

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF MARCH, 2026

BEFORE

THE HON'BLE MR. JUSTICE G BASAVARAJA

CRIMINAL APPEAL NO. 1865 OF 2024

BETWEEN:

- 1 SRI.RAJU @ RAJA
S/O KRISHNAPPA
AGED ABOUT 44 YERS
R/O CHOWDAIAHNAPALYA
KESARAMDU ROAD,
KYATHASANDRA-572104
TUMAKURU TOWN.
- 2 SRI. NAGARAJA S/O KRISHNAPPA
AGED ABOUT 35 YEARS
R/O CHOWDAIAHNAPALYA
KESARAMADU ROAD
KYATHASANDRA-572104
TUMAKURU TOWN.
- 3 SMT. RAMYA W/O RAJU @ RAJA
R/O CHOWDAIAHNAPALYA
KESARAMADU ROAD
KYATHASANDRA-572104
TUMAKURU TOWN.

...APPELLANTS

(BY SRI. HARISH N.R., ADVOCATE)

AND:

THE STATE OF KARNATAKA BY
KYATHASANDRA POLICE STATION
TUMAKURU. EPRESENTED BY
STATE PUBLIC PROSECUTOR
HIGH COURT BUILDING
AMBEDKAR BEEDI
BENGALURU-560001.

...RESPONDENT

(BY SMT. N. ANITHA GIRISH, HCGP)

THIS CRL.A IS FILED U/S.374(2) CR.P.C PRAYING TO SET-ASIDE THE JUDGMENT AND ORDER PASSED BY THE LEARNED PRINCIPAL DISTRICT AND SESSIONS JUDGE AT TUMAKURU IN S.C.NO.97/2022 DATED 25.09.2024 CONVICTING APPELLANTS FOR THE OFFENCE PUNISHABLE UNDER SECTION 323, 326 R/W. SECTION 34 OF INDIAN PENAL CODE, BY ALLOWING THIS APPEAL, WITH COST.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 09.01.2026, COMING ON FOR "PRONOUNCEMENT OF JUDGMENT" THIS DAY, THE COURT MADE THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE G BASAVARAJA

CAV JUDGMENT

The appellants have preferred this appeal against the judgment of conviction and order of sentence passed by the Principal District and Sessions Judge, Tumakuru (hereinafter referred to as 'the Trial Court') in S.C.No.97/2022 dated 25.09.2024.

2. The parties herein are referred to as per their rank before the trial Court.

3. The brief facts leading to filing of this appeal are that, Kyathasandra Police have submitted the charge sheet against the accused for the offence under Sections 323, 326, 307 r/w Section 34 of IPC. It is alleged by the prosecution that accused no.1-Raju alias Raja and accused no.2 Nagaraja, CW2-Shruthi C.S. and CW3-Revanna alias Ravi are

cousins. Three years prior to the date of incident, accused nos.1 to 3 were residing in the house constructed in land bearing Sy.No.11/4 of Kyathasandra Village belonged to CW2. On 23.08.2021 at 03.30 p.m. CW2-Shruthi C.S. along with CW1-Srinvas Gowda, CW3-Revanna alias Ravi and CW4-Ganesha went near the house situated at Chowdaiahnapalya and asked the accused to vacate the house. For that, accused threatened that if CW1 to CW4 do not register the house in the name of accused, they would kill them one by one and get the property. Thereafter, with an intention to commit murder, accused no.1 brought chopper from the house and chased CW1 to kill him and assaulted on his left leg, shank and toe of left foot and caused grievous injuries to him. Accused no.2 assaulted CW1 with club on his head and caused grievous injuries to him and accused no.3 and scratched CW2 on her body with hands by making her to fall on the ground who came to pacify the quarrel and caused simple injuries to her. On thorough investigation, the I.O. has submitted the charge sheet against the accused.

4. After filing the charge sheet, case was registered in CC.No.21096/2021. Thereafter case was committed to the Court of Sessions and registered in SC.No.97/2022. The accused were enlarged on bail.

5. Upon hearing on charges, the trial Court has framed the charges for the alleged commission of offence. Same were read over and explained to the accused. Having understood the same accused pleaded not guilty and claimed to be tried.

6. To prove the guilt of the accused, in all, 17 witnesses were examined as PW1 to PW17. Twenty documents were marked as Ex.P1 to P20. Six material objects were marked as MO1 to 6. On closure of prosecution side evidence, statement under Section 313 of Cr.P.C was recorded. Accused had totally denied the evidence of prosecution witnesses and they have specifically stated that they have not committed any offence as alleged and a false complaint has been filed against them. They have filed a complaint, but police did not receive the same.

7. On behalf of the accused, one Lakshmi Kantharaju alias L.K.Raju is examined as DW1 and one

document is marked as Ex.D1. Having heard the arguments on both sides, the trial Court has acquitted the accused for the offence under Section 307 r/w 34 of IPC and convicted the accused for the commission of offences under Sections 323 and 326 r/w 34 of IPC. Being aggrieved by this judgment, the appellants have preferred this appeal.

8. The Learned counsel for the appellants Sri. Harish N.R., would submit that the judgment of conviction and order on sentence passed by the trial Court is highly illegal besides being erroneous. The trial Court has not considered the contradictory statements and improved version of the complainant and other witnesses. The trial Court has considered only and solely on the basis of interested witnesses. The trial Court has not considered the dispute between the accused and the complaint as to the residential house. As per the complaint allegation, the complainant is the resident of Kadaburu village of Gowribidanur Taluk and he was caught by the complainant by hatching a plan to evict the accused from the house on one or the other way and the instant complaint is result of the said conspiracy. The complainant has clearly stated that at the time of alleged

incident while he was running, he fell on the ground. The wound certificate-Ex.P8 coupled with doctor's evidence clearly goes to show that injuries suffered by CW1 are over his toe of left foot and shank of left leg. Therefore, it could be clearly gathered that the injuries suffered by CW1 could be due to fall and not due to assault by the accused by using MO1. But the trial Court, without considering these logical aspects of the matter, passed the impugned judgment convicting the accused for the offence under Section 326 of IPC. The injury suffered by CW1 is lacerated wound over his forehead alleged to have suffered by him due to assault by accused no.2 by using MO4. But in fact, at no stretch of imagination, lacerated wound could be caused over forehead by using wooden club like MO4. The trial Court also lost its sight over this logical aspect of the matter while passing the impugned judgment. CWs1 to 5 created a false story of assault by accused No.3 by concocting the medical documents of CW2. The said concoction is evident by the fact that in the wound certificate-Ex.P10 there is mention as to hit by sharp instrument and wooden stick. Though there is no allegation in the complaint or in the entire charge sheet material regarding assault by accused No.3 by using an

instrument or wooden stick, the trial Court ought to have taken note of the aforesaid aspect of the matter while passing the impugned judgment. Further it is submitted that CW5-Srinivasa who has been examined as PW.6 has deposed that he has purchased the property from CW7 and this witness appeared before the Court and gave his evidence without any summons from the Court which clearly goes to show that prosecution witnesses who are all claiming to be the eye-witnesses have colluded each other to implicate the accused in a false criminal case. The spot mahazar, seizure mahazar and the witnesses are all planted witnesses. They have also not fully supported the case of the prosecution. CW2 in her evidence stated that she has given complaint before the police on 20.08.2021, but the said complaint is not forthcoming in the charge sheet to establish the factual aspect. The police have not produced the weapons MOs1 to 4 before the Doctor to give his opinion with regard to usage of the said weapons for the commission of offence. As per the case of the prosecution, accused nos.1 and 2 and CW2 are siblings and co-sharers. CW3 is the husband of CW2 and CW2 is said to be the owner of the land in which house is constructed and in which accused nos.1 to 3 have been

residing. It is the case of prosecution that CW3 brought JCB and demolished the cowshed which was constructed by the accused and also it is the specific case of the prosecution that CW1, who is the uncle of CW3, was asked to come from Kadaburu village of Gowribidanur Taluk.

9. From the above said facts and circumstances, it could be clearly gathered that CW1 to CW3 were aggressive and gone to the extent of demolishing the cowshed by using JCB and also lodged a false complaint in order to pressurise the accused to vacate the house. As per the case of the prosecution, the IO collected the blood stained mud-MO2 from the alleged place of incident on 24.08.2021. In fact there was heavy rain in the evening on 23.08.2021, that is after the incident alleged to have taken place at 03.00 to 03.30 p.m. Under these circumstances the chance of prosecution getting the blood stained mud on 24.08.2021 is highly impossible. As such the story of collection of blood stained mud-MO3 is created and concocted. X-Ray is not produced and radiology report is also not produced. The I.O. has not explained anything as to non-production of X-ray reports and X-ray film. The injured was admitted to the

hospital only for a day. Exs.P8 and P10 are the wound certificates. Name of the accused was not mentioned in the wound certificate. PW.11-Doctor has not whispered anything as to the name and weapons used for the commission of offence. PW.2 has clearly admitted in his evidence in paragraph No.7 that the accused were used to tie the cattle in the cattle shed which belongs to them and they informed the accused to vacate the same. But they did not vacate, hence they had removed the shed through JCB, then the *galata* was started. PW.2 has clearly admitted in paragraph No.8 that he has filed a civil suit against the accused before the Court at Tumakur. PW.6 is said to be the independent witness. He has clearly admitted that before issuing summons by the Court, he voluntarily appeared before the Court as CW.4 has informed the date over phone to him. The Trial Court has not properly appreciated the evidence on record in a proper perspective manner and convicted the accused for the commission of offence under Sections 323 and 326 r/w 34 of IPC, which is not sustainable under law. On these grounds, it is sought for allowing of the appeal. To substantiate his arguments, he relied on the judgment of the Division Bench of this Court in the case of **State Vs.**

Sheenappa Gowda and Others*, reported in **2011 (4) KCCR 2759 (DB).*

10. As against this, learned HCGP appearing for the respondent-State would submit that the trial Court has properly appreciated the materials on record in accordance with law and facts and that absolutely there are no grounds to interfere with the impugned judgment of conviction and order on sentence passed by the Trial Court. Accordingly, he sought for dismissal of the appeal.

11. Having heard the arguments on both sides, the following points would arise for my consideration:

1. Whether the trial Court is justified in convicting the accused for the offence under Sections 323 and 326 of IPC?
2. What order?

12. My answer to the above points are:

Point No.1: In the Negative

Point No.2: As per final order.

Regarding Point No.1:

13. I have examined the materials placed before the Court. The Investigating Officer has submitted the charge

sheet for the commission of offence under Sections 323, 326 and 307 r/w 34 of IPC. The Trial Court has acquitted the accused Nos.1 to 3 for the commission of offence under Sections 307 r/w 34 of IPC. However, convicted the accused for the commission of offence under Sections 323, 326 r/w 34 of IPC.

14. The genesis of this case arise from the complaint filed by PW.1-Srinivasagowda as per Ex.P1. It is appropriate to mention here as to the complaint at Ex.P1 which reads as under:

“ಹೇಳಿಕೆ

ದಿನಾಂಕ:

23.08.2021

ಶ್ರೀನಿವಾಸಗೌಡ ಬಿನ್ ವೆಂಕಟಶ್ಯಾಮಪ್ಪ 50 ವರ್ಷ ಸಾದರು ಜಿರಾಯ್ತಿ, ಕಡಬೂರು, ಗೌರಿಬಿದನೂರು ತಾ: ಚಿಕ್ಕಬಳ್ಳಾಪುರ ಜಿಲ್ಲೆ, ಮೋ:9900734414.

ನಾನು ಮೆಲ್ಕಂಡ ವಿಳಾಸದಲ್ಲಿ ವಾಸವಾಗಿರುತ್ತೇನೆ. ದಿನಾಂಕ 23.08.2021 ರಂದು ನನ್ನ ಅಣ್ಣನ ಮಗನ ಹೆಂಡತಿ ಶೃತಿರವರು ಮೈಸೂರಿನಿಂದ ನಮ್ಮ ಸ್ವಂತ ಮನೆಯಿರುವ ಕ್ಯಾತ್ನಂದ್ರ ಬಳಿಯಿರುವ ಚೌಡಯ್ಯನ ಪಾಳ್ಯಕ್ಕೆ ಬರುತ್ತಿದ್ದೇವೆ. ನೀವು ಬನ್ನಿ ಎಂದು ನನಗೆ ತಿಳಿಸಿದ್ದು. ಅದರಂತೆ ನಾನು ಈ ದಿನ ಮದ್ಯಾಹ್ನದ ವೇಳೆಗೆ ಚೌಡಯ್ಯನ ಪಾಳ್ಯಕ್ಕೆ ಬಂದೆನು ಅಲ್ಲಿ ನನ್ನ ಅಣ್ಣ ಮಗ ಗಣೇಶ, ಗಣೇಶನ ಹೆಂಡತಿ ಶೈತಿ, ಶೃತಿ ದೊಡ್ಡಪ್ಪನ ಮಗ ರೇವಣ್ಣ @ ರವಿ ಇದ್ದರು. ನಾನು ವಿಚಾರ ಮಾಡಿದಾಗ ಶೃತಿಯ ಹೆಸರಿನಲ್ಲಿರುವ ಮನೆಯಲ್ಲಿ ಶೃತಿಯ ದೊಡ್ಡಪ್ಪನ ಮಕ್ಕಳುಗಳಾದ ರಾಜ, ನಾಗರಾಜು ರವರು ವಾಸವಾಗಿದ್ದುಕೊಂಡಿದ್ದು. ನಾವು ಮನೆಯಲ್ಲಿ ವಾಸವಿರಲು ಬಂದಿದ್ದೇವೆ ಎಂದು ತಿಳಿಸಿದ್ದಕ್ಕೆ ನೀವು ಒಂದು ರೂಮಿನಲ್ಲಿ ಇರೀ ನಾವು ಮನೆಯನ್ನು ಬಿಟ್ಟು ಕೊಡುವುದಿಲ್ಲವೆಂದು ಹೇಳುತ್ತಿದ್ದಾರೆ ಹಾಗೂ ಶೃತಿಯು ಗಂಡನಿಗೆ ಜೆ.ಸಿ.ಬಿ ತರಲು ಹೇಳಿ ಷೇಡನ್ನು ಕೆಡವಿಸಿದ್ದು. ನಾನು ಮದ್ಯಸ್ಥಿಕೆ ವಹಿಸಿ ರಾಜ ಮತ್ತು ನಾಗರಾಜ ನನ್ನ ಅವರ ಮನೆಯನ್ನು ಅವರಿಗೆ ಬಿಟ್ಟುಕೊಡಿ ಎಂದು ಹೇಳಿದೆ ಅದಕ್ಕೆ ಶೃತಿಯು ನನ್ನ ಮನೆಯ ಬೀಗ ಕೊಡಿ ಎಂದು ರಾಜನನ್ನು ಕೇಳಲು ಹೋಗಿದ್ದಕ್ಕೆ ಮನೆಯನ್ನು ನಮ್ಮ

ಹೆಸರಿಗೆ ಮಾಡಿಕೊಟ್ಟು ರಜಿಸ್ಟರ್ ಮಾಡಿಸಿಕೊಟ್ಟರೇ ಮಾತ್ರ ನೀವು ಉಳಿಯುತ್ತೀರಾ ಇಲ್ಲಾ ಎಂದರೆ ಒಬ್ಬೊಬ್ಬರನ್ನು ಕೊಲೆ ಮಾಡಿ ನಮ್ಮ ಆಸ್ತಿಯನ್ನು ಪಡೆದುಕೊಳ್ಳುವತ್ತೆವೆಂದು ಹೇಳಿದವರೆ ರಾಜ ಎಂಬುವನು ಮನೆಯೊಳಗಡೆಯಿಂದ ಮಜ್ಜನ್ನು ಹಿಡಿದುಕೊಂಡು ನನ್ನನ್ನು ಕೊಲೆ ಮಾಡುವುದಾಗಿ ಓಡಿಸಿಕೊಂಡು ಬಂದನು. ನಾನು ಸ್ವಲ್ಪ ದೂರ ಓಡಿ ಹೋಗಿ ಬಿದ್ದು ಹೋದೆ ಆಗ ರಾಜನು ಮಜ್ಜಿನಿಂದ ನನ್ನ ಎಡ ಕಾಲಿಗೆ, ಎಡಪಾದದ ಬೆರಳಿಗೆ ಹೊಡೆದು ರಕ್ತಗಾಯಪಡಿಸಿದನು. ನಾಗರಾಜನು ದೊಣ್ಣೆ ತೆಗೆದುಕೊಂಡು ಬಂದು ನನ್ನ ತಲೆಗೆ ಬಲವಾಗಿ ಹೊಡೆದನು. ಅಷ್ಟರಲ್ಲಿ ಹಿಂದೆ ಓಡಿ ಬಂದ ರೇವಣ್ಣ @ ರವಿ ಮತ್ತು ಗ್ರಾಮದ ಕೆಲವರು ಬಂದು ಆಗ ರಾಜ, ನಾಗರಾಜ ನನ್ನನ್ನು ಬಿಟ್ಟು ಓಡಿ ಹೋದರು. ನನ್ನ ಅಣ್ಣನ ಮಗನ ಹೆಂಡತಿ ಶೃತಿಯನ್ನು ರಾಜನ ಹೆಂಡತಿ ರಮ್ಯಳು ಕೈಗಳಿಂದ ಕೆಳಕ್ಕೆ ಕೆಡವಿಕೊಂಡು ಪರಚಾಡಿದ್ದಳೆಂದು ಗೊತ್ತಾಯ್ತು. ಈ ಘಟನೆ ನಡೆದಾಗ ಮದ್ಯಾಹ್ನ 3.30 ಗಂಟೆಯಾಗಿತ್ತು. ನಂತರ ನನ್ನನ್ನು, ಶೃತಿ ಇಬ್ಬರನ್ನು ಚಿಕಿತ್ಸೆಗಾಗಿ ಕಾರನಲ್ಲಿ ಸಿದ್ಧಗಂಗಾ ಆಸ್ಪತ್ರೆಗೆ ಕರೆದುಕೊಂಡು ಬಂದು ನನ್ನನ್ನು ಒಳರೋಗಿಯಾಗಿ ದಾಖಲಿಸಿ ಚಿಕಿತ್ಸೆ ಕೊಡಿಸಿರುತ್ತಾರೆ. ಶೃತಿಯನ್ನೂ ಹೊರರೋಗಿಯಾಗಿ ಚಿಕಿತ್ಸೆ ಮಾಡಿಸಿರುತ್ತಾರೆ. ಆಸ್ತಿ ವಿಚಾರದಲ್ಲಿ ನಮಗೆ ಮೇಲ್ಕಂಡ ರ್. ನಾಗರಾಜ, ರಮ್ಯರವರು ಹೊಡೆಸಿರುವುದರಿಂದ ಇವರುಗಳ ಮೇಲೆ ಕಾನೂನು ರೀತ್ಯಾ ಕ್ರಮ ಕೈಗೊಳ್ಳಬೇಕೆಂದು ತಮ್ಮಲ್ಲಿ ಕೇಳಿಕೊಳ್ಳುತ್ತೇನೆ.”

ಓದಿ ಕೇಳಿದೆ ಸರಿಯಿದೆ.
ಸಹಿ/-

15. On the basis of the complaint on 23.08.2021, Kyatasandra police have registered the case in Crime No.194/2021 against accused Nos.1 to 3 for the commission of offence under Sections 323, 326 and 307 r/w 34 of IPC and submitted the charge sheet before the Court as per Ex.P15 on 23.08.2021 at 8.30 p.m. At the time of taking treatment by PW.1 in Shri Siddaganga Hospital, Tumakuru, the police have recorded the statement of injured Srinivasagowda. The Investigating Officer has produced the Accident register-cum-wound certificate issued by Shri Siddaganga Hospital and

Research Centre, Tumakuru, marked as Ex.P8, which reveals that on 23.08.2021 the injured Srinivasagowda aged about 50 years admitted to the hospital in IP.No.21080307 with the history of assault and the Doctor has found the following injuries:

- i. Open Grade 2 proximal Phalynx fracture Left 2nd Toe (Grievous injury)
- ii. Open Grade 2 Distal Third Tibia Unicortical Fracture (Grievous injury)
- iii. Lacerated wound over forehead (Grievous injury)

16. Findings of the physical examination are that; lacerated wounds over anterior-lateral aspect of leg and over the plantar aspect of the 2nd toe.

17. Ex.P7 is the intimation to the police about the accident and injuries in which it is stated that Srinivasagowda S/o Late Venkataswamappa came with the history of assault near Chowdaiahnapalya, Kesaramadu Road, Tumakuru at around 3.30 p.m. on 23.08.2021, assault by relatives, hit by sharp instrument and wooden stick. Ex.P9 is the wound certificate of Mrs. Shruthi C.S., who examined before the Court as PW.13, has stated that on 23.08.2021 she admitted to the hospital in OPD with the history of assault near Chowdaiahnapalya, Kesaramadu Road, Tumakuru at around

3.30 p.m. on 23.08.2021, assaulted by relatives, hit by sharp instrument and wooden stick.

18. Ex.P10 is the Accident Register-cum-wound certificate, which reveals that Mrs. Shruthi C.S., has sustained following injuries:

- (i) ® Face: An abrasion of size 1 x 2 cms (+) over temporal area.
- (ii) ® Forearm: Multiple abrasions @ over forearm and head
- (iii) ® Foot: An abrasion (+) over medial aspect of foot

19. Ex.P11 is the Medico-legal case Register extract issued by Shri Siddaganga Hospital and Research Centre, Tumakuru, pursuant to Srinivasgowda, wherein also the history of assault shown as by relatives hit by sharp instrument, wooden stick at around 3.30 p.m. on 23.08.2021.

20. Ex.P12 is the Medico-legal case Register extract pertaining to Mrs. Shruthi C.S., also reveals that she admitted to the hospital with the history of assault at around 3.30 p.m. at 23.08.2021 at Chowdaiahnapalya, Kesaramadu Road, Tumakuru.

21. PW.1-Srinivasagowda has deposed in his evidence that at about one and half years back at 3.30 p.m., he came

from Mysuru along with CWs.2 and 4 near the house of C.W.2 and the said house was entrusted to accused by CW.2 and CWs.2 & 4 were cleaning the vacant land situated near the house by bringing JCB and thereafter came to the house of CW.2. Further he deposed that they were residing in the said house since 3 years and at that time, CW.2 asked the accused to vacate the house and accused told that the said house belongs to them and they do not want to leave the house and he advised the accused by questioning the accused as to why they are not giving up the house as it belongs to CW.2. At that time, accused No.1 came out of the house holding his hand behind and he found the machete in the right hand of the accused No.1, he got frightened and ran away from the spot and fell down, accused No.1 came from his back and assaulted on his left shank with machete and caused injuries and he has shown the wound certificate before the Court. He further deposed that accused No.2 assaulted him with club and he became unconscious and he got admitted to the Tumakuru Hospital and police came and recorded his statement as per Ex.P1. He further deposed that accused No.3 has pushed CW.2 and kicked on her. This witness, PW.1 has partly treated as hostile witness and was cross-examined at length.

22. CW.2-Mrs.Shruthi C.S., the injured witness was examined as PW.13. She has also deposed that she owns land measuring 22.08 guntas in Sy.No.11/4 at Chowdaiahnapalya, Kesaramadu, Kyathasandra Road, Tumakuru, she had constructed RCC house and she owns shed, vacant land and old house. She further deposed that her father died in the accident in the year 2009 and her mother died in the year 2017 due to diabetes and she married in the year 2018 and she had been to America in December 2018 with her husband and her brother Manjunatha is in the house of C.W.1 Srinivasagowda and she is looking after her brother along with her uncle and aunt and her uncle and aunt were residing with her at Chowdaiahnapalya and accused being the children of her uncle, leased out the first floor of RCC house & after the expiry of term, the accused told that they would evict the tenants & she came back from America in the April 2019 and asked the accused to hand over the house which was leased out and accused told that they would get vacated the leased house & the house would have been vacated on 20.08.2021. So, she along with her husband Revanna went to ask the accused, at that time, the accused told that would not vacate the house. Hence, she went to the police station and lodged a complaint, however, the police did not register the complaint and she returned to Mysuru.

Further, she stated that on 23.08.2021, she asked Srinivasagowda to come to Chowdaiahnapalya and Srinivasagowda told that she should not go there alone and he would come along with her and on 23.08.2021, at 10.00 a.m., they came to Chowdaiahnapalya and asked the accused to vacate the house. However, the accused locked the doors of all the rooms of the house and allowed her to sit in the room in the ground floor and there was altercation between them. At that time, they were cleaning the shed with the help of JCB and when she, her husband and uncle asked the accused to vacate the house, the accused No.1 told them to register the house in their name, otherwise he would not spare them and accused No.1 went inside the house and brought machete. On seeing the machete, her uncle ran away, accused No.2 brought club and all of a sudden, her uncle fell down and accused No.1 assaulted on the left shank of her uncle with machete and accused No.2 assaulted her uncle on his head with club and by screaming she ran away and accused No.3 Ramya came and pushed her on to the ground and scratched her body. On seeing Revanna and her husband, the accused went away by holding machete and club. She further stated that her uncle has sustained injuries and her husband brought her and her uncle to Siddhaganga Hospital, Tumakuru for treatment. Further,

she has deposed as to the spot mahazar conducted by the police and also seizure of blood stained mud and sample mud.

23. CW.3 Reavana @ Ravi was examined as PW2. He has deposed in his evidence that about 5 years back there was a registered marriage between CW.2 and CW.4 and after the marriage CW.2 was residing at Mysore and now she is residing at America. CW.2 has constructed a house, the accused were residing in the said house and CW.2 asked the accused to reside in the said house and later CW.2 and CW.4 have decided to reside in the said house and on 23.08.2021. She had been to the said place along with CW.2 and CW.4 and CW.1 also came there and CW2 asked the accused to vacate the house. Accused told that they would not leave the house and asked CW.2 to register the said house in their name. CW.2 did not agree and thereafter accused No.1 made CW.1 to fall on the road and assaulted with machete on his left leg and head. Accused No. 2 assaulted with club on his head, chest and leg and caused bleeding injuries. He has also stated that accused No.3 scratched the body of CW1 after pushing her on the ground. He further deposed that he had admitted CW.1 and CW.2 to Sri Siddhaganga Hospital for treatment. The police came to the spot and conducted mahazar and collected blood-stained mud

and sample mud. He has also deposed as to panchanama at Ex.P2.

24. PW.14-Ganesh K.N., has also deposed in his evidence as to the alleged incident and also act of the accused.

25. PW.6-Srinivasa, who cited as eye-witness, has deposed in his evidence as to the assault made by the accused on Srinivasagowda with machete and he has further deposed that accused No.2 gave blow to CW.1 with club on his head and accused No.3 scratched the face and hands of CW.2.

26. PW.3-N.Prabhakar, the Lab technician has deposed as to the mahazar conducted by the police as per Ex.P2.

27. PW.4- K.Ashwatha Reddy, has deposed as to the mahazar conducted by the Police as per Ex.P3.

28. PW.5-Anil Kumar R., has deposed with regard to the mahazar conducted by the Police as per Ex.P4 and he has not fully supported the case of the prosecution.

29. PW.6-Srinivasa, has deposed in his evidence that accused No.1 chased Srinivasagowda and gave blow to him with machete on his left leg and left feet. Accused No.2 gave blow to CW.1 on his head and accused No.3 has scratched.

30. PW.7-Divakara has deposed as to the mahazar conducted by the police as per Ex.P4.

31. PW.8-Mohamad Shafiulla, the Head Constable has deposed as to the arrest of accused No.1 and produced before the PSI and gave report as per Ex.P5. He has also deposed as to the mahazar conducted by the police as per Ex.P4.

32. PW.9-Yashish Kumar C., has deposed in his evidence as to the mahazar conducted by the police as per Ex.P6.

33. PW.10-Harish, the lorry owner, has deposed in his evidence as to the mahazar conducted by the police as per Ex.P6 and he has not fully supported to the case of the prosecution.

34. PW.11-Dr.Rahul, Orthopedic surgeon, Sreedevi Institute of Medical Sciences has deposed his evidence as to the examination of the injured Srinivasagowda and Mrs. Shruthi C.S., and has also deposed with regard to the issuance of wound certificates at Exs.P8 and 10.

35. PWs.12 and 16- R.S.Siddappa the PSI and Omprakash Gowda, the Circle Inspector of Police, have deposed with regard to their respective investigation.

36. PW.14 Ganesh K.N., Civil Engineer has deposed in his evidence that Srinivasagowda is his uncle, CW.2 is his wife, CW.3 is his mother. The accused are cousins of CW.2. He married CW.2 in the year 2018 and thereafter they went to America. He left his wife's brother in the house of Srinivasagowda. His wife Shruthi C.S., is having house in Chowdaiahnapalya. When they were proceeding to America, they have given the ground floor of the house to the accused to look after the same and left the first floor for Manjunath, the younger brother of his wife. The accused have assured them that they will vacate the house after their return from America. In the month of April 2019, when he and Shruthi came from America, they went and asked the accused to vacate the house as the lease period of the house would complete on 28.02.2021. Then the accused told that they will not vacate the house. Hence, they lodged a complaint to the Kyatsandra Police and went to Mysore. After two days, they returned to Chowdaiahnapalya and there was altercation between the accused and himself and also CW.1-Srinivasagowda, who came by that time. The accused refused to hand over the possession of the house and they were cleaning the shed through JCB. Then, accused No.1 Raja came by holding machete by chasing his uncle. Then he fell. Thereafter, accused No.1 gave blow to

him on his left leg and accused No.2 gave blow to him with club. When, Revanna and himself tried to rescue them, accused Ramya scratched his wife Shruthi with her nails, then the accused went away. He, his wife and his uncle went to the Siddaganga Hospital, Tumkur for treatment. At the time of taking treatment, the police came and recorded the statement of CW.1. His wife also took treatment in the hospital. On the next day, he handed over the clothes of his uncle to the police. The police have seized the same under Ex.P3 and he identified the blood stained shirts and clothes as MOs.5 and 6. He also identified the machete and club used for the commission of offences, MOs1 and 4. At the time of seizure of clothes, the police took his signature on chit and pasted on clothes.

37. On careful examination of the entire evidence, it is crystal clear that there is a dispute between the accused and CWs.1 to 3 with regard to the vacating of disputed house. PW1 suffered Proximal Phalynx fracture left 2nd toe due to fall on the ground and not due to the assault by accused. This fact is evident by the very complainant and also the evidence of prosecution witnesses. In the complaint at Ex.P1, it is stated that “ನಾನು ಸ್ವಲ್ಪ ದೂರ ಓಡಿ ಹೋಗಿ ಬಿದ್ದು ಹೋದೆ.”

38. PW.1 in his cross-examination by the Public Prosecutor, has admitted that at the time of incident, he fell down. PW.13-Shruthi, who is also alleged injured eye-witness in her examination-in-chief itself stated that PW.1 fell down accidentally at the time of alleged incident which is extracted as follows:

“ನನ್‌ನ ಚಿಕ್ಕ ಮಾವ ತಪ್ಪಿಸಿಕೊಳ್ಳಲು ಹೋಗುತ್ತಿದ್ದರು, ಆಕಸ್ಮಿಕವಾಗಿ ಬಿದ್ದುಬಿಟ್ಟರು.”

39. Ex.P8, the wound certificate reveals that PW.1 sustained injuries to his 2nd toe and distal third tibia unicortial. From the nature of the above injuries, one can assume that the said injuries would likely be caused due to fall. If, at all the injuries are caused by accused No.1, the injuries would have more severe in nature.

40. With regard to the alleged assault made by the accused No.2 is concerned, in the complaint it is stated that accused No.2 assaulted him with the club on his head with force. PW.1 has also deposed the same in his evidence. PW,13- has also deposed the same in his evidence. However in the medical certificate and MLC register, the medical officer has not recorded the name of the accused and alleged weapons used

for the commission of offences. The injured Shruthi did not sustain any injuries on her head.

41. The allegations made in Ex.P1-complaint and evidence of PWs.1, 2, 13 and 14 clearly goes to show that they are aggressors who gone near the house in question, which is in dispute between the accused and the prosecution witnesses to get the possession of the house without following due process of law. In Ex.P1-complaint itself, the complainant himself stated that he brought JCB through PW.14 and got demolished the cow shed of the accused persons. PW.1 in his cross-examination has also admitted as under:

“ಆರೋಪಿತರೇ ಆ ಮನೆಯನ್ನು ಕಟ್ಟಿಸಿದ್ದು”

“ನನಗೆ ತಿಳಿಸಿದ ಕಾರಣ ಅವರನ್ನು ಮಾತಾಡಿಸಲೆಂದು ನಾನೇ ಸ್ವಂತ ನಮ್ಮ ಉರಿನಿಂದ ಚೌಡಯ್ಯನ ಪಾಳ್ಯಕ್ಕೆ ಬಂದಿದ್ದು. ನಾನು ಬಂದಾಗ ಸುಮಾರು ಮಧ್ಯಾಹ್ನ 3:30.”

42. PW.2 in his evidence has also clearly stated as follows:

“ಅದರಲ್ಲಿ ಆರೋಪಿತರು ದನ ಕಟ್ಟುತ್ತಿದ್ದರು. ಸದರಿ ಸೆಡ್ ನನಗೆ ಮತ್ತು ಚಾ ಸಾ 2 ರವರಿಗೆ ಸೇರಿದ್ದು. ಅದನ್ನು ಖಾಲಿ ಮಾಡಿ ಎಂದರೆ ಅವರು ಮಾಡಲಿಲ್ಲ. ಆದ್ದರಿಂದ ಗಲಾಟೆಯಾದ ದಿನ ಗಲಾಟೆಗೂ ಮೊದಲು ನಾವು ಸದರಿ ಸೆಡ್ ನ್ನು ಜೆಸಿಬಿ ತರಿಸಿ ಕೆಡವಿಸಿದ್ದೆವು.”

43. PW.13 has also stated in his evidence as follows:

“ಆರ್ ಸಿ ಸಿ ಮನೆಯನ್ನು ಆರೋಪಿತರು ತಂದೆ ಕಟ್ಟಿಸಿದರು ಎಂದರೆ ಇಬ್ಬರು ಸೇರಿ ಕಟ್ಟಿಸಿದ್ದೇವೆ ಎಂದು ಸಾಕ್ಷಿ ಹೇಳುತ್ತಾರೆ.”

44. PW.2 has further admitted that CW2 and himself have filed a suit for partition and possession against the accused which is pending before the Tumkur Court.

45. On perusal of the aforesaid admission made by the prosecution witnesses, the court can observe that if really the accused No.1 had an intention to assault PW.1 with MO1-machete, the injured would have sustained grievous hurt on the vital part of the body. He has not sustained any injuries, except on the 2nd toe and admittedly PW.1 had fallen on the ground, then only he sustained the injuries to his 2nd toe. Therefore, the evidence of PW.1 and other interested witnesses and the inconsistent evidence of medical evidence will create a reasonable doubt as to the injuries sustained by PW.1. When PW.1 sustained injury on his 2nd toe, taking undue advantage of the injuries, he had filed the complaint against the accused so as to implicate the case against them as there is an enmity between the complainant and the accused.

46. With regard to the injuries caused to Mrs. Shruthi C.S., is concerned, the medical officer has not stated anything in the wound certificate as to the age of injuries and name of

accused who has scratched Mrs. Shruthi C.S. Accordingly, the evidence of Mrs. Shruthi C.S., is not supported with medical evidence.

47. It is relevant to mention here that PW.1 has deposed in his examination-in-chief that after 2 days from the date of admission to Tumkur Hospital, for further treatment, he was shifted to Apollo Hospital, Mysore wherein he has taken treatment as an inpatient for one month in the said hospital. Thereafter, he used to visit the hospital everyday for taking treatment. In this regard, the Investigating Officer has not produced any document. The conduct of this evidence, the exaggeration, and the improved evidence of PW.1, reveal that his evidence is not believable as the same is not corroborated with any medical evidence. Even, the Investigating Officer has not deposed anything with regard to the admission of PW.1 in the Apollo Hospital, Mysore.

48. Viewed from any angle, the evidence of injured witnesses and other interested witnesses do not appear to be natural and their evidence is not consistent with each other and also not supported with medical evidence. Since there is an enmity between the accused and complainant with regard to vacating of disputed house, it is quite natural to depose against

the accused exaggerating with an intention to harass the accused. Under the given set of circumstances, it is not safe to believe the evidence of PWs.1, 13 and other interested witnesses whose evidence is not substantiated and corroborated by any independent witness. If, really PW.1 has sustained injuries with machete and club, he would have disclosed the same before the Medical Officer. However, he has not disclosed the name of weapons used for the commission of offence and also name of accused. Though the Medical Officer has mentioned in the wound certificate that the injury is caused by a hit with sharp instrument and wooden stick, the same is not in not consistent with MOs.1 and 4 produced by the prosecution.

49. The wound certificate of PW.1-Srinivasagowda, reveals that the injuries 1 to 3 are grievous in nature and there is a fracture of left 2nd toe Proximal phalynx fracture. To substantiate the same, the Investigating Officer has not produced the radiology report with regard to the fracture of left 2nd toe and even the X-ray is also not produced.

50. The Division Bench of this Court in the case of **Sheenappa Gowda** (supra), has observed that the prosecution has failed to prove the allegation of grievous injury

sustained by PW.4 in view of non-production of X-ray for confirmation of fracture opined by the doctor in clinical medical examination. On this ground, it is not possible to hold that accused said to have committed offence.

51. On careful examination of the entire evidence independently, I do not find any cogent, convincing, acceptable, credible and believable trustworthy evidence to convict the accused for the commission of offence under Sections 323 and 326 r/w 34 of IPC. By giving benefit of doubt, it is held that the accused are entitled for acquittal. Hence, I answer point No.1 in the negative.

Regarding Point No.2:

52. For the aforesaid reasons and discussions, I proceed to pass the following:

ORDER

- (a) The Criminal Appeal is ***allowed***.
- (b) The judgment of conviction and order on sentence dated 25.09.2024 passed in S.C.No.97/2022 by the Principal District and Sessions Judge, Tumakuru, is hereby set aside.
- (c) The appellants/accused Nos.1 to 3 are acquitted of the offence under Sections 323, 326 r/w 34 of Indian Penal Code;

- (d) The bail bonds of appellants/accused 1 to 3 shall stand cancelled;
- (e) The trial Court is directed to refund the fine amount, if any in deposit, to the appellants/accused 1 to 3;

Registry is directed to send the trial Court records along with the copy of this Judgment to the concerned Court.

**Sd/-
(G BASAVARAJA)
JUDGE**

msr