

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 20TH DAY OF SEPTEMBER, 2024**

PRESENT

THE HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MS JUSTICE J.M.KHAZI

CRIMINAL APPEAL NO.1672/2021

C/W

CRIMINAL APPEAL NOS.860/2021, 1946/2019

IN CRL.A.NO.1672/2021:

BETWEEN:

THE STATE BY JAYAPURA POLICE STATION
REP BY STATE PUBLIC PROSECUTOR
HIGH COURT BUILDING
BENGLAURU - 560 001.

...APPELLANT

(BY SRI VIJAYAKUMAR MAJAGE, SPP-II ALONG WITH
SMT. R. SOWMYA, HCGP)

AND:

SRI NAGABHUSHAN
S/O SHANKARANARAYANA
AGED 55 YEARS
AGLT. R/O BHAGILAGADDEMANE
SHANTHIGRAMA
KOPPA TALUK - 577 126.

...RESPONDENT

(BY SRI PRASAD B.S., ADVOCATE)

THIS CRL.A IS FILED UNDER SECTION 377 OF CR.P.C PRAYING TO ALLOW THIS APPEAL AND MODIFY THE JUDGMENT AND ORDER DATED 11.09.2019 PASSED IN S.C.NO.24/2018 ON THE FILE OF THE PRINCIPAL DISTRICT AND SESSIONS JUDGE AT CHIKKAMAGALURU, IN SO FAR AS IMPOSING INADEQUATE SENTENCE AGAINST THE ACCUSED NO.2- RESPONDENT HEREIN FOR THE OFFENCES PUNISHABLE UNDER SECTION 324 OF IPC AND ENHANCE THE SENTENCE BY IMPOSING MAXIMUM SENTENCE.

IN CRL.A.NO.860/2021:

BETWEEN:

THE STATE BY
 JAYAPURA POLICE STATION
 REPRESENTED BY STATE PUBLIC PROSECUTOR
 HIGH COURT BUILDING
 BENGALURU - 560 001. ...APPELLANT

(BY SRI VIJYAKUMAR MAJAGE, SPP-II ALONG WITH
 SMT. R. SOWMYA, HCGP)

AND:

SMT. LALITHA
 W/O NAGABHUSHAN
 AGED 60 YEARS,
 HOUSEWIFE,
 R/O BHAGILAGADDEMANE,
 SHANTHIGRAMA
 KOPPA TALUK - 577 126. ...RESPONDENT

(BY SRI PRASAD B.S., ADVOCATE)

THIS CRL.A IS FILED UNDER SECTION 378(1)(3) OF CR.P.C.
 PRAYING TO GRANT LEAVE TO APPEAL AGAINST THE JUDGMENT AND
 ORDER OF ACQUITTAL DATED 11.09.2019 PASSED IN
 S.C.NO.24/2018 ON THE FILE OF THE PRINCIPAL DISTRICT AND
 SESSIONS JUDGE AT CHIKKAMAGALURU ACQUITTING THE
 ACCUSED-RESPONDENT OF THE OFFENCES PUNISHABLE UNDER
 SECTIONS 504, 506, 323, 324, 307, 302 OF IPC.

IN CRL.A.NO.1946/2019:

BETWEEN:

- 1 . SRI NATESH @ NATARAJA B.N.
 S/O NAGABHUSHAN
 AGED ABOUT 24 YEARS
 AGRICULTURIST
 R/O BHAGILAGADEMANE
 SHANTHIGRAMA
 KOPPA TALUK - 577 126.
- 2 . SRI NAGABHUSHAN
 S/O SHANKARANARAYANA
 AGED ABOUT 54 YEARS

AGRICULTURIST
 R/O BHAGILAGADDEMANE
 SHANTHIGRAMA
 KOPPA TALUK - 577 126.

...APPELLANTS

(BY SRI PRASAD B.S., ADVOCATE)

AND:

STATE OF KARNATAKA
 BY JAYAPURA POLICE
 REP BY SPP HIGH COURT BUILDING
 BENGALURU - 560 001.

...RESPONDENT

(BY SRI VIJAYAKUMAR MAJAGE, SPP-II ALONG WITH
 SMT. R. SOWMYA, HCGP)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374(2) OF CR.P.C. PRAYING TO SET ASIDE THE JUDGMENT DATED 11.09.2019 AND SENTENCE DATED 20.09.2019, PASSED BY THE PRINCIPAL DISTRICT AND SESSIONS JUDGE, CHIKKAMAGALURU IN S.C.NO.24/2018, CONVICTING THE APPELLANT/ACCUSED NO.1 AND 2 FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 324, 307, 302 OF IPC.

Date on which the appeals were reserved for judgment	24.06.2024
Date on which the judgment were pronounced	20.09.2024

THESE CRIMINAL APPEALS HAVING BEEN HEARD AND RESERVED, COMING ON FOR PRONOUNCEMENT THIS DAY, ***J.M.KHAZI J.***, PRONOUNCED THE FOLLOWING:

JUDGMENT

Since these three appeals arise out of the same judgment, they are clubbed together and disposed of by common order.

2. The State has filed Crl.A.No.860/2021 against accused No.3, challenging her acquittal for all the offences. It has also filed Crl.A.No.1672/2021 against accused No.2 Nagabhushan and sought for convicting him for the remaining offences and also enhancement of punishment for the offence punishable under Section 324 of IPC. Crl.A.No.1946/2019 is filed by accused Nos.1 and 2 challenging their conviction and sentence.

3. For the sake of convenience, parties are referred to by their ranks before the trial Court.

4. A charge sheet came to be filed against accused Nos.1 to 3, alleging that they and the complainant were neighbours; there was a dispute between them with regard to fence in between their lands. Earlier also, there used to take place petty quarrels between them. In the said background on 10.10.2017 at 10.00 a.m, complainant and his wife Kushal Shedthi were trimming their fence by entering the land of accused persons and putting back the cut branches into their land. At this stage accused Nos.1 to 3 came there hurling abuses as to why they had entered

their land and that they would kill them. Accused No.2 Nagabhushan assaulted complainant with a club on his body. When CW-3 Prabhakar tried to intervene, accused No.1 Natesh @ Nataraj pushed him aside and assaulted the complainant with a sickle on his head and caused simple injury. When deceased came to the rescue of the complainant, accused No.3 Lalitha assaulted her with hands. Accused No.1 assaulted Kushal Shedthi with the sickle on her head as a result of which she sustained grievous bleeding injury. Initially, both injured were taken to Jayapura Hospital and from there to Koppa Government Hospital and finally to Manipal Hospital. However, while undergoing treatment, Kushal Shedthi died on 11.10.2017 at 5.15 a.m and thereby the accused persons committed the offences punishable under Sections 504, 506, 323, 324, 307, 302, r/w Section 34 IPC.

5. The accused pleaded not guilty to the charges levelled against them and claimed trial.

6. In order to prove the allegations against the accused persons, prosecution relied upon the evidence of PWs-1 to 18, Exs.P1 to 38, Exs.D1 to 5 and MOs-1 to 11.

7. During the course of their statements under Section 313 Cr.P.C, the accused denied the incriminating evidence led by the prosecution.

8. Though the accused did not lead any defence evidence, they got marked Exs.D 1 to 5, through PW1.

9. Vide the impugned judgment and order the trial Court acquitted accused No.3 of all the charges. It convicted accused No.2 Nagabhushan for the offence punishable under Section 324 of IPC and acquitted him of the remaining offences. The trial Court convicted accused No.1 Natesh @ Nataraj for the offences punishable under Sections 307 and 302 of IPC. They were acquitted of remaining offences. The accused are sentenced as detailed in the impugned order.

10. In support of their appeal, accused Nos.1 and 2 have contended that their conviction and sentence is

contrary to law, evidence and probability of the case. The trial Court committed serious error in convicting them based on the evidence which is highly interested, contradictory, unbelievable, and artificial. The prosecution is guilty of suppression of genesis of the incident and has not come forward with true version of the incident. The trial Court has erred in holding that the prosecution proved the allegations against the accused Nos.1 and 2. There was delay in filing the complaint which might have enabled the police to fabricate and concoct the case against the accused persons. The trial Court committed serious error in holding that there was motive on the part of the accused to commit the murder of Kushal Shedthi. However the prosecution has failed to produce any cogent and reliable evidence to prove the motive. It has also erred in holding that accused No.2 is guilty of offence punishable under Section 302 of IPC, when the complainant got her discharged from the hospital against medical evidence. When the trimmed branches of the plants were not found inside the land of accused persons, the theory of

prosecution that complainant and deceased were trimming the fence and it was the genesis of the incident is false.

11. The State has challenged the acquittal of accused No.3 contending that the Trial Court has grossly erred in not appreciating the evidence of prosecution witnesses and the material placed on record in right perspective and it has resulted in miscarriage of justice. The evidence proves that accused No.3 actively participated in the commission of the offence, more particularly, she held the victim while accused Nos.1 and 2 assaulted her. Her presence is spoken to by PWs.1, 3 and 6. It is she who started the quarrel. Her presence established the common intention. When based on the same evidence, accused Nos.1 and 2 are convicted, there is no justification for the Trial Court to acquit accused No.3 and therefore case for interference by this Court is made out.

12. So far as appeal against accused No.2 for enhancement of punishment for the offence under Section 324 of IPC is concerned, it is contended by the State that

the Trial Court ought to have imposed maximum punishment under Section 324 of IPC. The Trial Court is not justified in taking liberal view while imposing the punishment on accused No.2. When the Trial Court convicted and sentenced accused No.1 for the offences punishable under Sections 302 and 307 of IPC and since accused No.2 has participated in the said incident, he is also equally liable for the said offences. There was no reason for the Trial Court to limit his participation for the offence punishable under Section 324 of IPC. All the accused have shared common intention to commit the offence and participated in the crime. The Trial Court ought not to have deviated by minimizing the active role of accused No.2 who is also an aggressor in the crime.

13. We have heard elaborate arguments of both sides and perused the record.

14. At the outset, it is relevant to note that according to the prosecution, there is a property dispute between the complainant and his family members on the one hand and the accused on the other hand and it was

the motive for the incident in question. During the course of giving oral evidence the complainant and his son Rakesh, who are examined as PWs-1 and 6 respectively have deposed on this aspect. Their evidence reveals that complainant is owning 25 guntas of areca garden and he is in unauthorised occupation of 3 Acres of land and he applied for regularisation of the said extent. Since the order of the Grant Committee and Assistant Commissioner went against him, he approached the Deputy Commissioner and got the matter remanded to the Grant Committee and it is pending. In fact, the cross-examination of PWs-1 and 6 also indicates this aspect. During their cross-examination, suggestions are made to PWs-1 and 6 that a road runs in the land in occupation of the complainant and he blocked the same by putting fence and therefore, dispute arose between him and others. The documents produced by the defence also prove the fact that complainant filed a suit against the accused for permanent injunction, but the said suit as well as the appeal filed by him came to be dismissed.

15. Thus, through the testimonies of PWs-1 and 6 and also in the light of their cross-examination the prosecution has proved that civil dispute between the parties regarding the property in occupation of complainant and the claim of accused persons and others that road runs in the said property in occupation of complainant to reach the Basadi is the motive for the accused persons to commit the offence in question. While accused claim that because of the said dispute, they have been falsely implicated, motive being a double edged weapon, the prosecution has proved that the civil dispute between the parties is the motive for the accused persons to attack the complainant and his wife i.e, deceased Kushal Shedthi. Therefore the defence cannot claim that the prosecution has not proved motive for the offence. Moreover, when there is direct evidence, motive pales into insignificance. Of course in the present case the prosecution has proved motive.

16. It is an undisputed fact that at the relevant point of time, the son and daughter of complainant and his

wife deceased i.e., Kushal Shedthi were working at Shivamogga and they were not present at the place of incident. According to the prosecution in the assault by the accused persons, complainant and his wife were injured. Unfortunately, the wife of complainant succumbed to the injuries. Therefore, the evidence of complainant is relevant and it connects the accused persons with the crime. Of course, he being an interested person, his evidence is required to be appreciated cautiously. Looked in this background, the complainant being an injured would guarantee his presence at the place of incident. Moreover, being an injured, he would not spare the real culprits and falsely implicate the accused persons.

17. However, accused have taken a specific defence that complainant and his wife Kushal Shedthi were manufacturing illegal arrack and used to consume the same and quarrel daily. They have alleged that on the date of incident also, both of them consumed arrack and attacked each other and were injured. In fact, the accused have also taken up a defence that because of this reason,

complainant did not want his wife to be given proper treatment, in which case she would have survived and spoken against him and with this intention, he got discharged his wife against medical advice. During the cross-examination, both PWs-1 and 6 have denied suggestions to this effect. Of course, except the suggestions, the defence has not proved that complainant was illegally manufacturing arrack and on the date of incident, he and his wife consumed the same and fought each other that resulted in the injuries. It has come in the evidence of PW-1 that he and his wife were using sickles to trim the fence. A suggestion is also made to PW-1 that MO-1 sickle was in his hand.

18. Even though the defence has made suggestions to PWs-1 and 6 who are the complainant and his son that under the influence of alcohol, complainant and his wife fought with each other and sustained injuries, no such suggestions are made to PW-2 Prabhakar who is cited as eye witness and PW-3 Harisha who reached the spot immediately after the incident and who are known to the

complainant and his family or to the other witnesses who are the acquaintances of complainant and his family members. We would like to discuss further on this aspect at the appropriate stage regarding the nature of the injury suffered by PW-1 and deceased Kushal Shedthi and also ascertain whether the complainant and deceased consumed arrack when they were brought to the hospital. The place where the incident has taken place, which is the land of accused persons also assumes importance, if at all the complainant and his wife had quarrel with each other and assaulted, whether they would do so entering the land of the accused persons.

19. The evidence of PW-1 reveals that complainant fenced his land and that was the reason for frequent quarrel between his family and the family of accused persons. On the date of incident, around 10.00 a.m he and deceased Kushal Shedthi were trimming their fence situated in between their land and the land of accused persons. It appears in order to access their fence from the side of the accused land, they had entered the land of

accused persons and were trimming the fence. During his cross-examination, PW-1 has specifically stated that after trimming the fence, they were throwing the cut branches inside their land. In fact, the cross-examination of PW-11 Jayaram Junior Engineer who has prepared the sketch at Ex.P21 reveals that the cut branches of fence were not available at the spot where the incident had taken place. In fact, in the photograph at Ex.P5 taken at the time of spot mahazar also reveals that the cut branches of the fence were not available at the spot except few leaves.

20. During the course of his evidence, complainant deposed that taking exception to their entering the land of the accused for trimming the fence, all the three accused persons came hurling abuses. Accused No.1 was holding a sickle and accused No.2 was holding a club. When PW-2 Prabhakar, who had come to purchase some saplings tried to save them, he was pushed aside by accused No.1. Accused No.2 assaulted PW-1 with club. Accused No.1 gave blow with the sickle on PW-1 head. When his wife came to his rescue, accused No.3 punched her with fist.

Accused No.1 gave a blow with the sickle on her head, as a result of which she fell down. Both of them suffered bleeding injuries and fell on the ground. At this stage, all the accused persons ran away leaving the sickle and club at the spot.

21. PW-2 Prabhakar is cited as an eye witness to the incident. In fact, during his examination-in-chief, he deposed that on the date of incident, he had gone to the house of complainant to get some saplings. He heard some commotion and went to the spot and found accused persons assaulting the complainant and his wife. Though he tried to save them, he was pushed aside and accused persons continued the assault. He also deposed that accused No.1 was carrying a sickle and accused No.2 was holding a club. When he tried to pacify, he was pushed aside by accused No.1. Accused No.1 assaulted the complainant and his wife with the sickle and they started bleeding profusely. All the accused persons ran away from the spot, leaving the sickle and club there itself. After the complainant telephoned PW-3 Prabhakar, he came in an

auto rickshaw. PWs-1 to 3 have clearly stated that PW-2 Prabhakar brought a rug from the house of complainant and they put injured Kushal Shedthi in the rug and shifted her into the auto rickshaw. While PW-3, Harisha shifted the injured to the hospital, PW-2 Prabhakar stayed back.

22. It is relevant to note that in the complaint, the complainant has not stated about the presence of PW-2 Prabhakara at the place of incident and seeing the accused person assaulting them. At the outset it is pertinent to note that the statement of complainant was recorded at Manipal Hospital on 10.10.2017 at 10.00 p.m. In addition to his wife suffering grievous injuries and there being no possibility of her survival due to assault, complainant also sustained injuries to his head and other parts of the body and was also under treatment. He was in a state of shock when his statement was recorded in the presence of the doctor. In such circumstances, he might not have thought it fit to give a detailed account. Having regard to the fact that the entire incident took place within a short span of time, he might not have recollected the presence of PW-2.

It appears for this reason, though it was PW-2 Prabhakar, who helped Harisha to shift injured Kushal Shedthi into the auto rickshaw, in the complaint the complainant stated that Harish had brought one person with him who helped to shift injured Kushal Shedthi into the auto rickshaw. Later on realising that Prabhakar was present when the incident took place, he has deposed to that effect. As held by the Hon'ble Supreme Court in catena of decisions, an FIR need not be an encyclopedia of the entire case of the prosecution.

23. The evidence of PW-3 Harisha also proves the fact that after the assault complainant telephoned him with a request to shift them to the hospital and he went to the spot, where he found both complainant and Kushal Shedthi being injured and with the help of Prabhakara, he shifted Kushal Shedthi into the auto rickshaw and took both injured to the hospital, while Prabhakara stayed back. His testimony also proves the presence of PW-2 Prabhakar at the spot.

24. The evidence of PW-6 Rakesh the son of complainant and deceased Kushal Shedthi proves that at the time of incident, he and his sister Poornima were working at Shivamogga. On 10.10.2017 at 10.30 a.m, he received a call from his father regarding the accused persons assaulting him and their mother and that they were being taken to the hospital. When he reached the spot, PW-2 Prabhakar was present and he showed the place of incident. At the spot, he found blood stains and also blood stained sickle and club. Through PW-2 Prabhakar he also came to know that Harish has taken injured to the hospital. By the time he went to Jaipur Hospital, the injured were taken to Koppa Government hospital and when he went there, he came to know that they had been taken to Manipal Hospital. At Manipal Hospital he found his mother unconscious, but his father was in a position to speak. He also deposed regarding the recording of the statement of his father by the concerned police based on which complaint came to be registered. The testimony of PW-6 Rakesh supports the prosecution case.

25. It is pertinent to note that though in the examination- in-chief PW-2 Prabhakar deposed in support of the prosecution case, during his cross examination he turned hostile and admitted the suggestions made by the defence that when the incident took place, he was not present at the spot and on the other hand, he attended the office of the Tahsildar. He also admitted the suggestion made by the defence that he never went to the house of complainant on 10.10.2017 and he gave evidence in the examination-in-chief at the instance of the concerned police. Again, when he was treated hostile and cross-examined by the prosecution, he admitted that when the incident took place, he was present and he went to the office of the Tahsildar in the afternoon. The manner in which this witness has given evidence clearly indicates that despite being witness to the incident, in order to help the accused persons, he has resiled from his statement. Therefore, rightly the trial Court directed to register a criminal miscellaneous case against him for giving false evidence before the Court as provided under Section 344

of Cr.P.C and issue notice to him. However, even where the evidence of PW-2 Prabhakar is not taken into consideration, with the testimony of complainant, the prosecution proved the allegations against the accused beyond reasonable doubt.

26. Now coming to the defence of the accused that complainant and deceased Kushal Shedthi had consumed arrack and fought with each other and sustained injuries. Of course, the defence has failed to prove that in the house of complainant, illegal arrack was manufactured. PW-6 Rakesh, the son of complainant has admitted that his father was in the habit of consuming alcohol now and then, but he has specifically denied that his mother Kushal Shedthi was also in the habit of consuming alcohol and that his parents used to fight under the influence of alcohol. Though the defence has made a suggestion that complainant and his wife Kushal Shedthi assaulted each other and sustained injuries, they have not made any specific suggestion as to the weapons with which they hurt each other. However, having regard to the prosecution

case that at the time of the incident both complainant and Kushal Shedthi were trimming the fence with sickles, it is also suggested by the defence that when the incident took place, they were having sickles in their hands.

27. Therefore, it could be held that according to the defence, both complainant and Kushal Shedthi assaulted each other with the sickles. However, the nature of the injuries suffered by them clearly indicates that they were assaulted with club as well as the sickle. If the complainant and Kushal Shedthi assaulted each other with the sickles, the defence does not have any explanation as to how they sustained injuries with club also. Moreover the medical records of both complainant and Kushal Shedthi, including the wound certificates, in patient record and PM report at Exs.P12, 13, 19 and 22 does not state that the injured were found to have consumed alcohol. Even in the PM report also this fact is not forthcoming.

28. PW-9 Dr Kumar has treated the complainant and Kushal Shedthi at Koppa Government Hospital. PW-10 Dr Girish is the Neuro Surgeon at Manipal Hospital, who

treated them through his team under his supervision and direction. PW-13 Dr Balakrishna has conducted the postmortem examination of deceased Kushal Shedthi. Not even a single suggestion is made to these doctors alleging that when the injured were brought to the hospital, they were found in an inebriated condition or the smell of alcohol was coming from the stomach contents of deceased Kushal Shedthi. In the light of the above discussion, we are of the considered opinion that the accused have taken a false defence that the complainant and his wife Kushal Shedthi were drunk and under the influence of alcohol, they fought with each other and caused and sustained injuries.

29. One more important noteworthy aspect is that PW-13 Dr Balakrishna also examined MOs-1 and 2 and gave opinion as per Ex.P24 that the injuries suffered by deceased Kushal Shedthi are possible if she had been assaulted with them. However, though during his examination-in-chief, he had supported the prosecution case and deposed to that effect, when MO-1 sickle was

shown to him, he stated that it was not the one shown to him when he gave the opinion and the one shown to him was little heavier than MO-1. On this aspect, he has been cross-examined by the prosecution, wherein he has admitted that when MOs-1 and 2 were sent to him as per the requisition letter at Ex.P23, they were packed and sealed with FSL seal. He also admitted that after opening the sealed objects, he examined them and packed, resealed them with the hospital seal and sent to the investigating officer. He also admitted that he could see the hospital seal on the cloth which was used to pack MOs-1 and 2. He also admitted that in his opinion, he clearly stated that the injury suffered by the deceased are possible if assaulted with MOs-1 and 2.

30. It appears that to help the accused persons, he resiled from his opinion given in Ex.P24. As rightly held by the trial Court, PW-9 Dr Kumar, who treated complainant and his wife Kushal Shedthi at Koppa Hospital also examined the weapon of offence at MOs-1 and 2. He gave opinion that the injury sustained by the complainant and

his wife were possible if they were assaulted with them. Thus, from the evidence placed on record, the prosecution has proved that the injury suffered by the complainant are possible, if assaulted with MOs-1 and 2. Similarly, the prosecution also proved that the injuries found on the person of deceased are possible if assaulted with MOs-1 and 2 and her death was due to the injury sustained by her.

31. According to the prosecution, the accused persons left the sickle and club at the spot and ran away. They were seized through spot-cum-seizure mahazar at Ex.P4. PW-5 Devaraju is the witness to Ex.P4. He deposed that complainant showed the place of incident to the police. They found blood stains, a sickle and knife at the spot and the same were seized through mahazar. He also identified MOs-1 and 2 as the sickle and club seized from the spot. Though he stated that he cannot give the survey number and extent of the land where the mahazar was drawn, he also stated that the blood stains were found in the land of accused No.2 Nagabhushan. The blood stain

was covering an area of 1 feet. He also stated that the sickle was blood stained.

32. PW-7 Mounesh is a witness to the mahazar Ex.P7 through which the blood stained clothes of accused Nos.1 and 2 were seized at the police station. He deposed that on 11.10.2017, he had been to Jaipura police station to lodge a complaint regarding a quarrel that took place between him and his uncle and at that time accused Nos.1 and 2 were at the police station. The clothes which they were wearing were seized through mahazar by providing them alternative clothes and he witnessed the same. He also identified the clothes belonging to accused Nos.1 and 2. During his cross-examination he deposed that on that day quarrel took place between him and his cousin regarding a dog and in the said incident, his mother was injured. After shifting her to the hospital, he came to police station to lodge the complaint. Though he has stated that he does not remember the contents of the mahazar, his evidence proves the same.

33. Ex.P33 is the certificate of examination of the material objects and Ex.P38 is the serology report. These two documents prove that MO-1 sickle, MO-2 club which were seized from the spot, MO-5 nighty, MO-6 petticoat and MO-11 underwear belonging to the deceased Kushal Shedthi, MO-7 shirt, MO-8 pant belonging to accused No.1, MO-9 shirt and MO-10 pant belonging to accused No.2 are stained with human blood. This also supports the prosecution case. The accused have no explanation regarding their clothes being stained with human blood as that of the clothes of the deceased and also the sickle and club proved to have been used by accused persons to assault complainant and deceased Kushal Shedthi.

34. Though by making a suggestion to the complainant that on the date of incident, accused were not at all present at Bagilugadde where the incident took place and on that day they were at Kogare Village, the accused have made a faint attempt to take the plea of *Alibi*, but they have failed to prove the same by leading convincing and reliable evidence. On the other hand, the testimonies

of PWs-1 to 3 clearly prove that accused Nos.1 to 3 were very much present at the place of incident and they were the one who assaulted complainant and deceased with MO-1 and 2.

35. One more important aspect noteworthy is that at the Manipal Hospital having regard to the nature of the injury sustained by the deceased Kushal Shedthi, her family members were informed that her chances of surviving were very bleak. Therefore, they did not choose to admit her to the ICU and it was noted in the discharge summary that she was discharged from the hospital against medical advice. The accused have contended that if further treatment was given to Kushal Shedthi, she would have survived, it would not have been a case under Section 302 of IPC. Suggestions are being made to this effect to PW-1 who is the complainant and PW-6 Rakesh, who is the son of the deceased. It is also suggested to the complainant that since he was the one who assaulted his wife and he did not want her to live and therefore he got her discharged from the hospital against medical advice.

As already discussed, the defence failed to prove that the deceased and the complainant were injured in a fight between themselves. On the other hand, the prosecution proved that they sustained injuries on account of assault by accused Nos.1 and 2.

36. On this aspect, the evidence of PW-10 Dr Girish Menon is relevant. He is the Neurosurgeon under whom his team of doctors treated the deceased at Manipal Hospital. He has clearly deposed that when the deceased was brought to the hospital, she was not conscious. Her C.T. Scan and X-ray was taken. On account of head injury, her skull was fractured and brain was lacerated. Her condition was very serious. Her brain was not functioning partly (ನಿಷ್ಕ್ರಿಯವಾಗಿತ್ತು). She was in coma. The possibility of she surviving was very bleak. He brought these facts to the notice of her family members and having regard to her condition and the fact that the chances of she surviving was very low, her relatives got her discharged from the hospital against medical advice. During his cross-examination, he denied that if further treatment was

given, there were chances of her surviving. In this regard, he has explained that theoretically it could be said that she would have survived had she been given further treatment, but practically it was not possible.

37. During his cross-examination, complainant has stated that since he could not bear the expenses of keeping Kushal Shedthi in ICU, he got her discharged from the hospital. Therefore, the defence has cross-examined PWs-1 and 6 that they are having substantial income from agriculture and were in a position to provide expensive treatment to the deceased. However, they have denied that they are having lakhs together income from agriculture. Except the suggestions, the defence has not placed any evidence on record to show that complainant and his children are having sufficient income. In the present case rather than the complainant and his family members affording further treatment to Kushal Shedthi, it was a case of serious and precarious condition which prompted them to get her discharge from the hospital. Therefore, the argument of the learned counsel for

accused that had she been given further treatment, Kushal Shedthi would have survived and in that event it would not have been a case of murder cannot be accepted.

38. The evidence placed on record by the prosecution establishes the fact that the assault made by and blow given by accused No.1 with the sickle resulted in the death of Kushal Shedthi. He also assaulted complainant with the intention of causing his death. Therefore, the allegations against accused No.1 are proved beyond reasonable doubt and therefore he is guilty of offences punishable under Sections 302 and 307 IPC. On analysis of the evidence on record, the trial Court has also rightly held that accused No.2 is guilty of the offence punishable under Section 324 of IPC. However, though it is alleged that all the three accused persons acted in a concerted manner sharing common intention, on a detailed analysis of the oral and documentary evidence placed on record, the trial Court correctly held that the prosecution failed to establish that accused Nos.2 and 3 shared common intention with accused no.1 to cause the death of

Kushal Shedthi and to assault the complainant with the intention of causing his death and thereby they are also guilty of the offences punishable under Sections 302 and 307 of IPC. Similarly, it has rightly held that accused Nos.1 and 3 shared common intention with accused No.2 to cause simple injury to the complainant by assaulting with the club.

39. Therefore, the acquittal of accused Nos.2 and 3 for the offences punishable under Sections 302 and 307 IPC and also acquittal of accused Nos.1 and 3 for the offence punishable under Section 324 of IPC is correct and does not call for interference by this Court. On re-appreciation of the oral and documentary evidence placed on record, this Court finds no error in the conclusions arrived at by the trial Court. In the result the appeal filed by accused Nos.1 and 2, challenging their conviction and the appeal filed by the State against accused No.2 for enhancement of punishment and also the one filed by the State, challenging the acquittal of accused No.3 fails and accordingly the following:

ORDER

- (i) Crl.A.No.1946/2019 filed by accused Nos.1 and 2, challenging their conviction and sentence for offences punishable under Sections 302, 307 and 324 of IPC is dismissed.
- (ii) Crl.A.No.860/2021 and Crl.A.No.1672/2021 filed by the State respectively against accused Nos.2 and 3 are also dismissed.
- (iii) The impugned judgment and order dated 11.09.2019 in SC.No.24/2018 on the file of Prl.District and Sessions Judge at Chikkamagaluru, is confirmed.
- (iv) The Registry is directed to send back the trial Court records along with copy of the Judgment forthwith.

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

**SD/-
(J.M.KHAZI)
JUDGE**