Malappa @ Mallikarjun Vs. The State of Karnataka, rep by Additional State Public Prosecutor

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Court : Karnataka Kalaburagi

Decided On : Jun-29-2016

Judge : Anand Byrareddy &Amp; L.Narayana Swamy

Appeal No. : Criminal Appeal No. 3742 of 2010 c/w Criminal Appeal No. 3509 of 2011

Appellant : Malappa @ Mallikarjun

Respondent : The State of Karnataka, rep by Additional State Public Prosecutor

Judgement :

(Prayers: This Criminal Appeal is filed Under Section 374 (2) of Code of Criminal Procedure, 1973, praying to call for records in S.C. No.123/2009 and 134/2009, peruse the same, allow this appeal and set aside the judgment and order of conviction and sentence dated 28.10.2010 passed in S.C. No.123/2009 and 134/2009 on the file of the I Additional Sessions Judge Gulbarga, convicting the appellant/Accused No.2 and 3 in S.C. No.123/2009 and accused in S.C. No.134/2009 are convicted for the offence under Sections 147 and 148 of Indian Penal Code and ordered to pay fine amount of Rs.500/- each on each of the offences and in default to undergo S.I. for a period of three (3) months and sentence to undergo simple imprisonment for a period of six (6) months.

This Criminal Appeal is filed Under Section 374 (2) of Code of Criminal Procedure, 1973, praying to set aside the conviction and order of sentence dated 28.10.2010 passed in Sessions Case No.123/2009 on the file of the I Additional Sessions Judge at Gulbarga, convicting the appellants/accused No.2 and 3 for the offences Punishable Under Sections 147, 148, 504, 506 and 302 read with section 149 of Indian Penal Code. Further convicting the appellants/ accused No.2 and 3 for the offence Punishable Under Sections 147 and 148 of Indian Penal Code and order to pay fine amount of Rs.500/- each on each of offences and in default to undergo S.I. for a period of three months and sentence to undergo S.I. for a period of six months for each of the offences further the appellants/accused No.2 and 3 are convicted for the offence Punishable Under Section 302 of Indian Penal Code and order to pay fine amount of Rs.5,000/- each and in default to undergo S.I. for a period of one year and to under go life imprisonment. Further the appellants/accused No.2 and 3 are convicted for the offence Punishable under section 504 of Indian Penal Code and order to pay fine amount of Rs.500/- each and in default to undergo S.I. for a period of six months. Further the appellants/Accused No.2 and 3 are convicted for the offence Punishable Under Section 506 of Indian Penal Code and order to pay fine amount of Rs.500/- each and in default and undergo S.I. for a period of three months and sentence to undergo S.I. for a period of six months.)

Anand Byrareddy, J.:

1. Heard the learned counsel for the appellant. There were six accused before the court below. Accused no.1 is no more. Accused nos.2 and 3 have filed the appeal in Crl.A.3509/2011. Accused nos.4 and 5 are absconding. Therefore, the case against them has been split up and said to be pending before the court below. The appeal in Crl.A.3742/2010 is filed by accused no.6.

2. The case of the prosecution, briefly stated, are as follows:-

It is stated that the complainant s elder brother, namely, Sanjeevkumar had proposed to purchase a site from one Vittal Pujar, PW.4. The proposed purchase was opposed by Babu Pujari, accused no.1. He had also threatened the complainant with dire consequences if he continued to complete the transaction. It

is found that on 13.10.2008, the deceased Sanjeevkumar had gone to Tadakal village to make purchase and returned to Tambakwadi by 4 p.m. and he had proceeded towards his land to harvest bajra crop, on the footing that it was an auspicious time to ceremoniously commence harvesting without actually harvesting the crop. And on his way, he had visited kirana shop, where the complainant was present and he told him that he was going to the land to commence ceremonious harvesting of the bajra crop as it was a very auspicious time.

3. It is stated that when the complainant and his cousin Gurulingappa reached the land, they saw accused persons quarrel with the deceased and they heard a shout to the effect that (Kannadam) (Bastard Sanjya has grown insolent and he was interfering in every matter and today we have the opportunity to finish him). Saying so, according to the complainant, accused no.1 Babu Pujari assaulted Sanjeevkumar on the backside of his head with koita and caused bleeding injuries. Accused no.2 Shivanand had assaulted with an axe on the front side of his neck and accused no.4 had assaulted again on the back of his neck with a sickle. Accused no.3 Ramesh Hadapad assaulted with koita on the right hand and palm of the deceased and cut off his fingers and had also assaulted on the lips of the deceased and caused injuries. Accused no.5, Annappa Jawali is said to have assaulted with koita on his right shoulder and caused bleeding injuries and accused no.6 had also assaulted with koita on the left shoulder of the deceased.

4. It is further stated by the complainant that on being so assaulted by all the six accused, Sanjeevkumar had fallen to the ground while shouting (Kannadam) (I am dead). When the complainant and his cousin tried to intervene to save and protect the deceased, accused are said to have threatened them with words (Kannadam) (Hey; bastards, if you try to rescue, we will take your lives like Sanjya). Therefore, the complainant Gurulingappa had refrained from going towards Sajeevkumar and could not save him.

The accused had thereafter left the scene. Since adjoining land owners had also heard the commotion, were also observing the accused. The accused had run away. This had occurred, according to the complainant, at 5.30 p.m. Thereafter,

the complainant and Gurulingappa had shifted Sanjeevkumar to the Government Hospital at Aland in a jeep for treatment. The doctor there had provided first aid and advised them to shift Sanjeevkumar to Gulbarga, for further treatment and while they were making arrangements to shift him, Sanjeevkumar is said to have died. This was around 8.30 p.m. The Police were then informed about the incident and the Police had then registered a case and investigated the same and had filed a charge sheet against the accused for offences punishable under sections 147, 148, 504, 506 and 302 read with Section 149 of the Indian Penal Code, 1860 (Hereinafter referred to as the IPC , for brevity) .

5. The presence of the accused was said to have been secured and the matter had been committed to the Court of Sessions. The Court of Sessions had numbered the case as SC 123/2009 as against accused nos.1 to 3 and as against accused no.6, in SC No.134/2009. The case was split up against accused nos.4 and 5. The court has thereafter proceeded to frame charges in the two aforesaid cases against accused nos.1 to 4 and accused no.6.

6. The accused having pleaded not guilty and having claimed to be tried, the prosecution had tendered evidence of 25 witnesses and marked several exhibits and material objects in support of its case.

7. On behalf of the defence, portions of the statements of the prosecution witnesses were marked as Exhibit D.1 to D.9 and the Certificates issued by the doctor, PW.22, who initially provided first aid to Sanjeevkumar was confronted to him in his cross-examination and the same was marked as Exhibit D.10.

8. On the basis of the evidence so recorded, and after recording the statement of the accused under Section 313 of the Code of Criminal Procedure, 1973, the court below had framed the following points for consideration:

1. Whether the prosecution proves the homicidal death of Sanjeevkumar?

2. Whether prosecution proves beyond all reasonable doubt that on 13.10.2008 at about 5.30 a.m., in the land bearing Survey No.777 situated at Tambakwadi the accused persons alongwith split up accused persons held deadly weapons and

formed an unlawful assembly in prosecution of their common object and thereby committed an offence punishable under Sections 147 and 148 read with section 149 of the Indian Penal Code, 1860?

3. Whether prosecution further proves beyond all reasonable doubt that on the above said date time and place, accused persons alongwith split up accused persons in prosecution of their common object have intentionally insulted deceased Sanjeevkumar by abusing him in filthy language and thereby committed an offence punishable under section 504 read with section 149 of the IPC?

4. Whether the prosecution further proves beyond all reasonable doubt that on the above said date time and place, accused persons alongwith split up accused persons in prosecution of their common object have intentionally threatened the deceased Sanjeevkumar to take away his life and thereby committed an offence punishable under Section 506 read with Section 149 of the IPC?

5. Whether the prosecution further proves beyond all reasonable doubt that on the above said date, time and place, the accused persons alongwith split up accused persons in prosecution of their common object, assaulted Sanjeevkumar with sickles and axe and intentionally caused the death of Sanjeevkumar and thereby committed an offence punishable under section 302 read with section 149 of the IPC?

9. The court below has answered all the points in the affirmative and convicted accused nos.2 and 3 for the offence punishable under Section 302 of the IPC and sentenced to undergo life imprisonment and to pay fine a of Rs.5,000/- each.

10. It is to be noticed here that there is an inadvertent but a serious error, committed by the Court below in the operative portion of to judgment and while sentencing the accused it is restricted the accused No.2 and 3 whereas the findings are against accused No.6 as well. Therefore, the non-inclusion of accused No.6 while sentencing is an inadvertence that we will have to overlook having regard to the findings in the body of the judgment as to accused No.6 also having been found guilty. We proceed on the basis notwithstanding that the operative portion of the judgment pertaining to the sentence does not include accused No.6,

as in fact including him since an appeal has been preferred as understood by the accused No.6 himself, that he was also convicted. Hence, no doubt, that there is an inadvertence committed by the Court below which could be attributed to a clerical error committed by the Court. Accordingly, we proceed on the basis that even accused No.6 has been convicted along with accused No.2 and 3 when he continues to be in judicial custody. Therefore, the punishment imposed on accused No.2 and 3 for the various offences punishable under the several provisions that are invoked, would equally apply to accused No.6 also.

11. It is that judgment which is challenged in these appeals. The learned counsel appearing for the appellants would commonly contend that the prosecution had examined several so called eye-witnesses in support of their case that the accused had attacked the deceased together and had caused the injuries as a result of which he had died. All these several eye-witnesses who include the owners of the adjoining lands on which the deceased was said to have been done to death, had all turned hostile and had not supported the case of the prosecution. Therefore, the only eye-witnesses whose testimony has been accepted by the Court below is that of PWs.12 and 13. PW12 is the direct brother of the deceased-Pujari, whereas PW13 was his cousin. According to the prosecution, the deceased after having returned from the Market, had decided to symbolically commence the harvest of the bajra crop on their land and for that purpose he had left home and had informed his brother PW12, who was at the kirana shop which they own, that he was proceeding to the land to symbolically commence the harvest of bajra crop and it is claimed that PW2 had stated him that he would follow him to the land and he had later done so along with Gurulingappa-PW13. It is a coincidence that just when they arrived at the land, which was about one and a half kilometre from their village, and according to the witness, it would take about ten minutes to reach the land, the coincidence that they came upon the same as the accused were accosting the deceased and shouting at him in the words that had already been narrated hereinabove and proceeded to attack him and that on their attempt to intervene while continuing to attack the deceased, PW12 and PW13 were threatened that if they came to the victim s rescue, they would also meet the same fate. After each of the accused had attacked the deceased in the manner that has been narrated and caused injuries which were inflicted on the victim, and on

seeing the other neighbouring land owners also arriving on the scene, the accused are said to have fled from there. Therefore, when the case of the prosecution is sought to be supported by closely related witnesses of the deceased, it is settled law that the trial court ought to have scrutinised the evidence with much circumspection, especially, when other eye-witnesses had turned hostile and had resiled from their original statement to support the case of the prosecution merely on the testimony of blood relatives, would require the court to proceed with extreme caution and care in accepting the case of the prosecution.

12. The learned counsel would point out that the further sequence of events cast serious suspicion about their very presence on the scene. First of all, the learned counsel would contend that there was no reason for the witnesses PW 12 and 13 to follow the deceased to the land and even if it was in order to witness a symbolic commencement of harvesting the bajra crop, the time of the day at which the incident had occurred is again lost in ambiguity, for the statement of witnesses as to time of the incident varies. The Trial Court having noticed this variance in the time of the incident has characterised it as being attributable to the fact that the witnesses were rustic witnesses and could not be accurate about the time. Secondly, it is pointed out that immediately after the incident, PWs.12 and 13 have claimed that they have removed the body from there and carried it to the hospital in a jeep. It is also stated that, firstly, they carried the body to the gate of the village and thereafter procured the assistance of a jeep to carry the body to Aland Hospital. Therefore, this inconsistency is also not reconciled. Assuming that the jeep was in fact utilised, either from the land of the deceased to the hospital or from the village gate to the hospital, it was incumbent on the prosecution to have supported this circumstance by examining the jeep driver. No such endeavour was undertaken; and if the deceased having suffered at least ten serious injuries and was profusely bleeding, if he had been carried in a jeep, it was further incumbent to secure such evidence of blood which would have definitely spilt in the jeep, to match the allegation of the prosecution as to the manner in which the deceased was carried to the hospital. It is further, pointed out that at Aland Hospital, the Medical practitioner present had stated that the deceased was in a serious condition and that he should be taken to a better hospital for better treatment and that he had only offered to provide first aid and had called upon PWs.12 and 13 to

take him directly to a larger hospital and while they were making preparations to move to a hospital at Gulbarga, the deceased is said to have died.

13. This sequence of events the learned counsel would submit, is not supported by any independent witnesses and it is the self-serving testimony of PWs.12 and 13 merely to implicate the accused.

14. Significantly, in the First Information Report that was lodged by PW12, he has not mentioned the name of accused No.6. It is only thereafter in a further statement recorded of the said witness that accused no.6 has been incorporated. Therefore, when both PWs.12 and 13 had witnessed the manner in which the murder had been committed, the inconsistency in not having mentioned the name of accused No.6 to whom a particular overt act is attributed, is indeed inexplicable and was clearly an afterthought. This becomes evident from the fact that the first information report itself is registered a full twelve hours after it was recorded. The explanation offered by the Police Constable, who had carried the first information report to the Magistrate is that his superior had mentioned that it would be alright if the first information report is carried the next morning. In that, the first information report was recorded at 10.15 p.m. on 13th October 2008 and it was carried to the Court of Magistrate only at 8.20 a.m. on 14th October 2008. The inordinate delay in registering the first information report is itself fatal to the case of the prosecution, for it is evident that there has been much contemplation as to the manner in which the accused could be implicated and even thereafter the significant absence of mentioning the name of the accused No.6 is an infirmity for which there has been no explanation offered.

15. Therefore, the motive alleged, even if could be sustained as against accused No.1, there is no earthly connection in the manner in which the accused No.2 to 6 could have been implicated because there is no allegation against the said accused being engaged as contract killers or for other considerations by accused No.1 in those accused also being involved. Since accused No.1 is no more and since the accused No.2 to 6 also do not belong to the same community as accused No.1 or the deceased, the prosecution has completely failed to establish the motive which could be attributed to accused No.2 and 3 and accused No.6

who are in appeal before this Court. Hence, the entire case of prosecution that all the accused had the motive to commit the murder of the deceased is not forthcoming in the absence of any material evidence to support the same. Hence, the evidence of PWs.12 and 13, even if it could be accepted, would have to be turned down insofar as accused No.2 and 6 are concerned, as no motive can be attributed to them in the commission of the murder. This is especially so when other eye-witnesses claimed by the prosecution had all turned hostile and did not support the case of the prosecution.

16. The learned counsel for the appellants would further point out that it was very necessary to have addressed the conduct of the accused, if indeed they had been involved in the commission of the murder. It is not the case of the prosecution that the accused No.2 and 6 were absconding immediately after the incident, especially since PWs.12 and 13 had seen the said accused commit the murder and also been warned by the said accused that they would meet the same fate if they tried to intervene or protect the deceased. That being the case, it would be the normal reaction of any person to flee and avoid the long arm of law. However, before the incident and after the incident, the accused continued to be carrying on their normal activities, which is on record, and it is difficult to accept that they had indeed committed the murder. This is the View of the Supreme Court in the case of SADANAND MONDAL v. STATE OF WEST BENGAL [2013 AIAR (CRIMINAL) 955] where non-abscondence of the accused, who were very well available before and after the incident is certainly a factor which would prove their defence that they had nothing to do with the crime in question. Such conduct of the accused would go against the case of prosecution just as in the case on hand and is one other significant circumstance which the counsel for the appellants would plead as negativing the case of the prosecution.

17. It is also pointed out that except accused No.3 and 6, the other accused being of the same village, if indeed PWs.12 and 13 had witnessed the manner in which they had committed the murder, apart from reporting to police they would have ensured, with the help of other villagers, that the accused are kept in confinement till such time they are brought to book by the police. No such information has been provided to any one of the villagers nor has action been taken by anybody to see

that the accused are confined till they are duly arrested by the police. These are the circumstances which have been glossed over by the Trial Court in merely accepting the eye-witness account of PWs.12 and 13 without anything more. These are attendant circumstances which ought to have been taken into consideration in accepting the testimony of blood relatives who would be only interested in implicating the accused for reasons best known to them, for otherwise there is no possible motive that could be attributed, at least, to accused No.2 to 6. It is in this manner, the learned counsel would seek to point out that there is a serious infirmity in the manner in which the Court below has mechanically accepted the testimony of PWs.12 and 13 as being sufficient to bring home the charges against the accused irrespective of these other glaring circumstances.

18. The alleged recovery on the basis of the alleged voluntary statements of the accused is also not sustainable insofar as accused No.2 and 3 are concerned as there was no such recovery, even according to the prosecution, made from the accused No.2 and 3. The only alleged recovery was made from accused No.1 and the so-called weapons used and the injuries caused, again are not consistent as is evident from the evidence of the medical practitioner. The accuracy with which the witnesses have supposedly stated of the weapon used by each of the accused and the actual injury caused to the deceased on a particular part of his body, is humanly impossible to have been recorded and when the entire scene unfolds in quick succession and when there are six persons attacking the deceased and when it was almost night fall and there was little light, it is difficult to fathom as to how the other witnesses had, with such accuracy, noticed the particular injuries caused with the particular weapon by the particular accused. This is yet another circumstance with cannot be readily accepted as bearing any substance and the court below having freely accepted such testimony, has resulted in a gross miscarriage of justice and therefore seek acquittal of the accused.

19. It is incidentally noticed that the prosecution has relied upon PW.19 and PW7 insofar as the accused having been seen going in the same direction as the deceased on the fateful day and this is sought to be projected as being ample circumstantial evidence to demonstrate that the accused had indeed committed

the murder of the deceased. Significantly, PW.19 has mentioned five of the accused, while PW.7 has mentioned only two. It is not stated by any of the witnesses that they had seen PW.12 and PW.13 also go in the same direction when all these people had almost at the same time gone in the same direction, in order to accept the coincidence of the deceased being attacked by the accused, and PWs.12 and 13 also having come on the scene. Significantly, accused No.6 is not named either by PW.19 or by PW.7; and further, none of the villagers had noticed PWs.12 and 13 also going in the same direction as the accused and the deceased, which is yet another circumstance which has not been reconciled by the Court below and therefore, there is no case made out by the Prosecution in the manner suggested.

20. It is also to be kept in view that PW.13 has not stated about the overt act or the weapon used by accused No.6 in the acts alleged against him. It is in this fashion, the learned counsel for the appellants seeks to demonstrate that the judgment of the court below cannot be sustained on more than one ground.

21. Though the learned Additional Advocate General would seek to counter the grounds raised in the appeal and would emphasise that notwithstanding the relationship of PWs.12 and 13 to the deceased, there testimony could not be brushed aside when the same otherwise invokes the confidence of the Court and when there are direct eye-witnesses, the testimony would be sufficient to bring home the charges, which is how the Court below has proceeded. The Court having assigned reasons and having referred to all the circumstances which were apparent, there is no infirmity in the judgment and hence submits that the appeals be dismissed.

22. In the light of the rival contentions and on a close examination of the record, it is evident that the time of accident is not established with any certainty. The incident has occurred in the month of October and it is a scientific fact that in summer, the days are longer, and since in October we would be heading towards winter, when the nights are longer and the days are shorter. In other words, there would be lesser light towards the end of the day and if the incident had taken plac in October and had even occurred at 5.30 or 6.00 p.m., the possibility of there

being little visibility looms large.

23. The coincidence of the accused having confronted the deceased and PWs.12 and 13 having come on the scene just then and for the accused to have stated in a loud voice that since the deceased was interfering in their affairs, they had found the right opportunity to kill him, etc. is not readily acceptable. That the accused had noticed the presence of PWs.12 and 13 and had even warned them that if they tried to intervene they would also meet the same fate as the deceased, is a circumstance which would have compelled the accused after committing the offence to have tried to also attack PWs.12 and 13 in order to prevent them from revealing the incident. Buit they have merely walked away from the place and it is the case of the prosecution that this was so because other adjoining land owners had appeared on the scene. This circumstance cannot be reconciled with the subsequent conduct of the accused who continued to remain in the village freely till they were finally arrested on 14th October 2008 i.e. on the next day of the incident, when they could have easily absconded and hidden themselves.

24. Further, as rightly pointed out by the learned counsel for the appellants, though the motive alleged was that accused No.1 was not happy with the proposed transaction of sale which was being negotiated by the deceased with this brother and therefore he had the motive to commit the murder of the deceased, would not apply insofar as accused No.2 to 6 are concerned. The prosecution has not laid the foundation to establish the connection. It has not been demonstrated that either they were paid monetary consideration to join accused No.1 in the commission of the crime or that they were such close friends as they would have readily come to the aid of the accused No.1 in committing the murder of the deceased, or the they were of the same community and had the affinity in joining accused No.1 in committing the murder of the deceased. When this crucial connection is not established, even if the motive is accepted insofar as accused No.1 is concerned, the same cannot be accepted unless there was foundation laid to hold that accused No.2 to 6 were also carrying the same hatred against the deceased in order to be prompted to attack the deceased with such ferocity as is claimed by the prosecution. It was necessary for the Trial Court to have viewed the evidence of PWs.12 and 13 with circumspection and this was especially so when

other witnesses, who were cited as eye-witnesses had turned hostile and had not supported the case of the prosecution.

25. This when viewed in the further circumstance, as to the manner in which the deceased had been admitted to hospital and he had continued to be alive and he was taken to the Aland Hospital and administered first aid, it was also necessary for the prosecution to demonstrate that even if the deceased was not in a position to mention the assailants who had attacked him and the reason for such attack, as PWS.12 and 13 who were very much present, could have informed the Doctor and it could have been recorded in the wound certificate as to the assailants who had committed the offence.

26. Thereafter, the first information report having been lodged, did not mention accused No.6. It is only as an afterthought that his name has been included under the additional statement made by the accused.

27. Further, when the deceased was moved in a jeep, it is ambiguously stated that he was taken in a jeep from the very spot where the incident had taken place directly to the hospital. It is also stated that the deceased was first carried up till the village gate and from he was taken there in a jeep to the hospital. Neither the jeep driver is examined nor has the jeep been seized to collect the material evidence, as for instance the deceased would have been profusely bleeding on account of serious injuries inflicted and certainly there would be bloodstains left behind in the jeep which was significant material evidence which could have been supported by the jeep driver to establish whether the body of the deceased was moved from the spot of the incident to the hospital or from the village gate to the hospital, as the case may be. This exercise has not been undertaken by the prosecution. In their endeavour to provide immediate treatment and first aid to the deceased when PWs.12 and 13 had bodily carried the deceased, it is apparent that at least their clothes would have been bloodstained. No such clothes have been exhibited to establish that circumstance.

28. The inordinate delay in lodging the first information report is again a circumstance which has not been explained or sought to be reconciled. The distance from police station to the Court of Magistrate was hardly one kilometre

and it is inexplicable therefore that the first information report was registered only clear 12 hours after it was lodged and this has certainly dented the case of the prosecution leading to the presumption that there must have been much contemplation about the people who could be implicated as the accused and going by the conduct of the accused before and after the incident, it could be said that non-abscondence gains significance and as held by the Supreme Court that if they were available before and after the incident, when their identity was clearly noticed by PWs.12 and 13 and their acts were also noticed by them and if they continued to act normally, it is contrary to normal human behaviour and especially a person who has committed a serious crime and such conduct would go against the case of the prosecution.

29. Insofar as circumstantial witnesses PW.7 and PW.19 are concerned, PW.19 has stated that she has seen five of the accused and she has not mentioned accused No.6. PW.7 on the other hand has mentioned two of the accused and not mentioned the other accused seen going in the same direction as the accused. Those witnesses have not spoken about the deceased having gone in the same direction, nor had they seen PWs.12 and 13 go in the same direction. If the case of the prosecution is to be accepted, the deceased had first gone to his land followed by the accused and thereafter followed by PWs.12 and 13. Hence, they were all proceeding in the same direction at more or less the same time, for if PW.12 and PW.13 had come upon the accused attacking the deceased, they must have simultaneously reached the spot. This aspect of the matter has been glossed over by the Trial Court. There is no material witness to substantiate that PW.12 and 13 were seen going in the same direction at that point of time and hence it creates serious doubt as to their very presence on the scene. The possible scenario according to the learned counsel for the appellant, the deceased may have been found dead, murdered and on such news being received in the village many people have proceeded to the scene including PWs.12 and 13.

30. In the above view of the matter since the Court below has not appreciated the circumstances and the evidence that the prosecution has tendered in support of the allegations and charges framed against the accused, we are of the view that the appeals ought to succeed. Accordingly, the appeals are allowed. The judgment

of the Court below is set aside. The accused are acquitted. The fine amount, if any paid, shall be refunded.