



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF OCTOBER, 2022

BEFORE

THE HON'BLE MR. JUSTICE S. RACHAIAH

CRIMINAL REVISION PETITION No.580/2013

BETWEEN:

1. NAGESH

2. RAMAKRISHNA

3. JAYARAMA

... PETITIONERS

(BY SRI HASHMATH PASHA, LEARNED SENIOR COUNSEL FOR
SRI. NASIR ALI, ADVOCATE)

AND:

STATE OF KARNATAKA
BY RAMANAGARA RURAL POLICE
RAMANAGARA DISTRICT – 581 453.
REPRESENTED BY LEARNED
STATE PUBLIC PROSECUTOR

... RESPONDENT

(BY SRI RAHUL RAI K., HCGP)

THIS CRIMINAL REVISION PETITION IS FILED UNDER SECTION 397 CR.P.C PRAYING TO SET ASIDE THE JUDGMENT ORDER OF CONVICTION AND SENTENCE DATED 22.07.2010 PASSED BY THE PRL. C.J. (SR. DN.) AND C.J.M., RAMANAGARA IN C.C.NO.1009/2008 AND CONFIRMED BY JUDGMENT DATED 28.06.2013 PASSED BY THE I ADDL. DIST. AND S.J., RAMANAGARA IN CRL.A.NO.28/2010 AND CONSEQUENTLY ACQUIT THEM FROM ALL CHARGES ALLEGED.

THIS CRIMINAL REVISION PETITION HAVING BEEN HEARD THROUGH PHYSICAL HEARING / VIDEO CONFERENCING HEARING AND RESERVED ON 30.09.2022 AT THE PRINCIPAL BENCH AT BENGALURU, COMING ON FOR PRONOUNCEMENT OF JUDGMENT, BEFORE DHARWAD BENCH, THROUGH VIDEO CONFERENCING, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

ORDER

This criminal revision petition is filed against the concurrent findings of the judgment of conviction and order of sentence passed by the Trial Court and confirmed by the Appellate Court.

2. The petitioners are the accused before the Trial Court and appellants before the Appellate Court. For the sake of convenience, the rank of the parties henceforth will be considered as per their rank before the Trial Court.

3. Briefly stated facts of the case are that the accused Nos.1 to 3 are the children of Thimmegowda. The said Thimmegowda is the son of Tirumale Gowda and Smt.Venkatamma. PW.1 is also the brother of Thimmegowda. Originally the survey number 267 contains 7 acres 31 guntas of Bilugumba Village, Kasaba Hobli, Ramanagara Taluk. There was civil litigation between Thimmegowda and others with respect to the suit schedule property. It is stated in the complaint that on 02.08.2008 at about 8.30 a.m when PW.1 and his children were ploughing the land bearing its survey number 267, the accused Nos.1 to 3 have assaulted PW.3, PW.6 and PW.5 with a sickle and caused grievous injuries to them.

4. A complaint is lodged against the accused and a case has been registered in Crime No.153/2008 for the offences punishable under Sections 447, 326, 324, 506 read with 34 of

IPC. The police have investigated the case and submitted the charge-sheet.

5. The Trial Court framed the charges against the accused, read over and explained the offences in the language known to the accused. The accused pleaded not guilty and claimed to be tried.

6. In order to prove the case, the prosecution has examined 11 witnesses, PW.1 to PW.11 and got marked documents as per Exs.P1 to P14. On the other hand, the defence has got marked documents as per Exs.D1 to D4.

7. The Trial Court after appreciating the oral and documentary evidence on record convicted the accused for the offences punishable under Sections 326, 324, 506 read with 34 of IPC. The accused being aggrieved by the judgment of conviction and order of sentence dated 22.07.2010 in CC No.1009/2008 on the file of the Principal Civil Judge, Sr.Dn and JMFC at Ramanagara preferred an appeal before the Sessions Court. The Sessions Court dismissed the appeal on 28.06.2013.

Being aggrieved by the same, the accused have preferred this criminal revision petition.

8. Heard Sri.Hasmath Pasha, learned Senior Counsel appearing for the petitioners and Sri.Rahul Rai, learned HCGP appearing on behalf of the respondent-State.

9. The learned Senior Counsel submits that the judgment of conviction and order of sentence and also the order of the Appellate Court is contrary to evidence on record and law and liable to be set aside.

10. The learned Senior Counsel further submits that the disputed land belongs to Thimmegowda who is none other than the father of accused Nos.1 to 3, they are the owners of the property by virtue of the judgment and decree passed in R.A No.51/2006. The PW.1, PW.3, PW.5 and PW.6 have illegally entered into the land and started cultivating it. The Accused in order to protect the property asked them to refrain from illegal cultivation, then the altercation followed. The accused are not the aggressors, therefore, their right to defence should have been protected by the Trial Court.

11. The learned Senior Counsel further submits that the accused had been to the land unarmed. The alleged material objects have been brought by the injured to cultivate the land. No independent witnesses have been examined regarding alleged overt-act of the accused. In fact, the accused have not assaulted the injured, it was only verbal exchanges between the accused and the injured. It is further submitted by the learned Senior Counsel that, the evidence of the witnesses has not been appreciated by the Trial Court properly. Therefore, injustice is caused to the accused.

12. It is further submitted that, the judgment of conviction passed by the Trial Court is erroneous and totally non-application of mind. Therefore, the learned Senior Counsel prays to allow the petition and acquit the accused for the offences under Section 324, 326, 506 read with Section 34 of IPC.

13. *Per contra*, the learned HCGP while justifying the concurrent findings of the Trial Court and the Appellate Court submits that, the Trial Court has appreciated the evidence

properly and convicted the accused based on the evidence of eye witnesses and also the evidence of the Doctor who examined them. It is further submitted that, the accused have entered into the land illegally and assaulted the injured.

14. It is further submitted by the learned HCGP that the accused have used the lethal weapons like sickle and caused grievous injuries to PW.3, PW.5 and PW.6. The evidence of the injured witnesses and the wound certificates issued by the Doctor clearly indicates the gravity of the offence committed by them. Hence there is no illegality, perversity in the concurrent findings of the Trial Court and Appellate Court. As such, he sought to dismiss the criminal revision petition.

15. After having given my anxious and thoughtful consideration to the rival submissions made by the counsel for both the parties and perused the documents, the points which arise for my consideration are,

- 1) *Whether the concurrent findings given by the Trial Court and Appellate Court is illegal, perverse and bad in law?*

2) *Whether the petitioners have made out a ground to interfere in such concurrent findings?*

16. It is the case of the prosecution that PW3, P.W5 and PW6 are the sons and grandson of P.W1. They were ploughing the land for cultivation. The said land bearing its Survey No.267 situated at Bylahumba village and it belongs to Venkatalakshamma. The accused No.1 to 3 have trespassed into the land and assaulted, P.W3, P.W.5 and P.W6, as result all the three persons have sustained injuries and obtained treatment for their injuries.

17. It is further case of the prosecution that, P.W.9 is the Doctor who treated all the three injured persons and issued wound certificates as per Ex.P4, Ex.P9 and Ex.P7. The said Doctor opined that, the injuries found in Ex.P4 and Ex.P7 are grievous in nature and the injury found in Ex.P9 is simple in nature.

18. The Trial Court after considering the evidence of injured and the Doctor, opined that, the accused are guilty of the offences punishable under Sections 324, 326, 506 r/w 34 of

IPC. On careful perusal of the concurrent findings of the conviction, it is very clear that, both the courts have failed to apply the mind in proper perspective. It is relevant to note that, P.W.1 who is the father of P.W3 and P.W6 and grandfather of P.W.5 has lodged complaint stating that, the accused No.1 to 3 are the aggressors and trespassers and they have assaulted all the three persons and caused simple and grievous injuries. The Trial Court acquitted the accused No.1 to 3 for the offences under section 447 r/w 34 of IPC holding that, they are not trespassers.

19. If the accused No.1 to 3 are not the trespassers, the cause for the quarrel may not arise. It is an admitted fact that, the land where the alleged incident had taken place is in dispute. It is further admitted that, the father of accused No. 1 to 3 had won the case in R.A No. 51/2006. By virtue of the said judgment and decree, the accused Nos.1 to 3 are the owners of the said land. However, the evidence of P.W1 discloses that, he and children were ploughing the land on the date of alleged incident.

20. **The Trial Court and the Appellate Court have failed to consider the right of private defence. It is settled principle of law that, even if the accused does not plead self defence, it is open to the Court to consider such a plea if the same arises from the material on record.**

21. It is relevant to refer the provision under Section 96 of IPC which provides that nothing is an offence which is done in exercise of right of private defence. The Section does not define the expression 'right of private defence'. It merely indicates that nothing is an offence which is done in exercise of such right. It is true that the burden is on the accused to establish the plea of self defence is not as onerous as the one which lies on the prosecution and that, while the prosecution is required to prove its case beyond reasonable doubt, the accused need not establish the plea to the guilt and may discharge his onus by establishing a mere preponderance of probabilities either by laying basis for that plea in the cross-examination of the prosecution witnesses or by adducing defence evidence.

22. It is also relevant to refer Section 97 which deals with subject matter of right of private defence. The plea of right comprises the body or property of the person exercising the right; or of any other person; and the right may be exercised in the case of offence against the body, and in the case of offence of theft, robbery, mischief or criminal trespass and attempts at such offences in relation to property. The said right of private defence lays down the limits. Sometimes even it can extend upto causing voluntary causing of death. However, the accused must show that there were circumstances giving raise to reasonable grounds for apprehending that either death or grievous hurt would be caused to him.

23. Admittedly, in the present case, the Trial Court acquitted the accused for the offences punishable under Section 447 r/w Section 34 of IPC. It is also admitted by P.W.1 that, by virtue of judgment and decree passed in R.A No.51/2006, the father of the accused persons, is the owner of the land where the alleged incident had taken place and it is also admitted that, P.W.3, P.W.5 and P.W.6 being children of P.W.1 were ploughing

the disputed land which belongs to accused persons. Therefore, this Court concluded that, the accused have proved that, in order to protect the land they exercised right of self defence.

24. It is relevant to note that, all the witnesses have not deposed that, the accused persons had gone to the disputed land with deadly weapons in their hand. They went to the spot unarmed and tried to protect the land. The Trial Court ought to have looked at some independent corroboration where the witnesses are related and interested. Due weightage has to be given to the facts and circumstances and hyper technical approach has to be avoided in considering what happens on the spur of moment on the spot and keeping in view the normal human reaction and the conduct, where self preservation is the paramount consideration.

25. Considering the background, facts as highlighted above when alleged incident is tested in the backdrop of legal principles noted supra, the inevitable conclusion that the accused persons have established that they were exercising right of self defence in order to protect the property. But as the assaults

were made in the course of sudden quarrel, the accused are entitled to have benefit of Section 97 of IPC. These points have not been considered by the Trial Court as well as the Appellate Court while appreciating the evidence on record. Therefore, the judgment of conviction and order of sentence and also the order of confirmation of judgment of conviction passed by the Appellate Court are erroneous and are liable to be set aside.

26. In view of the observation made above, the point which arose for my consideration are answered as:

- 1) Point No.1 in the affirmative holding that there is an error apparent in the judgment of conviction and also confirmation order passed by the Appellate Court.
- 2) Point No.2 is answered in affirmative holding that the petitioners have made out a ground that right of self defence has not been invoked by the Trial Court as well as the Appellate Court.

27. Hence, I proceed to pass the following:

ORDER

- a. The Criminal Revision Petition filed by the petitioners is allowed.
- b. The judgment of conviction and order of sentence dated 22.07.2010 passed by the Principal Civil Judge (Sr.Dn) and CJM, Ramanagar in C.C.No.1009/2008 and confirmed by order dated 28.06.2013 passed by the I Addl. District and Session Judge, Ramanagar in Cri.A.No.28/2010 is set aside.
- c. The accused Nos.1 to 3 are acquitted for the offences punishable under Sections 324, 326, 506 read with 34 of IPC.
- d. Bail bonds, if any, shall stand cancelled.

**Sd/-
JUDGE**

Vmb/Naa