

(1999) 12 KAR CK 0044
In the Karnataka High Court
Case No : Criminal Appeal No. 1013 of 1999

State of Karnataka

APPELLANT

Vs

Venkatesha

RESPONDENT

Date of Decision : 08-12-1999

Acts Referred:

Penal Code, 1860 (IPC) — Section 326

Citation : (1999) CriLJ 2187

Hon'ble Judges : N.S. Veerabhadraiah, J; M.F. Saldanha, J

Bench : Division Bench

Advocate : B.C. Muddappa, Addl. S.P.P, for the Appellant;

Final Decision : Dismissed

Judgement

M.F. Saldanha, J.—We have heard the learned Additional State Public Prosecutor on behalf of the appellant-State.

2. A charge was framed against the accused for having committed an offence u/s 326, IPC the allegation being that he had assaulted the Complainant-P.W. 1 on 14-6-1995 at about 6.00 p.m. and that as a result of this assault, not only did the P.W. 1 sustain a bleeding injury on the mouth but that his teeth had also fallen out. When the evidence was led, the P.W. 1 ultimately gives a go-by to his original version and stated that the injury had been sustained by him as a result of the fact that he had fallen down. He has however admitted to the fact that since the accused is a relation that he has compromised the matter with him. It was obvious to the Court that since the parties have ultimately compromised, that this was the reason why the P.W. 1 did not support the persecution and furthermore, it was equally apparent to the learned prosecutor that examining any further witnesses would be futile which was why he closed the evidence. On this state of the record, the learned trial Magistrate followed the correct procedure by passing a short order and acquitting the accused since the offence u/s 326, IPC is not compoundable. Had the offence been compoundable, it was clear that the Court would have granted permission to compound and disposed of

the proceeding. The matter having been finally set at rest, we are" a little surprised as to why the State has filed an appeal against the order of acquittal with such material on record.

3. The learned Additional State Public Prosecutor submitted that originally when the P.W. 1 gave evidence he had supported the prosecution and that it was only later on that he has completely resiled from that version and set out a different story. His submission is that in this background, it was open to the Court to rely on the earlier part of the evidence in which case the order of acquittal is unjustified. This submission is incorrect because a Court has to take into consideration while evaluating the evidence, the totality of the position and in a case where a witness alters a stand or where a witness gives evidence that is contradictory in part, the credibility of the entire evidence gets seriously affected and the benefit will undoubtedly go to the accused. In such a situation, the simple question that arises is as to whether any miscarriage of justice has taken place where the accused has been acquitted and secondly, whether it is at all possible to base a conviction on this record. Our answer is in the negative to both these questions because the parties having compromised, no grievance subsists and it would be absolutely useless even for the trial Court to have insisted on going on with the trial which could never have resulted in a conviction. The record being what it is, the Court having acquitted the accused, while deciding whether an appeal should be filed or not, the State was required to scrutinise as to whether such material could sustain a conviction and where it is as clear as day light, that the answer to this question is in the negative an appeal should not have been filed in the first instance. While we do concede that wherever interference is necessary that an appeal would be justified, there is also a class of cases in which the State should refrain from filing an appeal such as the present one. We do believe that if in cases where there is virtually no substance an appeal is preferred that it would constitute a waste of previous judicial time and consequently, we direct while dismissing the appeal on merits, that the State shall pay a token cost of Rs. 501/- which amount shall be credited to the account of the Karnataka State Legal Services Authority within a period of eight weeks from today. We do hope that hereinafter the department concerned will ensure that there is a careful scrutiny of all cases for purposes of eliminating those in which no appeals are warranted.

4. We need to observe here that in this particular case the trial Court has very rightly not permitted the compounding since Section 326, IPC is a non-compoundable offence and the Court has very rightly acquitted the accused. As such, no interference is called for with that order.

5. We need to specifically bring it to the notice of the State Government that the High Court has been working on several special formulae for purposes of eradicating the areas so that time is available for rendering speedy justice in deserving cases. If utterly worthless Appeals are filed by the State, such cases virtually choke and strangle the system. The Supreme Court had categorised

such proceedings as "fake litigation" we need to go a stage further and observe that such worthless proceedings which are thoroughly devoid of substance are nothing short of garbage which the Courts can do without.

6. The Registrar General is directed to forward a copy of this order to the Chief Secretary to the Government, Law Secretary and the Director of Prosecutions, Government of Karnataka for information and necessary action.