

Srinivas and Others Vs. State of Karnataka

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Court : Karnataka

Decided On : Aug-19-2015

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

Appeal No. : Criminal Appeal No. 218 of 2011 connected with Criminal Appeal No. 530 of 2011

Appellant : Srinivas and Others

Respondent : State of Karnataka

Judgement :

1. The judgment and order dated 31-1-2011 passed by the Fast Track Court-II, Bengaluru Rural District, Bengaluru in Sessions Case No.161 of 2008 is the subject-matter of these two appeals.

By the impugned judgment and order, the Trial Court has acquitted all the accused for the offence under Section 307 read with Section 149 of Indian Penal Code, 1860, but convicted them for the offences punishable under Sections 148, 341, 324 and 506, Para II read with Section 149 of IPC. The convicted accused have filed Cri.A.No.218 of 2011 seeking for their acquittal; the State has filed Cri.A.No.530 of 2011 praying for an order of conviction against all the accused for the offence punishable under Section 307 of IPC.

2. Case of the prosecution in brief is that there is boundary dispute between P.W.2 and accused 1 in respect of an agricultural land; accused 1 had purchased the

said agricultural land to the extent of half portion; P.W.2 was a prospective vendee in respect of remaining half portion of said agricultural land; P.W.2 and his family members wanted to get the said land surveyed through private surveyor; accused 1 and his family members were objecting for the same inasmuch as, the accused wanted to get the land surveyed through a Surveyor of the Land Revenue Department; on the date of incident i.e., on 28-2-2007 at about 9.30 a.m., P.W.2 and his family members started to get the disputed land surveyed through a private surveyor; but the same was objected to by the accused; the group of P.W.2 was having number of persons and whereas, accused were 14 in number; the quarrel took place in the matter of survey between the two groups and in the said quarrel, persons belonging to both groups were injured to certain extent and consequently, two complaints came to be lodged by two groups against each other; both the criminal cases were tried simultaneously as case and counter case before the Trial Court; the crime registered against prosecution witnesses herein ended in acquittal and the State has not filed appeal; however, the case on hand which is registered against the accused has ended in conviction, as mentioned supra.

In the matter on hand, complaint came to be lodged by P.W.1 as per Ex.P.1 at about 11.45 a.m. on 28-2-2007, which came to be registered in Crime No.5 of 2007 in Sulibele Police Station, Hoskote Taluk; the police, after investigation, laid the charge-sheet against 14 accused. Before lodging the complaint, six injured were sent to medical treatment to the hospital.

3. The complainant-P.W.1 is an eye-witness to the incident. The complaint is at Ex.P.1. P.W.1 is also witness for the scene of offence mahazar-Ex.P.2 and also witness for panchanama-Ex.P.3 under which, bloodstained apparels of the injured are seized. P.Ws.2 to 5, 11 and 12 are the injured eye-witnesses. P.W.6 is a neighbouring landowner wherein the incident has taken place. He has deposed about the genesis of the assault. P.Ws.7 and 8 are the eye-witnesses among them, P.W.8 intervened at the scene of crime. P.W.9 also came to the spot and intervened to pacify the quarrel. P.W.10 is the Medical Officer attached to Government General Hospital, Hoskote. He treated all the injured and issued wound certificate as per Exs.P.4 to P.9. P.W.13 is the witness for panchanama-

Ex.P.10 under which, certain weapons are recovered from the coconut rearing shed of accused 1; P.W.14 is the Investigation Officer. He has laid the charge-sheet after completion of investigation; P.W.15 was then working as Sub-Inspector of Police. He conducted part of the investigation. P.W.16 was another Sub-Inspector of Police of Sulibele Police Station during the relevant point of time. He received the complaint filed by P.W.1 as per Ex.P.1 and registered the case based on the said complaint. He has conducted part of the investigation. P.W.17 is the witness for scene of offence panchanama-Ex.P.2.

On behalf of the accused, two witnesses are examined as D.Ws.1 and 2. Among them, D.W.1 was present on the scene of offence and according to him, he also sustained injury in the very incident, since he was assaulted by P.W.2. D.W.2 has deposed about the quarrel between the two groups.

4. Looking to the aforementioned material, it is clear that the incident has taken place because of the difference of the opinion between the accused and P.W.2 and his family members with regard to survey of agricultural land. It seems, the incident has taken place in a spur of moment. Neither there was any intention or any common object on the part of any accused for commission of offence. The incident has taken place suddenly at the time when accused 1 objected to the owner of P.W.2 and his family members to get the land surveyed through a private surveyor. Admittedly, the accused as well as the family members of P.W.2 are agriculturists. Accused 1 is the owner of the disputed agricultural land to an extent of half portion and such fact is not disputed. So also, P.W.2 is the prospective vendee in respect of the remaining half portion of the agricultural land. Thus, it seems, both the parties wanted to protect their interest. However, P.W.2 in a hurry to get the land measured, brought a private surveyor which was objected by accused 1 inasmuch as accused 1 wanted to get the land measured through a surveyor of the Revenue Department. Hence, it is clear that the incident in question has taken place because of the small factor. None of the accused had got criminal background.

As mentioned supra, the complaint came to be lodged by P.W.1 within 2 1/2 hours of the incident in question. Prior to lodging of the complaint at Ex.P.1, all the

injured were shifted to hospital for treatment. Thus, virtually there is no delay on the part of the complainant in lodging the complaint as per Ex.P.1. Moreover, it is not in dispute that P.W.1 and others were also present on the scene of offence, inasmuch as they are also accused in a cross case, which has ended in acquittal. D.W.1 has specifically admitted that he was present along with the family members at the time of incident and he was also assaulted by P.W.2. The evidence of P.Ws.1 to 6 as well as the evidence of P.Ws.8, 11 and 12 makes it clear that persons from both the groups were present on the scene of offence and the quarrel took place between two groups. Moreover, the presence of six injured cannot be disputed, inasmuch as immediately they were rushed to the hospital wherein they have taken treatment at 11.00 a.m. on the very day.

5. We find from the evidence of the injured witnesses as well as the eye-witnesses that their evidence is consistent, cogent and reliable. In our considered opinion, the Trial Court has rightly believed the versions of eye-witnesses for coming to the conclusion. There are bound to be minor variations in the evidence of the eye-witnesses in such matters where 14 accused were involved and six were injured. Since the incident has taken place between two groups, it is but natural to have variations in the evidence of the eye-witnesses as well as injured eye-witnesses. Merely on such minor variations, it cannot be said that the prosecution has failed to prove its case beyond reasonable doubt. The entire evidence has to be read homogeneously and consequently each sentence cannot be read in isolation. Looking to the totality of the versions of the eye-witnesses, we are of the clear opinion that the Trial Court is justified in believing the versions of the injured witnesses and eye-witnesses to conclude that the injured have sustained injuries in the incident in question and accused were responsible for causing such injuries.

However, the prosecution has tried to improve its case to certain extent. The complaint at Ex.P.1 clearly reveals that the accused while leaving the spot, threw away their weapons and went away, which means that the weapons ought to have been found on the spot. The scene of offence panchanama at Ex.P.2 was drawn from 1.15 p.m. and 2.00 p.m. on the date of the incident. However, the panchanama does not disclose the presence of the weapons on the spot. Curiously, the prosecution has tried to make out that the accused had hidden the

weapons in their cocoon rearing house. The Investigating Officer has even drawn the panchanama as per Ex.P.10 and the same is deposed by P.W.13. This version of the prosecution with regard to recovery of weapons from the cocoon rearing house of accused 1 appears to be false and concocted in view of the averments made in Ex.P.1 lodged by the eye-witness (P.W.1).

Be that as it may, even ignoring the aspect of recovery of the weapons as mentioned supra, the prosecution is able to prove its case against all the accused to the extent that six persons have sustained injuries in the incident in question and the crime is committed by the accused.

6. The next question to be decided is the nature of the offence committed by the accused. Though Exs.P.8 and P.9 prima facie appear that P.Ws.5 and 2 have sustained grievous injuries, such fact is not proved by the prosecution beyond reasonable doubt. Ex.P.4 is the wound certificate pertaining to injured P.W.3; Ex.P.5 is the wound certificate pertaining to P.W.4; Ex.P.6 is the wound certificate pertaining to P.W.12 and Ex.P.7 is the wound certificate pertaining to P.W.11. All these wound certificates specify that P.Ws.3, 4, 12 and 11 have sustained simple injuries. However, as aforementioned, Exs.P.8 and P.9 reveal that P.Ws.5 and 2 have sustained one grievous injury each. It is also evident from the said wound certificates at Exs.P.8 and P.9 that opinion as found in the said wound certificates is given by P.W.10, the doctor attached to Hoskote Government Hospital based on the radiologist's report and discharge summary issued by M.V. Jayaram Medical Hospital. Unfortunately, none of the doctors from M.V. Jayaram Hospital is examined before the Court to testify the fact that P.Ws.5 and 2 had sustained grievous injuries. Even the X-ray report and CT scan report are not placed before the Court below by the Investigating Officer. There is nothing on record to support the opinion as found in Exs.P.8 and P.9 that P.Ws.5 and 2 have sustained one grievous injury each. P.W.10-the doctor attached to Government General Hospital, Hoskote has not deposed in his examination-in-chief that either P.W.5 or P.W.2 has sustained grievous injuries. However, his opinion as mentioned supra is based on the so-called CT scan report issued by M.V. Jayaram Hospital.

7. In the absence of any supporting document to show that the victim was treated in M.V. Jayaram Hospital or that he really was subjected to CT scan in the said hospital, it would be hard for this Court to rely upon Exs.P.8 and P.9 and the evidence of P.W.10 to conclude that P.Ws.5 and 2 had sustained one grievous injury each. Since the burden lies on the prosecution to prove its case beyond reasonable doubt, it is not open for the prosecution to contend that the presumption can be raised against the accused based on Exs.P.8 and P.9 to convict them for the offence punishable under Section 326 or 307 of IPC. Based on the very grounds as mentioned supra, the Trial Court has rightly concluded that the prosecution has failed to prove its case in respect of the offence punishable under Section 307 or 326 of IPC. We do not find any ground to disagree with the said conclusion reached by the Trial Court.

However, based on the entire material on record, we concur with the reasons assigned and the conclusion reached by the Trial Court while convicting all the accused for the offences punishable under Sections 148, 341, 324 and 506, Para II read with Section 149 of IPC. We also concur with the opinion of the Trial Court that the prosecution has not proved its case against any of the accused for the offence punishable under Section 307 or 326 of IPC.

8. We have heard the learned Advocates on record on the question of sentence.

The Trial Court keeping in mind that the accused are poor agriculturists and the incident has taken place on a spur of the moment for flimsy reason of survey, has rightly imposed sentence of fine and consequently has rightly not imposed the sentence of imprisonment. We agree with the said conclusion reached by the Trial Court. However, we find that the fine imposed by the Trial Court is too meager having regard to the injuries sustained of P.Ws.2 and 5. Both of them have sustained injuries with some seriousness on the head. Therefore, we are of the considered opinion that injured P.Ws.2 and 5 need to be compensated reasonably imposing higher quantum of fine on the accused, in respect of the offence punishable under Section 324 of IPC. Accordingly, the following order is made:

(i) The judgment and order of conviction dated 31-1-2011 passed by the Trial Court in SC No.161 of 2008 convicting accused 1 to 14 for the offences

punishable under Sections 148, 341, 324 and 506, Para II stands confirmed.

(ii) The judgment and order of acquittal dated 31-1-2011 passed by the Trial Court in SC No.161 of 2008 acquitting the accused of the offence punishable under Section 307 read with Section 149 also stands confirmed.

(iii) The finding of the Trial Court regarding non-imposition of sentence of imprisonment for the offences punishable under Sections 148, 341, 324 and 506, Para II of IPC stands confirmed.

(iv) The sentence of fine imposed by the Trial Court on the accused in respect of the offence punishable under Section 324 is enhanced from Rs.2,000/- to Rs.6,500/-. In other words, each of the accused shall pay a fine of Rs.6,500/- (Rupees Six Thousand five hundred only).

(v) Default sentence prescribed by the Trial Court in respect of the respective offences shall continue to remain.

(vi) The aforementioned amount of fine if recovered from all the accused shall be paid to the injured-P.W.2, namely, Sri Ramanjinappa, S/o. Muniswamappa, to an extent of 60% and remaining 40% of the fine amount so recovered shall be paid to injured-P.W.5, namely, Sri Muniswamappa, S/o. Kenchappa. The entire fine amount shall be deposited by all the accused within four months from today, failing which they shall be taken into custody to undergo default sentence.

(vii) Cri.A.No.218 of 2011 stands dismissed.

(viii) Cri.A.No.530 of 2011 is partly allowed.

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