



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF OCTOBER, 2023

BEFORE

THE HON'BLE MR JUSTICE ANIL B KATTI

CRIMINAL REVISION PETITION NO. 551 OF 2016

BETWEEN:

1. SRI. SHANKAR NAIK
S/O LATE TANGA NAIK,
AGED ABOUT 38 YEARS
2. SRI. AMRISH NAIK
S/O LATE TANGA NAIK,
AGED ABOUT 34 YEARS,

BOTH ARE RESIDENTS OF
NIDUVALLI THANDYA, KADUR TALUK,
CHIKKAMAGALURU DISTRICT - 577 548.

...PETITIONERS

(BY SRI. PRAKASHA M., ADVOCATE)

AND:

STATE BY PANCHANAHALLI POLICE
REPRESENTED BY THE PUBLIC PROSECUTOR
BANGALORE - 560 001.

...RESPONDENT

(BY SMT.M.ANITHA GIRISH, HCGP)

THIS CRL.RP FILED U/S.397 CR.P.C, PRAYING TO SET ASIDE THE JUDGMENT PASSED IN CRL.A.NO.27/2015 DATED 04.04.2016 BY THE II ADDL. S.J., CHIKKAMAGALURU, DISMISSING THE APPEAL AND SET ASIDE THE CONVICTION JUDGMENT PASSED IN C.C.NO.724/2012 DATED 09.02.2015 BY THE II ADDL. CIVIL JUDGE AND JMFC, KADUR FOR THE OFFENCE P/U/S 323, 324 AND 504 R/W 34 OF IPC.

THIS PETITION, COMING ON FOR HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:

Digitally
signed by
SUMITHRA R
Location:
HIGH COURT
OF
KARNATAKA



ORDER

Revision Petitioners/accused Nos.1 and 2 feeling aggrieved by the judgment of First Appellate Court on the file of II Additional Sessions Judge, Chikkamagaluru in Criminal Appeal No.27/2015 dated 04.04.2016 confirming the Judgment of Trial Court on the file of II Additional Civil Judge and JMFC, Kadur in Criminal Case No.724/2012 dated 09.02.2015 preferred this revision petition.

2. Parties to the Revision Petition are referred with their ranks as assigned in the Trial Court for the sake of convenience.

3. Heard the arguments of both sides.

4. After hearing the arguments of both sides and on perusal of the Trial Court records, including the judgment of both the courts below, the following point arise for consideration:

"Whether the impugned judgment under Revision Petition is perverse, capricious and legally not



sustainable and any interference by this Court is required?"

5. The factual matrix leading to the case of prosecution can be stated in the nutshell to the effect that on 3.3.2012 at 9.00 p.m., accused No.1 was standing near Chowdamma temple; at that time, the complainant, PW.1- Ranganai s/o.Jairamnaik came to the said place and asked accused No.1, Manager of the temple, to submit the accounts regarding the transaction of the temple. On such asking, accused No.1 started abusing the complainant in filthy language and assaulted on his face. The daughter of complainant PW.2- Savitha, who was there, asked her father to let them back to the house. However, accused No.2 by means of club has assaulted on the head of PW.2- Savitha and caused injuries. Thereafter, the injured daughter of complainant, PW.2- Savitha, was taken to the hospital and thereafter he has filed the complaint. On these allegations made in the complaint, the Investigating



Officer has carried out investigation and on completion of investigation, filed charge sheet.

6. The prosecution to prove the allegations made against the accused, relied on the oral testimony of PWs. 1 to 7 and the documents, Exhibits P1 to P7, also got identified MO.1. The Trial Court after appreciation of evidence on record has convicted the accused for the offences punishable under Sections 323, 324 and 504 r/w Section 34 of IPC. The appeal filed by accused challenging the judgment of conviction and order of sentence before the First Appellate Court on the file of II Additional Sessions Judge, Chickaballapur in Criminal Appeal No.27/2015 came to be dismissed by judgment dated 4.4.2016 confirming the judgment of the Trial Court.

7. Learned counsel for the Revision Petitioner has vehemently argued that evidence of PWs. 1 & 2, being the complainant (Ranganaik) and daughter of the complainant (Savitha) is not consistent, their evidence is unreliable to prove any of the allegations made against the accused.



The wound certificate Ex.P.7 stands contrary to the oral testimony of PWs.1 and 2. The evidence of PW.7-Dr. Umesh is not in conformity with the injuries suffered by PW.2- Savitha in the incident as claimed by the prosecution.

8. Per contra, learned HCGP argued that there are absolutely no reasons to disbelieve the oral testimony of PW.1-Ranganaik and PW.2-Savitha regarding the incident that took place in front of Chowdamma temple. The injuries suffered by PW.2-Savitha is duly corroborated by the evidence of PW.7- Dr.Umesh and wound certificate as per Ex.P7. The courts below have recorded concurrent finding that injured PW.2- Savitha suffered injuries in the incident as alleged in the complaint Ex.P.1. The findings recorded by both the courts below are based on material evidence on record and the same does not call for any interference by this Court.

9. On careful perusal of evidence of PW.1-Ranganaik, it would go to show that himself and his daughter PW.2-



Savitha, on 3.3.2012 at about 8.00 P.M., were in front of Chowdamma temple; at that time, he PW.1- Ranganaik enquired about the accounts of the temple, accused Nos.1 and 2 being enraged of the said enquiry, started abusing him in filthy language. Accused No.1 by means of hands slapped over his cheek and Accused No.2 by means of club assaulted on the head of his daughter PW.2- Savitha, due to which she suffered injury and therefore, he has filed the complaint Ex.P1.

PW.1 further deposed to the effect on the next day police came to the spot and prepared spot panchanama Ex.P2 as shown by him and the photograph was taken as per Ex.P3.

10. PW.2- injured Savitha, aged about 14 years deposed to the effect that on 3.3.2012 at about 9.00 P.M., her father had gone to Chowdamma temple and she was standing at the said place along with her mother PW.3- Lakshmibai. At that time, her father questioned the accused for not giving accounts of the temple and being



enraged of the same, accused started abusing him (PW.1) in filthy language and accused No.1 by means of hand, slapped on the cheek of her father and accused No.2 by means of club, assaulted on her head, due to which she suffered bleeding injury. PW.3-Lakshmibai and PW.4-Kariyanaik rescued her from further assault. The witness has identified the club used by accused No.2 for assaulting her as MO.1.

11. PW.3-Lakshmibai is the mother of injured, PW.2-Savitha and she has deposed to the effect that about two years back at 9.00 p.m., herself and her daughter PW.2-Savitha were standing in front of Chowdamma temple. At that time, her husband (PW.1) questioned the accused about the accounts of the temple. Accused No.1 by means of hand slapped over his face and when her daughter PW.2-Savitha went to pacify the quarrel, accused No.2 by means of club assaulted on her head.

12. PW.4-Kariyanaik is another eye witness to the incident, but he has not supported the case of the



prosecution. However, he admits that when he went to the place of incident, PW.2- Savitha suffered injury over her head and the incident took place due to PW.1- Ranganaiik questioning accused persons about not giving accounts of the temple. His evidence would go to show that he came to the spot after the incident is over. He has stated that injured PW.2- Savitha was taken to Hospital by Manjanaik. The said evidence is further corroborated by the evidence of the doctor PW.7- Dr.Umesh and the wound certificate Ex.P.7. The oral testimony of PW.7-Dr.Umesh and wound certificate-Ex.P.7 would go to show that PW.2- Savitha suffered lacerated wound over the head about 6 x 2 cms. and the said injury is opined to be simple in nature. The counsel for accused though has subjected PWs. 1 to 3 and PW.7-Dr.Umesh to cross-examination, nothing worth material has been brought on record, so as to discredit their evidence that PW.2- Savitha suffered injury as noted in the wound certificate Ex.P7. The physical assault of accused No.1 by means of hand over the cheek of PW.1- Ranganaiik has also been corroborated by the evidence of



PWs. 2 & 3. Learned counsel for the accused has argued that lacerated wound cannot be caused by means of MO.1. The treated doctor, Dr.Umesh who is examined as PW.7, in his cross examination has stated about the possibility of PW.2- Savitha sustaining injuries if she is assaulted by means of sharp object and if anybody falls on the sharp object. Further PW.7 Dr.Umesh has specifically denied that no any lacerated injury could be caused if the person is assaulted by means of club-MO.1.

13. Learned counsel for accused also pointed out about the discrepancy found in the evidence of PWs.1 to 3 in describing the weapon used for assaulting PW.2- Savitha. The mere fact that different nomenclature used for the 'club' in the local language cannot be a ground to discredit the evidence of PW.2- Savitha and that of PWs.1 and 3. The Courts below have rightly appreciated the evidence on record and justified in holding that the prosecution has proved beyond reasonable doubt the



offence under Sections 323 and 324 r/w. Section 34 of IPC.

14. The Courts below have also convicted accused Nos.1 and 2 for the offence under Section 504 of IPC. The mere reference of some abusive words in the complaint Ex.P.1 and in the evidence of PWs. 1 to 3 itself cannot be said as sufficient evidence to attract penal action in terms of Section 504 of IPC. In this contest of the matter it is useful to refer to the judgment of the Hon'ble Apex Court in ***Fiona Shrikhande V. State of Maharashtra and another*** reported in AIR 2014 SC 957 wherein in it has been observed and held that :

"Section 504, IPC comprises of the following ingredients, viz., (a) intentional insult, (b) the insult must be such as to give provocation to the person insulted, and (c) the accused must intend or know that such provocation would cause another to break the public peace or to commit any other offence. The intentional insult must be of such a degree that should provoke a person to break the public peace or to commit any other offence. The person who intentionally insults intending or knowing it to be



likely that it will give provocation to any other person and such provocation will cause to break the public peace or to commit any other offence, in such a situation, the ingredients of Section 504 are satisfied. One of the essential elements constituting the offence is that there should have been an act or conduct amounting to intentional insult and the mere fact that the accused abused the complainant, as such, is not sufficient by itself to warrant a conviction under Section 504, IPC."

Looking to the oral testimony of PWs. 1 to 4 and the complaint allegations Ex.P.1, it would go to show that the same does not meet the legal requirement for the offence under Section 504 of IPC in terms of the principles enunciated by Hon'ble Apex Court in the aforementioned judgment. Therefore, the conviction of the accused for the offence under Section 504 of IPC cannot be legally sustained.

15. Now the question remains regarding the imposition of sentence. The Trial Court has sentenced accused Nos.1 and 2 to undergo S.I. of 6 (six) months and



to pay a fine of Rs.3,000/- each for the offence under Section 324 r/w. Section 34 of IPC and in default of payment of fine, to undergo S.I. for 1 (one) month. Accused Nos.1 and 2 were further sentenced to undergo S.I. for a period of 3 (three) months for the offence under Section 323 r/w. Section 34 of IPC. The sentences are ordered to run concurrently. The said imposition of sentence has been affirmed by the First Appellate Court.

16. The offence under Sections 323 and 324 of IPC are punishable with imprisonment or with fine or with both. The court has to exercise its judicial discretion in imposing the sentence, looking to the facts and circumstances of the case, the evidence placed on record and the nature of injuries suffered by the injured. It is the sentencing policy that imposition of sentence must be proportionate to the proven guilt. In the present case, the incident in question took place in front of Chowdamma temple when PW.1-Ranganaik questioned accused Nos.1



and 2 for not submitting accounts of the temple. The accused were unarmed at that point of time and there was no any preparation for assaulting either PW.1-Ranganaik or PW.2- Savitha. The incident took place in a spur of moment without their being any preparation. PW.2- Savitha who is the daughter of complainant PW.1- Ranganaik, as per the wound certificate Ex.P7 suffered lacerated wound over the head and the said injury is opined to be simple in nature. Looking to the said evidence on record, the sentence imposed for both the offences under Sections 323 and 324 of IPC is too harsh and disproportionate to the proven guilt.

17. Looking to the above referred evidence of PWs. 1 to 3, the facts leading to the incident in question and the facts and circumstances of the case, if accused Nos.1 and 2 are sentenced to undergo S.I. of one month and pay a fine of Rs.3,000/- each and in default of payment of fine, to undergo S.I. for one month for the offence under



Section 323 of IPC and further if accused Nos.1 and 2 are sentenced to undergo S.I. for a period of two months and pay a fine of Rs.3,000/- each and in default to undergo S.I. for one month for the offence under Section 324 of IPC is ordered, will meet the ends of justice and to modify the sentence imposed by the courts below, interference by this Court is required. Consequently, proceed to pass the following :

ORDER

Revision Petition filed by Revision petitioners/ accused Nos.1 and 2 is hereby partly allowed;

The judgment of conviction and imposition of sentences as ordered by the Trial Court on the file of II Additional Civil Judge and JMFC, Kadur in Criminal Case No.724/2012 dated 09.02.2015 which is confirmed by the First Appellate Court on the file of II Additional Sessions Judge, Chikkamagaluru in Crl.A.No.27/2015 dated 04.04.2016 is ordered to be modified as under:



Accused Nos.1 and 2 are sentenced to undergo S.I. of one month and pay a fine of Rs.3,000/- each and in default of payment of fine, to undergo S.I. for one month for the offence under Section 323 R/W section 34 of IPC;

Accused Nos.1 and 2 are also sentenced to undergo S.I. for a period of two months and pay a fine of Rs.3,000/- each and in default, to undergo S.I. for one month for the offence under Section 324 R/W section 34 of IPC.

Accused Nos.1 and 2 are acquitted for the offence under Section 504 r/w. Section 34 of IPC.

The benefit of Section 428 Cr.P.C. is given for the period of custody if any undergone by accused Nos.1 and 2 during the trial of the case.

On realization of fine amount as ordered above and in view of exercising the powers under Section 357(3) of Cr.P.C., the entire fine amount is ordered to be paid to the injured PW.2- Savitha as compensation.



NC: 2023:KHC:38684
CRL.RP No. 551 of 2016

Registry is directed to issue a copy of the order along with the records to Trial court.

SD/-
JUDGE

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List No.: 1 Sl No.: 11