



IN THE HIGH COURT OF KARNATAKA,

DHARWAD BENCH

DATED THIS THE 22ND DAY OF OCTOBER, 2024

PRESENT

THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MR. JUSTICE T. G. SHIVASHANKARE GOWDA

CRIMINAL APPEAL NO. 100529 OF 2021 (A)

BETWEEN:

STATE OF KARNATAKA
REPRESENTED BY THE
THE POLICE SUB-INSPECTOR
JAMAKHANDI POLICE STATION
DIST. BAGALKOT
THROUGH THE ADDL. STATE PUBLIC PROSECUTOR,
ADVOCATE GENERAL OFFICE,
HIGH COURT OF KARNATAKA
DHARWAD BENCH.

...APPELLANT

(BY SRI. M.B. GUNDAWADE, ADDL. SPP.)

AND:

1. VITHAL S/O. SHIVAGENEPPA HOLENNAVAR
AGE. 25 YEARS, OCC. BUSINESS,
R/O.KATATE PLOT, JAMAKHANDI,
JAMAKHANDI TALUK-587301, BAGALKOTE DISTRICT.
2. PANDU S/O. SHIVAGENEPPA HOLENNAVAR
AGE. 25 YEARS, OCC. BUSINESS,
R/O.KATATE PLOT, JAMAKHANDI, JAMAKHANDI TALUK-
587301, BAGALKOTE DISTRICT.
3. MALLAPPA
S/O. GULAPPA VALENNAVAR @ HOLENNAVAR



AGE. 38 YEARS, OCC. AGRICULTURE
R/O.BARA IMAM GALLI, JAMAKHANDI-587301
DIST. BAGALKOTE.

4. SHRISHAIL S/O. SHIVAPPA HUDI,
AGE. 37 YEARS, OCC. AGRICULTURE,
R/O.KADAKOL R.C.-587119, BAGALKOTE DISTRICT.
5. MALAPPA S/O. SHIVAGENEPPA HOLENNAVAR
AGE. 33 YEARS, OCC. AGRICULTURE,
R/O.KATATE PLOT, JAMAKHANDI TALUK,
JAMAKHANDI-587301, BAGALKOTE DISTRICT.
6. ASHOK S/O. IRAPPA GULI,
AGE. 33 YEARS, OCC. AGRICULTURE,
R/O.LAKKANAKERE, JAMAKHANDI,
JAMAKHANDI TALUK-587301,
BAGALKOTE DISTRICT.
7. RAMESH S/O. SHIVAGENEPPA HOLENNAVAR,
AGE. 31 YEARS, OCC. AGRICULTURE,
R/O.SHIVAJI NAGAR, JAMAKHANDI,
JAMAKHANDI TALUK-587301,
BAGALKOTE DISTRICT.
8. MALAPPA S/O. KAREPPA PUJARI,
AGE. 21 YEARS, OCC. COOLIE,
R/O. PENDARI GALLI, JAMAKHANDI,
JAMAKHANDI TALUK-587301,
BAGALKOTE DISTRICT.
9. SATISH S/O. SURESH KURANI,
AGE. 21 YEARS, OCC. DRIVER,
R/O. KONNUR, JAMAKHANDI
TALUK-587121, BAGALKOTE DISTRICT.
10. JAGADISH S/O. MARUTI HANAGANDI,
AGE. 20 YEARS, OCC. BUSINESS,
R/O.KATATE PLOT, JAMAKHANDI,
JAMAKHANDI TALUK-587301,
BAGALKOTE DISTRICT.
11. SAYYAD S/O. IMAMSAB NADAF,
AGE. 22 YEARS, OCC. DRIVER
R/O.MAREGUDDI,
NOW AT JAMAKHANDI, JAMAKHANDI TALUK-587301,



BAGALKOTE DISTRICT.

...RESPONDENTS

(BY SRI. J. BASAVARAJ, ADVOCATE FOR R1 TO R3, R6, R7, R9
AND R10;
APPEAL AGAINST R4 STANDS ABATED;
SRI. T.R. PATIL, ADVOCATE FOR R5, R8, R11)

THIS CRIMINAL APPEAL FILED U/S. 378(1) AND (3) OF CR.P.C. PRAYING TO, GRANT LEAVE TO APPEAL AND SET ASIDE AGAINST THE JUDGMENT AND ORDER OF ACQUITTAL DATED 06/11/2019 PASSED BY THE II ADDL. DISTRICT AND SESSIONS JUDGE, BAGALKOT IN SPECIAL CASE NO.34/2012 AND CONVICT AND SENTENCE THE RESPONDENTS / ACCUSED FOR THE OFFENCES PUNISHABLE UNDER SECTION 143, 147, 148, 323, 324, 336, 354, 307, 504, 506(2) OF IPC, 3(1)(x), 3(1)(xi) AND 3(2)(v) OF SC/ST (P.O.A) ACT R/W. SEC.149, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS APPEAL, COMING ON FOR FINAL HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR
AND
THE HON'BLE MR. JUSTICE T. G. SHIVASHANKARE GOWDA

ORAL JUDGMENT

(PER: THE HON'BLE MR. JUSTICE T. G. SHIVASHANKARE GOWDA)

In this appeal, the State has challenged the judgment of acquittal dated 06.11.2019 in Spl. Case No.34/2012 on the file of the II Addl. District and Sessions Judge, Bagalkote. The accused faced trial for the offences punishable under Sections 143, 147, 148, 323, 324, 336, 354, 307, 504 and 506(2) read with Section 149 of Indian



Penal Code, 1860 (for short, 'IPC') and under Section 3(1)(x) and 3(2)(v) of the Schedule Caste and Schedule Tribe (Prevention of Atrocities) Act, 1989 (for short, 'SC/ST (POA) Act.

2. Briefly stated the prosecution case is, on 08.03.2012, PW-12-PSI of Jamakhandi Rural Police Station visited Government Hospital, recorded Ex.P-1 statement of PW-1 Ramesh Shinge and registered the case in Crime No.28/2012 and submitted Ex.P-11 FIR to the jurisdictional Court. On careful perusal of Ex.P-1 which is the lead document to register the case, it is pertinent to note that on 08.03.2012, when PW-1 visited Kadkol RC village, about 10 to 15 people came in a motorcycle and TATA ACE abused him in filthy language. When he questioned, they assaulted on his left cheek, face, stomach and face. CW-11 Sanjeev Harinarayan on seeing it, came to rescue him along with PW-8 Satyavva, PW-6 Mahantesh. The accused abused them in filthy language in the name of their caste, threatened them, committed



criminal intimidation and by means of stones and stick, assaulted on their head, face, stomach and made attempt to commit their murder. The injured persons were treated at Dhanvantari Hospital and Government Hospital, Jamakhandi. Hence, the law was set into motion as per the statement of PW-1 as per Ex.P-1.

3. The investigation led to filing of the charge sheet against the accused. During trial, the prosecution examined 14 witnesses as PW-1 to PW-14, got marked 16 documents as per Exs.P-1 to P-14 and the material objections as per M.Os. 1 to 5. The accused did not lead any defence evidence though they denied the incriminating circumstances during their examination under Section 313 of Cr.P.C.

4. On perusal of evidence, the Trial Court recorded the acquittal for the reasons that, the material witnesses are not consistent and their evidence does not corroborate each other. The injuries stated by the injured are not corroborated with the medical evidence of doctors PW-10



and PW-11 so also the investigating Officers i.e., PW-12 to 14. Lot of contradictions and omissions are elicited and the evidence does not inspire confidence to rely upon. A lot of independent witnesses were present but they are not cited in the charge sheet. Panch witnesses are all interested. The injuries sustained by PWs-1 and 6 to 8 do not tally with the injuries stated by the respective witnesses. PWs-1 and 6 to 8 stated that they were admitted in the hospital for eight days but doctor-PW-11 stated that they were treated as out patients. CW-11 Sanjeev Harinarayana is an injured eyewitness but he has not examined. None of the witnesses examined was able to state the names of all the accused and also they have failed to identify them before the Court. The entire case of the prosecution is twisted and the statements of witnesses are different than from what has stated in the complaint and it is not safe to rely upon the prosecution witnesses.

5. We have heard the arguments of Sri M.B. Gundawade, learned Addl. SPP for the appellant-State, Sri



J. Basavaraj and Sri T.R. Patil, learned counsel for respondents/accused.

6. During the pendency of the appeal, respondent No.4/accused No.4 was reported to be dead and appeal stood abated as against him.

7. Learned Addl. SPP has contended that, the prosecution has examined the injured eyewitnesses in the form of PWs-1 and 6 to 8. Their evidence regarding the specific overt acts and the injuries is supported by PW-10 and PW-11, the treated doctors. PW-2, PW-3 and PW-4, the panch witnesses have spoken to about seizure of weapon of offence. PW-8 was treated as inpatient between 08.03.2012 to 18.03.2012 as indicated in the wound certificate at Ex.P-16. Trial Court has given undue importance to the minor discrepancies. Though no independent witnesses are examined, evidence of injured eyewitnesses takes corroboration from medical evidence. The medical opinion explain that seized material objects were used as weapons of offence to assault PWs-1 and 6



to 8. The Trial Court instead of accepting the said evidence and examining the case in this angle has given reasons that the evidence has not proved the ingredients of charged offences. The accused are liable to be convicted.

8. On the other hand, learned counsel for respondent/accused persons have contended that PW-1 and PW-6 to PW-8 are all interested witnesses. Prior to incident PW-8 had undergone surgery and she was in need of money towards further treatment. This has been elicited from the mouth of her own son PW-7. They knew about the compensation that is to be paid by the Government if a case of this nature is registered and in continuation of the same, PW-1 and PW-6 to PW-8 have been benefited by way of compensation. Whereas PW-7 received Rs.15,000/- and PW-8 received Rs.50,000/- as compensation from the Government. The alleged incident was on the day of Holi Festival, all were in a celebration mood, under the influence of alcohol. The statements of



witnesses failed to prove humiliation or insulting of complainant and other injured by taking the name of their caste. The medical opinion points out PW-1 and PW-6 to PW-8 were sustained simple injuries. The injury certificates at Exs.P-6, 7, 8, 9, 10 and 16 shows the history is stated as assault. Each of the witness referred to the particular accused person by names but have mentioned history as assault at the hospital. The statements of witnesses are omnibus aiming to grab compensation from the Government and now they have succeeded in getting the compensation. The Investigating Officers PW-12 to 14 have formally filed charge sheet without doing the investigation. What has not been stated before the Court has been recorded in the previous statements of witnesses. This clearly goes to show that the charge sheet was purposefully aiming towards compensation. The Trial Court has rightly evaluated each piece of evidence. When the incident took place, there are independent witnesses and none of them was cited in the charge sheet. Panch witnesses have not supported the



case of the prosecution. Lot of contradictions and omissions are elicited and PWs-1 and 6 to 8 are interested witnesses. The medical evidence do not stand in their support. Trial Court is right in recording that the entire case of the prosecution is twisted and it is not safe to rely upon the evidence and extended the benefit of doubt. The accused are enjoying the benefit of acquittal. In order to convict the accused, strong evidence is required but the prosecution evidence is weak, untrustworthy and thus he argued in support of the impugned judgment.

9. We have perused the entire evidence relied upon by the prosecution. Now the prosecution is required to demonstrate their evidence is qualitative in nature. Admittedly, no independent eyewitness was cited in the charge sheet in spite of their presence. The evidence demonstrates that PW-1 is elderly person of the community. It is he who set the law into motion. As we referred to the statement made in Ex.P-1, the evidence of PWs-1 and 6 to 8 demonstrated to be interested in nature.



When these injured persons were taken to the hospital, the history furnished was only assault. Names of assailants or the nature of weapon used is not disclosed to the medical officers. PW-7 suffered injury on his chest by means of stone used by accused No.7. Ex.P-6, medical certificate shows contusion and superficial abrasion over the right sternoclavicular region and not on his chest. PW-8 is the mother of PW-7. She stated that her son has suffered injury on left eye with bleeding but there is no such injury on his body. PW-8 admits that she had undergone operation six months prior to the incident and she claims that accused No.7 assaulted on her right cheek and accused No.6 kicked on her stomach but there is no injury found on her cheeks. The wound certificate as per Ex.P-7 refers contusion on the right abdomen with tenderness and it is an old injury of previous surgery.

10. The evidence of PWs6, 7 and 8 clearly points out that in the quarrel, the words uttered were filthy language, there was no reference of names of the



accused. It is interesting to note that the accused No.9 said to have used the name of the caste of PW-1 and PW-6 to PW-8, on the contrary, he himself is a person belonging to Scheduled Caste. How a person belonging to the same caste would abuse a person belonging to his own caste with an intention to humiliate or insult in a public place. The prosecution wants to rely upon the panch witness PWs-2 to 4 and they are all friends of PW-1. The cross-examination clearly brought out that they have not seen the seizure properly.

11. On careful perusal of the evidence relied upon by the prosecution except the official witnesses, all other witnesses are interested witnesses and their statements are omnibus and there is no clarity in their testimony.

12. We are not persuaded by the arguments of the learned Addl. SPP that the allegations made in Ex.P-1 have been put into the evidence through PW-1 and PW-6 to PW-8, corroborated by the panch witnesses and the medical evidence and the Investigating Officers. When the



witnesses themselves speak that the accused having taken the name of caste of PWs-1 and 6 to 8 and one of the accused belonging to the same caste, we feel strange in the case of the prosecution that a person belonging to his own caste insults a person belonging to the same caste by taking the name of his own caste. Hence, the evidence relied upon by the prosecution is not trustworthy.

13. We have carefully perused the judgment of the Trial Court. The Trial Court has observed that there are omissions, contradictions, and that medical evidence does not support injuries referred to by the injured persons. The panch witnesses are interested and no independent witness is cited in the charge sheet. The injured are unable to identify all the accused persons as the assailants. In the totality, the Trial Court has rightly accepted that defence is more probable and the prosecution has not proved the charges beyond reasonable doubt. In this view, we do not find any good ground to interfere with the well reasoned judgment of the Trial Court. Hence, we are of the opinion that the appeal is devoid of merits, in the result, the following:



ORDER

Appeal is dismissed.

**Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE**

**Sd/-
(T. G. SHIVASHANKARE GOWDA)
JUDGE**

NAA
List No.: 1 Sl No.: 44