

Ganesh Devadiga Vs. State Of Karnataka

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Court : Karnataka

Decided On : Oct-28-2021

Judge : K.Somashekar

Appeal No. : CRL.A 1118/2013

Appellant : Ganesh Devadiga

Respondent : State Of Karnataka

Judgement :

R1IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE28H DAY OF OCTOBER, 2021 BEFORE THE HONBLE MR.JUSTICE K.SOMASHEKAR CRIMINAL APPEAL No.1118 OF 2013 BETWEEN:

1. Ganesh Devadiga Aged about 28 years S/o Shukra Devadiga R/o Near Makki Temple Bijoor Village, Kundapura Taluk.
2. Udaya Devadiga Aged about 35 years S/o Shukra Devadiga R/o Near Makki Temple Bijoor Village, Kundapura Taluk.
3. Savitha Aged about 21 years D/o Shukra Devadiga R/o Near Makki Temple Bijoor Village, Kundapura Taluk.
4. Muttu Hengsu Aged about 29 years W/o Chandra Devadiga R/o Near Makki Temple Bijoor Village , Kundapura Taluk. ...Appellants (By Sri. Murthy D. Naik -

Advocate) 2 AND: State of Karnataka By PSI of Byndoor Police Station. ...Respondent (By Sri. Rahul Rai K - HCGP) This Criminal Appeal filed under Sec.374(2) of Criminal Procedure Code, by the Advocate for the appellant praying to set aside the impugned judgment and order dated 25.11.2013, passed by the court of Addl. District and Sessions Judge, Udupi (Sitting at Kundapura) Kundapura in S.C. No.4/2013 on their file for the offence punishable under Section 504, 342, 324, 307 r/w 34 of IPC and acquit the appellants. This criminal appeal coming on for dictating judgment this day, the court delivered the following:

JUDGMENT

This appeal is directed against the judgment of conviction and order of sentence rendered by the trial Court in S.C.No.4/2013 dated 25.11.2013 whereby held conviction against the accused for the offence punishable under Sections 504, 342, 324, 307 r/w 34 of IPC, 1860. 3

2. Heard learned counsel Sri Murthy D.Naik for the appellants and so also, learned HCGP for respondent - State. Perused the judgment of conviction and order of sentence rendered by the trial Court.

3. It is transpired in the case of the prosecution that on 27.2.2009 at around 10 A.M. on the mud road of Balavadi School and Bijoor 5 cents, near Balehaklu of Bijoor village, the accused with common intention abused CW.2 to 8 in a filthy language and accused Nos.3 and 4 with common intention inclusive of co-accused and in all accused Nos.1 to 4 with a common intention and illegally made confinement of the injured CW.2 and CW.3 and while that injured Nagu during the pendency of the trial has lost her breathe and one Sooru who has been examined on the part of the prosecution and they have made interception and made them to confine and at the scene of crime, accused alleged to have assaulted with means of deadly weapons and 4 causing grievous injuries voluntarily by assaulting with means of sickles by accused No.2 on the part of her neck and one Suru who is an injured was assaulted on fingers. Accused No.1- Ganesh Devadiga associated with other accused assaulted one Chandra Devadiga on his left hand and also on the left parital region and so also on the right shoulder. In the meanwhile, that co-accused Nos.3 and 4 alleged to have assaulted with wooden club on Kuppu and

Abbakka on their person as a result sustained grievous and also simple injuries. Accused Nos.2 to 4 alleged to have assaulted with means of sickle and made an attempt to commit murder with an intention of causing injuries with means of sickle. In pursuance of the act of the accused on filing of complaint by the complainant, the criminal law was set into motion by registering the case in Crime No.48/2009 as per Ex.P21. Subsequent to registration of the crime, the Investigating Officer took up the case for investigation and thoroughly investigation has been done and charge sheet was laid before the committal Court. Subsequently, the case was committed by the committal Court as under Section 209 of Cr.P.C. and initially the case was registered in S.C.No.59/2009 and thereafter made over the case to the Court of Additional District and Sessions Judge, Udupi sitting at Kundapur and the case came to be registered in S.C.No.4/2013.

4. The charges were framed against the accused whereby the accused did not pleaded guilty but claimed to be tried. Subsequently the prosecution let in evidence by examining PWs.1 to 13 and got marked Exs.P1 to 27 and so also got marked M.O.1 and 2. Subsequent to closure of evidence of prosecution, the accused were subjected to examination as under Section 313 of Cr.P.C. for incriminating statements and whereby the accused declined the truth of evidence of prosecution adduced so far. Subsequent to recording the incriminating statement as contemplated under Section 313 of Cr.P.C. the accused was called to entering into defence evidence as contemplated under Section 233 of Cr.P.C. Accordingly, DW.1 who is accused No.2 was subjected to examine and got marked Ex.D1, the monthly attendance report for the month of February, 2009.

5. Subsequent to closure of evidence on the part of prosecution and so also, on the part of defence that the trial Court after hearing the arguments advanced by the prosecution and so also, the counter arguments advanced by the defence counsel and after convinced by the evidence on the part of the prosecution, awarded conviction for the offence punishable under Sections 504, 342, 324, 307 r/w 34 of IPC, 1860. It is this judgment which has been challenged under this appeal by urging various grounds.

6. Learned counsel for the appellant Sri Murthy D.Naik has taken me through the statements and also 7 the evidence of PW.1 - Sooru, PW.2 - Kuppu, PW.3 - Chandra. But the complainant who was subjected to examination on the part of prosecution and based upon his complaint the criminal law was set into motion. But Ex.P1 the complaint has been got it marked. Though the complainant has been subjected to examination on the part of the prosecution, but he did not withstood the averments made in the complaint at Ex.P1. But he has specifically stated that his signature was taken by the police forcibly and so also, he has specifically stated that he does not know about M.O.1 - sickles two in numbers and M.O.2 - wooden stick two in numbers. These M.O.1 and 2 have been secured by the Investigating Officer during the course of investigation by drawing the mahazar. But the contents of Exs.P2 to P5 were also denied by the complainant. This primary contention is taken by the learned counsel for the appellants and contends that in this appeal it requires for re-appreciation of the evidence as where the trial 8 Court misdirected the evidence of PWs.1 to 3 who are the injured witnesses who sustained injuries as per Exs.P10, P13, P14, P15, the wound certificates. But Ex.P10 is the wound certificate pertaining to PW.1 - Sooru and Ex.P13 is the wound certificate pertaining to PW.2 - Kuppu who were subjected to medical examination by the Doctor who issued the wound certificates. But CW.6 has been cited in the charge sheet and not subjected to examination but wound certificate at Ex.P14 has been got it marked. But Ex.P17 and P18 are the correspondence letters relating to subjected the medical examination of the injured persons. But the trial Court was misdirected with regard to appreciating the evidence on record that too be the evidence of PWs.1 to 3 who are the injured witnesses. But PWs.1 to 7 and the appellants/accused were relatives to each other in terms of cousins and also they are the family members. But in the nutshell of the facts which narrated in the complaint and also 9 circumstances which are disclosed in the charge sheet materials that due to the civil dispute emerged in between the family members and complainant on one part and appellants being arraigned as accused on other part. But for setting up theory to register the crime against the accused, the criminal law was set into motion and register the case against the accused alleging that the accused have committed the offence on 27.2.2009 at around 9.00 a.m. But the civil dispute emerged in between the

accused and the witnesses cited as CWs.1 to 8 in respect of land measuring 3 Acres 60 cents of Sy.No.287/2-P1 situated in the limits of Haklumane of Kundapura Taluk. But CWs.2 to 5 while returning from the said land with big basket by collecting cashew nut leaves, accused alleged to have picked up quarrel with them, so also, CWs.6 to 8, abused in a filthy language and accused Nos.3 and 4 wrongfully restrained CWs.2, 3, accused No.1 assaulted CW.2 with the sickle on her hand and head, accused 10 No.2 assaulted CW.3 with sickle on her neck, fingers and thereafter, accused assaulted CW.4 on his left hand backside of the head and also on the shoulder, accused Nos.3 and 4 assaulted CW.5 and 6 with the stick on their body and as such, CWs.2 to 4 sustained grievous injuries and CWs.5 and 6 sustained simple injuries.

7. Appellant No.1/accused No.2 - Ganesh Devadiga by avocation is an agriculturist, Appellant No.2/accused No.2 - Udaya Devadiga is an Assistant loco pilot in Konkan Railway, Appellant No.3/Accused No.3 - Savitha is working as an agriculture labourer and also unmarried girl. Appellant No.4/Accused No.4 - Smt.Muttu Hengsu is house wife cum agriculture labourer at Bijoor Village of Kundapur Taluk. But the allegations made against them is that they said to have committed the alleged offences as narrated in the complaint and so also in the charge sheet laid by the investigating officer. But accused No.2 who is an 11 employee of Konkan Railway as on the date of the incident he was not present at the scene of crime but he has been roped as an accused. PW.6 - T.Kumaran who was subjected to examination on the part of prosecution but his evidence has not been appreciated by the trial Court in a proper perspective manner and his evidence is supported with the evidence of DW.1 - Udaya Devadiga who is arraigned as accused No.2 has been in conformity with each other. Ex.D1, the monthly attendance report for the month of February, 2009 is also produced but the same was not considered by the trial Court.

8. The second limb of the arguments advanced by the learned counsel by referring to the evidence of PW.6 - T.Kumaran who was an employee of Konkan Railway was subjected to examination. He has stated that as per Ex.P6 and P7, accused No.2 was on duty on 26.02.2009 on train No.0103 from Rathnagiri to 12 Madgaon and also further stated that accused No.2 signed in at 13.50 hours and signed out

at 19.30 hours at Madgaon. PW.6 further stated that on 28.02.2008 accused No.2 was called for duty for train No.2619, Matsyagandha Express at 00.40 hours and he has signed of Mangalore centre at 8.16 hours and the said train goes from Madgaon to Mangalore Centre. As per Ex.P7 on 28.02.2009 accused was waiting for duty and on that day no duty was allotted to him. But this fact has not been considered by the trial Court. Therefore, it clearly shows that the entire prosecution case was set up to falsely implicate this accused in the crime. Therefore, the plea of alibi has been taken by accused No.2 and also he was subjected to examination as DW.1 and got marked Ex.D1 relating to the monthly attendance report for the month of February, 2009. But this important piece of evidence on the part of the prosecution and the defense side has not been appreciated by the trial Court in a proper perspective 13 manner. In this appeal, if the said evidence is not re-appreciated certainly there shall be miscarriage of justice whereby accused No.2 who is the gravamen of accusation made against him and so also, other accused being the gravamen of accusation.

9. It is further contended that dispute over the property of the father of the accused Nos.1 and 2 i.e., Sukra Devadiga and as the accused are in possession of disputed property, question of the claiming the right by PWs.1 to 4 does not arise, but for grabbing the land by PWs.1 to 4, false complaint has been lodged through PW.5 making false allegations to deviate the civil dispute between themselves. Further, it is contended that in support of the same, PW.11 - Manjunath Billava who is the village accountant has stated that the disputed land is a government land it was granted to Sukra Devadiga on time lease basis and the certificate in this regard has been marked as per Ex.P20. Merely 14 because the land in dispute stands in the name of Sukra Devadiga, it cannot be said that the same would be the cause for the incident that has taken place. PW.5 - Sudhakar Devadiga who is the complainant has been subjected to examination but he has completely given goby to the version in the complaint and he did not support the case of prosecution. But the theory was set up in order to register the case against the accused for the simple reason to implicate them in the alleged crime.

10. PW.4 - Parvathi is the eye witness and she was subjected to examination and she herself placed two numbers of MO.2 which was produced before the police on

16.03.2009 and the same has not been recovered from the possession of anyone of the appellants who are arraigned as accused. PW.9 being the panch witness to the mahazar where MO.1 two numbers sickles was seized on 28.02.2009 through 15 accused No.3. Though the charge sheet has been laid against the accused, but due to the death of Nagu during the pendency of the proceedings, attempt was made to invoke provision under Section 302 of IPC against the present accused, but the death of Nagu is no way concerned to the present case. Accordingly, the entire proceedings were dropped under Section 302 of IPC which clearly shows that false case was set up against these accused to grab the land. But the trial Court did not appreciated the aforesaid evidence in a proper perspective manner.

11. Lastly, it is contended that there are no specific allegations against appellant Nos.3 and 4 in the evidence and both of them are woman folk, accused No.3 - Savitha who is a unmarried girl and accused No.4 - Smt. Muthu Hengsu who is just married were not involved in commission of the offence as alleged. But they have been falsely implicated in the alleged crime. 16 But in this appeal it requires for re-appreciation of the entire evidence on record insofar as sentence has been awarded by the trial Court against accused Nos.3 and 4 and so also accused Nos.1 and 2.

12. It is further contended that PW.13 being the IO who was subjected to examination has stated that he recorded the voluntary statement of the accused No.3 and based on the said voluntary statement he proceeded along with accused No.3 and seized sickles which were lying in small drainage in the presence of panch witness under Ex.P3 and he has also admitted that he only recorded the voluntary statement of Accused No.3. Mere because seizure of M.O.1 - sickles two in numbers, it cannot be sufficient evidence on the part of the prosecution for arrival of conclusion that the prosecution has proved the guilt of the accused beyond all reasonable doubt. On all these premises counsel for the appellants seeking for allowing the appeal and set- 17 aside the judgment of conviction and order of sentence rendered by the trial Court in S.C.No.4/2013 dated 25.11.2013.

13. In support of his arguments, learned counsel for the appellants in this appeal has placed reliance of the judgment of the Honble Supreme Court in Sharad Birdhi

Chand Sarda vs State of Maharashtra reported in (1984) 4 SCC116 wherein it is held as under: We then pass on to another important point which seems to have been completely missed by the High Court. It is well settled that where on the evidence two possibilities are available or open, one which goes in favour of the prosecution and the other which benefits an accused, the accused is undoubtedly entitled to the benefit of doubt. In Kali Ram v. State of Himachal Pradesh,⁽¹⁾ this Court made the following observations:

"Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases where the guilt of the accused is sought to be established by circumstantial evidence."

18 14. In the instant case though Accused No.2 - Udaya Devadiga who was subjected to examine as DW.1 and even though the plea of alibi was pleaded and due to that benefit has been taken by him by subjecting himself as DW.1 and also subjected PW.6 on the part of the prosecution who is an employee of Konkan Railway on 27.02.2009 that DW.1 was on duty on the said date as indicated in Ex.D1, the monthly attendance report for the month of February, 2009. But the said important evidence has not been considered by the trial Court insofar as the role of accused No.2 to appreciate the evidence.

15. However, the counsel for the appellants even referred to the evidence of PW.7 - Shekar Devadiga who was subjected to examine on the part of the prosecution. But this witness did not withstood the statement made during the course of investigation done by him. The particulars of statements at Exs.P9, 19 P9(a)(b)(c) has been got it marked. But his evidence runs contrary to the evidence of PW.5 - Sudhakar Devadiga who is the complainant and he has also not withstood the averments made in the complaint and he has completely given a go-by to the version of the statement made in the allegation against the accused. Despite of it, the trial Court was misdirected and so also, misinterpreted the evidence of the prosecution and erroneously came to the conclusion that the prosecution has

proved the guilt of the accused beyond all reasonable doubt. Therefore, on all these premises, learned counsel for the appellants seeking for consideration of grounds as urged in this appeal and set-aside the judgment of conviction and order of sentence rendered by the trial Court in S.C.No.4/2013 dated 25.11.2013.

16. On controvert to the arguments advanced by learned counsel for the appellants, learned HCGP for 20 the State has taken me through the evidence of PWs.1, 2, 3 and 4, but PW.1 Sooru and PW.2, Kuppu and PW.3 Chandra who are injured witness and certificates have been produced on the part of the prosecution. Their evidence did not shaken even though they have been subjected to cross examination on the part of defence side and their evidence have been supported with the wound certificates which have been got marked at Ex.P.10, P.13, P14, P15 inclusive of P16. But Nagu who was also injured but she died during the course of trial and even she sustained grievous injuries during the incident. But the prosecution has relied upon the evidence of PW.5, even seizure mahazar at Ex.P3 has been got marked and secured signature of PW.5 and even Ex.P4, seizure mahazar. But these are all the material evidence on the part of the prosecution which has been got marked in order to prove the guilt of the accused beyond all reasonable doubt. But Ex.P2 it is the spot mahazar conducted by PW.13 being the 21 investigating officer in the presence of PW.5 and 10 and fulcrum of the aforesaid mahazar which has been established by the prosecution by examination of those witness. PW.13 being the investigating officer who laid the charge sheet against the accused. Mere because PW5 who is the complainant and author of the complaint did not supported the case of the prosecution even his further statement marked at Ex.P5 (a), (b), (c) and even contrary statements of the PW.7 as per Ex.P9 (a), (b), (c) it cannot be shaken the evidence of the prosecution in so far as where the accused took up the quarrel with PW1 to 4 and also got inflicted injuries over their persons as indicated in the wound certificates at Ex.P10 13, 14, 15, 16. But Exs.P17 and 18 are corresponding letters to the wound certificate. But the trial Court has appreciated the evidence on record and convincing evidence put forth by the prosecution to prove the guilt of the accused. Even though Ex.D1 has been got marked even on the part of the defence evidence and 22 whereby accused No.2 Udaya Devadiga has been subjected to examination and also taken plea of alibi. But it cannot be any assistance to the defence theory as put forth by even

subjected to examination PWs.1 to 6 and so also PW.9 to 11 inclusive of PW.6 - T.Kumaran who is an employee of Konkan Railway relating to accused No.2 - Uday Devadiga was on duty on 27.02.2009. But intervening night of 27.02.2009 and 28.02.2009 at around 21.45 hours even incident was took place. But defence counsel did not elicit any inconsistency and contradictions to each other to disbelieve the theory of prosecution. Therefore, in this appeal it does not arise for call for interference and consequently seeking for dismissal of this appeal being devoid of merits.

17. It is in this backdrop of the contention taken by the learned counsel for appellants and whereby referring the evidence of PWs.1 to 4 who are the injured. 23 But their evidence has been contrary to the evidence of PW.5 who is the author of the complaint and also further statement has been given at Ex.P5 and further statement at PW.5 (a), (b), (c) and similarly the contradictory statement of PW.7 at Ex.P9 and portions of statement at Ex.P9 (a), (b), (c). But accused No.2 Udaya Devadiga who is working as an employee of Konkan Railway as a Loco Pilot has taken plea of alibi. Therefore, it is relevant to refer conjointly Sections 11 and 103 of the Indian Evidence Act, 1872 which reads as under: Section 11. When facts not otherwise relevant become relevant.-Facts not otherwise relevant are relevant-(1) if they are inconsistent with any fact in issue or relevant fact; (2) if by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable. 24 Section 103. Burden of proof as to particular fact.-The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

18. The documents produced by DW.1 which has been subjected to examination and also got it marked at Ex.D1 relating to the monthly attendance report for the month of February, 2009. Therefore, Ex.P1, the complaint and Ex.D1, the monthly attendance report for the month of February, 2009 which were got it marked through the evidence of DW.1 - Udaya Devadiga taking into consideration in toto, there is nothing as to implicate accused No.2 Udaya Devadiga. This contention is taken by the learned counsel for the appellants by referring the evidence of PW.5

who is the complainant and also the author of the complaint and his further statement has got it marked at Ex.P5 (a) (b) 25 (c). But even PWs.5 and 7 did not support the case of the prosecution to any extent. Insofar as the prosecution record even though it reveals that accused No.2 - Udaya Devadiga was not present at the time of incident as narrated in the complaint and so also, discloses in the substance of the charge sheet, but the question is whether he was present at the scene of crime as narrated in the charge sheet on the intervening night of 27.02.2009 and 28.02.2009. Therefore, accused No.2 - Udaya Devadiga has taken the plea of alibi. Even though counsel for the defence has taken the evidence of DW.1 and addressed his arguments and the same has been observed in para 19 of the impugned judgment that as rightly argued by advocate for the accused, in case of plea of alibi is proved, it creates the doubt, and as such, whole prosecution case stands collapsed.

19. PW.6 is the official of Konkan Railway who has given information to the Byndoor police as per 26 Ex.P6 and P7. Even taking into consideration the contents of Exs.P6 and P7 that accused No.2 Udaya Devadiga has attended duty on 26.02.2009 on train No.0103 from Rathnagiri to Madagaon. But accused No.2 Udaya Devadiga was working as an Assistant loco pilot in Konkan Railway. PW.6 has stated that accused No.2 signed in at 13.50 hours and signed out at 19.39 hours at Madagaon. He has further stated that on 28.02.2009 accused No.2 was called for duty for train No.2619, Mastyaganda Express at 00.45 hours and he has signed off Mangalore Centre at 08.15 hours. He has further stated that the said train goes from Madgaon to Mangalore Centre. He has stated that as per Ex.P7 on 27.02.2009 accused No.2 was waiting for duty and on that day no duty was allotted to him. These are all the important area on parts of the prosecution theory and evidence on the part of the prosecution and so also the evidence of DW.1 insofar as document at Ex.D1 which is monthly attendance report for the month of February, 27 2009 and this material documents are required to be appreciated in a proper perspective manner. As per the aforesaid document on 27.02.2009, accused No.2 Udaya Devadiga was waiting for duty. Even as per documents produced on the parts of the prosecution, documents signed by accused No.2 on 28.02.2009 it is of 00.45 hours which means to say it is to be clarified on intervening night of 27.02.2009 and 28.02.2009. But signed in and signed out as

mentioned in Ex.P7 even though it tallies with Ex.P8, Xerox copies of the computer entries even if it is observed meticulously signed in and signed out it is to be strictly to be considered and also closely scrutinize it is of intervening night of 27.02.2009 and 28.02.2009 and signed in and signed out. DW.1 who is accused No.2 has been subjected to examination on the part of defence evidence. But PW.11 who is village accountant has stated in his evidence that land bearing survey No.287/2-P1 measuring 3 acres 60 cents it is a 28 government land and it is granted to Shukra Devadiga on lease basis. He is the father of accused Nos.1, 2 and 4 and uncle of accused No.3. But evidence of PW.11 who is village accountant discloses as even at Ex.P20 that the disputed land was granted to Shukra Devadiga and stands in his name. But PWs.1 to 4 who have been subject to examination on the part of prosecution and they have been inflicted with some injuries as per wound certificate. But the dispute is civil in nature which turned into criminal in nature and it can be inferred even in the incident took place which is depicted at spot mahazar Ex.P2, which was drawn by PW13 being investigating officer who laid the charge sheet against the accused. But PW.10 who has specifically stated that he does not know the contents of the mahazar drawn at Ex.P2 by PW.13. PW.5 who is the author of the complaint and also given further supplementary statement but he turned hostile and he hid not with stood the version of his statement. PW4 29 who is the eye witness to the incident is alleged to have produced MO.2 sickles two in numbers on 28.02.2009. But MO.2 was produced by PW.4 before the police on 16.03.2009. But the alleged incident took place on 27.02.2009. But the version of PW1 and 2 that accused have thrown sticks that is MO.2 and even MO.1 which have been seized through mahazar by PW.13 in the presence of panch witnesses. PW.9 who is panch witness in respect of MO.1 sickles two in numbers and the same has been seized under the mahazar and he has stated in his evidence that on 28.02.2009 police seized MO1 sickles two in numbers which were shown by accused No.3 even though it is got identified. In this regard, it is relevant to refer Section 27 of the Indian Evidence Act, 1872 relating to discovery and recovery and the same reads as under:

27. How much of information received from accused may be proved.-Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police 30

officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

20. Recovery and discovery is an important aspect in the aforesaid provision of Indian Evidence Act and when there is discovery then it follows recovery as according to the concept of Section 27 of the Indian Evidence Act. But in the instant case, after lapse of certain period that is on 16.03.2009 the mahazar has been drawn by the investigating officer however, after lapse of 17 days. But the incident took place on 27.02.2009. Therefore, it requires for re-appreciation of the evidence under this appeal, if not, the accused who are the gravamen of the accusation would be the sufferers. In Ex.P4 mahazar the date of offence is mentioned as 27.03.2009 but incident took place on 27.02.2009. This contradictory version requires for re- appreciation of the evidence under this appeal by referring the evidence of PW.1 to 3 and PW5 and 7. But 31 PW.5 and 7 did not support the case of prosecution which are contradictory to the evidence of PW1 to 4.

21. PW.8 is the Doctor who issued wound certificate at Ex P10, 13, 14, 15 and 16. This PW.8 was also subjected to examination on the part of the prosecution. But injuries No.1 to 3 are grievous in nature and injuries No.4 and 5 are simple in nature. He has examined the weapons and stated about the possibility of such injury by the weapons like, examined by him. But in the criminal justice delivery system the evidence adduced and secured should be beyond all reasonable doubt. But the injuries caused to the victims more particularly to PWs.1, 3 and deceased CW.2 - Smt.Nagu - W/o. Jatta Naik are cut injury on the vital part of the body and it is true that accused Nos.3 and 4 alleged to have assaulted with MO.2, sticks. Accused No.2 Udaya Devadiga who is an employee as loco pilot in Konkan Railway and he was on duty as per Ex.D1, 32 the monthly attendance report for the month of February, 2009 at Ex-D1. But the incident narrated in the complaint at Ex.P1 took place on 27.02.2009. But Ex.P4 mahazar it is indicated as incident took place on 27.03.2009. Though this contradictory version crept in complaint at Ex.P1 relating to the offences lugged against the accused and so also narrated in the complaint and the same ought to have been appreciated by the trial court in proper perspective manner to arrive at a proper conclusion and even closely

scrutinize the evidence, if not, accused would be sufferers and also gravamen of the accusation made against them. Therefore, under this appeal it requires for re-appreciation of evidence wherein the trial court has misdirected the evidence as could be seen in the impugned judgment rendered by the trial Court. When there is doubt arise in the mind of the Court, it shall be extended in favour of the accused alone. However, on closely reading Sections 11 and 103 of Indian Evidence 33 Act relating to plea of alibi has been taken in respect accused No.2 - Udaya Devadiga being the loco pilot in Konkan Railway who was on duty on intervening night of 27.02.2009 and 28.02.2009 it is an acceptable theory as akin to his evidence. But the incident took place on 27.02.2009 and Ex.P4 mahazar indicates the date of incident as 27.03.2009 and mahazar has been drawn on 16.03.2009.

22. The charge has been framed under Section 307 of IPC, 1860 against the accused with a common intention and also causing some grievous injuries and so also, wrongful confinement and due to the confinement as alleged causing some public peace. But the essentials for criminal attempt for the offence under Section 307 of IPC are an existence of an intent on the part of accused to commit a particular offence; some steps taken towards it after completion of preparation to commit the offence and also it must be the completion of the ultimate design as made by the person being 34 arraigned as accused. But in the instant case, the domain is vested with the prosecution mainly to prove the guilt of the accused with beyond all reasonable doubt by facilitating the ingredients of each one of the offence to establish though the injured would have met with injuries as per the wound certificates and also justification to be made by the prosecution to secure the conviction even for the major offence under Section 307 of IPC and even if there is presence of an intent coupled with some overt act in execution thereof. The same can be assessed through the evidence which are facilitated by the prosecution even by subjected to examination of the witnesses and even in order to determine the intention of the assailant and various factors and circumstances which are to be considered such as nature of injuries caused, severity of the blow or its persistence and many other factors which requires to be proved by the prosecution by affording assistance in determining the intention. As per the opinion of the 35 Doctor who has been subjected to examine the injured and also issued

wound certificates, some injuries are grievous in nature and some injuries are simple in nature. But as according to the theory put forth by the prosecution as the accused who are the appellants herein and so also the injured are the family members and there was some enmity in between two groups of that family members. But the occurrence took place all of a sudden as according to the theory put forth by the prosecution and alleging that all the injuries were caused by the accused who are the appellants before this Court under this appeal. But accused No.2 - Udaya Devadiga was working as Assistant Locopilot in Konkan Railway as on the alleged date of incident. However, that accused No.2 who is examined as DW.1 and also subjected to examine one of the witness as PW.6 who is an employee of Konkan Railway has taken plea of alibi as this accused was not present even at the time of incident narrated in the complaint and in the 36 charge sheet as he being working as Locopilot in Konkan Railway. Therefore, on the close scrutiny of evidence of PWs.5 and 7 coupled with evidence of DW.1 and PW.6 as well as contents at Ex.D1 of the attendance report for the month of February, 2009, the legal position it would be evident even appended to the aforesaid provision and moreso, the intention or knowledge relating to commission of the offence as narrated and more so ingredients relating to each one of the offence, even the gravamen of the offence under Section 307 of IPC are not being established by the prosecution by facilitating worthwhile evidence. This contention is also taken by learned counsel for the appellant and also referred to provision under Sections 3, 11 and 103 of the Indian Evidence Act, 1872 relating to seeking benefit of plea of alibi insofar as accused No.2 namely Udaya Devadiga. But if the plea of alibi is taken into consideration and also extended then naturally the entire theory of prosecution it would 37 collapse. On this primary contention and also specific grounds as urged in this appeal by the learned counsel for the appellants by referring to so much of the evidence relating to the fulcrum of the mahazars at Exs.P2, P3 and P4 and so also, the contents at Ex.P1, complaint as made by the complainant who is the gravamen of incident, if the accused are supposed to have greater knowledge and intention certainly they would not have spared the injured as they were alleged to have used M.Os.1 and 2, weapons. Therefore, all that is necessary to be established by the prosecution insofar as the motive, intention with which the act is done and if once that intention is established the nature of the

act will be immaterial and nature would be helpful in finding out the intention of the accused. In the instant case, there is no specific evidence on the part of the prosecution that the accused persons made an attempt to take away the life of the injured as per the wound certificates facilitated on the part of the 38 prosecution to prove the guilt of the accused and more so, it is necessary for the prosecution to prove that the accused had one of the four special mens rea mentioned in Section 300 of IPC which defines murder. Therefore, there is no justifiable evidence and more so, positive evidence has been facilitated by the prosecution for securing conviction. On this background in this appeal, the evidence facilitated by the prosecution is required to be re-appreciated and the evidence of DW.1 has to be closely scrutinized as wherein he has taken plea of alibi and has stated that he was not present at the scene of crime as on the date of the incident stated in the complaint as well as specifically stated in the charge sheet laid by the investigating officer against the accused persons for securing the conviction by proving the guilt of the accused beyond reasonable doubt. Therefore, it is said that the prosecution has failed to establish the guilt of the accused beyond all reasonable doubt. When once the doubt has crept in the mind, 39 that benefit of doubt is always to be in favour of the accused alone under the criminal justice delivery system. Therefore, in the instant case, the accused are deserving for acquittal by consideration of benefit of doubt.

23. These are all the important materials on the part of the prosecution which are required to be re- appreciated in a proper perspective manner even for recovery mahazar or spot mahazar. But the prosecution ought to have established the case against the accused by putting forth positive, corroborative and consistent evidence in order to secure conviction and if any doubt arises in the theory of prosecution and the benefit of such doubt should be extended in favour of the accused alone according to doctrine of criminal justice delivery system. But in the instant case clouds of doubt has arisen in the theory of prosecution on the close scrutiny of the evidence and more so, the prosecution has failed to establish the guilt of the accused by putting forth 40 positive, corroborative and consistent evidence in order to arrive at a conclusion against the accused for conviction. In terms of the aforesaid reasons and findings it is opined that prosecution has not established the guilt of the accused beyond all reasonable doubt. Consequently

accused are deserving for acquittal. Accordingly, I proceed to pass the following :

ORDER

The appeal filed by the appellants / accused under Section 374 (2) Cr.P.C is hereby allowed. Consequently, judgment of conviction and order of sentence rendered by the trial Court in S.C.No.4/2013 dated 25.11.2013 is hereby set aside. Consequent upon setting aside the impugned judgment of conviction and order of sentence that appellants / accused Nos.1 to 4 are hereby acquitted for the offences punishable under Sections 504, 342, 324, 307 read with Section 34 of IPC for 41 which they have been charged. The bail bonds executed by the accused shall stand cancelled. However, the fine amount, if any, deposited by the appellants / accused shall be returned, on due identification, in accordance with law. Sd/- JUDGE DKB/RJ

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