

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

DATED THIS THE 2<sup>ND</sup> DAY OF APRIL 2013

PRESENT

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

AND

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

CRIMINAL APPEAL NO.2773/2011

BETWEEN:

The State by Siddapur P.S ,  
Represented by Addl. SPP.

... Appellant.

(By Shri Y.V.Raviraj, Addl. Government Advocate.)

AND:

1. Manjunath Narayan Gouda  
Age: 27 years, Occ: Agriculture  
And Coolie,  
R/o.Halgar, Gijagini village,  
Siddapur.
2. Maruti Narayan Gouda  
Age: 23 years, Occ: Agriculture  
And Coolie,  
R/o.Halgar, Gijagini village,  
Siddapur.
3. Ganapati Narayan Gouda  
Age: 20 years, Occ: Agriculture

And Coolie,  
R/o.Halgar, Gijagini village,  
Siddapur.

... Respondents.

(By Shri S.C.Bhuti, Advocate, for Shri  
V.P.Kulkarni, Advocate.)

This criminal appeal is filed under section 378(1) and (3) of Cr.P.C., seeking to set aside the judgment and order of acquittal passed by the Sessions Judge, U.K., Karwar, in S.C.No.37/2006, dated 26.10.2010, and consequently convict the accused for the offence charged, etc.,.

This criminal appeal coming on for further hearing this day, H.S.Kempanna, J., delivered the following judgment.

### **JUDGMENT**

The State has preferred this appeal challenging the legality and correctness of the judgment and order dated 26.10.2010, passed in S.C.No.37/2006, by the Sessions Judge, Uttara Kannada, Karwar, acquitting the respondents/ accused of the charges under Sections 307 read

with 34 of IPC, 324 read with 34 of IPC, 504 read with 34 of IPC and 506 read with 34 of IPC.

2. The brief facts of the case are:-

(a) The respondents/accused were tried on the charges for the offences under Sections 307 read with 34 of IPC, 324 read with 34 of IPC, 504 read with 34 of IPC and 506 read with 34 of IPC. It is alleged that on 17.02.2006, at 17:30 hours (5:30 p.m.), in the wetland of PW.1 situated at Halagar in Gijagini village of Siddapur Taluk, the accused in furtherance of their common intention, assaulted PW.2 with chopper and stones on his head with such an intention or knowledge, under such circumstance, if they had caused the death of PW.2, they would have been guilty of murder and further they also caused simple hurt to PW.2 and abused him in vulgar language, thereby gave provocation intending that such provocation would cause PW.2 to break public peace and

further they also threatened PW.2 with dire consequences and thereby committed the aforementioned offences.

(b) It is the case of the prosecution, PWs.1 and 2 are direct brothers. They own their wetlands situated at Halagar in Gijagini village of Siddapur Taluk. PW.3 is their relative i.e., cousin of PWs.1 and 2. All these witnesses are residing in their respective houses along with their family members at Halagar in Gijagini village of Siddapur Taluk.

(c) The accused in the case are cousins. They are residing with their respective families at Halagar in Gijagini village of Siddapur Taluk. They also own their wetlands situated adjacent to the land of PWs.1 and 2.

(d) It is the case of the prosecution, the lands owned by PWs.1 and 2 and the accused are

fed by water from a stream, which flows from the hillock. It is the specific case of the prosecution and admitted that the lands of PWs.1 and 2 are situated in the upper stream and the lands of the accused are situated below the lands of the PWs.1 and 2 i.e., lower down the stream. The accused have to feed water to their lands from the water that flows from the stream, after it spills over from the lands of PWs.1 and 2. Therefore, the accused were putting up a katta above the lands of PWs.1 and 2 and were drawing the water to their lands through pipe. Since, the water was not sufficient to feed the lands of PWs.1 and 2, they used to remove the katta put up above their land by the accused and in this connection there used to be frequent quarrels between the two. On account of the same, there were differences between the two.

(e) Such being the case, it is the case of the prosecution, on 17.02.2006, at about 5:30 p.m., the accused were drawing water to their lands by passing the lands of PWs.1 and 2 through pipes. Seeing the same, PW.2 went and resisted the acts of the accused and asked the accused as to why they have put up pipes to draw water by passing their lands. Heated exchange of words took place between them. At that juncture, it is the case of the prosecution, accused No.1 assaulted PW.2 with MO.3-iron knife on his head, followed by accused Nos.2 and 3 with stones. On account of the assault made, PW.2 sustained severe injuries. According to the prosecution, on hearing the galata that was taking place near the land, PW.3, the cousin of PW.2 come to the said place accompanied by CWs.7, 9, 10 and 11. Seeing the assault made, they rescued PW.2 and thereafter PW.2 was shifted to Siddapur

Government Hospital, where he was treated initially by PW.12, the Medical Officer.

3. PW.12 after treating PW.2 sent an intimation to Siddapur Police Station, in response to which PW.11, the PSI came to the Government Hospital at Siddapur and there he recorded the oral complaint Ex.P.1 of PW.1, the brother of PW.2, who by that time had also accompanied PW.2 to the hospital. Thereafter PW.11 on the basis of Ex.P.1, registered a case in Crime No.27/2006 for the offences punishable under Section 307, 324, 504, 506 read with Section 34 of IPC against he accused and issued FIR as per Ex.P.4 to the jurisdictional Magistrate (Note: PW.11, the PSI had recorded the complaint Ex.P.1 of PW.1, as PW.2 was not in a position to give his statement). PW.11 thereafter proceeded to the spot of occurrence and there he drew up the spot panchanama as per Ex.P.3. At the time of Ex.P.3,

he seized MOs.4 to 8 and MO.3, which was produced by PW.3, in the presence of panchas PWs.4 and 5. After completing Ex.P.3, he recorded the statement of PWs.3, 4, 5, 6 and other witnesses in the case. He also made efforts to trace and apprehend the accused. On 21.02.2006, he arrested accused No.2 and after subjecting him to medical examination, on completion of arrest formalities, got him remanded to judicial custody. On 22.02.2006, he arrested the accused No.3 and after subjecting him to medical examination and on completion of arrest formalities, got him remanded to judicial custody. Thereafter on 24.02.2006, he handed over further investigation of the case to PW.9, the CPI.

4. PW.9 on taking over the investigation, seized the blood stained clothes of PW.2, which are at MOs.1 and 2, under panchanama Ex.P.2, in the presence of the pancha PW.6. He also recorded



the statement of some of the witnesses and further statement of witnesses examined by PW.11. On 27.02.2006, he arrested accused No.1 on being produced by his staff and after completing the arrest formalities, got him remanded to judicial custody. Thereafter, he also forwarded all the seized articles in this case for subjecting to chemical examination to FSL office, Bangalore. He also gave a requisition to the Village Accountant to give RTC extract of the land where the occurrence had taken place and obtained the same, which is at Ex.P.7. He also got the sketch prepared from the concerned authorities as per Ex.P.6. Thereafter, on receipt of the relevant documents from the concerned authorities, including the wound certificate of PW.2, since the investigation had been completed, he submitted final report against the accused before the jurisdictional Magistrate, who in turn committed the case of the accused to the Court of

Sessions, which on receipt of the records, secured the presence of the accused and framed charges against them as aforesaid, to which they pleaded not guilty but claimed to be tried.

5. The prosecution in support of its case in all examined PWs.1 to 12 and got marked Exs.P.1 to P.11 and MOs.1 to 8. The accused got marked Ex.D.1 during the course of the examination of the prosecution witnesses.

6. After the closure of the prosecution evidence, the accused denied all the incriminating circumstances in their examination under Section 313 of Cr.P.C. Thereafter, they examined DW.1 as their defence witness in support of their case. Total denial of the prosecution case is the defence of the accused.

7. The learned trial Judge on considering the oral and documentary evidence placed on

record, came to the conclusion that the prosecution has failed to establish the charge levelled against the accused and accordingly, by the impugned judgment and order acquitted them.

8. The State being aggrieved by the judgment and order of acquittal is in appeal before this Court.

9. Shri Y.V.Raviraj, learned Additional Government Advocate, assailing the impugned Judgment and order contended, the evidence of PW.2-injured clearly goes to show that it is the accused who have assaulted him with MOs.3 to 5 and have caused the injuries. His evidence clearly reveals, the accused with an intention to commit his murder have assaulted him. That evidence of PW.2 is further fortified from the evidence of PW.3, an eyewitness to the occurrence. The said evidence of those two witnesses is further corroborated from the evidence of PWs.10 and 12,

the medical officers, who have treated PW.2 and have issued wound certificate in respect of him as per Exs.P.8 and P.9.

10. The learned trial Judge, despite these materials being on record, more particularly that of the injured witness PW.2, without appreciating the same in its right perspective has come to an erroneous conclusion in holding that the prosecution has not established the charge levelled against the accused, which finding being contrary to the evidence on record and perverse cannot be sustained, it be set aside, the accused be punished in accordance with law.

11. Per contra, the learned counsel appearing for the respondents/accused supporting the impugned judgment and order contended, the evidence of PWs.2 and 3 is untrustworthy. In this connection he contended, though the evidence on record reveals that accused No.1 had sustained an

injury on his person, both these witnesses have not whispered a word about the injury sustained by accused No.1. The evidence of PW.12, the Medical Officer, who has treated PW.2 discloses that on the day he treated PW.2, he has also treated accused No.1 in the hospital for the injury which he had sustained. His evidence further reveals that accused No.1 was treated at Government Hospital, Siddapur, for a period of seven days and that is fortified from he having not been arrested by the police either along with accused No.2 or accused No.3 on which dates they were arrested by PW.11, the PSI. He further contended, the evidence on record reveals, all was not well between PWs.1 and 2 on the one hand and the accused on the other hand in respect of drawing water to the land which was being done from decades ago. In the light of the prosecution witnesses having not whispered a word about the injury sustained by accused No.1 coupled with the

fact of the long standing enmity which existed between PWs.1 and 2 on the one hand and the accused on the other hand, the theory of prosecution that the accused assaulted PW.2 cannot be believed. He also further contended, alternatively even taking the entire material on record it goes to show, the accused in right of defence of their property and person have exercised their right in respect of drawing water to their land and therefore they have not committed any offence. The learned trial Judge on appreciation of the entire material on record has come to the right conclusion in holding that the prosecution has failed to establish the charge, which finding being based on evidence does not suffer from any infirmity calling for interference in this appeal, hence it be dismissed.

12. In the wake of the submissions made, the evidence and the documents on record, the point that arises for our consideration is:-

Whether the impugned judgment and order of the trial Judge calls for any interference?

13. It is the case of the prosecution, on 17.2.2006, at about 5.30 p.m., in the wetland of PWs.1 and 2 situated at Halagar in Gijagini village, the accused in furtherance of their common intention did assault on PW.2 with MOs.3 to 5 and if by that act they had caused death of the injured, they would have been guilty of murder and further by their act have caused hurt to PW.2, abused him with an intention to provoke PW.2 to break public peace and also threatened him with dire consequences.

14. PWs.1 and 2 are direct brothers. PW.3 is their cousin. The prosecution has mainly relied upon the evidence of PW.2 the victim and the eye witness PW.3.

15. The evidence on record reveals, the lands of PWs.1 and 2 and that of the accused are situated adjacent to each other. The evidence on record also reveals that the accused had put-up katta above the lands of PWs.1 and 2 and were drawing water to their lands through pipes by-passing the lands of PWs.1 and 2. In this connection there were differences between the two. PW.2 has testified to this effect in his evidence, likewise is the evidence of PW.1 his younger brother. According to PWs.2 and 3, when PW.2 questioned the accused as to why they are drawing water by laying pipes by passing their land, accused No.1 assaulted PW.2 with iron knife MO.3 followed by accused Nos.2 and 3 with



stones, due to which he sustained injuries. PW.3 claims that on hearing the commotion, he came to the said place and at that time he saw the occurrence. His evidence also reveals that apart from him CWs.7, 9, 10 and 11 also came to the spot and he along with the said witnesses had rescued PW.2. For the reasons best known to the Prosecution they have not been examined, on the other hand the records reveal, they have been given up without assigning any reasons. A perusal of the order sheet of the trial Court reveals that the said witnesses are given up on the submission made by the learned Public Prosecutor. As already pointed out, no reasons are assigned by the learned Public Prosecutor, as to why he is giving up the said witnesses. No memo has also been filed to that effect before the trial Judge giving up the said witnesses. Admittedly, PWs.2 and 3 are related to each other. They are interested witnesses. Apart from the same, there is long

standing difference between PWs.1 and 2 on the one hand and the accused on the other hand in respect of drawing water to their land. The evidence on record reveals, accused No.1 had also sustained injury in the occurrence. He has been treated by PW.12, the Medical Officer, at Siddapur Government Hospital on the very day of the occurrence, after PW.2 was treated in the hospital. Both these PWs.2 and 3 have not whispered a word about accused No.1 having sustained any injury on his person. The Police Officer PW.11, the PSI, who has gone to the hospital on the very day of the occurrence and has recorded Ex.P.1 of PW.1 has also not whispered a word about accused No.1 having taken any treatment with PW.2 on the date of occurrence and he having been in the hospital for nearly seven days as stated to by PW.12, in his cross-examination. This would go to show that the prosecution has suppressed the true genesis of

the case. As already pointed out, there were differences between PWs.1 and 2 on the one hand and the accused on the other hand in respect of drawing water to their land by passing the land of PWs.1 and 2. Apart from this, the accused in support of their defence have examined DW.1. DW.1 is an adjacent land holder holding his land situated abutting the lands of PWs.1 and 2. His evidence discloses, the water from the stream first has to feed his land and thereafter the lands of PWs.1 and 2 followed by the lands of accused. The accused were putting up katta in his land and were drawing water to their lands through pipes since PWs.1 and 2 were not allowing accused to draw water from their lands. He has stated that this was the practice that was prevailing for over more than a decade. PW.2 in his cross-examination has admitted the fact of DW.1 owning lands situated adjacent to their lands and the water from the stream has to pass via his lands. It

is the case of the accused that on the date of occurrence they were drawing water to their land by putting up katta in the land of DW.1. PW.2 came to the land armed with katti and in order to see that they do not draw water, tried to damage the pipes that had been put up by them and in the said process he assaulted accused No.1 due to which he sustained injuries. That is also fortified from the evidence of DW.1 who has stated that when he came to the land after hearing the commotion, he saw accused No.1 having sustained injury. On questioning him it was revealed to him that he sustained the said injuries on account of the assault made by PW.2. Immediately he directed him to be taken to the hospital. In the cross-examination of DW.1 nothing has been elicited to discredit his testimony. Therefore taking an overall view of the evidence it is clear that there were differences between PWs.1 and 2 on the one hand and the accused on the other

hand in respect of drawing water to their lands. This difference was there between the two for more than a decade. As PWs.2 and 3 have not whispered about accused No.1 having sustained any injury and as PW.11, the Investigating Officer has also not whispered a word about the same, in the circumstances as the evidence of PW.12 reveals that accused No.1 was in the hospital for about nearly seven days, despite he having sustained simple injury, we are of the clear view that PWs.2 and 3 have suppressed the true genesis of the case which in turn, in our view, does not inspire confidence to place reliance on their testimony. Further the material on record reveals, the accused have exercised the right of defence of property and person in respect of drawing water to their land. Therefore under these circumstances we are of the clear view, it cannot be said that the accused have committed the offences as alleged by the prosecution. The trial

Judge on an appreciation of the entire material on record has come to the right conclusion in holding that the prosecution has failed to establish the charge levelled against the accused. The said finding in our view having been based on facts and evidence on record does not call for any interference.

16. Accordingly we do not find any merit in this appeal. Hence it is dismissed.

**SD/-  
JUDGE**

**SD/-  
JUDGE**

Mrk/-