

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

DATED THIS THE 8TH 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.2751/2011

BETWEEN:

1. Kamappa S/o.Siddappa Byagi
Age: 36 years, Occ: Agriculture,
R/o. Udagatti, Tq: Gokak.
2. Bhimappa S/o.Siddappa Byagi
Age: 29 years, Occ: Agriculture,
R/o. Udagatti, Tq: Gokak,
Dist: Beigaum.

... Appellants.

(By Shri M.B.Gundawade, Advocate.)

AND:

State of Karnataka,
Represented by the State
Public Prosecutor,
High Court of Karnataka,
Circuit Bench, Dharwad,
Through Kulagod Police, Tq: Gokak.

... Respondent.

(By Shri V.M.Banakar, Addl. SPP.)

This criminal appeal is filed under Section 374 of Cr.P.C., seeking to set aside the judgment of conviction dated 17.6.2011 and order of sentence dated 18.6.2011 passed by the Fast Track Court and Addl. Sessions Judge, Hukkeri, sitting at Gokak, in S.C.No.94/2010, for the offence under Section 302 read with Section 34 of IPC, etc.

This criminal appeal coming on for final hearing this day, **B.V.Pinto, J.**, delivered the following judgment.

JUDGMENT

This appeal is filed challenging the judgment dated 17.6.2011, passed by the Fast Track Court and Addl. Sessions Judge, Hukkeri, sitting at Gokak, in S.C.No.94/2010, convicting the appellants/accused for the offence punishable under Sections 302 read with Section 34 of IPC and sentencing them to undergo imprisonment for life and to pay fine of Rs.50,000/- each, in default to undergo rigorous imprisonment for a period of three years.

2. It is the case of the prosecution that on 9.11.2009, at about 8.30 a.m., in Udagatti village coming within the jurisdiction of Kulgod Police Station, the appellants/accused Nos.1 and 2 along with one Siddappa, the accused No.3, assaulted on the deceased Ishwar Basalingappa Gudli. The 1st accused Kamappa assaulted Ishwar on his left side of the stomach and also on his left hand with a sickle (Kurupi) and second accused assaulted the deceased Ishwar on his right shoulder with a sickle and caused grievous injuries and accused No.3 Siddappa assaulted him with a cycle chain on his right eye brow, as a result of which the deceased Ishwar died on 22.12.2009 at KLE Hospital, Belgaum, thereby they are alleged to have committed offence under Section 302 read with Section 34 of IPC. The incident was brought to the notice of the police by means of an intimation given by

PW.14 Dr.Ramesh, in whose hospital the deceased Ishwar was admitted, as a result of the injuries sustained by him. PW.1-Shivarayappa, who is the brother of the deceased had shifted the deceased from the scene of occurrence to the hospital, where PW.6 Basalingappa had recorded the statement of the deceased which is marked as Ex.P.8. In the statement it is stated that he belongs to Udagatti village and that he was residing with his family members. His lands are situated between Udagatti cross and Udagatti village and by the side of his lands, the lands of Kamappa the accused No.1 are situated; he had purchased the land from PW.5-Adivappa to form a cart road and thereafter he was moving tractor and cart on the said road, and since the lands of the accused were situated by the side of his lands, the accused were also taking their cart in the said road and in this connection the

deceased had told the accused that they should not take their cart and other materials on the said road unless they give part of the cost paid to the said road to PW.5 and also to meet the expenses of forming and maintaining the road. However without paying any amount the accused were using the said road. On the date of incident i.e., on 9.11.2009, when he was near the field, the accused persons namely Kamappa, Bhimappa and Siddappa came near the land and at that time the deceased objected the accused from using the said road; after sometime when he went to his house and came back with the sugarcane slip, all the three persons named above came with weapons in their hands namely accused Nos.1 and 2 were holding kurupi (sickle) and accused No.3 was holding a cycle chain; thereafter by abusing him in vulgar language in connection with the road, the accused No.1

assaulted him by means of a sickle on the left side of his stomach and caused grievous injury and his intestine came out from the stomach; by the time accused No.1 attempted to assault again, he raised his left hand and at that time the blow fell on his left hand and he sustained injury on the left hand; accused No.2 also held a sickle and assaulted on his right shoulder and dealt a blow; the accused No.3 also assaulted him with a cycle chain which caused injury on his right eye brow; at that time the people in the neighbourhood by name PW.3-Siddappa Hipparagi and PW.4-Suresh came and extricated him from the clutches of the accused. Thereafter PW.1-Shivarayappa and PW.2-Arjun, who are the brothers of the deceased came to the said place and removed him in a vehicle to the hospital of PW.14-Dr.Ramesh, at Gokak. The injured narrated the incident to PW.6-Basalingappa, who

recorded the said statement and took the LTM from the deceased in the presence of PW.14-Dr.Ramesh, who has also signed the said statement, which is marked as Ex.P.8.

3. PW.17-Raghavendra, the PSI of Kulgod Police Station, on receipt of the intimation from PW.14, Dr.Ramesh came to the hospital at about 9-00 a.m. on 9.11.2009 and thereafter he observed that the deceased Ishwar was taking treatment, he gave a requisition to the Medical Officer requesting him to opine as to whether the injured is in a position to give statement, as per Ex.P.35(a). Thereafter he sent a requisition to the Taluka Executive Magistrate as per Ex.P.38, in response to which the Tahasildar PW.15 came to the hospital and recorded the statement as per Ex.P.39. After PW.15 recorded statement of the injured, the injured Ishwar who was undergoing

treatment in the hospital handed over to him Ex.P.8, which he had got written from PW.6. Thereafter PW.17 recorded the further statement of the deceased, as per Ex.P.42. Thereafter he went to the Police Station and registered the case in Crime No.167/2009 for the offences punishable under Sections 504, 506, 307 read with Section 34 of IPC, against accused Nos.1 to 3 and issued FIR as per Ex.P.43 and transmitted the same to the Court. Thereafter he visited the scene of occurrence along with panchas and recorded the statements of panchas and took photographs and drawn the panchanama of the scene of occurrence as per Ex.P.9 and also took photograph as per Ex.P.10. He has also seized MOs.1, 6 and 7 from the scene of occurrence and prepared a rough sketch of the scene of occurrence as per Ex.P.44 and thereafter he has recorded statements of CWs.10 to 12. After

returning from the scene of occurrence he again visited the hospital and seized the blood stained clothes of the injured and a panchanama to this effect was drawn by him. MOs.2 to 5 are the clothes of the injured. Ex.P.11 is the panchanama regarding seizure of the clothes from the injured. Thereafter he has also recorded the statements of CWs.7, 9 and 13 and subjected the properties to PF. On 15.11.2009 he has arrested accused Nos.1 to 3 and on their interrogation he recorded their voluntary statements as per Exs.P.45, 46 and 47 respectively. Thereafter in pursuance of their voluntary statements he seized MOs.8, 11 and 12 at the instance of accused No.1, MOs.9, 13 and 14 at the instance of accused No.2 and MO.15 at the instance of accused No.3 under the panchanama Ex.P.19 in the presence of the panchas PWs.8 and 9. On 27.11.2009 the seized

articles were sent for FSL examination through PC No.871. On 4.12.2009 the said articles were transmitted to FSL office at Beigaum as per Ex.P.49. On 22.12.2009, PW.17 received intimation regarding the death of deceased as per Ex.P.50. He has filed a memo before the Court for converting the offence under Section 307 into 302 of IPC, as per Ex.P.51. Thereafter he visited the KLE hospital, Beigaum, on the same night and conducted the inquest proceedings on the dead body as per Ex.P.12 and also took the photographs and thereafter the dead body was subjected to postmortem examination. Ex.P.52 is the requisition issued by him to the Medical Officer. Ex.P.53 is the postmortem examination report received by him. Thereafter the dead body was handed over to the relatives of the deceased. On receipt of the documents namely the dying declaration rendered by Taluka Executive

Magistrate, as per Ex.P.54, he handed over further investigation to PW.13, the CPI.

4. PW.13 the CPI took over the investigation from PW.17 and after verifying the investigation so far conducted, he received the postmortem examination report on 30.12.2009 as per Ex.P.23. It is in the evidence of PW.13 that on 5.1.2010 he visited the KLE hospital with a requisition to furnish him the documents regarding the treatment in the said hospital and on 16.1.2010 he received the RTC of the land in respect of which the dispute arose which is marked as Ex.P.24. On 18.1.2010 he received the original postmortem examination report and on 20.1.2010 he forwarded the weapons i.e., two sickles and one cycle chain to PW.14 the doctor to give his opinion as per Ex.P.25. The doctor PW.14 has given his opinion as per Ex.P.26. On

receipt of the FSL report regarding the materials sent to FSL, Bangalore, as per Ex.P.29, PW.13 has filed the charge sheet against accused.

5. On receipt of the charge sheet the learned Magistrate committed the case to the Court of Sessions and on appearance of the accused before the Court of Sessions they have pleaded not guilty to the charges framed against them. Thereafter the prosecution in order to prove the case has examined in all 17 witnesses and got marked Exs.P.1 to P.54 and produced MOs.1 to 15. The defence of the accused was one of total denial. The accused neither examined any defence witnesses nor produced any documents or materials. The learned Sessions Judge after considering the material on record held that the prosecution has proved the case against the accused No.1 and 2, the appellants

herein and convicted and sentenced them as aforesaid while acquitting the accused No.3 of all the charges levelled against him. The convicted accused have filed this appeal.

6. PW.1-Shivarayappa and PW.2-Arjun are the brothers of the deceased. They have stated regarding purchase of land by them from PW.5-Adivappa for the purpose of forming a road to have approach to their agricultural land. They have stated that the accused were also using the said land without paying the cost of the said land and also without maintaining the same. Hence in this connection there was a dispute between the accused and themselves. PW.1 has further stated that on 9.11.2009 at about 8.30 a.m. when he was in the house, he learnt from PW.4-Suresh that his brother Ishwar has been assaulted by all the accused and thereafter he ran towards the

scene of occurrence; his brother Ishwar has been assaulted on the road in respect of which there was a dispute between them; his brother had fallen down; he had sustained injuries on his stomach and the intestine had come out; his brother had also sustained injuries on his left forehead and also on his back; when he enquired with his brother, he stated that accused No.1 had assaulted him by means of sickle on his stomach and he has also again attempted to assault him and since he brought his hand forward, the blow fell on his left hand. It is also stated by PW.1 that deceased told him that 2nd accused assaulted him by means of a sickle on his right shoulder and the 3rd accused assaulted him by means of a cycle chain on his forehead. Thereafter himself and others took his brother in a jeep to the hospital at Gokak and got him admitted in the said hospital. It is stated by

PW.1 that PW.6-Basalingappa had written the statement given by the injured and the same was handed over to the police when the police came to the hospital. His brother was in the said hospital from 9th day to 12th day of the said month and thereafter he was shifted to the KLE hospital, Belgaum. His brother had received treatment in the said hospital and has died on 22.12.2009.

7. PW.1 has been thoroughly cross examined by the defence. It is suggested that the accused are not responsible for the death of the deceased. The evidence of PW.2 is also to the similar effect insofar as giving treatment to the injured after the incident. PW.2 has also clearly stated that on enquiring the injured at the scene of occurrence, he stated the names of three

accused and also the weapons used by each of them to assault him.

8. PW.3-Shiddappa and PW.4-Suresh are the eye witnesses to the incident. However both of them have not supported the case of the prosecution and have been treated hostile by the Public Prosecutor.

9. PW.5-Adiveppa is the person from whom the deceased had purchased the land for forming a road. PW.5 has stated that his land has been purchased by the deceased for the said purpose. However so far as the incident is concerned, he has not supported the case of the prosecution and he has been treated hostile. PW.6 is the scribe of Ex.P.8, the statement of the injured/deceased. He has identified his handwriting in Ex.P.8, which was handed over to the police after taking the left thumb impression

of deceased Ishwar on the same. He has also stated that the contents of Ex.P.8 are recorded by him as informed to him by the deceased.

10. PW.7-Ningappa has stated that he has been a witness to the panchanama drawn at the scene of occurrence, which is marked as Ex.P.9. He has identified the articles seized by the police at the time of preparing the panchanama. He has also identified the photograph taken from the scene of occurrence as Ex.P.10. PW.7 has also visited the hospital and he is a witness to the panchanama for seizure of clothes from the person of the injured as Ex.P.11. PW.7 is also a witness to the inquest proceedings which is recorded as per Ex.P.12.

11. PW.8-Pandappa and PW.9-Shekhar are the witnesses to the recovery panchanama Ex.P.19. However both of them have turned

hostile to the case of the prosecution. PW.10-Mahadev is the photographer who has taken the photographs as per Exs.P.10, 13 to 18.

12. PW.11-Mamul Rasid is the village accountant who has given a letter as per Ex.P.21 stating therein that Sy.No.105/3 belongs to Sri Mahadev Yaragudri and accused No.3 Siddappa is residing in the house situated in the said survey number.

13. PW.12-Khandu is a Police Constable who has carried the dead body to the hospital and thereafter handed over the dead body to the relatives of the deceased. PW.13-Sadashiv is the Investigating Officer in the case whose evidence has been already discussed above.

14. PW.14-Dr.Ramesh has stated that he is working in the Sukh-Shanthi polyclinic in Gokak.

On 9.11.2009 at about 8.30 a.m. the injured by name Ishwar aged about 48 years was brought to his hospital with a history of assault by sickle. He has treated the injured at about 10-00 a.m. on the said date and has found five injuries on him. He has stated that four injuries out of the said five injuries are grievous in nature and the same would have been caused by a sharp edged weapon. He has issued the wound certificate as per Ex.P.34. It is in the evidence of PW.14 that the patient was in his hospital from 9.11.2009 to 12.11.2009 and while he was in the hospital, the police had requested him to give opinion as to the capacity of the injured to give a statement and PW.14 has opined that the injured is in a position to give statement as per Ex.P.8(c) which is the signature of PW.14 in Ex.P.8. He has also identified the letter Ex.P.35 in which the police had requested him to give an opinion regarding

the capacity of the injured to give statement. PW.14 has further stated that on the same day the Tahasildar came to the hospital and since he was treating the injured, the Tahasildar requested him to permit him to record the dying declaration of the injured. He has stated that the said dying declaration was recorded in his presence and he had signed the said document as per Ex.P.36. On 20.1.2010 the Investigating Officer produced the weapons seized in the case and sought his opinion. The letter requesting him to give opinion is as per Ex.P.25.

15. PW.14 has stated that he has seen two sickles and one cycle chain and has opined that article No.1 sickle could have caused the injuries No.2, 3 and 4 and article No.2 another sickle could have caused injury No.1 and article No.3 cycle chain could have caused injuries No.3 to 5

as mentioned in his evidence. The said opinion of the doctor PW.14 is marked as Ex.P.26. He has further examined the x-ray report taken in respect of injured/deceased which are marked as Ex.P.37.

16. PW.15 is the Taluka Executive Magistrate of Gokak Taluk and PW.17- Sub-Inspector of Police requested him to record the dying declaration of the injured Ishwar Basalingappa Gudli and he came to the hospital on 09.11.2009 and had sought the opinion of the doctor of Sukh Shanthi Clinic who stated that the injured Ishwar Basalingappa Gudli is in a fit condition to give his statement. PW.15 has recorded the dying declaration of the injured/deceased Ishwar Basalingappa Gudli as per Ex.P39. It is stated by him that, as per the questions put to the injured, he states in Ex.P39

that he was assaulted by accused Nos.1 to 3 namely Kamappa Siddappa Byagi, Bhimappa Siddappa Byagi and Siddappa Lazman Mukkannavar. It is also stated by PW.15 that, to the question No.13, it is stated by the injured Ishwar that in respect of a land accused had assaulted him when he was going towards his field, by means of a sickle on his stomach and other parts of the body. The defence has cross-examined PW.15 extensively suggesting that the deceased has not given the statement as per Ex.P36. However, PW.15 has denied the said suggestion.

17. PW.16- is the Medical Officer who was working at J.N.M.C hospital, Belgaum. He has stated that, on 22.12.2009, he had conducted the postmortem examination on the dead body of the deceased Ishwar Basalingappa Gudli between

9.35 p.m. to 10.35 p.m. He has stated that, the dead body contained eight external visible injuries and that after conducting the examination, he has given report as per Ex.P23. He has stated that the death of the deceased is caused due to Septicemia.

18. PW.17- is Sub-Inspector of Police, Kulgoda police station during relevant time. The investigation conducted by him has been explained in the earlier portion of this Judgment

19. Heard Sri.M.B.Gundawade, learned Counsel appearing for the appellants and Sri.V.M.Banakar, learned Addl.SPP for the State.

20. Learned Counsel for the appellants submits that, the trial Court has not believed the statement Ex.P8 received by PW.17 from the deceased, insofar as accused No.3 is concerned

and therefore, the trial Court has acquitted accused No.3 of the offences charged against him and the State has not preferred an appeal against the order of acquittal passed by the learned Sessions Judge against accused No.3. It is further submitted that, when such is the position, the dying declaration of the deceased-Ex.P39 also contains the names of three accused and therefore, the trial Court ought to have held the same yardstick insofar as accused Nos.1 and 2 are concerned and ought to have acquitted the appellants also. It is his further submission that, PWs.3 and 4 having been treated as hostile to the prosecution, there are no eye witnesses to the incident and the circumstances on which the prosecution relies does not form a complete chain of circumstances indicating the guilt of the accused and therefore, the accused are entitled for an order of acquittal. It is his further

submission that, though initially, the injured was admitted in the hospital in which PW.14 was the Medical Officer, from the evidence of PW.14, it is clear that only from 09.11.2009 to 12.11.2009, the injured was taking treatment in that hospital and that there is no evidence to show as to where exactly the patient was taken and where he has been subjected to the medical treatment thereafter. The evidence of PW.16 indicates that, he was requested to conduct the postmortem examination on the dead body of the deceased on 22.12.2009 and the prosecution is silent as to what happened to the deceased in the intervening period and the cause of death as shown in Ex.P23, as Septicemia. Therefore, there is no reference to the injuries caused to the deceased and there is absolutely no connection between the injuries caused on the deceased and the death of the deceased. In that view of the

matter, it is submitted by him that, accused have been erroneously convicted by the learned Sessions Judge for the offence of committing the murder of the deceased and therefore, the said order of conviction is liable to be set aside.

21. In the alternative, it is submitted that, the appellants could not have been convicted by the learned Sessions Judge, as there is no evidence at all regarding the cause of death of the deceased. Hence, he submits that, appeal be allowed and order of conviction and sentence be set aside.

22. Learned Addl.SPP- Sri.V.M.Banakar, on the other hand submits that, though PWs.3 and 4 have turned hostile to the case of the prosecution, the evidence of PWs.1, 2 and 6 indicates that, immediately after the incident, they went near the injured who was still

conscious and he has narrated to PWs.1, 2 and 6, that he was assaulted by accused Nos.1 to 3 by means of a sickle and cycle chain and this statement is the oral dying declaration made by the injured to PW.6. It is further submitted that, PW.6 has immediately recorded the statement of the injured which is at Ex.P8 and also obtained the LTM of the injured. It is also his further submission that, Ex.P8 also contains the signature of PW.14 in whose presence the said statement is recorded to the dictation of the deceased Ishwar.

23. It is further submitted by him that, Ex.P8 clearly establishes that, it is accused and accused alone who had caused injuries on the deceased and therefore, there is clear case of the prosecution that, it is accused who have caused injuries on the deceased Ishwar. It is his further

submission that, when PW.15-Taluka Executive Magistrate came to the hospital, he has requested PW.14 to give his opinion regarding the fitness of the injured to make the statement and accordingly Ex.P39 dying declaration has been recorded by Taluka Executive Magistrate. Even in Ex.P39, names of accused Nos.1 and 2 are specifically and clearly mentioned and therefore, he submits that, the learned Sessions Judge has rightly convicted the accused Nos.1 and 2 holding that, they are responsible for the death of the deceased. It is his further submission that, PWs.14 and 16 doctors who has first seen injured and the doctor who has conducted the postmortem examination of the deceased respectively have clearly stated that, after the injured was taken from Sukh Shanthi Hospital, he was admitted at KLE hospital at Belgaum and the postmortem examination report

clearly indicates that, the injured had died in the hospital. It is his submission that, it is mentioned in Ex.P23 -Postmortem report that, the injured was admitted at KLE hospital on 12.11.2009 and that he had died on 22.12.2009. There is absolutely no cross-examination to PW.16 regarding the veracity of Ex.P23 stating that the injured was admitted to the said hospital on 12.11.2009. It is his submission that, in view of this evidence and the document-Ex.P23, coupled with evidence of PW.14, it is clearly established that the injured after being discharged from the Sukh Shanthi hospital, Gokak, was straightaway taken to KLE hospital at Belgaum and that while being treated there, he has succumbed to the injuries. Under the circumstances, it is submitted by him that, the death of the deceased is a direct result of the injuries sustained by him as a result of assault

on him by the accused persons. Therefore, the learned Sessions Judge has rightly convicted the accused and sentenced them. Hence, he submits that, there is no error or illegality in the order of conviction passed by the learned Sessions Judge and therefore, the appeal may be dismissed.

24. We have given our careful thought on the submissions made by either side. Though, PWs.2 and 3 are the direct eyewitnesses to the incident but that they have not supported the case of the prosecution, the evidence of PW.6 who is none other than the brother of the deceased is clear and cogent. He has stated that, immediately after the incident, when he went near the scene of occurrence i.e, the land belonging to the deceased, the deceased had fallen on the ground and he states that, he was assaulted by accused Nos.1 to 3 by means of

sickles and cycle chain. PWs.1, 2 and 6 who are the direct brothers of the deceased have taken the injured to the hospital at Gokak and immediately thereafter, PW.6 has recorded the statement of the injured Ishwar Basalingappa Gudli which is attested by the injured himself by putting his LTM. PW.14 has given evidence to the effect that, he was present when the statement of the injured was recorded and that injured was in a fit condition to give the statement. Ex.P8 contains the signature and seal of PW.14. Under the circumstances, we have no hesitation to hold that, what has been written in Ex.P8 is true and correct version of the incident of fact by deceased Ishwar Basalingappa Gudli. Ex.P8 has been handed over to PW.17 who arrived at the hospital on the intimation given by PW.14 and immediately after returning to the police station, PW.17 has registered the said complaint as a

cognizable case for the offences under Section 506 and 307 of IPC. PW.17-Police Sub-Inspector has summoned PW.15-Taluka Executive Magistrate, requesting him to record the dying declaration of the deceased and PW.15 came to the hospital on the same day and recorded the dying declaration of the deceased as per Ex.P39. PW.15 has put several questions to the injured and the answers are recorded in Ex.P39. From the answers elicited from the injured by PW.15, it is clear that, the injured was in a fit and proper condition to make the statement and he has answered to all the questions put by the Taluka Executive Magistrate. In the said statement, the injured has clearly stated that, he has been assaulted by accused Nos.1 to 3 namely Kamappa Siddappa Byagi, Bhimappa Siddappa Byagi and Siddappa Laxman Mookannavar. The said statement made by the injured as per

Ex.P39 is also in corroboration with Ex.P8 and also in corroboration with the oral dying declaration given to PW.6, immediately, after the incident. To question No.13 put by PW.15- the injured has given information of the incident namely that, there was some dispute regarding the land and that the incident has happened when he was taking a tractor in the said land. He has also mentioned in the said Ex.P39, the weapon used by accused. Under the circumstances, we are of the considered opinion that, the case put forward in Ex.P8, Ex.P39 and in the evidence of PW.6 are in complete corroboration with each other and there is no reason as to why the said statement have to be disbelieved by this Court. Insofar as accused No.3 is concerned, the learned Sessions Judge has observed that, there is a small discrepancy regarding his part and also regarding his name.

It is further seen that, while stating reasons to his injuries, the deceased has not disclosed the weapon cycle chain and therefore, the name of accused No.3 and the weapon used is not clearly established from the prosecution evidence and therefore, the learned Sessions Judge has given benefit of doubt to accused No.3.

25. On a careful consideration of the entire material on record, we are of the considered opinion that, the learned Sessions Judge has rightly convicted accused Nos.1 and 2 for the act committed by them and also rightly acquitted accused No.3 by giving benefit of doubt. We would also like to state that, the State has not preferred any appeal against the order of acquittal passed by the learned Sessions Judge against accused No.3. In that view of the matter, the finding of fact recorded by the learned

Sessions Judge that the injured had sustained the injuries from the weapon used by accused Nos.1 and 2 is established beyond reasonable doubt.

26. So far as the nature of offence is concerned, however, we are of the opinion that, the prosecution has not been able to bring on record the evidence that the death of the deceased is a direct result of the injuries sustained by the deceased. While the incident has happened on 09.11.2009, the deceased was shifted from Sukh Shanthi Hospital, Gokak, on 12.11.2009. There is absolutely no material to show as to how or in what manner the injured was shifted from the said Gokak Hospital to KLE Hospital, Belgaum. The evidence of PW.16 states that, he was requested by PSI to conduct the postmortem examination on the dead body of the

deceased on 22.12.2009. Neither the doctor who treated the deceased during the intervening period from 12.11.2009 to 22.12.2009 has been examined nor the case sheets and other relevant medical records have been seized or produced by the prosecution before the Court and the cause of death is mentioned by PW.16 in Ex.P23 as septicemia. Nowhere, PW.16 has stated that, the cause of death of the deceased is due to the injuries sustained by the deceased. Under the circumstances, we are of the considered opinion that, it cannot be said that, the death of the deceased is due to the injuries sustained by him as a result of assault. It is also not brought on record that, the injuries caused by accused has resulted in Septicemia. Under the circumstances, we are of the considered opinion that, the accused can be found guilty of the offence of committing culpable homicide not amounting to

murder punishable under Section 304-Part-I of IPC. This we do on the basis of the nature of weapon used by them, number of persons present at the time of assault and that the deceased was alone in the field. Under the circumstances, we hold that the appellants are guilty of the offence under Section 304-Part-I r/w Sec 34 of IPC.

27. So far as sentence is concerned, having regard to the fact that accused No.1 has assaulted on the stomach of the injured which has resulted in protruding of the intestine instantaneously and that he has again attempted to assault on the deceased for the second time and but for his raising his left hand injured would have sustained second severe blow on his body and also the fact that the accused No.2 who is none other than the brother of accused No.1

also was armed with sickle and assaulted on the right side of the injured causing injuries on the right shoulder and in view of the opinion of PW.14 that the injuries Nos.1 to 4 are grievous in nature, we are of the opinion that the sentence of eight years of rigorous imprisonment would meet the ends of justice.

28. Before parting with this case, we are constrained to observe that, the prosecution has not been able to connect the guilt of the accused so far as the offence under Section 302 of IPC is concerned, due to lack of medical evidence in this case. PW.13- Sadashiv Revappa Kattimani Circle Inspector of Police and PW.17- Raghavendra are the two Investigating Officers who had conducted the investigation in this case. We have observed earlier that, right from 12.11.2009 till 22.12.2009, the prosecution has

not produced any iota of evidence, to say that the deceased was treated at KLE Hospital, Belgaum. Therefore, we find that, the Investigating Officers have not performed their duty in a diligent manner. PW.17- who is Sub-Inspector of Police had conducted the major part of the investigation. On 24.12.2009, the investigation is handed over to PW.13 who has filed the charge sheet. In his evidence, PW.13 has stated that while taking over the investigating papers from PW.17, he has examined the investigation already done by PW.17. However, having regard to the evidence of PW.14, the Medical Officer of Gokak Hospital who has categorically stated that, the injured was shifted to KLE Hospital on 12.11.2009, no efforts has been made by the Investigating Officer to collect the materials relating to the progress of the medical treatment rendered to the deceased at KLE Hospital,

Belgaum. He has neither cited the doctor who has treated the deceased in KLE Hospital at Belgaum nor has taken records, copy of the case sheet and other records while filing the charge sheet. Further, the evidence of PW.13- Circle Inspector of Police reveals that, he had sent a requisition to KLE Hospital to furnish the details of the treatment given and he has not obtained the same. Even during the trial, the learned Public Prosecutor conducting the case has also not taken effective steps to summon the medical records from the K.L.E. Hospital, Belgaum and to examine the doctor who had treated the injured Ishwar. In that view of the matter, we had directed the learned Addl.SPP not only to keep present the said two Officers, but also the learned Public Prosecutor who had conducted the case before the trial Court. The learned Public Prosecutor as well as PWs.13 and 17 were

present before us while passing this order. We have also orally questioned them as to the reason as such, which has caused serious lacuna in the conduct of investigation. However, we are not satisfied with the answers given by them. Therefore, the attention is also drawn to their own evidence before the trial Court and also the evidence of PW.14 regarding removal of the injured from Gokak Hospital. However, they are unable to satisfy us regarding the dereliction of duties they have committed in filing the charge sheet without medical particulars from the KLE Hospital. We have already held that, the absence of medical evidence has resulted in acquittal of the accused of the offence under Section 302 of IPC in this case. Under the circumstances, after hearing learned Addl.SPP, we are of the opinion that, it is necessary for taking certain measures insofar as the conduct of PWs.13 and 17 is

concerned. We hold that, both PWs.13 and 17 are negligent in performing their duties in investigating in this case, in particular in not obtaining the medical evidence insofar as the treatment of the deceased at KLE Hospital is concerned, which has resulted in failure of the prosecution case for the offence under Section 302 of IPC.

29. Therefore, in view of what has been laid down by the Apex Court in the case of **Dayal Singh v. State of Uttaranchal** reported in **(2012) 8 Supreme Court Cases 263**, we direct the IG of Belgaum under whose jurisdiction PWs.13 and 17 are presently working to initiate action against these two officers in accordance with law in respect of dereliction of the duties that have been committed and take appropriate steps to penalise them. We earnestly hope that

the learned Public Prosecutors, whether they are derived from the department or appointed on contract basis, shall be more diligent in conducting the serious cases before the Sessions Court/Fast Track Courts.

30. We direct the Registry to communicate this portion of the order to the concerned IG of police and take action and report to this Court on the same.

31. In the result, the following order is passed:

ORDER

- i) The appeal is allowed in part.
- ii) The order of conviction and sentence passed by the learned Sessions Judge in respect of appellant Nos.1 and 2 is hereby altered from the one under Section 302 r/w Sec 34 of IPC

to the one under Section 304-Part-I r/w Sec 34 of IPC.

- iii) Instead of the sentence passed by the learned Sessions Judge, accused/appellants are directed to undergo RI for eight years for the offence under Section 304-Part-I r/w Sec 34 of IPC and to pay fine of Rs.50,000/- each, in default to suffer imprisonment for two years.
- iv) The order of payment of compensation amount to the wife of the deceased shall remain intact.
- v) It is seen from the records that, the appellants have been granted bail by suspending sentence imposed on them by this Court. They are directed to surrender before the trial Court and to serve out the sentence passed on them failing which the trial Court is directed to take necessary steps and secure them and remand them to custody for

serving the sentence passed on
them.

**SD/-
JUDGE**

**SD/-
JUDGE**

MRK/KSR