Deepak Kumar Vs. State of Karnataka

Deepak Kumar Vs. State of Karnataka

SooperKanoon Citation : sooperkanoon.com/378970

Court : Karnataka

Decided On : Mar-07-2003

Reported in : 2003(4)KarLJ277

Judge : K. Sreedhar Rao, J.

Acts : Indian Penal Code (IPC), 1860 - Sections 326, 394, 397, 448 and 450; Code of Criminal Procedure (CrPC) , 1973 - Sections 374(2) and 386

Appeal No. : Criminal Appeal No. 566 of 1998

Appellant : Deepak Kumar

Respondent : State of Karnataka

Advocate for Def. : M. Marigowda, Additional State Public Prosecutor

Advocate for Pet/Ap. : R.B. Deshpande, Adv.

Disposition : Appeal dismissed

Judgement :

K. Sreedhar Rao, J.

1. The appeal arise out of the judgment of conviction and sentence passed in S.C. No. 127 of 1992 on the file of Sessions Judge, Mangalore. The appellant is accused 1, along with another charge-sheeted for committing offences punishable

under Sections 450, 394 and 397 of the IPC read with Section 34 of the IPC.

2. It is unfortunate to note that in the charge framed, without invoking the provisions of Section 34 of the IPC joint trial is held, however in the final report, the provisions of Section 34 of the IPC is invoked. The case of the prosecution discloses that appellant is accused 1. In the house belonging to complainant examined as P.W. 2, there was a garage which was used by P.W. 5 for parking his car and was also training few boys in refrigerator mechanism. Accused 1 was one such trainee under P.W. 5 visiting the house of P.W. 2. On 3-124991 around 4.15 p.m. P.W. 2 was in her house. The accused 1 along with accused 2 came to the house of P.W. 2; rang the calling bell, gained entry into the house of P.W. 2 saying that accused 2 is interested in purchasing the old refrigerator of P.W. 2 which was offered for sale. After gaining entry, the accused requested P.W. 2 to get some water and when she was going inside the room for getting water, she was pushed down, a pillow was pressed on her face, with a view to suffocate her. P.W. 2 fell unconscious. Some time after P.W. 1 comes, he finds the accused open the door and run away. P.W. 5 finds P.W. 2 lying unconscious. She is taken to Wenlock Hospital. P.W. 2 had sustained as many as five injuries and there was one tracheal cut injury which was grievous injury. The FIR was lodged by the complainant, P.W. 1. She has implicated accused 1 and also names the participation of another accused. After the apprehension of accused 1, at his voluntary instance, the valuable gold jewelleries robbed from the house of P.W. 2 is recovered wider seizure mahazar and on the information of accused 1, accused 2 is arrested. P.W. 2 identifies accused 2 in the hospital.

3. In the trial, prosecution has examined 11 witnesses and marked in evidence 18 documents and 20 material objects. The Sessions Court has acquitted accused 2 on the ground that there is no evidence to establish his involvement and. holds that the offence of robbery is not proved, however, convicts the accused/appellant for committing offences punishable under Sections 448 and 326 of the IPC and sentenced him to undergo R.I. for a period of six months for offences under Section 448 of the IPC and R.I. for a period of 4 years for an offence under Section 326 of the IPC. Both sentences are directed to run concurrently. The detention period from 4-12-1991 to 10-4-1992 and 15-6-1998 to 18-6-1998 is

directed to be set off. Aggrieved by the said judgment of conviction and sentence, the present appeal is filed.

4. After carefully going through the evidence and the judgment, I findthat the quality of appreciation of evidence by the Sessions Judge whileacquitting accused 2 is far from satisfactory so also acquitting the appellant-accused 1 for committing offences under Sections 394 and 397 of the IPC is founded on improper reason. May be some discrepancy may bethere in the evidence of P.W. 2 in not mentioning the user of a sharpedged weapon for causing cut grievous injuries on the trachea and onthe other vital parts of the body. The fact remains that by the time P.W.1 enters, the accused ran away from the scene. P.W. 2 was lying unconscious. She is an old lady aged around 70 years. She immediately admitted to Wenlock Hospital. The grievous injuries sustained are noticed bythe doctors and treated, later on P.W. 2 has explained the causation ofinjuries. After the attack P.W. 2 become unconscious; she does not knowthe details of the articles robbed. In the FIR accused 1 is described byhis features by P.W. 1. Accused 1 is familiar to P.Ws. 1 and 2 as he wasa trainee under P.W. 5 and visiting the house of P.W. 2. After apprehension of accused 1, at his voluntary instance, the jewelry is recovered. Thesame is identified by P.W. 2. She has identified both the accused whilein the hospital. Despite such pristine and clinching evidence of P.W. 2,the Court comes to the conclusion that the evidence of identification ofaccused 2 is not sufficient evidence for conviction and holds that there isno sufficient corroboration to convict accused 2, further holds that thereis no evidence to convict accused 1 for an offence of robbery and causinggrievous injuries during robbery. On the other hand comes to the conclusion that accused 1 has caused the grievous injuries. For what purposeand motive the grievous injuries came to be caused, remains unexplained. On the whole, the appreciation of evidence relating to incriminating circumstances is totally erroneous and smacks the lack of basicscientific skills of appreciation.

5. It is equally unfortunate that the State has not challenged acquittal of accused 2 nor has challenged the acquittal of accused 1 for offence under Sections 394 and 397 of the IPC.

6. Be it as it may, although the appellant was liable for conviction for higher offence under Sections 394 and 397 of the IPC which carries statutory minimum sentence of 7 years, but the offences under Section 394 and 396 of the IPC imbibe within them the offence of causing grievous injury which is distinctly made punishable under Section 326 of the IPC. The offence under Section 397 of the IPC is combination of offence of committing an offence of theft and in the course of commission of theft, causes grievous hurt to the victim. While considering the ingredients of Section 397 of the IPC, the Trial Court upholds the prosecution case of causing grievous hurt punishable under Section 326 of the IPC but exculpates the accused in respect of other ingredients of robbery. In other words, the offence of causing grievous hurt which forms part of an offence under Section 397 of the IPC is held to be proved and other requisites of offence or robbery are held not proved. The said conviction under Section 326 of the IPC although erroneous but the ingredients of causing grievous hurt under Section 326 of the IPC is held to be proved and the said conviction may be improper from the standpoint of the prosecution but is to the advantage of the accused in getting a lenient punishment. Therefore, the conviction under Section 326 of the IPC cannot be held to be bad in law in view of the evidence of P.Ws. 1 and 2 and the medical evidence.

7. I do not find any ground to interfere with the order.

8. The contention of the State. Public Prosecutor that accused could be convicted under Section 397 of the IPC in appeal by exercise of powers under Section 396 of the IPC is untenable against the acquittal of accused 2 and partial acquittal of accused 1 from the charge under Sections 394 and 397 of the IPC. There is no appeal preferred by the State. Therefore, the order of acquittal becomes conclusive and binding even though it is erroneous. In a case where there is a charge of commission of higher offence by the accused and conviction is rendered for lesser offence and for higher offence accused is acquitted in an appeal by an accused against the conviction, the State cannot argue for reversal or modification of the order of acquittal granted in respect of such of the offence without a specific appeal in that behalf. So also on the sentence without an appeal by the State against the sentence the Appellate Court cannot alter the nature and extent of sentence so as to enhance the same.

9. For the reasons and discussions made above, I find that there is no ground to interfere with the order of conviction for an offence under Section 326 of the IPC. The sentence imposed is also quite proportionate to the gravamen of the charge and does not call for interference. Accordingly, the appeal is dismissed.