

State of Karnataka and Others Vs. Moti @ Mohan and Others

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Court : Karnataka

Decided On : Aug-20-2015

Judge : Mohan M. Shantanagoudar & R.B. Budihal

Appeal No. : Criminal Appeal Nos. 902 of 2011 c/w 445 of 2011

Appellant : State of Karnataka and Others

Respondent : Moti @ Mohan and Others

Judgement :

(Prayers: This criminal appeal is filed under Section 378(1) and (3) of the Code of Criminal Procedure by the state public prosecutor for the state praying to grant leave to file an appeal against the judgement dated 2.4.2011/15.4.2011 passed by the district and sessions judge chamarajanagara in special Case.No.108/09 (old no.88/08) - acquitting the respondent for the offences punishable under Sections 341, 326 AND 506 R/W 149 of Indian Penal Code and under Section 3(1)(x) of SC/ST (Prevention of Atrocities) Act.

This criminal appeal is filed under Section 374(2) of the Code of Criminal Procedure by the appellants/accused praying to set aside the order of conviction dated 2/15.4.2011 passed by the district and sessions judge, chamarajanagar in Special Case No.108/2009 (Old No.88/2008) convicting the appellants/accused for the offences punishable under Sections 143, 323, 325 R/W 149 of Indian Penal Code and etc.)

1. The judgment and order dated 2nd April, 2011 passed by the Sessions Court, Chamarajanagar in Special Case No.108/2009 is called in question in these appeals.

2. By the impugned judgment, the trial Court convicted accused Nos. 1 to 7 for the offences punishable under Sections 143, 323, 325 r/w 149 of IPC. However, all the accused are acquitted in respect of other offences viz., Sections 341, 326, 506 all read with Section 149 of IPC and Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 read with Section 149 of IPC.

3. Criminal Appeal No. 902/2011 is filed by the State seeking an order of conviction against all the accused in respect of the offences for which the accused are acquitted. Criminal Appeal No. 445/2011 is filed by the convicted accused seeking for an order of acquittal.

4. The case of the prosecution in brief is that as accused Nos. 1 to 3 and their companions used to tease the girls residing in the lane in which the accused were living; P.Ws. 1 to 3 are from scheduled caste whereas accused are from Lingayat community; the grievance of the accused is that P.Ws.1 to 3 did not mend their conduct though they were repeatedly told to do so; however, they continued to tease the girls of Lingayath community; the accused with the common object way laid P.Ws. 1 to 3 at about 7.30 p.m. on 14.8.2008 in front of a shop of Basavanna; all the accused abused P.Ws.1 to 3 in filthy language taking the name of their caste; all the accused assaulted P.Ws.1 to 3 with clubs and stones, consequent upon which, P.W.1 sustained fracture of left ulna and P.Ws. 2 and 3 sustained simple injuries; immediately after the incident all the three injured were admitted to the hospital for treatment; P.W.7 (Dr. Purushotham) treated P.Ws. 1 to 3 and issued the wound certificates as per Exs.P.6 to 8 respectively.

5. A complaint came to be lodged by P.W.1 as per Ex.P.1 at about 00.30 hours intervening night between 14.8.2008 and 15.8.2008 in Kollegal Government Hospital before the Sub Inspector of Police (P.W.13), which came to be registered in Crime No. 165/2008 of Kollegal Rural Police Station; P.W.12 - the Deputy Superintendent of Police completed the investigation and laid the charge sheet

against all the accused for the offences for which they are charged.

6. In order to prove its case, the prosecution in all examined 13 witnesses, 16 exhibits and 3 material objects. On behalf of the defence, no witness is examined. As aforementioned, the trial Court convicted the accused for the offences punishable under Sections 143, 323 and 325 all read with Section 149 of IPC and acquitted them in respect of other offences for which they were charged.

7. Sri P.M. Nawaz, learned State Public Prosecutor, taking us through the entire material on record submits that the trial Court was not justified in acquitting the accused for the offences punishable under Section 326 of IPC., in as much as the clubs and stones were used for commission of offences and that injured have sustained grievous injuries; the trial Court ought to have convicted the accused for the offence punishable under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 read with 149 of IPC; the reasons assigned and conclusion arrived at are not proper and incorrect; the trial Court has recorded a finding that the evidence of P.Ws.1 to 3 clearly make out a case against all the accused for the offences for which they were charged.

8. Sri Nataraju, learned advocate appearing on behalf of the accused per contra contended that there is no satisfactory material before us to show as to when the complaint was lodged; the case as made out by the prosecution before the Court appears to be artificial and concocted; the complaint came to be lodged after due deliberation; the incident has taken place on the spur of the moment and without any intention on the part of the accused; since P.Ws. 1 to 3 did not mend their conduct the accused only wanted to advice them properly and in that process, the incident has taken place; since the incident has taken place in the year 2010 and as parties have settled the disputes amicably, the accused need to be acquitted or at least be imposed with simple sentence.

9. P.W.1 is the complainant, who lodged the complaint as per Ex.P.1 at about 00.30 hours i.e., during the interregnum night of 14.8.2008 and 15.8.2008 in Kollegal Government Hospital before the Sub-Inspector of Police - P.W.12; he sustained grievous injuries and his wound certificate is at Ex.P.6; P.Ws.2 and 3 are other two injured witnesses and they have sustained simple injuries; Exs.P.7 and 8

are their wound certificates issued in favour of them respectively; P.Ws. 4, 5 and 6 are the eye witnesses, who have turned hostile to the prosecution witnesses. Their evidence with regard to the incident in question will not help either the defence or the prosecution. However, P.W.4 has deposed about the seizure of M.Os. 1 to 3 from scene of offence under Ex.P.3. P.W.7 is the doctor, who treated P.Ws.1 to 3 at about 10.00 p.m. on the date of the incident at Kollegal Government Hospital and issues the wound certificates as per Exs.P.6 to 8. P.W.8 is another eye witness, who has also turned hostile. P.W.9 came to the spot after the incident and he also turned hostile. P.W.10 is the Junior Engineer, who has visited the scene of offence and prepared the sketch as per Ex.P.11. P.W.11 is another Deputy Superintendent of Police, who completed the investigation and laid the charge sheet. P.W.13 is the Sub-Inspector of Police, who registered the complaint and conducted part of the investigation.

10. From the aforementioned narration, it is clear that the case of the prosecution mainly depends upon the evidence of P.Ws. 1 to 3 and the evidence of the doctor P.W.7.

11. The aforementioned complaint came to be lodged by P.W.1 as per Ex.P.1 and the same is registered at 00..30 hours i.e., during the night intervening between 14.8.2008 and 15.8.2008. The first information report reached the jurisdictional Magistrate at about 12.15 noon on 15.8.2008. It is also clear from Ex.P.1 - complaint that the complaint is lodged in the hospital when P.W.1 was taking treatment, but the evidence of P.W.1 reveals that his cousin (P.W.9/C.W.11) went to the police station and came back at about 9.00 p.m on 14.8.2008; P.W.9 told P.W.1 that he has given a complaint to the police; it is further admitted by P.W.1 that the doctor gave him pain killer tablets and he has slept on that night; he got consciousness at about 7.30 a.m., on the next day; during the interregnum, he was fast asleep and he did not wake up; in the morning at about 9.00 a.m., on 15.8.2008 that the Deputy Superintendent of Police came and prior to that, no police had come to him; he narrated the incident before the Dy.S.P., and the said Officer recorded his statement; the complaint Ex.P.1 is the statement given by him in the hospital to the police at about 9.00 p.m. Even according to P.W.1, he did not lodge the complaint during midnight as is sought to be made out by the

investigating officer before the Court. It is clearly admitted by P.W.1 that he was fast asleep in the hospital and he did not wake up till 9.00 a.m. on the next day i.e., till Dy.S.P., came and recorded the statement. Till such time, no other police officer came to him and recorded the statement. Thus according to P.W.1, it is clear that he had lodged the complaint only at 9.00 a.m. on 15.8.2008 and it is also clear from the evidence of P.W.1, that it was P.W.9 - the cousin of P.W.1, who went to the police station and lodged the complaint. However, such complaint lodged by P.W.9 is not forthcoming or also the complaint lodged by P.W.1 at about 9.00 a.m. on 15.8.2008 is not found on record. In this context, learned advocate for the accused is justified in contending that the real facts are suppressed by the prosecution.

12. Even assuming that the complaint is suppressed and even assuming that the statement at Ex.P.1 may be treated as the statement recorded under Section 161 Cr.P.C., we are of the opinion, that the case of the prosecution cannot be thrown out merely on the said ground. Since P.Ws. 1 to 3 have sustained injuries and among them, P.W.1 has sustained grievous injury, we are of the opinion, that incident has occurred during the night of 14.8.2008 and in that regard, the evidence of P.Ws.1, 2 and 3 appears to be consistent and cogent. However, there are number of variations in their evidence in regard to the complicity of the accused.

13. Though it is the evidence of the doctor-P.W.7 that P.W.1 has sustained fracture and though the wound certificate at Ex.P.6 evidences that P.W.1 has sustained fracture of ulna, there is no supporting document for the same. However, it is disclosed from Ex.P.6 that Dr.Kumar, Orthopedic Surgeon of Kollegal Government Hospital has taken the X-ray and has given the treatment. But neither Dr. Kumar is examined nor the X-ray film is produced before the Court. In the absence of such material, Sri Nataraju, learned Counsel for the accused is also justified in contending that there is no concrete material to prove that P.W.1 has sustained fracture of left ulna. Added to it, ulna is a thin bone which may result in fracture even if a person falls to the ground accidentally. The aforementioned factor is a mitigating circumstance which would be taken into consideration by us while imposing sentence.

14. In the complaint Ex.P.1, P.W.1 has stated that it was accused No.7, who assaulted him with club on his left fore arm whereas in his evidence, he has deposed that accused No.3 assaulted him on his left forearm. Such variations are found in the evidence of P.Ws. 1 to 3. It is also borne out from the material evidence on record that there was pitch darkness in the area and there was no electricity flow during that relevant point of time and hence, there may be some confusion in the mind of P.Ws. 1 to 3 while explaining the overt acts of each of the accused. Certain variations are bound to be there particularly when illiterate witnesses depose before the Court, that too, when the case involves number of accused and witnesses; the Court will have to assess the entire material evidence on record homogeneously and it cannot shut its eyes and decide in favour of the accused merely on the basis of technicalities. However, in regard to the totality of the facts and circumstances of the case, we are of the opinion, that the trial Court was justified in acquitting the accused for the offences punishable under Sections 326, 341, 506 all r/w 149 of IPC and Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act r/w 149 of IPC. The reasons assigned for acquitting the accused for the offences punishable under Sections 326, 341, 506 all r/w 149 of IPC and Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act r/w 149 of IPC., appear to be just and proper. The view taken by the trial Court while acquitting the accused in respect of the said provisions appears to be a possible view under the facts and circumstances of the case.

15. We also find that the trial Court is justified in convicting the accused for the offences punishable under Sections 143, 323, 325 all r/w Section 149 of IPC.

16. The appeal filed by the State i.e., Criminal Appeal No. 902/2011 against accused No.1-Moti @ Mohana S/o Kuntappa has abated in view of his death during the pendency of the appeal. We also notice from the order sheet that the accused have already suffered certain period of imprisonment and we feel that the period of imprisonment already undergone by the accused would be the sufficient sentence of imprisonment that may under the facts and circumstances of the case, more particularly, when the incident has taken place in an untimely hour and the accused as well as the witnesses have forgotten their differences before the Court

after a lapse of 7 years of time. However, we are of the clear opinion, that the accused shall be imposed with higher amount of fine so as to compensate the victim/injured reasonably.

17. P.W.1 has sustained grievous injury and P.Ws. 2 has sustained simple injuries. However, he has also taken treatment as in-patient in the hospital. Accordingly, the sentence of fine in respect of offence punishable under Section 325 r/w 149 of IPC., needs to be enhanced from Rs.3,000/- to Rs.6,000/- as against each of accused Nos. 2 to 7. Accordingly, we pass the following:

ORDER

The judgment and order of conviction, convicting accused Nos. 2 to 7 for the offences punishable under Sections 143, 323, 325 all read with Section 149 of IPC stands confirmed.

The judgment and order of acquittal acquitting accused Nos. 2 to 7 for the offences punishable under Sections 341, 326, 506 all read with Section 149 of IPC and Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, also stands confirmed.

Accused Nos. 2 to 7 are sentenced to undergo imprisonment for the period already undergone by them. Hence, they shall not undergo imprisonment any further in respect of crime in question.

The sentence of fine in respect of the offences punishable under Sections 143 and 323 IPC., both read with Section 149 of IPC as imposed by the trial Court stands confirmed. However, the sentence of fine as against each of accused Nos. 2 to 7 for the offence punishable under Section 325 r/w 149 of IPC., is enhanced from Rs.2,000/- to Rs.6,000/- and in default of payment of fine, the accused shall undergo further imprisonment for one month.

The fine shall be paid by each of accused Nos. 2 to 7 within four months from this day. In case of recovery of fine from accused Nos.2 to 7, 70% of the fine so recovered shall be paid to P.W.1-Puttaraju, son of Chikkabasavaiah and the remaining 30% of the fine recovered shall be paid to the injured P.W.2 - Umesh,

son of Dasaiah.

Both the appeals are disposed of accordingly.

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