

**IN THE HIGH COURT OF KARNATAKA
CIRCUIT BENCH AT DHARWAD**

DATED THIS THE 26TH DAY OF MARCH 2013

PRESENT

THE HON'BLE MR.JUSTICE B.V.PINTO

AND

THE HON'BLE MR.JUSTICE H.S.KEMPANNA

CRIMINAL APPEAL NO.2725/2011

BETWEEN:

GADIGEPPA FAKIRAPPA FATAT
AGE: 40 YEARS, OCC: AGRICULTURE
& COOLIE, R/O. YADWAD
TALUK: DHARWAD

... APPELLANT

(By Sri J. BASAVARAJ, ADV.,)

AND:

THE STATE OF KARNATAKA
PRESENTLY BY ITS
STATE PUBLIC PROSECUTOR (GARAG P.S.)
HIGH COURT OF KARNATAKA,
CIRCUIT BENCH, DHARWAD

... RESPONDENT

(By Sri Y.V.RAVIRAJ, AGA)

THIS CRIMINAL APPEAL IS FILED U/S 374(2) OF
CR.P.C. SEEKING TO CALL FOR THE RECORDS IN
S.C.NO.30/2006, ON THE FILE OF THE PRL. SESSIONS
JUDGE, DHARWAD, PURSUE THE SAME, ALLOW THE

APPEAL AND SET ASIDE THE ORDER OF CONVICTION AND SENTENCE DATED 07.03.2009 PASSED AGAINST THE APPELLANT AND PUNISHING THEM FOR THE OFFENCES P/U/S 302, 307 & 504 OF IPC AND SENTENCING THE APPELLANT R.I FOR LIFE IMPRISONMENT FOR THE OFFENCES P/U/S 302, AND TO PAY FINE OF RS.1,000/- IN DEFAULT TO UNDERGO SI FOR A PERIOD OF THREE MONTHS AND R.I. FOR A PERIOD OF FIVE YEARS FOR THE OFFENCES U/S 307, AND TO PAY FINE OF RS.1000/- IN DEFAULT TO PAY TO UNDERGO SI FOR A PERIOD OF THREE MONTHS AND ACQUIT THE APPELLANT.

THIS CRIMINAL APPEAL COMING ON FOR FINAL HEARING THIS DAY, **B.V.PINTO J.**, DELIVERED THE FOLLOWING:-

JUDGMENT

This appeal is filed challenging the Judgment dated 7.3.2009 passed by the Principal Sessions Judge, Dharwad in Sessions Case No.30/2006 convicting the appellant for the offences punishable under Sections 302 and 307 of IPC and sentencing him to undergo R.I. for life and to pay a fine of Rs.1,000/- in default to undergo S.I. for a period of three months for the offence under Section 302 of IPC and further sentencing him to undergo R.I. for a period of five years and to pay a fine of Rs.1,000/- in default to undergo S.I. for a

period of three months for the offence under Section 307 of IPC.

2. It is the case of the prosecution that on 6.11.2005 at about 3.30 p.m. near Durgavva temple of Yadwad village within the limits of Garag Police Station, Dharwad, the accused assaulted the deceased Chandrashekharayya with a sickle and caused his death on the previous ill-will regarding the civil case in respect of the property after abusing him in a filthy language with an intention to commit the breach of peace, thereby he is alleged to have committed the offences under Sections 504 and 302 of IPC.

3. It is the further case of the prosecution that on the said place, date and time, the accused assaulted the complainant-Mallayya Rudrayya Halligerimath with a sickle with the previous enmity of the civil litigation in respect of the property and caused injuries to the said Mallayya Rudrayya Halligerimath with an intention to cause his death, thereby

he is alleged to have committed an offence of attempting to murder punishable under Section 307 of IPC.

4. The prosecution in this case commenced with recording of the statement of the complainant-PW.1 by PW.15-PSI of Garag Police Station, Dharwad on 6.11.2005 at about 5.30 p.m., on receipt of a telephonic information from the District Hospital, Dharwad informing that one Mallayya Rudrayya Halligermath of Yadwad has been admitted with a history of assault and also that one person has been killed in Yadwad. PW.15 immediately went to the District Hospital, Dharwad and after giving requisition to the medical officer seeking advise as to the fitness of Mallayya Rudrayya Halligerimath to give statement and on the Doctor giving his opinion that the injured is in a position to give a statement, PW.15 recorded the statement of Mallayya Rudrayya Halligerimath, which is marked as Ex.P5. After returning from the hospital, PW.15 registered the said case in Crime No.128/2005 of Garag Police Station for the offences under

Sections 302, 307 & 504 of IPC. The FIR was dispatched to the jurisdictional Magistrate and he also reported the information to his superior officers. PW.15 gave a requisition to the Tahsildar to come and record the dying declaration of the complainant-Mallayya Rudrayya Halligerimath. PW.15 thereafter proceeded to the village, where the Circle Inspector took up further investigation in the case. PW.12-Tahsildar on receipt of the requisition from PW.15, on 6.11.2005, went to the District Hospital, Dharwad at about 7.15 p.m. and after seeking the information from Dr.Kadakol regarding the condition of Mallayya Rudrayya Halligerimath to give statement, himself along with the Doctor went to ward, where Mallayya Rudrayya Halligerimath was admitted. On securing the opinion from Dr.Kadakol that patient is in a fit condition to give a statement, PW.10 recorded the statement of Mallayya Rudrayya Halligerimath between 7.45 p.m. and 8 p.m. and obtained the signature of Mallayya Rudrayya Halligerimath for the statement which is marked as Ex.P10.

5. PW.16-Inspector of Police after taking up the investigation of the case, proceeded to the scene of occurrence along with PW.15 and on observing the dead body of the deceased Chandrashekharayya near Durgavva temple of Yadwad and on coming to know that the brother of the deceased has been admitted in the District Hospital, he contacted Garag Police and on knowing the crime number proceeded to conduct inquest proceedings on the dead body of the deceased Chandrashekharayya and completed the same in the presence of panchas. The inquest panchanama is marked as Ex.P15. The dead body of the deceased was thereafter sent for conducting post-mortem examination to the hospital. On the next day, PW.16 conducted the spot panchanama as per Ex.P17 in the presence of panchas and seized the bloodstained mud; pair of footwear; black spectacles; gunny bag and towel from the scene of occurrence which are marked as MOs.17, 10 to 13, respectively during trial. The dead body of the deceased was subjected to post-mortem examination after the personal effects on the body of

the deceased were seized under a panchanama as per Ex.P16. PW.16 thereafter recorded the statement of witnesses namely., Basayya Shivayya Halligerimath-PW.2; Basavaraj Madiwalappa Bendigeri-PW.3; Umesh Mahadevappa Jadar-PW.4; Dundayya Gangayya Halligerimth and other witnesses. He thereafter went to the Civil Hospital, Dharwad and seized the bloodstained clothes of injured Mallayya Rudrayya Halligerimath under a panchanama as per Ex.P18 in the presence of panchas. The said articles namely., Shirt and Dhoti of the complainant are marked as per MOs.1 and 3 respectively. On 8.11.2005, PW.16 sent the requisition to the PWD authorities to draw the sketch of the scene of occurrence and recorded a statement of PW.10, who was entrusted with the FIR. On 10.11.2005, the accused was produced before PW.16 by the police constable, who was arrested and a voluntary statement of the accused was recorded, the same is marked as Ex.P27. On the basis of the said voluntary statement of the accused, PW.16 was led by the accused to the Durgavva temple of Yadwad village, where

in the presence of two panchas, the accused led them towards the Mulamuttal road for about a distance of 1½ km from Yadwad and there from the haystack of tur dal crop, accused produced a sickle which was used for the commission of the offence. PW.16 seized the said sickle marked as MO.4 during the trial, as per Ex.P19-Panchanama. Thereafter after taking the photographs of the scene of occurrence and also seizing the clothes of the accused with bloodstains as per panchanama-Ex.P22 in the presence of witnesses, the same were subjected to chemical examination. The said clothes are marked as MOs.2 and 15 i.e., Banian and Lungi of the accused, which were blood stained. On 28.11.2005, PW.16 received the post mortem report of the deceased Chandrashekharayya and he also sent the request to the Regional Forensic Science Laboratory ['RFSL' for short], Belgaum for examination and opinion. On receipt of a requisition on 8.12.2005 from the RFSL, Belgaum, the sample of blood of the complainant was taken by the medical officer and thereafter the said sample was sent to the RFSL,

Belgaum on 13.12.2005. On receipt of the C.E. report as per Ex.P28, PW16 further requested the medical officer, Dharwad PW.13-Dr.Shashidhar to give his opinion regarding the age of injuries as per Ex.P14 and PW.13 gave his opinion as per Ex.P25. PW.15 thereafter filed the charge sheet against the accused.

6. After the accused was produced before the Court of Sessions in pursuance of the committal orders passed by the jurisdictional Magistrate, the accused pleaded not guilty to the charges framed against him.

7. The prosecution in order to prove the case has examined in all 17 witnesses and got marked Exs.P1 to P33 and produced MOs.1 to 19. The defence of the accused was one of total denial. The learned Sessions Judge after hearing the prosecution and the defence convicted the accused as aforesaid and sentenced him as mentioned above. The convicted accused has filed this appeal.

8. Heard Sri J.Basavaraj, learned Counsel appearing for the Appellant and Sri Y.V.Raviraj, learned AGA appearing for the Respondent/State.

9. Sri J.Basavaraj, learned Counsel appearing for the appellant submits that apart from the complainant there are no other witnesses to support the case of the prosecution since PWs.2 and 3 have not supported the case of the prosecution insofar as the incident is concerned. It is submitted by him that though the complainant has stated in his complaint that the deceased had been assaulted first and thereafter when PW.1 went to intervene the accused assaulted the complainant by means of a sickle, the said version has not been spoken to by PW.1 in Ex.P10 which is the statement recorded by the Taluka Executive Magistrate from the complainant-Mallayya Rudrayya Halligerimath when the latter was in the hospital on 6.112005 between 7.45 p.m. and 8 p.m. It is submitted by him that the fact of deceased being assaulted by the accused is totally absent in Ex.P10,

the statement recorded by PW.12-Tahsildar. It is his submission therefore the contents of Ex.P5 is an improvement regarding the death of the deceased which is not at all found in Ex.P10. It is further submitted by him that there is a total discrepancy regarding the time at which the FIR is brought into existence. It is submitted by him that FIR-Ex.P23 has been received by the learned Magistrate at 10.30 p.m. on 6.11.2005, whereas the same has been mentioned as dispatched at 19.50 hours [7.15 p.m.] It is his submission that the complaint-Ex.P5 is ante timed to suit the convenience of the prosecution, since according to the evidence of PW.15, he was in the hospital at about 7 p.m. Therefore having regard to the fact that the distance between the hospital and the Garag Police Station being about 12 km, PW.15 could not have reached the Police Station at 7.15 p.m. and therefore he submits that the complaint has been ante time to suit the convenience of the prosecution case. It is therefore his submission that so far as the offence under Section 302 of IPC in respect of Chandrashekharayya is

concerned, the same has been concocted by the prosecution and therefore it is his submission that the accused is entitled for an order of acquittal. Insofar as the offence under Section 307 of IPC is concerned, it is also further submitted by him that there being no other witnesses except PW.1, who is highly interested in the case of the prosecution, the accused ought to have been acquitted for want of corroboration. Therefore, he submits that the accused may be acquitted of the offences charged against him. It is further submitted by the learned Counsel for the appellant that in the alternative having regard to the long standing enmity between the deceased and his brother on the one side and the accused on the other, the incident would have occurred in the spur of a moment, since the accused had gone to the premises of Durgavva temple along with a sickle for collecting his jowar crop, whereas the deceased and his brother-complainant had been there to clean the onion crop and there is no motive or preparation for commission of an offence. Under the circumstances, it cannot be said that the accused had any

intention to commit the murder of the deceased Chandrashekharayya. Therefore, he submits that an offence under Section 302 of IPC is not made out and in the alternative he submits that having regard to the period for which the accused is in custody, the offence under Section 302 of IPC may be converted into an one under Section 304 of IPC and accordingly submits that the sentence may be modified.

10. The, learned Counsel for the appellant has also contended that in view of what is recorded in Ex.P33(a), the deceased being a chance victim, it cannot be said that the accused with an intention to commit the murder of the decease has assaulted him with the sickle. At best, he being a chance victim, the offence committed by the accused is culpable homicide not amounting to murder, falling within the ambit of Section 304 Part II of IPC.

11. Sri.Y.V.Raviraj, learned Additional Government Advocate appearing for the State, submits that in this case,

there is a prompt lodging of the FIR, in that the injured was taken to Hospital immediately after the incident and PW15- the P.S.I. has reached the Hospital almost simultaneously and has recorded the statement of PW1-Mallayya Rudrayya Halligerimath as per Ex.P5. He has further stated that the said statement has been registered as FIR and the FIR has been transmitted to the Court immediately thereafter. It is further submitted by him that PW1 has categorically stated regarding the incident in the complaint-Ex.P5. So far as the statement recorded by the Taluka Executive Magistrate/Tahsildar-PW12 as per Ex.P10 is concerned, it is his submission that the statement recorded is a dying declaration, which relates to the cause of the injuries sustained by PW1-Mallayya Rudrayya Halligerimath. Therefore, it is his submission that the same has been recorded subsequent to Ex.P5, which was recorded at 7:00 p.m., whereas Ex.P10 has been recorded by the Taluka Executive Magistrate between 7:45 p.m. to 8:00 p.m. It is therefore his submission, having regard to the fact that

Ex.P10 cannot be subsequently treated as a dying declaration, it loses its significance in the wake of earlier statement-Ex.P5. It is his submission that Ex.P5 is a statement in which the entire incident has been properly narrated. So far as the entry in the C.D. as per Ex.P33 is concerned, the learned A.G.A. submits that the entry No.15 in the said record dated 06.11.2004 indicates that the Sub Inspector of Police-PW15 has entered the same at 19:05 hours and that the said entry cannot be said to be contrary to Ex.P5. Though, the said document in fact contains the averments that firstly the complainant was assaulted and thereafter when the deceased intervened, he was assaulted. It is his submission that in view of the transmission of FIR to the Court as per Ex.P5, the averments in the complaint, which is recorded at 7:00 p.m. takes precedence to Ex.P33(a) and hence, he submits that no much significance can be attached to Ex.P33, which is derived from Ex.P5. So far as the delay in FIR being transmitted to the Court is concerned, though it is seen from Ex.P23-FIR that the said document

reached the Magistrate at 10:30 p.m., PW10 has stated in his evidence the reason for delay in transmitting the FIR. Hence, he submits that there is absolutely no discrepancy in the evidence of the prosecution witnesses and that the learned Sessions Judge has rightly come to the conclusion that the incident as alleged has happened and that the learned Sessions Judge has rightly convicted the accused.

12. PW1- Mallayya Rudrayya Halligerimath in his statement as per Ex.P5 has stated that, himself and his brothers by name Chandrashekharayya, Gangayya and Suryakantayya are belonging to Yadwad village and that they are residing along with their respective wife and children separately and they are also cultivating their properties individually. It is stated in the complaint that the father of the accused by name Fakkirappa had sold 9 acres 13 guntas of land about 33 years prior to the said incident and the complainant's family had purchased the same and that they were cultivating the said lands. However, about 6 to 7 years

back, the son of the said Fakkirappa namely the accused was requesting the complainant and his brothers to return the said lands to him, for which they had objected. In this connection the complainant had filed a civil suit in the Dharwad Court, which came to be decreed in his favour and the said suit was taken to the High Court at Bangalore, where also the family of the complainant were declared to be the rightful owners of the said property and hence, they were continuing to cultivate the lands. Though the civil suit was decreed in their favour, the accused was angry on the complainant and his brothers. On the date of incident, viz., on 06.11.2005, the complainant and his family members had stocked the onion crop in the court yard of Durgamma Temple of their village and his brothers and two workers were filling the gunny bags of onions in order to transport the same by cleaning the said onions. At about 3:30 p.m. the accused came near the said temple holding a sickle in his hand and he was pretending to collect the jawar crop put for drying. He came near his brother-Chandrashekarayya and abused him

in a filthy language and thereafter suddenly he assaulted on his brother Chandrashekarayya by means of a sickle in his hand on the back of his head, on his right ear, on his right hand and also on his left hand. At that time the complainant went to intervene between the accused and his brother and the accused assaulted him (namely the complainant) on the back of his head, lips and on his head. The complainant raised alarm and at that time the two workers, who had come to assist his brother, ran away being scared. At that time, on hearing the voice of the complainant, one Basayya Shivayya Halligerimath and others came near and on seeing them, the accused ran away from the scene of occurrence by holding the sickle in his hand. When they observed, Chandrashekarayya had sustained injuries on the back of his head and also on the front side of the head, on his right hand, left shoulder and other parts of his body and he had fallen dead. The complainant raised alarm and went towards his house and at that time, his son-in-law Channabasayya and other neighbours by name Basavantappa and others came

and took him for treatment. It is stated in the complaint that the accused Gadigeppa Fakirappa Fatat has assaulted his brother and himself, keeping in mind the property dispute and having regard to his failure in the civil suit and being angered by the situation. It is also stated in the complaint that the accused has not only murdered his brother Chandrashekarayya, but also has attempted to kill him by assaulting both of them with a sickle on various parts of their body. PW1 has deposed before the Court and has reiterated the version contained in the complaint-Ex.P5. He has also stated that about one month ago there was an altercation between the two namely the deceased as well as the accused. He has narrated the incident of assault by the accused in the evidence before the Court as mentioned in the complaint. PW1 has further stated that he was shifted to Government Hospital at Dharwad by one Shashimouli Kulkarni-CW15, Basavantappa Nekar-CW12 and Dudndayya Halligerimath-CW11, in a vehicle and he had furnished the history of assault, at the time of his admission in the District Hospital

at Dharwad. He has also stated that the Sub Inspector of Police had come to the Hospital and recorded his statement and the Tahsildar, Dharwad also came to the Hospital. He has stated that he was fully conscious when he gave the statement to the Police. He has identified his signature in Ex.P5, which is marked as Ex P5(a). He has identified the clothes worn by the deceased at the time of incident, so also the sickle used by the accused for assaulting him and his brother, which is marked as MO4. PW1 has been thoroughly cross-examined by the defence. Particulars of the civil dispute between them has been elicited in the cross-examination. It is suggested to PW1 that the accused has not worked as a coolie in the fields of the complainant. It is suggested to PW1 that he has not stated before the Tahsildar that the accused had also assaulted his brother. He has stated that when the Tahsildar had come, he had bleeding from head injury, but he was conscious. However, he had not received any fatal injuries on his person. It is suggested to PW1 that no such

incident has happened and that he is deposing falsely due to ill-will.

13. PW2-Basayya Shivayya Halligerimath has stated before the Court that the complainant Mallayya-PW1 had purchased the land from the father of the accused and that the father of the accused by name Fakkirappa is no more. After the death of the father of the accused, the accused used to quarrel with PW1-Mallayya Rudrayya Halligerimath stating that he had got executed a bogus sale deed from his father. It is stated by PW2 that on the date of incident, Chandrashekharayya had been murdered by the accused by assaulting him with a sickle. He has stated that when he was proceeding towards his land at about 3:15 p.m., by passing through the Durgamma Temple of their village, he saw PW1 came running towards his house with bleeding injuries and PW1 told him that the accused is assaulting Chandrashekharayya with the sickle near Durgamma Temple and he (PW1) asked him to go and rescue him. When he went

near the scene of occurrence, he saw the accused running away with a sickle in his hand towards western side and the sickle in his hand was blood stained. When he saw Chandrashekharayya, he was on the left side of the temple and was lying down on the ground. Chandrashekharayya had got injury on the backside of the head and on the right hand. Mallayya sustained head injuries and also injuries on his face. It is stated by PW2 that he had not seen personally the accused assaulting the deceased Chandrashekharayya with the sickle, but he saw him running away with the blood stained sickle. PW2 has been thoroughly cross-examined by the defence and it is suggested that he is deposing falsely at the instance of PW1. This PW2 has been treated hostile by the prosecution for the limited purpose of confronting him regarding the contents of the panchanama of scene of occurrence and seizure of certain articles.

14. PW3-Basavaraj Madiwalappa Bendigeri is the person who was employed by the deceased

Chandrashekharayya on the date of incident for cleaning and packing the onions in bags. He has stated so in the deposition before the Court. However, he has stated that during the lunch hours between 2:30 p.m. and 4:00 p.m. he had gone for taking lunch and when he came back, he saw the dead body of the deceased-Chandrashekharayya, who was murdered. The prosecution has treated this witness as hostile, so far as his eyewitness account is concerned. However he has not further supported the case of the prosecution except saying that he had seen the dead body of the deceased by about 4:00 p.m. on the date of the incident.

15. PW4-Umesh Mahadevappa Jadar is another boy, who was also engaged by the deceased for cleaning and collecting the onions near Durgamma Temple at Yadwad. He has also stated that between 2:30 p.m. and 4:00 p.m. he had gone to have his lunch and the learned Public Prosecutor has treated PW4 hostile insofar as his eyewitness account of the occurrence is concerned.

16. PW5-Prakash Hanumanthappa Kanajanavar is a resident of Yadwad village, who has stated that he reached the scene of occurrence immediately after the incident and observed Chandrashekharayya with cut injuries on his head, on the right side of his ear, on the back side of his head, on his shoulder, on both forearms, on his right wrists. He is the signatory to Ex.P15, whereunder the Circle Inspector conducted the inquest panchanama on the dead body of the deceased. He has also attested Ex.P16, in which the Circle Inspector has seized the clothes found on the dead body of the deceased. He has identified the said articles before the Court.

17. PW6-Madiwalappa Shivalingappa Dindalakoppa is another resident of Yadwad village, who is signatory to Ex.P17-the spot panchanama prepared by the Inspector of Police. He is also a signatory to Ex.P18 under which the Inspector of Police had seized the clothes of PW1-Mallayya in

the Dharwad District Hospital. He has identified the said articles before the Court.

18. PW7-Mallikarjun Kallappa Koyappanavar is the clerk of the Village Panchayat, Yadwad, who has stated that he had accompanied the Inspector of Police and the accused, when the accused led the Police Inspector at about 1½ k.m. away from the scene of occurrence, from where the sickle-MO4 was recovered and produced by the accused before the Police. Ex.P19 is the panchanama for seizure of MO4-Sickle, which was blood stained. PW7 has identified the said sickle as the one, which was recovered at the instance of the accused.

19. PW8-Dundayya has stated that he is the nephew of the complainant-Mallayya and the deceased Chandrashekharayya. He has accompanied Mallayya to the District Hospital at Dharwad on the date of incident. He has also stated that since the verdict given by the Civil Court in respect of the property was not in favour of the accused, the

accused developed the grudge and as such the present incident has occurred.

20. PW9-Shashimouli Dundayya Kulkarni is the owner of a car, in which the injured Mallayya was shifted to the Hospital.

21. PW10-Parashuram Shankarrao Kulkarni is the Head Constable, who has transmitted the FIR to the Court on 06.11.2005 at about 7:15 p.m. He has stated that he went to the home office of JMFC I-Court, Dharwad and submitted the FIR and the complaint at 10:30 p.m. It is in the evidence of PW10 that he got a bus from Garag to Dahrwad at 9:00 p.m. and hence, there was a little delay in reaching the residence of the learned Magistrate, which is about 1½ k.m. to 2 k.m. away from the New Bus Stand at Dharwad. In the cross-examination, it is suggested that for every 20 minutes there are buses from Garag to Dharwad and that the highway is about 2 k.m. to 4 k.m. from Garag Police Station. However, he has denied the suggestion that number of buses pass through

the Garag Police Station between 7:00 p.m. and 9:00 p.m. It is suggested that he is deposing falsely in order to suit the requirement of the Police.

22. PW11-Ravindrakumar Dyamappa Guttal is the constable, who had brought the dead body of the deceased from the scene of occurrence to the Civil Hospital at Dharwad for conducting postmortem examination and after the postmortem examination PW11 has collected the materials from the Doctor as per MO5 to MO9 and MO19 and handed over the dead body to the relatives and the articles to the Investigating Officer. He had also taken the 12 sealed articles concerned in this case to the Regional Forensic Science Laboratory, Belgaum.

23. PW12-Nazeerahmed Imamsab Nadaf is the Tahsildar, Dharwad. He has stated that on 06.11.2005 he received a requisition from the Garag Police Station to record the dying declaration of Mallayya Rudrayya Halligerimath of Yadawad Village. Accordingly, at 7:15 p.m. he went to the

District Hospital and contacted Dr.Kadakol and enquired with him as to whether Mallayya Rudrayya Halligerimath was in a fit condition to give statement and thereafter went to the ward along with the said Doctor and on receipt of the opinion that the injured is in a fit condition to give statement, he recorded the statement of PW1-Mallayya Rudrayya Halligerimath as per Ex.P10. PW12 has further stated that Maliayya Rudrayya Halligerimath has stated before him that the accused Gadigeppa Fakirappa Fatat of Yadwad Village had assaulted him with a sickle. In the cross-examination, it is elicited from PW12 that he has not enquired with Mallayya as to when he sustained injuries and as to whether he was the only person, who sustained the injuries. He has also not enquired whether any other person had sustained injuries or not. He has stated that PW1 did not disclose to him as to whether any person had witnessed the said assault.

24. PW13-Dr.Shashidhar is a Senior Specialist in the District Hospital at Dharwad, who had examined PW1 on

06.11.2005, at about 4:55 p.m. He has stated that PW1 had sustained the following injuries:

- i. Incised wound over right side of the forehead 4 cm. x ½ cm. bleeding present.
- ii. An incised wound over occipital region on right side 10 cm. x 2 m x 1 cm. bleeding present.
- iii. An incised wound over occipital region lower part 3 cm. x 1 cm. x ½ cm. bleeding present.
- iv. An incised wound on upper lop right side 3 cm. x 1 cm. x ½ cm.
- v. An incised wound over lower part of left arm medially 10 cm. x 2 cm. x ½ cm.

He has further issued a wound certificate as per Ex.P24. He has also stated that the injuries found on PW1, as mentioned in Ex.P24 can be caused by sickle-MO4 shown to him. PW13 has also stated before the Court that he has given an opinion regarding the injuries as per Ex.P25, so also, the fact that the Tahsildar had come to the Hospital and recorded the statement of PW1 in which he had endorsed at Ex.P10(c).

25. PW14-Hanumanthappa Bahubali Ijari is the photographer, who has taken the photographs of the dead body of the deceased Chandrashekharayya at the scene of occurrence. He has also taken the photographs at the time, when the accused pointed out the sickle used by him for commission of offence.

26. PW15-Muttanna Hanumanthappa Kale is the Police Inspector, whose evidence has been discussed in the earlier part of this judgment.

27. PW16-Amaresh Narasappa Barker is the Circle Inspector of Police, whose part in the investigation has also been discussed in the earlier part of this judgment.

28. PW17-Dr.Suryakant Durgappa Managoli has conducted the postmortem examination on the dead body of the deceased. He has stated that at the time of conducting postmortem examination over the dead body, he found the following external injuries:

- i. Cut injuries with regular margin on right side of the scalp 1" x ½" bone deep placed (dissected) antero posteriorly.
- ii. Cut injury on occipital area 4" x 1" skin deep placed obliquely margins regular.
- iii. Cut injury with regular margins just above the right ear 3" x 1" bone deep directed backwards.
- iv. Cut injury regular margins on right shoulder 1½" x ¼" skin deep - directed from medial to lateral.
- v. Abrasion just below the right shoulder joint 2" x ½" (length and breadth)
- vi. Cut injury just above the right wrist joint 2" x 1" bone deep both lower ends of right Radius and ulna completely cut - cut edges are sharp - directed from medial to lateral.
- vii. Cut injury with regular margins on left forearm upper 1/3 - skin deep 1" x 1".
- viii. Cut injury on right thumb (anterior) regular margins - skin deep - across placed - 1½" x 1".

He has given the opinion for the cause of death. The death is on account of shock and haemorrhage, as a result of multiple injuries and the time of death was about 12 to 24 hours prior to the postmortem examination. PW17 has issued postmortem examination report as per Ex.P31.

29. After the closure of the evidence, the accused was questioned as to his complicity in the case, in his examination under Section 313 of Cr.P.C. The accused has denied the questions put to him. To question No.136, the accused has stated that he is leading defence evidence after receipt of the documents. However, no defence evidence has been adduced by the accused.

30. On a careful consideration of the entire materials produced by the prosecution and also the submissions made by the learned counsel appearing for the appellant, it is seen that at the first instance, the injured-Mallayya has reached the Hospital at 4:55 p.m. and his statement has been recorded by PW15 immediately on receipt of the information from the District Hospital at Dharwad. It is stated that the said statement has been recorded at about 5:15 p.m. as per endorsement found in Ex.P5 and thereafter the said Ex.P5 has reached the Garag Police Station at 19:00 hours and the same has been registered as Crime No.128/2005. The

distance between the Police Station and the Dharwad Civil Hospital is about 12 k.m. and immediately thereafter the FIR has been dispatched to the Court, as stated by PW10-Parashuram, HC No.785.

31. On a perusal of Ex.P5, the statement of the injured-Mallayya and the FIR, it is seen that there is absolutely no inordinate delay either in recording the FIR or in transmitting the same to the Court. The FIR contains an endorsement that the said document along with the complaint reached the learned Magistrate at about 10:30 p.m. and PW10 has stated in his evidence that since he could not get a bus to come to Dharwad from Garag till 9:00 p.m., there was a delay. He has further stated that the residence of the learned Magistrate is about 1½ k.m. to 2 k.m. away from the Dharwad New Bus Stand, which means the total distance of about 14 k.m. from the Garag Police Station to the Home Office of the learned Magistrate. Even in the cross-examination of PW10, though it is suggested that there are

many buses running in front of the Garag Police Station towards Dharwad, PW10 has stated that between 7:00 p.m. and 9:00 p.m. there were no such buses available and under the circumstances, we are of the opinion that the time consumed for FIR to reach the residence of the learned Magistrate has been properly explained by the prosecution. It is further seen that the Doctor has certified that PW1 was in a fit condition to give statement while his statement was recorded in the Hospital and therefore, there is absolutely no doubt regarding the veracity of Ex.P5, as being the correct statement given by PW1 to the Police when the same was recorded.

32. It is vehemently contended by the learned counsel appearing for the appellant that the station house dairy written by PW15 indicates a contrary statement to Ex.P5-the complaint. In the complaint PW1 has stated that the accused had first assaulted the deceased-Chandrashekharayya and when the PW1 tried to intervene, the accused assaulted PW1,

whereas in Ex.P33, which is a station house dairy, it is mentioned that the accused first assaulted PW1 and when Chandrashekharayya deceased came and intervened, the accused has assaulted Chandrashekharayya and caused his death. The said Ex.P33 has been brought into existence at about 19:05 hours and PW15 is the author of the said Ex.P33(a). However, the statement of PW1 has been recorded by PW15 by about 5:00 p.m. in the District Hospital in the presence of the Doctor. We are of the considered opinion that the mentioning of the incident by PW15 in Ex.P33 in no way affects the substratum of the prosecution case as propounded in Ex.P5 and therefore, much significance cannot be given to the entry in Ex.P33(a).

33. Be that as it may, the said document indicates that the case in Crime No.128/2005 has been registered at 19:05 hours on 06.11.2005 which corroborates the timing mentioned by PW15 and the document viz., the FIR. Under the circumstances, we are of the opinion that the case of the

prosecution, as propounded in Ex.P.5, has not been taken away by Ex.P.33.

34. Insofar as the finding of the learned Sessions Judge is concerned, having regard to the evidence of P.W.17, who has conducted the postmortem examination on the dead body of the deceased Chandrashekharayya, it is clear that the deceased Chandrashekharayya has died a homicidal death. It is also further fortified by the inquest panchanama and also the evidence of P.Ws.2 and 3 who have also stated that immediately after the incident, they reached the scene of occurrence and saw the deceased Chandrashekharayya fallen on the ground in front of Durgamma temple. Under the circumstances, finding of the learned Sessions Judge that the deceased Chandrashekharayya has suffered a homicidal death does not call for any interference as the prosecution has established that the deceased has died a homicidal death.

35. So far as the presence and participation of accused in the crime is concerned, we have the evidence not

only of P.W.1, who is an injured eye witness, but we also have the evidence of P.Ws.2 and 3, who have categorically stated that the accused was running away from the scene of occurrence by holding a sickle in his hands when they reached the scene of occurrence. The said sickle-M.O.4 has been identified by P.W.4. The recovery of said sickle has also been proved by the evidence of witness for panchanama viz., P.W.7 and P.W.16-the CPI. Under the circumstances, we have no hesitation to hold that the accused is the cause for the injuries sustained by the deceased Chandrashekharayya as well as P.W.1-Mallayya and, therefore, we are of the considered opinion that the finding of the learned Sessions Judge that the accused has caused injuries on the deceased Chandrashekharayya and on P.W.1-Mallayya on 06.11.2005, does not call for any interference and, hence, we hold that the prosecution has established the fact that the deceased Chandrashekharayya has been done to death by the accused on the date of the incident.

36. Shri. J.Basavaraj, learned counsel appearing for the appellant vehemently submitted that so far as the nature of the act committed by the accused is concerned, it falls short of Section 302 of Indian Penal Code since the incident had happened in the background of bitter enmity between the accused and the deceased regarding the property. It is his submission that the accused entertained a doubt that the deceased and P.W.1 had entered into a bogus document from the father of the accused namely Fakirappa in respect of the sale of the property. The accused had also failed in the civil courts in establishing that the said document of sale is bogus one and therefore, in view of the fact that the deceased and P.W.1 were found near the Durgamma temple, the accused suddenly got enraged and, without any preparation, he must have assaulted on the deceased and P.W.1. It is his submission that, under the circumstances, the act of the accused comes down to an offence of culpable homicide not amounting to murder punishable under Section 304 of IPC

and, therefore, he submits that the accused may be convicted for the said offence and accordingly the sentence be reduced.

37. We have given our anxious consideration to the said submissions made by the learned counsel for the appellant. However, it is seen that there was absolutely no provocation on the part of the deceased at the time of the incident. From the photographs produced by the prosecution and marked in evidence, it is seen that the onions belonging to the deceased and the complainant was spread up in one part of the ground in front of the temple, whereas the jawar crop of the accused was spread over in another part of the ground of the temple. There was absolutely no reason for an altercation between the accused and the deceased and the accused has assaulted on the deceased and P.W.1 without there being any provocation as could be made out from the evidence adduced by the prosecution and the narration of the incident in Ex.P5-the complaint. Under the circumstances, we are unable to accept the submission made by the learned

counsel for the appellant that the incident has occurred out of sudden provocation. On the other hand, the accused has voluntarily caused grievous hurt. This finding, we are basing on the fact that post-mortem examination on the dead body of the deceased Chandrashekharayya reveals eight specific injuries which correspond to eight separate assault by sickle M.O.4 by the accused. Under the circumstances, we are of the considered view that intention to cause the death of the deceased by sickle is clearly made out by the said post-mortem examination report and, therefore, it is not possible to bring down the offence from the one under Section 302 of IPC as found by the learned Sessions Judge to any other lesser offence. Insofar as the injuries on P.W.1-Mallayya is concerned, it is seen that PW1-Mallayya has also suffered more than one injury which implies that the accused has assaulted P.W.1 five times and all the injuries on PW1-Mallayya are incised wounds. Therefore, no fault can be found with the finding of the learned Sessions Judge that the accused had intended to commit the murder of the deceased

Chandrashekharayya and caused such injuries as is likely to cause death of PW1-Mallayya, thereby attracting the ingredients of offence under Section 307 of IPC.

38. Under the circumstances, on a careful re-appreciation of the entire material on record, we are of the opinion that there are no merits in this appeal and the same is liable to be dismissed.

Accordingly, the appeal is dismissed.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

cp*/Vnp*/Kms