

BANNAREDDY & ORS.

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v.

STATE OF KARNATAKA & ORS.

(Criminal Appeal No. 382 of 2018)

MARCH 12, 2018

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[N. V. RAMANA AND S. ABDUL NAZEER, JJ.]

Penal Code, 1860 – ss.148, 341, 504, 326 r/w.149 – Prosecution case that accused No.2 picked up quarrel with P.W-2, thereafter on same day, the accused-appellants armed with weapons attacked P.W-2, P.W.-3 and P.W-5 – Certain witnesses intervened and rescued the complainant-P.W-5 and other victims – Police registered complaint u/ss.143, 147, 148, 323, 324, 341, 307, 504, 506 r/w. 149 filed by P.W-5 – Trial Court held that prosecution failed to prove the alleged offences against the accused beyond reasonable doubt and acquitted the accused persons – However, High Court reversed the order of acquittal and convicted the accused u/ ss.148,341,504, 326 r/w. 149 – On appeal, held: Order passed by the trial Court reaffirmed – High Court should not have re-appreciated the evidence in its entirety, especially when there existed no grave infirmity in the findings of the trial Court – Prosecution case suffers from several contradictions and infirmities e.g. the trial Court rightly pointed out the contradictions in the statements given by P.Ws-1,2 and P.Ws-3,5 regarding the incident of assault and the participation of the accused persons – These contradictions were material ones and cannot be overlooked – No specific assertions could be proved regarding the role and involvement of the accused persons – Further, certain actions of the victim-respondents themselves were dubious, for instance admitting themselves later in a Multi-speciality hospital from a reputed hospital without proper cause – No documents were produced to clarify the same – Medical evidences produced by the victims prove that, they had not sustained any fatal injuries – Prosecution was not able to establish the guilt of the accused persons beyond reasonable doubt.

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Allowing the appeal, the Court

HELD: 1. The trial court has rightly pointed out the contradictions in the statements given by P.W.1 and P.W.2

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A regarding the incident of assault and the participation of the
accused persons. These contradictions are material ones and
cannot be overlooked. [Para 17] [630-D-E]

2. Similarly, after the perusal of the statements of P.W.3
and P.W.5, there exist contradictions with regard to the incident
B and the role played by the different accused persons. The trial
court has correctly arrived at a conclusion on this aspect. Further,
it is to be noted that, although the above witnesses have stated
that there were several eye witnesses to the above incident who
intervened to stop the assault, except P.W.1 and P.W.13, other
witnesses have turned hostile. Apart from the other victims, P.W.1
C remains the sole witness to the said incident, but it is to be noted
that the statements given by all of them are not in conformity
with each other, rather differ on material points regarding the
commission of the act itself. In the light of this, it is not appropriate
to place reliance on these statements. [Para 18] [630-E-G]

D 3. Another major contradiction in the prosecution's version,
as rightly noted by the trial court, is the statement of P.W.14,
who according to the eye witnesses had intervened in the said
fight, as it was happening in the vicinity of his house. But, in clear
contravention to the above version, P.W.14 states that he was
E out of station on the said date and on returning back to the village
at night around 11.00 pm he came to know about the said incident.
[Para 19] [630-H; 631-A]

4. It is to be noted that certain actions of the victims were
inexplicable drawing our suspicion specifically the behavior of
F the victim after the incident. It is an admitted fact that after the
said incident the victims were taken to the Government Hospital.
As P.W.5 sustained simple injuries on his right shoulders thereby
he was not referred for any further treatment. P.W.2 and P.W.3
having sustained injuries in their head were referred to the KIMS
Hospital for further treatment. But the trial court noted that no
G documents or certificate regarding the admission or treatment
of the victims to this effect were placed on record. The trial court
rightly pointed out that P.W.19 who treated the victims both in
the well reputed KIMS Hospital and later in Multi Speciality
Hospital, admitted that KIMS Hospital is well equipped to treat

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the victims, then it is unclear why were the victims asked to shift to Multi Speciality Hospital. No documents were produced to clarify the same. The medical evidences produced by the victims prove that, they had not sustained any fatal injuries. In such circumstances, it is quite suspicious as to why were the victims shifted from KIMS Hospital to Multi Speciality Hospital, particularly, P.W.5, in spite of not being referred by any medical officer got himself admitted to KIMS Hospital and later to Multi Speciality Hospital. The trial court thereby noted that the victims were trying to generate incriminating evidences against the accused appellants. [Para 21] [631-D-H]

5. Coming further to address the guilt of the accused under Section 149, the prosecution has failed to establish the involvement of all the accused persons. Although the overt acts of certain accused such as accused no.1 (Bannareddy), accused no. 2 have been mentioned in the statements of the victims and other witnesses. But no *mens rea* or *actus reus* could be attributed towards the rest of the accused persons to establish their guilt under Section 149 of the IPC. [Para 22] [632-A-B]

6. Keeping in view the facts and circumstances of the case, the prosecution was not able to establish the guilt of the accused persons beyond reasonable doubt. Further, the High Court should not have re-appreciated evidences in its entirety, especially when there existed no grave infirmity in the findings of the trial court. There exists no justification behind setting aside the order of acquittal passed by the trial court, especially when the prosecution case suffers from several contradictions and infirmities. No specific assertion could be proved regarding the role and involvement of the accused persons. Further, certain actions of the victim-respondents themselves are dubious, for instance admitting themselves later in a Multi-speciality hospital without proper cause. [Para 27] [633-C-E]

Sambhaji Hindurao Deshmukh and Ors. v. State of Maharashtra (2008) 11 SCC 186; *Rabindra Kumar Pal @ Dara Singh v. Republic of India*, (2011) 2 SCC 490 : [2011] 1 SCR 929 – referred to.

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Case Law Reference**(2008) 11 SCC 186** referred to **Para 11****[2011] 1 SCR 929** referred to **Para 12**

B CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 382 of 2018.

From the Judgment and Order dated 29.11.2017 by the High Court of Karnataka at Dharwad Bench in Criminal Appeal no. 100108/2014]

H. N. Nagamohan Das, Sr. Adv., C. M. Angadi, B. V. Somapur, Rameshwar Prasad Goyal, Advs. for the Appellants.

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Joseph Aristotle S., Ashish Yadav, N. D. B. Raju, Ms. Krishna Bipin, Uday Dubey, Advs. for the Respondents.

The Judgment of the Court was delivered by

N. V. RAMANA, J. 1. Leave granted.

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2. This appeal by special leave is directed against the judgment dated 29th November, 2017 passed by the High Court of Karnataka, Bench at Dharwad in Criminal Appeal No. 100108 of 2014.

3. Vide impugned judgment, the appellants were convicted in the following manner-

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i. Under Section 148 read with Section 149 of the Indian Penal Code (hereinafter "IPC") were sentenced to undergo a simple imprisonment of 18 months and a fine of Rs. 3,000/-, in default of payment of fine they have to undergo further simple imprisonment for one month;

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ii Under Section 341 read with Section 149 of IPC were sentenced to undergo a simple imprisonment for a period of fifteen days and a fine of Rs. 200/- was imposed, in default of payment of fine they have to undergo further simple imprisonment for a period of one week;

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iii. Under Section 504 read with Section 149 of the IPC and have to undergo simple imprisonment for a period of one year and a fine of Rs. 1000/- was imposed, in default of payment of fine they have to further undergo simple imprisonment for a period of fifteen days;

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iv. Under Section 326 read with Section 149 of IPC, each of the accused were sentenced to further undergo simple imprisonment for a

period of four years and shall pay a fine of Rs. 6000/-, in default of payment of fine to undergo simple imprisonment for a period of two months. A

4. Before we delve into the merits and analysis of the case, it would be trite to refer to the Prosecution's case. On 29.08.2008, when the village fair was ongoing, the accused no-2 (Dharmareddy) picked up quarrel with P.W.2 (Hemaraddi), wherein the second accused threatened to finish P.W.2 (Hemaraddi), but this was pacified with the intervention of the persons present there. On the same day when P.W.5 (Sanjeevareddy), P.W.2 (Hemaraddi) & P.W.3 (Lingareddy) were walking to the house, at around 09:30 pm, the accused persons armed with iron rods, clubs etc. approached them and started abusing them and restrained them. Thereafter, they started assaulting the victims, viz. P.W.5 (Sanjeevareddy), P.W.2 (Hemaraddi) & P.W.3 (Lingareddy). Certain witnesses intervened and rescued the complainant and other victims immediately. As the P.W.2 and P.W.3 were injured, they were taken to Navalgund Government Hospital and later to KIMS Hospital, Hubli, thereafter they were transferred to the Sushruta Multi Speciality Nursing Home. B C D

5. The complainant P.W.5, (Sanjeevareddy) gave a complaint to the police which was registered as Crime No. 194/2008 on 29.08.2008 against the accused under Sections 143, 147, 148, 323, 324, 341, 307, 504, 506 read with 149 of IPC. Thereafter in the morning of 30.08.2008, the clubs and iron rods were recovered from the possession of the accused-appellant Bannareddy in the presence of P.W.6 (Devareddy) and P.W.9 (Fakkirappa). On the same day the bloodstained cloths were recovered from the possession of the accused appellant no. 1 in the presence of panch witnesses. The bloodstained clothes were recovered from the possession of the injured Lingareddy in the presence of P.W.7 & P.W.8. Spot mazhar was conducted and sample of blood stained earth was collected for chemical analysis in the presence of mazhar witnesses. E F

6. The trial Court, after careful perusal of oral and documentary evidence available on record, by judgment dated 18.01.2014, came to the conclusion that the prosecution failed to prove the alleged offences against the accused beyond reasonable doubt. Hence, the accused were acquitted for the offences punishable under Sections 143, 147, 148, 341, 504 and 307 read with 149 of IPC. G

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A 7. Thereafter, the State preferred the appeal before the High Court
in Criminal Appeal No.100108/2014 against the above order of acquittal
passed by the trial Court, wherein the High Court, by reversing the order
of acquittal passed by the trial Court, had convicted the accused under
Sections 148, 341, 504 and 326 read with 149 of IPC. Therefore, being
B aggrieved by the above order of conviction, the accused appellants have
approached this Court.

8. Before us, learned counsel appearing on behalf of the appellants
contended that the prosecution case is full of contradictions and the
material evidence available on record is highly inconsistent and the order
C of the High Court, reversing an order of acquittal, is unsustainable.
Learned counsel has also apprised us about the existence of a
compromise entered into between the parties, but it is not possible under
law to give effect to the same and compound the offence as the offences
charged are not compoundable under Section 320 of Cr.P.C.

D 9. Per contra, learned counsel appearing on behalf of the State
supported the impugned judgment of the High Court convicting the
accused-appellants.

10. Heard both the counsels. As the offences alleged are not
compoundable, notwithstanding the fact that the parties have entered
into a compromise, we will deal with the matter on merits.

E 11. Before we proceed further to peruse the finding of the High
Court, it is relevant to discuss the power and jurisdiction of the High
Court while interfering in an appeal against acquittal. It is well settled
principle of law that the High Court should not interfere in the well
reasoned order of the trial court which has been arrived at after proper
F appreciation of the evidence. The High Court should give due regard to
the findings and the conclusions reached by the trial court unless strong
and compelling reasons exist in the evidence itself which can dislodge
the findings itself. This principle has further been elucidated in the case
of **Sambhaji Hindurao Deshmukh and Ors. vs. State of Maharashtra**,
G (2008) 11 SCC 186, para 13, wherein this Court observed that:

*“.....The High Court will interfere in appeals against
acquittals, only where the trial court makes wrong assumptions
of material facts or fails to appreciate the evidence properly.
If two views are reasonably possible from the evidence on*

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record, one favouring the accused and one against the accused, the High Court is not expected to reverse the acquittal merely because it would have taken the view against the accused had it tried the case. The very fact that two views are possible makes it clear that the prosecution has not proved the guilt of the accused beyond reasonable doubt and consequently the accused is entitled to benefit of doubt.” A
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12. It is not in dispute that the presumption of innocence is further reinforced, reaffirmed and strengthened against the acquitted accused by the judgment in his favor. [Vide **Rabindra Kumar Pal @ Dara Singh vs. Republic of India**, (2011) 2 SCC 490 in para. 94]. C

13. In light of the above well settled principles, we would proceed to examine the evidence and analyze whether the intervention of the High Court in the order of the trial court was justified.

14. At first it is appropriate to have a glance at the statements of certain witnesses. D

15. Siddappa Doddamani, P.W.1, stated that when he was near the temple on the date of the said incident, he saw the accused persons being armed with rods and clubs proceeded towards the victims' house. Hence, he followed them out of curiosity, and saw the accused abusing the victims. During the said quarrel, the accused no.1 assaulted Sanjeevareddy on his shoulders & left leg with a club and accused no.7 (Ramappa) assaulted him with a club by giving a blow on his body. The accused no-2 (Dharmareddy) and accused no.8 (Venkareddy) assaulted P.W.2 (Hemareddy) with an iron rod on his left shoulder and left hand. It was further stated that other accused persons also assaulted the victims. Thereafter he along with P.W.14 (Vardhamangouda), P.W.15 (Sunil), P.W.16 (Yallappa), P.W.4. (Shivareddy), P.W.13- (Manjureddy) & P.W.6 (Devareddy) intervened to rescue the victims. It is pertinent to note that, P.W.1 during his cross examination contradicted the above statements made in his examination-in-chief. E
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16. The victim P.W.2 (Hemareddy) stated that on 29.08.2008, the accused no.2 (Dharmareddy) abused him and threatened to kill him in the evening at around 5 pm near Hanuman Temple, but this was pacified by the intervention of P.W.4 (Shivareddy) and P.W.16 (Yellapa). But again at 9.30 p.m the said accused persons apprehended the victims G

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A near the house of P.W.14 (Vardhamangouda) and started abusing the victims in relation to the pending dispute between the parties. Thereafter, the accused no.9 (Mallareddy) assaulted the complainant-P.W.5 (Sanjeevareddy) but not P.W.2 (Hemareddy). Accused no.1 (Bannareddy) also assaulted Sanjeevareddy on the left palm. Accused
B no.7 (Ramappa) assaulted Sanjeevareddy with a club on his head and other parts of the body. Accused no.3 (Hanamareddy) assaulted Lingareddy on his hands and head with an iron rod. The other accused persons were dragging the victims towards the other accused persons who were armed with clubs, who thereafter assaulted him on his head and body. Accused no.1 (Bannareddy) assaulted Sanjeevareddy on his
C left hand and head with iron rod. P.W.11 (Maktumsab), P.W.16 (Yellapa Halawar), P.W.14 (Vardhamangouda), P.W.1 (Siddappa) along with others came to their rescue. He further stated that, as the victims had sustained injuries, his brother Venkatareddy shifted them to Navalgund General Hospital for treatment, thereafter they were transferred to the KIMS
D Hospital, after being discharged from there, they were admitted in Shushruta Hospital.

17. The trial court has rightly pointed out the contradictions in the statements given by P.W.1 and P.W.2 regarding the incident of assault and the participation of the accused persons. These contradictions are material ones and cannot be overlooked.

E 18. Similarly, after the perusal of the statements of P.W.3 and P.W.5 we note that, there exist contradictions with regard to the incident and the role played by the different accused persons. The trial court has correctly arrived at a conclusion on this aspect. Further, it is to be noted that, although the above witnesses have stated that there were several
F eye witnesses to the above incident who intervened to stop the assault, except P.W.1 (Siddappa) and P.W.13 (Manjureddy), other witnesses have turned hostile. Apart from the other victims, P.W.1 (Siddappa) remains the sole witness to the said incident, but it is to be noted that the statements given by all of them are not in conformity with each other, rather differ
G on material points regarding the commission of the act itself. In the light of this, it is not appropriate to place reliance on these statements.

19. Another major contradiction in the prosecution's version, as rightly noted by the trial court, is the statement of P.W.14 (Vardhamangouda), who according to the eye witnesses had intervened

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in the said fight, as it was happening in the vicinity of his house. But, in clear contravention to the above version, P.W.14 states that he was out of station on the said date and on returning back to the village at night around 11.00 pm he came to know about the said incident. A

20. Although motive becomes irrelevant in the presence of direct evidences, however, the prosecution has submitted that the accused and victims were from different political parties, and political rivalry may be the motive behind the assault. Although the victims were followers of P.W.14- (Vardhamangouda), who was the chairman of the panchayat at the time of incident, but surprisingly he has not supported the case of the prosecution. Further it is to be noted that, there existed prior enmity between the accused- appellants and the complainant victims regarding boundary of their land. The dispute has been continuing for the past 10-15 years which could not be resolved even with the intervention of the other villagers. B C

21. It is to be noted that certain actions of the victims were inexplicable drawing our suspicion specifically the behavior of the victim after the incident. It is an admitted fact that after the said incident the victims were taken to the Government Hospital, Navalgund. As P.W.5 (Sanjeevareddy) sustained simple injuries on his right shoulders thereby he was not referred for any further treatment. P.W.2 and P.W.3 having sustained injuries in their head were referred to the KIMS Hospital, Hubli for further treatment. But the trial court noted that no documents or certificate regarding the admission or treatment of the victims to this effect were placed on record. The trial court rightly pointed out that P.W.19 (Dr. Mithun Sattur) who treated the victims both in the well reputed KIMS Hospital and later in Shushruta Hospital, admitted that KIMS Hospital is well equipped to treat the victims, then it is unclear why were the victims asked to shift to Shushruta Hospital. No documents were produced to clarify the same. The medical evidences produced by the victims prove that, they had not sustained any fatal injuries. In such circumstances, it is quite suspicious as to why were the victims shifted from KIMS Hospital to Shushruta Multi Speciality Hospital, particularly, P.W.5 (Sanjeevareddy), in spite of not being referred by any medical officer got himself admitted to KIMS Hospital and later to Shushruta Multi Speciality Hospital. The trial court thereby noted that the victims were trying to generate incriminating evidences against the accused appellants. D E F G

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A 22. Coming further to address the guilt of the accused under Section
149, the prosecution has failed to establish the involvement of all the
accused persons. Although the overt acts of certain accused such as
accused no.1 (Bannareddy), accused no. 2. (Dharmareddy) have been
mentioned in the statements of the victims and other witnesses. But no
B *mens rea* or *actus reus* could be attributed towards the rest of the accused
persons to establish their guilt under Section 149 of the IPC.

23. The trial court has correctly observed that, the statements
made by the mazhar witness regarding recovery of material cannot be
relied on, as they have turned hostile. Even the recovery of the blood
C stained mud seems conspicuous considering the fact that, the given date
of incident was admitted to be drizzly and thousands of devotees had
come to witness the fair. In such circumstances, it is very unlikely that,
the blood samples could have been collected the next day.

24. The High Court has relied upon the statement of P.W.3, wherein
he stated that, rest of the accused were dragging the injured to assist the
D other accused persons with weapons to assault them. This allegation is
very wide and made in vague manner, the same is not supported by any
other evidence. It will not be appropriate to rely upon the evidence of
victims solely to prove the culpability of the accused persons. Therefore
the trial court has correctly held that, when any overt act could not be
E associated with these accused, provisions of Section 149 IPC will not be
attracted.

25. The High Court has failed to take note of the fact that the
panchas to the seizure panchanama have turned hostile. Although the
investigating officer seized weapons which were identified by the victims
and certain eyewitnesses, however, it is pertinent to note the all the
F witnesses have turned hostile except P.W.1 and P.W.13. Although P.W.1
(Siddappa) in his cross-examination stated that he could recognize the
weapons in M.O.No.1 and No.2 as he has seen them, but contradicted
his own statement by stating that he could not say any special features
of the weapons used in the offence. Further P.W.13 also recognized the
G weapons as the same used in the assault. But it must be noted that,
P.W.13 seems to be an interested witness considering his relationship
with P.W.3. In such circumstances, wherein the panch witnesses have
turned hostile, it is not safe to rely upon the recovery of these weapons
to substantiate the guilt of the accused persons. Further we are suspicious

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about the collection of blood samples, especially when it is an admitted fact that the incident took place on a mud road when it kept drizzling throughout and additionally thousands of devotees were present in the village attending the fair. In the light of such circumstances, the collection of blood samples seems unlikely. A

26. In the present case, when the facts as to the incident and the role of the accused could not be proved beyond reasonable doubt, whether the motive behind the same is dispute regarding boundary wall or political rivalry becomes irrelevant. B

27. Keeping in view the facts and circumstances of the case, we hold that the prosecution was not able to establish the guilt of the accused persons beyond reasonable doubt. Further, the High Court should not have re-appreciated evidences in its entirety, especially when there existed no grave infirmity in the findings of the trial court. There exists no justification behind setting aside the order of acquittal passed by the trial court, especially when the prosecution case suffers from several contradictions and infirmities. No specific assertion could be proved regarding the role and involvement of the accused persons. Further, certain actions of the victim-respondents themselves are dubious, for instance admitting themselves later in a Multi-speciality hospital without proper cause. It has further come to our notice that respondents have already compromised and have executed a compromise deed to that extent, though the same is not the basis for our conclusion. C
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28. Therefore, we set aside the conviction order passed by the High Court and reaffirm the order of acquittal passed by the trial court. The appellants are to be released from custody forthwith.

29. The appeal is allowed accordingly. Pending applications, if any, shall also stand disposed of. F