thus:

9. there to no embargo on the appellate court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from, acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate court to appreciate the evidence where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused, really committed any offence or not (See Bhagwan Singh and Others Vs. State of Madhya Pradesh,), The principle to be followed by the appellate court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable and relevant and convincing materials have been unjustifiably eliminated in the process, it is a compelling reason for interference.

11. Keeping in view the above parameters of law, I have examined the evidence on record. Of the eight witnesses examined by the prosecution, P.W.2 Siddappa is the complainant and PW1, PW3 and FWS are the eyewitnesses and all these witnesses are police officials.

12. PW2 Siddappa has deposed in his evidence that about ten days earlier to 27.4.1992, there was a theft of 23 asbestos sheets put on the ground level water tank in the Railway Board Colony and the police officials were in search of persons who had committed the theft. On receiving credible information that A1 and other two persons have committed the theft, PW2 along with PW1 and others went in search of the culprits and this was around 7.45 p.m. on 27.4.1992 after some running and chasing, the police officials were able to apprehend A1 who while running had fallen and sustained injury to his lower lip, A1 was caught and brought to RPF Polks Station and on the way, A2 the brother of A1 asked for AX to be set free. This request was not heeded by the police officials and they brought A1 to the police station. After sometime A2 came there along with the Railway Station Master and other employees and created a scene in the police station. It was, at this juncture that when FW2 was in the guardroom of the RPF Station, A4 Chakravarthi came there and held FW2 a shirt collar and gave him a ditch with his head on to the mouth of PW2 on the ground that FW2 filed a case against the brother of A4. Following the said assault by A4, FW2 suffered injury and two teeth fell down. His clothes were also blood stained. A2 and A4 ran away from the place. Thereafter, PW2 was taken to the hospital along with A1 and the complaint of PW2 was recorded while he was in Bowring Hospital on 28.4.1992 as per Ex.F-1. He has identified MO.1 as his blood stained shirt and MO.2 is the teeth that had fallen.

13. In the cross-examination of FW2, the defence has not been able to discredit the core of the testimony of FW2 with regard to assaulting of PW2 in the manner described above.

14. This evidence of PW2 finds support from the evidence of PW1 Naganna the RPF Constable and he says clearly in his evidence that A4 came to the police station and made galata to set free A1 and then A2 held PW2 and A4 gave a ditch (blow) from his head to the (c) mouth of PW2 leading to injury being sustained to PW2 and one lower tooth having fallen and this witness identifies MO.1 as shirt belonging to PW2. There is nothing in the cross examination of this witness in order to disbelieve his version regarding the assault on PW2 by A4.

15. PW3 Vishwanathan was the constable working in the RPF station during the time of incident and he confirms the galata having taken place on 27.4.1992 by deposing that around 8.40 p.m. A1 was brought to the station by PW2 and A2 to A4 came and requested that A1 be released. FW2 refused to do be and then A4 tried to remove scabbard (upper portion) of the rifle of PW2 and then A4 gave a ditch with his head to the mouth of PW2 and caused bleeding injury, In the cross-examination of this witness also, defence has not been successful in eliciting anything so as to discredit his testimony. PW5 K. Raju is another police constable of RPF Station who was at the police station on 27.4.1992 and deposed in similar fashion like the other eyewitnesses and says that A4 assaulted PW2 by giving a ditch with his head to the mouth of PW2 and this led to injury being caused to the nose and mouth of PW2. In the cross-examination, this witness also haw not

been able to show that the testimony of PW5 is not reliable.

16. All the eyewitnesses examined though being police officials support the testimony of the injured complainant PW2. the prosecution has also placed medical evidence through PW8 Dr. Chennakeshar. The said doctor has deposed that he examined Siddapps on 27.4.1992 at 10.50 p.m. and found the following injuries.

i) Patient has lout his two upper incisor teeth (one tooth was recovered and another was lost).

ii) Lenear out injury measuring $1/2 \times 1/4$ seen over inner aspect of upper lip on the left side

iii) Swelling seen over the left cheek.

iv) Patient complains of severe throat pain.

17. PW8 further stated in his evidence that later he sent him to dentist and the dentist examined and gave his opinion which is mentioned in the medico legal register. The Certificate that is marked in Ex.P-5 was issue by the dental doctor and it is identified by PW8. In the cross-examination, the defence has brought out that A1 Johnson also sustained injuries namely:

i) Lenear out injury measuring $1/2$ seen over inner aspect of lower lip on the left side.

ii) Patient complaints of severe chest pain on the left side and severe pain over the left region and also over the left foot.

The doctor however, has denied the suggestion that the said injuries were grievous in nature.

18. thus the medical evidence of FW8 fully corroborates with the eyewitness account of the injuries sustained by PW2. There is corroboration between the testimony of PW2 and the medical evidence placed through PW8 and Ex.P-5.

19. I am, therefore, of the view that the eyewitness, account of the incident supported by medical evidence establishes the case of the prosecution insofar as A4 assaulting PW2 is concerned. However, the evidence is not very convincing an to the role played by A3, None of the eyewitnesses referred to any over tact by A2 during the incident. There was no reason for the trial court not to have disbelieved the evidence of the eyewitnesses though they were all police officials, As far as the defects referred to by the learned Counsel for the respondents are concerned, no doubt, there are some discrepancies in the evidence with regard to the seizure of shirt MO.1 and the doctor who treated PW2 has not been examined and the statement of some of the witnesses were recorded after certain delay. Nevertheless, the defects pointed out are not so serious enough so as to reject the reliable and convincing testimony of the injured-complainant PW2 and well supported by the testimony of the other eyewitnesses and the medical

evidence. Merely because the eyewitnesses happened to be police officers, it is not a ground to reject their testimony. The Apex Court has held in number of cases that testimony of a police officer also requires to be appreciated and weighed in the same manner like any other witness. As far as PW2 being not on duty is concerned, though PW2 has deposed in his evidence that his duty time was from 8 a.m. to 7.45 p.m., what is not to be lost sight of is that, being a public servant and more so being a police officer, PW2 will have to be deemed to be on duty all the 24 hours of a day. In fact, PW2 in the course of his evidence has clearly stated that the RPS staff will always be on duty for the whole period of 24 hours in a day. As far as the delay in recording the statement of the witnesses is concerned, though it has been brought out from the evidence of PW7 that statements of the eyewitnesses were recorded on 8.8.1992. Mere delay in recording the statement will not be fatal unless it is shown that the investigating agency was marking time in order to give a shape to the case. No such inference can be drawn in the case on hand having regard to the evidence of PW2 and other eyewitnesses.

20. No doubt, there has been some lapses on the part of the investigation, but they do not have the effect of discrediting the testimony of the eyewitnesses because, the prosecution has proved its case and the testimony of the eyewitnesses remained unshaken so far as the substratum of their evidence is concerned. It is said by the great jurist Jeremy Bentham that eyewitnesses are the eyes and ears of justice and therefore, to reject the testimony of the eyewitnesses, merely because of some discrepancies and lapse on the part of the investigation is not only improper, but such appreciation of evidence cannot be sustained in law. The Apex Court in the case of Prithvi Manraj 2005 SCC Cri. 198 has held that faulty investigation could hardly be a ground for rejection of testimony of eyewitnesses which had a ring of truth in it. In fact, in the aforesaid decision, the Apex Court has also referred to an earlier decision reported in Allarakha K. Mansuri Vs. State of Gujarat, and has observed thus:

The defect in the investigation holding it to be shaky and creating doubts also appears to be the result of imaginary thought of the trial court. Otherwise also defective investigation by itself cannot be made a ground for acquitting the accused.

21, In the very same decision of the Apex Court, it is also observed that delay in recording the statement though may render it suspect, yet, it is for the court to assess the explanation and if satisfied, accept the statement of witness.

22. In the light of the aforesaid law laid down by the Apex Court and also the ruling referred to by the learned Government Pleader for the State, I am of the view that the acquittal of A4 particularly by the trial court cannot be sustained as the state has made out compelling grounds for this Court to interfere with the order of acquittal. This is a case in toy view, the trial court has ignored the admissible evidence and hence, there is a very compelling reason for interference. For the foregoing reasons, the acquittal of A4 by the trial court will

have to be set aside.

23. As far as the offence punishable u/s 452 of the IPC is concerned, learned Counsel for the respondent contended that the said section is not attracted because, a plain reading of Section 452 would make it clear that it is applicable only in cases of trespass into the house properly and as the accused No. 4 did not enter a house, but entered the police station, the question of house trespass does not arise and the ingredient of Section 452 are not attracted.

24. On the other hand,, learned Government Pleader for State argued that a look at the meaning as signed to the expression "house trespass" in Section 452 of IPC will make it clear that the criminal trespass in question, need not be only in respect of a building used as a human dwelling, but it also covers in building used as a place for custody of property and as the police station is a place where there will also be custody of property, Section 442 is satisfied, in the instant case and consequently, as A4 did commit criminal trespass by entering the police station and assaulted PW2, Section 452 also comes Into application.

25. Therefore, the important question, to be answered at this juncture is, whether the prosecution has also made out a case against A4 in respect of the offence punishable u/s 452 of the IPC?

26. Section 452 of the IPC reads as follows:

452 House-trespass after preparation for hurt assault or wrongful restraint- Whoever commits house-trespass, having made preparation for causing hurt to any person or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

27. The expression house trespass has been explained in Section 442 of the IPC as follows:

442. House trespass- Whoever commits criminal trespass by entering into or remaining in any building, tent or vessel used as a human dwelling or any building used as a place for worship, or as a place for the custody of property, is said to commit house -trespass.

28. Therefore from a combined reading of these two Sections and in particular, having regard to use of the expression in building used as a place for "custody of property" I am of the view that A4 having entered the police station and having assaulted PW2, Section 452 gets attracted. A police station is necessarily house in a building and it is also a place for custody of property. Therefore, I am unable to agree with the contention put forward by the learned Counsel for the respondents that Section 452 of the IPC is applicable only in respect of any building used as a human dwelling. In this regard, it is also pertinent to refer to a decision reported in 1991(2) OLR 295 which decision has been referred to in AIR Manual 5th Edition Volume 38 at page 868 where it is commented thus:

Where the evidence on record proved that accused went inside office room of the Sub-Divisional Veterinary Assistant Surgeon with a stone in hand and threatened to assault him, offence u/s 448 is made out against thus accused.

29. In the instant, case not only A4 committed criminal trespass by entering the police station, but he further assaulted PW2 by dishing his head against the face of PW2 and thereby caused injuries to PW2 which also included loss of one tooth. Under the above circumstances, I am of the view that the prosecution has made out a case by conviction of A4 even in respect of the offence punishable u/s 452 of the IPC.

30. Heard the learned Counsel for the parties on the question of sentence.

31. Learned Government Pleader submitted that the punishment prescribed for the offences proved against A4 being imposed upon him.

32. On the other hand, learned Counsel for the respondents submitted that the incident said to have been taken place in the year 1992 and more than 16 years have elapsed and A4 is still working and therefore, these factors be considered and leniency be shown.

33. Having regard to the above submission made and also taking note of the nature of assault committed by A4 on PW2 and the injuries that were caused, I am of the view that A4 can be sentenced to undergo R.I. for a period of one year. Accordingly, I pass the following order;

33.2 The State appeal is allowed. The acquittal of A4 by the trial court is set aside and he is convicted for the offence punishable under Sections 333 and 452 of the IPC.

33.3 In respect of the conviction for the offence under Sections 333 of the IPC A4 is sentenced to undergo R.I. for a period of one year.

33.4 For the conviction u/s 452 of the IPC, he is sentenced to undergo rigorous imprisonment for a period of one year and also to pay a fine of Rs. 5,000/, and in default of payment of fine, he shall undergo further S.I. for a period of six months. The substantive sentences shall run concurrently.

33.5 The acquittal of A2 however, is sustained.

A4 shall forthwith surrender before the trial court to undergo the sentence imposed upon him as above and I also direct the trial court to take necessary steps to secure the presence of A4 for him to undergo the sentence.

33.6 The fine amount, if recovered, shall be paid to PW2, the injured complainant, as compensation.

33.7 The appeal is disposed of accordingly.

33.8 After the disposal of this appeal, the learned Counsel for the respondents filed an LA. seeking suspension of sentence on the ground that he intends to

prefer an appeal before the Hon"ble Supreme Court.

33.9 Heard the learned Counsel for the parties on the said application, The said I.A. is allowed and the sentence is suspended for a period of three months and A4 shall execute a personal bond for Rs. 20,000/- with one (surety for the like sum. to the satisfaction of the Registrar of the court.