

Venkatesh Vs. State of Karnataka

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Court : Karnataka

Decided On : Nov-11-2019

Judge : K.Somashekar

Appeal No. : CRL.RP 605/2011

Appellant : Venkatesh

Respondent : State of Karnataka

Judgement :

R IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE11H DAY OF NOVEMBER, 2019 BEFORE THE HONBLE MR.JUSTICE K.SOMASHEKAR CRIMINAL REVISION PETITION No.605/2011 BETWEEN1 Venkatesh Aged 29 years S/o Helavaiah 2. Madaiah Aged 33 years S/o Helavaiah 3. Viswanath Aged 21 years S/o Vairamudi All are residing of Devarasanahalli Village Nanjangud Taluk Mysore District. (By Sri. P. Nataraju, Advocate) AND State of Karnataka by Nanjangud Rural Police Nanjangud Represented by State Public Prosecutor High Court Building Bangalore-01. (By Sri. Thejesh .P, HCGP)

...

... Petitioner

s ... Respondent

This Criminal Revision Petition is filed under Section 397(1) of the Criminal Procedure Code, praying to, set aside the order dated 21.01.2011 passed by the II-Additional District and Sessions Judge, Mysore in CrI.A.No.50/2010 and order dated 31.03.2010 passed by the Additional Civil Judge (Jr.Dn.,) and JMFC, I/c Principal Civil Judge (Jr.Dn.,) and JMFC, Nanjanagud in C.C.No.456/2008. This Criminal Revision Petition Coming on for Hearing, this day, the court made the following: ORDER This criminal revision petition is preferred by the petitioners/accused challenging the judgment dated 21.01.2011 rendered by the Court below in CrI.A.No.50/2010 partly allowing the appeal which was filed against the judgement of conviction and order of sentence passed by the trial Court in C.C.No.456/2008 dated 31.03.2010.

2. The factual matrix of the petition is that on 20.10.2007 at around 8.30 p.m. when the complainant Ramakrishna was returning to his house from new site and when he reached Ramamandir in the village, the accused persons came there and accused No.1 caught hold the complainant, accused No.2 assaulted him with an iron rod on his left hand and accused No.3

assaulted him with a Iron tap-pipe on his left shoulder, back and right leg. When the complainant screamed, CW.2 D.K.Suresh and CW.3 Mahesh intervened and rescued him. They also snatched the iron rod and water pipe from the hands of the accused. On enquiry the complainant came to know that since his junior paternal uncles son by name Manju was in love with one Gowramma and had married her and the said Gowramma was the daughter of the junior paternal uncle of first accused and thinking that the complainant was behind this love marriage, the accused persons had assaulted him. The accused persons also threatened to kill while leaving the spot. Thereafter, the complainant was taken to the Government Hospital in Nanjangud and from there to K.R.Hospital, Mysore. On information, the Nanjangud Rural Police went there and recorded his statement on 22.10.2007 and on that basis a case was registered initially for the offences punishable under Sections 341, 324 and 506 r/w 34 of IPC, and later, on the basis of wound certificates obtained from the concerned doctors, charge sheet was

filed including Section 326 IPC. The trial Court framed charges against the accused persons and they did not plead guilty and claimed to be tried. During the course of the trial, the prosecution examined in all 10 witnesses as PW.1 to PW.10 and got marked Exs.P1 to P9 and Mos.1 and 2. The trial Court after appreciation of oral and documentary evidence on record, convicted the accused persons for the aforesaid offences. Under Section 341 IPC accused No.1 was sentenced to undergo SI for one month; for the offence under Section 326 of IPC, accused No.2 was sentenced to undergo SI for a period two years and for the offence under Section 324 IPC, accused No.3 was sentenced to undergo SI for a period of one year and for the offence under Section 506 of IPC, all the accused persons were sentenced to undergo SI for a period of 6 months and each of them were directed to pay a sum of Rs.5,000/- as compensation to the complainant.

3. Against the said judgment of conviction and order of sentenced passed by the trial Court, the accused filed an appeal in CrI.A.50/2010. The Court

below vide judgment dated 21.01.2011 partly allowed the appeal. The judgment of trial court convicting the first accused for the offence under Section 341 of IPC, second accused for the offence under Section 326 of IPC, third accused for the offence under Section 324 of IPC and all of them for the offence under Section 506 IPC was confirmed. The sentence imposed on the first accused for the offence under Section 341 of IPC was also confirmed. But in addition to the sentence of SI imposed by the trial Court on the second accused for the offence under Section 326 of IPC, he was sentenced to pay a fine of Rs.5,000/- and in default to pay the fine amount, to undergo SI for six months. Out of the said amount, a sum of Rs.4,500/- was ordered to be paid to the complainant as compensation under Section 357(1) Cr.P.C. Further the sentenced imposed on the third accused for the offence under Section 324 IPC was also confirmed. The sentence of imprisonment imposed on the accused for the offence under Section 506 of IPC was set-aside and instead, each of them were sentenced to pay fine of Rs.5,000/- and in default to pay the fine

amount, to undergo SI for period of six months. Out of the said amount, a sum of Rs.3,500/- was ordered to be paid to the complainant as compensation. The total

compensation amount payable to the complainant under this head was a sum of Rs.10,500/- and in addition to this amount of Rs.4,500/- out of the fine amount collected from second accused for the offence under Section 326 of IPC. In all a sum of Rs.15,000/- was ordered to be paid the complainant as compensation. It is this judgment which is challenged by the petitioners/accused under this revision petition by urging various amongst other grounds.

4. Learned counsel for the petitioners submits that the judgment and order passed by the Courts below are contrary to facts and evidence available on record. The accused are convicted based upon the evidence of interested, inconsistent and unreliable testimony of the prosecution witnesses. Further, the courts below have failed to notice that there is delay of two days in lodging the complaint as per Ex.P1 and that

the prosecution has failed to prove the motive for committing the alleged offences and there are ingredients constituting the alleged offences. The seizure mahazar as per Ex.P2 is not proved in accordance with law and the courts below have failed to properly consider the omissions and contradictions in the evidence of the prosecution witness and when the entire evidence placed on record by the prosecution is taken on its face value, the prosecution has not made out a case to convict the petitioners for the alleged offences and the prosecution has failed to prove the guilt of the accused beyond reasonable doubt. Therefore, on all these grounds, learned counsel for the petitioners prays for allowing the revision petition and set-aside the impugned judgments passed by the Courts below convicting the accused for the aforesaid offences.

5. Per contra, learned HCGP for the respondent State contends that the trial Court after appreciation of oral and documentary evidence on record, has rightly convicted the accused persons and there is no need for

this court to interfere with the impugned judgments. The trial Court on thorough scanning of the entire evidence has rightly evaluated and analysed the same to arrive at a proper conclusion. Even the lower Appellate court on going through the evidence regarding the incident and corroborative evidence in that regard and so also the medical and other evidence, had come to right conclusion and passed the

judgment which is neither be said as illegal or arbitrary or otherwise opposed to law, facts and probabilities of the case. Therefore, learned HCGP submits that the petition being devoid of merits is liable to be dismissed.

6. In this backdrop of the contentions as taken by the learned counsel for the petitioners and learned HCGP for the respondent State, it is relevant to state that on 20.10.2007 the complainant while returning to his house, was assaulted by the accused persons with an iron rod and iron tap pipe on different parts of his body since his junior paternal uncles son Manju was in love with one Gowramma who was related to accused

persons. When the complainant was taken to K.R.Hospital for treatment, the Nanjangud Rural Police went there and recorded his statement as per Ex.P1 and on that basis crime came to be registered against the accused initially for the offences punishable under Sections 341, 324 and 506 r/w 34 of IPC. Since the wound certificates disclosed that the complainant had sustained a fracture of the shaft of the humerus of the left shoulder, charge sheet was laid by the IO including Section 326 of IPC.

7. PW.1 being the complainant has stated in his evidence that on 20.10.2010 when he was going to his house, first accused caught hold him and second accused assaulted him with an iron rod on his left shoulder and third accused assaulted him with iron tap pipe on his left shoulder. PWs. 2 and 3 said to be eye witness intervened and took him to the house. Ex.P1 is his statement before the police. MO.1 and MO.2 are iron rod and iron tap pipe. :

8. PW.2 in his evidence has reiterated the same facts. He has also stated that since the son of the junior paternal uncle of PW.1 had taken the daughter of the junior paternal uncle of first accused, the said incident took place. He has also spoken about the spot mahazar at Ex.P2.

9. PW.7 Manjunatha in his evidence has stated that PW.1 is the son of his senior paternal uncle and one day about one and half year prior to June 2009 when he tendered evidence in the court at about 7.30 or 8.30 p.m. when he was in the house, PW.2 and 3 brought PW.1 with injuries on left shoulder. He also stated that

since he had married Gowramma who is the daughter of the junior paternal uncle of the first accused, the accused persons have assaulted PW.1.

10. PW.8 Senior specialist working in the Government Hospital, Nanjangud has issued Ex.P.5 wound certificate stating that PW.1 had sustained fracture of the humerus bone and injury No.1 is simple injury and injury No.2 is grievous in nature. :

11. PW.5 is another Doctor from K.R.Hospital, Mysore. He has stated that on radiological examination of PW.1, fracture of humerus bone was disclosed and through him a copy of the letter sent from K.R.Hospital to Nanjangud Hospital is marked as Ex.P3 and X-ray film as Ex.P4.

12. PW.9 was working as Head Constable in Nanjangud Rural Police at the relevant point of time and PW.10 is the Investigating Officer and he has stated about arrest of accused persons and laying of charge sheet after collecting the wound certificate.

13. While evaluating the evidence available on record, the Courts below noticed that PW.1 to PW.3 have given evidence as eye witness to the whole incident but have denied all material suggestions in the cross examination. As admitted by these witnesses the incident happened in the matter of Gowramma marrying Manjunatha. But the Courts below have failed to notice that PW.2 being an eye witness to the incident did not withstood his statement and he stated :

that the police had come to the spot and did not seize anything in his presence and to this effect he has been treated hostile. Further, PW.6 who is also an eye witness has also turned hostile to the case of the prosecution.

14. The Courts below erred in not noticing the fact that there was delay of two days in lodging the complaint. Even PWs.2 and 3 who are the eye witnesses to the incident could have lodged the complaint. The same is fatal to the case of the prosecution and there is doubt casted upon the case of the prosecution. Therefore, on the ground of delay the Courts below have erred in convicting the accused persons.

15. Further, PW.1 in his cross-examination has stated that his statement was recorded by the Police in Nanjangud Government Hospital before shifting him to K.R.Hospital and the same has not been produced by the prosecution which would have been the first information in the case. But the Court below erred in holding that based on the answer elicited in the cross :

examination of PW.1 it cannot be said that his statement was recorded in the Nanjangud Hospital and that it would have been the first information and the said suggestion is either to mislead the complainant or on improper instruction.

16. In Ex.P2 spot mahazar it is stated that MOs.1 and 2 were produced whereas the evidence of PW.2 gives a different indication. PW.2 has turned hostile with regard to the seizure of MOs. 1 and 2. He states that they were not seized in his presence. He has not supported the case of prosecution regarding the fulcrum of mahazar. This aspect of the matter has not been properly considered by the Courts below while convicting the accused persons based upon the evidence of PWs 1 to 3 and PWs.5 and 8 said to be the Doctors who issued wound certificate Ex.P5.

17. At a cursory glance of the entire evidence relied on by the prosecution relating to conviction of the accused persons for the offence under Sections 341, 326, 324 and 506 of IPC the trial Court has sentenced :

first accused to undergo SI for one month for the offence under Section 341 of IPC; second accused has been sentenced to undergo SI for two years for the offence under Section 324 of IPC and the third accused has been sentenced to undergo SI for one year and for the offence under Section 506 of IPC, all the accused persons have been sentenced to undergo SI for six months and fine of Rs.5,000/- as compensation to the complainant.

18. The Appellate Court while confirming the order of trial Court in so far as it relates to convicting the accused persons for the aforesaid offences, modified the sentence. The sentence imposed on first accused for the offence under Section 341 IPC was confirmed. In addition to the sentence of imprisonment imposed by the trial Court on second accused for the offence under Section 326 of IPC, he

was sentenced to pay a fine of Rs.5,000/- and in default to undergo SI for six months. Out of the said amount a sum of Rs.4,500/- was ordered to be paid to the complainant. Further, the sentence imposed on third accused for the offence :

under Section 324 IPC was also confirmed and the sentence of imprisonment imposed on the accused persons for the offence under Section 506 of IPC was set-aside and instead, each of them were sentenced to pay fine of Rs.5,000/- and in default of payment of fine, to undergo SI for six months. Out of fine amount collected from each of the accused a sum of Rs.3,500/- was ordered to be paid to complainant as compensation. Therefore, the total compensation amount payable to the complainant under this head was a sum of Rs.10,500/- and in addition to this a sum of Rs.4,500/- out of the fine amount collected from the second accused for the offence under Section 326 of IPC, in all a sum of Rs.15,000/- was ordered to be paid to the complainant as compensation.

19. But having regard to the totality of the facts and circumstances of the case and the material evidence available on record, in this criminal revision petition, the conviction held by the trial Court for the aforesaid offences is found to be disproportionate which :

is found in the operative portion of the judgment rendered by the lower appellate Court. The offence under Section 326 of IPC is voluntarily causing grievous hurt by dangerous weapons or means. Subsequent to apprehending the accused by the IO, they would have been necessarily remanded to judicial custody. Therefore, in my considered opinion, the judgment of conviction and order of sentence rendered by the first Appellate Court in CrI.A.No.50/2010 and so also, the trial Court in C.C.No.456/2008 requires interference and the same needs to be modified. For the aforesaid reasons and findings, I have to proceed to pass the following: ORDER Criminal Revision Petition is hereby allowed in part. Consequently, the impugned judgment of conviction and order of sentence rendered by the Addl.Civil Judge (Jr.Dn) and JMFC, Nanjangud in C.C.No.456/2008 dated 31.03.2010 and the judgment passed by the II Addl.District and Sessions Judge, :

Mysore in Crl.A.No.50/2010 dated 21.01.2011 are modified as under: The judgment of the trial Court convicting petitioner No.1/accused No.1 for the offence punishable under Section 341 r/w 34 of IPC and convicting petitioner No.3/accused No.3 for the offence punishable under Section 324 r/w 34 of IPC is hereby set-aside. The judgment of the trial Court convicting petitioner No.2/accused No.2 for the offence punishable under Section 326 r/w 34 of IPC is modified to the extent of setting aside the sentence of imprisonment. But accused No.2 is sentenced to pay a fine of Rs.10,000/- and in default of payment of fine amount, to undergo SI for a period of six months. The judgment of the trial Court convicting accused Nos.1 to 3 for the offence punishable under Section 506 r/w 34 of IPC is modified to the extent of setting aside the sentence of imprisonment. But the accused persons are sentenced to pay fine in all a sum of Rs.5,000/- . :

The total fine amount in a sum of Rs.15,000/- shall be paid to the complainant Ramakrishna being the complainant, as contemplated under Section 357 of Cr.P.C. DKB Sd/- JUDGE

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