



IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 24TH DAY OF FEBRUARY 2026

PRESENT

THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ

AND

THE HON'BLE MRS JUSTICE GEETHA K.B.

CRIMINAL APPEAL NO. 100465 OF 2022 (A)

C/W

CRIMINAL APPEAL NO. 100221 OF 2023 (A)

IN CRL. A NO.100465/2022
BETWEEN:

UOSMANASAB S/O. ALLASAB ATTIGERI,
AGE: 37 YEARS, OCC: AGRICULTURE,
R/O. HOSARITTI, TQ: HAVERI,
DIST: HAVERI-581213.

...APPELLANT

(BY SRI. SIDDALINGANAGOUDA DODDAGOUDAR, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA,
(THROUGH GUTTAL POLICE STATION, GUTTAL)
REPRESENTED BY SPP,
HIGH COURT OF KARNATAKA,
DHARWAD BENCH, DHARWAD.
2. RAJESAB S/O. USMANSAB ATTIGERI,
AGE: MAJOR, OCC: COOLIE,
R/O. HOSARITTI, TQ: HAVERI,
DIST: HAVERI-581213.





3. LALESAB S/O. BADESAB ATTIGERI,
AGE: MAJOR, OCC: COOLIE,
R/O. HOSARITTI, TQ: HAVERI,
DIST: HAVERI-581213.
4. SHARIFSAB S/O. RAJESAB ATTIGERI,
AGE: MAJOR, OCC: COOLIE,
R/O. HOSARITTI, TQ: HAVERI,
DIST: HAVERI-581213.
5. DILSADBEE W/O. RAJESAB ATTIGERI,
AGE: MAJOR, OCC: COOLIE,
R/O. HOSARITTI, TQ: HAVERI,
DIST: HAVERI-581213.
6. KHADARBEE W/O. BADESAB ATTIGERI,
AGE: MAJOR, OCC: COOLIE,
R/O. HOSARITTI, TQ: HAVERI,
DIST: HAVERI-581213.

...RESPONDENTS

(BY SRI. JAIRAM SIDDI, HCGP FOR R1;
SRI. A.M. GUNDAWADE, ADVOCATE FOR R2, R3, R5 & R6;
SRI. AVINASH ANGADI, AMICUS CURIAE FOR R4)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 372 OF CR.P.C. 1973, SEEKING TO ALLOW THE PRESENT APPEAL AND SET ASIDE THE JUDGMENT AND ORDER AGAINST THE RESPONDENT/ACCUSED NO.2 TO 6 DATED: 13.06.2022 PASSED BY THE COURT OF PRINCIPAL DISTRICT AND SESSIONS JUDGE, HAVERI IN S.C.NO.68/2015 BY CONVICTING RESPONDENTS/ACCUSED FOR THE CHARGED OFFENCES PUNISHABLE UNDER SECTIONS 143, 148, 449, 504, 302 READ WITH SECTION 149 OF IPC.



IN CRL.A NO.100221/2023
BETWEEN:

STATE OF KARNATAKA,
REPRESENTED BY THE
POLICE SUB INSPECTOR,
GUTTAL POLICE STATION,
HAVERI CIRCLE,
THROUGH THE ADDITIONAL
STATE PUBLIC PROSECUTOR,
ADVOCATE GENERAL OFFICE,
HIGH COURT OF KARNATAKA,
DHARWAD BENCH.

...APPELLANT

(BY SRI. JAIRAM SIDDI, HCGP)

AND:

1. SHRI SHARIFASAB ATTIGERI @ SHARIFSAB
S/O. MOULASAB ATTIGERI,
AGE: 26 YEARS, OCC: COOLIE,
2. SHRI RAJESAB
S/O. USMANSAB ATTIGERI,
AGE: 46 YEARS, OCC: COOLIE,
3. SHRI LALESAB
S/O. BADESAB ATTIGERI,
AGE: 27 YEARS, OCC: COOLIE,
4. SHRI SHARIFASAB
S/O. RAJESAB ATTIGERI,
AGE: 27 YEARS, OCC: COOLIE,
5. SHRI DILSADBEE
W/O. RAJESSAB ATTIGERI,



NC: 2026:KHC-D:2910-DB
CRL.A NO.100465 of 2022
CRL.A No. 100221 of 2023

AGE: 45 YEARS, OCC: COOLIE,

6. SHRI KHADARBEE
S/O. BADESAB ATTIGERI,
AGE: 57 YEARS, OCC: COOLIE,
ALL ARE RESIDENT OF HOSARITTI,
HAVERI TALUK AND DISTRICT-581213.

...RESPONDENTS

(BY SRI. AVINASH ANGADI, AMICUS CURIAE FOR R1 & R4;
SRI. A.M. GUNDAWADE, ADVOCATE FOR R2, R3, R5 & R6)

THIS CRIMINAL APPEAL HIS FILED UNDER SECTION 378(1) AND (3) OF CR.P.C. SEEKING TO GRANT LEAVE TO APPEAL AGAINST THE JUDGMENT AND ORDER OF ACQUITTAL DATED 13.06.2022 AND DATED 22.06.2022 PASSED BY THE PRL. DISTRICT AND SESSIONS JUDGE AT HAVERI IN S.C.NO.68/2015 SO FAR IT RELATES TO ACQUITTAL OF RESPONDENTS/ACCUSED NO.1 TO 6 FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 143, 148, 449, 302 504 READ WITH 149 OF IPC AND TO SET ASIDE THE JUDGMENT AND ORDER DATED 13.06.2022 AND DATED 22.06.2022 PASSED BY THE PRL. DISTRICT AND SESSIONS JUDGE AT HAVERI IN S.C.NO.68/2015 AND TO CONVICT AND SENTENCE THE RESPONDENTS/ACCUSED NO.1 TO 6 FOR THE OFFENCE PUNISHABLE UNDER SECTIONS 143, 148, 449, 302, 504 READ WITH 149 OF IPC.

THESE APPEALS, COMING ON FOR FURTHER 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 MRS JUSTICE GEETHA K.B.)

Both the above appeals are filed challenging the judgment dated 13.06.2022 passed in S.C.No.68/2015 on the file of Principal District and Sessions Judge, Haveri (for short, 'Sessions Court')

2. Criminal Appeal No.100465/2022 is filed by the complainant against the acquittal of accused No.2 to 6; Criminal Appeal No.100221/2023 is filed by the State praying to convict and sentence accused No.1 to 6 for the offences under Sections 143, 148, 449, 302, 504 read with 149 of IPC.

3. Parties would be referred with their ranks as they were before the Sessions Court for the sake of convenience and clarity.

4. The CPI of Haveri Rural Circle has filed charge-sheet against accused No.1 alleging the offences punishable under Sections 504, 148, 449 and 302 of IPC. At the time of



filing the charge-sheet, names of accused No.2 to 6 were deleted stating that the offences against them is not made out.

5. After filing the charge-sheet, cognizance of the offence was taken by the concerned J.M.F.C. and then committed the matter to the Sessions Court and numbered as S.C.No.68/2015. Proceedings are commenced only against accused No.1.

6. After hearing both sides, learned Sessions Judge has framed charges against accused No.1 alleging the offences punishable under Sections 448, 449, 504 and 302 of IPC. After commencement of the trial, as per the orders passed on application under Section 319 of Cr.P.C., accused No.2 to 6 were included and charge was framed against all the accused persons for the offences punishable under Sections 143, 148, 449, 504, 302 read with 149 of IPC.

7. All the accused pleaded not guilty and claimed trial before the Sessions Court.



8. On behalf of prosecution, totally 23 witnesses were examined as P.W.1 to P.W.23 apart from marking Exs.P.1 to P.36, M.O.1 to M.O.8 and closed its side before the trial Court. On behalf of accused, -'B' report in earlier criminal case lodged by the wife of deceased against accused is marked as Ex.D.1.

9. After recording evidence of both sides and hearing arguments of both sides, the learned Sessions Judge has convicted accused No.1 for the offence punishable under Section 304 Part II of IPC and acquitted accused No.1 for the remaining offences i.e., 143, 148, 449, 504, 302 read with 149 of IPC and acquitted accused No.2 to 6 for all the offences i.e., 143, 148, 449, 504, 302 read with 149 of IPC and sentenced him to undergo rigorous imprisonment for 7 years 1 month 20 days and to pay a fine of ₹.6,000/- and in default of payment of fine, to undergo imprisonment for further period of 6 months.



10. Aggrieved by the said judgment of acquittal of accused No.1 to 6 for the offences punishable under Sections 143, 148, 449, 302, 504 read with 149 of IPC, the State has preferred appeal and complainant has preferred appeal against acquittal of accused No.2 to 6 for all the offences.

11. Heard arguments of both sides.

12. Learned counsel for complainant/first informant Sri. Siddalinganagouda Doddagoudar would submit that there is ample evidence against accused Nos.2 to 6 along with accused No.1. P.Ws.1, 4 and 6 have categorically deposed about involvement of accused Nos.2 to 6. They have deposed about the instigation given by accused Nos.2 to 6 to commit the offence by accused No.1. Hence, they being present at the spot and instigated accused No.1 are also equally liable for the offence committed by accused No.1 and thus, they are also to be held guilty for the offence punishable under sections alleged against them.



Hence, prayed for allowing Crl.A.No.100221/2023 and convict accused Nos.2 to 6.

13. Learned HCGP Sri. Jairam Siddi for State and appellant in Crl.A.No.100465/2022 would submit that accused No.1 ought to have been convicted for the offences punishable under Sections 302, 448, 449 and 143, 147, r/w 149 IPC, because involvement of accused Nos.2 to 6 is established and trespass of accused No.1 to the house of deceased taking crowbar and assaulting deceased with crowbar thrice on the head would establish that accused No.1 has an intention to commit the murder of deceased Allah Sahib. Hence, the intention is gathered from the act committed by him. Hence, he is to be convicted for the offence under Section 302 IPC and as there is criminal trespass with an intention to commit the offence punishable with death sentence and thus, offence under Section 449 IPC are established against accused No.1. Hence, prayed for allowing the appeal.



14. Learned Amicus curie Sri.Avinash Angadi for respondent Nos.1 and 4 and learned counsel Sri.A.M.Gundawade, for respondent Nos.2, 3, 5 and 6 would submit that there is discrepancy in the evidence of eyewitnesses P.W.1, PW.4, P.W.6 and P.W.7. Admittedly there is property dispute and it is the tendency of the first informant that all the family members were arrayed as accused persons. However, the Sessions Judge has come to the conclusion that only offence alleged against accused No.1 is proved. This itself shows the exaggeration made by P.W.1, P.W.4 and P.W.6. P.Ws.1, 4 and 6 are close relatives of deceased i.e. son, grandson and daughter of deceased. Except them there is no other cogent supporting evidence to substantiate the case of prosecution. There are contradictions in the evidence of P.W.1, P.W.4 and P.W.6 on one side and P.W.7 said to be the eye witness. His evidence is also unbelievable because he has deposed that he had seen the incident from 70 feet away from the spot, which is not a believable one. As per the case of prosecution, the



investigation was commenced much earlier to registration of the case. The evidence of fingerprint expert is also not a believable one. The evidence of doctor and p.m. report shows that he has not at all applied his mind at the time of conducting post mortem and thus his report is unbelievable one. Hence, acquittal of accused Nos.2 to 6 by learned trial Judge is correct. Accused No.1 has not preferred any appeal against conviction. Hence, prayed for dismissal of both appeals.

15. Having heard the arguments of both sides, verifying the appeal papers as well as trial Court records, the point that arises for our consideration is:

- 1) Whether prosecution proves beyond reasonable doubt the involvement of accused Nos.2 to 6 in committing the murder of deceased- Allasab?
- 2) Whether prosecution proves beyond reasonable doubt that accused No.1 has committed the murder of Allasab with an intention to kill him?



16. The case of prosecution in nutshell is that accused and deceased- Allasab are relatives; there is property dispute between accused and deceased and his family members in respect of Sy.No.16/2 of Hosaritti Village. Because of that property dispute, there is ill-will between accused persons and the deceased. Accused No.1 has taken a house from one Malleshappa Veerappa Angadi on rent in front of the house of deceased only to harass him and his family members; to take revenge against the deceased and to grab his property.

17. It is the further case of prosecution that from 08.00 a.m. of 30.04.2015 after finishing his breakfast, accused was sitting by the side of his house i.e., on Jetty (ಕಟ್ಟೆ) of Gubbiswami Matha; he was waiting for suitable opportunity to murder Allasab; was observing the movement of Allasab; he had seen deceased entering his house; then, he went to the house of deceased, pushed the door of the house of deceased, its latch was broken; then



he entered the kitchen and took iron crowbar and came out from the house and abused the deceased in filthy language by using the words “ಅಸ್ತಿಯಲ್ಲಾ ನೀನ ತಂತಯಾ ಜಿನಾಳಿ ಮಗನ” in the public road, assaulted with said iron crowbar on the head of deceased thrice at 12.04 noon and caused murder of Allasab and thereby committed the aforesaid offences.

18. P.W.1, P.W.2 and P.W.5 are said to be the eyewitnesses to the incident and have not supported the case of prosecution; P.W.3 is the complainant-cum-son of the deceased; P.W.4 is the grandson of deceased and son of P.W.6; P.W.6 is the daughter of deceased and they have supported the case of prosecution; P.W.7 is an independent eyewitness and he has also supported the case of prosecution; P.W.5 was not only cited as an eyewitness, but also cited as the scribe of complaint. As far as writing the complaint is concerned, P.W.5 has supported the case of prosecution; P.W.8 is spot panch witness for Ex.P.11; P.W.9 is inquest and spot panch witness; P.W.10 is the seizure



panch witness for Ex.P.20-panchanama, under which M.O.1, M.O.6, M.O.7 and M.O.8-the clothes of deceased were seized; P.W.11 is circumstantial witness; P.W.12 is said to be the eyewitness. P.W.13 is seizure panch witness for Ex.P:21-panchanama, under which, the blood stained pant of accused No.1-M.O.8 was seized; P.W.14 is the police constable, who is the carrier of FIR; P.W.15 is the police constable, who has handed over the dead body to its legal representatives and received the clothes of deceased from the doctor and produced before the I.O.; P.W.16 is the doctor, who has conducted postmortem on dead body; P.W.17 is the fingerprint expert, who examined the fingerprints found on the door of the house of deceased and also the admitted fingerprints of accused No.1; P.W.18 is the then PSI, who has registered the case based on complaint of P.W.3 and arrested accused No.1, produced before the I.O.; P.W.19 is the I.O., who has conducted major portion of investigation and filed charge-sheet against accused No.1; P.W.20 is the Assistant Engineer of



PWD, who has drafted spot sketch as per Ex.P.34; P.W.25 is the in-charge CPI, who has conducted partial investigation; P.W.22 is the wife of deceased and circumstantial witness; P.W.23 is scientific officer at FSL, Bengaluru, who has examined the seized articles and furnished his report as per Ex.P.36.

19. The prime witnesses to the case are P.Ws.3, 4, 6 and 7. P.W.3 is the son, P.W.4 is the grandson, P.W.6 is the daughter of deceased and P.W.7 is an independent witness. There is slight variation amongst the evidence of P.W.3, P.W.4, P.W.6 and P.W.7 about how the incident has taken place. According to P.W.3, P.W.4 and P.W.6; P.W.4 and deceased were in the front house and P.W.3 and P.W.6 were in the back old house on 30.04.2015. On that day at about 12 noon, accused No.1 pushed the door of the house in which deceased and P.W.4 were there and the latch was broke open and then he entered the house, accused No.1 dragged the deceased from the house and went inside the house, took iron crowbar from the kitchen and came out



and then assaulted with the said crowbar on the head of the deceased thrice and thereby caused the death of deceased. According to P.W.3 and P.W.6 when they were in the back house, they heard loud sound of pushing the door and hence they came from the house and they saw accused No.1 going inside the kitchen taking iron crowbar and assaulting deceased with crowbar thrice and they could not prevent him and within that time the incident had taken place.

20. According to P.W.7 on 30.04.2015 at 12.04 hours when deceased was sitting on the Jetty (ಕಟ್ಟೆ) of their house, accused No.1 brought iron crowbar from the house of deceased and assaulted with it on the crown of deceased and because of that Allasab collapsed and accused No.1 also kicked twice or thrice from his leg and the people gathered there have dragged the accused and pacified the quarrel. At that time he had seen the time, it was 12.04 hours.



21. According to the evidence of P.Ws.3, 4, 6 and 7, immediately Allasab was taken to hospital in a Tom Tom vehicle by P.W.1; by examining him the doctor declared that he was brought dead. Afterwards P.W.3 has lodged complaint and then criminal law was set into motion.

22. Sri Avinash Angadi, learned Amicus Curiae appearing for respondents No. 1 and 4 and Sri A.M. Gundawade, learned counsel for respondents No. 2, 3, 5 and 6 would strenuously submit that the investigation commenced before registering the case. Thus investigation is bad in law and based on this investigation there shall not be any conviction.

23. P.W.16 is the doctor who has conducted postmortem on dead body of deceased Allasab. According to him, he conducted postmortem on 30.04.2015 from 12 to 12.30 p.m. and Allasab died on that day at 10.00 a.m. He has noted the same in postmortem report as per Ex.P.24.



24. FIR as per Ex.P.23 was registered on 30.04.2015 at about 3.00 p.m. whereas according to doctor the postmortem was conducted on that day from 12 to 12.30 p.m. that is much earlier to registration of the complaint and thus learned Amicus Curiae and the learned counsel for the accused submit that the investigation has commenced before registration of FIR.

25. It is to be noted that as per the evidence of P.W.7, at the time of incident he was holding mobile in his hand and had seen the time and it was 12.04. The case of the prosecution is also that the incident had taken place at 12.04 noon.

26. Form No. 146(ii) was given to doctor to conduct postmortem and only afterwards postmortem has to be conducted and it is conducted after receipt of the requisition from the I.O. This Form No.146(ii) is produced and kept in the file reveal that the requisition was given at 17.45 hours to conduct postmortem and dead body was found on



30.04.2015 at 16.30 hours and incident had taken place on 30.04.2015 at 12.30 noon.

27. Coupled reading of these things clearly and categorically reveal that postmortem could not have been conducted from 12 to 12.30 p.m. It is only the mistake committed by the doctor in mentioning the time as 12 to 12.30 p.m. in the postmortem report and in his evidence. He has deposed that the incident had taken place at 10.00 a.m. However no reason is given by the doctor to say that how he came to know that the incident had taken place at 10.00 a.m. Hence this mistake of the doctor alone cannot be the ground to say that the investigation had commenced much earlier to registration of FIR.

28. Having perused the postmortem report and the evidence of P.W.16, it reveals that the deceased was aged about 65 years and height was 5-½ feet and found ante mortem injury on occipital region of the dead body. According to him about three hours prior to examination,



death might have caused. The doctor has observed that there was mass bleeding from wound in occipital region and he opined that death was due to hemorrhage in brain and hemorrhage shock.

29. Afterwards the crowbar was produced before the doctor and he has given his opinion report on 20.05.2015 as per Ex.P.25 that the wounds found on occipital part of the dead body may be caused due to the assault by the crowbar produced before him. He further opined that three injuries were on scalp and they were fresh wounds and the person might have died due to those injuries.

30. According to the evidence of P.W.3 and I.O.-P.W.15, P.W.3 along with P.W.5 had been to the Police Station and lodged complaint and then PSI had registered the complaint in Crime No. 43/2015. Only afterwards the investigation commenced because the inquest is conducted afterwards and before conducting inquest, the dead body cannot be given to the doctor for postmortem. According to



the inquest report it was conducted from 3.30 to 4.30 p.m., in the hospital itself.

31. There is no appeal from the accused No.1 against whom the conviction is recorded. It is only the State appeal to convict accused No.1 for all the offences alleged against him including for the offence under Section 302 IPC and also against acquittal of accused Nos.2 to 6 and the appeal by first informant to convict accused Nos.2 to 6.

32. With this background, the evidence available against accused Nos.2 to 6 is to be analyzed to see as to whether prosecution is able to prove the offence of murder or whether it can be only U/s 304-II of IPC against accused No.1 is to be analyzed.

33. The complaint averments are that there is a property dispute between the deceased, accused No.1 to 4 and also against other two persons named in the complaint. Thus, the relationship between parties is to be verified to understand the case properly. One Usmansab had four



sons and three daughters. Amongst them two –Bade Sab and Moula Sab were no more. Accused No.2-Raje Sab is the uncle of P.W.1 and younger brother of deceased-Allasab. Accused No.3 is the son of accused No. 6-Khadar Bi and Badesab. Accused No.1 is the son of Moula Sab. Accused No.5-Dilshad Bi is the wife of accused No. 2, accused No.4-Sharif Sab @ Chaman Sab is the son of accused No. 2 and 5.

34. After investigation charge sheet is filed only against accused No.1 by deleting the names of other accused persons. Then based on the application filed U/s 319 of Cr.P.C., accused Nos.2 to 6 are impleaded.

35. The only evidence available against accused Nos. 2 to 6 is the evidence of P.Ws.3, 4, 6 and 7. The other witnesses have not spoken anything about these accused persons.

36. P.W.3 in his evidence has deposed that accused Nos. 2 to 6 caught hold his father and were telling that they



will do something to him; they abused his father; they have brought his father outside the house and they were instigating accused No.1 to commit murder and he has deposed the involvement of accused No.2 to 6. In the complaint he has stated that those accused persons also assaulted his father with hands.

37. P.W.4, child witness has deposed that accused No.1 has brought his grandfather outside the house by holding the shirt collar and abused that his grandfather is not giving property and went inside the kitchen, brought crowbar and other accused persons were assaulting his grandfather, they are Lale Sab, Raje Sab Mama and two grandmothers, i.e., accused Nos.2, 3, 5 and 6 and they were instigating accused No.1. According to this witness, accused No.4 was not there at the spot.

38. P.W.6 has not deposed anything against the remaining accused persons except instigation by them.



39. P.W.7 another eyewitness who is an independent witness, has deposed that other accused persons were not at the spot.

40. Thus, there is a serious discrepancy amongst the evidence of P.Ws.3, 4, 6 and 7 regarding involvement of accused Nos. 2 to 6. Hence their acquittal by the trial Court needs no interference.

41. Now the only point to be considered is whether there is any intention by the accused to commit murder of deceased or whether it has taken place in a sudden quarrel without any intention on the part of the accused to commit the murder.

42. According to the evidence of P.W.7, there was oral altercation being taken place between accused No.1 and deceased. According to the case of prosecution, accused No.1 has taken a house on rent in front of the house of the deceased only with an intention to commit



murder of deceased and was waiting for a suitable opportunity and with an intention to harass the deceased.

43. In this regard in the cross-examination of P.W.6 it is elicited that accused No.1 had taken the house on rent and residing in that house since one year prior to the incident. Thus, the case of prosecution that accused No.1 was waiting for an opportunity appears to be not correct.

44. It is the case of the prosecution that accused No.1 entered the kitchen of deceased, took the crowbar and came out; then assaulted with the said crowbar on the head of Allasab and thereby committed his murder.

45. It is not the case of the prosecution that when accused No.1 pushed the door of the house by breaking its latch, he was holding a weapon. Thus there was no intention or premeditation for the accused No.1 to commit murder. The cross-examination of P.W.7 reveals that there was altercation between accused No.1 and deceased and he has not gone there to pacify it because the deceased was



not hearing his words. From this, the prior intention of accused No.1 is not gathered.

46. P.W.7 has further deposed that in that altercation suddenly accused No.1 went inside the house of deceased, brought crowbar and suddenly assaulted on the head of deceased which resulted in his death.

47. The above evidence of P.W.7 and the evidence of other witness that people were gathered at the spot who have not made efforts to intervene and pacify the quarrel establish that in a sudden fight, accused No.1 entered the house of the deceased, brought the crowbar and assaulted with it on the head of deceased.

48. Admittedly, accused was not carrying the weapon when he broke opened the latch of the house of deceased; as per the evidence of P.W.7, at the time of commencement of quarrel, there was only altercation between accused No.1 and deceased and then, suddenly he entered the house of



deceased, brought crowbar and assaulted on the occipital region of the deceased.

49. The sum and substance of the evidence of witnesses reveal that immediately when the quarrel was taking place, accused No.1 entered the house of deceased, took crowbar from the kitchen, came in suddenly and assaulted on the head of deceased thrice. However, the finding of trial Court that to convict the accused for the offence under Section 304 Part II of IPC is not proper. The above discussion reveals that accused No.1 has committed culpable homicide, not amounting to murder but he taking crowbar, a weapon can be used for committing murder and using it thrice on the head of deceased, who is an aged senior citizen shows his intention of causing death or causing such bodily injury as is likely to cause death and thus, it comes under Section 304 Part I of IPC and not under Part II of IPC.



50. Thus, it comes within the Exception No.4 to Section 300 of IPC. Culpable homicide is not murder if it is committed without premeditation in a sudden fight, in the heat of passion upon a sudden quarrel, and without the offender having taken undue advantage or acted in a cruel or an unusual manner.

51. For the above discussion, we hold that the acquittal of accused Nos.2 to 6 is proper and it needs no interference and convicting accused No.1 for the offence under Section 304 Part II of IPC is not justifiable, but accused No.1 is liable to be convicted for the offence under Section 304 Part I of IPC.

52. The fact that accused No.1 entered the house of deceased by breaking open the latch with an intention to bring crowbar from said house itself establishes that accused No.1 has committed house trespass, which is punishable under Section 448 IPC.



53. Even though, the offence punishable under Section 504 of IPC is alleged against accused No.1, it is only brought in evidence that he abused the deceased in filthy language, but the other ingredients of Section 504 of IPC that he intentionally insulted the deceased and provoked the deceased to breach public peace or to commit any other offence is not established. Hence, acquitting accused No.1 for the offence punishable under Section 504 of IPC is proper.

54. Even though, it is alleged that accused committed house trespass of deceased with an intention to commit the offence punishable with death, as we have come to the conclusion that intention to commit murder is not established and hence, offence under Section 449 of IPC is also not established.

55. The incident took place in the year 2015, 11 years have lapsed. Subsequent to this incident and his release, it is not alleged that he is involved in any criminal



activities. We have convicted him for the offence punishable under Section 304 Part I of IPC. The sentence prescribed for the said offence is either life imprisonment or the sentence of imprisonment, which may extend to 10 years. Since, he has already undergone more than 7 years of imprisonment, we deem it fit that the sentence already undergone by him may be held sufficient, however, the fine imposed can be enhanced.

56. When accused Nos.2 to 6 are acquitted, there is no question of proving the offences under Sections 143, 148 r/w Section 149 of IPC.

57. Accordingly, the following:

ORDER

- i. Criminal Appeal No.100221/2023 filed by the State is ***allowed in part.***
- ii. Criminal Appeal No.100465/2022 filed by the complainant is ***dismissed.***



- iii. The conviction of accused No.1 is modified to 304 Part I of IPC instead of 304 Part II.
- iv. Acquittal of accused Nos.2 to 6 is confirmed.
- v. Accused No.1 is convicted for the offence punishable under Section 304 Part II of IPC and sentenced to the period of sentence already undergone by him, i.e. 7 years 1 month and 20 days. Apart from this, the accused No.1 shall pay fine of Rs.25,000/-, in default to make payment of fine, to undergo further imprisonment for a period of 6 months.
- vi. Accused No.1 is sentenced to undergo simple imprisonment for one year with fine of Rs.1,000/-, in default to undergo simple imprisonment for further period of 15 days for the offence punishable under Section 448 of IPC.
- vii. Both the sentences shall run concurrently.



- viii. Out of the fine amount Rs.20,000/- shall be paid to the P.W.22 – Hawabi Attigeri, the wife of the deceased. The balance Rs.5,000/- shall be credited to the State Exchequer.
- ix. The honorarium of Rs.30,000/- fixed to the Amicus Curiae by this Court on 20.02.2025 shall be paid to him by the High Court Legal Services Committee, Dharwad Bench, Dharwad.
- x. Bail bonds, if any, stands cancelled.

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

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

Sh-para 1-12
Bvv-para 13-36
Rkm-para 37 to end
Ct-mck
list no.: 1 sl no.: 0