



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3RD DAY OF MARCH, 2026

PRESENT

THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ

AND

THE HON'BLE MR. JUSTICE VENKATESH NAIK T

CRIMINAL APPEAL NO. 91 OF 2018 (A)

BETWEEN:

NARAYANASWAMY
AGED ABOUT 51 YEARS,
S/O VARADAPPA,
R/O HYADALA VILLAGE,
DEVANAHALLI TALUK,
BENGALURU RURAL DISTRICT.

...APPELLANT

(BY SRI. MAYUR M.R., ADVOCATE (P/H))

AND:

1. THE STATE OF KARNATAKA BY
CHANNARAYAPATNA POLICE,
DEVANAHALLI TALUK,
BENGALURU RURAL DISTRICT,
REP BY STATE PUBLIC PROSECUTOR,
HIGH COURT COMPLEX,
BENGALURU-560 001.
2. MUNIYAPPANNA
AGED ABOUT 56 YEARS,
S/O LATE MUNIYAPPA,
3. MUNEGOWDA
AGED ABOUT 37 YEARS,
S/O THATHAPPA @ MARAPPA,



4. RAMESH
AGED ABOUT 29 YEARS,
S/O THATHAPPA @ MARAPPA,
5. MARIYAPPA
AGED ABOUT 39 YEARS,
S/O DODDAMARAPPA,
6. THIMMARAYAPPA
AGED ABOUT 51 YEARS,
S/O SANNAPPA,
7. MUNIRAJU
AGED ABOUT 46 YEARS,
S/O CHIKKAPILLAPPA,
8. MANJUNATH
AGED ABOUT 36 YEARS,
S/O MARAPPA @ MOTAPPA,
9. ANJINAPPA
AGED ABOUT 41 YEARS,
S/O SONNAPPA,
10. CHIKKASIDDAPPA
AGED ABOUT 32 YEARS,
S/O MARAPPA,

ALL ARE RESIDING AT
HYDALU VILLAGE,
DEVANAHALLI TALUK,
BENGALURU RURAL DISTRICT.

...RESPONDENTS

(BY SRI. RAHUL RAI K., HCGP FOR R1 (P/H);
SRI. N.K. SIDDESWARA, ADVOCATE FOR R2 TO R10 (P/H))



THIS CRL.A. IS FILED U/S.372 CR.P.C., PRAYING TO SET ASIDE THE ACQUITTAL JUDGMENT PASSED ON 06.07.2017 PASSED BY THE V ADDITIONAL DISTRICT AND SESSIONS JUDGE, DEVANAHALLI IN S.C.NO.15016/2016 - ACQUITTING THE RESPONDENTS/ACCUSED NO.1 TO 9 FOR THE OFFENCE P/U/S 395 OF IPC.

THIS APPEAL, COMING ON FOR HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE MOHAMMAD NAWAZ
and
HON'BLE MR. JUSTICE VENKATESH NAIK T

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE VENKATESH NAIK T)

Heard learned counsel for the appellant, learned High Court Government Pleader for respondent No.1- State and the learned counsel for respondent Nos.2 to 10.

2. The appellant/defacto complainant Narayanaswamy (PW1) has filed this appeal challenging the acquittal judgment passed in SC No.15016/2016 dated 06.07.2017 by V Additional District and Sessions Judge, Devanahalli, Bengaluru Rural District, acquitting



respondent Nos.2 to 10 for the offence punishable under Section 395 of IPC.

For the sake of convenience, the parties are referred as per their ranking before the Trial Court. The appellant is defacto complainant, respondent No.1 is the State and respondent Nos.2 to 10 are accused Nos.1 to 9.

3. The brief facts of the prosecution case is as under:

On 28.01.2009 at about 9.30 a.m., PW1-Narayanaswamy lodged a complaint - Ex.P1 to the first respondent Police, alleging that the land bearing Survey No.83/3 measuring 30 guntas belongs to his father, CW2-Varadappa and there was civil dispute between his family and the accused persons in respect of the said land. The borewell, which was situated in their land was under repair and they removed the borewell pipes, chain pulley, and cables for repair and had kept the same in their land. On 26.01.2009, at about 11.00 p.m., accused Nos.1 to 9, in



furtherance of common object trespassed into their land and abused the complainant and his father-PW2 in filthy language and took away eight 20 feet iron pipes, 100 feet cable wire, chain pulley in a tempo bearing No.KA 43-1226 by threatening their lives. Hence, he lodged a complaint vide Ex.P1. Thereafter, the jurisdictional police have registered the case in Crime No.11/2009 for the offence punishable under Section 379 of IPC. The matter was investigated and the I.O., filed charge sheet for the offence punishable under Sections 143, 447, 504, 323 and 506 r/w 149 of IPC. Initially, the matter was tried by the jurisdictional Magistrate. While recording the evidence, the prosecution filed an application under Section 323 of Cr.P.C., before JMFC, Devanahalli, for committal of the case to the Court of Sessions on the ground that Section 395 of IPC would attract. Later, the matter was remitted to the Court of Sessions for trial and the Court of Sessions framed charge under Section 395 of IPC, for which,



accused Nos.1 to 9 pleaded not guilty and claimed to be tried.

4. The prosecution in order to prove its case examined in all 6 witnesses as PWs.1 to 6 and got marked documents as Exs.P1 to P8(a) and material objects as MOs.1 to 3. After recording 313 statement of the accused, the accused did not adduce any defence evidence. The trial Court based on the oral and documentary evidence on record, acquitted accused Nos.1 to 9 of the offence punishable under Section 395 of IPC.

5. Being aggrieved by the impugned judgment passed by the trial Court, PW1/complainant preferred this appeal.

6. Learned counsel for the appellant/complainant contended that the trial Court has not properly appreciated the evidence on record. On the contrary, the trial Court has misread the evidence and acquitted the accused persons. The evidence of PW1-V.Narayanaswamy and the



evidence of PW2-Varadaraju clearly goes to show that on the date of alleged incident, accused Nos.1 to 9 forcibly took MOs.1 to 3 from the land of PW1 and to corroborate the evidence of PW1, PW2-Varadaraju was examined and their evidence corroborates with each other. Further, PW3-Papanna, though he has given statement as per Ex.P5, later he turned hostile, but the fact remains that MOs.1 to 3 were recovered from the house of PW3. PW.4-Munegowda, panch witness to Exs.P2 and P3-spot mahazar and seizure mahazar has supported the case of the prosecution and he has identified the photos, which are marked as Ex.P4. PW5- Kalandra Khan, Police Inspector, has clearly stated before the Court with regard to seizure of material objects MOs.1 to 3 from the house of PW3. Though all the material witnesses have clearly stated that MOs.1 to 3 were taken away by the accused, however, the trial Court has acquitted accused Nos.1 to 9 on unsustainable ground. Though there are minor omissions and contradictions in the evidence of the



prosecution witnesses, the same do not go to the very root of the case and they are not sufficient to discard the prosecution case in its entirety. The trial Court has totally failed to appreciate the evidence on record and erroneously acquitted accused Nos.1 to 9 for the offence punishable under Section 395 of IPC. It is contended that there are sufficient materials to convict the accused persons for the offence under Section 395 of IPC. Hence, he prays for allowing the appeal.

7. The learned High Court Government Pleader appearing for respondent No.1/State contended that the reasons assigned by the trial Court are not proper and not in accordance with law. In fact, PWs.1, 2 and 4 have clearly stated against accused Nos.1 to 9 and the ingredient of Section 395 of IPC clearly gets attracted. The Investigating Officer has also stated regarding the seizure of articles MOs.1 to 3. Hence, learned High Court Government Pleader also prays to allow the appeal.



8. Learned counsel for respondent Nos.2 to 10/accused Nos.1 to 9 vehemently contended that there are contradictory testimonies of PW1 and PW2 with regard to arrival of accused Nos.1 to 9 to the land, trespass and robbing of MOs.1 to 3 from the land of PW1 and PW2. Learned counsel further contended that there is an inordinate delay of 2 days in lodging the complaint. The incident has occurred on the night of 26.01.2009, but the complaint was lodged on 28.01.2009 and the delay is not properly explained. There is civil litigation pending between the parties and PW1, who is litigating minded person right from 1987 is filing original suits one after the another. The original suit which was filed by him in OS No.192/1987 and OS No.2199/2006 came to be dismissed and hence, he had grudge against accused Nos.1 to 9. In that context, he has filed this false case against accused Nos.1 to 9. The recovery is also not proved to attract Section 27 of Indian Evidence Act. PW3 has also turned



hostile to the case of prosecution. Hence, he prayed to dismiss the appeal.

9. After hearing the learned counsel from both sides, the points that arise for our consideration in this appeal are:

"i. Whether the prosecution has proved beyond reasonable doubt that on 26.01.2009 at 11.00 p.m., accused Nos.1 to 9 trespassed to the land of PW1, took quarrel with PW1 and PW2, abused them in filthy language, intentionally insulted them, made criminal intimidation to eliminate them and also took away 8 iron pipes measuring 20 feet length along with chain pulley, 120 meters cable wires in the tempo, thereby committed an offence punishable under Section 395 of IPC?

ii. Whether the judgment of acquittal under appeal warrants any interference at the hands of this Court?"

10. Before proceeding further in analyzing the evidence led in the matter, it is to be borne in mind that this is an appeal preferred against the judgment of acquittal passed by the trial Court. Therefore, the accused



has the double benefit. Firstly, the presumption under law is that unless the guilt of accused is proved, he has to be treated as an innocent. Secondly, the accused has already been enjoying the benefit of judgment of acquittal passed under the impugned judgment. As such, bearing the same in mind, the evidence placed by the prosecution in the matter is required to be analyzed.

(a) The Hon'ble Apex Court, in its judgment in the case of ***Chandrappa and others -vs- State of Karnataka***, reported in ***(2007) 4 Supreme Court Cases 415***, while laying down the general principles regarding powers of the Appellate Court while dealing in an appeal against an order of acquittal, was pleased to observe at paragraph 42(4) and paragraph 42(5) as below:

"42(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 acquittal, the presumption of innocence is further reinforced, reaffirmed and strengthened by the trial Court.

42(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.”

(b) In the case of ***Sudershan Kumar -vs- State of Himachal Pradesh*** reported in ***(2014) 15 Supreme Court Cases 666***, while referring to ***Chandrappa’s case (supra)***, the Hon’ble Apex Court at Paragraph 31 of its judgment was pleased to hold that, it is the cardinal principle in criminal jurisprudence that presumption of innocence of the accused is reinforced by an order of acquittal. The Appellate Court, in such a case, would interfere only for very substantial and compelling reasons.

(c) In the case of ***Jafarudheen and others -vs- State of Kerala*** reported in ***(2022) 8 Supreme Court***



Cases 440, at Paragraph 25 of its judgment, the Hon'ble Apex Court was pleased to observe as below:

"25. While dealing with an appeal against acquittal by invoking Section 378 Cr.P.C, the appellate Court has to consider whether the trial Court's view can be termed as a possible one, particularly when evidence on record has been analysed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the appellate Court has to be relatively slow in reversing the order of the trial Court rendering acquittal. Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters."

11. The above principle laid down in previous case was reaffirmed by the Hon'ble Apex Court, in the case of **Ravi Sharma -vs- State (Government of NCT of Delhi) and another** reported in **(2022) 8 Supreme Court Cases 536** and also in the case of **Roopwanti -vs-**



State of Haryana and others reported in **AIR 2023**
SUPREME COURT 1199.

12. Keeping in mind the above principles laid down by the Hon'ble Apex Court, we proceed to analyze the evidence placed by the prosecution in this matter.

13. The prosecution, in order to prove the alleged guilt against accused Nos.1 to 9 has examined in all eight witnesses PW.1 to PW.8.

14. PW1-V.Narayanaswamy, in his evidence has stated that PW2-Varadappa is his father. He knows accused Nos.1 to 9. He owns land bearing Survey No.83/3 measuring 30 guntas at Hyadalu village, Channarayapatna Hobli, Devanahalli Taluk, and the land has been standing in the name of his father, PW2-Varadaraju and they are in possession of the said land. They had grown grapes in the said land and there is a borewell in the land. He further stated that on 26.01.2009, the motor got burnt and with the help of chain pulley, pipes and cable wire, the motor



was removed and the said materials were kept in their land. At that time, they were in their land. On the same day, at 09.00 p.m., all the accused trespassed into their land in a tempo, abused them in filthy language and took away MOs.1 to 3 chain pulley, 120 meter cable wire, 8 iron pipes measuring 20 feet length in the tempo and threatened them with dire consequences. The villagers told him to approach the panchayat. However, no panchayat was convened in the village. Therefore, on 28.01.2009, he lodged a complaint. Soon after receipt of the complaint, the police came to his land, drew Panchanamma vide Ex.P2. Later, he came to know that MOs.1 to 3 were kept in the house of PW3-Papanna. Hence, he showed the house of Papanna, where the police seized MOs.1 to 3 from the house of PW3 under Ex.P3 seizure panchanama.

15. PW1 was cross examined. In his cross examination, he has clearly admitted that PW2-Vardappa has four brothers namely, Muniyappa, Doddapapanna,



Chikkapapanna and Varadappa. Accused No.1 is none other than the son of Muniyappa. In land bearing Survey No.83/3, there were three partitions. Muniyappa, Pillamma and Varadappa got 6 guntas each and PW.2-Varadappa got 18 guntas in the said land. Later, Chikkapapanna and PW2 exchanged their land. He admitted that the land of accused No.1 and PW1 are abutting to each other. He also admitted that there is civil dispute between the parties and suit filed by PW1 in OS No.192/1987 and O.S.No.2199/2006 came to be rejected by Civil Judge, Devanahalli. He further stated that soon after the incident, he visited the police station and gave complaint, immediately the police came to the spot and in front of the police itself, accused Nos.1 to 9 took MOs.1 to 3 in a tempo.

16. PW2-Vardaraju has reiterated the oral testimony of PW1 and corroborates his testimony.

17. PW3-Pappanna, the owner of neighbouring land has stated that for the past nine years, the pipes, cable



wires and chain pulley belonging to PW1 were lying in the land of PW3, as there was no one to watch over them. However, he has turned hostile to the case of prosecution and nothing has been elicited in his cross-examination by the learned Public Prosecutor.

18. PW4-Munegowda, though supported the case of prosecution and corroborated the testimonies of PW1 and PW2, however, in the cross-examination, he stated that he has not seen the incident. Therefore, he is a hearsay witness.

19. PW5-Kalandar Khan-Police Inspector, who received the complaint and registered the FIR has stated that on 28.01.2009 at 9.30 a.m., PW1 lodged the complaint vide Ex.P1. Thereafter, he visited the scene of offence, where he drew Ex.P2-mahazar and later seized MOs.1 to 3 from the house of PW3-Papanna under Ex.P3.

20. PW6-Chowdappa-PSI, investigated the matter and filed the charge sheet. With this evidence, learned



counsel for appellant vehemently contended that PWs.1, 2 and 4 have supported the case of the prosecution.

21. The learned counsel for appellant contended that the evidence of PW-4 Munegowda, who is panch witness to Ex.P2 and P3 spot and seizure mahazar, has supported the case of the prosecution and he has identified the photos, which are marked as Ex.P4, but, nothing has been elicited in the cross-examination to impeach his testimony and the Trial Court has not properly considered the evidence of this witness.

22. He further contended that PW-5 N.A.Khalandar Khan, Police Inspector has clearly stated that, the material objects MOs.1 to 3 were recovered and seized articles were identified. Even in the cross-examination of this witness, nothing is elicited to impeach his testimony. Though this witness is an official witness and investigating officer, his evidence cannot be brushed aside on the ground that he is an official witness. The Trial Court has failed to consider the evidence of this witness also.



23. He further contended that in his evidence, PW-6 Chowdappa, PSI, has stated that, the initial investigation was done by him and after concluding the investigation, the charge sheet was laid before the Court. This witness is only a formal witness.

24. The learned counsel contended that the trial Court has failed to appreciate the evidence of PW-1, PW-2 and PW-4, who are the independent material witnesses, who have supported the case of the prosecution to the fullest extent. The Trial Court failed to appreciate that, discrepancies in the evidence of independent witnesses are minor discrepancies, whose statements have been recorded after lapse of 3-4 years. The minor variations in the evidence will not go to the very root of the case. Further, the Trial Court has totally failed to appreciate the evidence on record and erroneously acquitted the accused i.e., respondent No.2 to 10 for the offences punishable under Sections 395 of Indian Penal Code. There are sufficient materials to convict respondent No.2 to 10 for



the offences punishable under Sections 395 of Indian Penal Code.

25. Admittedly, the appellant made allegations that on the relevant date, time and place, the accused persons trespassed to his land, intentionally insulted appellant to provoke his breach of peace, voluntarily caused hurt to PWs.1 and 2 by hands, made criminal intimidation to eliminate them and took MOs.1 to 3 from their land.

26. A perusal of the material available on record goes to show that a suit was filed by accused No.1 against the appellant in O.S. No.217/2014 and there is civil litigation pending between the parties in respect of share to be allotted in the property. The records reveal that, the father of appellant and accused persons are brothers and the property in dispute is their ancestral property. Under these circumstances, it is just and necessary to analyse Section 504 of IPC.



27. The Hon'ble Apex Court in the case of ***Fiona Shrikhande vs. State of Maharashtra and another***¹ at paragraph Nos.13 and 14 held as under:

"13. Section 504 IPC comprises of the following ingredients viz. (a) intentional insult, (b) the insult must be such as to give provocation to the person insulted, and (c) the accused must intend or know that such provocation would cause another to break the public peace or to commit any other offence. The intentional insult must be of such a degree that should provoke a person to break the public peace or to commit any other offence. The person who intentionally insults intending or knowing it to be likely that it will give provocation to any other person and such provocation will cause to break the public peace or to commit any other offence, in such a situation, the ingredients of Section 504 are satisfied. One of the essential elements constituting the offence is that there should have been an act or conduct amounting to intentional insult and the mere fact that the accused abused the complainant, as such, is not sufficient by itself to warrant a conviction under Section 504 IPC.

14. We may also indicate that it is not the law that the actual words or language should figure

¹ (2013) 14 SCC 44



in the complaint. One has to read the complaint as a whole and, by doing so, if the Magistrate comes to a conclusion, prima facie, that there has been an intentional insult so as to provoke any person to break the public peace or to commit any other offence, that is sufficient to bring the complaint within the ambit of Section 504 IPC. It is not the law that a complainant should verbatim reproduce each word or words capable of provoking the other person to commit any other offence. The background facts, circumstances, the occasion, the manner in which they are used, the person or persons to whom they are addressed, the time, the conduct of the person who has indulged in such actions are all relevant factors to be borne in mind while examining a complaint lodged for initiating proceedings under Section 504 IPC."

28. Further, appellant – *de-facto* complainant made allegations that on the relevant date and time, accused persons intentionally insulted him to provoke his breach of peace, but on perusal of the charge-sheet at column No.17 and the evidence before the Court, the prosecution witnesses have not stated about the ingredients of Section



504 of the IPC. Therefore, in the case on hand, ingredients of Section 504 of the IPC are not made out.

29. In the complaint, the appellant – *de-facto* complainant has taken the contention that on the relevant date, time and place, the accused persons made criminal intimidation to eliminate him, but on perusal of the charge-sheet material and the evidence before the Court, the clear terms used by accused persons have not been stated by the appellant - *de-facto* complainant.

30. On perusal of the above provisions, it is clear that in order to satisfy the ingredients of criminal intimidation, there has to be a threat or injury to person, reputation or property of the complainant by the accused persons, which should be with an intention to cause threat to that person or cause that person to do any act, which he is not legally bound to do, or to omit to do so as to avoid the execution of such threat.



31. In case of ***Manik Taneja and another v. State of Karnataka and another***², the Hon'ble Supreme Court had an occasion to examine the ingredients of Section 503 and 506 of the IPC.

"Section 506 IPC prescribes punishment for the offence of criminal intimidation. "Criminal intimidation" as defined in Section 503 IPC is as under:

"503.Criminal intimidation.—Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

Explanation.—A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section."

A reading of the definition of "criminal intimidation" would indicate that there must be an act of threatening to another person, of causing an injury to

² (2015) 7 SCC 423



the person, reputation, or property of the person threatened, or to the person in whom the threatened person is interested and the threat must be with the intent to cause alarm to the person threatened or it must be to do any act which he is not legally bound to do or omit to do an act which he is legally entitled to do."

32. The perusal of the foregoing proposition of law, it is clear that in order to constitute an offence of criminal intimidation, there must be threat with intention to cause alarm to the complainant or to do any act which is not legally bound to do. Mere expression of any words without any intention to cause alarm to the complainant or to make him to do, or omit to do any act, is not sufficient to bring the act within the definition of criminal intimidation. Therefore, in the instant case, even ingredients of Section 506 of the IPC are not made out against the accused persons. The evidence of prosecution witnesses clearly demonstrates that, there is civil case pending between the family of the appellant and the accused persons. Further, the allegations made against



the accused persons appears to be civil in nature and in order to offshoot from civil suit, the appellant has foisted this criminal case against the accused persons.

33. In order to attract Section 395 of IPC, it is just and necessary to analyse Section 395 of IPC.

395. Punishment for dacoity.—

Whoever commits dacoity shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

The term dacoity defined under Section 391 of IPC -

"When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding, is said to commit "dacoity".

34. In the light of the above definition, let us examine the evidence of prosecution. PW1, in his evidence



has categorically stated that on 26.01.2009, the motor pumpset installed in his land was burnt. Therefore, in order to get the repair done, they had removed all pipes with motor with chain pulling along with cable wire. At the same time, all the accused persons trespassed into their land and taken the chain pulley - 120 meter cable wire and 8 iron pipes measuring 20 feet length in a tempo vehicle, by making criminal intimidation. However, in the cross-examination, he has admitted that, there was a civil litigation between the parties and when PW1 and PW2 were guarding their land, the accused persons trespassed into their land in a tempo and took away chain pulley, meter cable wire and iron pipes at the instance of the police itself.

35. If really the instant incident had occurred on 26.01.2009 at about 09.00 p.m., then PW1 could have lodged the complaint on the same night and that too if the incident occurred in the presence of police itself, he could have lodged complaint to the police on the spot itself.



However, he did not lodge any complaint on the date of incident, but after two days of the incident i.e., on 28.01.2009, he lodged the complaint. Therefore, there is inordinate delay in lodging the complaint. In the complaint, PW1 has stated that since the villagers assured him to compromise the matter and restore MOs.1 to 3 articles to his land, on that premise, he could not lodge the complaint in time. But, the cross-examination of PW1 clearly reveals that on the date of incident i.e., on 26.01.2009 at 10.00 p.m., itself the police visited his land and accused Nos.1 to 9 robbed MOs.1 to 3 in their presence itself. He did not lodge complaint to the police in the land itself, which is contrary to the contents of Ex.P1 and falsifies the statement of the complainant.

36. Insofar as delay in lodging the complaint is concerned, mere delay in lodging the complaint cannot be a ground to acquit the accused in a criminal case. However, the delay in lodging a complaint (FIR) does not automatically invalidate a case, but puts the Court on



guard, often casting suspicion on the prosecution's story. While not fatal on its own, unexplained, long, or unreasonable delays may suggest fabrication, exaggeration, or embellishment of facts. However, if a plausible reason for the delay is provided, or if witnesses have no motive to implicate the accused falsely, the delay can be overlooked. Whereas in the instant case, the complainant has motive against the accused persons and there is series of civil litigations between the parties.

37. Admittedly, MOs.1 to 3 were not recovered at the instance of accused Nos.1 to 9. On the contrary, the same were recovered from the house of PW3. However, PW1 has stated that soon after committing robbery, MOs.1 to 3 were kept in the house of PW3. But PW3 has stated that PW1-complainant himself brought MOs.1 to 3 to his house and kept there and the police have seized the aforesaid articles at the instance of PW1 and not at the instance of accused persons. Therefore, there is material



contradictions in the evidence of PWs.1 and 3 with regard to recovery of robbed articles such as MOs.1 to 3.

38. Very interestingly, PW1 has deposed that police station is situated nearby his village and immediately after the incident, he rushed to the police station and gave information. He went one step ahead and deposed that on the same night, he lodged the complaint at about 10.00 pm., and immediately police rushed to the spot. It shows that there is inconsistency in the evidence of PW1.

39. Insofar as the oral testimony of PW2 is concerned, he is a hearsay witness. According to him, in his presence, spot Mahazar was drawn vide Ex.P2, so also in his presence, seizure Mahazar was drawn vide Ex.P3. In the cross-examination, he denied the suggestion that he has not made statement vide Ex.P4 and insofar as the oral testimony of PW3 is concerned, it is alleged that in his house, theft articles were kept, but he turned hostile to the case of the prosecution.



40. From perusal of the material available on record, the contents of Ex.P2-spot mahazar and Ex.P3-seizure mahazar are not proved. Further, the delay is not properly explained by the prosecution and non-seizure of tempo is also fatal to the case of prosecution. The oral testimonies of PWs.1, 2 and 4 is full of inconsistencies and their testimonies are not reliable and corroborative with each other. Therefore, the trial Court has rightly appreciated the oral testimony of the prosecution witnesses and rightly acquitted accused Nos.1 to 9.

41. PWs.1 and 2 have categorically admitted that there is a civil dispute pending between the parties. Therefore, there is serious doubt with regard to alleged offence committed by the accused persons. Hence, there is no merit in the appeal.

42. On considering both oral and documentary evidence placed before the Sessions Court, the Sessions Court has rightly acquitted the respondents of the alleged offence. Hence, we do not find any reasons to interfere



with the impugned judgment. Accordingly, we pass the following:

ORDER

- (i) The Criminal Appeal stands ***dismissed***.
- (ii) The judgment of acquittal dated 06.07.2017 passed in SC No.15016/2016 by V Additional District and Sessions Judge, Devanahalli, acquitting accused Nos.1 to 9 of the offence punishable under Section 395 of IPC is confirmed.

Sd/-
(MOHAMMAD NAWAZ)
JUDGE

Sd/-
(VENKATESH NAIK T)
JUDGE