



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 5TH DAY OF MARCH, 2025

PRESENT

THE HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MRS JUSTICE K.S. HEMALEKHA

CRIMINAL APPEAL NO.1106 OF 2017 (A)

C/W

CRIMINAL REVISION PETITION NO. 709 OF 2017

IN CRL.A. No.1106/2017

BETWEEN:

STATE BY POLICE SUB-INSPECTOR,
UPPINANGADY POLICE STATION,
PUTTUR TALUK, D.K.DISTRICT,
REPRESENTED BY THE
STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING,
BENGALURU-560 001.

... APPELLANT

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Location: HIGH
COURT OF
KARNATAKA

(BY SRI HARISH GANAPATHY, HCGP)

AND:

1. LINGAPPA
S/O PODIYA,
AGED 37 YEARS,
R/AT KAJEKKADU HOUSE,
NELLAYADI VILLAGE,
PUTTUR-574201.
2. RAMESHA
S/O ANGARA,
AGED 32 YEARS,
R/AT KAJEKKADU HOUSE,



NELLAYADI VILLAGE,
PUTTUR-574201.

3. ANNU MOGERA
S/O MUDARA
AGED 56 YEARS,
R/AT PADUBETTU HOUSE,
NELLAYADI VILLAGE,
PUTTUR-574201.

... RESPONDENTS

(BY SRI SUYOG HERELE E., ADVOCATE FOR R-1 TO R-3)

THIS CRL.A. IS FILED UNDER SECTION 378(1) AND (3) CR.P.C BY THE S.P.P. FOR THE APPELLANT PRAYING THAT THIS HON'BLE COURT MAY BE PLEASED TO GRANT LEAVE TO APPEAL AGAINST THE IMPUGNED JUDGMENT AND ORDER DATED OF ACQUITTAL DATED 07.10.2016 PASSED IN CRL.A.NO.5025/2015 AND 5026/2015 BY THE LEARNED V ADDITIONAL DISTRICT AND SESSIONS JUDGE, D.K., MANGALORE, SITTING AT PUTTUR, D.K., THEREBY REVERSING THE JUDGMENT DATED 11.08.2015 PASSED BY THE COURT OF THE ADDITIONAL CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS, PUTTUR, D.K., IN C.C.NO.1145/2008 AND ACQUITTING THE RESPONDENTS/ACCUSED FOR THE OFFENCES P/U/S 341, 326, 506, 109 R/W 34 OF IPC.

IN CRL.R.P. NO.709/2017

BETWEEN:

STATE BY POLICE SUB-INSPECTOR,
UPPINANGADY POLICE STATION,
PUTTUR TALUK, D.K.DISTRICT
REPRESENTED BY THE
STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING,
BENGALURU-560 001.

... PETITIONER

(BY SRI HARISH GANAPATHY, HCGP)

AND:

1. LINGAPPA
S/O PODIYA,
AGE 37 YEARS,



R/AT KAJEKKADU HOUSE,
NELLAYADI VILLAGE,
PUTTUR-574201.

2. RAMESHA
S/O ANGARA,
AGE 32 YEARS,
R/AT KAJEKKADU HOUSE,
NELLAYADI VILLAGE,
PUTTUR-574201.
3. ANNU MOGERA
S/O MUDARA,
AGE 57 YEARS,
R/AT PADUBETTU HOUSE,
NELLAYADI VILLAGE,
PUTTUR-574201.

... RESPONDENTS

(BY SRI SUYOG HERELE E., ADVOCATE FOR R-1 TO R-3)

THIS CRL.RP IS FILED UNDER SECTION 397 R/W 401 CR.P.C BY THE S.P.P FOR THE STATE PRAYING THAT THIS HON'BLE COURT MAY BE PLEASED TO i) SET ASIDE THE JUDGMENT AND ORDER PASSED BY THE APPELLATE COURT V ADDL. DIST. AND S.J., D.K., MANGALORE SITTING AT PUTTUR D.K., IN CRL.A.5012/2016 DATED 07.10.2016 FOR THE OFFENCE P/U/S 326,109 R/W 34 OF IPC; ii) IMPOSE PROPER, ADEQUATE AND MAXIMUM SENTENCE TO THE ACCUSED PERSONS FOR THE OFFENCE P/U/S 326, 109 R/W 34 OF IPC BY MODIFYING THE SENTENCE IMPOSED BY THE COURT OF THE ADDL. CIVIL JUDGE AND JMFC, PUTTUR D.K., PASSED IN C.C.NO.1145/2008 BY ITS JUDGMENT AND ORDER DATED 11.08.2015.

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



CORAM: HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR
and
HON'BLE MRS JUSTICE K.S. HEMALEKHA

ORAL JUDGMENT

(PER: HON'BLE MRS JUSTICE K.S. HEMALEKHA)

Both the criminal appeal and the criminal revision petition are preferred by the State. Criminal Appeal is against the judgment and order passed in Crl.A.Nos.5025/2015 and 5026/2015 dated 07.10.2016 on the file of the V Additional District and Sessions Judge, D.K., Mangalore sitting at Puttur, D.K. (referred to as 'Sessions Court') thereby reversing the judgment dated 11.08.2015 passed by the court of Additional Civil Judge and JMFC, Puttur, D.K. in C.C.No.1145/2008 and acquitting the accused of the offences punishable under Sections 341, 326, 506, 109 read with Section 34 of Indian Penal Code, 1860 (for short 'IPC') and Criminal Revision Petition insofar as praying to impose adequate sentence on the accused persons for the offences



punishable under Sections 326 and 109 of IPC read with Section 34 of IPC.

2. The case of the prosecution is that on 05.12.2007, at around 8.15 a.m. while PW1 was on his way to work, he was restrained by accused Nos.1 and 2 near the house of accused No.1, then accused No.1 threw chili powder into his eyes and assaulted him with a sickle on his left leg, while accused No.2 struck him with a wooden plank. Upon hearing his screams, his wife-PW3, mother and neighbors came to the spot. A complaint was given by PW1 about the incident as per Ex.P1, investigation which resulted in the accused being charge sheeted and tried.

3. The prosecution in support of their case, examined 11 witnesses viz., PWs 1 to 11 and Ex.P1 to Ex.P10 were marked, material objects M.Os 1 to 4 were produced, Exs.D1 to Exs.D7 were marked in favour of the defence during the course of the cross-examination of the prosecution witness.



4. The learned Magistrate believed the testimony of the witnesses and also referred to Ex.P5 and Ex.P9, the medical reports to hold that PW1 had sustained grievous injury besides considering the seizure of sickle in the presence of PW4 and PW5 under Ex.P4 and recorded an order of conviction against accused Nos.1 to 3 for the offences punishable under Sections 341, 326, 506 and 109 read with 34 of IPC.

5. Aggrieved by the judgment, the accused has preferred criminal appeal and State has also preferred an appeal against the punishment imposed being inadequate. The sessions court, on re-appreciation of the entire oral and documentary evidence reversed the conviction and acquitted the accused, granting them a benefit of doubt, giving the reasons that prior enmity between the complainant and the accused in regard to the measurement of land could be motive for false implication, the testimonies of PW2 and PW3 about whether they actually witnessed the incident is doubtful, and medical



evidence is also contradictory. The appellate court found that the prosecution failed to present credible evidence to establish the guilt.

6. We have heard the learned High Court Government Pleader Mr.Harish Ganapathy, appearing for the State and also learned counsel Mr.Suyog Herele E, appearing for respondent Nos.1 to 3 and perused the entire material on record.

7. It is the contention of the learned HCGP appearing for the State that the evidence of PW1 corroborates the contents of Ex.P1 - the complaint, the evidence of PW2 and PW3 as well as the medical evidence of PW7 and PW9 supports the case of the prosecution. It is submitted that if the evidence had been properly appreciated by the appellate court, there would be a possibility to hold that the offence has been established and is one punishable under the aforesaid Section. It is submitted that the magistrate court has rightly appreciated the case of the prosecution and held there



was no occasion for PW1 to lodge a false complaint and rightly convicted the accused, which is reversed by the Appellate court without assigning valid reasons. It is submitted that though the trial court held that the accused committed an offence under Section 326 of IPC, it failed to award adequate sentence.

8. It is the submission of the learned counsel appearing for the respondent that there is no corroboration from the witnesses more particularly, PW2 and PW3, which weakens the case of the prosecution about the incident having taken place. It is argued that the wound certificate also does not indicate any injury to the eye and the claim of the prosecution that chili powder was thrown into the eye of PW1 is falsified. There is inconsistency and lack of corroborative evidence, which created sufficient doubt in favour of the accused and in the given circumstances, the motive to falsely implicate the accused is found by the session's court. The session's



court has rightly held that the prosecution has failed to prove beyond reasonable doubt.

9. We have considered the rival contentions urged by the learned counsel for the parties and perused the material on record.

10. Upon careful assessment of the facts narrated above, we need to significantly understand the situation in the context of evidence of the key witnesses' viz., PW1, PW2 and PW3 and material document Ex.P5 and Ex.P9.

11. The complaint at Ex P1 and the evidence of PW1 states about the pre-existing land dispute between the complainant and the accused. Upon measurement of the land, it was found that the complainant was in possession of the accused's land. The complaint and the evidence of PW1 do not corroborate with each other for the sole reason that PW2, who is the brother of PW1, his presence at the time of incident is not forthcoming in the complaint. As per the complaint, PW1 mentions that on



hearing his scream, his wife, mother and neighbors came to the place of incident whereas, PW1's evidence is to the effect that PW2 and PW3 on hearing his scream, came to the place of incident.

12. PW2 is stated to be an eye-witness to the case of the prosecution. PW2 states that he heard the scream of PW1, his brother when he was coming from his house to the house of PW1, whereas, in his cross-examination, PW2 admits that he was in his house at the time of incident, and on hearing the scream, he too went to the place of incident. PW2's evidence is to the extent that he was at a distance of 70 meters away from the place of incident.

13. PW3 is none other than the wife of PW1 who in her chief-examination deposed about the incident that took place in front of the house of accused No.1 on 05.12.2015. The incident stated by PW3 corroborates the contents of complaint and evidence of PW1. In the cross-examination of PW3, she has categorically admitted that



she was tutored by her husband to give evidence. Thus, the evidence of PW3 would not inspire the confidence of the court. Importantly, it is to be stated that PW2 and PW3 deposed that they witnessed the incident from 70 meters, giving scope for doubting they were witness to the attack.

14. PW4 is panch witness to Ex.P4 under which M.O.1 is said to have been seized. PW4 is none other than the brother of PW3 and in cross-examination, PW4 admitted that PW1 tutored him to give evidence.

15. Ex.P5 is the wound certificate and Ex.P9 is the case sheet. The complaint and the evidence of all the witnesses is to the effect that accused No.1-Lingappa poured chili powder in the eye of the complainant and caused injury on the left leg with a sickle and accused No.2 - hit the left hand of the complainant with a wooden plank. In Exs.P5 and P9, the injury indicated is fracture of left fibula bone (mid shaft), neither the wound certificate nor the case sheet indicates any injury to the eyes or the



left hand of PW1, clearly falsifying the case of the occurrence of incident and causing injury as mentioned in the complaint and evidence. The injury sustained may not be in dispute, but the medical evidence should corroborate the evidence of the complainant and the other witnesses about the wound. The material on record would indicate that there is no material to show injury to the eyes or to the hand as made out by the complainant, thus, contradicting the claim that chili powder was thrown and injury caused to the left hand. PW1 has categorically admitted that there is a land dispute between the complainant and the accused and the complainant was found to be in possession of a portion of the accused land.

16. If the testimonies of all the witnesses are assessed, the inference that can be drawn is that the complainant and accused were involved in a land dispute and the complainant was found to be in possession of a portion of the accused land and there is a possible motive to falsely implicate the accused. PW2-the brother of the



complainant, his name initially did not find place in the complaint, but in the evidence of PW1, he states about PW2 being present, which raises questions about whether PW2 was truly present at the scene. The wound certificate does not indicate any injury to the eyes, nor the injury stated in the wound certificate matches with the injury sustained to the left hand, thus weakening the prosecution's case. These circumstances made the sessions court hold that the prosecution failed to present credible evidence to establish the guilt. In the given inconsistency, lack of corroboration and possible motive for false implication, the accused is entitled for acquittal. There is no perversity in the order passed by the appellate court and no ground made out to interfere with the reasoned order of the first appellate court and therefore, the order of acquittal is justified and this court pass the following:



O R D E R

- (i) The Appeal and revision petition are hereby ***dismissed***.

Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE

Sd/-
(K.S. HEMALEKHA)
JUDGE