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Court : Karnataka

Decided On : Oct-27-2010

Judge : K.Sreedhar Rao; B.V.Pinto Jj.

Appeal No. : CRIMINAL APPEAL NO.220/ 2005

Appellant : State of Karnataka,

Respondent : B.Muniyappa, S/O Late Narayanappa and ors

Advocate for Def. : Sri.C.G.Sundar, Adv.

Advocate for Pet/Ap. : Sri.G.Bhavani Singh, SPP

Judgement :

1. This appeal is filed by the State challenging the judgment dated 11.08.2004 passed by the Principal District and Sessions Judge, Kolar in S.C.No.370/3002 acquitting the respondents of the offence under Sections 143, 147, 148, 323, 324, 326 504 and 302 r/w Sec.149 of IPC.

2. It kitties case of the prosecution that, on 26.03.2002 at about 7.00 p m., all the accused persons formed themselves into an unlawful assembly with the common object of committing murder of one Chikka Boodalappa of K.Guttahalli Village, Chintamani Taluk and in pursuance of the said common object, they held lethal weapons like clubs and thereafter, they have committed fianc under Sections 143, 147 and 148 r/w Sec.149 of IPC. It is further charged against the accused that on

the said place, date and time being the members of the unlawful assembly, the accused went near the house of CW-1 Muniyamma and abused her in fcui language and committed criminal mtimidation to commit the murder of the deceased Chikka Boodalappa, thereby they are alleged to have committed offence under Section 504 and 506 r/w Section 149 IPC. It is further alleged that on the said place, date and time, the accused have assaulted CW-2 Gangi Reddy and CW-1 Muniyamma and caused grievous injuries to them, thereby they are alleged to have committed offence under Section 326 r/w 149 IPC. It is also true further charge against them that, at the said place, date and time, the accused have assaulted the deceased Chikka Boodalappa by means of clubs on. Various parts of body and caused his death and thereby, they are alleged to have committed offence under Section 302 r/w Sec. 149 IPC. It is also further the cage of the prosecution that on the said date, place and time being the members of the unlawful assembly, the accused have assaulted Chikka Boodalappa and Gangireddy and have caused simple injuries on them, thereby, they are alleged to have committed offence under Section 324 and 323 r/w Sec.149 IPC respectively,

3. After securing the respondents before the Court, the prosecution has examined in all 14 witnesses and has got marked Exs.Pl to Pl3 and produced MOs -1 to 3. The defense of the accused is one of total denial and they haw stated that there was a counter case in respect of the staid incident in which the accused in this case are also injured and therefore, they have sought for acquittal The Court after looking into the evidence on record held that the prosecution has not come up with clean hands and therefore, has given benefit of doubt to the accused. The State has filed this appeal against the order of acquittal.

4. PW-1 is Muniyamma, Wife of the deceased and complainant. She is also injured in this case. She has stated that, there was a dispute regarding the purchase of a house site towards the east of their house.

On the date of the incident at about 6.30 p.m., when her husband was in the house, accused No.4 came and assaulted her by means of a club and she sustained a fracture. At that time, CW-3 cams running and accused No.2 assaulted CW-3 on her head by means of a club. Thereafter, all the eight accused

came and held her husband. They held his neck and twisted him. Accused No.5 Shivappa essa?ilted her husband by means of a club on his head. Her husband fell down. At that time, CW-2 her son came there. Accused assaulted CW-2 also by means of hands. PW 4 Narayanaswamy also came to pacify 'die accused. At that time, accused No.2, Shankarappa assaulted him by means of a club. PW-6 Ananda was also present there and h e has extricated her son Gangireddy from the clutches of the accused. Thereafter, somebody phoned to the police station. The police came, thereafter her husband was taken to the hospital at Kaiwara. The doctor at Kaiwara Hospital suggested that the deceased be taken to NIMHANS Hospital at Bangalore. Her husband died in the hospital.

She has given the complaint as per Ex,PI. She has identified MOs - 1 to 3. PW-2 Gangi Reddy is another injured and son of PW-1. He has stated that on the date of offence at about 6.30 p.m., one Lokesh grandson of accused No.1 was digging the mud. H mother told him not to dig the mud and took the milk to the diary. When his mother came back, they all were fighting and his sister Bhagyamma CW-3 was requesting them not to fight At that time, accused assaulted his sk-ter by a club. By that time, his mother same and his mother was also assaulted. Thereafter, his father came. Four persons among the accused held his father and A5 Shivappa assaulted his father by means of a club. Thereafter, Al and A4 caught hold of his neck and at that time, PW-4 Narayanaswamy came and A2 assaulted Narayanaswamy on his head. Thereafter, PWs 5 and 6 extricated them from the hands of the accused. Accused threw the clubs at the scene of the offence and fled away. Thereafter, the police came and took them to the hospital. Thereafter, his father died in the NIMHANS Hospital, Bangalore. PW-3 Bhagyanuria also has narrated this incident saying that accused No.4 assaulted her mother by means of a club on her head but the injury is caused on her right hand. Accused No.2 has assaulted her by means of a club and five accused have assaulted her father by means of a club on the head and her father fell down. At that time, her brother came and Accused Nos.3, 6, 7 and 8 assaulted her brother. Accused No,6 tried to squeeze the neck of her brother. CW-4 came there and tried to stop the fight. Accused beat him also, Thereafter, on the telephone call of somebody, police came and they were sent to the ho spited.

PW-4 Narayanaswamy also has narrated the incident of assault, PW-5 has turned hostile to the case of the PW-6 Ananda is an eye witness and he has stated regarding the assault of Accused No.2 on CW-2, Accused No.4 on PW-1 and Accused No.5 en the head of the deceased. Thereafter, police came and took the injured to the hospital.

PW-7 Narayanaswamy is the son-in-law of PW-1. He has stated that Accused No.2 assaulted FW-3 on the head. Al to A4 and A6 to A8 assalilted the deceased. A5 assaulted the deceased by means of a club on his head. Al and A4 squeezed the neck of PW-2. A2, A4 and A6 assaulted CW-4, thereafter, they have thrown the clubs at the scene of occurrence and fled away. PWs - 8 and 9 are formal witnesses.

PW-10 is another eye witness who has given a general statement regarding accused assaulting them and his father. PW-11 is the doctor, who has examined the injured witnesses and has issued the Wound Certificates. PW-12 is a signatory to Ex.P5 inquest mahazar. 10 CHA220/2M5 PW-13 is the PSI, who has registered the FIR and has conducted investigation of the case and arrested the accused.

5. Heard Sri.G.Bhavani Singh, SPP PW-14 Mariyappa is the Cl who has completed the investigation and filed the charge chest. In the cross-examination, it is brought out that there is a counter case in respect of this incident in S.C.Mo.211/2003 against the injured witnesses in this case. It is from the evidence of these wefnesaec that the learned Sessions Judge has found that the evidence is not convincing and has acquitted the accused. Sri.C.G.Sundsr, learned counsel for respondents 1 to 5 and 7 and Sri.B Anand, Amicus Curiae for respondents 6 & 8 and perused the materials.

6. It is seen from the evidence recorded and also the documents filed that there-was a counter case in respect of the incident in which the accused were injured. Further, none of the eye-witnesses speak anything about the injuries sustained by the accused persons. Consequently, it is seen that the incident narrated by each of the eye witnesses and injured witnesses is different from the other and the narration of facts by each witnesses differs glaring^, while PW-1 says that, after she came back from, the diary, after delivering the mild, the incident of assaults

started. Bhagyamma PW-3 states that she was assaulted first and at that time, her mother came forward and her mother was assaulted subsequently, whereas the version of another witness Shivappa is totally different and none of them whispered about the injuries on the accused persons. It is mother seen that the post mortem report Ex.PI 2 has been marked during the trial and the doctor has not been examined. The alleged weapons used in this case are only eucalyptus clubs and therefore, the opinion of the doctor who has conducted post mortem examination was very much essential to come to the conclusion as to the 12. CHA22C/2005 nature of the injuries and the nature of the weapons used for the said injuries. As reported in 2R 2000 Karnataka 3502 and AIR 2976 SC 2263. The examination of the doctor is very much essential and the non-examination of the doctor is very much fatal to the case of the prosecution. There is also a delay in filing the FIR. The incident took place a t 6.30 p.m. and the complaint and eye-witness account is that the police came to the spot and shifted the injured to the hospital. However, the FIR is registered cn the next day at about 7.00 a.m. Therefore, there is an inordinate delay in registering the FIR by trie police, though they were present immediately after the incident. Under the circumstances, the rulings relied on by the prosecution does not inspire confidence in the mind of the Court to hold that the accused have committed the offence alleged by the prosecution.

7. We have gone through the judgment of the trial Court. The reasoning assigned by the learned Sessions Judge appears to be sound and proper. There is no convincing reason to take a different view other than conclusions arrived at by the learned Sessions Judge. In that view of the matter, we hold that the appeal does not merit consideration and therefore, the appeal is dismissed.

Amicus Curiae is fixed at Rs.7,000/-. The State has to pay the same.

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