



IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 7TH DAY OF AUGUST, 2024
PRESENT
THE HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR
AND
THE HON'BLE MR JUSTICE UMESH M ADIGA
CRIMINAL APPEAL NO. 2191 OF 2017 (A)
C/W
CRIMINAL APPEAL NO. 941 OF 2017(A)
IN CRL.A NO.2191 OF 2017

BETWEEN:

KARIYA @ KARIYAPPA ,
S/O THIMMAGOWDA,
AGED ABOUT 31 YEARS,
R/O THAMBADAHALLI,
MALAVALLI TALUK,
MANDYA DISTRICT-571 430.

...APPELLANT

(BY SRI. S. SHANKARAPPA., ADVOCATE)

AND:

1. STATE OF KARNATAKA
BY MADDUR P.S.
REP. BY SPP,
HIGH COURT BUILDING,
BANGALORE – 560 001.
2. NINGAIAH
S/O PAKKE JAVANEGOWDA,
AGED ABOUT 51 YEARS,
3. JAVAREGOWDA
S/O BOLANA KARIGOWDA,





AGED ABOUT 41 YEARS,

4. DODDEREGOWDA @ RAJANNA
S/O MUDDEERANA NATHEGOWDA,
AGED ABOUT 44 YEARS,
5. CHANDRA
S/O CHIKKAMADEGOWDA,
AGED ABOUT 39 YEARS,
6. KUNTAPPA @ EREGOWDA
S/O MUDDEERANA NATHEGOWDA,
AGED ABOUT 41 YEARS,
7. GUNDA
S/O GORAKEGOWDA,
AGED ABOUT 30 YEARS,
8. SIDDA
S/O HONNEGOWDA,
AGED ABOUT 26 YEARS,

RESPONDENTS NO. 2 TO 8 ARE
R/O AMRUTHESHARANAHALLI VILLAGE,
MALAVALLI TALUK - 571 430.

...RESPONDENTS

(BY SMT. RASHMI JADHAV., ADDL. SPP ALONG WITH
SRI. RAJATH SUBRAMANYAM., HCGP FOR R1,
SRI. H. MALATESH., ADVOCATE FOR R2-R8)

THIS CRL.A. IS FILED UNDER SECTION 372 CR.P.C BY
THE ADVOCATE FOR THE APPELLANT PRAYING TO SET
ASIDE THE JUDGMENT AND ORDER DATED 24.01.2017
PASSED BY THE V ADDITIONAL DISTRICT AND SESSIONS
JUDGE, MANDYA IN S.C.NO.75/2011 - ACQUITTING THE
RESPONDENTS/ ACCUSED NO.1 TO 7 FOR THE OFFENCE
PUNISHABLE UNDER SECTIONS 143, 147, 148, 307, 324
AND 341 R/W 149 OF IPC.



IN CRL.A NO.941 OF 2017

BETWEEN:

THE STATE OF KARNATAKA BY
MADDUR POLICE STATION,
REPRESENTED BY STATE
PUBLIC PROSECUTOR
HIGH COURT BUILDING,
BENGALURU – 560 001.

...APPELLANT

(BY SMT. RASHMI JADHAV., ADDL. SPP ALONG WITH
SRI. RAJATH SUBRAMANYAM., HCGP)

AND:

- 1 . NINGAIAH,
S/O PAKKE JAVANEGOWDA,
AGED ABOUT 51 YEARS.
- 2 . JAVAREGOWDA ,
S/O BOLANA,
KARIGOWDA,
AGED ABOUT 41 YEARS.
- 3 . DODDEREGOWDA @ RAJANNA
S/O MUDDEERANA NATHEGOWDA
AGED ABOUT 44 YEARS
- 4 . CHANDRA,
S/O CHIKKAMADEGOWDA
AGED ABOUT 39 YEARS
- 5 . KUNTAPPA @ EREGOWDA,
S/O MUDDEERANA NATHEGOWDA,
AGED ABOUT 41 YEARS.
- 6 . GUNDA,
S/O GORAKEGOWDA
AGED ABOUT 30 YEARS



7 . SIDDA
S/O HONNEGOWDA
AGED ABOUT 26 YEARS.

ALL ARE RESIDENTS OF
AMRUTHESHWARANAHALLI
VILLAGE, MALAVALLI TALUK – 571 430.

...RESPONDENTS

(BY SRI. H. MALATESH., ADVOCATE FOR R1-R7)

THIS CRL.A. IS FILED UNDER SECTION 378(1) & (3)
CR.P.C BY THE STATE P.P. FOR THE STATE PRAYING TO
GRANT LEAVE TO APPEAL AGAINST THE IMPUGNED
JUDGMENT AND ORDER OF ACQUITTAL DATED 24.01.2017
PASSED BY THE V ADDITIONAL DISTRICT AND SESSIONS
JUDGE, MYSURU IN S.C.NO.75/2011 - ACQUITTING THE
RESPONDENT/ACCUSED FOR THE OFFENCE PUNISHABLE
UNDER SECTIONS 143, 147, 148, 307, 324, 341 READ
WITH SECTION 149 OF IPC.

THESE APPEALS, COMING ON FOR ORDERS, THIS DAY,
JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR
and
HON'BLE MR JUSTICE UMESH M ADIGA

ORAL JUDGMENT

(PER: HON'BLE MR JUSTICE UMESH M ADIGA)

These appeals arise out of the judgment passed by the
learned V Addl. District and Sessions Judge, Mandya
(hereinafter for brevity referred to as 'trial court') in
S.C.No.75/2011, dated 24.01.2017, acquitting accused of



the alleged offences. The complainant-victim has filed Crl.A.No.219/2017 and the State has preferred Crl.A.No.941/2017. Both the matters are taken up together for disposal.

2. We refer to the parties as per their ranks before the trial court.

3. It was the case of the prosecution that on 05.06.2009, the accused Nos.1 to 7 formed an unlawful assembly holding deadly weapons with the common object of killing PW-1-Kariyappa and PW-2 Dodderegowda, assaulted both of them with deadly weapons like long, sickle, chopper, as well as club, at Markadudoddi, coming within the jurisdiction of Maddur police station and caused grievous hurt to both of them and committed offences punishable under Sections 143, 147, 148, 341, 307 and 324, read with Section 149 of the Indian Penal Code.

4. The victim PW-1 Kariya @ Kariyappa lodged the complaint to Maddur Police Station and on that basis, the Maddur Police registered a case in Crime.No.246/2009. The



police after investigation, filed final report before JMFC Court at Maddur, against accused for the offences punishable under Sections 143, 147, 148, 341, 307 and 324 read with Section 149 of IPC.

5. The learned JMFC took cognizance of the case and committed the case to the court of sessions at Mandya for trial. It was registered as S.C.No.75/2011 and tried by the V Additional District and Sessions Judge at Mandya.

6. The learned trial judge heard accused Nos.1 to 7 on the charges and framed charges for the above said offences. The accused Nos.1 to 7 pleaded not guilty and claimed to be tried. The prosecution, to prove its case examined PW-1 to PW-11; got marked documents from Exs.P-1 to P-26 and produced MO-1 to MO-11 and closed its evidence.

7. The learned trial judge examined the accused under Section 313 of Cr.P.C. and their answers were recorded. The accused did not lead any defence evidence. But, during the cross-examination of the prosecution witnesses, the accused marked the documents at Exs.D-1 to



D-3. The learned sessions judge hearing the arguments on both side and appreciating the evidence available on record, acquitted the accused of the offences punishable under Sections 143, 147, 148, 307, 324, 341, 114 read with 149 of the IPC by judgment dated 24.01.2017 and being aggrieved by the judgment both the complainant/victim as well as the state have preferred these appeals.

8. We have heard the arguments of learned counsel for both sides.

9. The learned counsel for appellants have submitted that the learned trial Judge has not appreciated the evidence properly and in right perspective. The learned trial Judge did not give weightage to the evidence of injured witnesses-PWs.1 and 2. The reasons assigned to acquit the accused are not tenable in law. Therefore, prayed for setting aside the same and allowing both the appeals.

10. The learned counsel for accused-respondents has submitted that the trial Court has properly appreciated the evidence on record and acquitted the accused. There are no



grounds to interfere in the said findings. PWs-1 and 2 are highly interested witnesses. The accused in this case lodged several complaints against PWs-1 and 2 and series of criminal cases were registered against them. Therefore, only to take revenge against the accused, a false complaint was filed. These facts were considered by the trial court and rightly acquitted the accused of the alleged charges. It does not call for any interference by this court. With these reasons, prayed for dismissing both the appeals.

11. Following question arises for our determination:

Whether the trial court is justified in acquitting accused Nos.1 to 7 of the alleged offences ?

12. We answer above question partly in the negative, for following reasons;

13. It is the evidence of PW-1 that he and PW-2 and accused are owners of adjacent lands. It appears, both have dispute in respect of said land. A few days prior to alleged incident, there was a quarrel between maternal uncle of PW-1 as well as accused No.2. Maternal uncle of PW-1 planted



some eucalyptus saplings in-between his land and the land of accused No.2, and accused No.2 objected for the same and they removed all the said saplings. In this regard, his maternal uncle and PW-1 quarreled with accused No.2. The accused gave a complaint against PW-1 and his maternal uncle. Both PWs-1 and 2 thought that they would be arrested by the police, therefore, they left their village and went to Malavalli and were temporarily staying there doing coolie work. On the day of incident, both PWs-1 and 2 had been to a hotel around 9.30 p.m to have dinner; they found accused Nos.1 to 7 in the said hotel. Looking at PWs-1 and 2, accused talked among themselves to catch hold of PW-1 and PW-2 and kill them. Scared PW-1 and PW-2 fled that said place on a motorcycle towards Malavalli. Accused chased them in a goods auto as well as motor cycle. When they reached near Marakadudoddi gate, all the accused came to the said spot, intercepted them; PWs-1 and 2 suddenly stopped the motorcycle, due to which they fell down.

14. PW-1 in his further evidence has stated that accused No.1 assaulted on his head with a long, accused



No.6 assaulted on his back and left shoulder with a machchu, accused No.3 assaulted on him with MO-5 -sickle on his right hand as well as his left hand, accused No. 4 assaulted on both his legs with club as well as assaulted on his hips and thigh with sickle and caused bleeding injuries. Similarly, they assaulted on PW-2 with the said weapons. Both PWs-1 and 2 started shouting for help and immediately none came to rescue them from the accused. Later two motorcyclists came towards the said place, who are CWs-3 and 4. Looking at them, all the accused threw their weapons at the spot and left in their vehicles. Both of them sustained grievous bleeding injuries. They were taken to government hospital, Maddur by PWs-3 and 4. Police came to the hospital and recorded the statement of PW-1 between 10.30 p.m. to 11.00 p.m. as per Ex-P-11. The incident had taken place around 10.00 p.m. He identified the weapons as M.Os-3 to 6. He has further stated that his dress was blood stained and he handed over the same to the police. He identified the said dress worn by him as MO-1 and 2. It appears, wherever



the accused assaulted with sharp edged weapon, the dress was cut at that portion, which is stated by PW-1.

15. PW-2 has corroborated evidence of PW-1 and according to him, accused No.7 assaulted on his head with machu, accused No.5-Kuntappa assaulted on his left and right hand, right shoulder as well as abdomen with club, all the accused assaulted on him with different weapons. Since accused forced him to bow down, he was unable to see the face of the accused as well as weapon used by them.

16. Both PWs-1 and 2 have stated that with the help of street light, they could see the face of the accused. PW-2 has also stated as to who assaulted on PW-1 and thereafter shifting him to hospital at Maddur. PW-2 has also identified clothes worn by him at the time of incident as well as weapon of offence as M.Os-1 and 6.

17. The accused cross examined both PWs-1 and 2 and in the cross-examination, it was brought out regarding enmity between accused as well as PWs-1 and 2 and the frequent fight between them in respect of the landed



property belonging to accused as well as PWs-1 and 2. PWs-1 and 2 denied the suggestion that due to the said enmity, a false case had been lodged against accused Nos.1 to 7. Looking to the facts and circumstances of the case, the said suggestion is not believable. In the detailed cross examination by the accused, nothing was brought out to disbelieve or discard the evidence of PWs-1 and 2. Both of them were injured and eye-witnesses. The enmity between the parties might be reason for committing the said crime. When there is admitted enmity, the evidence has to be scrutinised carefully to rule out the chances of false implication. From the answers given in the cross examination, it does not appear that they have falsely deposed before the court.

18. PW-5 Ramesh went to the spot of incident on hearing shouting of PWs-1 and 2. PW-5 in his evidence has stated that during June 2009, on one day, when he was returning from Annur village and going towards Maddur, about 2 kms prior to Maddur, around 10.00 p.m, when he reached near Marakadudoddi gate, he heard commotion of



the victims near the said doddi cross; he went to the spot of incident and in the meanwhile, another rider of the motorcycle also came to the said spot. Looking at them, the persons who had assaulted the victims, left the spot by a goods auto rickshaw as well as motorcycle, throwing weapons at the spot. Thereafter, they enquired with the victims. The victims sustained bleeding injuries. Hence, both PW5 and another shifted the victims to the government hospital at Maddur for treatment.

19. PW-5 has further stated that on the next day, police came to the spot of incident. He along with another person i.e., Chandra @ Chandra Gowda were present at the spot of incident as per the request of police. The police in their presence seized one long, one machchu and one sickle and four clubs. Police drew mahazar as per Ex.P-9 and obtained their signatures. He signed at Ex.P-9(a). He identified weapons in the Court.

He was thoroughly cross-examined by the accused. He denied that he was closely related to accused No.1 and elaborated the facts. In his cross-examination, he has stated



that by the street light, he could see the incident. He denied his previous statement as per Ex-D-2. The said contradiction is not material to disbelieve his evidence. He has also denied his previous statement that “after the incident, accused Nos.1 to 6 went in the goods auto as well as motorcycle towards Maddur side” That was marked at Ex.D-3. The said contradiction is also not material contradiction to discard his evidence. He has identified the accused in the court. He has stated that on the day of incident, he saw the accused for the first time. Immediately after the incident, CW-3 as well as PW-5 went to the spot of incident to rescue the victims and by that time, accused left the spot of incident in a goods auto as well as motorcycle. PW-5 had seen the weapons of offence at the spot and he shifted both the injured to the hospital. These relevant facts were testified in his cross-examination. However, nothing was brought out to disbelieve or discard his evidence.

20. PW-8 is a doctor, who treated both injured PWs-1 and 2. At the relevant point of time, he was serving as a medical officer in government hospital at Maddur. According



to him, on 05.06.2009, around 11.20 p.m, both PWs-1 and 2 came to the hospital for treatment. He gave first-aid treatment, thereafter for higher treatment, sent both of them to the MIMS hospital, Mandya, where treatment was given to both of them. On the basis of information furnished by MIMS hospital, he gave wound certificate as per Exs.P-12 and P-13. He has mentioned that the injuries sustained by both of them were simple in nature. He has stated that by assaulting with weapons such as MOs-1 to 5 such injuries sustained by PWs.1 and 2 could be possible.

21. The injuries of PW-1 mentioned in Ex.P-12 are as under :

- a. Incised wound on the left hand of 10 cm x 2 cm x 1 cm.*
- b. Incised wound of 2 cm x 3 cm x ½ cm at the left deltoral region.*
- c. Incised wound of 2 cm x 3 cm x ½ cm at the left mastroid region.*
- d. Incised wound of 6 cm x 1 cm x ½ cm at the right scapula / & interscapular region.*
- e. Soft Tissue injury from IP No.11268/2009 at – 06.06.2009 of MIMS, Mandya.*

Injuries of PW-2 mentioned in Ex.P-13 are as under.:



- *Incised wound of 3 cm x 20 cm x ½ cm at the left arm.*
- *Incised wound of 2 cm x 20 cm x ½ cm at the right deltoral.*
- *Incised wound of 20 cm x 3 cm x ½ cm at the right thigh.*
- *Incised wound of 2 cm x 3 cm x 1 cm at the left thigh,*
- *Soft Tissue injury from IP No.11267/2009 at - 06.06.2009 of MIMS, Mandya.*
- *Abrasion of 3 cm x 1 cm at the right scapula / abrasion of 20 cm x 1 cm at the left scapular/interscapular region.*

22. PW-8, the doctor has stated that above said injuries could be possible by assaulting with weapons seized in this case. The suggestions made to him by the accused in his cross-examination are not sufficient to disbelieve his evidence.

23. PWs-10 and 11 are the investigating officers. They have given evidence about investigation done by them. In their cross-examination, though their evidence was denied in total, nothing was brought out to disbelieve or discard their evidence regarding investigation made by them. The evidence of witnesses are narrated and discussed by the



learned trial judge and no need to repeat the same. The evidence of PWs-1, 2, 5, 8 11 and 12 are consistent, corroborative and reliable.

24. PW-3 has handed over blood stained dress of PWs-1 and 2 to the police and in his presence Ex.P-2 mahazar was drawn. During the evidence, he has stated about handing over the dresses of PWs-1 and 2 to police and seizure of the same by police under Ex.P-2. He identified the said clothes as M.Os-1, 2 and 7 to 9.

In the cross-examination, he has repeated the said answer and it was suggested to him that he was related to PWs-1 and 2 and hence to help them he was deposing falsely before the court, he denied the said suggestions. The dress worn by PWs-1 and 2 were handed over by him to the police. They were produced before the court and identified by witnesses. Nothing is brought out to disbelieve his evidence.

25. PW-4 is witness to seizure mahazar of vehicle belonging to accused i.e., one goods auto as well as one motor cycle. He has stated about seizure of the said vehicles



and identified both vehicles through its photographs as Exs.P-4 to 8. In his cross-examination also he has stated the said facts and even given the boundary wherein the said vehicles were seized.

PW-6 has taken photographs at Exs.P-4 to 8. He is not an important witness to the case of prosecution.

26. The evidence of PWs-3, 4 and 6 supports the case of prosecution regarding handing over the blood stained cloths, seizure of vehicles in which accused came to the spot, as well as taking of photographs. They are corroborative and consistent. There are some minor contradictions and inconsistencies. They do not affect the credibility of the said evidence. In the cross-examination of the said witnesses nothing was brought out to discard their evidence.

27. PW-7 is a witness to the seizure mahazar of vehicles belonging to accused at Exs.P-3 and P-11. Similarly PW-9 is also a witness to the mahazar at Ex.P-15. They have turned hostile to the case of prosecution. The seizure of the vehicle was reported to court and concerned owners of the



vehicles have got them released to their custody. They are not material witness. They have not supported the case of prosecution and the same will not affect the merits of the case.

28. The material witnesses in this case are PWs-1 and 2. They have sustained injuries in the incident. They have stated in detail about the manner in which incident took place and weapons used by each of the accused to assault them. Both of them have stated that they could see the accused in the street light. The said evidence is corroborated by PW-5. The injuries sustained by PWs-1 and 2 were clinically examined by PW-8 and he has stated that by assaulting with MOs-3 to 6, such injuries could be possible. According to the evidence of PW-8, both PWs-1 and 2 had sustained simple injuries.

29. It is pertinent to note that the accused were charge sheeted for an offence punishable under Section 307 of the IPC. It is the allegation of the prosecution that all the accused were intending to murder PWs-1 and 2 and with that intention, by holding deadly weapons, came to the spot and



assaulted on PWs-1 and 2. The facts available on record do not support said allegation. If that was the intention of the accused, then nothing prevented them from materializing their intention. There were in all seven accused and they were holding deadly weapons. Place of incident was not within the village of PWs-1 and 2 or residential or populated area. None came to rescue them during incident. Both PWs-1 and 2 sustained simple injuries. By all these facts and circumstances, it could be inferred that accused had intention to cause bodily injury to PWs-1 and 2 due to earlier enmity and they had no intention to cause their death. Hence, prosecution is not able to prove that accused have committed an offence punishable under Section 307 of IPC. Considering the evidence available on record, we can infer that accused had common intention to cause bodily injury to PWs-1 and 2. The prosecution evidence leads us to come to the conclusion that accused have committed an offence punishable under Section 324 read with 34 of IPC.



30. There are no materials to convict them for the offences punishable under Sections 143, 147, 148, 307, 114 read with 149 of IPC.

31. The learned trial judge in the impugned judgment disbelieved the evidence of PWs-1 and 2 on the ground that there are serious contradictions in their evidence. On re-appreciation of the evidence, it doesn't appear that there are any serious contradictions affecting the merits of the case. There are minor inconsistencies that will not affect their credibility.

32. The incident had taken place during 2009 and during 2016 evidence of witnesses were recorded and human memory fades due to lapse of time. In view of the same, naturally omissions, inconsistency and contradictions in the evidence of witnesses do occur. Unless they are tutored, they cannot reproduce their previous statements before the court. It indicates that they were not tutored. On that basis, their evidence cannot be discarded.



33. It is the case of prosecution that due to previous enmity, accused assaulted PWs-1 and 2. The defence of accused is that, due to the said enmity, false case was registered against them. Merely there was admitted enmity, cannot be ground to hold false implication of accused in the criminal case. In such cases, evidence of interested witnesses have to be scrutinised carefully. But the learned trial judge failed to do so and discarded the evidence of material witnesses, which is erroneous. Hence, findings of learned trial judge is perverse.

34. It is settled principle of law that on the basis of minor lapses in the investigation, the case of prosecution cannot be thrown out of the court. The witnesses who had seen both accused and PWs-1 and 2 in a hotel are not relevant witnesses. It is the case of prosecution that PWs-1 and 2 entered the hotel and saw accused in the said hotel, immediately they left the hotel. No incident had taken place at hotel. Hence, examination of such persons is irrelevant and unnecessary and hence non-examination of any such persons by the investigating officer is not fatal to



the case of prosecution and reasons to discard the case of prosecution.

35. The trial court also suspected the case of prosecution on the ground that the accused were alleged to be armed with the deadly weapons and attacked PWs-1 and 2 with such weapons, who had no idea that on that day they would meet PWs-1 and 2, which shows that they were falsely implicated in the incident. The said reason is also not tenable. The weapons seized are club, machchu and long. Such articles are normally used in the household and agriculture and available in the houses of agriculturists. The accused are said to be agriculturists. The said articles were said to be kept in the goods auto. Only on that basis, the case of prosecution cannot be thrown out of the court. The said finding is erroneous.

36. Much was argued by learned counsel for accused as well as commented by the trial court in the impugned judgment that before the doctor, PWs-1 and 2 stated that the accused assaulted them with blade and



caused injuries. But, by use of blade such injuries are not possible. The said blade was not at all seized by the police.

37. It is the evidence of PWs-1 and 2 that accused assaulted on them with long, sickle, machchu and clubs. The injuries sustained by PWs-1 and 2 is stated in the above paragraphs. PWs-1 and 2 while giving evidence identified weapons of offence used to assault them. PW-8 saw the said injuries and while giving evidence, he opined that by assaulting with such sharp edged weapon, injuries sustained by PWs-1 and 2 could be possible. Most of the injuries according to Exs.P-12 and P-13 were cut and incised injuries. Such injuries could be possible by sharp edged weapons.

38. Normally, in the rural areas sharp edged weapon are called as blades. The prosecutor should have got explanation in this regard in the evidence of PWs-1 and 2. Therefore, according to PWs-1 and 2 which type of instruments are called as blades is not clarified. The evidence of witnesses shall be understood and appreciated on the basis of their status such as social, educational, economical and residential background. Admittedly, PWs-1 and 2 are



residents of village and appears to be illiterates. Both had sustained injuries by the attack of seven accused. Due to shock and pain, they must have stated some facts before the medical officer. Only on that basis, case of the prosecution cannot be thrown out of the court.

39. The court cannot consider the meaning of the blade as "stainless steel blade, used for shaving". It shall be understood on the basis of the evidence available on record. PWs-1 and 2 identified MOs-3 to 6, which were used to assault them. PW-8 doctor opined that by use of such weapons, injuries sustained by PWs-1 and 2 could be possible. The injuries mentioned in Ex.P-12 and P-13 shows that both had sustained incise injuries. Such injuries could be possible by sharp edged weapon. In view of these reasons, even if ignorantly PWs-1 and 2 have stated before the doctor that they were assaulted with a blade, it cannot be a ground to reject the case of prosecution. The said finding of the trial court is erroneous.

40. Normally the appellate court while reversing judgment of acquittal, has to consider the facts in detail.



The appellate court must bear in mind that in case of acquittal, there is a double presumption in favor of the accused, firstly the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence, that every person shall be presumed to be innocent, unless he is proved guilty by a competent court of law.

Secondly, the accused having secured his acquittal, the presumption of innocence is further reinforced, reaffirmed and strengthened by the trial court judgment. But if the findings of the trial court are erroneous and if the trial court wrongly appreciates the evidence or there is serious error committed by the trial court while appreciating the evidence, the appellate court has got every power and jurisdiction to reverse the findings of the trial court and convict the accused for the offences which are proved by the prosecution before the trial court.



41. In the case of ***Siju Kurian Vs State Of Karnataka***¹, it is observed by the Hon'ble Apex court that:

"17. The Appellate court may reverse the order of acquittal in exercise of powers and there is no indication in the court of any limitation or restriction having placed on High Court in exercise of its power as an appellate court. No restriction can be drawn as regards to the powers of the High court in dealing with an appeal, between an appeal from an order of acquittal and an appeal from a conviction. The court of criminal procedure does not place any fetter on exercise of power to review at large the evidence upon which the order of acquittal was founded, and to reach the conclusion that upon that evidence the order of acquittal should be reversed".

42. In the case of ***Chandrapa vs. State of Karnataka***² in paragraph No.42, the Hon'ble Apex Court has observed as under:

"42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded.

¹ 2023 SCC online SC 429

² (2007) 4 SCC 415



(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.

43. In this case, the learned trial Judge disbelieved the evidence of PWs-1 and 2 as well as PW-8 and wrongly appreciated their evidence on the grounds that there are



inconsistence in the wound certificate and weapon produced by prosecution and there are material contradiction in the evidence of PWs-1 and 8, are sufficient to disbelieve the evidence of PWs-1 and 2. As discussed above, they are not material contradictions to discard the case of prosecution. Lapses in the investigation and non-recording of statement of some of the witnesses, which were irrelevant, cannot be a ground for acquittal. The finding of the trial court is erroneous and perverse. Therefore, interference in the impugned judgment is required.

44. The prosecution has proved that accused have committed an offence punishable under section 324 read with Section 34 of the IPC.

45. Heard the learned advocate for respondent - accused on sentence.

46. The learned counsel for respondent-accused submits that incident had taken place on 06.06.2009, nearly one and a half decade back. The accused are breadwinner of their respective family. They are all rustic villagers and living



on the income from agriculture. Therefore, prayed to take lenient view while imposing the sentence.

47. Learned High Court Government Pleader submits that the accused have committed serious offence. Therefore, maximum permissible sentence be imposed against them.

48. The incident had taken place during the year 2009 and more than 15 years has passed after the incident. The accused are middle aged persons and are said to be depending upon the agricultural source of income. They are poor and said to be breadwinners of the family. Considering the gravity of the offence, their social, economical and educational background and antecedents of the accused, we feel that, if fine is imposed, it suffices the requirement, imprisonment is not necessary.

49. Accordingly, we pass following:

ORDER

The appeals are ***allowed in part.***



The impugned judgment passed by the learned V Additional District and Sessions Court at Mandya in S.C.No.75/2011 dated 24.01.2017 acquitting the accused for the offence punishable under Section 324 read with 34 of IPC is reversed.

The accused Nos.1 to 7 are found guilty for the offence punishable under Section 324 read with Section 34 of IPC and they are convicted for the said offence. The accused are sentenced to pay fine of Rs.5,000/- each and in default of payment of fine, each accused shall undergo imprisonment for a period of two months.

The acquittal of the accused for the offences punishable under Sections 143, 147, 148, 341, 307 read with 149 of IPC is confirmed.

The accused shall deposit the fine amount before the trial court within a period of 45 days from the date of receipt of copy of this judgment, failing which, they



shall surrender before the trial court to undergo default sentence.

Supply the copy of judgment to the accused free of cost.

Registry is directed to send back the records to the concerned trial court along with the copy of the judgment.

Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE

Sd/-
(UMESH M ADIGA)
JUDGE