



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 1ST DAY OF JUNE, 2023

BEFORE

THE HON'BLE MR JUSTICE K.NATARAJAN

CRIMINAL APPEAL NO. 242 OF 2012

BETWEEN:

...APPELLANT

(BY SRI. RAJENDRA S. ANKALKOTI, ADVOCATE)

AND:

1. THE STATE
RFP BY STATE PUBLIC PROSECUTOR
HIGH COURT BUILDING,
BANGALORE - 1

...RESPONDENT

(BY SMT. RASHMI JADHAV, HCGP)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374(2) OF CR.P.C. PRAYING TO SET ASIDE THE JUDGMENT OF CONVICTION AND SENTENCE DATED 7/8.2.2012 PASSED BY THE PRINCIPAL SESSIONS JUDGE, CHIKMAGALUR IN S.C.NO.69/2010-CONVICTING THE APPELLANT/ACCUSED FOR THE OFFENCES P/U/S 341, 504 & 307 OF IPC AND ETC.

THIS APPEAL, COMING ON FOR HEARING, THIS DAY, THE COURT DELIVERED THE FOLLOWING:





JUDGMENT

This appeal is filed by the appellant/accused under Section 374(2) of Cr.P.C. for setting aside the judgment of conviction and order of sentence passed by the Principal Sessions Judge, Chikmagalur, in S.C.No.69/2010 vide judgment dated 07.02.2012. The appellant was found guilty and convicted and sentenced to undergo imprisonment for 7 years for the offence punishable under Section 307 of IPC, 1 month for the offence punishable under Section 341 of IPC and 1 year for the offence punishable under Section 504 of IPC.

2. Heard the arguments of learned counsel for the appellant and learned High Court Government Pleader for the respondent-State.

3. The rank of the parties before the trial Court is retained for the sake of convenience.

4. The case of the prosecution is that on the complaint of PW.1-Omkarappa, whose statement was recorded by the Police in the hospital on 16.03.2010, it is alleged that as per Ex.P.1 that on 15.03.2010 in the evening at about 6.00 p.m., he was driving the tractor, the accused came in front of



complainant's motorcycle by staring at him and in the night, at about 10.00 p.m., when the complainant and others were dancing in front of the procession of Narasimhaswamy in the village fair, the accused with an intention to commit murder, came and picked up quarrel, abused him in filthy language and squeezed his testicles and caused inner injuries to the vital part. The eye witnesses one Ananda, Rama, Murthy and Kumara were pacified the quarrel and shifted PW.1-injured to the hospital, where MLC was sent to the police, in turn, the police recorded the statement and registered the FIR in Crime No.26/2010. The accused was arrested and sent to the judicial custody, later he was released on bail. The investigation was completed and charge-sheet has been filed against him. The accused pleaded not guilty when charges were framed for the above said offences, he claimed to be tried. Accordingly, the prosecution examined 10 witnesses as per PWs.1 to 10 and 9 documents as per Exs.P.1 to P.9 and after closing the evidence, the statement of the accused was recorded under Section 313 of Cr.P.C. The case of the accused is one of the total denial, but not chosen to adduce any evidence. After hearing the arguments, the trial Court found the accused guilty, convicted



and sentenced for imprisonment as stated above. Being aggrieved by the same, the appellant is before this Court.

5. The learned counsel for the appellant has contended that the judgment of conviction and order of sentence passed by the trial Court is not in accordance with law and the alleged eye witnesses were all not seen the incident. They came after the victim fell down and therefore, it cannot be said that they are the eye witnesses. There are some contradictions in the evidence of the eye witnesses. The doctors-PWs.5 and 6 have not stated anything about the injury caused to the complainant as it would endanger the life. All the witnesses are the interested witnesses. Therefore, the evidence of those witnesses cannot be ruled out. In the cross examination, the witnesses have stated there were thousands of people gathered in the village fair and procession, it is very difficult to identify the accused by the witnesses, they have not seen him and also not seen the quarrel, except shifting him to the hospital. Therefore, prayed for allowing the appeal.

6. Per contra, learned High Court Government Pleader supported the judgment of conviction and order of sentence



passed by the trial Court and contended that PW.1 is the injured eye witness and PW.3 is an eye witness and also spot panch witness. PWs.4 and 7 are the other eye witnesses to the incident apart from PW.8 who is also the eye witness who took the injured in his car to the hospital. The injured as well as the four eye witnesses were categorically stated that the offence is committed by the accused. The spot panch witnesses i.e., PWs.2 and 3 have also supported the prosecution case. The evidence of the doctor Exs.P.4 to 6 also reveals that the injury sustained by the victim at the instance of the accused. A surgery was undergone, therefore, it is clear case of an attempt to commit murder by the appellant with an intention to commit murder which is likely to cause death. Therefore, prayed for dismissing the appeal.

7. Having heard the arguments and on perusal of the records, the point that arises for my consideration are:

- "1) *Whether the prosecution proves the case against the accused beyond reasonable doubt, that on 15.03.2010 at 10.00 p.m., when the complainant was in the village procession, the accused came in front of him, staring at him, abused him in filthy language and squeezed*



the testicles with an intention to commit murder, thereby, committed the offence punishable under Sections 341, 504, 307 of IPC ?

2) *Whether the judgment of conviction and order of sentence passed by the trial Court calls for any interference by this Court ?"*

8. Before advertng the evidence of prosecution witnesses, it is worth to mention the evidence adduced by the prosecution by the trial Court.

(a) PW.1-Omkarappa who is an injured eye witness has stated in his evidence that about two months prior to the incident, there was a quarrel between the accused as well as one Shivanna where the complainant was the witness who gave evidence before the Additional District and Sessions Judge as against the accused. Therefore, the accused nourished the enmity towards him. On the date of incident, when he came in the tractor, the accused came in front of him by seeing with staring eyes towards the complainant. However, on the same day night, when the Narasimhaswamy festival was going on in the village, himself and CWs.4 to 6 were proceeded in front of procession, at that time, the accused obstructed, abused him in



filthy language and squeezed the testicles. Thereby, the complainant fell down and he was taken to the hospital. The police came to the hospital and obtained his statement as per Ex.P.1 and he has undergone the surgery where his left testicle was removed. In the cross examination, the learned counsel for the accused tried to impeach the evidence of PW.1, but, PW.1 has categorically stated that the accused came, picked up quarrel and squeezed the testicle, it was witnessed by the other eye witnesses and he has been taken to the hospital. He has stated that there were 20 to 25 persons in the procession, where the learned counsel for the accused has suggested that there were more than 1000 people and it was denied by him. However, the evidence of PW.1 in respect of previous enmity, assault and squeezing the testicals has not been defending by the learned counsel for the accused in the cross examination and he has categorically supported the prosecution case.

(b) PW.2-Parameshwarappa who is a pancha witness to the spot panch and he has stated that the police came to the spot and prepared the spot panchanama as per Ex.P.2 and he has signed the same. In the cross examination, he has stated that there is no requisition and he has stated that the police



has read over Ex.P.2 and he has signed the same. Though the suggestion were made that he came to the Police Station and signature was affixed in the Police Station which was denied by him but, from the evidence of this witness, the prosecution able to show the police visited the spot and prepared the panchanama.

(c) PW.3-Murthy who is the eye witness to the incident and also panch witness has stated that he went to the temple for beating the drums. PW.1 and others were dancing in front of the procession and there was a galata, PW.1 fell down, he has not seen the gaiata and thereafter, he has shifted the injured to the hospital. But he has admitted that Ex.P.2(b) is his signature. After treating this witness hostile, he has categorically accepted that there was a quarrel. Though, he has denied that the accused abused him in filthy language and squeezed his testicles, but, in the further examination, he has stated that PW.1 fell down, other witnesses took him to the hospital and the testicles were removed and once again, he has stated that he was standing at little distance and not seen the actual galata. Therefore, this witness is not giving exact picture of quarrel took place, but he has seen only after PW.1 falling



down. Therefore, he cannot be said to be the eye witness to the incident. However, he has affixed his signature on the Ex.P.2-Panchanama and PW.2 also supported the prosecution case in respect of Ex.P.2.

(d) PW.4-Manjappa is also an eye witness who supported the prosecution case. On the day of procession, himself, CWs.4 to 6 were dancing in front of the procession, at that time, the accused came, abused PW.1 and assaulted him two to three times, thereafter, squeezed the testicles. In the cross examination, nothing has been elicited to disbelieve the evidence of the witness, except suggesting, he has not seen the quarrel. This witness has also stated that they removed the under wear of PW.1 and saw that there is no bleeding injury but the testis of PW.1 was swollen. The evidence of this witness corroborates with the evidence of PW.1 that the accused came, assaulted and squeezed his testicles.

(e) PWs.4 and 5 are the Doctors who are the medical witnesses who examined PW.1 and issued the Histopathology report as per Ex.P.4 and medical certificate (wound certificate) as per Ex.P.5. Both the witnesses have categorically supported



the prosecution case, except the suggestion that the injury may also caused if a person fall on the hard object and the said object came in contact with the private part, then injury can be caused. But here in this case, there is no suggestion to PW.1 that he has fallen down on the hard object as the incident took place when the complainant and others were dancing in front of the procession. Therefore, the suggestion made by the learned counsel for the appellant is not useful for taking defence to show that there is no incident took place.

(f) PW.7-Kumara, another eye witness also supported the prosecution case and he has stated that the accused came and picked up quarrel and squeezed the testicles. This witness even in the cross examination not able to show by the learned counsel for the accused except suggesting there were so many people gathered in the village. But this witness has categorically stated that himself and others i.e., PWs.1 and 4, C.Ws.4 and 6 were dancing. Therefore, the evidence of this witness cannot be disbelieved in respect of the offence committed by the accused.



(g) PW.8-Manjappa is an agriculturist who is having a Maruti Car in whose car the injured-PW.1 was shifted to the hospital along with PWs.3, 7 and CWs.9 and 10 and got admitted to the hospital. There is nothing to disbelieve the evidence, but the injured sustained injury and taken to the hospital in his car.

(h) PW.9-Yogeesh, Police Sub-Inspector who received the MLC report, he went to the hospital, obtained the complaint from PW.1 as per Ex.P.1 came to the Police station and handed over the same to the Police Inspector. There is nothing to disbelieve the evidence of this witness who went to the hospital by receiving the MLC report as per Ex.P.6 and recorded the statement of the complainant as per Ex.P.1.

(j) PW.10 S.M.Rane, Police Sub-Inspector conducted the investigation after registering the FIR as per Ex.P.7. He prepared spot panchanma as per Ex.P.2, recorded the statement of the witnesses, secured the medical document and filed the charge sheet. Except denial, nothing has been suggested in order to disbelieve the evidence of the witness.



9. On perusal of the evidence of PWs.1 to 10 except PW.2, though he is the eye witness but PW.1 fell down and has not seen the actual galata as all other witnesses i.e., PW.1 injured, PWs.3, 4 and 7 who are the eye witnesses have categorically supported the prosecution case that on the day of incident, accused came and picked up quarrel with PW.1, abused him in filthy language and squeezed his testicles. The evidence of the injured and the eye witnesses were also supported by the medical witnesses i.e., PWs.5 and 6 and Exs.P.5 and 6 corroborates with their evidence. PW.8 who is uncle of PW.1, shifted him to the hospital in his car and also supported totally on strengthening the prosecution case.

10. PWs.9 and 10 are the police witnesses who recorded the statement and investigated the matter. All the witnesses were clearly deposed the accused for having attempted to commit the offence. By considering the evidence, I am of the view, the prosecution is successful in proving the fact that the accused picked up quarrel in respect of previous enmity between them, abused him in filthy language and squeezed his testicles. The trial Court considering the evidence



and witnesses has rightly held the findings where the guilt was proved by the prosecution in respect of defence.

11. The learned counsel for the appellant has contended that the age of the accused is now 50 years. The incident took place in the year 2010 i.e., 13 years back. The appellant has children, aged parents and there is no bleeding injury. There is no medical evidence to show that the injury was endangering to the human life. Therefore, prayed for reducing the sentence.

12. On perusal of the reasoning assigned by the trial Court as well as the injury caused to the testicals of PW.1, it is admittedly a vital part of the body and in a general view, if any injury caused to the testicles, if he has not treated, it leads to the death, therefore, it cannot be said that the appellant have no knowledge about causing injury to the private part which may leads to the death. However, by looking to the incident, as per the evidence of the witnesses, there was enmity between PW.1 and the accused as PW.1 gave evidence against the accused in some other proceedings before the Additional District Court, Chikmagaluru. Therefore, on that background, he has picked up quarrel. However, the quarrel was took place



during the Narasimhaswamy procession in their village, where it cannot be said that there is no light, whereas the witnesses have stated that there was light and lamps were carried by the persons during the procession. There was a quarrel between the accused and the complainant on the spot. During that quarrel, the accused chosen to squeeze the testicles. Therefore, it cannot be said that the accused came with an intention or with preparation to commit murder. If at all, he has prepared or attempt to commit murder, he could have brought some deadly weapons with him in order to commit murder. But here in this case, it is the village where the village people were gathered in the procession of the Narasimhaswamy, where this complainant was dancing along with other witnesses when the accused was present there and because of the enmity there was quarrel between them and during the quarrel, the accused chosen to squeeze the testicles. Therefore, at this stage, it cannot be said that the accused as a pre plan brought any deadly weapons with an intention to commit murder. Though he has chosen the testicles which is the vital part of the body which may cause death and the injured was taken to the hospital, also undergone surgery and



the testicles was removed which is a grievous hurt. Therefore, I am of the view, it cannot be said that the accused with an intention or preparation had attempted to commit murder of PW.1, whereas, during the quarrel took place on the spot, he has squeezed the testicles. The injury caused by the accused could be brought under Section 325 of IPC by causing grievous injury by squeezing the private part which is the vital part of the body. The Hon'ble Supreme Court in the case of **Sakharam vs. State of Madhya Pradesh** reported in **(2015) 10 SCC 557** and in the case of **Tularam vs. State of Madhya Pradesh** reported in 2013 **SCC OnLine MP 5910**, has taken similar view and brought the injury under Section 325 of IPC causing grievous hurt and reduced the sentence to 3 years from 7 years. In my view, this is the case which is clearly falls under the category of grievous hurt caused by the accused during the quarrel without using any deadly weapons. Therefore, I am of the view, the sentence passed by the trial Court finding guilty for the offence punishable under Section 307 of IPC is not correct and the offence committed by the accused is clearly falls under Section 325 of IPC.



13. Accordingly the appeal is ***allowed in-part.***

The judgment of the trial Court in respect of act of assault by the accused squeezing the testicles is confirmed. However, the finding of the Trial Court is liable to be modified from Section 307 of IPC to Section 325 of IPC.

The appellant is sentenced to undergo imprisonment for three years and pay fine of Rs.50,000/- and in default of payment of fine, he shall undergo six months simple imprisonment for the offence punishable under Section 325 of IPC.

The sentence passed by the Trial Court under Sections 341 and 504 of IPC is upheld. Out of the fine amount collected, Rs.50,000/- is ordered to be payable to PW.1 as compensation.

**Sd/-
JUDGE**

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List No.: 1 SI No.: 27