



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST 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.1080 OF 2018

BETWEEN:

THE STATE OF KARNATAKA
REPRESENTED BY
SUB-INSPECTOR OF POLICE,
SULLIA POLICE STATION,
SULLIA TALUK, D.K.,
REPRESENTED BY
STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING,
BENGALURU-560001.

... APPELLANT

(BY SRI RANGASWAMY R., HCGP)

AND:

1. M. SEETHARAMA
AGED ABOUT 45 YEARS,
S/O. LATE KOOSAPPA GOWDA
R/O KOLCHARU HOUSE,
ALETY VILLAGE,
SULLIA TALUK,
D.K. DISTRICT-574239.
2. SHIVARAMA .K
AGED ABOUT 49 YEARS,
S/O. LATE KOOSAPPA GOWDA,
R/O. KOLCHARU HOUSE,
ALETY VILLAGE,
SULLIA TALUK,
D.K. DISTRICT-574239.

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Location: HIGH
COURT OF
KARNATAKA



3. JAYA PRAKASH
AGED ABOUT 39 YEARS,
S/O. SHIVAPPA GOWDA,
R/O. HOSAGADDE HOUSE,
ALETTY VILLAGE,
SULLIA TALUK,
D.K. DISTRICT-574239.
4. SATHISHA .K
AGED ABOUT 39 YEARS,
S/O. GOPALAKRISHNA GOWDA
R/O. HOSAGADDE HOUSE,
ALETTY VILLAGE,
SULLIA TALUK,
D.K. DISTRICT-574239.
5. BASAPPA
AGED ABOUT 45 YEARS,
S/O. LATE BOJAPPA GOWDA,
R/O. KOLCHARU HOUSE,
ALETTY VILLAGE,
SULLIA TALUK,
D.K. DISTRICT-574239.

... RESPONDENTS

(BY SRI C.N. SRINIVAS RAO, ADVOCATE FOR R-1 TO R-5)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 378(1) AND (3) CR.P.C. PRAYING TO GRANT LEAVE TO FILE AN APPEAL AGAINST THE JUDGMENT AND ORDER OF ACQUITTAL DATED 27.12.2017 PASSED IN S.C.NO.5005/2015 BY THE V ADDITIONAL DISTRICT AND SESSIONS JUDGE, D.K., MANGALURU, SITTING AT PUTTUR, D.K., THEREBY ACQUITTING THE ACCUSED-RESPONDENTS FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 143, 144, 147, 148, 341, 323, 324, 307 AND 506 R/W 149 OF IPC AND SECTION 30 OF INDIAN ARMS ACT AND ETC.

THIS APPEAL 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 MR JUSTICE SREENIVAS HARISH KUMAR)

This appeal is by the State questioning the correctness of the acquittal judgment dated 27.12.2017 in Sessions Case No.5005/2015 on the file of V Additional District and Sessions Judge, Dakshina Kannada, Mangaluru (sitting at Puttur). Five accused persons faced trial for the offences punishable under Sections 143, 144, 147, 148, 341, 323, 324, 307 and 506 read with Section 149 of IPC, and Section 30 of the Indian Arms Act, 1959.

2. The prosecution case is as below:

There was dispute with regard to using a pathway between the families of Gattigaru Seetharama and Marlakaje family. A panchayath was arranged to resolve this dispute and in that panchayath, PW.1 participated in favour of Gattigaru Seetharama. On 15.02.2014, PW.1 went to the house of Vijaya Kumar in connection with



cooking food, as marriage had been arranged in his family. The accused persons also came to the marriage place for the purpose of cooking food. Around 2.30 a.m. the accused persons left the place after finishing the cooking work. PW.1 also left that place riding his motorcycle. One Purushotham i.e., PW.2 accompanied PW.1. As they were riding the motorcycle in the rubber plantation of Kolcharu Purushothama, around 3.00 a.m., the accused persons stopped the motorcycle, asked Purushothama to move away from the place and then threatened PW.1 at the point of a gun stating that they would kill him. The further allegation was that PW.1 was knocked down from the motor bike and the accused inflicted injuries on both the eyes and lips. Accused Nos.1 and 3 are said to have held the neck of PW.1 to kill him. Accused No.1 took a knife and inflicted injury on the genital of PW.1. Seeing Purushothama making telephone call to one Vijay Kumar, all the accused left that place thinking that PW.1 was dead. Thereafter PW.1 was taken to hospital where his statement was recorded for registration of FIR.



Investigation was held and thus the accused came to be charge sheeted.

3. The prosecution examined 13 witnesses and produced 10 documents and 2 material objects to establish its case. On appreciation of evidence, the trial court recorded the findings that the evidence of PW.1 and PW.2 cannot be believed because of previous enmity between them and the accused. Both PW.1 and PW.2 were heavily drunk at the time when they were cooking in the house of PW.3 in connection with the marriage. The defence was that PW.1 fell down from the motorcycle, there was a possibility of such a fall because PW.1 was drunk. There was no believable evidence to show that MO.1 and MO.2 were used for commission of the offences. In view of inconsistency and contradictions in the evidence of the prosecution witnesses, a doubt arises with regard to the very incident and thus the accused would become entitled to acquittal.



4. Learned Government Pleader assails the findings of the trial court by arguing that the existence of enmity between two families is not in dispute and in that connection, a panchayath had been held. PW.1 participated in the panchayath and spoke in favour of PW.8 and this was the reason for the accused grudging against PW.1. So far as incident is concerned, PW.1 has given a good narration and injuries sustained by him finds corroboration from the medical evidence. Two doctors have stated about the injuries which PW.1 has also stated. In this view it cannot be said that the evidence of PW.1 cannot be believed. Further PW.2 was very much present at the time when the incident occurred. Standing at a distance he saw the entire incident. He spoke in tandem with PW.1. For this reason, the evidence of PW.2 cannot be disbelieved. PW.3 stated that there was marriage in his house and PW.1 as well as the accused had come for cooking the food. PW.5 and PW.8 state that there is a dispute with regard to pathway. Looked from any angle, all the witnesses examined by the prosecution establish



the incident. Therefore, there was no reason for the trial court to acquit the accused.

5. Learned counsel for the accused-respondent Nos.1 to 5 submits that the trial court has assessed the evidence thoroughly. Finding inconsistency in the evidence and taking into account the conduct of PW.1 especially in regard to registration of the complaint against him on the allegation of making an attempt to outrage modesty of wife of accused No.1, the evidence of PW.1 cannot be believed in the way he has given. There might be support from PW.2, but the fact remains that they were all drunk and riding the motorcycle in that condition. Doctors have opined very clearly that there was a possibility of happening of injuries when a person falls from the motor bike. Moreover, the prosecution has not produced vital evidence, i.e., blood stained lungi and shorts of PW.1. For this reason, the prosecution case has not stood established and therefore, there cannot be interference with the acquittal judgment.



6. We have given a re-look to the entire evidence. It is true that PW.1 states about the panchayath having been held to resolve the dispute between two families with regard to pathway and speaking in favour of PW.8. His evidence was that when he and PW.2 were returning in the early hours of the day, he was threatened by the accused and assaulted. His version is corroborated by PW.2, who is shown to be an eye witness. It was in the house of PW.3 that marriage had been arranged and he has spoken that PW.1, PW.2 and accused had come for cooking the food. But the evidence of PW.1 though finds support from PW.2, it is difficult to believe for the reason that his evidence with regard to bleeding injuries on his genital cannot be believed in as much as two doctors have clearly stated about other possibility of happening of that injury when a person falls from the motorcycle. Both of them were drunk. PW.1 has clearly stated that he had taken drinks while cooking. PW.1 and PW.2 left the marriage house early in the morning in the darkness. With regard to



the injury on his genital, PW.1 stated that his knicker was not torn because it was pulled down and then injury was inflicted with a knife. But PW.2 has stated that the knicker of PW.1 was torn. In this regard, the evidence is not consistent. Moreover, as PW.1 sustained bleeding injuries as has been stated by him, the investigating officer should have seized blood stained clothes. No reason is forthcoming for not seizing of those two clothes. The evidence of PW.1 and PW.2 could have been believed if blood stained clothes had been produced before the court. This is not a trivial evidence to be ignored. The submission of the government pleader that it is a procedural lapse by the investigating officer cannot be accepted because production of blood stained clothes would have strengthened the prosecution case. In this view of the matter, though the testimonies of PW.1 and PW.2 appear to be supporting the prosecution, still a doubt remains without answer because of non-production of blood stained clothes. Since appeal is against acquittal judgment, there cannot be interference unless there is



perversity in appreciation of evidence. Because of the reason that perversity is not forthcoming, we do not find good reason to entertain the appeal. Therefore, appeal is ***dismissed.***

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

**Sd/-
(K.S. HEMALEKHA)
JUDGE**

MBM
List No.: 1 Sl No.: 4