
(2013) 12 KAR CK 0037
In the Karnataka High Court
Case No : Criminal Appeal No. 492 of 2008

Surendranaika and Subramanya

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 10-12-2013

Acts Referred:

Citation : (2013) 12 KAR CK 0037

Hon'ble Judges : N. Ananda, J

Bench : Single Bench

Advocate : A.N. Radhakrishna, for the Appellant; B.T. Venkatesh, SPP-II, for the Respondent

Final Decision : Partly Allowed

Judgement

N. Ananda, J.—The appellants (hereinafter referred to as "accused 3 & 4") were tried along with accused No. 1 (since dead) and accused No. 2 for offences punishable under sections 114, 341, 324, 326 and 307 r/w 34 IPC. The learned trial Judge acquitted accused No. 2 and convicted accused 3 & 4 for offences punishable under sections 341 & 307 r/w 34 IPC and sentenced them to undergo simple imprisonment for a period of one month each for an offence punishable u/s 341 IPC and they were further sentenced to undergo simple imprisonment for a period of four years each and pay fine of Rs. 15,000/- each, in default to undergo simple imprisonment for a period of one year for an offence punishable u/s 307 IPC. The learned trial Judge has directed out of the fine amount, a sum of Rs. 25,000/- shall be paid as compensation to PW 1 (injured). I have heard Sri A.N. Radhakrishna, learned counsel for accused 3 & 4 and Sri B.T. Venkatesh, learned SPP for State.

2. In brief, the case of prosecution and inter se relationship of accused and some of the prosecution witnesses is stated thus:-

Accused No. 1-Muttanaika (since dead), accused No. 2-Thimmanaika @ Thimmappanaika and PW 1-Sheshappa are direct brothers. Accused No. 3-

Surendra Naik and accused No. 4-Subramanya are the sons of accused No. 1. They are residents of Yelugodu Village, Thirthahalli Taluk.

It is the case of prosecution that PW 1 was trying to erect a fence in front yard of his house. Accused were preventing PW 1 from erecting fence alleging that PW 1 should not obstruct their right of path way in front of house of PW 1. There was no cordiality between PW 1 and accused. On 28.05.1998 at about 1.30 p.m., when PW 1 was going near Balappa's Hadde in Yelugodu Village, Thirthahalli Taluk, accused 3 & 4 wrongfully restrained PW 1 and assaulted him with a sickle and caused grievous injuries to PW 1 with such intention and knowledge by such acts if they had caused death of PW 1, they would have been held guilty of an offence punishable u/s 302 IPC. Accused No. 1 since dead and accused No. 2 were instigating accused 3 & 4 to assault PW 1. PW 2-Kumuda (wife of PW 1) came to rescue her husband and she was also assaulted by accused. Some of the prosecution witnesses intervened and saved PW 1 from hands of accused 3 & 4. PW 1 was taken to General Hospital at Thirthahalli, after preliminary treatment, he was shifted and admitted in Kasturba Hospital at Manipal. PW 1 had suffered multiple fractures. PW 1 had undergone operation for reduction of fractures. When PW 1 was taking preliminary treatment in General Hospital at Thirthahalli, Investigating Officer came to hospital and recorded statement of PW 1, on the basis of which crime was registered against accused for offences punishable under sections 114, 341 & 324 r/w 34 IPC.

After discharge from hospital, PW 1 not being satisfied with the aforestated offences registered against accused, as police had not included an offence punishable u/s 307 IPC, PW 1 initiated a complaint u/s 200 Cr.P.C., alleging an offence punishable u/s 307 IPC against accused. The learned Magistrate committed the case to Court of Sessions. Thus, accused were tried for aforestated offences, including an offence punishable u/s 307 IPC.

3. In view of death of accused No. 1 and acquittal of accused No. 2 of aforestated offences, the following points would arise for determination:-

(1) Whether prosecution has proved that on 28.05.1998 at about 1.30 p.m., when PW 1 was proceeding near the forest land of one Balappagowda, in Yelugodu Village, Thirthahalli Taluk, accused 3 & 4 wrongfully restrained PW 1 and in the same course of transaction, accused 3 & 4 assaulted PW 1 with handle of a sickle and a club and caused grievous injuries to PW 1 with such intention and knowledge by such acts if they had caused death of PW 1, accused 3 & 4 would have been held guilty of an offence punishable u/s 302 IPC, thereby accused 3 & 4 committed offences punishable under sections 341, 307 r/w 34 IPC?

(2) Whether learned trial Judge has properly appreciated evidence on record?

(3) Whether impugned judgment calls for interference?

(4) To what order?

4. The independent witnesses namely PW 3-Kadappa, PW 4-Balappa, PW 5-Thimmappa, PW 6-Shankaranaika and PW 7-Ramakrishna have not supported the case of prosecution. Therefore, prosecution has relied on evidence of PW 1-Sheshappa (injured), PW 2-Kumuda (wife of PW 1) and PW 10-Puttamma (the wife of elder brother of PW 1) and medical evidence given by PW 9-Dr. B. Manjunatha and PW 11-Dr. Sharath Kumar.

5. PW 1-Sheshappa has deposed about relationship of PW 1 and accused. PW 1 has deposed; on 28.05.1998, at about 1.30 p.m., he was going near Balappana Hadde; at that time, accused No. 4 wrongfully restrained PW 1; accused No. 3 joined accused No. 4; accused No. 4 raised a sickle to assault PW 1; PW 1 held the hand of accused No. 4; at that time, accused No. 3 assaulted PW 1 with handle of a sickle on right knee, right thigh and right lower limb of PW 1; PW 1 fell down; accused No. 4 assaulted on head, ears, left thumb and on both legs with a sickle; wife of PW 1 (PW 2) came to place of incident and tried to save PW 1 from the hands of accused; PW 2, so also the wife of elder brother of PW 1 (PW 10) were pushed away by accused; witnesses namely Balappa (PW 4), Kada (PW 3), Ramakrishna (PW 7) and Mahesh came to place of incident and saved PW 1; PW 1 was shifted to General Hospital at Thirthahalli; police came to hospital and recorded statement of PW 1 as per Ex. P. 1; after preliminary treatment, PW 1 was shifted and treated in Kasturba Hospital at Manipal; PW 1 was under treatment till 22.06.1998.

During cross-examination, PW 1 has admitted that there was dispute between himself and accused regarding pathway. PW 1 has denied suggestion that PW 1 & PW 2 had suffered injuries in a motor vehicle accident and he had lodged a false complaint against accused. The accused have not disputed that PW 1 had suffered injuries. However, accused had made an unsuccessful attempt to establish that PW 1 & PW 2 had suffered injuries in a motor vehicle accident. PW 1 being the injured witness would be least disposed to leave aside real assailants to falsely implicate accused. If PW 1 had suffered injuries in a motor vehicle accident, he would have filed a claim petition to get compensation.

6. At this juncture, it is relevant to refer to evidence of PW 9-Dr. B. Manjunath, who treated PW 1 in General Hospital at Thirthahalli at about 3.30 p.m., on 28.05.1998. PW 9 has deposed that PW 1 had suffered following injuries:-

I. A lacerated wound measuring 5 c.ms. x 0.5 c.m. skin deep over right parietal region.

II. A lacerated wound measuring 2 c.m. x 0.5 c.m. skin deep over palmar aspect of left thumb.

III. A lacerated wound measuring 2 c.ms. x 0.5 c.m. skin deep over anterior aspect of upper 1/3rd of left leg.

IV. A lacerated wound measuring 2.5 c.ms. x 0.5 c.m. skin deep over anterior aspect of middle 1/3rd of right leg.

V. Swelling and tenderness on right knee joint.

VI. A lacerated wound measuring 7 c.ms. x 0.5 c.m. over right front parietal area, skin deep.

VII. Swelling and tenderness over lateral malleolus of left leg (As per KMC Manipal Hospital report lateral malleolus fracture of left fibula).

7. At the relevant time, PW 11-Dr. Sharath Kumar was working as an Orthopaedic Surgeon in Kasturba Hospital at Manipal. PW 11 has deposed; on 28.05.1998, PW 1 was admitted to Kasturba Hospital at Manipal with a history of assault by his brothers; PW 11 on examination of PW 1 found following injuries:-

I. A lacerated wound measuring 2 c.ms. x 1 c.m. x 1 c.m. on pal mar aspect of proximal phalanx of left thumb.

II. A lacerated wound measuring 3 c.ms. x 1 c.m. x 1 c.m. on anterior aspect of right middle shin.

III. A lacerated wound measuring 2 c.ms. x 1 c.m. x 1 c.m. on anterior aspect of left shin.

IV. A lacerated wound measuring 5 c.ms. x 1 c.m. x 1 c.m. on right parietal cortex.

V. A long oblique fracture on lower 1/3rd of right femur.

VI. Lateral malleolus fracture of left fibula.

PW 11 has deposed; on 10.06.1998, PW 1 underwent operation for reduction of fracture of right femur and he was discharged from Kasturba Hospital at Manipal on 22.06.1998; PW 1 was going to Kasturba Hospital for follow-up treatment.

8. PW 9 & PW 11 have denied suggestion that above injuries could be caused by a motor vehicle accident. The nature of injuries and situs of injuries would belie the defence contention that PW 1 had suffered aforesaid injuries in a motor vehicle accident. Therefore, there are no reasons to suspect the evidence of PW 1.

9. PW 2-Kumuda is the wife of PW 1. PW 2 has deposed; she had reached place of incident when PW 1 was being assaulted by accused 3 & 4; accused No. 4 was assaulting her husband (PW 1) with a sickle and accused No. 3 was assaulting her husband with a club; when PW 2 tried to snatch weapons from hands of accused 3 & 4; they pushed PW 2; when PW 10 came to rescue PW 1, she was also pushed by accused 3 & 4; other persons namely Balappa, Kadappa, Mahesh, Parameshwara and others came to place of incident and accused left that place; PW 2 has identified weapons of offence.

During cross-examination of PW 2, nothing has been elicited to discredit her evidence. PW 2 has deposed that she had suffered injuries, however she has not suffered any visible injuries. PW 2 has deposed; at the time of incident, her

husband (PW 1) was trying to fence front yard of his house. PW 2 has denied that PW 2 and PW 1 had suffered injuries in a motor vehicle accident.

10. In the discussion made supra, I have assigned reasons to discredit the defence put forth by accused.

11. PW 10-Puttamma is the wife of elder brother of PW 1. PW 10 has deposed; accused No. 3 had assaulted on legs of PW 1 with the handle of a sickle; accused No. 4 was assaulting PW 1 with a sickle; PW 10 intervened to rescue PW 1; after incident of assault, PW 1 & PW 2 were shifted to hospital.

During cross-examination, PW 10 has deposed; before incident she was cordial with accused; after incident, she was not in talking terms with accused. PW 10 has deposed; when she reached place of incident, 5 to 6 persons were near place of incident and PW 1 had suffered injuries and had fallen down. PW 10 has denied suggestion that she was tutored by PW 1 to give evidence against accused.

12. It is worthwhile to notice that defence has not made suggestions to PW 10 that she was inimical to accused and she had motives to falsely implicate accused. Therefore, evidence of PW 1 & PW 2 which is corroborated by medical evidence also finds corroboration from evidence of PW 10. In the circumstances, learned trial Judge was justified in holding that accused 3 & 4 had assaulted PW 1 and caused grievous injuries to him.

13. Now, the next point for determination is:-

Whether acts committed by accused would attract an offence punishable u/s 307 IPC?.

14. As already stated, accused No. 1 (since dead), accused No. 2 and PW 1 are direct brothers. Accused 3 & 4 are the sons of accused No. 1. It appears there was dispute between PW 1 and accused regarding pathway in front yard of house of PW 1. PW 1 was trying to erect a fence for which accused had taken serious objections. Even on the previous date of incident, there was quarrel between PW 1 and accused regarding pathway. It appears incident of assault on PW 1 was preceded by a brief quarrel. It appears, accused 3 & 4 picked up weapons and assaulted PW 1 and caused grievous injuries to PW 1.

15. Considering the background of incident and relationship between parties it is not possible to hold that accused 3 & 4 had assaulted and caused grievous injuries to PW 1 with such intention and knowledge by such acts, if they had caused death of PW 1, they would have been held guilty of an offence punishable u/s 302 IPC. Therefore, I hold accused 3 & 4 guilty of an offence punishable u/s 326 IPC.

16. The learned counsel for accused would submit that having regard to relationship between parties and facts and circumstances of the case, a lenient view may be taken in the matter of sentence.

17. The learned SPP would justify the impugned judgment.

18. Accused 3 & 4 are nephews of PW 1. Accused 3 & 4 do not bear criminal antecedents. Accused 3 & 4 had taken law into their hands. Accused 3 & 4 had caused grievous injuries to PW 1, including fracture of right femur.

19. Therefore, having regard to aggravating and mitigating circumstances, severity of injuries and nature of offence, I deem it proper to sentence accused 3 & 4 to undergo rigorous imprisonment for a period of two years and pay fine of Rs. 25,000/- each, in default to undergo simple imprisonment for a period of six months for an offence punishable u/s 326 r/w 34 IPC. In the result, I pass the following:-

ORDER

The appeal is accepted in part. The impugned judgment is modified. The conviction of accused 3 & 4 for an offence punishable u/s 341 r/w 34 IPC and sentence imposed thereon is confirmed. Accused 3 & 4 are acquitted of an offence punishable u/s 307 r/w 34 IPC. Accused 3 & 4 are convicted for an offence punishable u/s 326 r/w 34 IPC. Accused 3 & 4 are sentenced to undergo rigorous imprisonment for a period of two years and pay fine of Rs. 25,000/- each, in default to undergo simple imprisonment for a period of six months for an offence punishable u/s 326 IPC. Out of fine amount, a sum of Rs. 40,000/- shall be paid as compensation to PW 1-Sheshappa (injured). The substantive sentence of imprisonment shall run concurrently. The period of detention, if any, undergone by accused 3 & 4 during trial is given set off as provided u/s 428 Cr.P.C.