

State Of Karnataka Vs. Ramesha

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Court : Karnataka

Decided On : Nov-19-2021

Judge : K.Somashekar and Pradeep Singh Yerur

Appeal No. : CRL.A 1963/2016

Appellant : State Of Karnataka

Respondent : Ramesha

Judgement :

R1IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE19H DAY OF NOVEMBER, 2021 PRESENT THE HONBLE MR.JUSTICE K.SOMASHEKAR AND THE HONBLE MR. JUSTICE PRADEEP SINGH YERUR CRIMINAL APPEAL No.1963 OF 2016 BETWEEN: State of Karnataka By Medigeshi Police Rep. by State Public Prosecutor High Court Building Bengaluru - 01. ...Appellant (Smt. K.P. Yashodha - HCGP) AND:

1. Ramesha S/o Jayaramaiah Major 2. Jayaramaiah S/o Venkataramanappa Aged 67 years 3. Manjunatha B.C S/o. Chikkalakshmaiah Major 2 4. Rajagopala S/o. Subbaiah Age:

39. years 5. Raghavendra S/o. Anjinappa Major 6. Kumara S/o. Anjinappa Major 7. Shivakumara S/o. Narasappa Major 8. Devaraj S/o. Balaramappa Major 9. Gopala S/o. Jayaramaiah Major 10. Raja S/o. Ramaiah Aged 31 years All are R/o

Benakanahally Village Medigeshi Hobli Madhugiri Taluk-572132. ...Respondents (By Sri. Vivek S - Advocate for R-1 to R-10) This Criminal Appeal is filed under Section 378(1) and (3) of Code of Criminal Procedure praying to set aside the judgment and order of acquittal dated 01.06.2016 passed in S.C.No.328/2012 by IV-Addl. District and Sessions Judge at Madhugiri, acquitting the Respondents - Accused for the offences punishable under Sections 324, 323, 307, 148, 147, 143, 504, 506 r/w 149 of IPC. This criminal appeal coming on for hearing this day, K. SOMASHEKAR J., delivered the following:

JUDGMENT

This appeal is directed against the judgment rendered by the Trial Court in S.C.No.328/2012 dated 01.06.2016 acquitting respondents / accused Nos.1 to 10 for offences punishable under Sections 324, 323, 307, 148, 147, 143, 504, 506 read with Section 149 of the Indian Penal Code, 1860 (for short IPC). The State has filed this appeal seeking to set aside the acquittal judgment rendered by the Trial Court and consequently to convict the accused for aforesaid offences under the IPC, 1860, considering the grounds urged therein.

2. We have heard the arguments advanced by Smt. K.P. Yashodha, learned HCGP for the appellant / 4 State and so also the learned counsel Shri Vivek S for the respondents / accused Nos.1 to 10, who are present before court physically. Perused the judgment of acquittal rendered by the Trial Court in S.C.No.328/2012 consisting of the evidence of PW-1 to PW-13 and documents at Exhibits P1 to P15 inclusive of MO-1 to MO-6 and so also the contradictory statements of PW-1 and PW-2 at Exhibits D1 and D2.

3. It transpires from the case of the prosecution that as on 23.03.2012 at 6.00 p.m. when PWs 1 to 3 and 5 were sitting in front of the house of PW-3 at Benakanahally, accused persons namely the respondents herein, in view of an old enmity, had formed themselves into an unlawful assembly and armed with machetes, stones, bricks and clubs had gone to the spot and had picked up a quarrel with PWs 1 to 3 and 5. The overt acts alleged against them were that Accused No.1 assaulted PW-2 / Harikrishna on his forehead, near nose and behind the head with a machete, thus trying to kill him. Accused Nos.2

and 3 are said to have assaulted PW-2 with clubs on his right ribs, Accused No.4 is said to have assaulted PW-3 / Ramalingappa on the left side of his forehead and nose with a club, Accused No.6 is said to have hit PW-3 near the right foot on great toe with a stone, Accused No.10 is said to have assaulted PW-1 / Papamma on her right elbow with a club, Accused No.7 is said to have thrown a stone towards PW-3, Accused No.8 is said to have thrown bricks towards PW-3, Accused No.9 is also said to have thrown bricks towards PW-3 and is said to have punched him with hands. Thus, all accused persons are said to have threatened to take away the lives of PWs 1 to 3 and 5. Criminal law was set into motion in view of a complaint report filed by the complainant and after recording FIR, the Investigating Officer / PW-12 had taken up the case for investigation and laid a charge-sheet against the accused for the offences punishable under Sections 324, 323, 307, 148, 147, 143, 504, 506 read with Section 149 of the Indian Penal Code. However, the accused pleaded not guilty and claimed to be tried. During trial, the prosecution subjected to examination several witnesses namely PW- 1 to PW-13 and so also got marked several documents at Exhibits P1 to P15 inclusive of material objects MO-1 to MO-6. Contradictory statements of PW-1 and PW-2 were got marked at Exhibits D1 and D2.

4. Subsequent to closure of the evidence of the prosecution, incriminating statements of accused persons as contemplated under Section 313 of the Cr.P.C. was recorded, whereby the accused had denied the truth of the evidence of the prosecution. Further, they did not come forward to adduce any defence evidence as contemplated under Section 233 Cr.P.C. However, contradictory statements were got marked as Exhibits D1 and D2. Subsequently, the Trial Court, on hearing the arguments advanced by the learned counsel 7 for both the parties, had framed the points that arose for its consideration and answered point Nos.1 to 5 in the negative and point No.6 as per the final order and thereby acquitted the accused Nos.1 to 10 / respondents herein. It is this acquittal judgment which is under challenge in the present appeal by urging various grounds.

5. The learned HCGP for the State in this appeal, has taken us through the evidence of PW1, PW2, PW4 and PW5 who are the injured witnesses and submits that their evidence has not been properly considered by the Trial Court in

acquitting the accused. PW1 is the complainant and also brother of the victim / injured. In spite of the fact that the evidence of PWs 1, 2, 4 and 5 corroborates with each other in order to prove the charges leveled against the accused persons, the same has been brushed aside by the Trial Court in acquitting the accused persons. It is further contended that the 8 Sessions Judge has failed to consider the evidence of PW-3, another injured witness and also failed to consider the evidence of PWs 6 to 9 and the contents of the mahazar drawn by the Investigating Officer. Further, the medical evidence of PW-10 / Dr. Rathnavathi who had treated the injured and had issued Wound Certificates as per Exhibits P7 to 9 has also not been considered by the Trial Court. PW-10 being the Doctor had provided treatment to PWs 3, 2 and 5 at Madhugiri Government Hospital and issued Wound certificates as per Exhibits P7, P8 and P9. This evidence has supported the case of the prosecution and more so, this evidence has been subjected to cross- examination. But nothing worthwhile has been elicited to disbelieve the evidence of this PW-10. Therefore, there is no contradictory evidence has been elicited by the defence counsel even though he had subjected to examination PWs 1, 2, 3 and 5. They are the material witnesses for the prosecution. The Trial Court has failed to notice that the evidence of PW-10 Doctor corroborates with the evidence of witnesses namely PWs 1 to 3 and 5. Further, PW-12 / Investigating Officer had no ill- will against accused persons to falsely implicate them in the commission of crime. During investigation, the Investigating officer drew the spot mahazar at Exhibit P3 in the presence of PW6 and PW7. More so, under this mahazar, he has seized MO-1 to MO-6. But MO-1 / Sticks, MO-2 / bricks, MO-3 / Stone, M.O-5 / machete are the material objects alleged to have been used by accused persons, which have been seized while drawing Exhibit P3. Despite of it, the Trial Court did not appreciate the evidence on record in a proper perspective. Further, much credence has been given to the version of the defence rather than appreciating the material evidence against all the accused persons. Hence, learned HCGP submits that the evidence on 10 record requires to be appreciated in a proper perspective and if not, it would result in a miscarriage of justice. Therefore, she contends that in this appeal, it requires intervention of the judgment of acquittal rendered by the Trial Court. If not interfered by re-appreciating the evidence and also re-appreciating the material

documents at Exhibits P7 to P9, the complainant and also injured would be the sufferers. According to the evidence of PW-1 / Papamma being the mother of PW-3 / Ramalingappa, it is stated that there was an altercation involving Vijayakumar S/o. Krishnappa and her son, Srinivas had questioned the accused and therefore, the accused are alleged to have assaulted them. But the aforesaid Srinivas is not a charge-sheeted witness. Merely because PW6 and PW7 did not withstand the fulcrum of the facts in spot mahazar at Exhibit P3, it cannot be a ground for seeking acquittal from the aforesaid offences leveled against the accused and more so, the photograph at 11 Exhibit P4 has been subjected to examination. PW-1 being the mother of PW-3 though has been examined on the part of the prosecution, this witness has not been properly examined by the prosecution even though an injured witness and also was given treatment by the Doctor. But PW-5 / Gangamma is also an injured witness and is the mother of PW-2 / Harikrishna. This witness was also subjected to examination on the part of the prosecution. But over all, these witnesses have withstood the versions of their statements. But the Trial Court had not considered their evidence but had given more credentiality to the cross-examination of those witnesses and held that the prosecution has failed to prove the guilt of the accused beyond all reasonable doubt. Therefore, under this appeal, it requires re- appreciating the entire evidence by considering the evidence of PW-1, PW-2, PW-4 and PW-5 who are the material witnesses and their evidence finds corroborated with each other in order to prove the guilt of the 12 accused. If this court does not consider the evidence of these witnesses, certainly it would result in a miscarriage of justice. Therefore, learned HCGP contends that this appeal requires intervention by considering the grounds urged therein and consequently seeks for setting aside the judgment of acquittal rendered by the Trial Court in S.C.No.328/2012 dated 01.06.2016. Consequent upon setting aside the acquittal judgment, it is prayed to convict the accused for the offences leveled against them.

6. Therefore, learned HCGP contends that in this appeal, it requires for re-appreciation of the evidence wherein the appeal is a continuation of the proceedings. Therefore, the learned HCGP for the State seeks for consideration of the grounds urged in this appeal and thereby to set aside the judgment of acquittal rendered by the Trial Court and consequently to convict the accused for alleged

7. Per contra, learned counsel for respondents / accused has taken us through the evidence of PW-1 / Papamma who is also an injured and had taken treatment. She has specifically stated in her evidence that when the police had visited the scene of crime, at that time they gave a complaint in writing by narrating the incident how it had taken place. But the same is not forthcoming on the part of the prosecution. PW-1 has been subjected to examination and also she is none other than the mother of PW-3 cited in the charge- sheet. But no doubt she has supported the case of the prosecution in part. But she has specifically stated in her examination-in-chief that accused had assaulted them when there was some altercation during the marriage of Vijayakumar S/o. Krishnappa, but as per the prosecution, the incident of assault had taken place after one month from the marriage of the said Viayakumar. She has further deposed that as there was an altercation involving Vijayakumar and her son, one 14 Srinivas had questioned the accused and therefore, the accused persons had assaulted them. But however, in the charge-sheet laid by the Investigating Officer, the said Srinivas is not made as a witness. If really the incident had taken place during the marriage of Vijayakumar S/o. Krishnappa, and that was the reason for the present incident, Srinivas being the eye-witness was a vital witness but he has not been made a charge sheet witness nor examined before the court. Therefore, the evidence of PW-1 does not assist the case of the prosecution to establish the incident as narrated in the statement of Exhibit P1 given by Ramalingappa who is examined as PW-3. Hence, the learned counsel contends that the said inconsistencies and absence of corroboration in the evidence of PW-1 has been rightly appreciated by the Trial Court in acquitting the accused. PW-9 / Venkataravanappa who is a witness to the seizure mahazar was also subjected to examination 15 relating to the spot mahazar at Exhibit P3 under which the weapons MO-1 to MO-3 and MO-5 were seized. However, this witness turned hostile to the case of the prosecution by deposing that even though he is in the photograph Exhibit P4 and had signed Exhibit P3, he does not know the contents of Exhibit P3 and that nothing was seized in his presence. Further, PW6 / Venkatesh and PW7 / Manjunath also have been cited as witnesses and also subjected to examination to prove Exhibit P3 of the mahazar drawn as on 24.03.2012. But both of them as well had turned hostile

to the case of the prosecution since they had stated that they did not know about the incident and they had not given any statement to the police. The materials secured by the I.O. during the course of investigation under Exhibit P3 mahazar those materials were sent to the FSL and subjected to examination and FSL report was secured at Exhibit P15. But the blood group has not been properly elicited 16 by the prosecution to prove the guilt of the accused relating to blood stains found on the items narrated and also the Wound Certificates at Exhibits P7, P8 and P9 do not specifically state as to who are the assailants and also cause for the injuries. But known people are alleged to have assaulted PWs 1 to 3 and 5. However, the names of any of those known people were not told to the Doctor who was examined as PW-10 who is said to have treated the injured and issued wound certificates. These are all the important evidence which has been appreciated by the Trial Court. There are also several inconsistencies in the statements of injured witnesses and the wound certificates. In that, while PW-2 had deposed that Accused No.1 assaulted him on the left side of his head, left ear, back side of head and right ribs with a machete, but Exhibit P8 / wound certificate does not indicate any injury to his right ribs. Further, while PW-5 has deposed in the examination-in-chief that she did not 17 know with what weapon she was assaulted whereas her wound certificate reveals that she was assaulted with a stick. While PW-2 has deposed that he was assaulted with a machete, but wound certificate reveals that the weapon used as a sickle. Thus, the versions of PWs 3, 2 and 5 are not corroborated by the Doctor or with the wound certificates regarding the parts where they sustained injuries. More so, the injured Harikrishna had been subjected to examination as PW-2. But based upon the report of the Rajiv Gandhi Hospital, PW-10 has opined that there was fracture on the right ribs and injured was referred to NIMHANS hospital. In NIMHANS Hospital report and Rajiv Gandhi Hospital report, two injuries are mentioned in his Wound certificate at Exhibit P8, grievous in nature. But report of Rajiv Gandhi Hospital and NIMHANS hospital, Bengaluru, on the part of the prosecution, is not forthcoming. Therefore, in the impugned judgment the Trial Court 18 has assessed the evidence of PW-10 / Doctor inclusive of the evidence of PW-2 / Harikrishna. Even Accused No.1 is alleged to have assaulted him by means of a machete. But Exhibit P8 / Wound Certificate does not speak of any injury to the right rib part. However, it speaks of

injuries on the part of the nose which is deposed by that injured PW-2. This version of PW-2 Harikrishna and version of PW-10 Doctor in respect of Exhibit P8 / Wound Certificate, does not coincide and does not corroborate each other even to arrive at a conclusion that the injuries were caused by means of MO-5 / machete which have been used by the accused at the time of the incident. PW-13 being Rudramurthy who subjected to examination the blood group and also examined, has only given a report regarding blood group of PW-2 on the basis of the report given by blood bank as per Exhibit P-13. He has supported the case of the prosecution. But the prosecution is required to 19 establish the link in between the injuries to PWs 1 to 3 and 5 and the accused persons being the cause for it. This version of the witness on the part of the prosecution does not help the case of the prosecution in establishing the case against the accused insofar as important circumstances that the accused were the cause for the injuries. PW-12 being the I.O who secured Exhibit P1 of the statement of PW-3 namely Ramalingappa, his statement has been recorded by one Police Constable Sriranga, but that Police Constable has neither been cited as a witness in the charge-sheet nor a venture was made to subject to examination the said Police Constable who is said to have recorded the statement of the injured Ramalingappa as per Exhibit P3. But Exhibit P11 / FIR has been recorded by Manjunath / I.O. who thoroughly investigated the case and during investigation, he has conducted mahazar at Exhibit P3 in the presence of PW6 and PW7. But the said panch 20 witnesses did not withstand the fulcrum of Exhibit P3 of the mahazar for having seized MO-1 to MO-6 in their presence. But PWs 6 and 7 have given a go-by to the fulcrum of Exhibit P3 mahazar. Therefore, clouds of doubt arises in the mind of the court to arrive at a conclusion whether the accused were cause for injuries on the injured PW-1, 2 and 5. Further, PW-4 Vijayakumar the eye-witness, did not support the case of the prosecution and more so, though he has given statement before the I.O. during the course of investigation, he has given go-by to the version of his statement at Exhibit P2. PW-8 / Venkataswamy who is also an eye-witness also did not withstand the versions of his statements. All these evidence have been completely appreciated by the Trial Court and the independent witnesses on the part of the prosecution have turned hostile to the theory of the prosecution put forth, and there are lot of contradictions in the versions of the interested 21 witnesses cited.

Hence, the Trial Court has rightly come to the conclusion that the evidence of PW-1 / Papamma, PW-2 / Harikrishna , PW-3 / Ramalingappa and PW-5/ Gangamma did not help the prosecution in any manner for the prosecution to establish the guilt of the accused beyond all reasonable doubt. Consequently, when doubt arises, that benefit of doubt shall always be in favour of the accused alone. Accordingly, the Trial Court has rightly come to the conclusion by appreciating the evidence and rendered an acquittal judgment. Therefore, the learned counsel contends that in this appeal, it cannot arise for intervention of the judgment of acquittal rendered by the Trial Court. Therefore, he contends that the appeal deserves to be dismissed as being devoid of merits.

8. In the context of the contentions taken by the learned HCGP for the appellant / State and based on the contentions of the learned counsel for respondents, 22 it is necessary to refer to the evidence of PW-1, 2, 3 and 5 who are the injured witnesses who have been subjected to examination. The incident had taken place on 23.03.2012 at around 6.00 p.m. But PWs 1 to 3 and 5 who are the injured were sitting in front of the house of PW-3 at Benakanahally and the accused persons / respondents herein are alleged to have come there and assaulted them with deadly weapons with common object by holding material objects of stone, bricks, clubs, machete by forming an unlawful assembly in view of an old enmity. They had also abused PWs 1 to 3 and 5 in filthy language. Accused No.1 assaulted PW-2 on his head, left forehead, near nose and behind the head with a machete, thus trying to kill him. Accused Nos.2 and 3 are said to have assaulted PW-2 with clubs on his right ribs, Accused No.4 is said to have assaulted PW-3 on the left side of his forehead and nose with a club, Accused No.6 is said to have hit PW-3 near the right foot on great toe with a stone, Accused No.10 is 23 said to have assaulted PW-1 on her right elbow with a club, Accused No.7 is said to have thrown a stone towards PW-3, Accused No.8 is said to have thrown bricks towards PW-3, Accused No.9 is also said to have thrown bricks towards PW-3 and is said to have punched him with hands. Thus, all accused persons are said to have threatened to take away the lives of PWs 1 to 3 and 5. Exhibits P7 to P9 are the wound certificates issued by the Doctor Rathnavathi / PW-10. But on the part of the prosecution, the reports of Rajiv Gandhi Hospital and NIMHANS Hospital, are not forthcoming to justify whether that wound certificate at Exhibit P8 has been

issued by PW-10 Doctor relating to giving an opinion that two injuries are grievous in nature and also inflicted with means of a club. It is relevant to refer to Section 149 of the Indian Penal Code, 1860 relating to unlawful assembly with intention to eliminate a person. Where the presence of injured eye-witnesses at the place of occurrence was 24 undoubtful and their evidence corroborated by medical evidence supported by a prompt FIR against the respondents / accused, merely non-explanation of injuries sustained by accused persons by these witnesses, is not fatal for the case of the prosecution. In the instant case, such common object of unlawful assembly to cause injuries as stated in Exhibits P7, P8 and P9 even though these injury certificates have been produced by the prosecution on their part to prove the guilt of the accused, but there is camouflage on the part of the prosecution theory. When doubt arises in the case of the prosecution, in criminal justice delivery system, it is always in favour of the accused alone. The nexus between common object and offence is the most important ingredient of Section 149 of the IPC. Section 149 does not create separate offence but only declares vicarious liability of all members of unlawful assembly for acts done in common object. There must be nexus between the common object and the offence committed 25 and if it is found that the same was committed with common object, every member of the assembly will become liable for the same. These ingredients relating to offence under Section 149 of the IPC of accused armed with deadly weapons would have to be established by the prosecution as there is a greater responsibility upon the prosecution to prove the guilt of the accused.

9. To determine the existence of a common object, the court is required to see the circumstances in which the incident had taken place and conduct of the members of unlawful assembly including the deadly weapons carried by each one of them and also used on the spot as narrated in the statement of the complaint including the substance in the FIR inclusive of the mahazar said to have been conducted by the I.O. But in the instant case, Exhibit P3 of the mahazar has been drawn by PW-12 / PSI and also being an I.O. and he 26 has laid the charge-sheet against the accused. But PW- 6 and PW-7 did not support the case of the prosecution. Consequently, doubt has arisen and there is no corroboration of the evidence of PWs 6, 7 and 12 in respect of Exhibit P3 of the spot mahazar said to be conducted by PW-12. Whereas under Section 307 of the IPC, 1860 the intention or

knowledge of the accused must be under such circumstances as necessary to constitute the offences. The question of intention to eliminate the person having knowledge that it would cause death in terms of Section 307, is a question of fact and not a question of law. It would always depend upon the facts and circumstances of a given case. But the important things to be kept in mind while determining the question is whether an offence under Section 307 IPC is made out by the prosecution relating to the concept of intention or even knowledge or even motive behind commission of an offence and causing of injuries on the 27 injured. Even though it is not necessary that injury, capable of causing death, should have been inflicted. What is material to attract the provisions of Section 307 IPC is the guilty intention or knowledge with which the all was done, irrespective of its result. But in the case on hand, the accused had made attempt to take away the life of the injured relating to infliction of injures at Exhibits P7, P8 and P9. But the prosecution did not facilitate worthwhile evidence in respect of each one of the offences in respect of which charges were framed. Though PW-1 to PW-13 were subjected to examination and several documents at Exhibits P1 to P15 including MO1 to MO6 were marked, PW-6 and PW-7 relating to Exhibit P3 spot mahazar, did not support the case of the prosecution to any extent to believe the version of the prosecution witnesses and also give more credentiality of the witnesses to arrive that the accused had inflicted injuries with means of MO-1 to MO-5. 28

10. Section 3 of the Indian Evidence Act, 1872 as regards the concept of proving a fact, makes it clear that, a fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. Further, Section 3 of the Indian Evidence Act, 1872 as regards the concept of disproving a fact, makes it clear that, a fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers its non- existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist. Section 3 of the Indian Evidence Act, 1872 as regards the concept of a fact not proved, states that, a 29 fact is said not to be proved when it is neither proved nor disproved. The concept of proved and disproved insofar as Section 3 of the Indian Evidence Act is an

important aspect. This domain is vested with the prosecution only to establish the guilt against the accused. But PW-4 who is a material witness and also eye-witness, he did not support the case of the prosecution to any extent. Therefore, the evidence of PW-1, 2, 3 and 5 creates some doubt in the mind of the court. Consequently, the Trial Court has rightly come to the conclusion that the prosecution did not facilitate worthwhile evidence to convict the accused. But merely because number of witnesses have been examined, but quality of evidence is an important aspect on the part of the prosecution and not the quantity of the evidence which is required to be judged by the court wherein more credence must be placed on the statement of witnesses. Law of 30 evidence does not require any particular number of witnesses to be examined to prove a given fact.

11. However, faced with the testimony of a single witness, the court may classify the oral testimony of a single witness, into three categories, namely, i) wholly reliable, ii) wholly unreliable and iii) neither wholly reliable nor wholly unreliable. In the first two categories, there may be no difficulty in accepting or discarding the testimony of the single witness. The difficulty arises in the third category of cases. The court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial, before acting upon testimony of a single witness. Whereas insofar as Exhibit P1 of the statement given by PW3 / Ramalingappa who is an injured, whose 31 statement has been recorded by one P.C., namely Sriranga, he has not subscribed his signature on the endorsement that his statement has been recorded in the presence of PW-12 / PSI who is the I.O. who laid the charge-sheet against the accused. But Section 17 of the Indian Evidence Act defines admission . An admission is a statement, [oral or documentary or contained in electronic form]., which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons. Admissibility is substantive evidence of the fact admitted while a previous statement used to contradict a witness does not become substantive evidence and merely serves the purpose of throwing doubt on the veracity of the witness. But in the instant case, Exhibit P1 is the statement of witness recorded by one PC Sriranga and based upon his statement, criminal law was set into motion by recording an FIR as per Exhibit P11 and thereafter PW-12 being an I.O. had taken up the case 32 for investigation and conducted thorough investigation and laid a

charge-sheet against the accused inclusive of Exhibit P3 spot mahazar. But Exhibit P1 of the statement given by one PW-3 / Ramalingappa who is an injured. However, his evidence is contrary to the evidence of PW-4 / Vijayakumar and further contradictory to the evidence of PW-7 and PW-12.

12. Whereas in the instant case, PW-6 had turned hostile and PW-7 had also turned hostile in respect of the contents of Exhibit P3 of the mahazar and PW-8 also turned hostile in respect of Exhibit P3 and they have specifically stated in their evidence that they did not know about the narration made in Exhibit P3 of the mahazar and so also PW-6 and PW-7 did not know about the incident narrated in the statement at Exhibit P1 given by PW-3 / Ramalingappa. Even Exhibit P11 which is the FIR recorded by the Police Constable Sriranga and based upon his complaint, criminal law 33 was set into motion and then laid a charge-sheet by PW- 12 / I.O. PW-10 Doctor who subjected to examination PWs 3, 2 and 5, has specifically stated in her evidence that the injuries were simple in nature on the basis of the report given by the Government Hospital, Tumkur. It is pertinent to refer to the report submitted by her wherein she has specifically stated in her cross- examination that Machette MO-5 has been used. She has stated the police did not bring PW-3 / Ramalingappa and she does not remember whether he had tied cloth on his head. PW-12 being an I.O. who laid the charge-sheet against the accused he has given evidence on the part of the prosecution that he made search of the accused on 13.04.2012 and even in Andhra Pradesh, but the same is not forthcoming on the part of the prosecution even in the material collected by him while laying the charge-sheet. But in the cross- examination, he has specifically stated that the police officials visited the spot on 23.03.2012 but he cannot 34 name those persons. But some villagers had called upon the police station and given opinion regarding the incident narrated in the FIR Exhibit P-11. But there is contradiction and inconsistency in the theory put forth by the prosecution to prove the guilt of the accused. The Trial Court has rightly appreciated the evidence of PWs 1 to 3 and 5 which is full of omissions and contradictions, which casts serious doubt in the case of the prosecution set out. Though prosecution was given an opportunity to prove the guilt of the accused, but has failed to facilitate worthwhile evidence by subjecting to examination eye-witnesses present in the scene of crime on 23.03.2012. Therefore, the evidence of

PWs 1 to 3 and 5 is not helpful to the case of the prosecution to any extent. Therefore, the Trial Court has held that the prosecution has miserably failed to prove the guilt of the accused. When clouds of doubt has arisen in the mind of the court, certainly there shall be some camouflage in the theory of the prosecution. 35 Consequently, the Trial Court has rightly come to the conclusion that the prosecution did not prove the guilt of the accused beyond all reasonable doubt. Accordingly, it has acquitted the accused. Therefore, under this appeal, it does not arise to call for interference.

13. In view of the aforesaid reasons and findings, we are of the opinion that there is no worthwhile evidence or any sound reasons or justifiable grounds urged in this appeal to seek intervention. Consequently, the appeal deserves to be rejected, being devoid of merits. Accordingly, we proceed to pass the following:

ORDER

The appeal preferred by the appellant / State under Section 378 (1) and (3) of the Cr.P.C. is hereby rejected. Consequently, the judgment of acquittal 36 rendered by the Trial Court in S.C.No.328/2012 dated 01.06.2016 is hereby confirmed. If any bail bond has been executed by respondents / accused, the same shall stand cancelled. Sd/- JUDGE Sd/- JUDGE KS

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