

MHLA090006372011



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IN THE COURT OF
JUDICIAL MAGISTRATE FIRST CLASS (COURT NO.3)
AT UDGIR, DIST. LATUR

(Presided over by Shri. Bhalchandra Raosaheb Zende)

Regular Criminal Case No.159/2011
Exhibit No.113/B

FIR No. : 82/2011,
Police Station : Police Station Udgir (Rural), Tal. Udgir, Dist. Latur.
Offence Punishable u/s. : 325, 324 and 504 r/w. sec. 34 of the IPC.

Prosecution	:	The State of Maharashtra, Through the Incharge of Police Station, Police Station Udgir (Rural), Tal. Udgir, Dist. Latur.
Represented by	:	Learned A.P.P. Smt. A. J. Chavan
Accused	1)	Somnath Mahalappa Swami, Age : 43 years, Occu. : Agril., R/o. : Tondchir, Tal. Udgir, Dist. Latur.
	2)	Mahalappa Rudrayya Swami (died),
	3)	Sumanbai Mahalappa Swami, Age : 73 yrs, Occ. : Agril., R/o. : Tondchir, Tal. Udgir, Dist. Latur.
	4)	Babalu @ Babruwan Chandrakant Swami, Age : 39 yrs, Occ. : Agril., R/o. : Tondchir, Tal. Udgir, Dist. Latur.
Represented by	:	Learned Adv. Shri. P. S. Biradar

Part 'B'

Date of offence	:	17.06.2011
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Date of FIR	:	18.06.2011
Date of Charge sheet	:	11.07.2011
Date of Framing of charges	:	17.10.2015
Date of commencement of evidence	:	14.09.2018
Date on which Judgment is reserved	:	23.04.2026
Date of the Judgment	:	13.05.2026
Date of the sentencing order (if any)	:	NA

ACCUSED DETAILS

Rank of the accused	Name of the accused	Date of arrest	Date of release on bail	Offences charged with	Whether Acquitted or Convicted	Sentence imposed	Period of detention undergone for the purpose of sec. 468 of BNS
A1	Somnath Mahalappa Swami	27.06.2011	27.06.2011	U/sec. 325, 324, 504, 34 of the IPC.	Acquitted	NA	NA
A2	Mahalappa Rudrayya Swami	27.06.2011	27.06.2011	U/sec. 325, 324, 504, 34 of the IPC.	Abated	NA	NA
A3	Sumanbai Mahalappa Swami	27.06.2011	27.06.2011	U/sec. 325, 324, 504, 34 of the IPC.	Acquitted	NA	NA
A4	Babalu @ Babruwan Chandrakant Swami	27.06.2011	27.06.2011	U/sec. 325, 324, 504, 34 of the IPC.	Acquitted	NA	NA

J U D G M E N T

(Delivered on 13.05.2026)

1. The accused No.1, 3 and 4 are being tried for the offences punishable under sections 325, 324 and 504 read with section 34 of the Indian Penal Code, 1860 (hereinafter referred to as “the IPC” for the sake of brevity and convenience).

2. The prosecution case, as unfolded from the report dated 18.06.2011 lodged by the informant namely Ravindra Subhash Swami, is that prior to the present incident there was previous enmity between the informant's family and the accused persons on account of an earlier quarrel involving the informant's son, regarding which a police complaint had already been lodged. It is alleged that on 17.06.2011 at about 09.30 p.m., the accused persons came near the house of the informant and questioned them about lodging complaint against them. Thereafter, all the accused allegedly abused and assaulted the informant and her family members by fists, kicks and stick blows. Accused Somnath allegedly assaulted the informant on his head, causing bleeding injury. Accused Mahalappa Swami assaulted the informant on his both tibiae. While the wife of informant namely Sangita was there to intervene in the quarrel, accused Sumanbai assaulted her by means of fist and kick blows. Accused Babalu Swami also assaulted them by means of fist and kick blows. Mallikarjun Revanappa Swami and Manmath Kanteppa Swami have also received injuries while intervening in the quarrel. Hence, the instant report.

3. Acting upon the above report, police of Police Station Udgir (Rural) have registered a crime bearing No.82/2011 against the accused, for commission of offence punishable under sections 325, 324, 504 read with section 34 of the IPC and the investigation was handed over to NPC/547 Shri. V. S. Phulari. During investigation, the investigation officer has visited the spot of occurrence, draw spot panchnama there, recorded the statements of witnesses, seized the muddemal, collected injury certificates of the informant and other injured person and other documents and after completion of investigation, final report came to be filed against the accused before the Magistrate.

4. Upon appearance of all the accused, copies of final report and police papers came to be supplied to them vide provisions of section 230 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as “the BNSS” for the sake of brevity and convenience). On 17.10.2015, the learned predecessor of this Court has framed charges (Exh.31) against accused No.1 to 4 for commission of offences punishable under sections 325, 324, 504 read with section 34 of the IPC. The charges were read over and explained to them in Marathi language, to which they pleaded not guilty and claimed to be tried.

5. During the pendency of the case, accused No.2 namely Mahalappa Rudrayya Swami left for heavenly abode. Thus, vide order below Exh.1, case against him came to be abated.

6. During the course of trial, the prosecution has examined as many as 8 witnesses and thereafter moved a pursis (Exh.100) thereby informing that the prosecution wish to close their oral evidence. Acting upon the same, the prosecution evidence came to be closed by passing order below Exh.1. Thereafter, this Court has examined (Exh.101 to 103) the accused No.1, 3 and 4 vide section 351(1)(b) of the BNSS. The defence of the accused is of total denial and false implication.

7. The points for determination along with my findings thereon are as under :

Sr. No.	Points	Findings
1.	Whether the prosecution proves beyond reasonable doubt that the accused, in furtherance of common intention, voluntarily caused grievous hurt to the informant ?	In the negative.
2.	Whether the prosecution proves	In the negative.

	beyond reasonable doubt that the accused, in furtherance of common intention, voluntarily caused hurt to the informant and witness by means of deadly weapon ?	
3.	Whether the prosecution proves beyond reasonable doubt that the accused, in furtherance of common intention, committed an offence of breach of public peace ?	: In the negative.
4.	What Order ?	: Accused stands acquitted vide final order.

EVIDENCE :

LIST OF PROSECUTION / DEFENCE / COURT WITNESSES :-

A. Prosecution :-

Rank	Exh. No.	Name of witnesses	Nature of evidence
PW1	41	Ravindra Subhash Swami	Informant
PW2	45	Dayanand Marutirao Dhanade	Spot panch
PW3	46	Ganesh Sangareddy Kalmukle	Seizure panch
PW4	78	Mallikarjun Revanappa Swami	Injured witness
PW5	80	Chhaya Mallikarjun Swami	Eye witness
PW6	82	Sangita Ravindra Swami	Injured witness
PW7	91	Dr. Ranidevi Apparao Kadam	Medical Officer
PW8	94	Vilas Santram Phulari	Investigation Officer

B. Defence :- Nil.

C. Court :- Nil.

LIST OF PROSECUTION / DEFENCE / COURT EXHIBITS :-

A. Prosecution :-

Sr. No.	Exh. No.	Description
1	Exh. P-42/PW1	Report lodged by the informant
2	Exh. P-43/PW1	FIR
3	Exh. P-92/PW7	Medical certificate of the informant
4	Exh. P-93/PW7	Medical Certificate of PW4
5	Exh. P-95/PW8	Spot panchnama
6	Exh. P-96 and 97/PW8	Seizure panchnamas
7	Exh. P-98/PW8	Portion mark – A in the statement of PW2

B. Defence :- Nil.

C. Court Exhibits :-

Sr. No.	Exh. No.	Description
1	Exh. C-31 to 35	Charge and Statements of accused
2	Exh. C-101 to 103	Examination of accused No.1, 3 and 4 u/s. 351(1)(b) of the BNSS

D. Material Objects :-

Sr. No.	Exh. No.	Description
1	MO-1	A wooden stick
2	MO-2	A wooden stick

ADMITTED FACTS :

8. The accused have admitted the lodgment of present report against them. It is undisputed that the accused and the informant are the close relatives *inter se*. It is also admitted fact that it is a cross case.

FINAL ARGUMENTS :

9. I have heard learned APP Smt. A. J. Chavan for the State whereas learned advocate Shri. P. S. Biradar for the accused, for some time. Perused the matters before the Court. The rival submissions would be dealt with at the relevant places hereinafter.

REASONS

AS TO POINTS NO.1 AND 2 :

10. Since the evidence adduced and arguments advanced on these points being interlinked, and to avoid pleonasm and for the sake of brevity, they are taken up altogether for consideration.

11. To bring home the guilt of the accused for commission of offences punishable under sections 325 and 324 read with section 34 of the IPC, the prosecution has to prove beyond reasonable doubt that accused persons in furtherance of common intention, voluntarily caused grievous hurt to the informant and a witness by means of fist and kick blows and deadly weapon as well. To prove these essential ingredients, the prosecution has examined as much as 8 witnesses and heavily relied upon the evidence of the informant and injured witnesses. At the very outset it is made clear that the informant herein is not only the informant but also injured witness as well. Thus, comparatively her evidence has more sanctity than others.

12. Thus, I begin with the evidence of the informant, namely Ravindra Swami (PW1). He has testified (Exh.41) in consonance with his report (Exh. P-42/PW1) and has reiterated almost all the contents thereof. To be more specific, he has deposed that on 17.06.2011, at about 9.00 p.m. to 09.30 p.m., the incident occurred while they were taking dinner. He went on to testify that at the relevant time accused Somnath Swami came there and accosted why did the informant's wife lodged a report against them, and abused and assaulted him by means of a stick on his head, thereby he fell unconscious. Thereafter accused No.4 rushed the spot and he also assaulted him on his tibiae by means of a stick. It is further deposed that, at that time, her wife was also received stick blow injuries while she was intervening in the quarrel. Thereafter, he lodged the instant report (Exh. P-42/PW1).

13. To get the informant's version corroborated, the prosecution has examined the injured witness, namely Mallikarjun Swami (PW4). He has testified (Exh.78) that on 17.06.2011 at about 9.00 p.m., after hearing a hue and cry from the house of the informant, he immediately rushed there. He went on to depose that, at the relevant time, accused Somnath assaulted and given a stick blow on his head. It is further testified by accused Somnath and Mahalappa have assaulted the informant near his right ankle and on head. While Manmathappa received stick blow on his head when he tried to intervene in the quarrel. Chhaya Mallikarjun Swami (PW5) has also testified (Exh.80) in line with her spouse. Further Sangita Swami (PW6) has deposed (Exh.82) in consonance with the evidence of the informant and corroborated the version of the informant. Considering the prosecution evidence, it appears that the evidence of the informant is pivotal and therefore requires strict scrutiny.

14. The informant was subjected to rigorous cross-examination. During his cross-examination, he has invariably admitted that at the time of incident his clothes were get wet by blood and he has neither given to the police nor police seized the same. On this point it is observed that it is expected from the police officer investigating the offence to seize such blood stained clothes. When the prosecution has come with the case of grievous hurt coupled with bleeding injuries, it is but natural that blood stained clothes were crucial piece of evidence. On this point the evidence of Investigating Officer Shri. Phulari (PW8) is crucial. He deposed (Exh.94) assumes importance. However he did not incur a single word as to the seizure of blood stained clothes of the informant. In these peculiar circumstances, it is observed that it is an investigative flaw and goes to the root of the case, causing prejudice to the accused. Thus, in absence of seizure thereof, I hold that no prudent man can say that the informant was sustained bleeding injuries on his head.

15. The informant has shown unawareness as to the cross-case against them in respect of the instant incident. However, admitted that he appeared in the Court acting upon the call of the Court in State Vs. Ravindra and others' case. If the said admission is considered vis-a-vis age of the case commenced since the year 2011 until the date of deposition i.e. 14.09.2018, almost 7 years, a big span elapsed. Still the informant has shown his unawareness thereof. Such admissions certainly lessens his credibility.

16. Further, injured witness Mallikarjun Swami (PW4) admitted that due to the dark he could not have identified the assailants. Chhaya Swami (PW5) has also invariably admitted that at the time of incident there were the dark and invisibility as well. The prosecution has come with the case that this injured witness has witnessed the instant incident. However considering his admission on material point that he has not identified the assailants due to dark prevailing at the relevant time, a prudent man can not say that accused Somnath Swami has given a stick blow on the head of the informant and thereby caused grievous hurt to him. Further it is not getting clear whether all the accused were present at the scene of occurrence at the time of quarrel. Thus, instead enhancing credence of the prosecution case, it is getting weaken from the evidence of this injured witness.

17. Though Chhaya Swami (PW5) and Sangita Swami (PW6) have deposed that accused Somnath Swami has assaulted the informant, still their testimony can not be said to be in consonance with the version of the informant. They have also admitted on material points, such as at the time of incident there was the dark and a poor visibility as well. Further almost 100 persons were gathered at the time of occurrence of the incident. Making a point thereof learned advocate Shri. P. S. Biradar would submit with vehemence that the prosecution has examined only

related and interested witnesses and therefore no reliance can be placed on their testimonies. He went on to submit that the prosecution has examined Chhaya Swami and Sangita Swami, of which Sangita is the wife of the informant and Chhaya is of Mallikarjun. Even he went on to submit that not a single witness had sustained injuries in the instant incident.

18. I have thoroughly considered the above submissions. Considering the same it reveals that though the above 2 lady witnesses are the family members of the informant, still they deposed in the capacity of injured witnesses. However considering the express admission given by Chhaya Swami (PW5) that at the time of incident almost 100 peoples were gathered there, and she was unable to state their names. Considering the said admission it is clear enough that there were N number of persons who have witnessed the instant quarrel, still the police have not examined them and gave preference to the related witnesses only. Thus, I find some merit in the arguments advanced on behalf of the accused. Hence, from their testimony as well no confidence inspires.

19. From the aforesaid evidence, it becomes abundantly clear that the accused persons and the informant party are not only neighbourers *inter se* but are also closely related to each other. The evidence further discloses that the present case arises out of a counterblast to the quarrel that had taken place between both sides. The defence has consistently taken a specific plea that the accused had not assaulted the informant party and, on the contrary, they themselves were assaulted at the hands of the informant party. The prosecution witnesses have also admitted, to some extent, the existence of previous enmity between the parties.

20. Upon careful scrutiny of the testimonies of the prosecution witnesses, the Court finds that their evidence does not inspire full confidence. Their versions do not appear to be wholly clear, cogent and trustworthy so as to base a conviction thereupon. Material omissions and improvements have surfaced during the course of evidence. The witnesses have not given a consistent and reliable account regarding the actual manner of occurrence, presence of the accused on the scene of the occurrence and the role attributed to each accused. Furthermore, the admissions elicited during cross-examination probabalise the defence version and create a serious dent in the prosecution story.

21. It is a settled principle of criminal jurisprudence that where two views are possible on the basis of the evidence on record, the view favourable to the accused must prevail. The prosecution is under a bounden duty to prove its case beyond reasonable doubt and cannot derive any advantage from the weakness of the defence. In the present case, the evidence led by the prosecution falls short of the standard required in a criminal trial. Consequently, the credibility of the prosecution witnesses stands materially shaken and their testimonies do not remain wholly reliable even after lengthy cross-examination. Thus, at the least, a reasonable doubt is created regarding the genesis and manner of the alleged incident.

22. Now, the spot of occurrence also requires consideration. In order to establish the scene of occurrence, the prosecution has examined Dayanand Dhanade (PW2). He has categorically testified (Exh.45) that no spot panchnama came to be drawn in his presence. Since this witness did not support the prosecution case, the learned APP through prior permission of the Court has put some questions which might be asked in cross-examination to this witness.

23. During the questions put to him in the nature of cross-examination under section 157 of the Bharatiya Sakshya Adhiniyam, 2023, the said witness denied the panchanama being dawn in his presence, it came to be read over to him and thereafter he has put his signature thereon. He went on to deny the material contents of the spot panchanama as well. Thus, from such questions as well nothing favourable to the prosecution come on record. On this point, learned APP Smt. A. J. Chavan has invited the attention of the Court at the testimony of the investigating officer and would submit that though the spot panchanama is not proved at the instance of the panch, still it is proved as per law through the evidence of the investigating officer.

24. I have given thoughtful considerations to the above submissions. Considering the same it is clear enough that the spot panchanama (Exh. P-95/PW8) came to be proved at the instance of investigating officer. Though it is proved at the instance of the investigating officer, still considering the fact that both the spot panch turned unfavourable to the prosecution vis-a-vis both the cross-cases being investigated by one and the same police officer, it has less evidential value. Further the eye witnesses have shown hesitation to clearly identify the presence of the accused at the scene of occurrence.

25. From the aforesaid evidence, it becomes sufficiently clear that nothing favourable to the prosecution has emerged from the evidence of Dayanand (PW2) so far as the actual spot and manner of occurrence are concerned. The prosecution has failed to satisfactorily establish the scene of occurrence through reliable and independent evidence. The testimony of Dayanand (PW2), instead of supporting the prosecution case, creates further doubt regarding the genesis of the incident. Consequently, the Court is constrained to hold that the prosecution has failed to prove the scene of occurrence beyond reasonable doubt.

26. The Medical Officer, Dr. Ranidevi Kadam (PW7), has deposed (Exh.91) that upon examination of patient Ravindra Swami and injured witness Mallikarjun Swami, she found simple injuries to patient Ravindra Swami whereas grievous injury to index finger of injured Mallikarjun Swami and accordingly issued medical certificates (Exh. P-92/PW7 and Exh. P-93/PW7) respectively. The accused failed to cross-examine this witness. In the event of such failure in common parlance it is understood that the accused has admitted the said evidence. Though this might be the settled position, still it can not be considered in isolation. Instead thereof the evidence of medical officer needs to be considered along with the other evidence on record. Considering this evidence on that point of view, I hold that in the instant case the prosecution has failed to establish who assaulted whom and the presence of the accused at the scene of occurrence. Thus, I hold that the evidence of the medical officer is not much useful to the prosecution case.

27. The medical officer has opined that the injuries noted in the certificates were also possible if one received blows by means of a stick. Though the Medical Officer has opined so, the opinion of an expert witness is merely advisory in nature and is not binding upon the Court. At the same time, the medical evidence on record does indicate that the informant and injured witness had sustained injuries and there is nothing on record to infer that the said injuries were self-inflicted. However, in the event the seizure is not proved, it certainly affect the evidential value of the such opinion.

28. The Investigating Officer Shri. Vilas Phulari (PW6), has deposed regarding the formal investigation carried out by him. He went on to depose that he has drawn spot panchnama (Exh. P-95/PW8) and seizure panchnamas (Exh. P-96 and 97/PW8). On this point the learned APP would submit that the prosecution has successfully established the

seizure panchanamas. She went on to submit that since the seizure of seized sticks (MO-1 and 2) is proved, the offences against the accused also proved. As against this, Shri. P. S. Biradar, learned advocate appearing for the accused has taken strong exception to the seizure at the instance of the accused and would submit that actually while drawing spot panchnama the wife of the informant namely Sangita has handed over 2 sticks, which are totally unconcerned with the instant incident and the informant has deposed in respect thereof.

29. I have given my thoughtful consideration to the above rival submissions. Considering the objection raised at the instance of the accused I have again taken up the evidence of informant Ravindra (PW1) for consideration. Perusal of his cross-examination it goes clear enough that he has invariably stated that on the third day of the incident his wife has handed over the sticks to the police. Considering the said statement in the form of admission vis-a-vis seizure panchanamas, I hold that it casts reasonable doubt over the seizure of the sticks (MO-1 and 2). Further the seizure panch Ganesh (PW3) turned unfavourable to the prosecution case. Though the seizure panchanamas are proved at the instance of the investigating officer, considering the above admission on the crucial aspect of seizure, I hold that seizure is not proved beyond reasonable doubt.

30. Admittedly the informant side in the present case figures as accused persons in the cross-case and that both cases were investigated by one and the same Investigating Officer. This aspect assumes significance in the facts and circumstances of the present case. Investigation of cross-cases by the same Investigating Officer is an irregularity which requires cautious appreciation of evidence, particularly when there exist allegations and counter-allegations between both factions. In the present case, it could be safely termed as the investigative flaw. If the said

investigative flaw is considered with the evidence on record I hold that it assumes importance in view of the doubtful and inconsistent prosecution evidence already discussed hereinabove. The possibility of prejudice to the accused, therefore, cannot be completely ruled out. At the costs of repetition it is stated that though the prosecution has tried to prove spot panchnama and seizure panchnamas at the instance of the Investigating Officer, still considering his evidence no confidence inspires. Thus, I hold that the evidence of the Investigating Officer does not materially improve or strengthen the prosecution case.

31. Making a point that the present case is a cross-case, learned advocate Shri. P. S. Biradar appearing for the accused submitted that, the present prosecution is a classic example of a concocted and exaggerated case arising out of previous enmity between closely related neighbours. He went on to submit that considering the strained relations between the parties and the subsequent settlement arrived at between them, the accused are entitled to the benefit of doubt and deserve acquittal. Per contra, learned APP Smt. A. J. Chavan submitted that the prosecution evidence is cogent, reliable and fully convincing, and therefore no doubt whatsoever arises regarding the prosecution case. She further submitted that although the present case is a cross-case, both cases did not arise out of the same transaction. She concludes with a submission that the prosecution has successfully proved the guilt of the accused beyond reasonable doubt and that the accused deserve to be convicted in accordance with law.

32. I have thoughtfully considered the rival submissions in the light of the matters on record. Upon careful appreciation of the material on record, it appears that the presence and participation of the accused at the actual scene of occurrence is not free from doubt. The prosecution case is that the accused assaulted the informant and witness Mallikarjun

(PW4) by means of a stick and that the said incident was witnessed by Chhaya Swami (PW4) and Sangita Swami (PW6). Therefore, being an alleged eye-witnesses, their testimonies require strict and cautious scrutiny.

33. In this regard, the evidence of Chhaya Swami (PW4) assumes significance. She has deposed that upon hearing hue and cry she along with her husband rushed the spot of incident. Though she had deposed so still the informant did not incur a single word as to the presence of this witness at the scene of occurrence in his report. If the said fact is considered with the arguments of interested witnesses, I find some merit therein. Thus, I do not find the evidence of these witnesses as convincing and reliable.

34. If the above evidence is considered altogether I hold that the testimony of injured witness Ravindra Swami (PW1) does not receive satisfactory corroboration from the evidence of Mallikarjun Swami (PW4), Chhaya Swami (PW5) and Sangita Swami (PW6). Consequently, the prosecution version regarding the manner of assault and the role played by the accused becomes doubtful.

35. I have considered the aforesaid evidence vis-à-vis the rival submissions. In the backdrop of the admitted fact that the present matter is a cross-case, the discrepancies in the evidence of the informant and injured witness Mallikarjun Swami (PW4) on material particulars assume considerable importance. In such circumstances, the allegation that accused No.1 assaulted the informant, does not appear to be wholly free from doubt in the facts and circumstances of the present case.

36. Moreover, the existence of cross-cases itself probabalises the defence version that the incident was a free fight or mutual quarrel between both sides. The prosecution has failed to place on record clear

and independent evidence explaining the genesis of the incident and the precise role played by each accused. Further the examined witnesses are interested witnesses, regard being had to the non examination of witnesses who had intervened in the quarrel. Added to this, both parties have admittedly arrived at a settlement (Exh.112) outside the Court, which further indicates that the dispute was essentially personal and arose out of strained family relations. Taking an overall view of the case, the Court finds that the defence has succeeded in creating a reasonable doubt in the prosecution case. Therefore, the submissions advanced on behalf of the accused deserve acceptance to that extent.

37. Now, it is necessary to examine whether the prosecution has proved that the accused voluntarily caused grievous hurt to the informant and witness Mallikarjun. In order to establish the same, the informant and Mallikarjun Swami (PW4) have deposed that accused Somnath assaulted the informant on her head and right hand by means of a stick and also assaulted Mallikarjun by means of a stick. The prosecution has further relied upon the seizure of 2 sticks during investigation. However, before appreciating this aspect, the evidence of the Investigating Officer requires consideration.

38. Investigating Officer Shri. Phulare (PW8) has deposed (Exh.94) that on 18.06.2011 he drew the spot panchanama (Exh. P-95/PW8) in the presence of two panch witnesses and seized 2 sticks from the spot. He has proved the contents thereof as well as the signatures of the panchas appearing thereon. However, mere seizure of 2 sticks (MO-1 and 2) from the spot by itself is not sufficient to conclusively establish the guilt of the accused. The prosecution is further required to prove, through clear, cogent and trustworthy evidence, that the said weapon was actually used by the accused during the commission of the offence. In the present case, there is no convincing evidence connecting

the seized sticks with the injuries allegedly sustained by the informant and Mallikarjun. At the cost of repetition it is stated that no blood stains or forensic evidence connecting the weapon with the incident have been brought on record. Further, in view of the inconsistent and doubtful ocular evidence already discussed hereinabove, I hold that mere recovery of the alleged weapon and production of injury certificates would not by themselves be sufficient to fasten criminal liability upon the accused.

39. It is fairly settled that the conviction cannot rest upon conjectures or mere suspicion. The prosecution is required to establish an unbroken chain of circumstances and trustworthy ocular evidence pointing unmistakably towards the guilt of the accused. In the present case, the evidence on record falls short of the standard of proof required in criminal jurisprudence. Consequently, the Court finds that the prosecution has failed to prove beyond reasonable doubt that the accused voluntarily caused grievous hurt to the informant and hurt to witness Mallikarjun (PW4) by means of the alleged weapon.

40. On the point of hurt caused by means of a deadly weapon, learned advocate Shri. Biradar appearing for the accused has taken a strong exception and would submit that the seized sticks (MO-1 and 2) cannot, by itself, be termed as a deadly weapon. He, therefore, concludes with a submission that the offence punishable under section 324 of the IPC is not made out under any circumstance.

41. I have duly considered the aforesaid submissions. Admittedly, the seized sticks (MO-1 and 2) cannot be treated as a deadly weapon *per se*. Whether a particular object assumes the character of a deadly weapon depends upon various factors such as the nature of the weapon, the manner in which it is used, the part of the body targeted, the force employed, and the nature of injuries caused thereby. Therefore, an

ordinary stick may, in a given case, become a dangerous or deadly weapon depending upon the attendant circumstances.

42. However, in the present case, the prosecution evidence on this aspect does not inspire full confidence. Though the prosecution has alleged that the informant sustained a bleeding injury on her head due to assault by means of the sticks (MO-1 and 2), the Investigating Officer has admittedly not seized the blood-stained clothes of the informant. Ordinarily, if a person sustains a bleeding head injury, the clothes worn by such person are likely to contain blood stains. In spite of this, no explanation whatsoever has been offered by the prosecution for non-seizure of such material evidence. This omission assumes significance in the facts of the present case, particularly when the prosecution evidence itself suffers from material inconsistencies and the matter arises out of a cross-case.

43. Further, there is no forensic or scientific evidence connecting the seized stick with the alleged injuries. The prosecution has also failed to establish by cogent and reliable evidence that the stick allegedly seized from the spot was the very weapon used in the commission of the offence. Thus, the essential ingredients required for attracting section 324 of the IPC are not satisfactorily established. In view of these circumstances, the Court finds substance in the submissions advanced on behalf of the accused. Thus, I hold that the prosecution has utterly failed to prove beyond reasonable doubt the charge punishable under section 325 of the IPC.

44. Though the charge under section 324 of the IPC has not been proved, the evidence on record does indicate that the informant and Mallikarjun (PW4) had sustained certain simple injuries. The informant has deposed that he sustained injuries on her head and right hand,

whereas Mallikarjun (PW4) has deposed that he sustained injuries on his head. However, as already discussed hereinabove, the testimony of alleged eye-witness Chhaya Swami (PW5) and Sangita Swami (PW6) do not satisfactorily corroborate the version of the informant and Mallikarjun (PW4) regarding the manner of assault and the identity of the assailants. Moreover, material discrepancies exist in the prosecution evidence regarding the actual role attributed to the accused persons. The presence and participation of the accused at the scene of occurrence are also not proved beyond reasonable doubt. The admitted existence of a cross-case, previous enmity between the parties, inconsistencies in the ocular evidence, and deficiencies in investigation cumulatively create a serious doubt regarding the prosecution story.

45. It is a cardinal principle of criminal jurisprudence that the prosecution must prove its case beyond reasonable doubt and the benefit of every reasonable doubt must necessarily go in favour of the accused. In the present case, considering the overall evidence on record, the surrounding circumstances, and the settlement admittedly arrived at between the parties, this Court finds that it would not be safe to hold that the accused voluntarily caused hurt to the informant and injured witness Mallikarjun (PW4). For these reasons, I hold that the prosecution has failed to prove beyond reasonable doubt that the accused voluntarily caused grievous hurt to the informant and hurt to Mallikarjun (PW4). Hence, the charge punishable under section 324 of the IPC also fails.

46. Now, I proceed to examine the applicability of the enabling provision under section 34 of the IPC. In order to attract section 34 of the IPC, the prosecution is required to establish that the criminal act was committed in furtherance of the common intention of all the accused persons. The existence of a prior meeting of minds or a pre-arranged plan is the *sine qua non* for invoking the said provision, though such common

intention may develop on the spot in a given case. However, the prosecution must establish the same through cogent and reliable evidence.

47. If the present case is examined on the aforesaid touchstone, it is the prosecution case itself that accused Somnath was initially present alone at the scene of occurrence and that the remaining accused arrived at the spot only after hearing the hue and cry. Thus, the material on record does not satisfactorily establish any prior concert, premeditation or meeting of minds amongst the accused persons before the alleged incident. Though the prosecution witnesses have attempted to depose in tune with the prosecution case, their evidence suffers from material inconsistencies and lacks the degree of certainty required in a criminal trial. In the backdrop of the admitted cross-case, previous enmity between the parties, doubtful ocular evidence and deficiencies in investigation, the Court does not find sufficient material to infer the existence of common intention amongst the accused persons. Thus, I hold that no prudent man can say with certainty that the accused shared a common intention to commit the alleged offence.

48. Considering the overall matters before the Court, a reasonable doubt arises regarding the prosecution case, particularly as to the manner of occurrence and whether the accused were the actual authors of the injuries allegedly sustained by the informant and Mallikarjun (PW4). In the instant case, the principal offences are not proved. Further the specific role of any accused is not attributed, and therefore I hold that no enabling provision come into play. At the cost of repetition it is stated that it is a cardinal principle of criminal jurisprudence that when a reasonable doubt arises from the evidence on record, the benefit thereof must necessarily enure to the accused. In the present case, the cumulative effect of the inconsistencies in the prosecution evidence, the admitted existence of a cross-case, the doubtful

nature of the ocular testimony, and the settlement admittedly arrived at between the parties creates a substantial doubt regarding the prosecution case. Therefore, the accused are entitled to the benefit of such doubt. In the result, I hold that the prosecution has failed to prove the charges against the accused beyond reasonable doubt. Hence, the accused are entitled to acquittal. Accordingly, I answer Point Nos.1 and 2 in the negative.

AS TO POINT NO. 3 :

49. In order to prove the offence punishable under section 504 of the IPC, the prosecution has come forward with the case that during the course of the quarrel, the accused abused the informant and thereby intentionally provoked breach of public peace. However, upon careful scrutiny of the testimony of the informant, it appears that he has mainly deposed regarding the alleged assault by means of a stick. He has further stated that upon hearing the hue and cry, the neighbours and Mallikarjun (PW4), Chhaya Swami (PW5) and Sangita Swami (PW6) rushed to the spot and, after their intervention, the quarrel came to an end. Thereafter, according to him, they proceeded to the police station for lodging the report.

50. Significantly, the informant has not uttered a single specific word regarding the exact abusive language allegedly used by the accused or as to how such utterances amounted to intentional insult provoking breach of public peace. Mere vague allegations regarding abuse, without specifying the actual words uttered or the intention behind such utterances, are not sufficient to attract the ingredients of section 504 of the IPC. Further, neither Mallikarjun (PW4) nor Chhaya Swami (PW5) or Sangita Swami (PW6) has supported the prosecution on this material aspect. Their evidence is completely silent regarding any intentional

insult or abusive words allegedly uttered by the accused. Thus, there is no cogent, reliable and convincing evidence on record to establish that the accused intentionally insulted the informant with an intention or knowledge that such provocation would lead to breach of public peace.

51. In the absence of clear and trustworthy evidence regarding the essential ingredients of the offence under section 504 of the IPC, this Court finds that the prosecution case on this aspect becomes doubtful. It is well settled that suspicion, however strong, cannot take the place of proof in a criminal trial. Hence, I hold that the prosecution has failed to prove beyond reasonable doubt the offence punishable under section 504 of the IPC. In the result, I answer Point No.3 in the negative and record my findings accordingly.

AS TO POINT NO. 4 :

52. Consequent to my above findings, I have already held that the prosecution has failed to prove its case beyond reasonable doubt. Thus, the accused needs to be acquitted of the offence punishable under sections 325, 324 and 504 read with section 34 of the IPC and need to be released forthwith.

53. Perusal of record reveals that 2 wooden sticks (MO-1 and 2) are seized in the instant case. Since it is useless and worthless, it needs to be destroyed after the period of appeal is over. Further, where the case ends in acquittal, the bail bonds of accused needs to be cancelled coupled with setting them at liberty forthwith. Furthermore, the bail under section 481 of the BNSS needs to be undertaken from all the accused to ensure their presence before the appellate Court, in the event of appeal. In the result, in answer to point No.4, following order is passed :

ORDER

1. Accused No.1, 3 and 4, named above, are hereby acquitted of the offence punishable under sections 325, 324 and 504 read with section 34 of the Indian Penal Code, 1860 vide section 271(1) of the Bharatiya Nagarik Suraksha Sanhita, 2023.
2. The bail bonds of the accused stands cancelled and they are set at liberty forthwith.
3. Seized property i.e. 2 wooden sticks (MO-1 and 2) be destroyed after the period of appeal is over.
4. The accused shall furnish bail bonds of ₹10,000/- (Ten Thousand rupees only) each and one surety in the like amount as per section 481 of the Bharatiya Nagarik Suraksha Sanhita, 2023 to appear before the higher Court in case of appeal and the same shall be in force for six months from the date of this order.

(Dictated and pronounced in open Court).

Date : 13.05.2026
Place : Udgir.

(Bhalchandra R. Zende)
Judicial Magistrate (First Class),
(Court No.3), Udgir.