



**IN THE HIGH COURT OF KARNATAKA, AT DHARWAD**  
**DATED THIS THE 23<sup>RD</sup> DAY OF FEBRUARY 2026**  
**PRESENT**  
**THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ**  
**AND**  
**THE HON'BLE MRS JUSTICE GEETHA K.B.**  
**CRIMINAL APPEAL NO. 100220 OF 2023 (A)**

**BETWEEN:**

THE STATE OF KARNATAKA,  
REPRESENTED BY THE  
POLICE SUB INSPECTOR,  
KANAKAGIRI POLICE STATION,  
GANGAVATHI TALUK,  
KOPPAL DISTRICT,  
THROUGH THE ADDITIONAL STATE PUBLIC  
PROSECUTOR, ADVOCATE GENERAL OFFICE,  
HIGH COURT OF KARNATAKA,  
DHARWAD BENCH, DHARWAD.

...APPELLANT

(BY SRI. M.B. GUNDAWADE, ADDITIONAL SPP)

**AND:**

1. BHARIMARADAPPA,  
S/O. SIDDAPPA NADAVARAMANE,  
AGE: 29 YEARS, OCC: AGRICULTURE,  
R/O. HIREKHEDA,  
TALUK: GANGAVATHI, DISTRICT: KOPPAL.
2. SHANKRAPPA  
S/O. DURGAPPA,  
AGE: 24 YEARS, OCC: AGRICULTURE,  
R/O. HIREKHEDA,  
TALUK: GANGAVATHI, DISTRICT: KOPPAL.





3. KANAKARAYA @ KANAKAPPA  
S/O. DURAGAPPA,  
AGE: 21 YEARS, OCC: AGRICULTURE,  
R/O. HIREKHEDA,  
TALUK: GANGAVATHI, DISTRICT: KOPPAL.
4. BHARIMARADAPPA  
S/O. VEERESHAPPA,  
AGE: 24 YEARS, OCC: AGRICULTURE,  
R/O. HIREKHEDA,  
TALUK: GANGAVATHI, DISTRICT: KOPPAL.
5. BASAVARAJ  
S/O. SIDDAPPA,  
AGE: 25 YEARS, OCC: AGRICULTURE,  
R/O. HIREKHEDA,  
TALUK: GANGAVATHI, DISTRICT: KOPPAL.

...RESPONDENTS

(BY SRI. A.M. MALIPATIL, ADVOCATE FOR R1-R5)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 378(1) AND (3) OF CR.P.C. SEEKING TO CALL FOR RECORDS FROM APPELLATE COURT NAMELY 1<sup>ST</sup> ADDITIONAL DISTRICT AND SESSION JUDGE KOPPAL SITTING AT GANGAVATHI IN CRIMINAL APPEAL NO.44/2016 AND FURTHER BE PLEASED TO SET ASIDE THE JUDGMENT AND ORDER DATED 12.10.2021 PASSED BY THE 1<sup>ST</sup> ADDITIONAL DISTRICT AND SESSION JUDGE KOPPAL SITTING AT GANGAVATHI IN CRIMINAL APPEAL NO.44/2016 AND CONVICT AND SENTENCE THE RESPONDENTS/ACCUSED NO.1 TO 5 FOR THE OFFENCES PUNISHABLE UNDER SECTION 143, 147, 148, 323, 326, 504, 506(2) READ WITH SECTION 149 OF IPC IN THE INTEREST OF JUSTICE.

THIS APPEAL, COMING ON FOR FINAL HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ  
AND  
THE HON'BLE MRS JUSTICE GEETHA K.B.



### **ORAL JUDGMENT**

(PER: THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ)

State is in appeal, feeling aggrieved by the judgment passed in Criminal Appeal No.44/2016 by the Court of the I Additional District & Sessions Judge, Koppal sitting at Gangavathi, insofar as setting aside the judgment and order of conviction and sentence passed by the Court of Additional Civil Judges and JMFC., at Gangavathi in C.C.No.56/2015, acquitting accused Nos.1 to 5 of the offences punishable under Sections 323, 326, 504, 506(2) r/w Section 34 of IPC.

2. Heard learned Addl. SPP for the State and the learned counsel appearing for respondents-accused Nos.1 to 5. Perused the evidence and material on record.

3. The first informant-Hanumesha (PW.1) and the injured/Bharimaradappa (PW.8) are brothers. Their properties are adjacent to each others at Hirekheda. There was enmity between the accused and the complainant viz.,



cousins with regard to boundaries of their properties. On 06.10.2014 at 04.30 p.m., when PW.1 and PW.8 were proceeding to their house from their property on the cart road and when they were by the side of the property of Umesh Kurubar at Hirekheda, all the accused, formed an unlawful assembly and wrongfully restrained PW.8. Accused Nos.2 and 3 held P.W.8 and abused him in filthy language, accused No.1 assaulted with the butt end of the axe on his left shoulder and caused grievous bleeding injury, Accused No.4 assaulted him with a club on his left ear and back, Accused No.5 kicked him on his stomach. Due to the said assault, PW.8 sustained fractures to his forearm etc; contusion on his back etc. CW.6 and CW.9 who were present, pacified the quarrel. Thereafter, accused threatened PW.1 and PW.8 with dire consequences and went away.

4. Charges were framed against accused Nos.1 to 5 for the offences punishable under Sections 143, 147, 148, 149, 148, 323, 326, 504, 506(2) r/w 149 IPC.



5. On behalf of the prosecution, 12 witnesses were examined and 9 documents were got marked apart from MO.s 1 to 5.

6. The trial Court vide judgment and order dated 11.11.2016 and 14.11.2016 was pleased to acquit accused Nos.1 to 5 of the offence punishable under Sections 143, 147, 148 and 149 of IPC and convicted them for the offences punishable under Sections 323, 326, 504, 506(2) r/w 34 of IPC.

7. In Crl.A. No.44/2016 preferred by accused Nos.1 to 5, the learned Sessions Judge vide judgment dated 12.10.2021 set aside the conviction and sentence passed by the trial Court and acquitted them of the offences punishable under Sections 323, 326, 504, 506(2) r/w 34 IPC, which is under challenge in this appeal.

8. It is the case of prosecution that there was enmity between the complainant and the accused with regard to the boundaries of their properties. On 06.10.2014



at about 04.30 p.m., when the complainant (PW.1) along with his brother (PW.8) were proceeding to their house, all the accused who had formed an unlawful assembly armed with axe and club and out of them accused Nos.2 and 3 held PW.8-the injured and abused him in filthy language, accused No.1 assaulted with butt end of axe on his shoulder and accused No.4 assaulted with a club on his ear and back and accused No.5 kicked on his stomach. According to prosecution, on account of the assault, PW.8 sustained fractures as mentioned in the wound certificate/Ex.P9 issued by the Medical Officer of Community Health Center, Gangavathi.

9. In Ex.P.1 lodged by PW.1, he has stated that at the time of incident, one Mallikarjuna Nayak, Basavaraj and Channabasappa were present and they pacified the quarrel. Thereafter, he shifted the injured to Government Hospital Kanakagiri, Gangavathi. Hence, initially the injured was shifted to the Government Hospital at Kanakagiri, Gangavathi wherein he was examined by the doctor on



06.10.2014 at about 05.15 p.m., as per the wound certificate-Ex.P9.

10. Among the three persons named in the FIR, who are said to have pacified the quarrel two are examined as PWs.5, and 10. They are the independent witnesses to the incident. However, they have not supported the case of prosecution.

11. Learned Addl. SPP contended that PW.8 is the injured and his evidence is corroborated by the evidence of PW.1 and PW.9 and also the wound certificates at Exs.P.8 and Ex.P.9. He contended that PW.8 being the injured witness, his evidence has to be accepted, whereas, the Appellate Court came to an erroneous conclusion by discarding his evidence. He has therefore contended that the judgment and order of conviction and sentence passed by the trial Court may be confirmed by setting aside the judgment of acquittal passed by the Appellate Court.



12. Admittedly, there was enmity between the complainant and accused with regard to the boundaries of their properties. In this background, the evidence of PW.1 and PW.8 and PW.9 has to be examined. The defence taken by the accused is that the injured has sustained those injuries by fall from a motorcycle, which has been denied by PW.1 and PW.8.

13. A careful perusal of the evidence of PW.1-the first informant in this case clearly goes to show that when the incident took place, he was at a distance of 1 k.m. away from the spot. The same is elicited in his cross-examination. PW9 is another eyewitness. He has stated that he was near the land, when PW.1 and PW.8 were proceeding near the land of one Umesh Kurubar and at that time, the accused came and abused PW.8 and assaulted him with club and butt end of the axe and threatened him. He has stated that he along with CW.6 and CW.8 i.e., PW.5 and PW.6 were present.



14. The name of PW.9 does find place in the complaint. When PW.1 has specifically named PW.5, PW.6 and PW.10 as the persons who pacified the quarrel, and if PW.9 was also present at the spot, he would have certainly mentioned his name. This is relevant because another eyewitness examined by the prosecution as PW.10 has categorically stated in his evidence that when he went to the spot, except the injured i.e., PW.8, no one was present at the spot. As per prosecution, there was enmity between the accused and the complainant's party. If so, it is not forthcoming as to why only PW.8 was assaulted by the accused, if even PW.1 was present along with him.

15. PW.10 has stated that on the date of incident, he had gone near his land, at that time, he saw PW.8 coming from the land by walk and he had suffered injuries to his left hand and back of his ear and back. He has stated that except PW.8 there was no one present and he has not seen as to who assaulted PW.8.



16. In view of the above evidence on record, the case of the prosecution that even PW.1 and PW.9 were also present at the spot and they have also witnessed the incident is doubtful. PWs.5 and PW.6 have turned hostile to the case of prosecution. PW10 has stated that he has not seen as to who assaulted PW8.

17. According to prosecution, PW.8 was initially shifted to Government Hospital at Kanakagiri, Gangavathi wherein, he was examined by the doctor on the same day. Thereafter, for further treatment he was shifted to Mallanagouda Hospital, Gangavathi. Ex.P.9 is the wound certificate issued by Community Health Center, Kanakagiri, Gangavathi, as per which PW.8 has sustained fractures. The prosecution has not examined the doctor who treated PW.8 and issued the said certificate. Further, the X-ray films to confirm that PW.8 sustained fractures is also not produced and marked. In the absence of the same, it cannot be held that the prosecution has established that PW.8 has sustained grievous injuries. Ex.P.8 is the medical certificate



issued by PW.12. In his evidence, PW.12 has stated that PW.8 was admitted as an inpatient in his hospital from 07.10.2014 to 16.10.2014 and there was fracture of left ulna with multiple rib fracture left side with multiple contusions over back and right scapular region with left decramon # with fracture upper and left fibula. PW.12 has further stated that he has examined the X-ray concerning the injured. He has mentioned the same in Ex.P.8. However, the X-ray film is not produced and marked. PW.12 has only issued the certificate pertaining to PW.8 and no medical documents except Ex.P.8 are produced to show that PW.8 was an inpatient in his hospital from 07.10.2014 to 16.10.2014 or to show the nature of treatment given to PW.8.

18. It is the case of prosecution that M.O.1 and M.O.2 were seized from the spot i.e., the axe and the club under Ex.P.2. PW.2 and PW.7 are the panch witnesses to the said mahazar. PW.7 has not supported, however, PW.2



has supported seizure of M.O.1 and M.O.2. Insofar as the seizure of blood stained clothes of PW.8, which are marked as M.Os.3 to 5 under Ex.P.3, both the panch witnesses namely PW.3 and PW.4 have turned hostile and not supported the prosecution case. Further, the said seized articles were not sent for chemical examination.

19. PW.8 in his evidence though stated about the assault on him by the accused and presence of CW.1, CW.5, CW.6 and CW.7 and they pacifying the quarrel, we have already observed that the presence of other eyewitnesses including PW.1 at the scene of occurrence is doubtful. In view of the admitted rivalry between the parties, convicting the accused on the sole evidence of PW.8, without corroboration from independent witnesses and convincing medical evidence, may not be proper. This is an appeal preferred against the judgment of acquittal. Once a Court acquits the accused, the initial presumption of innocence in his favour is further reinforced. The learned Sessions Judge



has held that the prosecution has miserably failed to prove with cogent, oral/documentary evidence that accused Nos.1 to 5 have committed the offences charged against them, beyond reasonable doubt. The reasons assigned are not perverse or illegal.

20. For the foregoing reasons, we proceed to pass the following:

**ORDER**

The appeal fails and accordingly dismissed.

**Sd/-  
(MOHAMMAD NAWAZ)  
JUDGE**

**Sd/-  
(GEETHA K.B.)  
JUDGE**

HMB-17  
KMV- 18 to end  
CT-MCK  
LIST NO.: 1 SL NO.: 19