(2016) 06 KAR CK 0183

KARNATAKA HIGH COURT

Case No: Criminal Appeal No. 1567 of 2015

State		APPELLANT
	Vs	
P. Mohammed Ashraf		RESPONDENT

Date of Decision: June 27, 2016

Acts Referred:

- Evidence Act, 1872 - Section 3
- Penal Code, 1860 (IPC) - Section 307

Citation: (2016) 4 AirKarR 695

Hon'ble Judges: Mohan M. Shantanagoudar and Budihal R. B., JJ.

Bench: Division Bench

Advocate: P. M. Nawaz SPP-1, for the Appellant; Chandrashekhar R. P., Amicus Curiae, for the Respondent

Final Decision: Dismissed

Judgement

Mohan M. Shantanagoudar, J. - The records of the lower Court are made available by the learned SPP and the same are perused. Heard the appeal with consent of both the advocates.

2. The judgment and order of acquittal dated 25.7.2015 passed by the Sessions Court, D.K., Mangalore, sitting at Puttur, D.K. in Sessions Case No.163/2013, is called in question in this appeal by the State.

By the impugned judgment, the trial Court has acquitted the accused of the offences under Sections 341, 504, 324 and 307 of IPC.

3. Case of the prosecution in brief is that the complainant''s younger brother Abdul Sathar and Mohammed Ashraf (accused), against whom previously a case was registered in Puttur town police station, were friends; the complainant advised his younger brother not to mingle with Mohammed Ashraf and not to indulge in any illegal activities; Mohammed

Ashraf (accused) along with others were committing theft of certain properties; Mohammed Ashraf was enraged by such advisory words of the complainant to his brother, as such, at about 11.30 a.m. on 11.5.2004, when P.W.2 (complainant) was coming towards Keremoole junction, the accused restrained him and scolded him in filthy language; accused took out a knife hidden in his waist and stabbed on the stomach as well as on the back of P.W.2; P.W.2 raised hue and cry; meanwhile, the neighbours including Ibrahim (P.W.4) and Mohammed Farooq (P. W.3) came there; on seeing them, the accused ran away from the said place along with the knife; thereafter, the brother of P.W.2 shifted P.W.2 to Puttur Government Hospital for treatment in a car, wherein he was treated by the doctor P.W. 1. Charge-sheet came to be filed against the respondent herein for the aforementioned offences.

4. In order to prove its case, the prosecution in all has examined 10 witnesses and got marked 15 Exhibits and 4 Material Objects. On behalf of the defence, no witness is examined. The Trial Court on evaluation of the material on record, acquitted the accused.

5. PW.1 is the doctor who treated the injured and issued the wound certificate as per Ex.Pl. The opinion of the doctor is at Ex.P2.

PWs. 2,3 and 4 are the eye-witnesses. They have turned hostile to the case of the prosecution.

PW.5 is the witness for scene of offence mahazar Ex.P5. He has turned hostile to the case of the prosecution.

PW.6 is the Head Constable, who participated in the investigation.

PW.7 is the Assistant Sub-Inspector of Police. He also participated in the investigation.

PW.8 is the eye witness, who has turned hostile to the case of the prosecution.

PW.9 is the Officer of Forensic Science Laboratory. He has issued the reports as per Exs.P11 to P14.

PW.10 is the Investigating Officer, who completed the investigation and laid the charge-sheet.

6. Case of the prosecution fully rests on the versions of the eye witnesses including the injured witness. PW.2 is the injured eyewitness. PWs. 3,4 and 8 are the eye-witnesses. All of them though have deposed before the Court in their examination-in-chief supporting the case of the prosecution, did not support the case of the prosecution during the course of cross-examination. They had taken '' U'' turn during the course of cross-examination and have deposed that they do not know anything about the case.

The Public Prosecutor treated these witnesses as hostile witnesses and cross-examined them. However, the Public Prosecutor was not able to secure any useful evidence from them on behalf of the prosecution.

Be that as it may, the fact remains that all the eye-witnesses including the injured eyewitness have turned hostile to the case of the prosecution and they have pointedly answered that they do not know as to who stabbed the injured PW.2. Even PW.2 has deposed that he does not know as to who stabbed him.

7. However, the evidence of the doctor PW. 1 discloses that the injured has sustained one grievous injury apart from other simple injuries. The Forensic Science Laboratory report as well as the evidence of the Officer of the Forensic Science Laboratory fully support the case of the prosecution to the effect that the knife - M.O.No.l was used for the commission of offence. But, there is no reliable evidence to show as to who has caused the injuries on the body of the injured PW.2.

8. Since there is no reliable material to show as to who caused injuries on the body of the injured PW.2 and PW.2 himself has turned hostile to the case of the prosecution apart from the other eye witnesses, the Trial Court is justified in acquitting the accused, inasmuch as the prosecution has not proved its case beyond reasonable doubt.

9. We find that the view taken by the Trial Court is the only plausible view under the facts and circumstance of the case. Hence, the appeal filed by the State against the judgment and award passed by the Trial Court stands dismissed.

10. We place on record the valuable assistance rendered by Sri. Chandrashekhar R.P, learned Amicus Curiae. The registry is directed to pay Rs.6,000/- (Rupees Six Thousand Only) to the learned Amicus Curiae, as honorarium.