



CNR: KAHC010221172019

NC: 2026:KHC:46186-DB
CRL.A No. 829 of 2019
C/W CRL.A No. 870 of 2021

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF AUGUST, 2026

PRESENT

THE HON'BLE MR. JUSTICE H.P.SANDESH

AND

THE HON'BLE MR. JUSTICE B.PRAMOD

CRIMINAL APPEAL NO.829 OF 2019
C/W
CRIMINAL APPEAL NO.870 OF 2021

IN CRL.A NO.829/2019:

BETWEEN:

1. THE STATE OF KARNATAKA,
BY POLICE SUB-INSPECTOR,
SURATHKAL POLICE STATION,
D.K., MANGALURU,
REPRESENTED BY STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
BENGALURU-560001.

...APPELLANT

(BY SRI. CHENNAPPA ERAPPA, HCGP)

AND:

1. HITESH,
S/O. RAGHUVeer KOTIYAN,
AGED ABOUT 35 YEARS,
R/O. D.NO.137/1,
NEAR NARAYANAGURU BHAJANA MANDIRA,
IDYA VILLAGE, SURATHKAL,
MANGALURU-575014.

Digitally signed
by DEVIKA M
Location: HIGH
COURT OF
KARNATAKA



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2. GURUPRASAD,
S/O. VAMAN G. ANCHAN,
AGED ABOUT 33 YEARS,
R/O. SHIVAPRASAD NIVASA,
KOLUVAILU MANE,
NEAR BRIDGE, HALEYANGADY,
MANGALURU-575014.
3. SHIVARAJ,
S/O. SURESH,
AGED ABOUT 28 YEARS,
R/O. SHRINIVASA KULURU COMPOUND,
SKENDA NILAYA, KOTEKARU,
MADURU, THOKKOTTU, ULLALA,
MANGALURU-575014.
4. NAGESH,
S/O. LATE KRISHNAPPA,
AGED ABOUT 29 YEARS,
R/AT RENTED HOUSE OF KRISHNAPPA KULAL,
NEAR PILICHANDI TEMPLE,
WITHIN THE JURISDICTION OF PANAMBUR P.S.,
NEAR GROUND, KODIKERE,
62ND THOKURU VILLAGE,
MANGALURU TALUK,
PERMANENT RESIDENT OF NEERMARGA PADAVU,
PEDAMALE POST,
MANGALURU TALUK-575001.
5. VISHWANATHA @ KODIKERE VILLAGE,
AGED ABOUT 35 YEARS,
S/O. YOGISH,
R/AT SAHIRA PINTO COMPOUND,
KODIKERE 62ND TOKURU VILLAGE,
MANGALURU-575001.

...RESPONDENTS

(BY SRI. NISHIT KUMAR SHETTY, ADVOCATE FOR R1 AND R5;
SRI. LOKESHA K., ADVOCATE FOR R3 AND R4;
SRI. JEEVAN K., ADVOCATE FOR R2)



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THIS CRIMINAL APPEAL IS FILED UNDER SECTION 378(1) AND (3) OF CR.P.C PRAYING TO GRANT LEAVE TO FILE AN APPEAL AGAINST THE JUDGEMENT AND ORDER OF ACQUITTAL DATED 19.09.2018 PASSED BY THE I ADDITIONAL DISTRICT AND SESSIONS JUDGE, D.K., MANGALURU IN S.C.NO.60/2014 THEREBY ACQUITTING THE RESPONDENT/ ACCUSED FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 143, 144, 147, 148, 232, 324 AND 307 R/W 149 OF IPC.

IN CRL.A NO.870/2021:

BETWEEN:

1. STATE OF KARNATAKA,
BY SURATHKAL POLICE STATION,
REP. BY THE STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING,
BENGALURU-560001.

...APPELLANT

(BY SRI. CHENNAPPA ERAPPA, HCGP)

AND:

1. PRATHEESH ACHARI,
AGED ABOUT 24 YEARS,
S/O DAMODHARA ACHARI,
R/O D.NO.4/14,
SRI BHAGAVATHI KRIPA,
NEAR GRAMASANGH,
HONNAKATTE, KULAL,
MANGALURU-575001.

...RESPONDENT

(BY SRI. JEEVAN K., ADVOCATE)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 378(1) AND (3) OF CR.P.C PRAYING TO GRANT LEAVE TO FILE AN APPEAL AGAINST THE JUDGMENT AND ORDER DATED 22.04.2019 PASSED IN S.C.NO.107/2018 ON THE FILE OF I



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ADDITIONAL DISTRICT AND SESSIONS JUDGE, D.K.,
MANGALURU, THEREBY ACQUITTING THE ACCUSED NO.5 -
RESPONDENT OF THE OFFENCES PUNISHABLE UNDER
SECTIONS 143, 144, 147, 148, 323, 324 AND 307 R/W 149 OF
IPC.

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

CORAM: HON'BLE MR. JUSTICE H.P.SANDESH
and
HON'BLE MR. JUSTICE B.PRAMOD

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE H.P.SANDESH)

Heard the learned High Court Government Pleader
appearing for the appellant/State, Sri Nishit Kumar Shetty, the
learned counsel for respondent Nos.1 and 5, Sri Lokesha K, the
learned counsel for respondent Nos.3 and 4 and Sri Jeevan K,
the learned counsel for respondent No.2 in Crl.A.No.829/2019.

2. Heard the learned High Court Government Pleader
appearing for the appellant/State and Sri Jeevan K, the learned
counsel for the respondent in Crl.A.No.870/2021.

3. These two appeals are filed by the State against the
acquittal order dated 19.09.2018 passed in S.C.No.60/2014 in
respect of accused Nos.1 to 4 and 6 and order dated



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22.04.2019 passed in S.C.No.107/2018 in respect of accused No.5 in view of the split up charge-sheet filed against accused No.5.

4. The factual matrix of the case of the prosecution against accused Nos.1 to 6 is that, on 21.02.2014, at about 12.00 noon, within the limits of Surathkal Police Station at Malemar Beach, Surathkal Village, Mangalore Taluk, the accused persons were indulged in assaulting one Mr. Nissar. The accused persons came to beach and accused Nos.2 and 3 holding coconut tree kothalige and having iron kadaga in their hand, assaulted Nissar. The other accused persons, including a juvenile offender, also assaulted him with hands and also kicked him with legs,. As a result, he became unconscious and he was immediately shifted to Padmavathy Hospital, Surathkal and then he was shifted to Highland Hospital, Mangalore for higher treatment. The victim had suffered simple injuries over his forehead, arms and legs. Based on the complaint of P.W.6 Kumareshwaran i.e., Police Inspector, case was registered suo motu invoking the offences under Sections 143, 144, 147, 148, 323, 324, 307 read with Section 149 of IPC. The police



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investigated the matter and recorded the statement. Having received the information, P.W.6 Kumareshwaran went to the spot along with P.W.3 Aithappa and witnessed the incident of assault. He found assaulting the victim with M.O.3 and apprehended totally four accused persons at the spot and thereafter, subsequently added other accused persons on the information given by the co-accused. After the investigation charge-sheet was filed. The accused persons were enlarged on bail and on committal, case was registered as S.C.No.60/2014 and one of the accused was absconded and hence, split up case was registered in S.C.No.107/2018 and both the matters were taken up independently and witnesses were examined. The Trial Court having taken note of both oral and documentary evidence available on record and in view of accused persons did not plead guilty, acquitted accused Nos.1 to 4 and 6 in S.C.No.60/2014 and subsequently in S.C.No.107/2018 also acquitted accused No.5. Hence, these two appeals are filed before this Court.

5. The main contention of the learned High Court Government Pleader appearing for the appellant/State in



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Crl.A.No.829/2019 is that the Trial Court committed an error in not accepting the case of the prosecution. The Trial Court failed to appreciate the very evidence of P.W.3 and P.W.6, who are the official witnesses who have witnessed the incident and also fails to consider the evidence of P.W.1, who is an injured witness, who has deposed that he was assaulted by the accused persons and even he identified the accused persons and had no axe to grind to falsely implicate the accused persons as there was no any previous ill-will. The learned counsel also vehemently contend that the Trial Court has erroneously disbelieved the evidence of P.W.12 Medical Officer who has clearly deposed that P.W.1 was semi-conscious and he was not in a condition to give any statement and he was severely injured, only on the ground that the wound certificate does not depict that the injured was semi-conscious and his evidence has been erroneously disbelieved which has resulted in miscarriage of justice.

6. The learned High Court Government Pleader appearing for the appellant/State in Crl.A.No.870/2021 reiterated the grounds which have been urged in



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Crl.A.No.829/2019. The learned counsel would vehemently contend that the Trial Court committed an error in considering the evidence of P.W.1, but only got carried away that P.W.1 belongs to Muslim community and P.W.2 belongs to Hindu community. P.W.2 voluntarily went to the beach along with P.W.1 on account of friendship, but P.W.2 turned hostile. The said evidence has not been properly analyzed by the Court below and wrongly acquitted the accused. The Trial Court ought to have invoked Section 114 of the Evidence Act to draw an inference that the evidence of Government servants have not been properly analyzed, which is highly improper. In spite of the accused persons were examined under Section 313 of Cr.P.C., except denying the incriminating circumstances, they have not given any explanation for committing an assault on P.W.1 and the Court below committed an error in acquitting the accused persons in both the matters. Hence, it requires interference of this Court.

7. Per contra, the learned counsel for the respondents/accused would vehemently contend that the Trial Court has taken note of the inconsistencies in the evidence of



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P.W.1 and P.W.7. P.W.1 is the injured and P.W.7 is the mother of the injured who came to know that P.W.1 had sustained the injuries and rushed to the hospital. P.W.7 in her evidence says that P.W.1 injured only informed her about the incident. But the case of the prosecution is that P.W.1 was unconscious when he was taken to the hospital. The learned counsel would contend that the evidence of the doctor who has been examined as P.W.12 is very clear that the injured only gave the history at the time of his admission though post incident he had post traumatic stress disorder and recovered, but nothing is stated in the wound certificate at Ex.P.11. The opinion of the doctor is also that the injuries are simple in nature. The learned counsel also brought to the notice of this Court the admission on the part of P.W.1 that he gave his statement before the police after three days. But on that day, none of the accused assaulted him. The same was also taken note of by the Trial Court. The learned counsel also vehemently contend that P.W.2 who was along with P.W.1 also has stated that none assaulted P.W.1. P.W.2 also gave the complaint against P.W.1. But the police have not investigated the matter and the same is evident



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from the records that P.W.6 has not investigated the same and even P.W.1 also admitted that a complaint was given against P.W.1 by P.W.2. P.W.6 also admits that P.W.2 has given the complaint. In spite of these materials, the police have not investigated the matter in respect of the complaint given by P.W.2, but proceeded to register the case against the accused persons. The learned counsel also brought to the notice of this Court that there are discrepancies in the evidence of the prosecution witnesses. According to P.W.3 and P.W.6, when they went to the spot, they found only four persons. But subsequently added another three persons and one among them is a juvenile. It is the case of the prosecution that P.W.3 and P.W.6 witnessed the incident and found M.O.3 and M.O.4. But P.W.6 categorically admits that even though he found M.O.3 and M.O.4 in the hands of the accused, the same were not seized and subsequently drawn the mahazar and seized the same. The very case of the prosecution is doubtful. P.W.6 also categorically admits in his evidence that he himself and P.W.3 went to the spot on information. He says that they received the information at 12.00 p.m. and rushed to the spot at 12.15 p.m.



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and they witnessed the incident and injuries were simple in nature. But, there cannot be a scuffle for a period of 15 minutes which leads to only simple injuries. Hence, the case of the prosecution is doubtful. The learned counsel also brought to the notice of this Court that P.W.6 categorically admits that he came back to the police station at 1.00 p.m. But case was registered at 7.00 p.m. It is a case of suo motu registration of the case and there is no explanation on the part of P.W.6 in what prevented him from registering the suo motu case immediately after visiting the police station. According to the prosecution, P.W.1 was not able to give any statement since he was not having conscious and the same is not explained. These materials were taken note of by the Trial Court while acquitting the accused persons in both the cases and hence, it does not require any interference.

8. Having heard the learned High Court Government Pleader appearing for the appellant/State and the learned counsel for the respondents in both the appeals, the points that would arise for the consideration of this Court are:



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- (i) Whether the Trial Court committed an error in acquitting accused Nos.1 to 6 and whether it requires interference of this Court?
- (ii) What order?

Point No.(i):

9. Having considered the material on record and also the accusation made in the complaint, no doubt, the case is registered suo motu by P.W.6. P.W.6 says that he received the information at 12.00 noon and along with P.W.3 he went to the spot at 12.15 p.m. But when the incident was taken place at 12.00 p.m., both P.W.3 and P.W.6 claim that they witnessed the incident at 12.15 p.m. also. But P.W.2 who was along with P.W.1 has not supported the case of the prosecution. P.W.2 categorically says that when P.W.1 misbehaved with her, she screamed at the spot and public gathered and she also gave the complaint against P.W.1. The same is also admitted by P.W.1 that P.W.2 has given the complaint against him. P.W.6 also admits that P.W.2 gave the complaint against P.W.1, but not registered the case and not investigated the same. It is also important to note that P.W.2, who is a minor girl,



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screamed at the spot when P.W.1 misbehaved with her and public who were there at the spot gathered and assaulted P.W.1. The very case of P.W.6 that when he went to the spot, on information, along with P.W.3, still they were assaulting cannot be believed. It is also important to note that P.W.6 categorically says that when they witnessed the accused persons, according to them there were only four persons. But subsequently added three persons including a juvenile offender. Apart from that, when they found M.O.3 and M.O.4 in the hands of the accused, they were not seized at the spot and mahazar was drawn on the next day.

10. It is also important to note that P.W.1 had sustained simple injuries, which have been noted in Ex.P.11 wound certificate. P.W.12 doctor who treated the injured says that the injured himself has given the statement. It is also important to note that it is the case of the prosecution that P.W.1 was not having conscious. But wound certificate Ex.P.11 discloses different. The injured was under the treatment in ICU, according to the prosecution. But there is no explanation on the part of the prosecution as to what made to take the



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treatment in ICU. It is also important to note that P.W.1 was not having conscious for a period of three days according to the prosecution. But no documents are placed before the Court that he was unconscious. There are inconsistencies in the evidence of the prosecution witnesses. The injuries which were found on P.W.1 and also the evidence of the doctor P.W.12 is contradictory to each other. These discrepancies were taken note of by the Trial Court while passing the judgment in S.C.No.60/2014 and S.C.No.107/2018.

11. The Trial Court in S.C.No.60/2014 in paragraph No.38 taken note of the evidence of the mother of P.W.1, who has been examined as P.W.7. She has stated that in the afternoon hours, her husband C.W.14 received the telephonic call from Padmavathy Hospital, wherein P.W.1 was hospitalized. As per the case of the prosecution, immediately after the incident, P.W.1 was hospitalized by the police at Padmavathy hospital. As per the evidence of P.W.7, in the afternoon of the same day of the incident, she received information from the hospital that P.W.1 has been assaulted by seven persons. The Trial Court also taken note of how P.W.7 gets the information of



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involvement of seven persons in assaulting P.W.1 and when the police witnesses went to the spot at 12.15 p.m. they saw only four accused persons. P.W.7 has clearly stated that on 24.02.2014, P.W.1 started speaking in the afternoon and at that time P.W.1 only informed her that when he had been to Malemar beach along with P.W.2, he was assaulted by a group of seven persons with M.O.3 and M.O.4. The facts elicited during the course of cross-examination of P.W.7 at paragraph No.5 also makes it clear that as on the date of the incident itself P.W.1 informed her that a group of seven persons assaulted him. Thus, the evidence of P.W.1 to P.W.7 varies and contradicts each other regarding the number of persons involved in the assault and so also with regard to the very law was set in motion is concerned is also doubtful that P.W.6 has registered suo motu case. What prevented P.W.1, who sustained only simple injuries, in giving the complaint is not explained. According to P.W.7, P.W.1 himself has narrated how an incident was taken place to P.W.7. All these materials contradicts each other and the evidence available on record not inspires the confidence of the Court to reverse the finding of



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the Trial Court having considered inconsistencies in the evidence of P.W.1 to P.W.7.

12. The doctor who has been examined as P.W.12, with regard to the nature of injury is concerned, says that injury Nos.1 and 2 could be caused even if a person falls on the hard surface and rolls over. But no specific evidence before the Court that using of M.O.3 and M.O.4 could cause injuries of such nature. When such inconsistencies are found, not a case for reversing the same in view of the judgment of the Apex Court in the case of **MALLAPPA AND OTHERS v. STATE OF KARNATAKA** reported in **(2024) 3 SCC 544**. In case of perversity in giving the finding as well as miscarriage of justice, under such circumstances only the Court can reverse the same and otherwise if any two views are possible also, the benefit goes in favour of the accused person. We do not find any such perversity and miscarriage of justice in considering the evidence by the Trial Court in both the cases. The Trial Court having considered the material on record acquitted the accused persons and no ground is made out to reverse the same. Hence, we answer the point in the negative.



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Point No.(ii):

13. In view of the discussions made above, we pass the following:

ORDER

Appeals are dismissed.

Sd/-
(H.P.SANDESH)
JUDGE

Sd/-
(B.PRAMOD)
JUDGE

MD
List No.: 1 Sl No.: 19