

KABC0A0023302022



IN THE COURT OF THE XXVIII ADDITIONAL CITY CIVIL
AND SESSIONS JUDGE (CCH-29) MAYOHALL, BENGALURU

Dated this the 5th day of February, 2025.

PRESENT:

Sri BALAPPA APPANNA JARAGU B.Sc., LL.M.,
XXVIII Additional City Civil and Sessions Judge,
Bengaluru.

Criminal Appeal No.25122/2022

APPELLANT : State by Indiranagar
Police Station, Bengaluru.
(By Public Prosecutor)

-VERSUS-

RESPONDENTS : 1. Anjanappa Reddy,
S/o. Late Kathappa Reddy,
Aged about 65 years.
2. Mohan Kumar,
S/o. Anjanappa Reddy,
Aged about 38 years.
3. Rahul,
S/o. Srinivasa Reddy,
Aged about 18 years.
4. Manjula,
W/o. Srinivasa Reddy.
All are residing at No.88/1,
9th Cross, Mottappana Palya,
Indiranagara, 2nd Stage,
Indiranagara, Bengaluru.

(By Sri S.K. Venkata Reddy, Advocate)

JUDGMENT

This is a Criminal Appeal filed by the appellant/State under Section 378(1)(A) of Criminal Procedure Code, challenging the judgment of acquittal dated 20.09.2021 in CC No.22449/2010 passed by learned X ACMM, Mayohall, Bangalore for the offences punishable under Sections 323, 326 r/w Sec.34 of Indian Penal Code.

2. The parties are referred to their respective ranks they held before learned Trial Court.

3. The brief facts of the case are that:

a) The accused/respondents having been charge-sheeted for the offences punishable under Section 323, 326 r/w Sec.34 of Indian Penal Code and faced trial before the X Additional Chief Metropolitan Magistrate, Mayohall, Bangalore on the accusation that, on 08.08.2009 at or about 5.30 p.m., the accused have assembled in front of house No.88, 9th Cross, Mottappanapalya, Indiranagara 2nd Stage within jurisdiction of Indiranagara Police Station, Bengaluru and suddenly started quarrel with C.W.1. Accused No.1

and 2 caughthold C.W.1, at that time, accused No.1 and 4 have assaulted on nose and right leg of C.W.1 with cement stone and caused grievous bleeding injuries to him. Further accused have assaulted C.W.1 on his back and chest and caused simple injuries to him. Accused No.1 and 2 have also assaulted to C.W.1 with hands and caused simple injuries to him. Therefore, it is alleged that, accused have committed the offences punishable Section 323, 326 r/w Sec.34 of Indian Penal Code.

b) The prosecution in order to bring home the guilt of the accused, in all has examined P.W1 to P.W.6 and Ex.P.1 to Ex.P.5 and M.O.1 to M.O.3 have been marked. The Trial Court, after recording 313 statement in respect of incriminating material that has come in the evidence of prosecution witnesses and hearing the arguments of both sides, came to the conclusion that, there is lot of in consistency in evidence of witnesses and benefit of doubt should be extended to accused. Thereby proceeded to acquit accused for alleged offences.

4. Feeling aggrieved by Judgment of acquittal passed by learned trial court, the State has come up in this appeal, challenging the correctness and validity of the same on the following grounds:-

The impugned judgment of acquittal passed by learned trial court is against evidence on record. The complainant and accused are relatives and same is mentioned in complaint as well as same is very much extracted in cross-examination of prosecution witnesses. It is clearly mentioned in complaint that there is common Wall between houses of complainant and accused. As tenant tried to fix nail on common Wall, there was quarrel and accused have assaulted complainant. The accused have not denied seizure of articles used for commission of offence and they have also not denied alleged incident. The trial court has not taken into consideration an evidence of P.W.1 who is injured. Further trial court failed to appreciate P.W.2 has supported case of prosecution and evidence of P.W.1 and also same is supported by evidence of Doctor who is P.W.3. The learned trial court given much

importance to minor discrepancies which are quite natural. The trial court has further failed to appreciate P.W.3 has clarified that by mistake date wrongly mentioned in Ex.P.3 wound certificate. The trial court further failed to appreciate, P.W.1 and P.W.2 have explained reasons for delay in filing complaint. The judgment rendered by learner trial court is not based on any legal evidence. Hence, on these grounds, it is prayed for setting-aside the judgment of acquittal and to convict respondents by allowing this appeal.

5. After receiving the appeal, Trial Court records have been secured. The respondents appeared through their counsel.

6. Heard on both sides and perused the records.

7. The points that arise for my determination are:

1. Whether the judgment of acquittal passed by learned Trial Court is against evidence and material on records and same is erroneous, thereby, needs to be interfered with?

2. What order?

8. My answers to the above points are as under:-

POINT No.1 - In the negative;

POINT No.2 - As per final order,

for the following –

REASONS

9. **POINTS NO.1** :- On re-appreciation of entire material on record, it is forthcoming that, P.W.1– Lokesh filed his first information statement against accused as per Ex.P.1. The P.W.1 in his first information statement as well as in his evidence before court has deposed, there is common Wall in between his house and house of his brother Srinivasa Reddy, who is accused No.2. It is further stated, C.W.5 – Mary Sheela is tenant under complainant. Said tenant was fixing nails on common Wall. Same was questioned by accused No.2 and his wife and they abused C.W.5. The C.W.5 called complainant. Complainant questioned accused why they were making galata with C.W.5. The accused No.1 to 5 picked up quarrel with complainant. Accused No.4 – Rahul twisted leg of complainant and accused have assaulted complainant with stone.

10. P.W.4 – Dasappa, Head Constable in his evidence has deposed, on 08.08.2009 he was SHO of Indiranagara Police Station, on that day P.W.1 come to station and filed his written complaint as per Ex.P.1, Based on same, he registered case in Cr.No.307/2009 and forwarded FIR to court and handed over further investigation of case to P.W.5.

11. The P.W.5 who conducted investigation of case has deposed, on 09.08.2009 he went to place of offence and conducted mahazar as per Ex.P.2 and seized blood stained shirt, banian and two cement stone pieces used for commission of offence as per M.O.1 to M.O.3 and further he collected would certificate as per Ex.P.3.

12. P.W.2 – Smt. Jayalakshmi who is wife of P.W.1 has deposed, about 4 years ago at or about 5.30 p.m., accused have assaulted P.W.1 and caused injuries to his nose and back and also twisted his leg. The Doctor who treated P.W.1 and issued would certificate has been examined as P.W.3 before court.

13. It is worth to note here that, learned Public Prosecutor has argued that, an evidence of P.W.1 is in consonance with his first information statement as per Ex.P.1 and evidence of P.W.1 is corroborated by evidence of P.W.2 who is eye-witness and same is also supported by evidence of Doctor who treated the P.W.1. Further it is argued, the P.W.4 and P.W.5 being police officials have deposed about act done by them in registering case and conducting investigation of case. It is further argued, the trial court failed to appreciate all these facts and wrongly proceeded to acquit accused.

14. It is to be noted here, as rightly pointed out by learned counsel for respondents/accused, it is not stated in Ex.P.1 – FIS that, complainant P.W.1 has sustained bleeding injuries on his nose. Further, it is not stated in Ex.P.1 which accused assaulted on which part of complainant. It is to be noted here, accused are not unknown to complainant. The accused being brothers and their family members, complainant would have stated which accused has assaulted on his nose and back with cement stone. Further, complainant

having aware about names of accused would have clearly stated in his First Information Statement which accused has twisted his right leg. Though it is true, complaint is not encyclopedia which should contain everything but complainant having aware about names of accused persons would have clearly stated in his Ex.P.1 – complaint about alleged act of assault done to him by particular accused.

15. It is worth to note here that, P.W.1 in his examination-in-chief has stated, as accused have assaulted him he become unconscious and his wife P.W.2 has shifted him to hospital for treatment. The P.W.2 has stated, as P.W.1 has sustained fracture of bone of nose, he was shifted to hospital. The P.W.1 has specifically stated, when he was in hospital police come there and recorded his statement as per Ex.P.1. On the contrary, P.W.4 – Dasappa in his evidence has deposed, it is P.W.1 come to police station and lodged complaint as per Ex.P.1. The P.W.2 who is wife of complainant in her cross-examination has deposed, immediately after incident she took her husband to police station and

police have directed her to take her husband to hospital.

16. It is worth to note here that, as already discussed, P.W.1 has not stated in his complaint about bleeding injury sustained by him by the act of accused. The P.W.5 has stated on 09.08.2009 he had been to place of offence and conducted spot mahazar as per Ex.P.2 and seized M.O.1 to M.O.3. P.W.1 has also stated, he shown place of offence to police at the time of conducting mahazar as per Ex.P.2. P.W.6 – M. Narayana being one of witnesses to spot mahazar has not supported case of prosecution. In cross-examination of P.W.6 nothing worth elicited which supports case of prosecution with regard to contents of Ex.P.2 and seizure of M.O.1 to M.O.3.

17. The P.W.3 – Doctor who issued wound certificate has deposed, in wound certificate date is mentioned as 03.08.2009. According to complainant and P.W.2 alleged incident took place on 08.08.2009. The P.W.3 tried to clarify by mistake in wound

certificate date is mentioned as 03.08.2009 instead of 08.08.2009.

18. It is worth to note here that, in Ex.P.1 itself it is mentioned by complainant, there is dispute between himself and accused with regard to property and his elder brother collecting all rents and utilizing it. It is further stated by P.W.1 in his cross-examination that, there is civil case filed by him against accused regarding family properties. It is further admitted by P.W.1 earlier to present complaint he has given two more complaints against accused persons. An evidence of P.W.1 clearly indicates that, there is civil dispute between complainant family and accused with regard to partition of family properties. As P.W.1 himself admitted apart from present complaint he filed two more complaints against accused. This fact indicates that, civil dispute between complainant family and accused not resolved. When there is civil dispute between complainant and accused in respect of division of family properties, there must be clear corroborative evidence of prosecution witnesses to prove guilt of accused beyond all reasonable doubts.

19. Herein the case, C.W.5 who was very well alleged to have present at the time of alleged incident not examined before the court. The P.W.1 in his cross-examination has clearly admitted, there are neighbors who are well acquainted with complainant family and accused family. Those independent witnesses who were present at the time of alleged incident not cited as witnesses and examined before court. There are material contradiction in evidence of prosecution and also there are unusual improvements in evidence of prosecution witnesses before court. Above all independent eye witnesses have not been examined before court. Seizure of material objects alleged to have been used for commission of offence not proved by evidence of pancha witnesses. All these facts definitely creates doubts in story of prosecution. Once such doubt created in mind of court, benefit of such doubt shall be given to accused.

20. Therefore, on close scrutiny of the evidence on records and its re-appreciation as above, the grounds urged by the appellant in the Memorandum of Appeal

are not sustainable and absolutely, there is no scope for this Appellate Court to find fault with the findings of the Trial Court so as to interfere with the judgment of acquittal. Hence, I answer **point No.1 in the negative**.

21. **Point No.2 :-** In view of my findings on above point, I proceed to pass the following:

ORDER

Criminal Appeal filed under Section 378(2)(a) of Cr.P.C., by the complainant-state is hereby dismissed by confirming judgment and order of acquittal dated 20.09.2021 in CC No.22449/2010 passed by learned X ACMM, Mayohall, Bangalore for the offences punishable under Sections 323, 326 r/w Sec.34 of Indian Penal Code.

Send back the lower court records along with copy of this judgment.

(Dictated to the Stenographer directly on computer, typed & computerized by her, corrected and signed by me and then pronounced in the open Court on this the **5th day February, 2025**).

(BALAPPA APPANNA JARAGU)
XXVIII Additional City Civil and
Sessions Judge, Mayohall, Bengaluru.