HC-KAR

NC: 2026:KHC:61483
CRL.A No. 1193 of 2015

CNR: KAHC010427032015

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 5TH DAY OF NOVEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE G BASAVARAJA

CRIMINAL APPEAL NO. 1193 OF 2015 (C)

BETWEEN:

1. SULTAN,
   S/O VAJIR ALI,
   AGED ABOUT 25 YEARS,
   OCCUPATION BUSINESS,
   RESIDING AT ALIPUR VILLAGE,
   TONDEBHAVI HOBLI,
   GOWRIBIDANUR TALUK-561 213.

...APPELLANT

(BY SRI. SHAIKH SAOUD, ADVOCATE)

AND:

1. THE STATE BY MANCHENAHALLI POLICE,
   REPRESENTED BY
   THE STATE PUBLIC PROSECUTOR,
   HIGH COURT OF KARNATAKA,
   BANGALORE-560 001.

...RESPONDENT

(BY SRI. K. NAGESHWARAPPA, HCGP)

Digitally signed by GEETHA P G
Location: HIGH COURT OF KARNATAKA

THIS CRL.A. IS FILED U/S 374(2) CR.P.C. PRAYING TO SET ASIDE THE JUDGMENT AND ORDER OF CONVICTION DATED 11.09.2015 PASSED BY THE PRINCIPAL DISTRICT AND SESSIONS JUDGE, CHIKKABALLAPURA IN S.C.NO.13/2012 - FOR THE OFFENCE UNDER SECTION 326 AND SENTENCING THE ACCUSED FOR 2 YEARS R.I. AND FINE OF RS.5,000/- AND HE MAY BE ACQUITTED.

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

CNR: KAHC010427032015

CORAM: HON'BLE MR. JUSTICE G BASAVARAJA

ORAL JUDGMENT

Notice is duly served to the appellant. Appellant is absent. Learned counsel for the appellant is present.

2. The appellant/accused no.1 has preferred this appeal against the judgment of conviction and order on sentence dated 11.09.2015 in S.C.No.13/2012 passed by the Principal District and Sessions Judge, Chikkaballapura.

3. The parties are referred to by the same rank what they had before the trial Court.

4. The brief facts leading to this appeal are that, on 15.04.2011, CWs.1, 4 and 5 asked accused no.1 to pay the remaining amount of Rs.20,000/- which pertain to the monetary transaction between them. On the same day at 05.30 p.m., when CW1-Mohammed Ibrahim was in his shop in Alipura Village, all the accused having common object with an intention to commit murder, accused no.1 gave blow to CW1 with chopper on his three fingers of left hand, accused no.2-Meer Mujeeb Raza gave blow to CW1 with iron pipe on his left

leg. Accused no.3-Rafiq assaulted him with reaper on his back. Accused no.4-Maksud Ali assaulted him with his legs and they attempted to commit murder and also caused grievous hurt to CW1. Thus the accused have committed the alleged offences.

5. After filing charge sheet, the case was registered by the learned Magistrate in C.C.No.708/2011 and the case was committed to the Court of Sessions. Thereafter, accused appeared before the Sessions Court and enlarged on bail.

6. The trial Court has framed the charges against the accused for the alleged commission of offences. Same was read over and explained to the accused. Accused pleaded not guilty and claimed to be tried.

7. To prove the guilt of the accused, prosecution has examined five witnesses as PWs.1 to 5. Eleven documents were marked as Exs.P1 to 11 and four material objects were marked as M.O.No.1 to 4. On closure of prosecution side evidence, statement under Section 313 of Cr.P.C. was recorded. Accused totally denied the evidence of prosecution witnesses. However, they did not choose to lead any defence evidence on their

behalf. Having heard the arguments on both sides, the trial Court has acquitted accused nos.2 to 4 for the offence under Sections 323, 324, 326, 307 read with 34 IPC. The trial Court has also acquitted accused no.1 for the offence under Section 323, 324, 307 read with 34 IPC. However, trial Court has convicted accused no.1 for the offence under Section 326 IPC and sentenced him to undergo rigorous imprisonment for a period of two years and to pay fine of Rs.5,000/-. Being aggrieved by this judgment of conviction and order on sentence, accused no.1 has preferred this appeal.

8. The learned counsel for the appellant would submit that the judgment and order of conviction under Section 326 IPC passed against the appellant is based on conjectures and surmises and not on the legal evidence. PW1-Mohammed Ibrahim, an injured complainant, not supported the case of the prosecution. PW2-Famid Raza**,** witness for Exs.P3 and P4 also not supported the case of prosecution. PW3-Naveed Abbas, the star witness for the prosecution has also not supported the case of prosecution. PW4-Dr.M.S.Balaji, who treated the injured, issued the wound certificate-Ex.P7, has not deposed anything

against this accused. However, the trial Court has convicted accused no.1, which is not sustainable under law and sought for allowing this appeal.

9. As against this, learned HCGP Sri.K.Nageshwarappa submits that the trial Court has convicted accused no.1 in accordance with law and facts and sought for dismissal of this appeal.

10. Having heard the arguments on both sides and perused the materials placed before this Court, the following points would arise for consideration:

i. Whether the appellant/accused no.1 has made out any ground to interfere with the impugned judgment of conviction and order on sentence?

ii. What order?

11. My answer to the above points are as under:

Point No.1 - Affirmative

Point No.2 - As per final order

Regarding Point No.1:-

12. I have examined the materials placed before this Court. The I.O. has submitted the charge sheet against the accused for the offence under Sections 323, 324, 326, 307 r/w 34 IPC. The trial Court has acquitted accused nos.2 to 4 for the offence under Sections 323, 324, 326, 307 r/w 34 IPC and accused No.1 for the offence under Sections 323, 324, 307 IPC. However, trial Court has convicted accused no.1 for the offence under Section 326 IPC.

13. With regard to the offence under Section 326 is concerned, PW1-Mohammed Ibrahim, the injured complainant has deposed that at about 2 years back one day, accused no.1 assaulted him with iron rod and remaining accused have not assaulted him. Further he has deposed that accused no.1 also has not assaulted him. Since he was aged, he fell and sustained injury and somebody told him to give complaint. Accordingly, he gave complaint as per Ex.P1. He does not know the contents of the complaint. This witness has turned hostile. The learned Public Prosecutor has treated him as hostile witness with the permission of the Court and cross-examined. During his cross

examination, he has categorically denied the contents of Ex.P1. He has also denied the further statement said to have been recorded by the I.O. as per Ex.P2. The prosecution has not elicited any favourable answers from this injured witness.

14. PW2-Famid has not supported the case of prosecution. He has categorically denied the contents of Exs.P3 and 4. This witness was also treated as hostile witness with the permission of the Court and cross-examined. During the course of his cross examination also he has categorically denied the statement said to have been recorded by the I.O. under Section 161 of Cr.P.C., which is marked as Ex.P5.

15. PW3-Naveed Abbas, S/o CW1 and the eyewitness has not supported the case of the prosecution. PW4-Dr.M.S.Balaji, the medical officer, has not deposed anything against this accused. But he has deposed that he has examined the injured and found the injuries mentioned in the wound certificate, which is marked as Ex.P7. PW5-Sundar, the I.O. has deposed as to the investigation conducted by him.

16. On careful examination of the entire evidence on record, this Court has noticed that none of the material witnesses including the injured has supported the case of prosecution. The wound certificate does not reveal the name of any accused. Even after treating PWs.1 to 4 as hostile witnesses with the permission of the Court, prosecution has not elicited any favourable answers from them to substantiate the case of the prosecution. All the material witnesses have not supported the case of prosecution. However, the trial Court has held that the case of prosecution has proved the guilt of the accused only on medical evidence. But the wound certificate does not reveal the name of this accused. If really accused no.1 has assaulted PW1, he would have revealed the name of accused no.1 before the medical officer. However, trial Court has convicted accused no.1 without any legal evidence. Hence, the impugned judgment of conviction and order on sentence passed by the trial Court is not sustainable and accordingly, I answer point No.1 in the Affirmative.

Regarding Point No.2:-

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

ORDER

(i) The appeal is ***allowed***;

(ii) The impugned judgment of conviction and order on sentence passed by the Principal District and Sessions Judge, Chikkaballapura in S.C.No.13/2012 dated 11.09.2015 is hereby set aside;

(iii) The appellant/accused no.1 is acquitted of the offence under Section 326 of IPC;

(iv) The trial Court is directed to refund the fine amount, if any, deposited by the appellant.

Registry is directed to send the copy of this judgment along with TCR to the trial Court.

Sd/-
(G BASAVARAJA)
JUDGE

PGG
List No.: 1 Sl No.: 6