
(2015) 01 KAR CK 0069

Karnataka High Court

Case No: Criminal Appeal No. 1203 of 2011

The State of Karnataka

APPELLANT

Vs

B. Munikrishnappa and
Others

RESPONDENT

Date of Decision: Jan. 20, 2015

Acts Referred:

Penal Code, 1860 (IPC) - Section 143, 147, 148, 149, 306

Citation: (2015) 01 KAR CK 0069

Hon'ble Judges: Mohan M. Shantana Goudar and P.S. Dinesh Kumar, JJ.

Bench: Division Bench

Advocate: B.T. Venkatesh, Addl. SPP, for the Appellant; D.R. Anandeeshwara, Amicus Curiae and S. Shankarappa, Advocate, for the Respondent

Final Decision: Dismissed

Judgement

Mohan M. Shantana Goudar, J.

The judgment and order of conviction passed by the Fast Track Court - I, Chikmagalur, in S.C. No.

195/2009 dated 27.05.2011 is called in question in this appeal by the State.

The accused were tried and acquitted of the offences punishable under Sections 143, 147, 148, 427, 324, 326 & 506 r/w Section 149 of Indian

Penal Code.

2. The case of the prosecution in brief is that the accused and the injured PWs 1, 2 and 4 are from the same place i.e., Vijayapura Town of

Devanahalli Taluk; a civil litigation existed between accused 1 and 2 on the one side and complainant and his family members on the other side in

respect of the property bearing Khatha No. 1323/148 situate on Kolar-Sompura road at Vijayapura Town; the shop wherein the incident in

question has taken place is also situated on the very property; the civil litigation ended in favour of the complainant's family; the order of injunction

is passed against the accused in respect of the property in question; the accused being intolerant of consistent success of the complainant's family

before the Court of law, hatched a plan to do away with the life of PWs 1, 2 to 4. During the night intervening between 10.01.2003 and

11.01.2003, PWs 1 and 2 along with PWs 3 and 4 were sleeping in the vulcanizing shop run by PWs 1 and 2 with a view to guard the said shop

from the accused family; at about 2.00 a.m. on 11.01.2003, all the accused came to the spot with deadly weapons like chopper, clubs and acid in

a plastic can by forming themselves into an unlawful assembly with a common object of killing PWs 1 and 2; the accused were supported by 100s

of their followers who also came to the spot; the accused told PW2 that only if he lives in future he can claim the disputed property and therefore,

he should be finished; on hearing hue and cry raised by the accused outside the shop, PWs 1 to 4 woke up and saw through the window that PW1

was holding a plastic can and other accused were holding lethal weapons like chopper, clubs etc; all the accused suddenly pushed the tin door of

the said shop and destroyed the shop as well as the STD Booth attached to the shop; accused No. 1 threw acid on PWs 1 and 2, which he had

brought in a can; accused No. 2 threw a big stone on the right leg of PW2 and assaulted on his right hand with a chopper and caused grievous

injury to him; so also accused Nos. 2 to 8 assaulted PWs 1, 2 & 4 with the weapons brought by them, consequent upon which, PWs 1, 2 & 4

sustained injuries.

Immediately after the incident, PW2 who had sustained serious injuries was shifted by police to Baptist hospital, Bangalore for treatment; PWs1

and 4 who had sustained simple injuries took treatment at Vjayapura Town only. A complaint came to be lodged by PW1 at about 6.00 a.m. on

11.01.2003 as per Ex. P1 before the Station House Officer of Vijayapura Police Station (PW9) who registered the complaint in Crime No.

4/2003.

3. The record further discloses that another complaint came to be lodged by the accused No. 1 herein before the very police station against PWs 1

to 4 herein and other witnesses, which came to be registered at about 7.00 a.m. on 11.01.2003. The same was tried in C.C. No. 335/2003.

4. On completing the investigation in this matter, PW10-the inspector of police laid charge sheet against 8 accused.

5. In order to prove its case, the prosecution in all examined 10 witnesses and got marked 17 exhibits and 9 Material Objects. On behalf of the

defence, 13 documents were got marked.

6. It is relevant to note that Ex. P17 is the certified copy of the judgment passed in another matter in C.C. No. 335/03. It is further relevant to note

that the matter on hand was initially tried before the Magistrate Court for the offence punishable under Section 324 of Indian Penal Code apart

from other offences in C.C. No. 229/2003; four witnesses were examined in C.C. No. 229/2003; at that point of time the learned Magistrate who

was trying the case felt that the offences committed by the accused may fall under Sections 306 and 326 of Indian Penal Code and thus,

committed C.C. No. 229/2003 to Sessions Court for trial afresh. After committal, the matter (C.C. No. 229/03) is renumbered as S.C. No.

195/09.

As aforementioned, the complaint lodged by accused No. 1 herein was the subject matter of C.C. No. 335/03. Unfortunately, C.C. No. 335/03

was not tried along with S.C. No. 195/09 though it was legally required to do so. The said C.C. No. 335/03 was independently tried and the

accused are acquitted. The State has not preferred appeal as against judgment of acquittal passed in C.C. No. 335/03.

7. Sri. B.T. Venkatesh, learned Additional SPP taking us through the material on record submits that the trial Court was not justified in acquitting

the accused, more particularly, when PWs 1 to 4 have deposed before the Court supporting the case of the prosecution as against accused Nos. 1

and 2. The trial Court has not given valid reasons for coming to the conclusion; it has given more weightage to minor variations in the evidence of

the prosecution. Merely because, the counter case is concluded by acquitting the accused therein, it was not open for the Court below to acquit

the accused in this matter also; since, each case has to be decided independently based on the material collected during the course of evidence, it is

not open for the trial Court to get influenced by the order of acquittal passed in counter case. According to him, the evidence of PWs 1, 2 & 4-the

injured witnesses and the evidence of PW3-eye witness is consistent, cogent and reliable; Absolutely, no valid reasons are forthcoming to

disbelieve their evidence and consequently, the trial Court is not justified in acquitting the accused.

Per contra, learned Advocate for the defence as well as the learned amicus curiae argued in support of the judgment of the Court below.

8. PW1 is the complainant; he is the injured witness; the complaint is at Ex. P1; PW8 is the Doctor who treated PW1 and issued wound

certificate; Ex. P13 is the wound certificate pertaining to PW1 -complainant; Ex. P1 the written complaint came to be lodged at 6.00 a.m. on

11.01.2003; PW2 is the father of PW1; he sustained grievous injuries in the incident; he also sustained burn injuries, which are caused by the acid;

Ex. P11 is the wound certificate of PW2; PW3 is the eyewitness to the incident in question; he had also slept in the shop in question along with

PWs 1, 2 & 4; PW4 is another eye-witness. Ex. P14 is the wound certificate pertaining to PW4; PW 5 is the witnesses to inquest panchanama at

Ex. P2. In the very panchanama, Mos 1 to 5 were seized from the spot; PW6 is the Doctor who treated PW2 and issued wound certificate at Ex.

P11; MLC register is at Ex. P12; PW7 is a witness to the panchanama-Ex. P2, however, he has turned hostile; PW8 is the Doctor who treated

PWs 1 and 4 at Vijayapura town; the wound certificates of PWs 1 and 4 and the MLC register extract pertaining to them are marked at Exs.P13,

14 & 15; PW9 is the PSI who went to the spot with PW10 (the investigating officer) immediately after the incident and enquired with PWs 1 to 4.

He registered a case on the basis of the complaint lodged by PW1 as per Ex. P1 at 6.00 a.m. on 11.01.2003; PW10 is the Inspector of Police; he

completed the investigation and laid the charge sheet.

9. Before proceeding further it is relevant to note the situation of the scene of offence. Undisputedly, the incident has taken place within the

premises of the shop. The said shop was a garage as well as a vulcanizing shop. The said shop is situated in the circle of Vijayapura Town. The

police station is situated within the short distance from the shop; the shop in question is surrounded with various other shops including a petrol

bunk, Government hospital, cinema theatre etc. As aforementioned, the jurisdictional police is also very near to the shop in question. Even the bus

stand of the Vijayapura Town is situated near the shop in question. Thus, it is clear that the incident has taken place in a busy area.

However, it is to be borne in mind that the incident has taken place at 2.00 a.m. and consequently, there will be no much traffic or movement of

persons in the area during the relevant period.

10. The case of the prosecution mainly revolves around the evidence of PWs 1 to 4 who are the eyewitnesses to the incident in question. The

place of incident is not in dispute. The fact that PWs 1, 2 & 4 have sustained injuries also is not in dispute. It is also not in dispute that some of the

persons from the group of the accused were also injured and they had also lodged a complaint. However, none of the accused on record in this

matter were injured.

11. Though the incident has taken place at 2.00 a.m. on 11.01.2003 and though the police station is situated opposite to the shop and though the

police -PWs 9 & 10 came to the spot immediately after the incident and shifted PW2 to Baptist Hospital, Bangalore for treatment, complaint came

to be registered only at 6.00 a.m. on 11.01.2003. The eye-witnesses have admitted that police came to the spot immediately after the incident and

PW2 was shifted to hospital in a private car immediately. It is also admitted by them that the police spoke with them thoroughly and enquired

about the incident as well as the names of the assailants within a short period of the incident

12. It is further admitted that the police insisted that a complaint should be lodged by any one of the injured persons. Despite the same, none of the

injured persons lodged a complaint. It is astonishing to note that even police did not venture to register the crime suo motu though they knew very

well that cognizable offence has taken place during the relevant time. Absolutely no reasons are forthcoming as to why complaint came to be

lodged belatedly at 6.00 a.m. by PW1 though he was present in the shop along with PWs 3 & 4 from 2.00 a.m. till 10.00 a.m. on that day.

Though police accompanied PW2 to Baptist Hospital, Bangalore, they did not even try to register a crime suo motu before proceeding to hospital.

Thus, there was ample time for the Investigating Officer as well as the complainant to think over, plan and to implicate as many accused as possible

to create a story as that one on hand. If really the complainant as well as the police knew very well about the real assailants at about 2.00 or 2.30

a.m. on 11.01.2003, there is no reason as to why they should wait till 6.00 a.m. for lodging the complaint particularly when three of the four eye-

witnesses were on the spot throughout till 10.00 a.m.

Even at 6.00 a.m., i.e., while lodging the complaint as per Ex. P1, the complainant was not specific about the overt acts of each of the accused.

The complaint-Ex. P1 clearly reveals that accused Nos. 1 to 8 came to the spot at 2.00 a.m. and they were supported by 100 more persons; they

raised a hue and cry and thereafter, they broke open the door of the shop and started assaulting PWs 1 to 4; serious injuries were sustained by

PWs 1 and 2 and at that point of time PWs 3 & 4 having feared, ran away from the scene. Subsequently, all the accused threw acid on PWs 1

and 2, consequent upon which, they sustained burn injuries. Thus, it is clear that Ex. P1 makes allegation against all the 8 accused omnibusly. No

specific overt act is attributed to accused Nos. 1 or 2 or any other accused. It has also come on record, more particularly, in the evidence of PWs

1 to 4 that PWs 3 and 4 remained with PW1 till lodging of the complaint. They left the spot to their respective houses only at about 9.30 or 10.00

a.m. on 11.01.2003. Throughout that time they deliberated with each other about the incident;

13. Curiously during the course of trial, PWs.1 to 4 have deposed about the specific overt acts of accused Nos. 1 and 2. It is specifically deposed

by them that after hearing hue and cry outside the garage (shop), they opened the window of the shop and saw through the window that accused

No. 1 was standing with a group of 100 persons, including accused Nos. 2 to 8; accused No. 1 was holding plastic can containing acid; all other

accused were holding the deadly weapons like chopper, club, etc. All the witnesses have further deposed that after opening the door of the shop,

the accused and others rushed inside the shop and accused No. 1 threw acid on PWs.1 and 2, due to which they sustained burn injuries. So also,

accused No. 2 threw a big stone on the leg of PW.2 and assaulted him with a chopper, consequent upon which the upper and lower limbs of

PW.2 were fractured. Thus, before the Court, PWs. 1 to 4 specified the overt acts as against accused Nos. 1 and 2 at least.

In this context, the defence is justified in arguing that the version as deposed by PWs. 1 to 4 before Court is an after thought, inasmuch as the

complaint does not disclose any of the overt acts against accused Nos. 1 and 2.

14. It is relevant to note that none of the accused has sustained injuries in the incident as aforementioned. Ex. P17 is the copy of the judgment

rendered by the learned Magistrate in counter case, i.e., CC. No. 335/2003. The said case was initiated based on the complaint of accused No. 1

herein. In the said matter, PWs. 1 to 4 herein were the accused along with others. Though certain injuries were sustained by some of the persons in

that matter, none of the accused herein had sustained injuries. In this context, the defence may be justified in arguing that none of the accused

herein were present, per contra, other persons who were injured were present.

The defence is further justified in arguing that the acid might have been spilled over the body of PWs. 1 and 2, inasmuch as the place in which the

incident has taken place is a puncture and vulcanizing shop and the acid would be kept generally in such garages by the owner of the shop for his

professional work. Since the incident has taken place in a melee, the alleged act of throwing the acid cannot be attributed to any of the accused

specifically.

15. Admittedly, the incident has taken place in a melee. The judgment in CC. No. 335/2003 reveals that the hundreds of persons had gathered in

front of the shop from the group of accused as well as from the group of PWs.1 to 4. Thus, it is clear that there was a free fight between the two

groups. Since the incident has taken place in a melee and during the free fight, it may not be possible for the Court to remove the grain from chaff

to find out as to who was the real aggressor.

16. Having regard to the totality of the facts and circumstances of the case, the trial Court is justified in observing that the material on record is not

sufficient to bring home guilt against any of the accused. Since the specific overt acts are not forthcoming at least as against accused No. 1 and 2

and the material contained in the first information (which was lodged belatedly) is not sufficient to bring home guilt against any other accused, we

are of the considered opinion that the trial Court is justified in acquitting all the accused. Accused Nos. 1 and 2 cannot be convicted merely on the

versions of the eye witnesses before the Court unless their version is truthful and reliable. The entire material has to be viewed homogeneously

before coming to the conclusion. The improvements made during the course of the evidence of the eye witnesses will have to be kept in mind while

coming to the conclusion. In view of the same, we find that the view taken by the trial Court is the possible view under the facts and circumstances

of the case. Even on reconsideration of the material on record, we do not find any ground to interfere with the judgment and order of the acquittal

passed by the Court below.

Hence, appeal fails and the same stands dismissed.

Though accused were represented by Sri Shankarappa, learned advocate, Sri Anandeeswara was appointed earlier as an amicus curiae to assist

the Court. We place on record the assistance rendered by Sri Anandeeswara, learned amicus curiae while deciding the matter. In token whereof,

he shall be paid Rs. 5,000/- (Rupees five thousand only) as honorarium by the Registry.