

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH 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.1681 OF 2021

BETWEEN:

SHIVAKUMAR S.C.
S/O. CHIKKAPEMMA REDDY,
AGED ABOUT 28 YEARS,
RESIDENT OF SEETHAHALLI VILLAGE,
BASHETTIHALLI HOBLI,
SHIDLAGHATTA TALUK,
CHIKKABALLAPURA DISTRICT,
PIN-562101.

...APPELLANT

(BY SRI Y.R. SADASIVA REDDY, SENIOR ADV. FOR
SRI RAHUL S.REDDY, ADV. FOR APPELLANT)

AND:

STATE OF KARNATAKA
BY DEPUTY SUPERINTENDENT OF POLICE,
CHINTHAMANI SUB-DIVISION,
(DIBBURAHALLI POLICE STATION)
CHIKKABALLAPUR REPRESENTED BY ITS
STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING,
DR B.R. AMBEDKAR VEEDHI,
BENGALURU-560001.

...RESPONDENT

(BY SRI VIJAYKUMAR MAJAGE, SPP-II FOR RESPONDENT;
SRI SOMANATH S.HIREMATH, ADV. FOR COMPLAINANT)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374(2) OF CR.P.C. PRAYING TO ALLOW THIS CRIMINAL APPEAL BY SETTING ASIDE THE JUDGMENT AND ORDER OF CONVICTION AND SENTENCE DATED 01.10.2021/07.10.2021 PASSED BY THE I ADDITIONAL DISTRICT AND SESSIONS JUDGE, CHIKKABALLAPUR IN SPECIAL S.C.NO.38/2019 THEREBY CONVICTING THE APPELLANT FOR THE OFFENCE PUNISHABLE UNDER SECTION 302 OF IPC AND

SENTENCING HIM TO SUFFER RIGOROUS IMPRISONMENT FOR LIFE AND TO PAY FINE OF RS. ONE LAKH IN DEFAULT CLAUSE, FURTHER CONVICTING THE APPELLANT FOR THE OFFENCE PUNISHABLE UNDER SECTION 3(2)(V) OF SCT/ST (PREVENTION OF ATROCITIES) ACT AND SENTENCING HIM TO UNDERGO RIGOROUS IMPRISONMENT FOR LIFE AND TO PAY A FINE OF RS. ONE LAKH WITH DEFAULT CLAUSE IN THE INTEREST OF JUSTICE AND EQUITY.

DATE ON WHICH THE APPEAL WAS RESERVED FOR JUDGMENT	10.07.2024
DATE ON WHICH THE JUDGMENT WAS PRONOUNCED	30.09.2024

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

CORAM: HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR
and
HON'BLE MS JUSTICE J.M.KHAZI

CAV JUDGMENT

(PER: HON'BLE MS JUSTICE J.M.KHAZI)

In this appeal filed under Section 374(2) of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') accused No.1 has challenged his conviction and sentence for the offences punishable under Section 302 IPC and Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 (for short, 'SC/ST Act').

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

3. Based on the complaint filed by PW-1 Akkayyamma and after conducting detailed investigation, Dibburahalli Police filed charge sheet against accused Nos.1 and 2 alleging that Akkayyamma and deceased Narayanamma belong to Adi-Karnataka caste, whereas accused Nos.1 and 2 belong to Vokkaliga community for about five months a dispute between these two families was going on with regard to a vacant space situated in between the houses of accused and complainant Akkayyamma. About five months prior to the date of incident, accused persons assaulted Narayanamma. On the intervention of CWs.5 to 7, the dispute was settled before the Dibburahalli Police and no complaint was lodged. However, accused No.2 used to abuse the deceased covertly.

3.1 On 09.02.2019 at around 7.00 a.m., accused Nos.1 and 2 trashed dirt in the place which was under dispute. They were working in the said area and throwing mud on the flower plants grown by deceased. When deceased questioned them, they abused her saying that the said space belonged to them. Hearing the commotion,

the complainant came out of the house and questioned accused No.2 as to why they were abusing the deceased. Accused No.2 picked up quarrel with the complainant. In this way, quarrel took place between accused Nos.1 and 2 and complainant and the deceased. Around 8.00 a.m., when deceased was fetching water from the tap, on the instigation of accused No.2 to finish the deceased, accused No.1 gave two severe blows on the head of the deceased with the spade with which he was working. As a result of the assault, deceased sustained grievous injuries and died on the spot after profuse bleeding and thereby accused Nos.1 and 2 committed the offences punishable under Sections 302, 114 and 504 read with Section 34 of IPC and Section 3(1)(r)(s) and 3(2)(va) of the SC/ST Act.

4. Accused pleaded not guilty and claimed trial.

5. In order to prove the allegations against accused, prosecution examined in all 18 witnesses as PWs.1 to 18, got marked Exs.P.1 to 36 and MOs.1 to 8.

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

7. Accused did not lead any defence evidence, but, during the course of cross-examination of PW.1, they got marked Exs.D.1 and 2.

8. Vide the impugned Judgment and order, the trial Court acquitted accused No.2 of all the charges. However, it convicted accused No.1 for the offences punishable under Section 302 of IPC and Section 3(2)(v) of SC/ST Act and sentenced him to undergo rigorous imprisonment for life for both offences and also sentenced accused No.1 to pay fine of Rs.1,00,000/- each for both offences with default sentence.

9. State has not challenged the acquittal of accused No.2.

10. However, accused No.1 has challenged his conviction and sentence, contending that the impugned Judgment and order passed by the Sessions Court is contrary to law, facts and evidence placed on record and reasons assigned by the trial Court and thereby he has slipped into error resulting in grave miscarriage of justice. The prosecution case is solely based on evidence of PW.1, who was aged 65 years, at the time of incident. She

stated that she did not know the contents of the complaint and she did not go to the police station and the complaint was filed at the instance of Dalitha Sangharsha Samiti (for short, 'DSS'). This clearly indicates that the incident as alleged has not taken place and accused No.1 is falsely implicated. Since the complainant is the mother-in-law of deceased and as such interested witness. No independent witnesses have been examined to support the testimony of PW.1. There are many contradictions in the evidence of PW.1.

10.1. The evidence on record also indicates that DSS extracted Rs.8,00,000/- to be given to the family of deceased by falsely foisting case against the accused. The complaint was filed against eight persons and ultimately charge sheet was filed against accused No.1 and 2. The Sessions Court convicted only accused No.1, which goes to show that a false case is filed against the accused. Complainant who is examined as PW.1 has not identified MOs.4, 5, 7 and 8, which clearly goes to show that she was not at all present at the spot. The Investigating Officer seized MO.4-shirt and MO.6-towel belonging to

accused No.1. None of the prosecution witnesses has given evidence to connect accused No.1 to MOs.4 and 6.

11. PW.10, who is the witness to the seizure of MO.1 spade, at the instance of accused No.1 has not supported the prosecution case and as such, it is not proved. The prosecution also failed to prove that the place where the incident took place belongs to the deceased family. The spade is also not examined for fingerprints to show that it was used by accused No.1. PWs. 3, 4, 6 and 10 have not fully supported the prosecution case. The prosecution has failed to establish that the offence in question was committed solely on the ground that deceased belongs to scheduled caste. The findings of the trial Court are contrary to the evidence on record and as such perverse and pray to set aside the impugned Judgment and order and acquit accused No.1.

12. On the other hand, learned State Public Prosecutor-II supported the impugned Judgment and order. He would submit that the family of accused and deceased are neighbors. There is a strip of land between the house of deceased and the house of accused persons,

on which both families stake claim. There used to be frequent quarrels between both families in regard to this land. The deceased had grown flowering plants in the said piece of land. On the date of incident, the accused started dumping debris on the flower plants. Deceased objected and requested them not to dump mud on the plants. However, on the instigation of accused No.2, accused No.1 gave a blow with a spade with which he was working, as a result of which deceased sustained grave injury on her head and died on the spot. Through, the oral and documentary evidence on record, the prosecution proved the allegations against accused. The findings of the trial Court are consistent with the evidence placed on record. Since the deceased belongs to scheduled caste community and the incident is subsequent to the Amendment of 2015, the offence under Section 3(2)(v) Of SC/ST Act is established and pray to dismiss the appeal.

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

14. It is the definite case of the prosecution that the dispute between the families of complainant and

accused is a strip of land situated in between the houses of the complainant and the accused. Both of them were staking claim over the same and there used to be frequent quarrel between them for this reason. Therefore, before appreciating the evidence regarding the actual incident, it is necessary to examine whether the prosecution has proved the motive for the offence. PW.1 Akkayamma is the complainant. She is the mother-in-law of the deceased. PW.2-Venkataramanappa is the husband of deceased. Both of them have spoken about the reason for accused persons to attack the deceased. PW.1-Akkayamma deposed that in the vacant space between their houses, deceased had grown flowering plants. Accused had removed a wall of their house and were collecting the debris in the vacant space and in the process, the mud was falling on the flowering plants. Therefore, deceased requested them not to damage the flowering plants. She even said that if the vacant land belongs to them, they can take it and if it is decided that the land belongs to the complainant family, they would take it, but they should not damage the plants.

15. PW.2- Venkataramanappa, the husband of deceased also deposed that on the date of incident, the accused persons were putting the debris on the flower plants and it was objected by the deceased. She sent him to get the elders to decide to whom the land belongs and accordingly he went to Dibburahalli. By the time he returned, the accused persons had killed his wife. PW.2 specifically stated that when he had gone to Dibburahalli his mother informed him over phone about the accused persons killing his wife.

16. PW.4-Chikkanarasimhappa is examined to prove the fact that there was dispute between the family of complainant and accused persons with regard to land situated in between their houses. Though in the examination-in-chief, this witness has not deposed about the said fact, during his cross-examination by the prosecution, he admitted that his wife is a member of the panchayat and since he is the President of the Bhovi Sangha, people in the surrounding area approach him to conciliate and resolve their disputes and he along with other elders of the panchayat mediate and settle their

disputes. He also admitted that on 08.02.2019, i.e., the previous day of the incident deceased visited his house and informed him that the family of accused persons are throwing debris in the four feet space which the Panchayat had given to them and if questioned, they quarrel with the family of complainant and he should come on the next day and settle the matter. He directed them to get the stones ready so that they would fix the boundaries by pitching the stones. However, on the next morning at 8.00 a.m. when he was in the house, PW.2-Venkataramanappa came and informed him that the accused persons are quarrelling with them and he should come early. After taking bath around 8:30 a.m., when he went to the spot deceased was fallen in a pool of blood and she was not breathing.

17. PW.6-Ashwathreddy also deposed that his wife is also a Member of the Panchayat. Whenever there is dispute between the villagers, he and others would conciliate and resolve the same. Once they conciliated the dispute between accused persons and deceased family regarding the drainage and had promised to fix the boundary stones. On the date of incident, he was informed

through telephone that deceased sustained head injury and fell down. During his cross examination by the prosecution, he admitted that in the panchayat they directed accused persons to leave 4ft. space to the complainant family and they had agreed. During his cross examination by the defence he deposed that while the complainant constructed house in the free sites allotted by the panchayat, accused have constructed their house in their land. He also admitted that there is no document in the panchayat regarding the vacant space in dispute. He denied that no panchayat was held.

18. In fact, PW.5-Narayanaswamy is also examined to prove the dispute between the family of accused and complainant with regard to the vacant space between their houses. However, he has not supported the prosecution case and denied that he used to hold meetings to conciliate and mediate the dispute between the residents of the village; that once he a conciliated between the accused person and deceased about the drain and had promised to fix the boundary; that on the date of incident

at 8.30 a.m. he received a call that Narayanamma sustained injury and by the time, he went to the spot, she was already dead. During his cross-examination by the prosecution, he denied that about five months prior to the date of incident after the Panchayat, they inspected the spot and accused family agreed to leave 4 feet space out of the land in dispute.

19. PW.7-Narayanappa is the brother of deceased. He deposed that on the date of incident around 6.30 to 7.00 a.m. he was informed telephonically about the quarrel that is going on. By 8.00 to 8.15 a.m., when he went to the spot, he found his sister dead with severe injuries. He was informed that the accused persons assaulted her regarding the dispute of vacant land between their houses.

20. The testimonies of PWs.1, 2, 4, 6 and 7 prove the fact that there was dispute between the family of accused and deceased regarding the vacant land situated in between their houses and there used to be frequent quarrels. In fact, the members of the Panchayat, rather the husbands of lady members of the Panchayat had

mediated and conciliated between them and there was also a proposal by them to fix the boundary stones for the 4 feet space which the accused persons had agreed to allow the family of deceased to enjoy. However, before the same could realize the incident in question took place wherein the deceased lost her life.

21. In fact, the cross-examination of the prosecution witnesses by the defence indicates that earlier the accused persons were having an agriculture pond (ಕೃಷಿ ಹೊಂಡ). Bharat, the son of deceased died in the said pond and it was also one of the reasons for the bad blood between the two families. Thus, the prosecution proved the motive for accused persons to quarrel with the deceased and assault her.

22. PW.1-Akkayamma is an eyewitness to the incident. Speaking with regard to the same, she deposed that her daughter-in-law i.e., deceased-Narayanamma had grown flowering plants in the vacant space by the side of their house. On the date of incident, the accused persons who had removed a wall of their house started collecting

the debris in the said space as a result of which the flowering plants were damaged. Deceased requested them not to do so and a quarrel ensued. Though initially the accused persons moved a little away from the said space, at the instigation of accused No.2 to assault the deceased, accused No.1 gave a blow on the head of deceased with the spade as a result of which she fell down and died instantaneously. On seeing the same, accused ran away from the spot.

23. PW.3-Jayaramappa is the neighbor of complainant and the accused persons. He is cited as an eyewitness to the incident however, he has not supported the prosecution case so far as the actual incident is concerned. During his cross-examination by the prosecution, he denied that when the incident took place he was present in his house and on hearing the commotion he came out of the house and saw Narayanamma fallen on the ground with grievous injuries and accused Nos.1 and 2 ran away from the spot and

accused No.1 was holding the spade and on enquiry he came to know about the assault made on the deceased.

24. The evidence of PW.2-Venkataramanappa, the husband of the deceased reveals that on the date of incident when accused persons started quarreling with them, at the request of deceased he went to the Dibburahalli to call the elders to intervene and when he was at the Dibburahalli, his mother informed that accused persons have killed the deceased. Around 8.00 a.m. he returned and he found deceased with bleeding injuries and she was taken to Hospital in ambulance, but the doctors declared her as brought dead.

25. The evidence of PW.2 that he went to Dibburahalli to call elders to mediate is supported by the evidence of PW.4, who deposed that PW.2 came and informed about the quarrel by the accused persons and at the same time he received phone call from his mother and by 8.30 am when he reached the spot, Narayanamma was already dead.

26. Having regard to the fact that PW.3 who is cited as eyewitness has not supported the prosecution case, only the testimony of PW.1-Akkayamma is available as to the actual assault on the deceased. It is argued by the learned counsel for the accused that since PW.1 is interested witness, her evidence needs corroboration. However, as held by the Hon'ble Supreme Court in *Dariya Singh and Others vs. State of Punjab*¹ (**Dariya Singh**), though an evidence of an eyewitness who is a near relative of the victim should be scrutinized carefully, but no corroboration is required. Having regard to the fact that the incident has taken place in front of the house of PW.1 and deceased, she is a natural witness to the incident.

27. As held by the Hon'ble Supreme Court in *Dalbeer Kaur Vs. State of Punjab*² (**Dalbeer Kaur**), a close relative who is a very natural witness cannot be regarded as interested witness. The term interested postulates that the person concerned must have some direct interest in seeing that the accused person is somehow or the other

¹ (1964) 3 SCR 397

² (1976) 4 SCC 158

convicted either because he had some animus with accused or for some other reason. Of course, in the present case PW.1 is both a close relative of the deceased and there is animosity between the accused persons and her family. However, the question would be whether the incident in question has taken place and accused No.1 is the person who assaulted the deceased. Of course, the evidence of PW.1 is required to be scrutinized carefully.

28. The accused have taken a defence that PW.2-Venkataramanappa is having two wives i.e., deceased-Narayanamma is his first wife and the second wife is one Anjanamma. Though PW.2 has admitted that his wives were not in cordial terms, both PWs.1 and 2 have denied that there used to be frequent quarrel between them. PW.1 denied that deceased died in a quarrel with PW.2 and his second wife and in order to save them a false complaint is filed against the accused. However, no suggestion is made to PW.2 that he and his second wife quarreled with the deceased and during the course of it she sustained injuries and died. It is only suggested that

she died in a family dispute and to escape from the liability, a false complaint is filed against the accused. Of course, he denied the same.

29. No similar suggestions are made to PW.3-Jayaramappa who is a neighbor. PW.4-Chiakkanarasimhappa and PW.5-Narayanaswamy, who reached the spot immediately after the incident. The evidence of PW.4 clearly reveals that after the quarrel started, around 8.00 a.m. PW.2-Venkataramanappa came to his house and informed about the quarrel that is going on and requested him to come and settle the dispute. Infact he directed PW.2 to get the stone pillars ready and he would come and fix the boundaries. By the time they reached the spot, they found deceased fallen on the ground with severe bleeding injuries. This testimony of PW.4 rulesout the possibility of PW.2 being assailant along with his second wife.

30. Infact PW.2-Venkataramanappa is also not an eyewitness to the actual assault, though he was present when the quarrel commenced. By the time he returned,

already the deceased had fallen on the ground with severe injuries. Therefore, the defence of the accused that PW.2 along with his second wife assaulted the deceased is without any substance. Infact during her cross-examination at page-6 paragraph No.8, PW.1 has specifically stated that when the actual incident took place PW.2 not yet returned home.

31. Moreover, PW.7-Narayanappa is the real brother of the deceased. After knowing that a quarrel is taking between the accused persons and complainant family, he reached the spot around 8.00 a.m. to 8.15 a.m. and found deceased fallen on the ground with injuries and came to know that she has been assaulted by accused No.1 with spade. If at all the assault was by PW.2 or his second wife or both of them, he could not have spared the real culprit by concealing the true fact. Therefore, the defence of accused that deceased was killed by PW.2 and his second wife is without any substance.

32. Sofar as PW.1 the complainant is concerned, she being the mother-in-law of the deceased and staying

with her in the same house, her presence at the place of incident is natural. Her evidence reveals that at the time of incident he was present along with deceased and PW.2. The evidence of PW.2 reveals that when the quarrel started, on the direction of deceased he went to Dibburahalli to bring the elders to mediate, however by the time he came back his wife had sustained injuries and died. Infact while he was still at Dibburahalli, his mother i.e., complainant informed him about the deceased having sustained injuries in the incident. The testimony of PW.1 is cogent, consistent and reliable.

33. During her cross-examination, she admitted that they have filed complaints against accused whenever they quarreled with her and family members concerning the open space between their houses. She also admitted that when her son-Bharat died in the agriculture pond (ಕೃಷಿ ಹೊಂಡ) belonging to the accused persons, then also a complaint was filed against the accused persons, but the concerned Police did not take any action on the ground that there was no fault on the part of the accused persons. While the accused persons claim that Bharat tried to swim

in the pond in question unauthorisedly and died, complainant claim that he died due to electrocution. Anyhow despite the fact that number of complaints were given against the accused persons, it was on account of they frequently quarreling with the family of complainant with regard to the vacant land between both houses and also in respect of the un-natural death of her son-Bharat. This cannot be termed as false implication. The testimony of PW.1 with regard to the actual incident is not at all challenged. Infact her entire cross-examination is concentrated with regard to the previous incidences, the strained relationship between the parties.

34. One more important aspect is that during her evidence the complainant i.e., PW.1 admitted that one of member of DSS wrote the complaint, but she does not know his name. She also stated that she did not read the complaint and while giving statement to the Police she did not ascertain the contents of the complaint. Since the complainant is an ill-literate, the member of DSS might have helped her write the complaint. When she is an

illiterate question of she reading the contents of complaint would not arise. Having regard to the facts enumerated in the complaint, unless the complainant gave the said information, the scribe would not have known the details. Moreover, having regard to the illiteracy, backwardness and also the fact that the members of SC and ST community could not fight against the might of people belonging to the forward communities, the members of the DSS would come forward to help the cause of such persons. It cannot be termed as false implication of the accused.

35. As far as the say of PW.1 that she do not know the contents of the complaint, after deposing in detail about the incident which corroborate the contents of the complaint and also the fact of having given the complaint, mere statement that she do not know the contents would not take away her evidence. When a witness is questioned whether he/she know the contents of complaint, mahazar or statement etc., thinking that they are required to repeat the contents, sometime the witness may give an

answer that he/she do not know the contents. When the witness has already spoken to about the contents and his/her evidence corroborate with the same it goes without saying that he/she know the contents. Therefore, mere fact that the complainant has stated that she does not know the contents of the complaint would not enure to the benefit of accused.

36. It is pertinent to note that during the course of her evidence PW.1 has not identified the clothes which were recovered from the person of the deceased. A sky blue shirt, pink and gray colour saree, a white-black stripes towel, a pink blouse and blue underskirt are marked through PW.11 Dr.Anusha, who conducted the postmortem examination and deposed that after the postmortem examination she handed over the same to the Police. This evidence of PW.11 regarding the clothes found on the person of the deceased at the time of postmortem examination is not disputed by the defence. In fact on the dead body, the sky blue colour shirt, pink and gray colour saree, a white-black stripes towel and pink blouse are

visible in the photographs of the dead body at Exs.P.3 to 5. For reasons best known to her, PW.1 has not identified MOs.4 to 8 before the Court. Having regard to the fact that they were extensively soiled with blood and after a gap of more than 10 months, PW.1 who was aged 65 years might not have been in a position to identify them. When the accused have not disputed that MOs.4 to 8 are the clothes found on the dead body at the time of postmortem, they cannot take any advantage of PW.1 not identifying them before the Court.

37. At paragraph No.18 of the appeal memo, one of the grounds of the appeal raised by the accused is that the prosecution has seized MO.4-bloodstained shirt, MO.6-towel, but it has failed to prove that the same belongs to accused No.1. None of the prosecution witnesses have spoken as to whom they belong. At the outset, it is relevant to note that prosecution has not at all claimed that MOs.4 and 6 belong to the accused. As already discussed, it is the definite case of the prosecution that, they belong to the deceased and are collected from the

person of the deceased along with other clothes by PW.11 Dr.Anusha, who conducted the postmortem examination and handed over to the Investigation Officer. Infact PW.1 has deposed to this effect. As already discussed, in the photographs at Exs.P3 to 5, the MO.4 shirt and MO.6 towel are visible. As rightly discussed by the trial court, while carrying on the manual work, including the construction and other works involving exposure to sun and dirt, usually women are found wearing a shirt on their normal attire. The deceased might have had a towel on her person when she was assaulted. It is nobody's case that MO.4 and 6 were recovered from accused No.1.

38. One of the circumstances relied upon by the accused is that there is some variation in the statement of complainant as per Exs.D1 and 2 and the evidence given by her before the Court. The testimonies of PWs.1 and 2 reveals that from morning itself quarrel started between the accused persons on one hand and complainant and deceased on the other regarding they throwing debris on the flower plants grown by the deceased. Infact PW.1 sent

PW.2 to fetch PW.4-Chikkanarasimhappa. On the previous day at 6.00 p.m. also deceased-Narayanamma and PW.2 visited his house and informed about the dispute going on and requested him to come and settle the matter. By 8.00 a.m. the quarrel between them culminated in accused No.1 assaulting deceased with the spade on her head and when she fell down and died due to the injuries, the accused persons ran away from the spot. Therefore, in the complaint all the details which have come on record during the evidence are not forthcoming.

39. A complaint cannot be an encyclopedia of the prosecution case. The contents of Exs.D.1 and 2 corroborate the complaint averments. The same cannot be termed as contradictions going to the root of the prosecution case. Therefore, the minor contradictions and variations in the testimony of PW.1 would not make her evidence unreliable. Infact the trial Court has met all the questions raised by the accused while analyzing the evidence on record. Absolutely there are no justifiable

reasons to disbelieve the evidence of PW.1 with regard to the complicity of accused No.1 in the crime in question.

40. After the arrest of accused No.1, on his voluntary statement the spade used by him to assault the deceased is seized through mahazar Ex.P.15. PW.10-Shrinath is witness to the said mahazar. He deposed that in his presence the concerned Police recorded the statement of accused No.1, but did not collect anything from him. He identified the photographs at Exs.P.16 and 17 captured at the time of said mahazar. With regard to the accused pointing out and producing the spade and its recovery, he is treated as hostile. However, during his cross-examination by the prosecution he admitted that on 10.02.2019 in between 10 to 11 a.m. accused No.1 produced the spade at MO.1 which was fallen in the potato field belonging to the accused and it is seized through mahazar.

41. During his cross-examination by the defence, he specifically stated that before the police came to the spot he did not see MO.1. He expressed ignorance to the

suggestion that the police came to the spot along with MO.1. He denied that he signed the mahazar at the Police Station and that the photographs at Exs.P.14 and 15 are not captured when the said Mahazar was drawn. He stated that he was not summoned by anyone but, was already present at the spot. The careful analysis of evidence of PW.10 establish the fact of seizure of MO.1 at the instance of accused No.1. PW.17-B.S.Srinivasa, the Investigating Officer deposed with regard to seizure of MO.1 at the instance of accused No.1. In *Mallikarjun Vs State of Karnataka*³, (***Mallikarjuna***), (relying upon the decisions in *Rameshbai Mohsnbhai Koli vs State of Gujarat* and *Others* reported in (2011) 11 SCC 111; *Modan vs State of Rajasthan* (1978) 4 SCC 438; *Mohd. Aslam vs State of Maharashtra* (2001) 9 SCC 362 and *Anter Singh vs State of Rajasthan* (2004) 10 SCC 657) the Hon'ble Supreme Court held that if fairly well settled that the evidence of the Investigation Officer can be relied upon to prove the recovery even when the panch witnesses turned hostile. As already discussed, though initially PW.10 did

³ (2019) 8 SCC 359

not fully support the prosecution regarding seizure of MO.1 at the instance of accused No.1, during cross-examination by the prosecution, he admitted the said fact. Through the testimonies of PWs.10 and 17, the prosecution proved that the spade at MO.1 is seized at the instance of accused No.1.

42. Of course the evidence of PW.11 proves that the death of deceased was due to the head injury suffered by her. She also examined MO.1 spade and gave opinion at Ex.P.19 that the injuries suffered by the deceased are possible if assaulted with it. PW.18 Dr.Linge Gowda is the Senior Scientific Officer, F.S.L. Bengaluru, who examined the clothes of the deceased and the spade and found them stained with blood of human origin belonging to 'A' group. He denied that the bloodstains found on MOs.1 to 8 belong to animal. Thus, not only the clothes belonging to the deceased, but also on MO.1 the spade blood was found which corroborates with the case of the prosecution.

43. In **Balwan Singh Vs. The State of Chattisgarh and another** (Crl.A.727/2015) dated

6.08.2019, the Hon'ble Supreme Court held that if the recovery of blood stained clothes is proved beyond reasonable doubt by the prosecution and if the investigation is not found tainted, then it may be sufficient for the prosecution to show that the blood found on the article is of human origin, even though the blood group is not proved because of disintegration of blood.

44. The trial Court on detail analysis of oral and documentary evidence placed on record has come to a correct conclusion that the deceased died due to the assault by accused No.1 with MO.1-spade.

45. It is argued by the learned counsel for accused No.1 that there was no intention on the part of accused No.1 to kill the deceased. On account of fight that ensued between the accused persons and the deceased, in a fit of anger he gave blow on the head of deceased with MO.1-spade with which he was working on the land resulting in her death and at the most it may be a case covered under Section 304 of IPC and not under Section 302 of IPC.

46. Undisputedly, the houses of the complainant and accused are situated side by side. The accused are having agricultural land on the eastern side of their house. There is vacant space between both houses. Both the complainant and accused claim right over the vacant land situated in between their houses which is the bone of contention between them. During his cross-examination, PW.2 admitted that the said land is not standing in the name of the complainant or her family members. The evidence of PW.4 reveals that the house of the accused is situated in their land, whereas the complainant has constructed her house in the free site allotted by the panchayat. When suggested by the defence that she constructed in the entire extent of the said site, he replied that almost all the site is utilized for construction of the house. With regard to the vacant land adjoining the house of the complainant PW.4 stated that the said land is not in the name of Panchayat.

46.1 PW.13 Venkatachalapathy is the P.D.O. Mudiyanooru Gram Panchayat. At the request of the

Investigation Officer, he furnished the information regarding the said vacant land between the house of the complainant and accused persons. In this regard, he stated that the said land is a Government land, but, its Khata is not standing in anybody's name. It has come in the evidence that frequent quarrel took place between the family of the complainant and accused persons with regard to this vacant space between their houses. One of the sons of the deceased had also died in an agricultural pond belonging to the accused persons.

46.2 During the course of his cross examination, when suggested that his son Bharat died in the agricultural pond belonging to the accused, PW.2 Venkataramanappa admitted the said fact and stated that when the incident took place, deceased was scolding the accused persons regarding the death of her son. At this stage, it is relevant to refer to the voluntary statement of accused No.1 regarding reason for the assault made by him. It is true that as per Section 27 of the Indian Evidence Act, only that portion of the statement of the accused given while in

the custody of the police is admissible which relates distinctly to the fact thereby discovered and not otherwise. In other words, the portion of such statement could be utilized against the accused which leads to the discovery of a fact which connects the accused to the crime. However, if such statement is in favour of the accused, it can be utilized in his favour.

46.3 In his confession statement, a portion of which is marked as Ex.P28, accused No.1 stated that the vacant land measuring 40 X 50 ft. situated in between his house and the house of the complainant is a Gram Thana karab land and it is in their possession since 35-40 years. Earlier in the said portion, they had constructed an agricultural pond (ಕೃಷಿ ಹೊಂಡ). About 7 years back, while swimming in the said pond unauthorisidely, Bharat-the son of the deceased and another boy had died. After they adopted drip irrigation, the agricultural pond was closed, but, it was in their possession. They had opened a new door on the eastern side of their house and collecting the mud and other debris in the vacant place in question. At this stage,

the complainant and deceased started quarreling with accused No.2 abusing each other. He was gathering the debris with spade in the basket (*बग*) and accused No.2 was carrying it to throw in the vacant land. Deceased was collecting water from the tap and abusing his mother questioning her character (*शेर*).

46.4. Therefore, he became very angry and gave two blows on the head of the deceased with the spade. With a shriek she fell down with bleeding injury. Therefore, he and other accused left the place. This piece of statement of accused No.1 indicates that, though the quarrel between two families were going on since morning, only after deceased abused his mother (accused No.2) questioning her character, accused No.1 became angry and unable to control his anger assaulted the deceased. Therefore, it could be reasonably held that accused No.1 had no intention of causing the death of deceased. He had the knowledge that it is likely to cause death or such bodily injury as is likely to cause death. Therefore, Section 304 Part II is attracted. The Hon'ble Supreme Court in

1989 2 SCC 217 has dealt with similar situation and converted the conviction for murder into one for culpable homicide not amounting to murder. Therefore, we hold that the accused is liable to be convicted for the offence punishable under PART II of Section 304 of IPC instead of Section 302 of IPC.

46.5 Since the conviction of accused No.1 is altered to Section 304 Part II, now the question would be to what punishment he is liable for the offence under Section 304 Part II of IPC. The punishment prescribed for the offence under Section 304 of IPC is imprisonment for life or imprisonment of either description for a term which may extend to 10 years and shall also be liable to fine, if the act by which death is caused is done with the intention of causing death or of causing such bodily injury as is likely to cause death, which is Part I of the Section or; with imprisonment of either description for a term which may extend to 10 years or with fine or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

46.6 Since we have held that Part II of Section 304 of IPC is attracted, taking into consideration the facts and circumstances of the case, we hold that sentencing accused to undergo rigorous imprisonment for a period of 5 years would meet the ends of justice. However, we sentence accused to pay fine of Rs.2,00,000/-.

47. Now, coming to the question whether the provisions of SC/ST Act are attracted, the charge sheet is also filed for the offence punishable under Section 3(1)(r)(s) and 3(2)(va) of SC/ST Act. In addition to other offences, the Trial Court has framed charge for the offence punishable under Section 3(2)(v) of SC/ST Act. The trial Court has convicted accused No.1 for the offences punishable under Sections 302 of IPC and Section 3(2)(v) of SC/ST Act. It is submitted by the learned SSP-II that after 2016 Amendment, to attract the provisions of SC/ST Act, it is sufficient if the accused is in the knowledge that the victim belongs to scheduled caste or scheduled tribe and there is no need for the prosecution to prove that the

offences in question are committed for the reason that the victim belongs to Scheduled Caste or Scheduled Tribe.

48. During the course of her evidence, complainant has deposed that she and her family members belong to madiga community whereas accused persons belong to lingayat caste. The accused have not disputed this fact. Ex.P13 is the report given by the Tahsildar regarding the caste of the complainant, deceased and accused persons. According to this, the deceased and complainant belong to Adi Karnataka caste which comes under scheduled caste, whereas the accused persons belong to Vakkaliga community. In fact, this document is marked with consent. Therefore, prima facie the provisions of SC/ST Act are attracted. Since the incident is dated 09.02.2019 which is subsequent to 2016 Amendment. Prior to the amendment the prosecution was required to prove that offence was committed on the ground that such person is a member of Scheduled Caste or Scheduled Tribe. After the amendment the wordings used are the accused

commits the offence knowing that the victim is a member of Scheduled Caste or Scheduled Tribe.

49. The amendment has the effect of substituting the words "*on the ground*" by the word "*knowing*". Before the amendment subsection took the meaning that the offences under IPC punishable with a term for 10 years or more should have been committed in the background of committing atrocity on the persons belonging to Scheduled Caste or Scheduled Tribe. That means unless the element of caste factor to be the prime reason for committing offences was not proved, there was no scope for recording conviction under Section 3(2)(v) of the SC/ST Act, although offences under IPC would get established. The amendment brought to Section 3(2)(v) does not altogether waive the requirement of establishing that the offences under IPC are committed with a view to subjecting the members of schedule caste or schedule tribe to atrocity in the background of

caste feeling. It is needless to say if an accused does not know the caste of the victim of the incident of crime, he cannot be punished under the provisions of SC/ST Act. Conversely if the accused has the knowledge about the caste of the victim and if he has no intention to subject the member of schedule caste or schedule tribe to atrocity can it be said that, his mere knowledge should result in recording a conviction against him? One of the objects of implementing law is prevention of atrocities against the members of the schedule caste and schedule tribes. Therefore it is very essential that the prosecution must establish in the first instance that offences of the type enumerated in Section 3 are committed with a view to committing atrocity with a caste feeling. If this ingredient is not established mere knowledge of one's caste is insufficient for recording conviction. What is most required is knowledge coupled with motive to commit atrocity. In the light of the above discussion, we are of the

considered opinion that absent the motive, mere knowledge is not sufficient.

50. In *Khuman Singh Vs. State of Madhya Pradesh (Khuman Singh)*⁴, the trial Court convicted the accused for the offences punishable under Sections 302 I.P.C and Section 3(2) (v) of SC/ST Act and sentenced him to undergo imprisonment for life. It was confirmed by the High Court. In that case, on facts it was established that accused called the deceased by his caste name in a sudden quarrel erupted in the field where the deceased was grazing buffaloes. The Hon'ble Supreme Court held that there was no evidence to show that the offence was committed only on the ground that the victim was a member of scheduled caste. Since there was no pre-meditation nor it was a caste based offence, the case clearly falls under Section 300 exception 4 and provisions of SC/ST Act are not attracted. Therefore, accused was convicted for the offence punishable under Section 304

⁴ (2020) 18 SCC 763

Part-II and acquitted for the offence punishable under Section 3(2)(v) of SC/ST Act.

51. There are also no allegations that during the fight, accused No.1 uttered any words attracting the provisions of SC/ST Act. The prosecution has not led any evidence to show that the offence was committed with a view to subjecting the deceased to atrocity in the background of caste feeling. On the analysis of facts of the present case, it is clear that the offence in question was not committed for the reasons that the victim and her family members are members of Scheduled Caste or Scheduled Tribe community, but on the other hand, it is a case of a quarrel that took place between the parties in connection with a vacant space in between their houses and after the deceased abused accused No.2-the mother of accused No.1 questioning her character, accused No.1 assaulted her with the spade. There is no intention on the part of the accused persons to attack the deceased for the mere reasons that she belongs to scheduled caste community. Therefore, we are of the considered opinion

that the offence under Section 3(2)(v) of SC/ST Act is not attracted and committed by accused No.1. Consequently, he is entitled for acquittal for the said offence.

52. To this extent, the appeal partly succeeds and accordingly, the following;

ORDER

- (i) Appeal is partly allowed.
- (ii) Accused No.1 is acquitted of the offences punishable under Sections 302 of IPC and Section 3(2)(v) of SC/ST Act.
- (iii) Instead of Section 302 of IPC, accused No.1 is convicted for the offence under Section 304 Part II of IPC and sentenced to undergo rigorous imprisonment for 5 years and pay fine of Rs.2,00,000/-, in default to undergo simple imprisonment for 6 months.
- (iv) Accused No.1 is entitled for benefit set off of the period during which he was in judicial custody.

- (v) The entire fine amount is ordered to be paid to the children of deceased Narayanamma.
- (vi) The Registry is directed to send back the trial Court records along with copy of this judgment forthwith.

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

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

CKK/Vmb/RR