

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 31ST DAY OF MAY, 2006

PRESENT:

THE HON'BLE MR. JUSTICE N.S. VEERABHADRAIAH

AND

THE HON'BLE MR. JUSTICE SUBHASH B. ADI

CRIMINAL APPEAL No.118 OF 2000

BETWEEN:

The State,
Represented by the Police,
Kanakagiri P.S.,
Gangavati Taluk.

... **APPELLANT/S**

[By Sri. P.M.Nawaz, HCGP.]

AND:

1. Basappa,
S/o. Gyanappa,
58 years,
2. Shivanandappa,
S/o. Basappa,
38 years,
3. Ningappa,
S/o. Basappa,
36 years,

All are r/o. Somasagar,
Tq. Gangavati, Dist. Koppal.

... **RESPONDENT/S**

[By Sri. Basavaraj Kareddy, Adv.]



THIS CRL. APPEAL IS FILED U/SEC. 378(1) and (3) CR.P.C. BY THE STATE P.P. FOR THE STATE PRAYING TO GRANT LEAVE TO FILE AN APPEAL AGAINST THE JUDGMENT DT. 25.9.99 PASSED BY THE ADDL. JMFC., GANGAVATHI IN CC No.99/98 ACQUITTING THE RESPONDENTS-ACCUSED FOR THE OFFENCES PUNISHABLE U/Ss. 447, 324, 326 4/2. 34 IPC.

THIS CRL. APPEAL COMING ON FOR FINAL HEARING, THIS DAY VEERABHADRAIAH J., DELIVERED THE FOLLOWING:

JUDGEMENT

This appeal is by the State, assailing the Judgment of acquittal of the accused for the offence under Sections 447, 324 and 326 r/w. 34 I.P.C. in C.C. No.99/1998 by the learned Addl. J.M.F.C., Gangavati, dated 25.09.1999.

2. The brief facts of the case are as follows:


Complainant-P.W.1-Basavantappa as well as accused No.1-Basappa are cousin brothers, whereas accused No.2-Shivananappa and accused No.3-Ningappa are sons of accused No.1-Basappa. There was a dispute regarding the boundary among them as their lands situated adjacent to one another at Kanakagiri village of Gangavati taluk. On 07.01.1998 accused No.1-Basappa was grazing his cattles in the land of

the complainant-P.W.1-Basavantappa, P.W.1 questioned and objected accused No.1-Basappa for having allowed his cattles, he returned home and sent his two sons by name accused No.2-Shivanandappa and accused No.3-Ningappa. Accused No.2-Shivanandappa and accused No.3-Ningappa started confronting with the complainant and a quarrel took place between the complainant and accused Nos.2 and 3. When P.W.2-Lakchama @ Laxman came to intervene, he was assaulted by accused No.2-Shivanandappa with a stone, as a result, two teeth were lost. P.W.2 proceeds to Kanakagiri Police Station and lodged a complaint as per Ex.F1. P.W.4-Bakkappa, the Sub-Inspector of Police registered a case in Crime No.5/1998 against accused Nos.1 to 3 for the offence under Sections 447, 324 and 326 r/w 34 IPC on the same day. Injured P.W.1-Basavantappa and P.W.2-Lakchama @ Laxman were sent to Gangavati Hospital for treatment. The P.S.I. proceeds to the spot, secured panch-witnesses and prepared a spot mahazar as per Ex.P2 and seized M.Os.1 and 2-two stones in the presence of P.W.3-Durgappa. After securing

wound certificates Exs.P4 and P5 from P.W.6- Dr.T.K.Jagajeevanrao and completion of the investigation, filed charge sheet against the accused.

The learned Addl. J.M.F.C., Gangavati, secured the presence of the accused, framed charges for the offence under Sections 447, 324 and 326 r/w. 34 IPC. The accused pleaded not guilty and claimed to be tried. The prosecution in all examined P.Ws.1 to 6, marked Exs.P1 to P6 and produced M.Os.1 and 2, whereas the defence got marked Exs.D1 and D2. The statement of the accused were recorded under Section 313 Cr.P.C. The defence is ^{one of} total denial. However, the accused did not choose to lead any oral evidence. The learned Addl. J.M.F.C. for the reasons recorded in the Judgment, acquitted the accused for the offence charged. It is this Judgment of acquittal, which is questioned in the present appeal.

3. Learned Government Pleader Sri. P.M.Nawaz submitted that the learned Addl. J.M.F.C. has not



properly appreciated the testimony of the prosecution witnesses though there is clinching evidence to show that accused No.2-Shivanandappa assaulted P.W.2-Lakchama @ Laxman with a stone, as a result, two teeth were broken and accused No.3-Ningappa assaulted complainant, P.W.1-Basavantappa with a stone over his head, as a result, suffered with lacerated wound. When the injured witnesses have clearly stated the overtacts and the said evidence being corroborated by the evidence of P.W.5-Shankarappa, there was no reason for the learned Addl. J.M.F.C. to discredit their testimony and submits that the findings of the learned Addl. J.M.F.C. is illegal and perverse having not appreciated the evidence properly. Also submitted that the testimony of P.W.1-Basavantappa and P.W.2-Lakchama @ Laxman is supported by medical evidence of P.W.6-Dr.T.K.Jagajeevanrao. Further submitted that from the Judgment of the learned Addl. J.M.F.C. it reveals that there is a counter case against P.W.1-Basavantappa, which ended in acquittal. This shows that the incident of assault took place



between the accused and the complainant and in the said scuffle the accused have suffered injury. Therefore, the acquittal of the accused is not proper. Accordingly, prayed to set aside the Judgment of acquittal and to convict the accused for the offence under Sections 447, 324 and 326 r/w. 34 IPC.

4. Learned counsel Sri. Basavaraj Kareddy vehemently contended that in respect of the same incident, that accused No.1-Basappa had filed a complaint against P.W.1-Basavantappa and the same is admitted in the cross-examination. Therefore submits that the Judgment of acquittal of the accused does not call for interference. Further submits that though P.W.2-Lakchama @ Laxman has stated that he lost two teeth, it is not recovered. Therefore, the evidence of P.W.2-Lakchama @ Laxman cannot be believed and the evidence of P.W.1-Basavantappa is not corroborative with the evidence of P.W.2. Also submitted that the evidence of P.W.5-Shankarappa cannot be relied as there was negotiations between

the complainant and P.W.5 to give the daughter of P.W.5 to his son and submits that there is inconsistency in the testimony of the prosecution witnesses. Accordingly, prayed to dismiss the appeal by confirming the Judgment of acquittal.

5. In the light of the submissions, the point for consideration that arises;

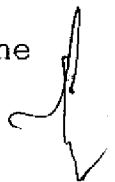
Whether the learned Addl. J.M.F.C., Gangavati, is justified in acquitting the accused or the Judgment suffers from illegality? If so, does call for interference?

6. It is not in dispute that complainant, P.W.1-Basavantappa as well as accused No.1-Basappa are cousins, whereas accused No.2-Shivanandappa and accused No.3-Ningappa are sons of accused No.1-Basappa. It is also not in dispute that the lands of the complainant and the accused are adjacent to one another and that there was some boundary disputes.

It is in the evidence of P.W.1-Basavantappa that accused No.1-Basappa allowed his cattles to the



land of the complainant for grazing. It was objected to by P.W.1-Basavantappa and asked accused No.1-Basappa to drive away his cattles. It is further seen that as P.W.1-Basavantappa objected, accused No.1-Basappa took his cattles and went towards his house. It is later on accused No.2-Shivanandappa and accused No.3-Ningappa came near the land of the complainant-Basavantappa and there was some verbal exchange, which ensued to a quarrel. It is also admitted by P.W.1-Basavantappa in the cross-examination that the accused have also lodged a complaint against P.W.1-Basavantappa alleging that he was also assaulted. Thereby, it makes clear that there was some scuffle between P.W.1-Basavantappa as well as accused No.2-Shivanandappa and accused No.3-Ningappa, which cannot be ruled out in the light of the admission made by P.W.1-Basavantappa in the cross-examination. P.W.1-Basavantappa has clearly stated that, accused No.3-Ningappa assaulted on his head with a stone, then he collapsed. Immediately his brother P.W.2-Lakchama @ Laxman came to his rescue, then accused No.2-Shivanandappa took a stone



and hit on his mouth, as a result, two teeth were cut. On a careful examination of the defence put forth, no much importance has been elicited in the cross-examination of P.W.1-Basavantappa so as to discredit his testimony.

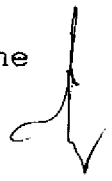
7. It is in the evidence of P.W.2-Lakchama @ Laxman that on the day of the incident at about 5.00 p.m. he was standing at a distance. At that time, P.W.1-Basavantappa was objecting accused No.1-Basappa as he had allowed his cattles to graze in his land. It is further seen that as P.W.1-Basavantappa objected, accused No.2-Shivanandappa and accused No.3-Ningappa started quarreling with the complainant-Basavantappa, whereas accused No.3-Ningappa hit on the head of P.W.1-Basavantappa with a stone. When he went to his rescue, accused No.2-Shivanandappa took a stone and hit on his mouth, as a result two teeth were broken, then P.W.5-Shankarappa came and separated them.

8. It is also in the evidence of P.W.5-Shankarappa that he witnessed accused No.3-Ningappa

assaulted on the head of P.W.1-Basavantappa and when P.W.2-Lakchama @ Laxman went to the rescue of P.W.1-Basavantappa, accused No.2-Shivanandappa assaulted on his mouth with stone, as a result two teeth were broken.

9. Now coming to the medical evidence, P.W.6-Dr.T.K.Jagajeevanrao, has stated that he was a medical officer at Gangavati Hospital and that he examined P.W.1-Basavantappa and on 07.01.1998 at 11.30 a.m. found a lacerated wound over the head and issued wound certificate as per Ex.P4. It is further in his evidence that he examined P.W.2-Lakchama @ Laxman and found two teeth were broken and the injuries were fresh in nature. He issued wound certificate as per Ex.P5.

10. From the testimony of injured P.W.1-Basavantappa and P.W.2-Lakchama @ Laxman it clearly established the fact that it is accused No.3-Ningappa who assaulted P.W.1-Basavantappa with stone and it is accused No.2-Shivanandappa who assaulted P.W.2-Lakchama @ Laxman. Immediately after the



incident, P.W.1-Basavantappa went to Kanakagiri Police Station and lodged complaint as per Ex.P1 with P.W.4-Bakkappa, Sub-Inspector of Police, who registered a case in Crime No.5/1998 on 07.01.1998 at 6.30 p.m., prepared F.I.R. as per Ex.P3 and forwarded the same to the jurisdictional Magistrate. It is also seen that the Police sent P.W.1-Basavantappa and P.W.2-Lakchama @ Laxman to the Hospital at Gangavati for medical treatment, wherein the doctor issued wound certificates as per Exs.P5 and P6. Though there is clinching evidence insofar as the assault is concerned, the learned Addl. J.M.F.C. by not appreciating the testimony of the prosecution witnesses in proper perspective and on the ground that a counter case was filed against the accused and also on the ground that the Police have not seized the teeth, by extending the benefit of doubt, acquitted the accused, which in our opinion is not proper. It is well settled principle that when the testimony of the injured witnesses are trustworthy and reliable, even though there are certain irregularities in the investigation does not

mean that the prosecution has not established its case. Therefore, in our opinion, the reasoning of the learned Addl. J.M.F.C. is not proper and the same is perverse and illegal.

11. It is proved from the testimony of P.W.1-Basavantappa and P.W.2-Lakchama @ Laxman as well as the testimony of P.W.6-Dr.T.K.Jagajeevanrao that P.W.2-Lakchama @ Laxman lost two teeth as a result of assault by accused No.2-Shivanandappa, whereas P.W.1-Basavantappa suffered simple injury as a result of assault by accused No.3-Ningappa. It is also on record that the injured as well as the accused are relatives and civil disputes are also pending. It is in the evidence of P.W.1-Basavantappa that he took accused No.1-Basappa to task as he has allowed his cattles to graze in his land and it is thereafter accused No.2-Shivanandappa and accused No.3-Ningappa came to the picture and a quarrel was ensued. Considering the manner in which the assault had taken place appears to be on a grave and sudden provocation and the accused having no

intention to cause grievous hurt, the offence committed by accused No.2-Shivanandappa falls under Section 335 IPC, whereas the offence committed by accused No.3-Ningappa does come under Section 323 IPC, for which they are liable to be convicted. On scrutinizing the testimony of the prosecution witnesses, no evidence is forthcoming as against accused No.1-Basappa and thereby the acquittal of accused No.1-Basappa does not call for interference.

12. Insofar as charges for the offence under Section 447 IPC is concerned, there is no clinching evidence to show in whose land the incident of assault took place. Therefore, the question of interfering with the acquittal of the accused for the offence under Section 447 IPC does not call for interference.

For the foregoing reasons, the Judgment of acquittal of accused No.2-Shivanandappa and accused No.3-Ningappa is hereby set aside by convicting accused No.2-Shivanandappa for the offence under

Section 335 IPC and convicting accused No.3 for the offence under Section 323 IPC.

We have heard the learned counsel Sri. Basavaraj Kareddy regarding sentence.

Considering the submissions, the facts of this case, their relationship and the length of time that had taken place, accused No.2-Shivanandappa is sentenced to pay a fine of Rs.500-00 within a period of 30 (thirty) days, in default to undergo S.I. for a period of 15 (fifteen) days and accused No.3-Ningappa is sentenced to pay a fine of Rs.250-00 within a period of 30 (thirty) days, in default to undergo S.I. for a period of 7 (seven) days.

Accordingly, the appeal is allowed in part.

Sd/2
Judge

Sd/4
Judge

Ksm*