

State of Karnataka Vs. A.P. Puttaswamy Gowda and ors.

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Court : Karnataka

Decided On : Jul-31-1998

Reported in : 1999(1)ALD(Cri)289; 1999CriLJ708

Judge : B. Padmaraj and ;Chidananda Ullal, JJ.

Acts : Probation of Offenders Act, 1961 - Sections 3, 4 and 4(1); [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 307, 321, 324, 326, 341 and 342; Code of Criminal Procedure (CrPC) - Sections 325(1)

Appeal No. : Cr. A. No. 667 of 1994 and C/W Cri A. 669 of 1994

Appellant : State of Karnataka

Respondent : A.P. Puttaswamy Gowda and ors.

Advocate for Pet/Ap. : B.R. Nanjundaiah, SPP

Judgement :

Chidananda Ullal, J.

1. These two appeals are interconnected. The first appeal is directed against the judgment and order of conviction of the respondents for the lesser or minor offences under Section 326 read with Section 34 of IPC and under Section 341 read with Section 34 of IPC and further as against their release under Sections 3 and 4 of the Probation of Offenders Act, 1961 (hereinafter referred to as 'P.O. Act')

by execution of a bond for one year to maintain good conduct, when the original charge as against them was Under Sections 341, 324 and 307 of IPC whereas the second appeal is directed against the order of acquittal passed by the learned Sessions Judge, Chickmagalur Under Section 307 of IPC. Both the appeals are filed by the State represented by the learned SPP.

2. We heard the learned SPP appearing for the appellants in both the appeals and the learned counsel, Sri B. R. Deshpande appearing along with Sri Sampath Anand Shetty for the respondents-accused. We have also perused the case records in both the appeals and further perused the case records in S.C. No. 27/87 of the learned Sessions Judge.

3. The facts of the case leading to filing of the above two appeals can shortly be narrated as hereunder :

That the respondent-accused No. 1 is the father whereas the respondents-accused Nos. 2 and 3 are his sons. All of them tried by the District and Sessions Judge, Ohickmagalur (henceforth in brief as the 'Sessions Judge') in S.C. No. 27/87 for the commission of offence punishable under Sections 341, 324, 307 read with Section 34 of IPC. The allegations of the prosecution against the respondents-accused are that on 31-7-1986 at about 6-30 p.m. in the land of Chandregowda situated in Agala Village the respondent-accused No. 1 obstructed PW. 3-Lokeshgowda while he was proceeding to allow water to flow to his wet land and further that the respondent-accused No. 1 assaulted PW. 3 by MO.5-club and that on hearing the noise the mother of P.W. 3, Rudramma PW. 4 and his brother (Ramesh) PW. 2 came to the spot. Thereafter the respondent-accused No. 1 asked the respondent-accused No. 2 to fetch the MO. 1 gun from their house and at that the respondent accused No. 2 having fetched the gun from their house, fired pellets in MO.6-bottles by MO. 1 -gun and injured PW. 3-Lokeshgowda and PW. 4-Rudramma. It is further stated that on hearing the noise and commotion, the complain-ant PW. 1-Honnappa Gowda, elder brother of PW. 2 and the son of PW. 3 came to the spot and at that the brother-in-law of PW. 1, PW. 2 and PW. 3 and further son-in-law of PW. 4, PW. 15 Shivegowda living in the neighbourhood also visited the spot. Having found PW. 15 on the scene, the respondent-accused

No. 3 had taken MO. 1-gun from the hands of the respondent-accused No. 2 and further fired pellets in MO. 8-Bottle to PW. 15-Shivegowda. That the complainant-PW, 1 had taken the injured PWs. 3, 4 and 15 and admitted to the Chickraagalur Hospital for treatment. Before that he had also lodged Ex. P-1-complaint before PW. 14-PSI of Aldur Police Station.

PW. 14 after completion of the investigation, filed the charge sheet before the learned Chief Judicial Magistrate on 29-6-1987 and on committal to sessions, the respondents-accused persons had taken the trial before the learned Sessions Judge. That, the learned Sessions Judge had framed charges as against all the respondents-accused persons for the offences under Sections 321, 324 and 307 read with Section 34 of IPC. The respondents-accused have pleaded not guilty before the learned Sessions Judge, whereupon the learned Sessions Judge had conducted the trial.

It is relevant to mention here that the respondent No. 1 herein in connection with the very incident had also lodged a complaint before the very Police alleging that PWs. 2 to 4 and PW. 1 complainant in the instant case had attacked and assaulted him by 'katta' and clubs and that the said police had also filed a charge sheet against the said person in CC No. 78/90 and in the said case all the eye-witnesses had turned hostile and finally the said case had ended in acquittal of the PWs. 2 to 4 and complainant PW. 1 herein.

In the instant case in hand the prosecution had examined in all 16 witnesses examined as PWs. 1 to 16 including PW. 1-complaint, the injured witnesses PWs. 3 and 4 and PW. 15, PW. 5, a witness who visited the spot after the incident, PW. 6 and PW. 7 mahazar witnesses for seizure of MO.2-shirt and MO.3-lungi of PW. 3 under Ex.P3, PW-8-mahazar witness for seizure of MO. 1-double barrel gun under Ex. P6, mahazar witness-PW. 9 for seizure pellets in MOs. 6 to 8-bottles under Ex. P7, PW. 12 Doctor witness who had examined injured PW. 3, PW 4 and PW. 15 and further issued wound certificate-Ex. P. 7-B, Ex. P9 and Ex. P8 respectively and further opined that the injured PW. 3 and PW. 15 had suffered grievous injuries having been injured with pellets fired from MO-1-DBML gun, PW. 13-Assistant Director, Ballistic Expert, Bangalore, PW. 15-1.O. The prosecution had

'also produced in all 14 documents and they include Ex. P1-complaint, Ex.P2-spot panchnama, Ex. P3 to P5-mahazar for seizure blood stained clothes, Ex. PW. 6 seizure mahazar for MOs. 6 to 8 bottles and P7(b), Ex. P8 wound certificate of PWs. 3 and 15 respectively, Ex.P9-wound certificate of PW. 4, Ex. P10-FSL report, Ex. P12- mahazar for seizure of MO. 1-rifle, Ex.P12-report of the chemical examiner and Ex. P14-gun licence in the name of the respondent-accused No. 1. In addition to the above, the prosecution had also produced 10 material objects they are MO. 1 -DBML gun, MO.2 and MO-3-blood stained shirt and lungi respectively of the injured PW. 3, MO.4 blood stained saree of PW.4, MO.5-club, MOs. 6 to 8-bottles contained pellets, MO 9-cap and MO. 10-blood stained shirt of injured PW. 15.

On appreciation of the above material evidence on record, the learned Sessions Judge had convicted and sentenced all the respondents-accused persons for the offence under Sections 341 and 326 read with Section 34 of IPC, whereas he had acquitted all of them under Section 325(1) of Cr. PC for the offence under Section 307 read with Section 34 of IPC. However, the learned Sessions Judge by exercising his power under Section 4 of the Probation of Offenders Act, released the respondents-accused person on probation for maintaining good conduct, for a period of one year.

The appellant-State having been aggrieved with the impugned judgment and order of conviction for the minor offence under Section 326 read with Section 34 of IPC and further releasing them under Section 4 of the Probation of Offenders Act had resorted to the above two appeals. When the first appeal i.e. Cr. A. No. 667/94, the appellant-State had challenged the impugned judgment and order in so far as the same related to the acquittal of the respondents for the offence under Section 307 of IPC, in the second appeal i.e. Cr. A. No. 669/94, the appellant-State had challenged the same to set aside the portion of the order of the learned Sessions Judge in so far as the same related to releasing of the respondents accused under Section 4 of the Probation of Offenders Act.

4. At the outset, we have to point out here, that none of the respondents-accused persons had filed any appeal as against their conviction under Section 326 read

with Section 34 of IPC. It is therefore obvious that this Court has to take that the respondents-accused persons had well received the impugned judgment and order of conviction as against them for the said offences committed by them. In the said circumstances what are before us in a way are the two appeals filed by the State and hence we have to decide the said two appeals in their due merits. It is therefore very much necessary for us to examine as to whether the impugned judgment to hold that the respondents-accused were guilty of the minor offence as above and further to examine as to whether the order of conviction for the said offence under Section 326 read with Section 34 of IPC is just and proper and further very well based on the material evidence on record or not and also to examine as to whether their release by the learned Sessions Judge under Section 4 of the P.O. Act was in consonance with law or not.

5. It is in the evidence of the injured-PW. 3-Lokeshgowda, injured-PW.2 Ramesh, brother of PW. 1 and PW. 3, injured-PW. 4 mother of PW. 1, PW. 2 and PW. 3 that at the first instance at about 6-00 or 7-00 p.m. on 31-7-1986, PW. 3 Lokeshgowda had been to the field to arrange for flow of water to their fields and at that the respondents-accused No. 1 restrained him from flowing water and further came and assaulted him and because of that he had fallen on the ground and cried out and that on hearing his cry PW. 2 and PW. 4 came to the spot and that thereafter the respondent-accused No. 1 asked the respondent No. 2 to fetch the gun from their house and when the respondent-accused No. 2 had been to the house and fetched the MO. 1-gun, the respondent-accused No. 3 took the club from the hands of the respondent-accused No. 1 and hit him on his left ear and that afterwards PW. 3 got up and at that, his brother PW. 2 and their mother PW. 4 tried to separate PW. 3 and the respondent No. 1 accused, It is also in his evidence that the respondent-accused No. 2 having fetched the MO. 1-gun from the house fired therefrom and injured him on the right shoulder, right side of his neck and further his head and that the pellet fired from the gun had also injured his mother PW. 4 and that thereafter he had gone unconscious.

6. To turn to the evidence of PW. 2 eye witness, we see that the said PW. 2 had also spoken to on the similar lines but in addition to that, he had also deposed that the respondent-accused No. 3 had taken the MO. 1-gun from the hands of the

respondent-accused No. 2 in the second round and fired at PW; 5 and thereafter he had sped away from the scene of offence.

7. If the above material evidence of the eye-witnesses is analyzed and appreciated in the light of the medical evidence on record adduced by the prosecution in examining PW. 12 Doctor witness and further in the light of the wound certificate-Ex. P7(b) in respect of PW. 3, Ex. P9-wound certificate in respect of PW. 4 and further wound certificate Ex. P8 in respect of PW. 15, it appears to us that the medical evidence is total corroboration of the ocular evidence of PW. 1, PW. 2, PW. 3 and PW. 4 and further the ocular evidence of PW. 12, for the Doctor witness-PW. 12 had not spoken in his evidence that he did find any other injuries on any of the injured witnesses, i.e. PW. 3, PW. 4 and PW. 15 other than* the injuries caused by the gun shots. Therefore, it is not believable that the respondents-accused persons had dealt with the respondents-accused persons by means of club. In this context, it is also relevant to mention that in all the wound certificates issued by PW. 12 in respect of PW. 3, PW. 4 and PW. 15, PW. 12 had mentioned only the gun shots injuries. Therefore, it is difficult for one to believe that the injured PW. 3 and PW. 4 were assaulted by the clubs by any one of the respondents-accused persons. In our considered view, the injured PW. 3 and PW. 4 were injured by gun shots in the hands of the respondent-accused No. 2 in the first round and in the second the injured-PW. 15 had suffered gun shots in the hands of the respondent-accused No. 3 and on both the occasion MO-1 gun was used by the respondent No. 2 and respondent No. 3. Here again one cannot miss two different circumstances in which the respondent-accused No. 2 had fired in the first round to the injured PW. 3 and PW. 4 and at the second by the respondent-accused No. 3 to the injured PW. 15. On analyzing ocular evidence of PWs. 2 to 4 and further the ocular evidence of injured-PW. 15, with reference to Ex. PI-complaint lodged by PW. 1 and further with reference to the evidence from his side, it is clear that at the first instance there was a quarrel between the injured PW. 3 and the respondent-accused No. 1 when PW. 3 had gone to arrange to flow of water to his field and when such a quarrel was in the progress, the respondent-accused No. 1 asked the respondent-accused No. 2 to fetch the MO. 1 gun and on fetching the same the respondent-accused No. 2 had fired from the said gun to the injured-P.W. 3 and PW. 4 and thereafter on appearance on the scene of the

respondent-accused No. 3, he had taken the gun from the hands of the respondent-accused No. 2 and fired yet again aiming at the injured PW. 15 who came to the place later. The said circumstances clearly go to show that the respondent-accused No. 1 and the respondent-accused No. 2 had acted in consort and in common intention to murder of PW. 3 and PW. 4 and it is in furtherance of that common intention the respondent-accused No. 2 had fired at and injured PW. 3 and PW. 4; thus when PW. 3 was injured on his right side of the chest, upper third right shoulder, outer side of the right arm and right side of the neck and further lacerated wound on the left side of skull behind the left ear and lacerated wound over the pinna of the left ear, PW. 4 was injured on rear side of the ear and below the head and below the left ear. It is clear there from that the respondent-accused Nos. 1 and 2 in consort had caused gun shot injuries, particularly on the vital parts of the injured PW. 3. Therefore, it appears to us that both the respondent-accused No. 1 and the respondent-accused No. 2 have committed graver offence under Section 307 read with Section 34 of [PC as the prosecution had charged in filing the charge sheet, whereas the respondent-accused No. 3 having assaulted PW. 15 over the back of the left arm (in the middle) and also by the MO. 1 gun committing lesser or minor offence under Section 324 of IPC as the injuries suffered by him were all simple in nature. It is relevant to point out here that in Ex, P7(b) wound certificate issued by PW. 12 in respect of the injured-PW. 3, the injuries on the right side of the chest, outer aspect of the right arm and right side of the neck were described as grievous whereas in the wound certificate-Ex. P7 issued by PW. 12 in respect of PW. 4, injuries were on the left side of the skull behind the left ear and the pinna of the left ear and were described as simple injuries and further in the wound certificate Ex. P8 issued PW. 12 in respect of the injured PW. 15, the injuries over the back of the left arm and further tenderness of the dorsem of the left hand were also described as simple injuries and further the said simple injuries caused to the injured-PW. 4 stated to have been caused by firing pellet in MO. 1 gun by the respondent-accused No. 2 whereas the pellet injuries caused on the body of the injured-PW. 15 , also stated to have been caused by MO. 1 DBML gun by the respondent-accused No. 3. At the cost of repetition, it is also to be stated here that the medical evidence had shown that the injuries on the bodies of the injured PWs.

3,4 and 15 were all pellet injuries and that obviously indicate that no other injuries were found either on the body of PW. 3 or for that matter on the bodies of the injured-PW. 4 and PW. 15 MO. 5 club.

8. In the circumstances, we are of the view that the respondents-accused No. 1 having wrong-fully restrained the injured PW. 3 ordered the respondent-accused No. 2 to secure MO. 1 gun through their house and on securing of the MO. 1 gun by the respondent- accused No. 2, he at the instance of respondent-accused No. 1 and in furtherance of their common intention or knowledge to cause death of the injured PW. 3 and PW. 4 had fired from MO. 1 gun both of them and that when PW. 3 had suffered pellet injuries on the vital part of his body i.e. chest, PW. 4 had suffered simple injuries on the hand and thus both were guilty of the offence punishable under Sections 341, 324 and 307 read with Section 34 of IPC. We are also of the view that in the facts and circumstances of the case that the respondent-accused No. 3 had caused simple injuries on the right side of the shoulder of the injured PW. 15 by firing of pellets by MO. 1 gun was guilty of the offence punishable under Sections 341 and 324 of IPC as he had independently and separately acted in isolation of the earlier acts of the respondent-accused Nos. 1 and 2 stated above.

9. In passing the impugned judgment though the learned Sessions Judge had held that all the respondents-accused persons guilty of the offence under Section 326 read with Section 34 of IPC and further held them guilty for the offence under Section 341 read with Section 34 of IPC while acquitting all of them under Section 307 read with Section 34 of IPC and then the learned Sessions Judge by applying Section 4 of the P.O. Act released all of them on probation of maintaining good conduct for a period of one year and further directed each of them to execute a bond for a sum of Rs. 2,000.00 each. We have to observe here that the learned Sessions Judge had totally erred even-to release the respondent-accused on probation of good conduct under Section 4 of the P.O. Act as the Section does not apply to a case when a person is found guilty of an offence for which an imprisonment for life is the punishment and despite that the learned Sessions Judge had wrongly applied Section 4 of the P.O. Act and released the respondents-accused on probation of good conduct. It is relevant to quote here

Section 4 of the P.O. Act. The same reads as hereunder:

Power of Court to release certain offenders on probation of good conduct.- (1) When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the Court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, as the Court may direct, and in the meantime to keep the peace and be of good behaviors :

Provided that the Court shall not direct such release of an offender unless it is satisfied that the offender or his surety, if any, has a fixed place of abode or regular occupation in the place over which the Court exercises jurisdiction or in which the offender is likely to live during the period for which he enters into the bond.(2) Before making any order under Sub-section (1), the Court shall take into consideration the report, if any, of the probation officer concerned in relation to the case.

(3) When an order under Sub-section (1) is made, the Court may, if it is of opinion that in the interests of the offender and of the public it is expedient so to do, in addition pass a supervision order directing that the offender shall remain under the supervision of a probation officer named in the order during such period not being less than one year, as may be specified therein, and may in such supervision order impose such conditions as it deems necessary for the due supervision of the offender.

(4) The Court making a supervision order under Sub-section (3) shall require the offender, before he is released, to enter into a bond, with or without sureties, to observe the conditions specified in such order and such additional conditions with respect to residence, abstention from intoxicants or any other matter as the Court may, having regard to the particular circumstances, consider fit to impose for

preventing a repetition of the same offence or a commission or other offences by the offender.

(5) The Court making a supervision order under Sub-section (3) shall explain to the offender the terms and conditions of the order and shall forthwith furnish one copy of the supervision order to each of the offenders, the sureties, if any, and the probation officer concerned.

10. By a cursory look at the provision of Sub-section (1) of the Section 4 of the P.O. Act, it is clear therefrom that when a person is guilty of an offence punishable for death or imprisonment for life, the Section has got no application at all. As we see the punishment prescribed for the offence under Section 326 is imprisonment for life or imprisonment for 10 years and fine. Hence, we have got no hesitation to hold that the release of the respondents-accused persons on probation of good conduct under Section 4 of the P.O. Act by the learned Sessions Judge is totally erroneous and as such untenable in law.

11. Now we have to turn to the sentence part in the case. In this regard we have also heard the learned counsel for the respondents-accused persons. It is his submission that all the respondents-accused persons had the benefit of their release on probation of good conduct under Section 4 of the P.O. Act, as the learned Sessions Judge had held all of them guilty of the offence under Section 326 read with Section 34 of IPC and under Section 341 read with Section 34 of IPC. It is also pointed out by him that at the time of passing of the impugned judgment, the respondent-accused No. 1 was 65 years of age whereas the respondent-accused No. 2 was 32 years of age and the respondent-accused No. 3 was 27 years of age. It is also his submission in this regard that the respondents-accused No. 2 and 3 having been married and settled in life, they would be put to great injury and hardship in life, if they were to be sentenced either under Section 307 read with Section 34 of IPC or under Section 326 read with Section 34 of IPC.

12. We have carefully considered the said aspect of the case highlighted by the learned counsel for the respondents-accused persons.

13. While discussing the material evidence on record, we have come to the conclusion that when the respondents-accused No. 1 and 2 were guilty of the offence under Section 341, 324 and Section 307 read with Section 34 of IPC, the respondent-accused No. 3 was guilty of offence under Section 341 and 324 of IPC as the respondent-accused No. 3 in our considered view had committed the said act independently devoid of offences committed by the respondents-accused Nos. 1 and 2 under Sections 341, 324 and 307 read with Section 34 of IPC. Therefore, it appears to us that it is just and proper for us to convict the respondents-accused No. 1 and 2 under Ss, 341, 324 and 307 read with Section 34 of IPC by setting aside the impugned judgment and order of conviction under Section 326 of IPC and further the order of their release by entering them on probation under Section 4 of P.O. Act, 1958 and further to confirm the order of conviction. It further appear to us that it is just and proper for us to confirm the judgment and order of conviction of the respondent-accused No. 3 not for the offence under Section 326 read with Section 34 of IPC as the learned Sessions Judge had done but under Section 342 and 342 of IPC for the aforesaid reasons and it also appears to us that we have to confirm the order of the learned Sessions Judge in release of the respondent-accused No. 3 under Section 4 of P.O. Act.

In the result, we pass the following :

ORDER

(1) The impugned judgment and order of conviction under Section 326 of IPC of the respondent-accused Nos. 1 and 2 and further their release under Section 4 of P.O. Act is hereby set aside. The respondents-accused No. 1 and 2 are hereby convicted under Sections 341, 324 and 307 of IPC read with Section 34 of IPC and each of them are sentenced to suffer R.I. for one month for the offence under Section 341 of IPC, for one year for the offence under Section 324 and RI for 3 years and fine of Rs. 5,000.00 for the offence under Section 307 of IPC and it is hereby directed that the substantial sentence shall run concurrently.

In the event of default to pay the fine imposed as above the respondents No. 1 and 2 shall suffer further R.I. for 1 (one) year.

(2) It is hereby directed that the fine of Rupees 5,000.00 each be deposited by both the respondents before the trial Court within a period of four months.

(3) It is also directed that out of the fine amount of Rs. 10,000.00 deposited (Rs. 5,000.00 each by the respondents Nos. 1 and 2), the trial Court shall pay Rs. 7,500.00 to the injured PW. 3 and the remaining sum of Rs. 2,500.00 to the injured PW. 4 after they being properly identified.

(4) The conviction and release of the respondent-accused No. 3 under Section 4 of P.O. Act in passing the impugned judgment and order by the learned Sessions judge is confirmed but confirming his conviction is not under Section 326 read with Section 34 of IPC but under Sections 341 and 324 of IPC.

Both the appeal of the State therefore succeed in part and accordingly allowed in part in the above terms.

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