

(2012) 04 KAR CK 0016
In the Karnataka High Court
Case No : Criminal Appeal No. 531 of 2007

Younus Khan

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 03-04-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 221, 222, 223

Citation : (2013) 1 AKR 515 : (2013) CriLJ 1040 : (2012) ILR (Kar) 6556 :
(2012) 6 KarLJ 643

Hon'ble Judges : V. Suri Appa Rao, J

Bench : Single Bench

Advocate : Sharanabasappa K. Babshetty, High Court Government Pleader, for
the Respondent

Final Decision : Dismissed

Judgement

V. Suri Appa Rao, J.—This criminal appeal is filed against the judgment of conviction and sentence passed by the learned Sessions Judge, Gulbarga in Sessions Case No. 30 of 2006, whereby the appellant who was working as erstwhile Head Constable attached to Central Jail, Gulbarga, was found guilty for the offences under Sections 221, 222 and 223 of the Indian Penal Code, 1860 and he was sentenced to undergo imprisonment for six months for each offence and to pay fine of Rs. 500/- each, in default to undergo simple imprisonment for one month for each offence. Aggrieved by the judgment of conviction and sentence, the appellant filed this appeal. The prosecution case in brief is as follows.--

That on 15-8-2004 at about 12.30 PM the appellant was entrusted with duty of escorting one convict Rustum Khan from Central Jail at Gulbarga to Government Hospital, Gulbarga for medical treatment. While returning from the said Hospital, the convict Rustum Khan had escaped by throwing chilly powder over the accused. The appellant being Head Constable who was legally bound to keep in confinement the convict Rustum Khan and bound to apprehend the culprit who

was under sentence of 3 years of rigorous imprisonment and a fine of Rs. 5,000/- in S.C. No. 224 of 2003. In the charge-sheet it is further alleged that the appellant intentionally aided him to escape from confinement and intentionally omitted to apprehend the escaped convict and had shown the negligence in discharging the duty. It is further alleged that the convict Rustum Khan is no other than the brother-in-law of the appellant. Basing on the allegations, the Station House Officer, Brahmpur Police Station registered a case in Crime No. 161 of 2004 against the appellant for the offences punishable under Sections 221, 222 and 223 of IPC.

2. During the course of investigation, the Sub-Inspector of Police arrested the appellant/accused and produced before the Additional Sessions Judge. After completion of the investigation, filed charge-sheet.

3. After hearing the learned Assistant Public Prosecutor and the Counsel for the appellant, the Trial Court framed the charges under Sections 221, 222 and 223 of IPC against the appellant. The plea of the appellant/accused is one of total denial.

4. In order to bring home the guilty of the accused for the aforesaid offences, the prosecution examined P.Ws. 1 to 6 and relied on Exs. P. 1 to P. 7 and M.Os. 1 to 7.

5. Considering the evidence of the prosecution witnesses and the documents relied upon by the prosecution, the Trial Court convicted the appellant for the aforesaid offences and passed the above order of conviction and sentence.

6. Learned Counsel for the appellant submitted that the evidence of the prosecution witnesses is not consistent and corroborative and that all of them are interested witnesses. Therefore, the learned Trial Judge was not justified in holding the accused guilty for the offences for which he was charged.

7. Learned Government Pleader submitted that, all the prosecution witnesses have supported the prosecution case. P.W. 4-Jubeda Begum who is no other than the wife of the appellant has clearly admitted in her evidence that the convict Rustum Khan is her brother.

8. P.W. 1-Rambabu, PSI, Reserved Police in Gulbarga has stated in his evidence that the appellant was working as Head Constable in District Armed Reserve. He deputed 8 Police personnel to Central Jail for the purpose of escorting the accused to hospital. The appellant was entrusted with the duty of escorting convict Rustum Khan to District Hospital, Gulbarga. On 15-8-2004 at about 12 Noon when he was present in Central Jail at Gulbarga, he came to know that convict Rustum Khan had escaped by throwing chilly powder over the escorted staff. Later on he came to know that the convict Rustum Khan is related to the appellant.

9. P.W. 2-Shantappa who is the panch witness for spot mahazar did not support the prosecution case. P.W. 3-Basavaraj, another PSI has stated in his evidence that the appellant was working as Head Constable in District Reserve Police. On

15-8-2004 the appellant was entrusted with the duty of escorting the accused/convict from jail to Hospital for treatment. Accordingly, the appellant has escorted the convict Rustum Khan. He left at about 9.30 or 10.00 a.m. and left the Hospital at about 11.30 A.M. On the same day at about 12.00 Noon he received message from Police Control Room that Rustum Khan escaped from the custody while coming from the Hospital.

10. P.W. 4-Jubeda Begum who is none other than the wife of the appellant/accused has clearly stated in her evidence that Rustum Khan is her younger brother and she has also stated in her evidence that her brother was convicted in one case and that the appellant had informed her that her brother Rustum Khan had escaped from the custody. P.W. 5-K. Ayyappa, another PSI, who received information about the escape of convict Rustum Khan, has stated in his evidence that he registered suo motu case in Crime No. 164 of 2004 against the appellant for the offences under Sections 221, 222 and 223 of IPC and after completion of investigation filed charge-sheet.

11. The learned Sessions Judge, after evaluation of entire evidence available on record found the accused guilty of the offence under Sections 221, 222 and 223 of IPC. P.Ws. 1, 3 and 5 who are the Police Officials have stated in their evidence that the accused/appellant was entrusted with the duty of escorting Rustum Khan to the Hospital and when he was returning to the Central Jail the convict Rustum Khan escaped. The evidence of P.W. 4 clearly indicates that the convict-Rustum Khan who is no other than her younger brother and closely related to the appellant who was entrusted the duty of escorting him. The accused being the close relative to the convict-Rustum Khan could not have accepted the entrustment of the convict for escorting him. The appellant knowing fully well that the convict Rustum Khan is closely related to him agreed and escorted him to the Hospital and allowed him to escape from his custody while they were returning back to the Central Jail.

12. The conduct of appellant in not giving any complaint immediately after the alleged incident clearly indicates that the appellant allowed the convict Rustum Khan to escape. In the absence of complaint from the appellant, P.W. 5-PSI suo motu registered a case against the appellant after receiving information about the incident. The conduct of the appellant is clearly indicates that the appellant intentionally omitted to apprehend the convict who was undergoing sentence and he was found to be negligent in discharging his duty. It appears that the appellant intentionally allowed the convict Rustum Khan to escape from his lawful custody. The Trial Court therefore, justified in convicting the appellant for the offences under Sections 221, 222 and 223 of IPC. For the reasons stated above, this Court is of the considered view that there are no grounds to interfere with the judgment of conviction of Trial Court. The appeal is therefore dismissed. The conviction and sentence passed by the Trial Court is hereby confirmed. Trial Court is directed to take steps to secure the presence of the accused to serve the sentence.