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Court : Karnataka Kalaburagi

Decided On : Jun-28-2017

Judge : B.A. Patil

Appeal No. : Criminal Appeal No. 1320 of 2011

Appellant : Hanmanth and Others

Respondent : The State of Karnataka, Through The Police, Represented by The Public Prosecution, Bidar

Judgement :

(Prayer: This Criminal Appeal is filed under Section 374(2) of Cr.P.C. praying to allow the appeal and to set aside the Judgment and Order of conviction and the sentence dated 21.12.2011 in S.C.No.50/2009 passed by the learned Additional District and Sessions Judge, Bidar, whereby the accused No.1 to 5 are convicted for the offences punishable under Sections 307 and 324 r/w Sec. 34 of IPC and the accused No. 6 to 8 are convicted for the offences punishable under Section 323 R/w section 34 of IPC and further awarded the sentence to the appellants No.1 to 5 to undergo simple imprisonment for five years and to pay a fine of Rs.5000/- each, in default to undergo further simple imprisonment for a period of six months for offence punishable under Section 307 R/w Section 34 of IPC and further to undergo simple imprisonment for a period of two years and to pay a fine

of Rs.2000/- each and in default to undergo further simple imprisonment for a period of three months for the offence punishable under Section 324 R/w section 34 of IPC and awarded sentence to accused 6 to 8 to pay a fine of Rs.1000/- each and in default to undergo simple imprisonment for one month for offence punishable under section 324 R/w Section 34 of IPC and be pleased to acquit the appellants.)

1. This appeal is preferred by the accused Nos.1 to 5 assailing the judgment of conviction passed by Additional District and Sessions Judge, Bidar in S.C. No.50/2009 dated 21.12.2011.

2. The case of the prosecution in nutshell as per the complaint are that, on 24.6.2008 at about 9:00 AM, accused by constituting an unlawful assembly by holding lethal weapons trespassed into the land bearing Sy.No.2 of Madnoor village belonging to the husband of the complainant. When they questioned about lifting of stones a Tractor, accused No.1 assaulted the husband of the complainant Sidram with a club on his left shoulder. Accused No.2 Nagendra assaulted him with an iron rod on left elbow. Accused No.3 Suryakanth assaulted him with a club on his thumb. Accused No.4 Pappu @ Premsagar assaulted him with an axe on his head. Accused No.5, Basavaraj assaulted Sidram with a club with an intention to take away the life of husband of the complainant. As a result of the said assault, he sustained injuries. When another wife of the complainant's husband tried to intervene and pacify the quarrel, accused Nos.6 to 8 assaulted with hands on shoulder, back and thereby caused simple injuries. Subsequently, they abused with filthy language and threatened with life. On the basis of the complaint, a case was registered in Crime No.122/2008. After investigation, the police filed the charge sheet.

3. After filing the charge sheet the committal Court on following the procedure laid down under Section 207 of Cr.P.C committed the case to the Sessions Court. The Sessions Court after taking the cognizance, secured the accused persons, after hearing them about the charge, charges came to be framed. Since, accused denied the charges and claimed to be tried, the trial was fixed.

4. In order to prove the case, the prosecution got examined P.Ws.1 to 13 and also got marked Exs.P-1 to 10 besides marking material objects at M.O. Nos.1 to 9. Thereafter, the statement 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, whereunder accused Nos.1 to 5 were convicted under Sections 307, 323 and 324 of IPC. Assailing the said judgment and order, the accused Nos.1 to 5 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 would submit that, the impugned judgment is contrary to law and facts on record. He would further contended that the Court below has not properly appreciated the evidence on record and has come to a wrong conclusion. He would further contended that mandatory provisions of 313 of Cr.P.C is not followed and thereby it has caused prejudice and injustice to the appellants. It is further contended that the trial Court has not considered the counter compliant filed by the accused- appellants. The complainant only with an intention to take revenge has filed the false complaint against the accused-appellants as a counter blast for having filed the complaint by the accused-appellants. He would further contended that the wound certificate clearly goes to show that, the injuries are simple in nature and the accused was not having any intention to cause death and as such the trial Court ought not to have convicted the accused under Section 307 of IPC. He would further contended that the quarrel took place at a spur of moment and the complainant and other persons have assaulted the accused persons, even though there is no overt act on the part of the accused appellants, the trial Court ignoring the material evidence has wrongly convicted the accused-appellants. The complainant and his men have aggressed and assaulted, only with an intention to defend, the accused persons have resisted and at that time they have sustained injuries. This aspect has not been considered and appreciated by the trial Court. He would further

contend that, now in the village both complainant and accused have compromised the matter and as such a lenient view may be taken towards the accused persons.

8. Per contra, the learned High Court Government Pleader vehemently argued and contended that the injuries sustained by the complainant and other witnesses are serious in nature. The accused persons with an intention to cause the death of the husband of the complainant have assaulted on the head by constituting unlawful assembly. He would further contended that there are eyewitnesses to the alleged incident and there is corroboration in the evidence of prosecution evidence. The trial Court after considering the entire material on record has rightly convicted the accused appellant. The accused-appellants have not made out any good grounds so as to interfere with the order of the trial Court. As such, the same is liable to be confirmed by dismissing 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. On perusal of the evidence it indicates that P.W.1 is the injured eyewitness and also she is the complainant. P.W.2 is the husband of complainant, who sustained the injuries at the hands of accused persons. P.Ws.3 and 4 are also the eyewitnesses to the alleged incident who pacified the quarrel between the complainant and the accused. P.W.5 is the doctor who treated P.W.2 and one Sangamma who came with the history of assault and issued Exs.P-2, P-3 and P-4. P.W.6 is the panch witness in whose presence P.W.1 produced blood stained clothes and the same were seized as per Ex.P-6 and he is also a panch witness to spot mahazar Ex.P-7 and also recovery of axe and rod at the instance of accused as per Ex.P-8. P.W.7 is the PSI who investigated the case and filed the charge-sheet against the accused. All these witnesses have categorically deposed that P.W.1 is having land at Madnoor village, at about 9:00 AM accused persons came to their plot and were removing stones and loading in the tractor. When P.W.1 questioned accused persons told that the said plot is belonging to them and at that time accused No.1 assaulted P.W.2 with a club on his shoulder and back and as such he sustained bleeding injuries. So also, accused No.2 assaulted him on left elbow with iron rod. Accused No.3 assaulted on his left hand and left leg. Accused No.4 assaulted him

with an axe on his head. Accused No.5 assaulted him on his hand and leg. At that time, P.W.1 and other persons came there and pacified the quarrel.

10. Though these witnesses have been cross-examined by the learned counsel for the accused, nothing has been elicited so as to discard the evidence of these witnesses. It has been brought on record that the husband of the complainant has sold one plot to accused No.1 who is adjacent plot owner of the husband of the complainant. Even during the course of cross-examination no such clear and cogent evidence has been brought to show that no such incident has taken place. Admittedly, a counter case is also filed by the accused persons about the same transaction. Under such circumstances, the only aspect which remains is that who is the aggressor and whether the prosecution has proved that the complainant and P.W.2 have sustained the injuries in the alleged incident. Though, the charges were leveled against the accused persons under Section 143, 147, 504, 506 r/w Sec. 149 of IPC, but there is no evidence to show that the accused persons with a common object came there and abused the complainant and P.W.2 in filthy language and thereby provoked them to break public peace and tranquility. On going through the evidence, it clearly indicates that a civil dispute is there in respect of the land and a plot situated by the side of the plot of the complainant. In the absence of any such material, the trial Court has rightly acquitted the accused-appellants for the above said offences.

11. On giving my conscious and careful consideration to the evidence of P.Ws.1 to 7. P.Ws.1 to 4 have clearly deposed that the accused persons have assaulted the complainant and P.W.2 and thereby caused the injuries as mentioned in Exs.P-2 and 3. During the course of cross-examination, absolutely nothing has been brought on record to show that how P.Ws.1 and 2 have sustained the injuries other than the act of the accused. Even on perusal of Ex.P-2, the wound certificate of P.W.2, P.W.2 has taken the treatment on 24.6.2008 at about 11:30 a.m. and history also indicates assault caused by accused persons on 24.6.2008 at about 9:00 a.m. and he has sustained four injuries, injury Nos.1 to 3 are simple in nature and injury No.4 is grievous. So also Exs.P-3 and 4 also indicates that P.W.1 and one Sangamma have also received the injuries in the alleged incident. On going through the evidence of P.Ws.1 to 5, there is corroboration and consistency so as

to prove the guilt of the accused beyond all reasonable doubt. It is not in dispute that to constitute an offence under Section 307 of IPC, there must be an injury caused to the victim. In order to attract Section 307 of IPC it would be sufficient that the act of the accused with an intention to kill has been acted upon, then, under such circumstances it constitutes an offence under Section 307 of IPC.

12. Keeping in view the above proposition of law, the only point which has to be considered is that, whether accused persons with an intention to cause death caused the injuries and were fatal or not.

13. As could be seen from the wound certificate issued by Primary Health Center, Kamalanagar dated 2.8.2008 which is marked as Ex.P-2. Injuries No.1 to 3 are simple in nature and they are lacerated wounds. Injury No.4 is contusion wound with bony deformity and crepitus felt of lower end of left hand. Though, during the course of evidence the witnesses have deposed that accused No.4 assaulted P.W.2 with an axe on his head, but actually there is no injury on the head. But, there is evidence to show that accused No.2 assaulted P.W.2 with iron rod on his left elbow. The said evidence corroborate the evidence of P.W.5 and Ex.P-2. But, by going through the evidence, it clearly indicates that though accused persons have assaulted P.Ws.1, 2 and one Sangamma, but by overall overtacts, if they are taken into consideration, it indicates that they are not having any intention to cause the death or such injury which is likely to cause the death and the said injuries are also not on vital part of the body so as to cause death.

14. Be that as it may. Even the injuries sustained by the witnesses are not sufficient in the ordinary course of nature to cause the death and that has also not established by the prosecution. The injury on the left elbow to P.W.2 is not a fatal injury. Under the circumstances, I feel that the trial Court has not properly appreciated this fact and has wrongly come to the conclusion that the accused-appellants have committed an offence punishable under Section 307 of IPC. When the accused-appellants have no intention to cause the death and in the ordinary course, the injuries are also not sufficient to cause the death. In that view of the matter, the conviction and sentence imposed by the trial Court requires to be altered from Section 307 of IPC to one under Section 324 of IPC. So far as the

other offences are concerned there is ample material and corroboration in the evidence of prosecution. When the entire prosecution case is credible and reliable with cogent and acceptable evidence then under such circumstances, minor discrepancies in the version of the eyewitnesses cannot come to the aid of the accused. This proposition of law has been laid down in the case of Khathiramuka Alighabai Vs. State of Gujrat reported in AIR 1993 SC 2472. Keeping in view the above said proposition of law and by considering the facts and circumstances of the case, I am of the considered opinion that the accused-appellants are liable to be convicted under Section 324 r/w 34 of IPC.

15. As could be seen from the order of the trial Court by imposing sentence, the trial Court has imposed a simple imprisonment for a period of five years and to pay a fine of Rs.5000/- each for the offence under Section 307 r/w Sec. 34 of IPC and also sentenced S.I. for a period of two years and to pay a fine of Rs.2000/- each for the offence punishable under Section 324 r/w Sec. 34 of IPC.

16. Now this Court has come to the conclusion that the accused have committed the offence under Section 324 of Indian penal Code. Accordingly, the sentence has to be modified. Since already accused persons have been convicted for a period of two years and to pay a fine of Rs.2000/- each for the offence punishable under Section 324 r/w Section 34 of Indian Penal Code, the same is kept intact and sentence under Section 307 of Indian Penal Code is modified as observed above.

17. I am conscious of the fact that while imposing the sentence, the Court must strike a balance and the sentence must be befitting to the offence or the crime committed by the accused, it should not be neither excessive nor plea bite sentence. In that view of the matter the above sentence appears to be just and proper.

Accordingly, the appeal is partly allowed. The impugned judgment of conviction and sentence of the trial Court is modified and accused persons have been convicted under Section 324 R/w Section 34 of Indian Penal Code.

18. Accused Nos.1 to 5 are hereby convicted for the offence punishable under Section 324 r/w Sec. 34 of IPC. They are sentenced to undergo simple imprisonment for a period of two years and to pay a fine of Rs.5000/- each and in default to pay the fine amount, they have to undergo further simple imprisonment for a period of three months.

19. So far as the conviction and sentence passed in respect of accused Nos.6 to 8 under Section 323 r/w Section 34 of IPC, is confirmed. So also the conviction of accused Nos.1 to 5 under section 324 of IPC is also confirmed. The accused persons are entitled to set off under Section 428 of Cr.P.C.

20. It is further ordered that out of the fine amount, an amount of Rs.20,000/- has to be paid to the P.W.2-Sidram as compensation.

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