

Bapugouda and Others Vs. The State Through P.S. Kembhavi

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Court : Karnataka Kalaburagi

Decided On : Jul-17-2017

Judge : B.A. Patil

Appeal No. : Criminal Appeal No.3648 of 2011

Appellant : Bapugouda and Others

Respondent : The State Through P.S. Kembhavi

Judgement :

(Prayer: This Criminal Appeal is filed under Section 374(2) of Cr.P.C. praying to allow the appeal and set aside the judgment and order passed in Spl. Case No.23/2010 on the file of the Session Judge at Yadgiri dated : 17.8.2011 convicting the appellants for the offences punishable under Sections 143, 147, 323, 504, 506 R/w 149 of IPC and U/Sec.3(1) (x) of SC/STs (Prevention of Atrocities) Act 1989 passed by the learned District and Sessions Judge, Yadgiri, in Spl. Case No.23/2010 dated: 17-08-2011, in view of the reasons as stated above, in the interest of justice and equity.)

This appeal has been preferred by appellants - accused nos.1 to 18 by assailing the judgment of conviction passed by the Prl. District Sessions Judge, Yadgiri in Spl.Case No.23/2010 dated : 17.08.2011.

2. The genesis of the case of the prosecution is that on 6.7.2008 at about 5.30 p.m., the complainant had been to his land situated at Kudalgi village, at that time,

the accused persons by constituting an unlawful assembly by holding lethal weapons man-handled him and also caused damage to his Tata Sumo vehicle. It is further case of the complainant that they also abused him by taking the name of the caste and they also robbed golden chain weighing 40 grams from his neck and also Rs.70,000/- kept in the Tata Sumo vehicle. On the basis of the complaint, a case was registered in Crime No.100/2008. After investigation, charge sheet came to be filed.

3. Since the Sessions Court is a Special Court for trial of the offences under the provisions of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act 1989, by following the procedure laid down under Section 207 of Cr.P.C. after taking the cognizance the said Court secured the accused, after hearing them about the charge, charge was framed. Since, accused denied the charges and claim to be tried, the trial was fixed.

4. In order to prove its case, the prosecution examined in all thirteen witnesses as P.Ws.1 to 13 and also got marked nine documents as per Exs.P-1 to 9 and also got marked M.Os 1 to 4. During the course of cross-examination accused got marked Ex.D.1 to Ex.D.8. Thereafter, the statements of the accused were recorded under Section 313 of Cr.P.C. by putting the incriminating materials as against them, which they denied and they have not led any evidence on their behalf.

5. Thereafter on hearing the arguments of both the counsels, the impugned judgment came to be passed, by which Accused Nos.1 to 18 were convicted under Sections 143, 147, 148, 323, 504, 506, R/w Sec.149 of IPC and also U/Sec.3(1) (x) of SC/ST (PA) Act, 1989. Assailing the said judgment and order, accused nos.1 to 18 are before this Court.

6. Heard the learned counsel for the appellants and the learned High Court Government Pleader on behalf of the State.

7. The learned counsel for the appellants Sri.Nandkishore Boob, vehemently argued and contended that P.W.s 1, 4 and 5 are the interested witnesses. Though PW.1 has sustained simple injuries and the complainant has not been abused by

taking the name of his caste, as he is a Municipal Councilor with political motivation a false case has been registered against the accused persons. He would further contend that the Court below has not properly appreciated the evidence on record and has come to a wrong conclusion. He would also contend that the trial Court slipped into an error and erroneously passed the impugned order, which has resulted into miscarriage of justice. He would further contend that PW.13 Deputy Superintendent of Police who conducted the investigation has clearly admitted that he has not recovered the gold chain, cash and the rod and no mahazar has been drawn. This itself indicates that there was no such incident and only for the purpose of a counter case this case has been registered against the accused persons. He would further contend that the fact that the land belongs to the accused person that itself clearly indicates the fact that the complainant and the other witnesses have trespassed into the land of the accused No.1 and they have assaulted her by pulling her saree with an intention to outrage her modesty. This aspect has not been properly considered and appreciated by the trial Court. On these grounds, he prayed for allowing of the appeal by setting aside the impugned judgment.

8. Per contra, the learned Special Public Prosecutor Sri.Prakash Yeli, vehemently argued and contended that P.Ws 1, 3, 4, 5 and 9 are the eyewitnesses who have categorically deposed the presence of the accused and P.W.9 is being an independent witness, there is no animosity. Under such circumstances, the trial Court by accepting the evidence of above said witnesses has rightly convicted the accused persons. Even P.W.9 the police constable was also present and he has also deposed about the incident. He would further contend that nothing has been elicited from the mouth of P.W.9 though he categorically stated about the alleged incident. He further contends that there is consistency and corroboration in the evidence of the above said witnesses and after considering the said facts the trial Court has rightly convicted the accused - appellants. Accused-appellants have not made out any good grounds so as to set aside the impugned judgment. The said judgment is liable to be confirmed. On these grounds, he prays for dismissal of the appeal.

9. In the background of the several contentions taken up by the learned counsel for the accused- appellants, now let me consider whether the accused appellants have made out any grounds so as to interfere with the order of the trial Court.

10. P.W.1 is the complainant. He has deposed that on 06-07-2008 at about 5.30 p.m., he had been to his land to make payment in respect of the work done by JCB machine and alongwith him, he took Tirupathi Gouda, Ningappa and the Jeep driver Veeresh and one Shivappa. He further deposed that at that time, the accused persons by constituting an unlawful assembly abused him by taking the name of his caste and thereafter by abusing that they are going to finish him, they have also pelted stone towards the Jeep and damaged the glasses of the Jeep. He has further deposed that the police who have come to bandubast came and rescued him. He has further deposed that the accused persons also robbed the cash and a gold chain from him. He has further deposed that he has given the complaint as per Ex.P.1. During the course of cross-examination, it has been elicited that the accused persons have assaulted only with stone and no other weapons. He has further admitted that accused No.1 has also lodged a case against him for Dacioty. Except that nothing has been elicited from the mouth of this witness.

11. PW.2 is the photographer who took the photographs of the Tata Sumo as per Ex.P.2 and Ex.P.3, which has been damaged at the time of incident. P.W.3 is the owner of the neighboring land and an eyewitness to the alleged incident. He has deposed that by the side of his land, the land of the complainant is situated. Accused persons by making a hue and cry came towards the land of complainant and they assaulted the complainant with stone and also slapped and assaulted on left shoulder, chest, back and other parts of the body. He has further deposed that they also took the name of caste and abused the complainant. He has further deposed that the accused persons also damaged the Jeep belonging to the complainant and they have robbed the amount kept in the Jeep. During the course of the cross-examination except denying the suggestions nothing has been elicited so as to discard the evidence of this witness.

12. P.W.4 is also eyewitness who went alongwith PW.1 in the Jeep. He has also reiterated the evidence of PW.1. During the course of cross-examination it has been elicited that the police have come there for the purpose of bandubast duty and they were on duty on that day and he has deposed that the police prevented the accused persons when they came for assaulting the complainant.

13. PW.5 is the driver of the Tata Sumo. He is also an eyewitness to the alleged incident. He has also reiterated the evidence of PW.s 1 and 4.

14. P.W.s 6 and 7 are the panchas to spot mahazar at Ex.P.4. They have not supported the case of the prosecution. They have been treated as hostile.

15. P.W.8 is also an eyewitness to the alleged incident. He has deposed that there was a galata between the complainant and the accused persons and there was a pelting of stones. When they were quarreling he went to his house. He has been treated as hostile.

16. P.W.9 is the police constable, who has been posted for bandubast duty. He has deposed that they were having information that Ramappa Nayak will come to the land and as such himself and P.C. No.1142 went near the land at about 5.30 p.m., at that time the complainant also came there, at that time accused No.1 alongwith 16 others came and told the complainant that why they have come whose land it is and abused by taking the name of the caste of the complainant and also pelted the stone towards Tata Sumo and broke the glasses and also assaulted the complainant Ramappa Nayak with mud ball and as a result of which, the complainant fell down, they pacified the quarrel, by that time P.S.I came there and took both the parties to the police station. During the course of cross-examination, he admits that Ramappa Nayak also scolded accused No.7 in filthy language.

17. PW.10 is the Doctor who examined the complainant Raja Ramappa. He has deposed that on 06-07-2008 at about 11.30 p.m., one person by name Raja Ramappa was brought before him by P.C. No.257 of Kembhavi police station with the history of injuries due to assault. He has further deposed that he examined and found the following injuries:

1) Swelling over the left shoulder

2) Swelling and black discolourisation over the left knee joint. I referred the patient to Government Hospital Gulbarga for taking X-ray. The report was received, x-ray was skull and left fingers showed no abnormality. Ultrasound of the abdomen did not disclose any traumatic lesion in abdomen

18. He has further deposed that he has issued the wound certificate as per Ex.P.6. During the course of cross-examination, he has deposed that if a person is assaulted forcibly with a stone the nature of the injury that may be caused may be abrasion or lacerated or contusion. He has further deposed that he has not mentioned the age of the injury in Ex.P.6.

19. PW.11 is the Tahsildar who issued the caste certificate of complainant as per Ex.P.7. PW.12 is the PSI, after coming to know about the incident he went to the spot and brought the complainant and the other persons to the police station and after receiving the complainant registered the case and issued FIR. Thereafter he handed over the further investigation to PW.13. P.W.13 is the Deputy Superintendent of Police, who further investigated the case and filed the charge sheet against the accused.

20. As could be seen from the evidence produced by the prosecution, the main cause for the alleged incident is that, the complainant was present in the land and at that time, accused No.1 along with other accused persons came there by constituting unlawful assembly and abused the complainant in filthy language and assaulted him and also caused damage to Tata Sumo and snatched the gold chain and Rs.70,000/-. It is not in dispute that the civil disputes are pending between the complainant and the accused. During the course of discussion, the learned Sessions Judge by keeping into consideration the fact that a case and a counter case have to be heard by the same Judge and as principle laid down in the said case he has conducted the case. The said ratio has been laid down in the case of Abdul Majid Sab V/s State of Karnataka reported in ILR 2010 Karnataka 1719. So far as the procedure adopted by the learned Sessions Judge is correct and in this behalf it does not call for any interference.

21. On perusing the prosecution case there are case and counter case and the presence of the accused is also going to be proved by virtue of case and counter case. Even it is going to prove the fact that there was a scuffle between the two groups because of the previous enmity between them pertaining to civil dispute. P.W.1 complainant has deposed that the accused persons came there and abused the complainant in filthy language and also threatened with life, damaged the glass of the Tata Sumo and also snatched the gold chain and Rs.70,000/-. During the course of cross- examination, nothing has been elicited so as to discard the evidence of these witnesses. In so far as PW.s 3, 4, 5 and 9 are concerned there is corroboration in the evidence of these witnesses. Though during the course of argument the learned counsel for the appellants would contend that they are interested witnesses, their testimony cannot be believed, on close scrutiny of evidence of PW.9 who is the police constable who was present for bandubast duty and he has deposed about the incident and he has also deposed the presence of the other witnesses. When this witness who is independent has deposed about the presence of the other witnesses and the said evidence is also corroborated with the evidence of PW.s 9 and 10 the Doctor who has examined the complainant, it clearly indicates that the accused persons have gone to the land of the complainant and they have abused the complainant by taking the name of his caste and also assaulted the complainant and caused the injuries. The testimony of these witnesses cannot be discarded and even during the course of cross-examination, nothing has been elicited so as to disbelieve and discard the evidence of these witnesses. By independent assessment of the evidence, it clearly establishes the fact that on 06-07-2008 the alleged incident took place and the accused persons have abused by constituting an unlawful assembly, thereafter they have caused damage to Tata Sumo.

22. On careful perusal of the evidence on record it clearly goes to show that the accused persons by constituting an unlawful assembly being the members of the said assembly with a common object to commit the riot came to the land pulled the hands of the complainant. In this behalf there is consistent and corroborative evidence. The entire evidence reposes the confidence to the effect that there is consistency and corroboration and there are no good grounds to discard their evidence and the prosecution has proved the guilt of the accused beyond all

reasonable doubt.

23. Looking from any angle, the impugned order is sustainable in law. The trial Court considering the material facts and on proper appreciation of the facts and documents has come to a right conclusion and has convicted the accused /appellants. The same cannot be interfered with at the hands of this Court. In view of the above discussion, the impugned order requires to be confirmed and following order has been passed :-

ORDER

Appeal is dismissed.

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