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Court : Karnataka Kalaburagi

Decided On : Jun-28-2017

Judge : B.A. Patil

Appeal No. : Criminal Appeal No. 3516 of 2012

Appellant : Sidram and Others

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

Judgement :

(Prayer: This Criminal Appeal is filed under Section 374(2) of Cr.P.C. praying to allow this memorandum of Criminal Appeal and be pleased to set-aside the impugned judgment of conviction and order of sentence dated 21-12-2011 passed by the Addl. District and Sessions Judge, Bidar in S.C.No.109 of 2009 and acquit the appellants/accused of all the charges to which they were tried.

1. This appeal is preferred by the accused Nos.1 to 4 by assailing the judgment of conviction passed by Additional District and Sessions Judge, Bidar in S.C. No.109/2009 dated 21.12.2011.

2. The case of the prosecution in nutshell as per the complaint is that, on 24.6.2008 at about 9:00 a.m., accused persons with a common intention tres-

passed into land bearing Sy.No.2 of Madnoor village belonging to the complainant. When the complainant and his son were putting firewood and clearing the said land, accused persons threatened them by saying that, they will take away the life and at that time accused No.1 tried to assault the complainant, at that time complainant forwarded his hand, as a result of the same, he sustained injuries to his left finger. Accused No.2-Shakuntala also assaulted complainant with a stone on his chest. Accused No.4 Pandit assaulted with club on his right leg. When the complainant's grandson, Premsagar and son Suryakanth tried to pacify the quarrel, in that event accused No.2, Shakuntala assaulted with stone on chest, thereafter one Rama, Parameshwar, Shivakumar and Baburao pacified the quarrel. Thereafter, complainant went to the police station and filed the complaint. On the basis of the complaint, a case was registered in Crime No.123/2008. After investigation, the police filed the charge sheet.

3. After filing the charge sheet, the committal Court, as the counter case is pending on the file of Sessions Court by 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 10 and also got marked Exs.P-1 to 10 besides marking material objects at MOs 1 to 3. 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 4 were convicted under Section 324 r/w 34 of IPC. Assailing the said judgment and order, the accused Nos.1 to 4 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 also 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 fact that the complainant is the aggressor and he has attacked the accused and when the accused tried to restrict the further assault by the complainant as a defence, the complainant sustained some simple injuries. This aspect has not been properly considered and appreciated by the trial Court. 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 contend 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. On these grounds, he prayed for allowing the appeal.

8. Per contra, the learned High Court Government Pleader vehemently argued and contend that the injuries sustained by the complainant and other witnesses are serious in nature. The accused persons have assaulted the complainant and other witnesses and have caused grievous injuries by trespassing into the land of the complainant. There is a corroborative evidence of P.Ws.1 to 3 and 9. The trial Court after considering the evidence on record, has rightly convicted the accused-appellants. Accused- appellants have not made out 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 the presence of the accused at the place of incident is not in dispute since a counter case has also been registered against the complainant by the accused in Crime No.122/2008 for the offences punishable

under Sections 143, 147, 447, 504, 506 and 307 R/w Section 149 of IPC.

10. P.W.1 is the injured-complainant he has deposed that he is having three acres of land and on 26.4.2008 at about 9:00 AM, accused persons were removing stones in their land, at that time, accused persons abused him in filthy language and thereafter accused No.1 assaulted with a sickle on his little finger and also assaulted his wife and daughter-in-law. He has further deposed that accused No.4 assaulted his son-Suryakant with a stone and at that time one Shivakumar, Ramesh and Parameshwara pacified the quarrel. During the course of cross-examination nothing has been elicited except denials. P.Ws.2 and 9 are the eyewitnesses, they have also reiterated the evidence of P.W.1. P.W.3 is the doctor, who examined the injured complainant and issued the wound certificate as per Ex.P-2 and he has also examined one Premsagar and issued wound certificate as per Ex.P-2. During the course of cross-examination of this witness, nothing has been elicited in the evidence so as to discard his evidence.

11. P.W.4 is a spot mahazar pancha to Ex.P-4 and he is also a seizer mahazar pancha to Ex.P-5, whereunder M.Os.2 and 3 have been recovered. P.W.5 to 7 are the eyewitnesses to the alleged incident. These witnesses have not supported the case of the prosecution and they have been treated as hostile. Even during the course of cross-examination, nothing has been elicited so as to substantiate the case of the prosecution. P.W.8 is the Assistant Sub-Inspector of Police who registered the complaint and issued FIR. P.W.10 is the P.S.I, who investigated the case and filed the charge-sheet.

12. By keeping in view the above said evidence, let me consider whether the prosecution has proved the guilt of the accused beyond all reasonable doubt. Though the prosecution got examined P.Ws.4 to 7, independent witnesses and they have not supported the case of the prosecution and they have been treated as hostile. P.W.1 is the injured-complainant, he has deposed in detail the act of the accused persons for having assaulted with sickle. P.W.2 has also reiterated and has specifically stated the overt act of each of the accused, so also P.W.9. No doubt, P.Ws.1, 2 and 9 are the relatives and interested witnesses. Merely because the said witnesses are relatives and interested witnesses, their testimony cannot

be discarded. But, however such evidence has to be weighed scrupulously and carefully. In that light, if the evidence is appreciated, it indicates that the presence of the accused persons at the place of incident is also not in dispute. Admittedly, they have also filed counter complaint, then under such circumstances false implication of the accused in this case does not arise at all.

13. Be that as it may. If, we peruse the evidence of P.W.1, 2 and 9, no such material has been elicited so as to discard their evidence, only on the ground that they are interested witnesses. The evidence of these witnesses is also corroborated by the evidence of P.W.3, doctor who examined P.Ws.1 and 2 and issued Exs.P-2 and 3. It is well established principle of law, that if the evidence of eyewitness is consistent with the medical evidence and without there being any other material to discard the evidence, then the said evidence has to be relied upon by the Court. In that light, there is a corroboration in the evidence of witnesses and after appreciating the said evidence, the trial Court has rightly convicted the accused-appellants.

14. During the course of argument, the learned counsel for the appellants contended that there are some discrepancies in the evidence of P.Ws.1, 2 and 9. On perusal of the entire case of prosecution, the said evidence is credible and reliable with cogent and acceptability, then under such circumstances minor discrepancies in the version of the eyewitnesses will not come to the aid of accused. This proposition of law has been laid down in the case of Kahiramku Aligbhai Vs. State of Gujrat reported in AIR 1993 SC 2472. In that light, the contention of the learned counsel for the appellants does not hold any water.

15. During the course of arguments, though the learned counsel would contended that mandatory provision under section 313 of Code of Criminal Procedure not followed, but he did not enlightened in what way he has been prejudiced. Records clearly goes to show that statement of accused under section 313 of Code of Criminal Procedure was recorded in accordance with law. As such, the said contention is not acceptable.

16. On perusal of the order of the trial Court, the trial Court has rightly come to the conclusion that there is no evidence as against the accused persons under

Sections 447, 504 and 506 of IPC and they have been acquitted against the said offences and the State has also not preferred any appeal being aggrieved by such findings. I have carefully and cautiously perused the judgment and order of the trial Court, the same is neither erroneous or capricious.

Keeping in view that aspect, the imposition of sentence by trial Court also appears to be just and proper and the same does not require any interference at the hands of this Court. Hence, I pass the following;

ORDER

Appeal is dismissed.

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