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IN THE HIGH COURT OF KARNATAKA  
CIRCUIT BENCH AT DHARWAD

DATED THIS THE 30<sup>TH</sup> DAY OF NOVEMBER, 2011

PRESENT

THE HON'BLE MR.JUSTICE MOHAN SHANTANAGOUDAR

AND

THE HON'BLE MR.JUSTICE RAVI MALIMATH

CRIMINAL APPEAL NO.2596/2010

**BETWEEN:**

State of Karnataka  
By Sub-Inspector of Police  
Represented by Additional  
State Public Prosecutor  
Advocate General Office,  
High Court  
Circuit Bench Unit,  
Dharwad.

.. Appellant

( By Sri V.M.Banakar, Addl.SPP )

**AND:**

Lokanna  
S/o Giriyappa Bhovi,  
Aged about 28 years,  
Occ: Coolie,  
R/o.Lokapur,  
Taluk: Mudhol,  
District : Bagalkot.

.. Respondent

( By Sri Jagadish Patil & Sri Siddu Sajjan, Advocates )

This criminal appeal is filed under Section 378(1) & (3) Cr.P.C. praying to set aside the judgment and order of acquittal of accused dated 30.09.2009 passed by the learned Sessions Judge in S.C.No.20/2007 for the offences punishable under Sections 323, 324, 307 and 504 of IPC.

This criminal appeal coming on for hearing, this day **MOHAN SHANTANAGOUDAR, J.**, delivered the following:-

J U D G M E N T


The State has filed this appeal against the judgment and order of acquittal passed by the Fast Track Court, Jamkhandi, in Sessions Case No.20/2009. The sole accused-respondent herein was charged with offences punishable under Sections 323, 324, 307 and 504 of IPC.

2.The case of the prosecution is that : there was ill-will between accused and PW-1 in the matter of laying a gutter near the house of PW-1. Accused wanted to form a gutter in order to drain out the left over water, for that PW-1 objected. Both the houses of the accused and PW-1 are adjoining each other. At about 4.30 p.m. on 23.6.2007, accused being enraged with the said act of PW-1 objecting for digging the earth for formation of gutter,



assaulted PW-1 with axe after abusing him in filthy language. PW-1 cried for help. The sons of PW-1 i.e., PWs.3 to 6 came to the spot. They were also assaulted by the accused with the axe. Consequent upon which, PW-1 and PWs.3 to 6 have sustained simple injuries. Complaint is lodged by PW-1 as per Ex.P-1 on the very date of the incident before Lokapur Police Station, which came to be registered in Crime No.92/2007. The police after investigation, laid the charge sheet.

3.In order to prove its case, the prosecution in all examined 10 witnesses and got marked 10 documents and 3 material objects. On evaluating the material on record and after hearing, the trial Court acquitted the accused on the ground that the injured, as well as the eye witnesses are partisan witnesses; that the injured have taken treatment prior to lodging of the complaint; the motive is not proved and it is impossible for one man to assault five persons. All these reasons assigned by the Court below cannot be sustained under the facts and circumstances of the case.



4. Sri. Banakar, learned Additional State Public Prosecutor argues that the evidence of PWs.-1 and 3 to 6 cannot be disbelieved by no stretch of imagination inasmuch as they are injured eyewitnesses. Their evidence is consistent and cogent; that the evidence of the injured is supported by the evidence of PWs.7 and 8 who are eyewitnesses to the incident; that the evidence of the injured is fully supported by the medical evidence. Thus, according to him, the order of acquittal passed by the Court below is unjustified.

5. Per contra, Sri. Jagadish Patil, learned counsel appearing on behalf of the respondent argues in support of the judgment of the Court below.

6. PW-1 is the complainant. He lodged the complaint as per Ex.P-1. He has suffered injuries in the incident in question. His wound certificate is at Ex.P-7. PW-2 is the mahazar witness for scene of offence panchanama and seizure panchanama-Ex.P-2. PWs 3 to 6 are the sons of PW-1. They are also injured in the incident. Their wound certificates are at Exs.P-8, P-3, P-4, P-9, P-5

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and P-6 respectively. PWs.7 and 8 are the eyewitnesses to the incident. PW-9 is the doctor who treated all the injured at the first instance and issued wound certificates. Thereafter the injured are taken to Kerudi Hospital at Bagalkot. PW-10 is the investigating officer.

7. The complaint is lodged immediately after the incident. The complaint narrates the incident meticulously. It also narrates the motive relating to the incident. The complaint reveals that the accused assaulted PW-1 with an axe and after hearing the cries of PW-1, his sons-PWs.-3 to 6 came to the spot and they were also assaulted by the accused. The version found in Ex.P-1 is fully supported by the evidence of PW-1-complainant. He has deposed at par with the averments made in Ex.P-1. As aforementioned, he is an injured person. He has taken treatment with PW-9. Wound certificate of PW-1 is at Ex.P-7. Though, PW-1 is subjected to cross-examination at length, nothing worth is elicited to discard his evidence.

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8. The evidence of PW-1 is supported by the evidence of PWs.3 to 6. They are the sons of PW-1. They have also deposed about the assault by the accused on PW-1 and on themselves. We find that the evidence of PWs.1 and 3 to 6 is consistent, cogent and reliable. Merely because PWs.3 to 6 are the sons of PW-1, their evidence cannot be brushed aside particularly when they are the injured eyewitnesses. Though the evidence of these injured eyewitnesses is consistent, cogent and reliable, the trial Court did not rely upon the evidence of these witnesses on the ground that they are the sons of PW-1 and that they are interested witnesses. It is very strange to note that the trial Court has acquitted the accused on the ground that the accused could not have assaulted 5 persons at a stretch.

9. The evidence of PWs.1 and 3 to 6 is supported by the evidence of the eyewitnesses PWs.7 and 8. They have also deposed at par with the evidence of PWs.1 and 3 to 6. Their evidence is disbelieved on the ground that they are belonging to the same community as that of the



complainant. PWs.7 and 8 are neighbours and their presence over the scene of offence is natural and it cannot be said that they are planted witnesses. It is but natural to find a particular community people in one area in the village. Merely because PWs.7 and 8 belong to the same community as that of PW-1, their evidence cannot be doubted.

10. The accused was holding an axe. He has wielded the axe, consequent upon which, PWs.3 to 6 have sustained certain simple injuries. Since the accused was armed with heavy weapon, it is but natural that the injured witnesses could not have over powered him. Even if they have over powered the accused, the injured witnesses would have received at least some simple injuries in the scuffle.

11. The case of the prosecution is further supported by the evidence of the Doctor PW-9, who has treated all the injured witnesses and issued wound certificates. He has deposed about the treatment given by

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him and on examination of the injured witnesses, he found that the injuries sustained by the injured are fresh and simple in nature. The axe is seized from the spot under the panchanama Ex.P-2. Mahazar witness for Ex.P-2(PW-2) has supported by the case of the prosecution. Hence, the seizure of axe from the spot is also proved. Since the accused has assaulted the injured with an axe and as the injured have sustained simple injuries, it can be safely concluded that the accused has committed an offence punishable under Section 324 of the Indian Penal Code.

12. In view of the aforementioned facts, we are of the considered opinion that the view taken by the trial court in acquitting the accused cannot be sustained.

13. We do not find any motive or intention on the part of the accused to commit murder of any of the assailants. The incident has occurred at the spur of moment. It seems the accused has picked up an axe only with a view to prevent PW-1 from his action of prohibiting the accused to form the gutter. If really, the accused had the intention to commit murder of either PW-1 or any

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other injured witnesses, he would not have left the matter as it is, inasmuch as, he was holding a deadly weapon like an axe. Having regard to the nature of the injuries suffered by the victims, we are of the opinion that the prosecution has not made out a case for an offence under Section 307 of the Indian Penal Code.

14. We have heard Sri. Jagadish Patil on the point of imposing sentence. He brings to the notice of this Court that the accused has suffered imprisonment for about 25 days prior to his release on bail. He further argues that the injuries sustained by the victims are simple in nature and therefore the imprisonment suffered by the accused would be sufficient punishment in the facts and circumstances of the case.

15. We find justification in the submission of the Sri. Jagadish Patil. Since the injuries suffered by the injured are simple in nature and as the incident has occurred at the spur of moment that too for a frivolous reason between the neighbours, we are of the considered opinion that the imprisonment suffered by the accused

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would be the sufficient imprisonment that can be imposed in the facts and circumstances of the case. Accordingly, the following order is made:

- a. The judgment and order of acquittal passed by the Court below acquitting the accused for the offences under Sections 323, 307 and 504 of Indian Penal Code stands confirmed. However, the judgment and order of acquittal acquitting the accused for the offence under Section 324 stands set aside.
- b. The accused is convicted for an offence under Section 324 of the Indian Penal Code. The period of imprisonment already undergone by the accused would be sufficient sentence of imprisonment. Hence, it is clarified that the accused shall not undergo imprisonment any further.

The appeal stands allowed in part accordingly.

Sd/-  
JUDGE

Sd/-  
JUDGE

bk/- & kmv