

(2015) 01 KAR CK 0060

In the Karnataka High Court

Case No : Criminal Appeal Nos. 1046/2007, 1622/2004 and 669/2005

The State of Karnataka and Others

APPELLANT

Vs

Shankar and Others

RESPONDENT

Date of Decision : 28-01-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 143, 145, 147, 148, 149

Citation : (2015) 01 KAR CK 0060

Hon'ble Judges : Mohan M. Shantana Goudar and P.S. Dinesh Kumar, JJ.

Bench : Division Bench

Advocate : B.T. Venkatesh, Addl. SPP, for the Appellant; N.S. Anil Kumar, Amicus Curiae, for the Respondent

Judgement

Mohan M. Shantana Goudar, J.—The Judgment & Order of conviction and Sentence dated 22.9.2004/27.9.2004 passed by the Presiding Officer, Fast Track Court-V, Bangalore City in S.C. No. 290/2003 is the subject matter of Criminal Appeal No. 1622/2004 and Criminal Appeal No. 669/2005. By the said Judgment, the trial Court has convicted Accused No. 1 for the offence punishable under Section 307 of IPC and sentenced him to undergo imprisonment for five years. By the very judgment, Accused Nos. 3 and 4 are convicted for the offence punishable under Section 341 of IPC and are sentenced to undergo imprisonment for one month and to pay fine of Rs. 500/- with a default clause.

The Judgment & Order of acquittal dated 6.2.2007 passed by the Presiding Officer, Fast Track Court-V, Bangalore city in S.C. No. 14/2006 is the subject matter of Criminal Appeal No. 1046/2007. By the said judgment, the trial Court has acquitted Accused No. 5 for the offences punishable under Sections 143, 145, 147, 148, 341, 323, 307 r/w 149 of IPC.

2. Convicted Accused No. 1 has filed Criminal Appeal No. 1622/2004 questioning the Judgment & Order of conviction passed by the trial Court in S.C. No. 290/2003.

State has preferred Criminal Appeal No. 669/2005 questioning the Judgment & Order passed by the trial Court in S.C. No. 290/2003 acquitting Accused Nos. 2 to 4 for the offence under Section 307 of IPC.

State has preferred Criminal Appeal No. 1046/2007 questioning the Judgment & Order of acquittal passed by the trial Court in S.C. No. 14/2006 acquitting Accused No. 5 for the offences with which he has been charged.

3. Since all the appeals are arising out of the same incident, they are heard and decided together by this common judgment.

Accused Nos. 1,2,3 and 5 are the brothers of Accused No. 4; It seems there is a dispute between the accused on one side and PWs. 1 to 3 on the other side relating to a site; two days prior to the incident in question i.e., two days prior to 6.9.2000, Accused Nos. 1 and 2 were raising funds for celebrating Ganesha festival; they asked P.W. 2 for contribution; P.W. 2 refused the demand of Accused Nos. 1 and 2 and consequently a quarrel ensued between Accused Nos. 1 and 2 on one side and P.W. 2 on the other; on the date of the incident i.e., on 6.9.2000 at about 9 p.m, Accused Nos. 1,2 and 3 started quarreling with PWs. 1 and 2; Accused No. 1 stabbed P.W. 2 on his abdomen with a knife, consequent upon which P.W. 2 sustained grievous bleeding injuries; immediately thereafter, the injured P.W. 2 was shifted by P.W. 3 and one Mr. Murugan in an autorickshaw to St. Philomena hospital; in the very incident, Accused No. 4 -Sampamma also sustained certain injuries as is clear from the complaint - Ex. P1.

Complaint came to be lodged by P.W. 1 as per Ex. P1 at 11.40 p.m. on 6.9.2000 before P.W. 12, the Assistant Sub-Inspector of Police attached to Aduvodi Police Station who registered the case in Crime No. 288/2000. During the course of investigation, the wound certificate of P.W. 2 was secured from the doctor P.W. 11. After recording the statement and completion of investigation, P.W. 13 - the Inspector of Police laid the charge sheet.

The accused were tried for the offences punishable under Section 143 of IPC, Section 145 r/w 149 of IPC, 147 r/w 149 of IPC, 148 r/w 149 of IPC, 341 r/w 149 of IPC, 323 r/w 34 of IPC and 307 r/w 149 of IPC.

4. In order to prove its case, the prosecution in all examined 15 witnesses and got marked 17 Exhibits and 7 material objects. On behalf of the defence, no witness is examined.

5. As aforementioned, the trial Court convicted Accused No. 1 for the offence under Section 307 of IPC and sentenced him to undergo imprisonment for five years and to pay fine of Rs. 1,000/- with a default clause; Accused Nos. 3 and 4 are convicted for the offence under Section 341 of IPC and are sentenced to undergo imprisonment for one month; Accused No. 2 and 5 are acquitted of the offences with which they were charged.

6. It is relevant to note that Accused Nos. 3 and 4 who are convicted for the offence under Section 341 of IPC have not preferred appeal.

7. Smt. Padmavathi, learned advocate appearing on behalf of Accused No. 1 taking the Court through the material on record and the judgment of the Court below submits that the trial Court is not justified in convicting Accused No. 1 for the offence under Section 307 of IPC; P.W. 2 seems to have sustained injuries in an incident which ensued because of the quarrel between the two groups; the act of Accused No. 1 is unintentional; looking to the entire background of the case, the offence may not fall under Section 307 of IPC. According to the learned advocate, the evidence of the eye witnesses including the injured eye witness suffers from major contradictions and omissions and therefore the trial Court ought to have acquitted the accused. She further submits that the Court below is justified in acquitting Accused Nos. 2 to 5 for the offence under Section 307 of IPC inasmuch as no case is made out against them.

The above submissions of Smt. Padmavathi are supported by the submissions of Sri Anil Kumar, learned amicus curiae. Sri Anil Kumar submits that absolutely no case is made out by the prosecution as against Accused No. 5.

Per contra, Sri Venkatesh, learned Addl. SPP submits that the Court below is not justified in acquitting Accused Nos. 2 to 5 for the offence punishable under Section 307 of IPC inasmuch as all the accused came to the spot together with the common object of taking away the life of P.W. 2; P.W. 4 brought a cricket stump and a knife from his house and handed over the same to Accused Nos. 1 and 2 by pronouncing that P.W. 2 should not be spared; the entire material if taken into consideration homogeneously would point towards the guilt as against other accused also for the offence under Section 307 of IPC.

8. P.W. 1 is the eye witness to the incident in question. He has lodged the complaint as per Ex. P1 before the Aduodi Police Station which came to be registered in Crime No. 288/2000. He filed the complaint within three hours of the incident.

P.W. 2 is the injured eye witness and PWs. 3 and 10 are two other eye witnesses. All of them have supported the case of the prosecution.

P.W. 4 is the witness for scene of offence panchanama Ex. P2 under which Mos. 1 to 3 are seized.

P.W. 5 was supposed to depose about the motive for commission of the offence. However he has turned hostile to the case of the prosecution.

PWs. 6 and 7 are the witnesses for the panchanama Ex. P3 under which Mos. 4 and 5 (blood stained clothes of the injured) were seized.

PWs. 8 and 9 are the witnesses for panchanama Ex. P5 under which MOs. 6 and 7, the weapons used by Accused No. 1 for commission of the offence are recovered at the instance of Accused No. 1. Both these witnesses have turned hostile.

P.W. 11 is the doctor who treated the injured P.W. 2 and issued the wound

certificate as per Ex. P6.

P.W. 12 is the Assistant Sub-Inspector of Aduvodi Police Station. He registered the crime in Crime No. 288/2000 against the three accused.

P.W. 13 is the Investigating Officer who completed the investigation and laid the charge sheet.

P.W. 14 though is an eye witness, has turned hostile to the case of the prosecution.

P.W. 15 is the officer of Forensic Science Laboratory.

9. Case of the prosecution mainly rests on the ocular testimony of PWs. 1 to 3 and 10. Out of them, P.W. 2 is the injured. As aforementioned, P.W. 1 (the eye witness) lodged the complaint as per Ex. P1 within three hours of the incident in question. Ex. P1 discloses that Accused Nos. 1 to 3 came to the spot and out of them, Accused No. 1 by pronouncing that P.W. 2 should not be spared, stabbed him on the left side of the abdomen with the knife. Immediately thereafter, he was shifted to hospital. Though it is stated in the complaint that Accused No. 2 assaulted P.W. 2 with the cricket stump, no corresponding injury is found on the body of P.W. 2, as is clear from the wound certificate Ex. P6 and the evidence of the doctor P.W. 11. However vaguely it is stated in the complaint that Accused No. 3 assaulted P.W. 2 with his hand. The complaint however does not disclose the presence of PWs. 3 and 10.

10. In the evidence, P.W. 1 has improved his version by deposing against four accused (Accused Nos. 1 to 4). Even in his deposition, P.W. 1 has testified that it was Accused No. 1 who stabbed on the left side of the abdomen of P.W. 2 and immediately thereafter he (P.W. 2) was shifted to St. Philomena hospital, Bangalore. Nothing is elicited in the cross-examination of P.W. 1 so as to discard his evidence. As a matter of fact, in the cross-examination, the defence practically admits the presence of accused No. 1 at the spot as well the incident. It is admitted by P.W. 1 that he did not go for pacifying the quarrel between P.W. 2 and Accused Nos. 1 to 3. The evidence of P.W. 1 fully supports the case of the prosecution as found in the complaint Ex. P1 atleast insofar as the case against Accused No. 1 is concerned.

11. The evidence of P.W. 1 is fully supported by the evidence of PWs. 2, 3 and 10. P.W. 2 is the injured eye witness. He is also specific in his deposition that it was Accused No. 1 who stabbed on his abdomen with a knife. He has also deposed about the motive for commission of the offence as put forth by the prosecution in the complaint -Ex. P1. Though P.W. 2 has deposed that he was assaulted by Accused No. 1, such evidence is not corroborated by the medical evidence. Even the evidence of PWs. 3 and 10 fully corroborates the case of the prosecution to the effect that Accused No. 1 stabbed on the abdomen of P.W. 2.

12. The defence has not been able to get anything in their favour in the cross-examination of PWs. 1 to 3 and 10 so as to suspect their evidence. We find that

the presence of PWs. 1,2,3 and 10 on the spot is natural. PWs. 1 and 2 are related inter se and are residing in the nearby houses. Whereas P.W. 3 is the friend of PWs. 1 and 2. He knew accused also. P.W. 10 is also staying in the house which is adjoining the house of the accused. He knew PWs. 1 and 2 also. The evidence of PWs. 1 to 3 and 10 is consistent, cogent and natural. We do not find any reason to suspect their presence at the spot as well as their versions. PWs. 3 and 10 are the independent eye witnesses. They knew the accused also. Not even a suggestion is made to them to the effect that they are biased against the accused. All of them have consistently and cogently deposed that it was Accused No. 1 who stabbed the injured P.W. 2 with a knife.

13. The ocular testimony of PWs. 1 to 3 and 10 is supported by the evidence of the doctor P.W. 11 and the wound certificate - Ex. P6. The evidence of the doctor clearly reveals that P.W. 2/victim was admitted to hospital at 10.30 p.m. on 6.9.2000 and he was operated; that the portion of intestine had protruded outside the skin; and Liver was damaged. The doctor has opined that the injuries sustained by the victim are grievous in nature and the victim was an in-patient for about one month and 10 days. He has also opined that the injuries as sustained by P.W. 2 can be caused by using the weapon - knife (MO. 7). The ocular testimony of PWs. 1 to 3 and 10 coupled with the evidence of the doctor makes it clear that the trial Court is justified in concluding that it was Accused No. 1 who caused such grievous injuries on the abdomen of the victim P.W. 2.

Though it is argued by Sri Venkatesh, learned Addl. SPP that there was common object of all the accused for commission of the offence, we decline to accept the said submission. As aforementioned, the complaint - Ex. P1 testifies the presence and overt acts of Accused Nos. 1 to 3 only. It is totally silent about the presence of Accused Nos. 4 and 5. The prosecution has introduced the presence of Accused Nos. 4 and 5 before the Court only at the time of recording the evidence. It is not uncommon in the rustic areas to implicate as many accused as possible.

Be that as it may, the evidence on record insofar as it relates to complicity of Accused Nos. 2 to 5 is concerned, is not consistent and cogent. Certain omnibus statements are made against Accused Nos. 2 to 4. Very vaguely, the presence of Accused No. 5 is spoken to by the eye witness. It seems the incident has taken place without there being any common intention on the part of Accused Nos. 1 to 3. There is nothing on record to show that there was prior meeting of minds among the accused Nos. 1 to 3 for commission of the offence. Therefore, in our considered opinion, the trial Court is justified in convicting Accused Nos. 3 and 4 for the offence under Section 341 of IPC and not under Section 307 of IPC.

14. The material on record also makes it clear that immediately after stabbing, Accused No. 1 went away from the scene. Had there been any intention to do away with the life of P.W. 2, Accused No. 1 would not have left the place immediately after stabbing. Accused No. 1 was armed with sharp cutting weapon, whereas P.W. 2 was unarmed. He was not supported by anybody during

the relevant point of time as is clear from the complaint - Ex. P1. Even P.W. 1 who was stated to be the eye witness was a mute spectator. He did not try to save P.W. 2 from being assaulted. Looking to all the facts on record, we are of the opinion that the offence may fall under Section 326 of IPC and not under Section 307 of IPC.

15. We have heard the learned advocates on record on the point of imposition of sentence. Smt. Padmavathi, learned advocate for Accused No. 1 submits that the offence has taken place on the spur of the moment without there being any intention to commit any crime and therefore she pleads for leniency while imposing the sentence. However the said submission is opposed by the learned Addl. SPP. He submits that the sentence imposed by the Court below is just and proper.

Having regard to the totality of facts and circumstances, we pass the following order:

"(a) The impugned Judgment & Order dated 22.9.2004/27.9.2004 passed by the trial Court in S.C. No. 290/2003 in respect of Accused Nos. 2 to 4 is concerned, stands confirmed.

(b) The Judgment & Order of acquittal dated 6.2.2007 passed by the trial Court in S.C. No. 14/2006 in respect of Accused No. 5 is concerned, stands confirmed.

(c) Accused No. 1 - Muniya is convicted for the offence under Section 326 of IPC. The impugned Judgment & order of the trial Court in S.C. No. 290/2003 convicting Accused No. 1 for the offence under Section 307 of IPC is modified accordingly to that extent.

(d) Accused No. 1 - Muniya is sentenced to undergo imprisonment for three years and to pay a fine of Rs. 20,000/- (Rupees twenty thousand only). In default of payment of fine, Accused No. 1 shall undergo further imprisonment for one year.

(e) In case of recovery of fine, the entire fine amount shall be paid to the injured P.W. 2 - Srinivasa s/o Muniswamy.

(f) Impugned Judgment & Order of the Court below in S.C. No. 290/2003 acquitting Accused No. 1 for the offence punishable under Section 341 of IPC remains undisturbed.

Accordingly, Criminal Appeal Nos. 1046/2007 and 669/2005 stand dismissed and Criminal Appeal No. 1622/2004 is allowed in part in the above terms.

We place on record the valuable services rendered by Sri Anil Kumar N.S., learned amicus curiae. In recognition thereof, we direct the Registry to pay Rs. 5,000/- (Rupees five thousand only) to the learned amicus curiae as honorarium.