

State of Karnataka Vs. Chikkanna and Others

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Court : Karnataka

Decided On : Feb-13-2014

Judge : N. Ananda

Appeal No. : Criminal Appeal No. 311 of 2009

Appellant : State of Karnataka

Respondent : Chikkanna and Others

Judgement :

(Prayer: This Appeal Is Filed Under Section 378(1) and (3) Cr.P.C., Praying To "Grant Leave To File An Appeal Against The Judgment And Order Of Acquittal Dated 30.12.2008, Passed In Spl.Case No. 18/2005, On The File Of The Additional District and Special Judge, Chikmagalur - Thereby Acquitting The Accused/Respondents For Offences Punishable Under Sections 143, 147, 148, 324, 504 and 506 Ipc and Sec.3-1)(X) and 2(1)(Xiv) Of Sc/St(Pa) Act, R/W 149 Ipc.)

1. The respondents (accused no.1 to 12) were tried and acquitted for offences punishable under Sections 143, 147, 148, 341, 324, 504 and 506 r/w 149 IPC and also of an offence punishable under Section 3 (1) (x) (xiv) of SC/ST (Prevention of Atrocities) Act, 1989. Therefore, the State has filed this appeal.

2. I have heard learned Government Advocate for the State and learned counsel for. accused.

3. The learned Special Judge had formulated the following points for determination

1. Whether the prosecution proves beyond all reasonable doubt that on 2.3.2005 at about 6.30 pm at Arabaja Gollarahatti village on the road near Junjappa temple, the accused formed themselves into an unlawful assembly with common object of committing an offence, armed with deadly weapons like sickle and clubs, committed offence of rioting and thereby committed the offence punishable under Sec. 143, 147 and 148 of IPC?

2. Whether prosecution proves beyond all reasonable doubt that on the above said place, date and time, accused in furtherance of their common object of unlawful assembly, wrongfully restrained CW-1 and others from proceeding in a direction where they had a right to so proceed and thereby committed an offence punishable under Sec. 341 r/w 149 of IPC?

3. Whether prosecution proves beyond all reasonable doubt that on the above said place, date and time, accused in furtherance of their common object of unlawful assembly, voluntarily caused bodily hurt to CW-,1 and others by means of sickle, clubs and stones, and thereby committed offences punishable under Sec. 324 r/w 149 of IPC?

4. Whether prosecution proves beyond all reasonable doubt that on the above said place, date and time, in furtherance of their common object of unlawful assembly, accused insulted CW-1 and others in filthy language and provoked them to break public peace and thereby committed an offence punishable under Sec. 504 r/w 149 of IPC?

5. Whether prosecution proves beyond all reasonable doubt that on the above said place, date and time in furtherance of their common object of unlawful assembly, criminally intimidated CW-1 and others by threatening them with dire consequences to their lives and thereby committed an offence punishable under Sec. 506 r/w 149 of IPC?

6. Whether prosecution proves beyond all reasonable doubt that on the above said place, date and time in furtherance of their common object of unlawful assembly,

the accused not being the members of scheduled caste or scheduled tribes, insulted CW-1 and others referring their caste with knowledge that they belong to scheduled caste, with intention to humiliate them within public view and further denied access to the temple and thereby committed an offence punishable under sec. 31(X) and 3(1)(XIV) of SC/ST (PA) Act r/w 149 of IPC?

4. The learned trial judge on appreciation of evidence adduced by the prosecution has held that prosecution has failed to prove the aforesaid charges against the accused and acquitted them.

5. After going through the evidence of injured eyewitnesses, I find that there was political rivalry between the accused and prosecution witnesses namely PW.1-Puttappa, PW.2-Sannappa, PW.3-Kariyappa, PW.4-Halappa, PW.5-Umesh, PW.6-Eranna and PW.7-Doddappa. The aforesaid witnesses belonged to one political party and accused belonged to other political party. They had contested for village panchayat elections. The candidates belonging to party of aforesaid prosecution witnesses were successful in the elections and some of the accused who had contested the election were defeated. On 02.03.2005, at about 6.30 p.m., the aforesaid prosecution witnesses after their success in the elections were proceeding towards Junjappa temple to offer prayers.

6. It is the case of prosecution that accused no. 1 to 12 had formed into unlawful assembly prevented the aforesaid prosecution witnesses from entering into the temple. They abused them by taking the name of their caste. The prosecution witnesses namely PW. 1-Puttappa, PW.2- Sannappa, PW.3-Kariyappa, PW.6-Eranna were assaulted by the accused with deadly weapons like clubs and chopper. The prosecution witnesses were treated by PW.10- Dr.G.Balakrishna in General Hospital at Tarikere at about 8.20 p.m., on 03.03.2005.

7. The first information relating to incident of assault was lodged by PW. 1-Puttappa on 03.03.2005 though the place of incident is at a distance of 20 Kilometers from the jurisdictional police station. The injured witnesses have deposed that they had gone to the hospital during the night of 02.03.2005 however, from the medical evidence we find that they were examined on the following day.

8. From the evidence of PW.6-Eranna we find that, at the time of incident, there was a crowd of 50 persons near the temple which included men, women and children. PW.6 has deposed; there was a huge crowd of assailants and the witnesses; therefore, it was not possible to make out who assaulted whom.

9. PW's.1 to 4 have named some of the accused as their assailants. The ocular evidence of PW's. 1 to 4 does not find corroboration from the medical evidence. The accused have produced the certified copy of judgment in C.C.No.215/2005 which was filed by the accused herein and other persons namely Mahadeveappa, Erappa, Kariyamma, Soubhagyamma, Dodda Savithramma alleging that on 02.03.2005 at about 6.00 p.m., the accused in the instant case along with other persons stated supra had assaulted some of the prosecution witnesses of the instant case and other persons near Junjappa temple of Arabala Gollarahatti village.

Thus, we find that in relation to the same incident C.C.No.215/2005 was filed against these accused alleging offences under Sections 143, 148, 323, 324, 504, 506 r/w 149 IPC. The accused herein and other persons were tried in C.C.No.215/2005 and they were acquitted. The instant case was filed in relation to same incident however, by including an offence punishable under Section 3 (1) (x) (xiv) of SC /ST (Prevention of Atrocities) Act, 1989.

10. PW.1 has admitted that there was political rivalry between some of the prosecution witnesses and accused. PW.1 has also admitted that they had not gone to nearest hospital after the incident of assault. On the other hand, they had gone to General Hosptial at Tarikere. PW.1 has denied that complaint lodged against the accused was motivated. The prosecution has not explained as to how C.C.No.215/2005 and the instant case were filed in relation to same incident.

11. As already stated, accused herein and some other persons were tried in C.C.No.215/2005 wherein, they were charged on the allegations that on 02.03.2005 at about 6.00 p.m., near Junjappaswamy temple of Arabala village they had assaulted some of the prosecution witnesses herein. The incident of instant case is alleged to have taken place at about 6.00 p.m., on 02.03.2005 near Junjappaswamy Temple of Arabala Gollarahatti village. It appears, after filing the

first information in Crime No.42/2005 in which final report was filed in C.C.No.215/2005, the first information of the instant case was filed by including an offence punishable under Section 3 (1) (x) (xiv) of SC/ST (Prevention of Atrocities) Act, 1989.

12. After examination of accused under Section 313 Cr.P.C., they filed written statement of defence along with copy of judgment in C.C.No.215/2005. The accused in the written statement of defence have stated that at the instance of local MLA, the prosecution witnesses had filed first information in Crime No.42/2005. After investigation of the same, C.C.No.215/2005 was filed against the accused and they were tried and acquitted in the aforesaid case. Some of the prosecution witnesses had also filed Crime No.43/2005 in relation to same incident however, by including an offence punishable under Section 3 (1) (x) (xiv) of SC/ST (Prevention of Atrocities) Act, 1989. In that way, all the prosecution witnesses were bent upon and harassing the accused.

13. The learned trial judge has arrived at a conclusion that prosecution witnesses had filed two cases in relation to some incident. The learned trial judge on appreciation of evidence has held that evidence of aforesaid prosecution witnesses who are stated to be the victims of assault is highly discrepant. The learned trial judge has held that in view of acquittal of accused in C.C.No.215/2005, in the instant case wherein assault and other offences are alleged in relation to same incident, the accused cannot be convicted.

14. On reconsideration of the matter, I do not find any reasons to interfere with the impugned judgment. The appeal is dismissed.

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