



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 30<sup>TH</sup> DAY OF SEPTEMBER, 2024**

**PRESENT**

**THE HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR**

**AND**

**THE HON'BLE MR JUSTICE UMESH M ADIGA**

**CRIMINAL APPEAL NO. 1927 OF 2017 (A)**

**BETWEEN:**

STATE OF KARNATAKA,  
BY MANDYA RURAL POLICE,  
REP. BY STATE PUBLIC PROSECUTOR,  
HIGH COURT BUILDING,  
BENGALURU-01.

...APPELLANT

(BY SMT. RASHMI JADHAV, ADDL.SPP)

**AND:**

- 1 . Y. D. UMESHA,  
S/O. LATE. DODDAIDEGOWDA,  
AGED ABOUT 47 YEARS,
- 2 . ATMANANDA,  
S/O. K. CHANNAIAH,  
AGED ABOUT 36 YEARS,
- 3 . CHIKKEGOWDA,  
S/O. LATE. KALEGOWDA,  
AGED ABOUT 50 YEARS,
- 4 . VINODA @ VINODKUMAR,  
S/O. NAGARAJU @ SADDUNINGANNA,  
AGED ABOUT 34 YEARS,
- 5 . V. C. MAHESHA,  
S/O. PITRE COWDEDOWDA,  
AGED ABOUT 34 YEARS,



- 6 . SHIVA,  
S/O. BOODEGOWDA CHANNAIAH,  
AGED ABOUT 51 YEARS,
- 7 . CHANDRA @ CHIKKA PANTI,  
S/O. BUDIGOWDARA DYAVAIAH,  
AGED ABOUT 43 YEARS,
- 8 . RAVI,  
S/O PUTTEGOWDA,  
AGED ABOUT 44 YEARS,
- 9 . PUNITHA,  
S/O. RAMAKRISHNA,  
AGED ABOUT 31 YEARS,
- 10 . V. C. RANJITH @ PUNITH,  
S/O. CHOWDAIAH @ SUBBA,  
AGED ABOUT 30 YEARS,
- 11 . V. K. NANDEESHA,  
S/O. KRISHNEGOWDA,  
AGED ABOUT 31 YEARS,
- 12 . SOMA @ AMBARAHALLI SOMA,  
S/O. SHIVAMADU,  
AGED ABOUT 31 YEARS,
- 13 . ABHI @ GANGAMMANA,  
MAGA ABHI, S/O RAJA,  
AGED ABOUT 30 YEARS,
- 14 . ABHILASH @ ABHISHEKA @ ABHI,  
S/O. CHANNAPPA,  
AGED ABOUT 31 YEARS,
- 15 . VINODA @ VINODARAJ,  
S/O. CHANNAPPA,  
AGED ABOUT 34 YEARS,

ACCUSED NOS.1 TO 14 ARE  
RESIDENTS OF B.YARAHALLI VILLAGE,  
MANDYA TALUK-571 401.



ACCUSED NO.15 IS RESIDENT  
OF JAVANEGOWDANA, DODDI VILLAGE,  
MANDYA TALUK- 571 401.

...RESPONDENTS

( BY SMT. AMBIKA M., ADVOCATE FOR R1, R2, R4,  
R5, R7, R8, R9, R10, R11, R13, R14 AND R15,  
AND SRI. S.G LOKESH, ADVOCATE FOR R6,  
VIDE ORDER DATED 03.09.2018, APPEAL  
STANDS ABATED AGAINST R-3, AND  
VIDE ORDER DATED 13.06.2024  
APPEAL STANDS ABATED AGAINST R-12)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 378(1) AND  
(3) OF CR.P.C PRAYING TO FILE AN APPEAL AGAINST THE  
JUDGEMENT AND ORDER OF ACQUITTAL DATED 26.07.2017 PASSED  
BY THE V ADDITIONAL DISTRICT AND SESSIONS JUDGE, MANDYA,  
IN S.C.NO.183/2011 ACQUITTING THE RESPONDENT/ACCUSED FOR  
THE OFFENCE PUNISHABLE UNDER SECTIONS 143, 147, 148,  
120(B), 302 AND 201 R/W 149 OF IPC.

THIS CRIMINAL APPEAL, HAVING BEEN RESERVED FOR  
JUDGEMENT, COMING ON FOR PRONOUNCEMENT THIS DAY,  
**UMESH M. ADIGA, J.**, PRONOUNCED THE FOLLOWING:

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

### **CAV JUDGMENT**

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

State has preferred this appeal challenging the  
judgment passed in S.C.No.183/2011, on the file of  
learned V Addl. District and Sessions Judge, Mandya, (for  
short `trial Court'), dated 26<sup>th</sup> July 2017, acquitting the  
accused of the offences punishable under Sections 143,



147, 148, 120-B, 302 and 201 read with Section 149 of IPC.

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

3. Brief facts of the case of the prosecution are that the deceased Chikkaiah was a popular political leader in B.Yarahalli village of Mandya Taluk. He was a party worker of Janata Dal (a political party). According to the case of the prosecution, during the elections, either for electing the members to Taluk Panchayath, Zilla Panchayath or for any other association, to whomsoever he was supporting, would get elected. The accused are the party workers of Congress (a political party). The deceased Chikkaiah and accused had political rivalry.

4. An election was held on 31.12.2010 for electing members to Mandya Taluk Panchayath and Mandya Zilla Panchayath. The accused were canvassing on the behalf of the candidate of Congress party and deceased Chikkaiah was canvassing on behalf of the candidates of



Janata Dal. The voting date was on 31.12.2010. On that day also, both accused as well as Chikkaiah were canvassing on behalf of their respective candidates. Around 11.30 a.m., there was quarrel between Congress party workers and Chikkaiah and in the said quarrel, some of the accused of this case were also present. Accused and congress party workers threatened Chikkaiah that if Congress party candidates would suffer defeat in the election, then they would kill him. The people gathered at the spot intervened and quarrel was ended. Counting of votes was on 04.01.2011. During the counting, the candidate of Janata Dal party, for whom Chikkaiah canvassed had won the election. Because of the same, the accused were angry against Chikkaiah and they were believing that because of the popularity of Chikkaiah, the candidates to whom he supports would win the election. And other party candidates may not get chance to win the election. Hence accused conspired to kill Chikkaiah. It is alleged that they wanted to kill Chikkaiah on 04.01.2011, however they were not successful. Again they all met



together and discussed the manner in which Chikkaiah was to be killed. All the accused conspired and hatched a plan to kill Chikkaiah. They knew that normally during early morning around 5.00 to 5.30 a.m., Chikkaiah used to go to wake up the servants working in the said factory and usually he use to go in the path way situated in the agricultural lands.

5. In furtherance of their conspiracy, accused Nos.1, 2, 6, 10 and 11 have kept the weapons near the haystack of accused No.1 situated near his house on the night of 05.01.2011. During the morning of 06.01.2011, around 5.00 a.m., accused Nos.1, 2, 4, 6, 10, 11 and 12 formed an unlawful assembly with a common object of murdering Chikkaiah, holding deadly weapons like long, machete, (machchu) and clubs. All of them had hidden themselves behind a neem tree, as well as bushes and waiting for the arrival of Chikkaiah. Around 5.30 a.m., Chikkaiah came from his house and going towards his jaggery factory. When Chikkaiah was going on Jayaram's land suddenly all



the above said accused attacked him with weapons. Accused No.1 assaulted on his head and face with long (MO-5), accused No.2 assaulted on the face of Chikkaiah with chopper (MO-16), accused No.6, 10 and 11 assaulted Chikkaiah with clubs (MOs.3 and 4) and caused grievous bleeding injuries. Chikkaiah died on the spot due to the said injuries.

6. The incident was witnessed by PW-4 Purushotham, however, due to fear of the accused, he did not raise his voice and even did not inform to the son of Chikkaiah. The dead body of Chikkaiah was lying in a pool of blood. Accused Nos.6, 10 and 11 threw their clubs at the spot of the incident and accused No.1 threw MO-5 nearby cow dung pit of one Chandrashekar situated near the spot of the incident. Accused No. 6 and 10 threw the clubs near dead body of Chikkaiah. Accused No.2 had taken said machchu (M.O.16) along with him and hid it. Above said accused who assembled at the spot fled away from the place of the incident.



7. PW-5 Swamy waterman of the Panchayath saw the dead body of Chikkaiah. He raised hue and cry and informed the same to PW-1 Y.C.Kumar, son of late Chikkaiah. PW-1 came to the spot and saw the dead body of his father sustaining severe bleeding injuries. Said information spread over village and people gathered at the spot of the incident. PW- 1, around 9.30 a.m., lodged the complaint to Mandya Rural police station as per Ex.P-1. He named some of accused in Ex.P1 on suspicion. On the basis of Ex.P 1, Mandya Rural police registered a case in Crime No.10/2011 for the offences punishable under Sections 143, 147, 148, 302 read with Section 149 of IPC against the accused Nos.1 to 9 and others.

8. The Station House Officers of Mandya Rural police station investigated the case and on conclusion of the investigation, submitted the charge sheet against accused Nos.1 to 15 for the offences punishable under Sections 143, 147, 148, 114, 120-B, 302, 201 read with Section 149 of IPC, before the Court of J.M.F.C., Mandya. The



learned Magistrate took cognizance of the case. He committed the case to the Court of Sessions, Mandya for trial, that was registered as S.C.No.183/2011 and tried by the learned V Addl. District and Sessions Judge, Mandya.

9. After hearing both side, learned Sessions Judge framed the charges. The accused pleaded not guilty and claimed to be tried.

10. The prosecution to prove its case, examined PW-1 to PW-31 and got marked Exs.P-1 to P-96 and produced MO-1 to MO-35 and closed its evidence. The learned trial Judge examined the accused under Section 313 of Cr.P.C. and their answers were recorded. The accused did not lead defence evidence, but got marked Exs.D-1 to D-4.

11. Learned trial Judge after hearing both the parties and appreciating evidence available on record, found that the accused were not guilty of the offences punishable under Sections 143, 147, 148, 120-B, 302, 201 read with Section 149 of IPC and acquitted them by the impugned



judgment dated 26.07.2017. That is challenged by the State on the grounds mentioned in the appeal memo, in the present appeal.

12. We have heard the arguments of the learned Addl.SPP for the State, as well as learned counsel appearing for respondent Nos.1, 2, 4, 5, 7 to 11 and 13 to 15 and learned counsel for respondent No.6. The appeal is abated as against respondent Nos.3 and 12 vide court order dated 03.09.2018 and 13.06.2024 respectively.

13. The following question arises for our determination :

*Whether the learned trial Judge is justified in acquitting the accused of the offences punishable under Sections 143, 147, 148, 120-B, 302, 201 read with Section 149 of IPC?*

14. We answer the above point partly in the Negative for the following reasons :



15. The facts of the case are as stated above. PW-1 has set the criminal law into motion by filing the complaint as per Ex.P-1. He is not an eye witness to the incident. In Ex.P-1 he alleges that on 31.12.2010, accused and others quarreled with his father Chikkaiah in respect of election. During the said quarrel accused threatened Chikkaiah that in the event if their candidates would lose the election, they would kill him. On 06.01.2011 around 5.00 a.m., he saw the dead body of his father on the passage situated in the land of Jayaram nearby his house at B-Yarahalli village. He suspected that the persons whose names are mentioned in Ex.P-1 had murdered his father. On that basis, case in Crime No.10/2011 was registered.

16. In evidence PW-1 had reiterated the contents of Ex.P-1. He was thoroughly cross-examined by the accused, however nothing was brought out to discard his evidence in respect of political rivalry between accused and deceased. It is also pertinent to note that accused



have not seriously disputed that they are Congress party workers, as well as deceased Chikkaiah was Janata Dal party worker. The investigating officer has not obtained any documents to show that they were members of respective political parties. Since it is not seriously disputed, not securing of documents does not affect the case of prosecution.

17. PW-1 in his evidence has stated with regard to quarrel between his father with some of the accused of this case. PWs.2 to 7 have corroborated the evidence of PW-1 regarding quarrel between Chikkaiah with some accused and other Congress party workers near school premises on the date of voting. In their cross-examination also, this fact was not seriously disputed by the accused.

18. According to the evidence available on record, election was held for electing the representatives of Village Panchayath and Zilla Panchayath of Mandya District. The date of voting was 31.12.2010. Accused quarreled with deceased on the same day and they threatened him. They



warned him that in case their candidates not elected in the election, they would kill him and results were declared on 04.01.2011. Chikkaiah was murdered on 06.01.2011. Proximity between these events are so close that any prudent person may infer that due to political rivalry, Chikkaiah was murdered.

19. It is the case of the prosecution that deceased Chikkaiah was a popular leader in B-Yarahalli village of Mandya Taluk. According to the past experience of accused Nos.1 and 3, as well as other Congress party workers, in the elections the candidates supported by Chikkaiah would win due to the popularity of Chikkaiah. It is also the case of the prosecution that both accused Nos.1 and 3 lost their election on previous occasion in respect of election to some other institution. These facts are not seriously disputed.

The death of Chikkaiah on 06.01.2011 is not in dispute. Said fact is stated by material witnesses examined by the prosecution.



20. PW-20 Dr.Puttaswamy conducted the post mortem examination on the dead body of Chikkaiah and has given his report as per Ex.P-36(2). In Ex.P-36(2), the external injuries sustained by Chikkaiah are mentioned, they are as under:

*" 1. A chop wound 8 cm x 0.5 cm x bone depth, placed in the sagittal plane present on the left side of the top of the head, over the left parietal scalp.*

*2. Left side of the head, forehead (left), left eye, left cheek were chopped into pieces, involving an area of 9 cm x 7.5 cm. chopped fresh, and bone pieces were seen loose lying adherent to the each other and soaked with blood. Lacerated brain matter was also seen coming out through the wound.*

*3. Right ala of the nose was cut with clean, well defined margins.*

*4. Left side of the chin including the left side of lower lip was chopped and the tissues were shredded into pieces and the wound was placed vertically.*



*5. Abrasions present at the chest over the upper half of sternum measuring 5 cm x 3 cm."*

PW-20 has stated in his evidence that on dissection of the body, following injuries were found on the dead body of Chikkaiah :

*" On dissection of the scalp it was chopped on left side corresponding to external injury Nos.1 and 2. Further the aponeurotic surface on right side and occipital region and vertex was bruised. Underlying skull bone was chopped with clean cut, well defined edges, corresponding to overlying scalp chop injuries. Left cerebral hemisphere was lacerated corresponding to overlying skull injuries with subdural and subarchnoid hemorrhages. Left side facial bones and lower jaw also chopped corresponding to overlying facial and chin injuries. Left eye was collapsed due to chopping."*

PW-20 also mentioned the time of death of Chikkaiah as less than eight hours prior to post mortem examination and according to his opinion, death was due to shock as a result of chop injuries of head and face. In his cross-



examination, the injuries sustained by the deceased as stated above, are not disputed.

21. The investigating officer had sent the weapons of offence i.e., MOs.3, 4, 5, 15 and 16 to PW-20 seeking his opinion about the said weapons and possibility of causing injuries as stated in Ex.P-36(2), by the use of such weapons. PW-20 after verification of the said weapons, had issued the certificate as per Ex.P-38, dated 18.05.2011. He opined that injuries mentioned in the post mortem report from Sl.Nos.1 to 4 were caused by the fairly heavy sharp cutting weapons like the ones described above and the injuries correspond to the weapons described under 1 and 2 above; the possibility of being caused in the way described under question No.2 cannot be ruled out; the victim is likely to have been attacked and assaulted from the front; and the injuries mentioned in the post mortem report are fatal in nature.



In the cross-examination of PW-20, except some technical suggestions, causing of injuries by assaulting with MOs.3, 4, 5, 15 and 16 was not disputed.

22. The investigating officer had conducted inquest and prepared mahazar as per Ex.P-10. It was drawn in the presence of witnesses. The external injuries found on the dead body are mentioned in the said Ex.P-10 which corroborates the evidence of PW-20.

The above facts help the prosecution to prove that death of Chikkaiah was caused due to injuries sustained by the deceased and such injuries could be possible by assaulting with the weapons such as MOs.3, 4, 5, 15 and 16.

23. PW-4 is the only eye witness and star witness in this case. In his evidence he has mentioned in detail about the manner in which the incident had taken place. He has stated that he was rearing silk worms. On the date of incident at morning, he woke up around 4.00 a.m. to feed silkworms. Around 4.45 a.m., he came out of his



house to attend nature call. His house was situated very near to the spot of incident. At that time, he saw accused Nos.1, 2, 4, 6, 10, 11 and 12 coming from the house of accused No.1 holding deadly weapons. He suspected and out of curiosity, he hid himself and was watching the accused. The above said accused came near passage situated in the land of Jayaram. Accused discussed in sotto voce which he did not hear. Accused Nos.1, 2 and 6 hid behind a neem tree and accused Nos.4, 10, 11 and 12 hid behind the bushes. Around 5.00 a.m., Chikkaiah was coming from the pathway towards his jaggery factory, on the land of Jayaram. At that time, all the accused attacked on him. Accused Nos.1 and 2 assaulted Chikkaiah with MOs.5 and 16 respectively on the head and face and accused Nos.6, 10 and 11 assaulted Chikkaiah with club on his head and face. Due to the said injuries, Chikkaiah collapsed at the spot. After ascertaining death of Chikkaiah, all the accused left the spot of incident. Accused Nos.10 and 11 threw the clubs brought by them at the spot. Accused No.1 carried MO-5 with him and



while leaving from the spot of the incident, he threw it in the cow dung pit belonging to PW-3 Chandrashekar.

24. PW-4 further stated that he was very much scared by seeing the said incident. He went inside the house and slept till 12.00 noon. Later on he came to know that death of Chikkaiah was informed to PW-1 by PW-5 and PW-1 lodged the complaint to the police. He did not inform this fact either to the family members of Chikkaiah or to the police. He was very much shocked and scared by witnessing the murder of Chikkaiah and thought to himself that these accused could murder person like Chikkaiah, who was powerful and influential person. If he discloses that he had seen the incident then they would kill him also. Therefore, till next day, he did not inform to anyone about the fact that he witnessed the incident.

PW-4 in his evidence has also stated that he had seen the face of the accused and the acts committed by them by the illuminating light from the house of Jayaram,



as well as lights from the house of Chandrashekar and another.

25. PW-4 was thoroughly cross-examined on each and every aspect stated by him in his evidence, however nothing was brought out to show that he was a planted witness. The learned trial Judge did not believe his evidence on the sole ground that he did not inform said facts immediately either to the police or family members of Chikkiah. Secondly, it was not possible for him to see the incident during wee hours, that too when it was dark. Both the reasons assigned by the trial court are erroneous. PW4 in his evidence stated facts of case in detail. In his cross examination he again elaborated them. Nothing was brought out to disbelieve him.

26. PW-4 in his evidence has stated about involvement of accused NO.1, 2 6,10,11 and 12. It is case of prosecution that above said accused were absconding from the date of incident. On 11.01.2011, accused Nos.1, 10 and 11 were arrested. Their clothes were blood



stained. On the same day in the presence of PWs.2 and 7, the investigating officer seized their blood stained clothes under mahazar as per Exs.P-6, P-7 and P-8. They are marked at MOs.8 to 13. All the said six clothes were sent to FSL for chemical examination. It was found that blood stains found on the said clothes are also of 'O' Positive that is blood group of deceased. Investigating officer also seized MO-16 on the confession of accused No.2. It also contains blood stains that were of 'O' Positive group that is blood group of deceased. Said evidences corroborate the evidence of PW-4. He stated presence of said accused and assaulting on Chikkiah by different weapons. The said weapons as well as clothes of some of the accused were blood stained. The said seizures are subsequent to recording of statement of PW4. It shows that he was not a planted witness.

27. PW-4 in his evidence has stated that he could see the incident as there was light in the house of Chandrasekhar, Jayaram and Hombalegowda. All the said



three persons fixed lights outside their houses. The learned trial judge assessing the evidence held that he could not see the incident by such lights since there were grown up trees and bushes in between the said houses and spot of incident. Said reasons are incorrect. It is perception of PW4. Accused assembled at the spot were not unknown persons. He was observing their movements for quiet some time. He has stated that by the lights from above said houses he could see the accused and their acts. When he assertively stated that he could see the incident by the said lights, by assigning some reasons it can not be brushed aside.

It is also to be noted that while the accused were waiting near spot of incident, they also were not holding any light. They identified Chikkiah and assaulted him. It also indicates that they could identify Chikkiah with help of some light and thereafter assaulted him. Therefore reasons assigned by the learned trial judge is not acceptable to discard PW-4 evidence.



28. PW-4 was thoroughly cross-examined. PW-4 withstood the cross-examination. If he had not seen the incident then he could not be able to answer the questions asked in the cross-examination. PW-4 has not pleaded ignorance to any of the material questions asked by the defence counsel in the cross examination. It does not appear that he was tutored witness. PW-4 undisputedly was residing nearby place of incident. He had an opportunity to see the place of the incident from front yard of his house. He said that he was getting up early morning around 4.00 am to feed silk worms, said evidence has not been disputed by the accused. It appears that PW-4 was a natural witness.

29. PW-4 has given explanation in his evidence as to why he did not inform to police that he had seen the incident. The said reason is acceptable. On the next day he might have come out of shock and trauma and informed to police. Only on that ground it cannot be held that he was a planted witness. The findings of the learned



trial Judge that PW-4 was a planted witness and his evidence is not reliable is a perverse.

30. The learned trial Judge doubted the case of the prosecution while appreciating the evidence of PW-1. In Ex.P-1 the names of about nine accused are mentioned and there was delay of four hours in lodging the complaint, from the time of the incident. During evidence, PW-1 has stated that on 31.12.2010, the accused and others gave life threat to his father Chikkaiah and they had declared that they would kill him in the event the candidate whom they had supported would not get elected. The election result was announced on 04.01.2011 and immediately thereafter within a day, the incident had taken place. Therefore, he has given explanation in the cross-examination that due to the said reasons and as there was political enmity between his father and accused, he suspected that they must have killed his father and hence mentioned their names in Ex.P-1. He has also stated that looking to the incident that has taken place,



he suspected that some more persons might be there in the said group, who murdered his father. PW-1 has given explanation for mentioning the names of nine accused in Ex.P-1. Under these circumstances, doubting the credibility of evidence of PW-1 only on the ground that he had mentioned names of nine persons in the FIR though he is not an eye witness is not a reason to disbelieve his evidence.

31. The learned trial judge gave much importance to so called delay of 4 hours in lodging complaint. It is discussed by the learned trial Judge in the impugned judgment regarding delay in lodging the complaint. It is pertinent to note that PW-1 is not an eye witness to the incident. Around 5.30 a.m., PW-5 saw the dead body of Chikkaiah. He raised hue and cry and on hearing the same, persons from nearby house rushed to the spot and he also went to the house of PW-1 and told about death of his father, thereafter PW-1 came to the spot. Ex.P-47 (FIR) shows that the police station was situated about



8 kms. away from the village of PW-1 (place of incident). Deceased was father of PW-1. Chikkaiah had sustained severe injuries on his head and face as per post mortem report and inquest. Looking at the dead body he must have been in shock and in disturbed mind. After consoling himself he must have gone to Mandya Rural police station which is situated about 8 kms. away from the spot and lodged the complaint and hence there is delay of three to four hours which is not fatal to the case of the prosecution in the present case. PW-1 must not be expecting death of his father on that day so as to keep ready the complaint to go to police station immediately after incident. The court has to appreciate the facts of the case keeping in mind normal human conduct.

32. In the cross-examination of PW-1 or other witnesses, it was not brought out that any advocate was present at the place of the incident in the early morning. Some villagers and neighbours might be gathered at the spot. It was also not brought out that the people gathered



at spot were enemies of accused. It was also not brought out in the cross examination that any person conversant with affairs of police station and court was present at spot. Hence the observation of the trial judge that after due discussion and deliberations Ex.P-1 was lodged is no basis.

33. The learned trial Judge has discarded the evidence of PW-4 on the ground that he was a planted witness. It is discussed by the learned trial judge that after lodging complaint, PW-1 came to know that there were no eye witnesses and hence PW-4 was planted on the next day, therefore his evidence was not believable. The said reasons are also not tenable and perverse finding.

34. PWs.1, 2 and 3 are witnesses to the spot mahazar. MOs.3, 4, 6 and 7 were seized from the spot of the incident. All the said weapons, cap and slippers were having blood stains. PWs.1 to 3 in their evidence have stated about seizure of the said articles from the spot, which was not seriously disputed. MO-5 was seized about 100 ft. away from the spot of the incident. It had blood



stains. After post mortem examination, the clothes of the deceased were handed over to police. PW-29 collected them from the hospital and produced before the police. They were seized under mahazar as per Ex.P-11. The articles which were seized are at MOs.22 to 32, which include the clothes worn by the deceased, one towel etc., and all of them were soaked with blood of the deceased.

35. The said articles i.e., MOs.3 to 7 and MOs.22 to 32 were sent to Forensic Science Laboratory (FSL), Bengaluru. The prosecution has produced the FSL report at Ex.P-75. It shows that blood stains found on item Nos.1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13 are stained with human blood of 'O' group. From the said facts it can be inferred that blood group of the deceased was of 'O' group.

36. It is the case of prosecution that on 11.01.2011, accused Nos.1, 10 and 11 were arrested. Their clothes were blood stained. On the same day in the presence of PWs.2 and 7, the investigating officer seized blood stained



clothes under mahazar as per Exs.P-6, P-7 and P-8. The clothes seized belonging to accused No.1 are at MOs.8 and 9 and the clothes belonging to accused Nos.10 and 11 are at MOs-10 to 13. All the said six clothes were sent to FSL for chemical examination. In the evidence of investigating officer, the said accused did not explain how their clothes were blood stained. The said clothes were chemically examined by the FSL and gave FSL report as per Ex.P-75. They are at Sl.Nos.14, 15, 16, 17, 18 and 19 in Ex.P75 and they were stained with human blood of group 'O'.

37. The blood group of deceased Chikkaiah as stated above is 'O' group. The very same blood group was found from the blood stained clothes worn by accused Nos.1, 10 and 11. It can be inferred that accused Nos.1, 10 and 11 were wearing the very same clothes at the time of incident and due to assault on Chikkaiah blood spilled on the clothes of above said accused. It



corroborates the evidence of PW-4 that accused Nos.1, 10 and 11 also assaulted Chikkaiah with deadly weapons.

38. Learned counsel for the accused submits that incident is said to have taken place on 06.01.2011 and the above said accused Nos.1, 10 and 11 were arrested on 11.01.2011. It is rather not possible to believe that they were wearing same dress for about five days. Therefore, the said story built up by the prosecution is not believable.

39. Learned Addl.SPP submits that immediately after the incident, accused Nos.1, 10 and 11 fled away from the spot of the incident in a motorcycle. They were absconding till 11.01.2011 and when they were arrested, they were wearing very same clothes and that were seized in the presence of the witnesses. Merely they did not change the clothes cannot be a ground to suspect that the case of the prosecution is not believable. We agree with the submission of learned Addl.SPP.

40. According to charge sheet, there were fifteen accused. PW-4 in his evidence has stated that accused



Nos.1, 2, 6, 10, 11 and 12 had assaulted Chikkaiah. The said oral evidence of PW4 corroborates with Ex.P-75 in respect of accused No.1, 10 and 11 which was not at all considered by the learned trial Judge.

41. It is the evidence of PW-4 that accused No.2 assaulted Chikkaiah with chopper and caused injuries on his face and head. As per the case of the prosecution, accused No.2 took machchu i.e., MO-16 along with him after the incident and hid it under the stake of wood. After his arrest, the investigating officer enquired him and recorded his confession statement disclosing the place where in he hid MO-16. Accused No.2 took police and witnesses to the said place and showed the place where in he hid MO-16. Police took MO-16 from said place and seized under mahazar in the presence of panchas. To prove the same, the prosecution examined PW-8. Along with other facts, PW-8 has stated about seizure of MO-16 in his presence on the basis of confession of accused No.2. MO-16 was also blood stained.



42. It is the evidence of PW-4 that accused No.6 assaulted Chikkaiah with club and caused injuries. As per the case of the prosecution, accused No.6 took club- MO-15 along with him after the incident and hid it. After his arrest, the investigating officer enquired him and recorded his confession statement disclosing place where in he hid MO-15. Accused No.6 took police and witnesses to the said place and showed the place where in he hid MO-15. Police took MO-15 from said place and seized it under mahazar in the presence of panchas. To prove the same, the prosecution has examined PW-8. Along with other facts, PW-8 has stated about seizure of MO-15 in his presence on the basis of confession of accused No.6. MO-15 was also blood stained. MO-15 and MO-16 were sent to FSL for chemical examination and as per the FSL report, they were having the blood stains. The said blood stains also of human blood of group 'O'. Therefore, the evidence of PW-4 that involvement of accused Nos.2 and 6 is also corroborated by Ex.P-75 and the blood stains found



on the said weapons. These facts were not considered by the learned trial Judge.

43. In this case, unfortunately the investigating officer who conducted major investigation was dead, therefore, he could not be examined. However, the relevant witnesses were examined who supported the case of the prosecution. Therefore, the absence of evidence of investigating officer which was beyond the control of the prosecution, is not fatal to the case of the prosecution.

44. The other witnesses are not material witnesses to the incident. The prosecution seized the mobile phones of some of the accused and produced the call detail records. However during the course of argument, it was not explained as to how far it connects to the incident. Admittedly, all the accused are residents of same village. They are known persons and workers of a common political party. Under such circumstances, if they contact each other through mobile phone, it cannot be presumed that they have discussed in regard to commit the offence.



Therefore, mere seizures of mobile phones do not connect the accused with the incident.

45. From the above said evidence, the prosecution is able to prove that accused Nos.1, 2, 6, 10 and 11 have committed the murder of Chikkaiah due to political rivalry. They had a common intention to commit the said offence, thereby the prosecution has proved that accused Nos.1, 2, 6, 10 and 11 have committed murder of Chikkaiah and committed an offence punishable under Section 302 read with Section 34 of IPC.

46. The prosecution has charge sheeted the accused under Sections 143, 147, 148, 114, 120-B, 201 read with Section 149 of IPC. But there are no sufficient evidence to prove the said offences. Therefore, the findings of the learned trial Judge acquitting the accused of the said offences is to be confirmed.

The trial Court has not appreciated the evidence properly. The reasons assigned for acquittal of accused



Nos.1, 2, 6, 10 and 11 are not proper and justifiable. Therefore, it needs interference by this court.

47. We are aware that while reversing the judgment of acquittal, the appellate court has to take proper care and caution. If the trial court has committed any grave error, then only appellate court can interfere in such findings of acquittal. If two views are possible, then, the view taken by the trial court or the view which is favourable to the accused, is to be accepted. In this case, as discussed above, only one view is probable and that is accused committed the murder. The reasons assigned by the trial court to acquit the accused are not in accordance with law. The Hon'ble Apex Court time and again held that in appropriate cases where injustice or miscarriage of justice has caused or the findings of the trial Judge are against the provision of law and perverse, the appellate court shall interfere and reverse the said findings of acquittal.



48. In the case of **Guru Dutt Pathak –vs- State of Uttar Pradesh<sup>1</sup>**, the Hon'ble Apex Court has held that:

*" Each and every ground on which trial court acquitted accused was elaborately dealt with by High Court. On reappreciation of entire evidence on record, High Court specifically concluded that findings recorded by trial court were perverse. Therefore, High Court was right in interfering with judgment and order of acquittal passed by trial court and convicting accused under Ss. 302/34 IPC. No interference with impugned judgment and order passed by High Court is warranted herein. Hence, conviction of accused under Ss. 302/34 IPC, stands confirmed".*

49. In the case of **Siju Kurian –vs- State of Karnataka<sup>2</sup>**, it is held that (we quote):

*" 16. It need not be restated that it would be open for the High Court to re-appraise the evidence and conclusions drawn by the Trial Court and in the case of the judgment of the trial court being perverse that is contrary to the evidence on record, then in such circumstances*

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<sup>1</sup> (2021) 6 SCC 116

<sup>2</sup> 2023 SCC Online SC 429



*the High Court would be justified in interfering with the findings of the Trial Court and/or reversing the finding of the Trial Court. In Gamini Bala Koteswara Rao v. State of Andhra Pradesh, (2009) 10 SCC 636, it has been held by this Court as under:*

*" 14. We have considered the arguments advanced and heard the matter at great length. It is true, as contended by Mr.Rao, that interference in an appeal against an acquittal recorded by the trial court should be rare and in exceptional circumstances. It is, however, well settled by now that it is open to the High Court to reappraise the evidence and conclusions drawn by the trial court but only in a case when the judgment of the trial court is stated to be perverse. The word "perverse" in terms as understood in law has been defined to mean "against the weight of evidence". We have to see accordingly as to whether the judgment of the trial court which has been found perverse by the High Court was in fact so."*

*17. The Appellate court may reverse the order of acquittal in the exercise of its powers and there is no indication in the Code of any limitation or restriction having placed on the High Court in exercise of its power as an Appellate*



*court. No distinction can be drawn as regards the power of the High Court in dealing with an appeal, between an appeal from an order of acquittal and an appeal from a conviction. The Code of Criminal Procedure does not place any fetter on exercise of the 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.*

*18. In the case of Sheo Swarup v. King Emperor, AIR 1934 PC 227, the Privy Council held as under:*

*" But in exercising the power conferred by the Code and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as:*

- a) The views/opinion of the trial judge as to the credibility of the witnesses;*
- b) The presumption of innocence in favour of the accused;*
- c) The right of the accused to the benefit of any doubt; and*



d) *The slowness of an appellate court in disturbing a finding of fact arrived at by a judge who had the advantage of seeing the witnesses.*

50. In the case of **Chandrappa and others -vs- State of Karnataka**<sup>3</sup> reiterated the legal position as under:

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

*(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*

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<sup>3</sup> (2007) 4 SCC 415: (2007) 2 SCC (Cri) 325



*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.*

We have kept in mind the law laid down in this regard before reversing the judgment.



51. For the aforesaid discussion, we proceed to pass the following :

**ORDER**

The Criminal Appeal is ***allowed in-part.***

The judgment of acquittal of the accused Nos.1, 2, 4 to 11 and 13 to 15, dated 26<sup>th</sup> July 2017, passed by the learned V Addl. District and Sessions Judge, Mandya, in S.C.No.183/2011, for the offences punishable under Sections 143, 147, 148, 120-B and 201 read with Section 149 of IPC is confirmed.

The acquittal of accused Nos.4, 5, 7, 8, 9, 13, 14 and 15 for the offence punishable under Section 302 read with Section 149 of IPC is confirmed.

The acquittal of accused No.1 – Y.D.Umesha, son of late Doddaidegowda, accused No.2 – Atmananda, son of K.Channaiah, accused No.6 – Shiva, son of Boodegowda Channaiah, accused No.10 – V.C.Ranjith @ Punith, son of



Chowdaiah and accused No.11 – V.K.Nandeesh, son of Krishnegowda, for the offence punishable under Section 302 read with Section 149 of IPC is set aside. Acting under Section 235(2) of Cr.P.C., above accused Nos.1, 2, 6, 10 and 11 are convicted of the charges punishable under Section 302 read with Section 34 of IPC.

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

**Sd/-  
(UMESH M ADIGA)  
JUDGE**

bk/



**SHKJ & UMBAJ:**

01.10.2024

**ORAL ORDER ON SENTENCE**

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

1. Accused no.1, 2, 6,10 and 11 are physically present before the court.

2. Learned counsel for the accused is present and learned Addl. SPP is present. Heard on sentence.

3. Accused no.1 submits that he has aged parents and his son is ailing from renal problems and he underwent surgery. He is working as a coolie and is earning his livelihood. He got 20 guntas of land wherein he does sericulture. Accused no.2 submits that he has aged parents and he is also an agriculturist having meager income. Accused no.10 and 11 submits that they are auto drivers and serving in Bengaluru. They are earning Rs.400/- to Rs.500/- per day. Accused no.10 submits that he is suffering from heart ailments. Accused no.11 submits that he has aged parents, wife and a small child. Therefore they pray for leniency while imposing sentence.



4. Learned counsel for the above said accused pleads leniency while imposing the sentence. Learned Addl. SPP submits that maximum permissible sentence be imposed against the accused.

5. It is not the rarest of the rare case to impose death sentence and in the alternative punishment of life imprisonment shall be imposed. Considering the age, social responsibilities of the accused, sentence has to be imposed. Similarly the family of the deceased should also be suitably compensated from the fine amount.

6. For the above discussion, following sentence is imposed.

7. Accused no.1,2,6,10 and 11 each are sentenced to undergo imprisonment for life and each of them shall pay fine of Rs.50,000/- and in default of payment of fine, they shall undergo rigorous imprisonment for a period of one year for the offence under section 302 r/w 34 IPC.



8. Out of the total fine amount, Rs.2,25,000/- shall be paid as compensation to the legal representatives of the deceased and the remaining amount of Rs.25,000/- shall be defrayed towards prosecution expenses. `

9. Registry is directed to supply free copy of the judgment to the accused.

10. Learned counsel for the above said accused submits that one month time may be granted for the accused to surrender before the trial court to undergo sentence. Said submission is accepted. One month time from today is granted to accused no.1,2,6,10 and 11 to surrender before the trial court to undergo sentence.

The above said accused shall execute personal bond for Rs.2,00,000/- each before the Registrar (Judicial) undertaking to surrender before the trial court on 04.11.2024.



Send back trial Court records to trial Court with copy  
of the judgment.

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

**Sd/-  
(UMESH M ADIGA)  
JUDGE**

sd  
List No.: 1 Sl No.: 2