

(2013) 11 KAR CK 0325
In the Karnataka High Court
Case No : Criminal Appeal No. 3652 of 2010

The State

APPELLANT

Vs

Bandagemma, Meeran Patel @ Bablu and Rajmahmed

RESPONDENT

Date of Decision : 26-11-2013

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, 324, 34, 504
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)(x)

Citation : (2013) 11 KAR CK 0325

Hon'ble Judges : Hluvadi G. Ramesh, J

Bench : Single Bench

Advocate : Sanjay A. Patil, Addl. SPP, for the Appellant; Mashak Patel, for the Respondent

Final Decision : Dismissed

Judgement

Hluvadi G. Ramesh, J.—This appeal is by the State challenging the order of acquittal passed by the Special Judge and II Addl. Sessions Judge, Gulbarga in Special Case No. 57/2008 dated 13.01.2010. According to the prosecution, on 23.12.2007 around 3.00 p.m. in the afternoon in Wadi town when C.W. 2- Padrnavathi demanded accused No. 1-Bandagemma to pay the rent of Rs. 200/-, accused No. 1 refused to pay the same. In the evening around 8.00 p.m. on that day, one Maremma-C.W. 1 and C.W. 2- Padmavathi went to the house of accused No. 1 and questioned her as to why she raised dispute and quarrel when C.W. 2 demanded rent. For that all the accused persons joined together, taking out the name of her caste, abused C.W. 1-Maremma in filthy language. Accused No. 1 held the tuft of C.W. 1-Maremma and assaulted her on her cheeks with hands. Accused No. 2 assaulted Maremma on her forehead with a club and accused No 3 assaulted from hands on the back of C.W. 1. Accordingly, on the complaint filed, police registered the case and after investigation, filed charge sheet for the offences punishable under Sections 323, 324, 504 R/W Section 34 of Indian Penal Code and also u/s 3(1)(x) of Scheduled Caste and Scheduled Tribe

(Prevention of Atrocities) Act, 1989.

2. During the trial, prosecution examined in all 13 witnesses and got marked 10 documents and M.Os. 1 to 3. The accused denied the charges framed against them. The accused were examined u/s 313 of Cr.P.C. Their defence was one of total denial. Having heard the Special Public Prosecutor and the learned counsel for the accused, the trial court acquitted the accused. Hence, this appeal by the State.

3. After having heard the counsel for the parties, the points that arise for my consideration are;

i) Whether the prosecution proved that accused in furtherance of their common intention, have voluntarily caused hurt to C.W. 1- Maremma by assaulting her with hands on her cheeks and back and caused bodily pain and thereby committed an offence punishable u/s 323 R/W Section 34 of IPC?

ii) Whether the prosecution proved that in furtherance of their common intention, accused No. 2 assaulted C.W. 1-Maremma, the complainant with a club on the forehead and thereby caused injury and thereby committed an offence punishable u/s 324 R/W Section 34 of IPC?

iii) Whether the prosecution proved that accused not being the members of Scheduled Caste and Scheduled Tribe knowing that C.Ws. 1 and 2 belongs to Scheduled Caste, intentionally insulted them by abusing them in filthy language taking out the name of their caste and humiliated them in public and the accused have committed an offence punishable u/s 3(1)(x) of SC & ST (PA) Act, 1989?

iv) What offence, if any accused have committed?

v) What order?

4. I have perused the evidence of P.W. 1, P.W. 2 and P.W. 3. P.W. 1 is the complainant, P.W. 2 is the injured, P.W. 3 is the eyewitness to the incident and the husband of complainant. P.Ws. 4, 6 and 10 are the eyewitnesses to the incident. P.W. 9 is the doctor who treated the injured. Other witnesses are panchas and police officials.

5. The alleged incident has taken place in the afternoon of 23.12.2007 for the first time and thereafter, in the evening around 8.00 p.m. Regarding reaching of the FIR is concerned, complaint is lodged during night at 10.30 p.m. and there is delay of nearly eight hours. The distance between the place of incident and police station is hardly three furlongs. So, of course, there is some reasonable delay. Apart from that, there is also delay in reaching the FIR. FIR has reached the Court on the next day morning around 8.50 a.m. With regard to the overt-acts, as is observed by the Special Court, there is inconsistency in the evidence of witnesses. As per the complainant, she had been to demand the rent of Rs. 200/- from the accused and accused abused and assaulted her. It is noted that

there is no averment in the complaint with regard to the complainant going to the house of the accused and demanding rent. On the other hand, it is noted, she went there to ascertain why Padmavathi was assaulted. Of course, on analysis of evidence of P.Ws. 1 and 2, there is inconsistency as to the overt-act attributed. The averment in the complaint as well as evidence are inconsistent. These P.Ws. 1, 2 and 3 are relatives. P.W. 1 is mother of P.W. 2 and P.W. 3 is the father of P.W. 2. P.W. 3 is a hearsay witness. The independent witnesses viz., P.Ws. 4, 6 and 10 who are said to be eyewitnesses to the incident have turned hostile to the version of the prosecution. Even with regard to wound sustained by the complainant, it neither attributes the offence u/s 323 nor 324 of IPC. The injured was treated nearly after six hours of the alleged incident. There is also the evidence of P.W. 9 who is said to have examined the injured in the night around 2.00 a.m. Alleged incident is said to have taken place at 8.00 p.m. on 23.12.2007. The injured has sustained lacerated wound on the forehead. The opinion of the doctor is that injury could be caused by assault with a club. What is pertinent to note is, nothing has been mentioned about the assault by this accused and it is also admitted that the injury mentioned in the wound certificate would have been caused due to fall on a hard surface and the doctor has not mentioned the age of the wound. In the absence of probable time as to the age of wound, rather it is difficult to connect the accused to the alleged incident or injured having sustained injury in the alleged incident. Neither there is mention of name of the accused in the wound certificate nor the name of the accused is mentioned by the injured before the doctor. The trial court, of course, looking into the nature of the overt-act and the incident said to have taken place and the delay in reaching the FIR to the Court, has extended the benefit of doubt and acquitted the accused. Though there is some evidence on record, in the absence of consistency in the evidence of injured-witnesses and also when the independent witnesses have turned hostile and also in the absence of age of the wound is concerned, rightly the trial Court acquitted the accused. It is not a case to lightly interfere with the finding given by the trial Court. Hence, the appeal filed by the State deserves to be dismissed.

Accordingly, it is dismissed. Send back the trial Court records.