

(2007) 06 KAR CK 0057

In the Karnataka High Court

Case No : Criminal A. No's. 1251 of 2000 and 271 and 272 of 2001

State of Karnataka

APPELLANT

Vs

Yeda and Others

RESPONDENT

Date of Decision : 11-06-2007

Acts Referred:

Penal Code, 1860 (IPC) — Section 109, 148, 149, 326

Citation : (2008) CriLJ 4726

Hon'ble Judges : K. Sreedhar Rao, J;C.R. Kumaraswamy, J

Bench : Division Bench

Advocate : N. Rudramuni, Addl. SPP, for the Appellant; S. Shankarappa Associates and J.T. Girish, Amicus Curiae, for the Respondent

Judgement

K. Sreedhar Rao, J.—Sri J.T. Girish, learned Counsel is appointed as Amicus Curiae for R7 in Crl. A. 272/2001.

2. On 28-4-1991, PW-1 (injured) around 4 p.m., was returning from his land, Al to A12 and others wielding weapons emerge from the canal side ambush PW-1. Al deals blow with a view to chop of the head. PW-1 fell down. All the accused assault on the left hand and the left leg for about 4 to 5 times. Wife of one Mari (PW-3), who comes to the, scene, notices the assault. PW-3 goes and informs PW-4 and CW-5 and come to the scene. PW-1 is taken to Holenarasipura Hospital, later on taken to Hassan Hospital and to Victoria Hospital, Bangalore.

3. It is the case of the prosecution that the assault takes place on account of political rivalries. It is further said that Al 7, who was not one of the assailants at the scene but his henchman A1 to A16 carry out the assault at the instigation of A17. The medical officer sent Ex. P17-a memo to the police intimating admission of MLC case. PW-11 visits the hospital. The written FIR is submitted to PW-11. According to medical evidence, PW-1 has sustained as many as 12 injuries including fractures of collis, tibia, left leg and right calcanium. 5 and 6 are grievous injuries. The police after the investigation, filed charge sheet against 17 accused persons. A16 died during the pendency of the trial. Al to A15 and A17

faced the trial.

4. The trial Court framed charge against A1 to A15 and A17 for committing offences Under Sections 148, 307 r/w Section 149 IPC, and also framed a charge against A17 for abatement of the offence u/s 109 IPC. The trial Court convicted A1, A2, A6 and A12 and the other accused are acquitted. The convicted accused have filed appeal against the order of conviction. The State has filed two appeals. One for seeking enhancement of sentence against convicted accused and another against the order of acquittal in respect of the other accused.

5. Sri. S. Shankarappa, learned Counsel for the accused-appellants made the following submissions while assailing the order of conviction:

(i) PW-1 in the FIR does not attribute overt acts to the other accused. The FIR states that A1 caused head injury with the axe. The Wound Certificate-Ex P10 Issued by the Victoria Hospital does not show any head injury. PW-1 in evidence attributes overt acts to A1, A2, A6 and A12 and makes omnibus statement that all the accused assaulted in long choppers. The evidence of PW-1 in this regard is riddled with discrepancies. Hence, the evidence of PW-1 is unreliable.

(ii) PW-1 admits that he belongs to congress party. The accused belongs to the rival political party. PW-1 admits that he has filed as many as 20 complaints against the accused in a span of one year, after, the, Congress party came to power. The evidence of PW-1 in this regard discloses that they are political factions and vindictively repeated complaints are filed against the accused. Therefore, there is every possibility of false implication of the accused.

(iii) PW-3 is one Sarojamma w/o. Mariaiah admits in her evidence that they are two persons with similar name Mariaiah. The lady mentioned in FIR (Ex P1) is not PW-3, but a different person. PW-3 admits that she belongs to the political group of PW-1. Therefore, no credence can be attached to the evidence of PW-3. That apart, PW-3 makes only omnibus statement that A1 to A16 assaulted PW-16. PW-3 does not specify the overt acts of each of the accused.

(iv) Ex P11 is the intimation sent by the medical officer, Holenarasipur to the police. Ex. P16 is the Wound Certificate issued by PHC, Holenarasipur. Ex. P16 specifically mentions the name of A1 and A9 along with others as the assailants. In the memo Ex P11, there is no mention of the names of assailants. It is admitted that by the time PW1 reached the hospital, the two of his relatives of PW-1 were already there. Hence, there is every possibility of false implication of the accused, who are the members of the rival political party.

(v) PW-1 states that one Hanumanthe-gowda drafted Ex P1, whereas PW11 (PSI) states that he recorded the complaint at Ex. P1 there is a serious discrepancy with regard to the preparation of FIR. Therefore, the entire prosecution case is to be disbelieved.

6. The decision of this Court is Puttaiah alias Putta v. State of Mysore reported in ILR 1973 Kar 1145 is cited, to contend that non-mentioning of the name of the

assailants creates serious doubt about the veracity of prosecution version.

7. In the alternative, it is argued that according to the FIR, A1 is the assailant, who caused the head injury, which is a simple injury. There is no evidence to show as to which of the accused, caused the grievous injury. In that view, A1 alone can be convicted for an offence u/s 324 IPC, A3, A6 & A12 have to be acquitted for want of clinching evidence against them.

8. Sri N. Rudramuni, learned Addl. SPP strenuously argued that evidence of PW-1 and PW-3 convincingly establish that A1 to A16 and A15 are the members of the unlawful assembly wielding deadly weapons. PW-1 names A1, A2, A6 and A12, which specific overt-acts and names and state that other accused also assaulted by them, when the accused are the members of unlawful assembly each one would be vicariously held liable for the acts of other. Hence, acquittal of A1 to A15 is bad in law. The evidence of the prosecution would establish that A17 although not present at the scene abated the commission of an offence. Hence, u/s 109 of IPC, A17 is also liable for conviction. The order of acquittal passed against A3 to A5, to A1, A13 to A15 and A17 is bad in law and all the accused are liable for conviction u/s 307 r/w. Section 149 IPC. Learned Addl. SPP also argued that the punishment imposed in respect of convicted accused is lenient and it calls for imposition of severe punishment of life imprisonment.

9. A thorough consideration of facts and evidence it disclose that the FIR mentions specifically the names of A-1 to A-12 and A17 as the culprits who participated in the assault. The name of A-17 is mentioned as the abettor. The evidence of PW-1 incriminates A-1, A-2, A-6 and A-12 specifically with overt-acts and makes a general statement that other accused also assaulted him. PW-3 an eye witness to the incident deposes that A-1 to A-16 i.e., A1 to A-15 and A-17 were the assailants and she witnessed the incident from a distance of about 20 feet.

10. The contention that PW-3 is not the person mentioned in FIR, is untenable. PW-2 and PW-4 make specific reference that PW-3 is the person who informed them about the incident. Ex. D2 the contradiction in the statement of PW-2 is marked to show that it is one Thammaiah who informed her about the incident and not PW-3. PW-2 has denied to have made the statement as per Ex. D2. We find no ground to disbelieve the veracity of PW-2 in this regard. The evidence of IO with regard to contradiction marked at Ex. D.2 cannot be taken as sacrosanct to disbelieve the evidence of PW1.

11. The wound certificates Ex. P9 (SC Hospital, Hassan), Ex. P10 (Victoria Hospital, Bangalore) and Ex. P16 (P H C, Holenarasipur) and evidence of PW-2 (doctor) do corroborate PW-1 regarding the injuries, caused to him. The evidence also establishes that PW-1 sustained grievous injury within the meaning of 320 Indian Penal Code. In Ex. P16 history of the injuries is shown as result of assault. The contents of Ex. P9 specifically disclose that the injuries are caused by A-1 and A-6. The contents of Ex. P10 disclose the assailants as A-1 to A 13 and

others. Ex. P16 discloses that assault is caused by A-1, A-9 and others. Ex. P16 and Ex. P9 are issued by the Hospital authorities, who examined and treated PW-1 at the earliest after the incident. Ex. P11 and Ex. P16 show a head injury and other injuries.

12. In the cited decision rendered by this Court the facts reveal that the police had sent a communication to the Medical Officer to attend on the victim at the spot. In the said memo, the name of A-1 was alone mentioned as assailant. The 10 later on filed a charge sheet against A-1 and A-2. In view of the omission of name of A-1 in the memo sent by Police to doctor, this Court held that the inclusion of A-2 in the charge sheet, does not inspire confidence of the Court to believe that A-2 was the assailant along with A-1 and thus acquitted A-2. In the instant case, the facts are diametrically opposite. The doctor sends the memo at Ex. P11 to the police. The fact that Exs. P16 and P9 do not mention the names of the accused is not a ground to disbelieve the veracity of FIR. The Medical Officer unlike the SHO need not record all the details of the crime and names of all the culprits in the history column. The absence of names of the assailants is not a ground to disbelieve the veracity of the FIR. If the name of the victim or the informant as recorded in the wound certificate is contrary to the names shown in the FIR, the defence can take benefit of the contradiction. If the wound certificate is silent regarding the names of assailants, it is of no consequence to the defence and cannot dent the prosecution's case.

13. On the thorough consideration, we find that evidence of PW-1 and PW-3 to the extent it is consistent with the FIR is to be accepted as credible. In that view, we hold that the prosecution has successfully proved the guilt of A-1 to A-12's participation in the crime. May be that, PW-1 gives specifically the overt-acts of A-1, A-2, A-6 and A-12. But nonetheless PW-1 also states that other accused assaulted him. The prosecution by the evidence of PW-1 and PW-3 establish the presence of A-1 to A-12 as members of unlawful assembly wielding deadly weapons and caused assault on PW-1. In that view of the matter, the order of acquittal recorded by the trial Court in respect of A-3 to A-5, A-7 to A-11 and A-12 is bad in law.

14. The decision of the Bombay High Court in Ramachandra Bahiru Shingate v. State 1972 Cri LJ 938 lays down the ratio that offence u/s 326 Indian Penal Code does not come under the species of offence u/s 307 IPC as minor offence. Therefore, when there is a charge for offence u/s 307 IPC the accused cannot be convicted for an offence u/s 326. The learned Judge My Lord Vindalal, J., takes the said view because of the reason tat the punishment provided for offence Under Sections 307 and 326 IPC is same and also that the ingredients of offence Under Sections 307 and 326 in some respects are different. The Supreme Court in Shamnsaheb M. Multtani v. State of Karnataka, (2001) 2 SCC 577 lays down the ratio that where main ingredients of two cognate offences are common, the offence for which the lesser punishment is prescribed would be a minor offence, causing an injury which is dangerous to life is one of the ingredients to constitute

a grievous hurt within the meaning u/s 320 IPC. Any act which likely to cause death is an offence punishable u/s 307 IPC. Whoever causes injury, which is dangerous to life is also deemed to cause an act, which is likely to cause death. Therefore, in that respect, there is commonality with regard to ingredients in offence Under Sections 326 and 307 IPC. The offence u/s 326 IPC is punishable with life and in alternative imprisonment for a period of 10 years. The offence u/s 307 is punishable with imprisonment 10 years where no hurt is caused. When hurt is caused, the punishment is life imprisonment. In view of the sentencing structure, the offence u/s 307 is more severe in imposing the imprisonment for life or imprisonment for a period of 10 years. Therefore, after closely examining the ingredients Section 326 IPC in comparison with Section 307 IPC, we find that offence u/s 326 where an injury dangerous to life is caused, would constitute a lesser specie of offence u/s 307 IPC.

15. We also notice that assailants were fully armed with deadly weapons. If there was really intention to cause death, there was absolutely no impediment for the assailants to cause the death of PW-1. But the accused have assaulted severely on the non-vital parts of the body. In that view, we find that A-1 to A-12 are guilty of committing offence Under Sections 326 r/w 149 IPC. The order of conviction of the trial Court for an offence Under Sections 307 r/w 34 IPC is bad in law.

16. In Venkatagowda and Ors. v. State of Karnataka 2006 (4) Crimes 338 (SC), all the accused were acquitted by the trial Court. This Court in an appeal reversed the order of acquittal in respect of 5 of the accused and convicted them. The Supreme Court in the said appeal confirmed the conviction of the accused for an offence u/s 326 and other offences and imposed sentence of RI for a period of one year each keeping in view the fact that the appeal is decided 20 years after the incident.

17. In the instant case also, the appeal is heard 16 years after the incident. The injuries inflicted on PW-1 may be grievous but not resulted in any permanent handicap to PW-1. In that view, we convict A-1 to A-12 for offence u/s 148 IPC. Each of the accused is sentenced to R.I for a period of 3 months and a fine of Rs. 5,000/- and in default to undergo SI for 3 months. For conviction Under Sections 326 r/w 149 IPC accused are sentenced to RI for a period of one year and to pay a fine of Rs. 5000/- each. In default to undergo SI for a period of one year. Out of the fine amount, Rs. 60,000/- shall be paid as compensation to PW-1.

18. The prosecution has not produced any clinching evidence to prove the abetment on the part of A-17. Therefore, the order of acquittal of A-17 is confirmed.

Fee of learned Amicus Curiae, Sri. J.T. Girish is fixed at Rs. 5,000/-. The State shall pay fee to the Amicus Curiae.

19. Appeal of the accused is partly allowed. The appeal of the State with regard to sentence is disposed of as indicated above.