



IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 12TH DAY OF FEBRUARY, 2026
BEFORE
THE HON'BLE MR. JUSTICE G BASAVARAJA
CRIMINAL APPEAL NO. 1035 OF 2014 (C)

BETWEEN:

SRI. BRIJESH
S/O LATE NAGESH NAIK,
AGED 35 YEARS,
RESIDING AT NO.45,
KODAKKAL SHIVANAGAR HOUSE,
ALPE VILLAGE, PADIL POST,
MANGALORE-575001.

...APPELLANT

(BY SRI. VINOD KUMAR M.,ADVOCATE)

AND:

STATE OF KARNATAKA
REPRESENTED BY STATION HOUSE OFFICER,
MANGALORE RURAL POLICE STATION,
REPRESENTED BY THE
STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING,
AMBEDKAR VEEDHI,
BANGALORE - 560001.

...RESPONDENT

(BY SMT. N. ANITHA GIRISH, HCGP)

THIS CRL.A. IS FILED U/S. 374(2) CR.P.C BY THE ADV.,
FOR THE APPELLANT/ACCUSED NO.2 PRAYING TO SET ASIDE
THE ORDER DATED:25.10.14 PASSED BY THE PRL.S.J.,
MANGALORE IN S.C.NO.46/11 - CONVICTING THE
APPELLANT/ACCUSED FOR THE OFFENCE P/U/S 341, 324 R/W
34 OF IPC AND ETC.



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

CORAM: HON'BLE MR. JUSTICE G BASAVARAJA

ORAL JUDGMENT

1. The appellant-Brijesh, who is accused No.2 has preferred this appeal against the judgment of conviction and order on sentence dated 25.10.2014 passed in SC.No.46/2011 by the Principal Sessions Judge, Dakshina Kannada, Mangalore (for short 'the trial Court').

2. For the sake of convenience, the parties herein are referred to as per their rank before the trial Court.

3. Brief facts leading to this appeal are that, Mangalore Rural Police submitted the charge sheet against accused Nos.1 to 3 for the offence under Sections 341, 324, 307 and 504 read with 34 of Indian Penal Code. It is alleged by the prosecution that, on 14.09.2010 at around 06.30 p.m. in Kannoor Village, within the limits of Mangalore Rural Police Station under the pretext of previous ill-will, all the accused having common object, voluntarily restrained



CW1-Suresh and CW2-Santhosh while they were proceeding on road and prevented them from proceeding further. In furtherance of common intention, the accused voluntarily caused hurt to CW1 and CW2. The accused abused CWs.1 and 2 in filthy language and threatened them. Accused No.1-Lathish Naik voluntarily caused hurt to CWs.1 and 2 and stabbed on their chest, back, neck and other parts of the body with a knife known as 'Kolibalu' which is used as a weapon. Thus caused bleeding injuries to them. Accused No.2 attempted to kill CW2 by using a stone. Accused No.3 has committed criminal intimidation by threatening CW1 and CW2 with an intention to cause alarm to them. Thus, accused have committed the offence punishable under Sections 341, 324, 307, 504 read with 34 of Indian Penal Code.

4. After filing the charge sheet against accused 1 to 3, Accused No.1-Lathish Naik is shown as absconding. Therefore, split-up charge sheet was filed. Case was registered in CC.No.810/2011. Thereafter, the case was



committed to the Court of Sessions. The trial proceeded against accused Nos.2 and 3. Accused Nos.2 and 3 appeared before the trial Court and were enlarged on bail.

5. Upon hearing the charges, the trial Court framed the charges for the commission of alleged offences. Having understood the same, accused pleaded not guilty and claimed to be tried.

6. To prove the guilt of the accused, the prosecution has examined, in all, fifteen witnesses who were marked as PWs.1 to 15. Seventeen documents were marked as Exhibits P1 to P17 and eight material objects marked as MO.Nos.1 to 8.

7. On closure of prosecution side evidence, statements under Section 313 of Cr.P.C were recorded. Accused have totally denied the evidence of prosecution witnesses. However, they did not choose to lead any defence evidence on their behalf.



8. Having heard the arguments on both sides, the trial Court has convicted the accused No.2-Brijesh for the offence under Sections 341 and 324 read with 34 of IPC and acquitted accused No.2 for the offence under Sections 307, 504 and 506 read with 34 of IPC. The trial Court has also acquitted the accused No.3-Ganesh Shettigar for the offence under Sections 341, 324, 307, 504 and 506 read with 34 of IPC. Being aggrieved by the judgment of conviction and order on sentence, accused No.2/appellant has preferred this appeal.

9. Learned counsel for the appellant would submit that the judgment of the trial Court is contrary to well established principles of law. Same suffers from legal infirmities. It is alleged that, though stone was lifted by the accused No.2 to dump on the victim, no stone has been seized from the spot.

10. PW1-Kishore stated that, other witnesses who have supported the case of the prosecution partially, are close friends of the victims. The victims also stated that after



the incident, people of their side came. Referring the other witnesses clearly reflects that the witnesses are friends and team-mates of the victim and admitted the fact that there was rivalry between the two on account of Ganesha Festival, which adds credence to the fact that due to the rivalry, the other witnesses have supported the story of the complainant. PW1 has stated that he does not know who has assaulted the victim and that it was dark and he could not see the assaulter. Another witness says that from the house of one Vishwanatha, the place of incident, is not visible. PW3 has stated that they were waiting near the shop of one Kishore, at that time, they received information and rushed to the spot. PW3 showed his ignorance as to who has assaulted. There is no case that the appellant has assaulted any of the victims. Even there is no evidence to show that he has committed the offence punishable under Sections 341 and 324 IPC. The trial Court has failed to appreciate the material on record in



accordance with law and facts. Hence, it is sought to allow this appeal.

11. Smt. N.Anitha Girish, the learned HCGP would submit that the trial Court has properly appreciated the material on record in accordance with law and facts and sought for dismissal of the appeal.

12. Having heard the arguments on both sides and on perusal of the materials placed before this court, the following points would arise for my consideration:

(i) Whether the judgment of conviction and order on sentence passed against the accused no. 2/appellant suffers from legal infirmities and calls for interference by this Court.

(ii) What order?

My answer to the above points are as under:

Point No.1 in Affirmative

Point No.2 as per final order.

13. I have examined the materials placed before this Court. It is the case of the prosecution that, the



Mangalore Rural Police submitted the charge sheet against the accused Nos.1 to 3 for the offence under Sections 341, 324, 307, 504 read with 34 of IPC. It is alleged by the prosecution that, on 14.09.2010 at around 06.30 p.m. in Kannoor Village, within the limits of Mangalore Rural Police Station under the pretext of previous ill-will, all the accused having common object voluntarily restrained CW1 and CW2 while they were proceeding on road and prevented them from proceeding further. In furtherance of common intention, the accused voluntarily caused hurt to CW1-Suresha and CW2-Santosha. The accused abused CW1 and CW2 in filthy language and threatened them. Accused No.1-Lathish Naik voluntarily caused hurt to CW1 and CW2 and stabbed on their chest, back, neck and other parts of the body with a knife known as 'Kolibalu' which is used as a weapon, thus caused bleeding injuries to them. Accused No.2 attempted to kill CW2 using a stone. Accused No.3 has committed criminal intimidation by threatening CW1 and CW2 with an intention to cause



alarm to them. Thus, the accused have committed the offence punishable under Sections 341, 324, 307, 504 read with 34 of Indian Penal Code.

14. To prove the guilt of the accused, prosecution has examined in all, fifteen witnesses who were marked as PWs.1 to 15. Seventeen documents were marked as Exhibits P1 to 17 and eight material objects marked as MO.Nos.1 to 8.

15. The genesis of the case arises from Exhibit P11-complaint filed by PW11-Suresh which reads as under:

"ನಾನು ಮೇಲಿನ ವಿಳಾಸದಲ್ಲಿ ಸಂಸಾರ ಸಮೇತನಾಗಿ ವಾಸವಾಗಿರುತ್ತೇನೆ. ನಾನು ಮರದ ಆಚಾರಿ ಕೆಲಸ ಮಾಡುತ್ತಿದ್ದೇನೆ. ಈ ದಿನ ತಾರೀಖು 14.09.2010 ರಂದು ಸಂಜೆ ಸುಮಾರು ನಾನು ಮತ್ತು ಸಂತೋಷ ಗಣೇಶೋತ್ಸವದ ಬಾಬ್ಬು ಹಾಕಿರುವ ದೀಪಾಲಂಕಾರದ ಸಾಮಗ್ರಿಗಳನ್ನು ಕೊಡೆಕಲ್ ಎಂಬಲ್ಲಿ ವೈದ್ಯನಾಥ ದೇವಸ್ಥಾನದ ಹತ್ತಿರ ತೆಗೆದು ಹೊತ್ತುಕೊಂಡು ಹೋಗುತ್ತಿದ್ದೆ ಸಮಯ ನಮಗೆ ಪರಿಚಯ ಇರುವ ಲತೀಶ್ ಮತ್ತು ಬೃಜೇಶ್ ಎಂಬವರು ಏಕಾಏಕಿ ಆಗಿ ಬಂದು ನಮ್ಮನ್ನು ಅಡ್ಡ ತಡೆದು ನಿಲ್ಲಿಸಿ ಬೆವರ್ಸಿಗಳೇ ನಿಮ್ಮನ್ನು ಕೊಲ್ಲದೆ ಬಿಡುವುದಿಲ್ಲ ಎಂದು ಹೇಳಿ ಲತೀಶ್ ಅವನ ಕೈಯಲ್ಲಿದ್ದ ಕೋಳಿ ಬಾಳಿನಂತಹ ಚೂರಿಯಿಂದ ನನಗೆ ಮತ್ತು ಸಂತೋಷನಿಗೆ ತಿವಿದನು. ನಾವು ಕುಸಿದು ಬಿದ್ದು ಬೊಬ್ಬೆ ಹೊಡೆದೆವು. ನಮ್ಮ ಬೊಬ್ಬೆ ಕೇಳಿ ನಮ್ಮ ಜೊತೆ ಅಲ್ಲೇ ಕೆಲಸ ಮಾಡುತ್ತಿದ್ದ ಕಿಶೋರ್ ಮುನ್ನ @ ಸಂತೋಷ ನಾರಾಯಣರವರು ಹಾಗೂ ಇತರರು ಬಂದರು ಆಗ ಅವರುಗಳು ಓಡಿ ಹೋದರು. ಲತೀಶ್‌ನು



HC-KAR

NC: 2026:KHC:8780
CRL.A No. 1035 of 2014

ಚೂರಿಯಿಂದ ತಿವಿದ ಪರಿಣಾಮ ನನಗೆ ಎಡ ಭಾಗದ ಎದೆಗೆ, ಬೆನ್ನಿಗೆ ಗಂಭೀರ ತರಹದ ಗಾಯವಾಗಿರುತ್ತದೆ. ಸಂತೋಷನಿಗೆ ಗಲ್ಲಕ್ಕೆ, ಎಡ ಕೈಗೆ, ಎಡ ಎದೆ ಭಾಗಕ್ಕೆ, ಎದೆ ಭಾಗಕ್ಕೆ, ಹೊಟ್ಟೆ ಭಾಗಕ್ಕೆ ಗಂಭೀರ ತರಹದ ಗಾಯವಾಗಿರುತ್ತದೆ. ಆ ಕೂಡಲೇ ಸಂತೋಷ, ಕಿಶೋರ್ ರವರು ಸೇರಿ ರಿಕ್ಷಾದಲ್ಲಿ ಫಾ|| ಮುಲ್ಲನ್ ಆಸ್ಪತ್ರೆಗೆ ಕರೆತಂದರು. ವೈದ್ಯರು ಪರೀಕ್ಷೆ ಮಾಡಿ ನಮ್ಮಿಬ್ಬರನ್ನು ಒಳ ರೋಗಿಯಾಗಿ ಚಿಕಿತ್ಸೆ ನೀಡುತ್ತಿದ್ದಾರೆ. ಈ ಘಟನೆ ನಡೆದಾಗ ಈ ದಿನ ಸಂಜೆ ಸುಮಾರು 6.30 ಗಂಟೆ ಆಗಿರುತ್ತದೆ. ಅವರುಗಳು ನಡೆಸಿದ ಹಲ್ಲೆಯಿಂದಾಗಿ ಗಾಯಗಳಿಂದ ನಾವು ಧರಿಸಿದ ಬಟ್ಟೆಗಳಿಗೆ ರಕ್ತ ಆಗಿರುತ್ತದೆ. ನಿನ್ನೆ ದಿನ ತಾರೀಖು 13.09.2010ರಂದು ಕಂಕನಾಡದಲ್ಲಿ ನಡೆದ ಗಣೇಶ ಶೋಭಾಯಾತ್ರೆ ವೇಳೆ ನಡೆದಿರುವ ವಿವಾದವನ್ನು ಹೇತುವಾಗಿರಿಸಿ ನಮ್ಮನ್ನು ಕೊಲೆ ಮಾಡುವ ಉದ್ದೇಶದಿಂದ ಲತೀಫ್ ಮತ್ತು ಬೃಜೇಶ್‌ರವರು ತಡೆದು ನಿಲ್ಲಿಸಿ ಚೂರಿಯಿಂದ ತಿವಿದು ಗಂಭೀರ ಗಾಯವನ್ನು ಮಾಡಿ ಕೊಲೆ ಮಾಡಲು ಪ್ರಯತ್ನಿಸಿರುವುದಾಗಿದೆ. ಆದುದರಿಂದ ಅವರ ಮೇಲೆ ಸೂಕ್ತ ಕಾನೂನು ಕ್ರಮ ಜರುಗಿಸಬೇಕೆಂದು ಈ ಮೂಲಕ ವಿನಂತಿಸುತ್ತೇನೆ."

16. On the basis of complaint filed by injured Suresh, police have registered the case against accused in Crime No.248/2010 for the offence under Sections 341, 324, 307, 504, 506 read with 34 of IPC. PW11-Suresh said to be the complainant who is examined as PW11, has deposed in his evidence that, on 13.09.2010 there was a Ganesha procession at Shivanagar. There was an altercation between the members of his group and the group of the accused. While removing 'gужju', planted for



the purpose of Ganesha Festival, the quarrel began between two groups. The accused assaulted him and Santhosh with 'Kolibalu'. He, as well as Santosh, sustained bleeding injuries. Accused No.2 had tried to hit him and Santhosh with a stone. Sri Lakshminarayan intervened and therefore, he escaped from getting injured. The witness stated that the clothes which were worn at the time of incident were blood stained. He, along with Santhosh, were taken to Kankanady Hospital by the witness Santhosh in an Auto Rickshaw. On the next day, police came and took the statement of PW11 which is marked as Ex.P11. He identified 'Kolibalu'-MO.1, which was used for the commission of offence. He also identified the clothes which were worn by Santhosh at the time of incident, as per MO.Nos.5 to 8. Further, he has deposed that even on the previous day there was a quarrel, and the accused had assaulted him with intention to kill him.

17. PW1-Kishore has deposed in his evidence that, on 14.09.2010 between 05.30 to 06.00 p.m. when he was



near his shop along with his friend Santhosh, the said Santhosh received a phone call regarding an incident and immediately he, along with the said Santhosh went in their scooter where they found Suresh and Santhosh injured. Immediately, they got shifted to Father Muller's Hospital, Kankanady and were admitted as inpatients.

18. PW12-Santhosh, who is the other injured eye-witness has deposed in his evidence that, on 13.09.2010 there was an altercation between him and the accused while removing the 'gujju' planted for the purpose of Ganesha Festival. When he along with Suresh were proceeding with 'gujju', accused No.2 and 3 have wrongfully restrained them and the accused No.1 was also present at that time. Accused No.1 criminally intimidated to take away their life and assaulted them with 'Kolibalu' on neck, palm, stomach and chest. He had also assaulted Suresh on his chest and back with 'Kolibalu'. Lakshminarayan, Santhosh, Pushparaj rushed there and on seeing them, all three accused have fled away from the



scene of offence. In the meantime, accused No.2-Brijesh had tried to assault them with stone. Lakshminarayan intervened and saved him. The victim stated that if Lakshminarayan had not intervened in the matter, the accused would have killed him by thrashing with a stone. After the incident, both injured were taken to Father Muller's Hospital in an auto-rickshaw. They have taken treatment for about 15 days as inpatients. He identified the weapon used in the commission of offence as MO.No.1 and clothes of both injured as MO.Nos.5 to 8.

19. PW13- Lakshminarayan, who is the eye witness to the incident has deposed in his evidence that, on 13.09.2010 there was a Ganesha Festival and he along with Santhosh, Suresh, Santhosh @ Munna, Pushparaj and Vamana Salian have participated in the said procession. On 14.09.2010, while they were removing 'gujju' planted for the purpose of Ganesha Festival, accused Nos.1 to 3 suddenly came and proclaimed that they will finish up Suresh and Santhosh and the accused No.1 took out



'Kolibalu' and stabbed Santhosh and Suresh causing bleeding injuries. Both Suresh and Santhosh fell down and in the meantime, accused No.2 took up a big stone to thrash on Santhosh. The witness further stated that he had intervened and managed to save Santhosh. Thereafter, all the three accused went away from the scene of offence. He, along with Santhosh @ Munna, Kishore took the injured to the hospital in an auto-rickshaw. The medical officer had handed over the clothes which were worn by the injured Suresh and Santhosh to the police when the police had come to the Kodakkal to draw the mahazar as per Exhibit P3 and seized MO.Nos.1 to 5.

20. PW14-Vamana, who was another eye-witness to the incident has deposed in his evidence that there was an altercation between the accused Santhosh and Suresh on 13.09.2010 and on the next day when Santhosh and Suresh were removing the 'gujju', the accused Nos.1 and 2 came there and assaulted Santhosh and Suresh with



'Kolibalu'. They had sustained bleeding injuries and both of them had fell down. Lakshminarayana prevented accused No.2 when he tried to thrash a stone on Santhosh. Otherwise, Santhosh would have died on the spot. The witnesses stated that with an intention to take away lives of Suresh and Santhosh, accused had stabbed him with 'Kolibalu'. The clothes which were worn at the time of incident were taken to Father Muller's Hospital.

21. Further, he has deposed that on 22.09.2010 police summoned him along with Rakesh to the Police Station. Accused No.1 was in the station and he has stated that he would show 'Kolibalu'. Accordingly, he went along with police and accused No.1-Lathish was in the police jeep. The police took him to the house of Lathish as directed by him. Accused No.1 went inside the house and produced 'Kolibalu' and T-shirt before the police. The police have seized the said articles under seizure mahazar Ex.P4.



22. During the course of cross-examination by Public Prosecutor, after treating PW1-Kishore as hostile witness with the permission of the Court, he has categorically denied the statements said to have been recorded by the Investigating Officer under Section 161 of Cr.P.C which is marked as Exhibit P1.

23. PW2-Pushparaj has deposed in his evidence that on 14.09.2010 at 06.30 p.m., he, along with Santhosh, Suresh, Lakshminarayan and Vamana were returning from Ganesha Festival and when they came near Chethana Wines at Kodakkal, it was around 06.30 p.m. and accused Nos.1 to 3 came and wrongfully restrained Santhosh and Suresh by proclaiming that they will take away their life, abused them in filthy language and accused No.1 took out a Kolibalu and assaulted both CW1 and CW2 on their chest, waist, neck, stomach etc. As a result, both injured fell down. Thereafter, accused No.2-Brijesh tried to assault them with a stone. In the meantime Lakshminarayana intervened and pulled accused No.2 back. Otherwise,



accused No.2 would have killed Santhosh. Further, they have deposed that he along with Kishore took the injured Santhosh and Suresh in an auto-rickshaw to Father Muller's Hospital, Kankanady. Accused No.3-Ganesh was also present at the scene of offence and was instigating accused Nos.1 and 2 to commit the offence. The witness identified the weapon which is marked as MO.No.1.

24. PW3-Santhosh has deposed in his evidence that, on 14.09.2010 at around 06.30 p.m., he was standing near the shop of Kishore at Kodakkal. At that time, he received a phone call from Lakshminarayan, who informed that there was a quarrel near one shop and immediately he went to the shop where Suresh and Santhosh were found with bleeding injuries and he had seen accused Nos.1 and 2 running away from the scene. Further, he has deposed that clothes which were worn by Santosh and Suresh were torn and blood stained. He along with Pushparaj, Kishore Rebello, have taken injured Santosh and Suresh to Kankanady Hospital. He has not stated anything against



the accused and has turned hostile. He has also categorically denied the statement recorded by the Investigating Officer under Section 161 of Cr.P.C which is marked as Exhibit P2.

25. PW4-Rakesh Salian, said to be the attester to the spot mahazar at Ex.P3, has not supported to the case of the prosecution.

26. PW5-Vishwanathan, who is an hearsay witness has not deposed anything against this accused.

27. PW6-Dr. Sebastian Mathias has deposed in his evidence that, on 14.09.2010, he examined the injured Santhosh and Suresh and issued wound certificates as per Exs.P5 and P6. The Doctor stated that all the injuries sustained by the injured were simple in nature. He has also deposed in his evidence as to the issuance of Report as per Exs.P7 and P8.

28. PW7-Shreedhar has deposed as to the seizure mahazar marked as Ex.P3.



29. PW8-B.P.Purandar, Police Constable has deposed in his evidence as to the submission of FIR to the court.

30. PW9-P.Keshava, Head Constable and PW15-Prakash.K, Police Inspector have deposed as to their respective investigation.

31. PW10-Manjunath, Police Constable has deposed as to the handing over of the material objects to the FSL.

32. On careful examination of the entire materials on record and the oral evidence of prosecution witnesses PWs.11, 12, 13 and 14 and contents of Exhibit P11, it is crystal clear that, in Ex.P1-Complaint, the complainant has not stated that accused No.2 tried to thrash a stone on PW11-Suresh and PW12-Santhosh. Though there is no allegation against accused No.2-Brijesh in the complaint, subsequently before this Court, for the first time, the material prosecution witnesses have deposed that the accused No.1 tried to thrash the stone on the injured. Even the stone said to have been used for the commission



of offence was not seized by the Investigating Officer. The Investigating Officer has not explained anything as to non-production of the stone said to have been used for the commission of offence.

33. Wound certificates, Exhibits P5 and P6 pertaining to the injured Suresh and Santhosh does not reveal as to the name of the accused and the alleged weapons used for commission of offence.

34. Viewed from any angle, I do not find any cogent, convincing, clinching and corroborative evidence against accused No.2/appellant to convict him for the offence under Sections 341 and 324 read with 34 of Indian Penal Code. The trial Court has failed to appreciate the materials on record in proper perspective and convicted the accused, which is not sustainable under law. Hence, I answer point No.1 in Negative.

Regarding Point No.2:

35. For the aforesaid reasons and discussions, I proceed to pass the following:



O R D E R

(i) Appeal is ***allowed***;

(ii) The judgment of conviction and order on sentence dated 25.10.2014 passed in SC.No.46/2011 by the Principal Sessions Judge, Dakshina Kannada, Mangalore, is set aside;

(iii) Accused No.2/appellant is acquitted of the offence under Sections 341 and 324 read with 34 of Indian Penal Code;

(iv) The trial Court is directed to refund the fine amount if any deposited by the accused No.2/appellant;

(v) The bail bond of the accused No.2/appellant shall stand cancelled;

Registry is directed to send copy of the judgment along with the Trial Court records to the concerned Court.

**Sd/-
(G BASAVARAJA)
JUDGE**

DHA
List No.: 1 Sl No.: 81