

(2015) 04 SC CK 0090

In the Supreme Court Of India

Case No : Criminal Appeal No. 644/2015 (Arising out of S.L.P. (Criminal) No. 1550/2012)

Vinay and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 16-04-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 357, 357(1), 357(3)
Penal Code, 1860 (IPC) — Section 307, 324, 326, 34, 427

Citation : (2015) 3 ACR 2882 : (2015) 5 AD (SC) 125 : (2015) 2 AKR 765 :
(2015) 2 ALD(Cri) 622 : (2015) ALLMR(Cri) 2004 : (2015) 3 ALT(Cri) 282 :
(2015) 2 CCR 306 : (2015) 2 CGLJ 319 : (2015) 2 Crimes 336 : (2015) 2 JCC
1178 : (2015) 3 JLJR 185 : (2015) 4 KarLJ 17

Hon'ble Judges : T.S. Thakur, J;R. Banumathi, J

Bench : Division Bench

Advocate : R.S. Hegde, Shanti Prasad and Rajeev Singh, for the Appellant; V.N. Raghupathy, Advocates for the Respondent

Final Decision : Dismissed

Judgement

R. Banumathi, J.—Leave granted.

2. This appeal arises out of the judgment dated 30.11.2011 passed by the High Court of Karnataka, Circuit Bench at Dharwad in Criminal Appeal No. 515/2010 modifying the conviction of the Appellants from Section 307 Indian Penal Code read with Section 34 Indian Penal Code to Section 326 Indian Penal Code read with Section 34 Indian Penal Code reducing the sentence of imprisonment from three years to three months and confirming the conviction Under Section 427 Indian Penal Code read with Section 34 Indian Penal Code, thereby reducing the sentence of imprisonment imposed on each of the accused from six months to three months further directing the sentences to run concurrently and imposing a fine of Rs. 10,000/-.

3. The Appellants and the complainant-Vishveshwar Parameshwar Hegde (PW-1)

are the real brothers and are children of Smt. Bharati (PW-8). Due to quarrel with the Appellants, PW-1 voluntarily left the parental house and started living separately. On 23.12.2001, complainant- Visheshwar Parameshwar Hegde (PW-1) along with four persons viz., PW-2 Chandru V. Bhat, PW-3 Kiran R. Bhat, PW-4 Chandranath V. Bhat, and PW-5 Madhukar L. Hegde came in a Maruti car to his parental house in order to remove the almirah and his other personal belongings, for which the Appellants objected which resulted in quarrel between the parties. In the heat of moment, Appellant No. 1 hit the complainant with club and when PWs 2 to 5 came to PW-1's rescue, they were also indiscriminately attacked by all the three Appellants with chopper and sickles. The Appellants also damaged the car glasses and tyres, in which PW-1 came along with his associates. In the scuffle, the Appellants also received simple injuries. PW-1 and other injured witnesses somehow got themselves rescued and were admitted in the Government Hospital, Sirsi. Based on the statement of PW-1, on the same day, F.I.R. was registered in Crime No. 146/2001 with the Sirsi Rural Police Station for the offences punishable Under Sections 307, 324, 326, 427, and 506 Indian Penal Code read with Section 34 Indian Penal Code. PW-14 Investigating Officer had taken up the investigation and went to the place of occurrence and recovered the weapons of assault (MOs 1 to 3) and drew the spot panchnama, arrested the accused- Appellants and seized the blood stained clothes of the Appellants. After completion of investigation by PW-14, charge sheet came to be filed against the Appellants for the aforesaid offences. Case was committed to the Sessions Court and charges Under Sections 307, 427 Indian Penal Code read with Section 34 Indian Penal Code were framed against the accused- Appellants. To prove their case, prosecution examined 14 witnesses and exhibited 26 documents and 15 material objects.

4. Upon appreciation of the evidence on record, trial court arrived at the conclusion that the nature of weapons and nature of grievous injuries caused to the injured witnesses (PWs 1 to 5) would show the intention and knowledge of the Appellants-accused to kill the complainant and his associates and by its judgment dated 29.4.2010 convicted the Appellants for the offences punishable Under Sections 307 and 427 Indian Penal Code read with Section 34 Indian Penal Code. Each of the Appellants were sentenced to undergo rigorous imprisonment for three years with a fine of Rs. 4,000/- with default clause for offence Under Section 307 Indian Penal Code read with Section 34 Indian Penal Code. For the conviction Under Section 427 Indian Penal Code read with Section 34 Indian Penal Code, Appellants were sentenced to undergo rigorous imprisonment for six months with fine of Rs. 5,000/- each with default clause.

5. Appellants being aggrieved by their conviction and sentence, filed appeal before the High Court of Karnataka, Circuit Bench at Dharwad. State being aggrieved by the inadequate sentence awarded to the Appellants Under Section 307 Indian Penal Code, preferred cross appeal for enhancement of the sentence. By the common judgment dated 30.11.2011, the High Court partly allowed the appeal of the Appellants and modified the conviction of the Appellants from

Section 307 Indian Penal Code read with Section 34 Indian Penal Code to Section 326 Indian Penal Code read with Section 34 Indian Penal Code and accordingly reduced the sentence of imprisonment to three months and dismissed the appeal of the State. High Court confirmed the conviction of the Appellants Under Section 427 Indian Penal Code read with Section 34 Indian Penal Code and reduced the sentence of imprisonment to three months. In addition, High Court also imposed a fine of Rs. 10,000/- on each of the Appellants to be paid as compensation to the injured. Being aggrieved, this appeal has been filed by the Appellants challenging their conviction and sentence of imprisonment.

6. Learned Counsel for the Appellants submitted that the complainant accompanied by his associates (PWs 2 to 5) armed with weapons trespassed into the house of the Appellants in breach of subsisting injunction order passed against them and the Appellants acted in their right of self-defence in protection of their property which aspect was not properly appreciated and the courts below erred in convicting the Appellants Under Sections 326 and 427 Indian Penal Code read with Section 34 Indian Penal Code.

7. We have heard the learned Counsel for the Respondent-State who supported the judgment of the High Court.

8. Admittedly, there is long standing dispute between the real brothers. The presence of the parties at the place of occurrence is admitted by both the parties. Admittedly, on the date of occurrence, the complainant went to bring his Almirah kept in his parental house at Padageri and was conversing with his mother (PW-8). At that time, accused- Appellants came armed with sickles and talwars (swords) and attacked PW-1 on his head and right hand. When PWs 2 to 5 tried to rescue PW-1, they were also attacked by the Appellants. Complainant and his associates have consistently deposed about the incident and the attack on them by the Appellants with sickles and the injuries sustained by them. The testimony of the injured witnesses is also supported by the medical evidence. Dr. Rama Hegde (PW-13) attached to Pandit Government Hospital, Sirsi where complainant was admitted and examined has stated that Kiran R. Bhat (PW-3), Chandranath V. Bhat (PW-4), Madhukar L. Hegde (PW-5), and Vishveshwar P. Hegde (PW-1) had suffered grievous injuries and that same could be caused by sharp and blunt objects and to that effect he has issued wound certificates. The wound certificates show that complainant Vishveshwar P. Hegde (PW-1) and Kiran R. Bhat, Chandranath R. Bhat, Madhukar L. Hegde (PWs 3 to 5) have sustained one grievous injury each and other injuries are simple in nature. Chandru V. Bhat (PW-2) has sustained simple injuries. As the Appellants wielded deadly weapons, namely, sickles and talwars and that PWs 1, 3, 4 and 5 have sustained grievous injuries, the courts below rightly convicted the Appellants Under Section 326 Indian Penal Code read with Section 34 Indian Penal Code and Under Section 427 Indian Penal Code read with Section 34 Indian Penal Code.

9. So far as the contention regarding quantum of sentence, learned Counsel for the Appellants submitted that the Appellants and the complainant party are the

real brothers and that in the sudden quarrel and in the heat of passion, both parties attacked each other and that the accused parties also sustained injuries and therefore prayed for reduction of sentence, which in our view, merits consideration. On the date of occurrence, PW-1 along with his associates went to his parental house and injured witnesses were armed with weapons to the parental house to remove the Almirah and his belongings. The Appellants-accused also suffered contusion and abrasion. Dr. Rama Hegde (PW-13) noted simple injuries on the person of the accused-Appellants and issued wound certificates Ext. P22 to P24. In his cross-examination PW-13 also opined that injuries on the person of the accused could be caused by sharp and blunt objects. The complainant party went to the house of the accused for removal of Almirah and certain personal belongings. There was animosity between two factions which led to attack and injuries on both sides. Nature of injuries on the person of complainant and the complainant party and the accused party suggested that both parties attacked each other and the Appellants seem to have exceeded the right of private defence, if any. After the occurrence, more than thirteen years have passed, the complainant party and the accused are entangled in litigation. Considering the totality of facts and circumstances of the case and the relationship between the parties, interest of justice would be met by reducing the sentence and imposing fine.

10. Sub-section (1) of Section 357 provides power to award compensation to victims of the offence out of the sentence of fine imposed on accused. After referring to Hari Kishan Vs. Sukhbir Singh and Others, AIR 1988 SC 2127 : (1989) CriLJ 116 : (1989) 3 Crimes 541 : (1988) 3 JT 711 : (1988) 2 RCR(Criminal) 394 : (1988) 2 SCALE 426 : (1988) 4 SCC 551 : (1988) 2 SCR 571 Supp and other decisions in Ankush Shivaji Gaikwad Vs. State of Maharashtra, (2013) 4 ABR 648 : (2013) 9 AD 294 : AIR 2013 SC 2454 : (2013) CriLJ 3044 : (2013) 7 JT 26 : (2013) 2 RCR(Criminal) 1036 : (2013) 6 SCALE 778 : (2013) 6 SCC 770 , this Court held as under:

30. In Hari Kishan Vs. Sukhbir Singh and Others, AIR 1988 SC 2127 : (1989) CriLJ 116 : (1989) 3 Crimes 541 : (1988) 3 JT 711 : (1988) 2 RCR(Criminal) 394 : (1988) 2 SCALE 426 : (1988) 4 SCC 551 : (1988) 2 SCR 571 Supp this Court lamented the failure of the courts in awarding compensation to the victims in terms of Section 357(1) Code of Criminal Procedure. The Court recommended to all courts to exercise the power available Under Section 357 Cr PC liberally so as to meet the ends of justice. The Court said: (SCC PP. 557-58, para 10)

10. ...Sub-section (1) of Section 357 provides power to award compensation to victims of the offence out of the sentence of fine imposed on accused.It is an important provision but courts have seldom invoked it. Perhaps due to ignorance of the object of it. It empowers the court to award compensation to victims while passing judgment of conviction. In addition to conviction, the court may order the accused to pay some amount by way of compensation to victim who has suffered by the action of accused. It may be noted that this power of courts to

award compensation is not ancillary to other sentences but it is in addition thereto. This power was intended to do something to reassure the victim that he or she is not forgotten in the criminal justice system. It is a measure of responding appropriately to crime as well of reconciling the victim with the offender. It is, to some extent, a constructive approach to crimes. It is indeed a step forward in our criminal justice system. We, therefore, recommend to all courts to exercise this power liberally so as to meet the ends of justice in a better way.

(Emphasis supplied)

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32. In *Sarwan Singh and Others Vs. State of Punjab*, AIR 1978 SC 1525 : (1978) CriLJ 1598 : (1978) 4 SCC 111 : (1978) SCC(Cri) 549 : (1979) 1 SCR 383 , *Balraj Vs. State of U.P.*, AIR 1995 SC 1935 : (1995) CriLJ 3217 : (1994) 2 Crimes 87 : (1994) 3 JT 649 : (1994) 2 SCALE 518 : (1994) 4 SCC 29 , *Baldev Singh and another Vs. State of Punjab*, AIR 1996 SC 372 : AIR 1995 SC 372 : (1995) 4 Crimes 244 : (1995) 7 JT 286 : (1995) 5 SCALE 703 : (1995) 6 SCC 593 : (1995) 4 SCR 301 Supp , *Dilip S. Dahanukar Vs. Kotak Mahindra Co. Ltd. and Another*, (2007) 137 CompCas 1 : (2007) CriLJ 2417 : (2007) 6 JT 204 : (2007) 5 SCALE 452 : (2007) 6 SCC 528 : (2007) 4 SCR 1122 this Court held that the power of the courts to award compensation to victims Under Section 357 is not ancillary to other sentences but in addition thereto and that imposition of fine and/or grant of compensation to a great extent must depend upon the relevant factors apart from such fine or compensation being just and reasonable. In *Dilip S. Dahanukar* case this Court even favoured an inquiry albeit summary in nature to determine the paying capacity of the offender. The Court said: (SCC p. 545, para 38)

38. The purpose of imposition of fine and/or grant of compensation to a great extent must be considered having the relevant factors therefore in mind. It may be compensating the person in one way or the other. The amount of compensation sought to be imposed, thus, must be reasonable and not arbitrary. Before issuing a direction to pay compensation, the capacity of the accused to pay the same must be judged. A fortiori, an enquiry in this behalf even in a summary way, may be necessary. Some reasons, which may not be very elaborate, may also have to be assigned; the purpose being that whereas the power to impose fine is limited and direction to pay compensation can be made for one or the other factors enumerated out of the same; but Sub-section (3) of Section 357 does not impose any such limitation and thus, power thereunder should be exercised only in appropriate cases. Such a jurisdiction cannot be exercised at the whims and caprice of a Judge.

The amount of compensation is to be determined by the courts depending upon the facts and circumstances of each case, nature of the offence and the capacity of the accused to pay. Considering the facts and circumstances of the present

case and the nature of the offence, sentence of imprisonment of three months imposed on the Appellants is reduced to the period already undergone by them and also imposing a fine of Rs. 25,000/- so as to compensate the injured witnesses in addition to the compensation awarded by the High Court.

11. The conviction of the Appellants Under Section 326 Indian Penal Code read with Section 34 Indian Penal Code and Section 427 Indian Penal Code read with Section 34 Indian Penal Code is confirmed. Sentence of imprisonment of three months imposed on them is reduced to the period already undergone by each of them. Additionally, the fine of Rs. 25,000/- is imposed on each of the Appellants-accused and in default to undergo sentence of imprisonment of three months. Out of the fine amount to be deposited by the Appellants-accused, the injured witnesses PWs 1, 3, 4 and 5 (Vishveshwar P. Hegde, Kiran R. Bhat, Chandranath V. Bhat and Madhukar L. Hegde) who sustained grievous injuries shall be paid compensation of Rs. 17,500/- each and PW 2-Chandru V. Bhat who suffered simple injuries shall be paid compensation of Rs. 5,000/-. With the above modification, the appeal is allowed in part.