

**IN THE HIGH COURT OF KARNATAKA,
CIRCUIT BENCH AT GULBARGA**

DATED THIS THE 29th DAY OF JUNE, 2010

BEFORE

THE HON'BLE MR. JUSTICE B V PINTO

CRL.A. NO.835 OF 2006

BETWEEN

1. SHIVAKANTAPPA,
S/O BHEMMSHYA BENNURKAR,
AGED 48 YEARS,
OCC. AGRICULTURE,
R/O BENNUR (B).

2. GOUTAM,
S/O SHIVAKANTHAPPA
BENNURKAR,
AGED ABOUT 22 YEARS,
OCC. AGRICULTURE,
R/O BENNUR (B).

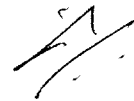
3. SANJEEVKUMAR,
S/O SHIVAKANTHAPPA BENNUKAR,
AGED ABOUT 20 YEARS,
OCC. AGRICULTURE,
R/O BENNUR (B).

...APPELLANTS

(BY SRI BABURAO MANGANE, ADV.,)

AND

STATE THROUGH SHAHABAD (R)



POLICE STATION.

...RESPONDENT

(BY SRI SHARANABASSAPPA K BABSHETTY, HCGP)

THIS CRL.A. IS FILED UNDER SECTION 374 CR.P.C. AGAINST THE JUDGEMENT DT. 23.3.2006 PASSED BY THE IV ADDL. S.J., GULBARGA IN S.C. NO.56/2006.

THIS CRL.A. COMING ON FOR FINAL HEARING, THIS DAY THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

This appeal is filed challenging the order of conviction and sentence passed by the 4th Addl. Sessions Judge, Gulbarga, in S.C. No.56/06 by judgment dated 23.3.2006 convicting the appellants for offences under Section 324 r/w Section 34 IPC and sentencing them to simple imprisonment for six months and further convicting them for offence under section 307 IPC r/w Section 34 IPC and sentencing them to S.I. for three years and to pay a fine of Rs.5,000/- each. Further sentencing the first appellant for offence under



Section 341 IPC and sentencing him to pay a fine of Rs.500/- for the said offence with default clause.

2. The case of the prosecution is to the effect that on 18.5.2004 at 4.15 p.m. near the houses of Ashraya yojana on the main road in Bennur (B) village in furtherance of their common intention appellant No.1 caused hurt to Revanasiddappa - complainant by dangerous weapon like iron rod and stone and appellant No.1 caused voluntary hurt to CW.4 by dangerous weapon like stone and knife and thereby all of them have committed offence under Section 324 r/w Section 34 IPC. It is further alleged that on the said place, date and time with the common intention have wrongfully restrained the complainant while going to his land. Thereby appellant No.1 is alleged to have committed offence under Section 341 IPC. It is further alleged in the complaint that on the said place, date and time in furtherance of their common intention the



appellant abused CW.1 Revanasiddappa and CW.4 in vulgar language with an intention to provoke the breach of peace. Thereby they are alleged to have committed offence under Section 504 IPC r/w Section 34 IPC. It is further charged against them that on the said place, date and time they have threatened CW.1 and CW.4, thereby they are alleged to have committed offence under Section 506(2) r/w Section 34 IPC. It is also charged against them that on the said date, place and time the appellants have assaulted CW.1 Revanasiddappa and CW.4 with iron rods, knife and stones under such circumstances that if by that act they would have caused the death of CW.1 and CW.4 they would have been guilty of murder, thereby they are charged for offence under Section 307 r/w Section 34 IPC.

3. In order to bring home the guilt of the accused prosecution examined in all 8 witnesses and got marked



Exs.P.1 to P.7 and also produced M.O.s 1 to 8. The defence of appellant was one of total denial. Thereafter after recording the statement under Section 313 Cr.P.C. the learned Sessions Judge was pleased to convict the appellants and sentenced them as hereinbefore mentioned. It is this order of conviction and sentence that is challenged by the appellants in this case.

4. PW.1 is the injured complainant Revanasiddappa. He has stated that about one year ten months back at about 1 p.m. when he was going to his land in a tractor to bring fodder alongwith Ambu Bai and Nagmma, accused No.1 came in his motorcycle in the opposite direction and stopped his vehicle in front of the tractor. When the complainant requested appellant No.1 to take back the motor cycle the appellant No.1 started abusing him. Two persons by name Siddaramappa and Maruti came and pacified the incident. Thereafter at 4.00 p.m. on the same day when



the complainant alongwith others came to Ashraya colony, the appellants came in a hero honda motorcycle and appellant No.1 assaulted him with iron rod on his forehead. Appellant No.2 tried to assault with knife on his back. When he tried to escape the said blow, he was hit on the backside. Appellant No.3 dragged knife from the hands of appellant No.2 and at that time CW.4 Ambu Bai started shouting by seeing it. Thereafter all the accused threatened to her life and accused Goutam assaulted her with stone. Accused Shivakantappa assaulted him with the stone. He sustained bleeding injuries. At that time Maruti and Siddaramappa who were present there took him to the hospital. He has identified the M.O.s seized and produced before Court. PW.3 Ambu Bai is also another eye witness. She was also injured in the incident. Her version regarding the incident fully corroborates the evidence of PW.1 in so far as the assault on herself and PW.1 is concerned. PW.4 Nagamma is also another eye witness, whose version is



similar to that of PWs.1 and 3. PW.5 Maruti is also an eye witness, who has also specifically stated that appellant No.1 assaulted PW.1 with rod and knives. PW.6 is a witness for seizure mahazar EX.P.4. PW.7 is the P.S.I. who has registered the case and investigated the matter and filed the chargesheet. PW.8 – the doctor has given evidence to the effect that he has examined PW.1 and found three injuries on his person and all the three injuries are simple in nature. It is from the above evidence that the learned Sessions Judge has found the appellants guilty of the offence mentioned above and convicted them.

5. Heard Sri Baburao Mangane, learned counsel for the appellant and Sri Sharanabassappa K Babshetty, learned HCGP for State.

6. The learned counsel for the appellant submits that the evidence of the prosecution witnesses is not clear in so far as the motive is concerned. There is



practically no motive for the incident in this case. It is a fight regarding going on the road that has caused this incident. Further he submits that there is absolutely no evidence to show that the appellants have any intention to commit the murder of PW.1 or PW.3 who are injured in the case. So far as the Section 341 is concerned, there is no proper material to show that the appellants have restrained the witnesses from going further. It is elicited from the I.O. that there is a counter case registered in Crime No.69/04 in respect of the said incident and therefore the prosecution has not come up in clean hands and hence they deserve to be acquitted.

7. The learned HCGP submits that there is full corroboration of the version of PW.1 and PW.3 so also PW.4 and PW.5. All these four witnesses have stated that the appellants have caused injuries by means of weapon and that the weapons used are dangerous in nature. But for the medical treatment the injured



would have succumbed to their injuries and hence he submits that the conviction of the appellants for the said offence is proper.

8. It is seen that in the evidence of PWs 3 and 5 there is no whisper of the appellants intending to cause death or cause such bodily injury as is likely to cause death of PW.1 or PW.3. The motive is very feeble and hence under the circumstances having regard to the evidence of PW.8 doctor saying that the injuries are simple in nature, I am of the opinion that the prosecution has not established the offence under Section 307 IPC beyond reasonable doubt. Hence they are entitled for an order of acquittal for offence under Section 307 IPC. In so far as the offence under Section 324 is concerned the prosecution has produced enough cogent and clear materials before the Court and I am of the opinion that having regard to the evidence of doctor PW.8 and the nature of weapons used by the appellants



and the eye witness account; the prosecution has established that the appellants have committed an offence under Section 324 IPC and therefore I hold that the conviction of the appellants for offence under Section 324 r/w Section 341 IPC is proper. Further the version in the F.I.R. regarding the weapons and the overtacts against all the three appellants is proved by the evidence of the witnesses and also the medical evidence. Hence the submission of the learned counsel for appellant that the prosecution has failed to establish this offence cannot be sustained. In so far as the finding of the trial court on offence under Section 341 is concerned, I am of the opinion that in a village when people meet each other the notion of unlawful restraining one person will not arise and there is no cogent evidence to this effect. Hence I am of the opinion that there is a reasonable doubt regarding commission of offence under Section 341 IPC is concerned.



9. So far as the sentence for the offence under Section 324 IPC is concerned, having regard to the date of offence and having regard to the fact that the appellants are father and sons and the incident has occurred only in respect of moving the tractor on a road and that there is no serious illwill or motive in the incident and also of the fact that there was a counter case against the witnesses in this case the sentence of imprisonment for the said offence is excessive in nature. I am of the opinion that since Section 324 IPC is punishable with imprisonment or fine the sentence of fine of Rs.5,000/- each would meet the ends of justice. Hence the following order.

O R D E R

Appeal is allowed in part. Order of conviction and sentence imposed on the appellants for the offence under Section 307 IPC r/w Section 34 IPC is hereby set aside. Similarly conviction for the offence under Section



341 IPC against first appellant is hereby set aside. Appellants are acquitted of the said offences. Appellants are convicted for the offence under Section 324 IPC and they are sentenced to pay a fine of Rs.5,000/- each for the said offence. It is seen from the records that the appellants had already deposited the fine amount before the Court. The said amount shall be appropriated to the State. Bail bonds executed by the appellants are set aside. A sum of Rs.500/- which is the excess fine paid by appellant No.1 is directed to be refunded to him.

**Sd/-
JUDGE**

YKL/-