

**State Of Karnataka Vs. Santhosh**

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**SooperKanoon Citation :** [sooperkanoon.com/1234309](https://sooperkanoon.com/1234309)

**Court :** Karnataka

**Decided On :** Nov-23-2022

**Judge :** K.Somashekar and C M Joshi

**Appeal No. :** CRL.A 1289/2016

**Appellant :** State Of Karnataka

**Respondent :** Santhosh

**Judgement :**

R - 1 - CRL.A No.1289 of 2016 IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE23D DAY OF NOVEMBER, 2022 PRESENT THE HON'BLE MR JUSTICE K.SOMASHEKAR AND THE HON'BLE MR JUSTICE C M JOSHI CRIMINAL APPEAL No.1289 OF 2016 BETWEEN: State of Karnataka Rep. by Birur Police Rep. by SPP High Court Bengaluru - 560 001. ...Appellant (By Sri. Abhijith K.S - HCGP) AND:

1. Santhosh S/o. Late Narasimhappa Aged about 23 years Agriculturist R/o. Horithimmanahally Kadur Taluk Chikkamagaluru - 577548.

2. Sunil S/o Late Narasimhappa Aged about 21 years Student R/o Horithimmanahally Kadur Taluk Chikkamagaluru-577548.-. 2 - CRL.A No.1289 of 2016 3. Sarojamma W/o. Narasimhappa Aged about 58 years R/o Horithimmanahally Kadur Taluk Chikkamagaluru-577548.

4. Renuka W/o. Santhosh Aged about 20 years R/o Horithimmanahally Kadur Taluk Chikkamagaluru-577548. ...Respondents (By Sri. K.S. Ganesha - Advocate for R-1 to R-4) This Criminal Appeal filed under Sec.378(1) and (3) of Criminal Procedure Code, by the SPP for the state/appellant praying to: a) grant leave to appeal against the judgment and order of acquittal dated 11.01.2016 in Sessions Case No.86/2013 passed by the I-Addl. Sessions Judge at Chikkamagaluru acquitting the accused Nos. 1 to 4 for offences punishable under Sections 504, 324, 326, 307, 506 r/w Section 34 of IPC; b) set aside the judgment and order of acquittal dated 11.01.2016 in Sessions Case No.86/2013 passed by the I-Addl. Sessions Judge at Chikkamagaluru acquitting the accused - respondents by allowing this appeal; and c) convict and sentence the Accused Nos.1 to 4 for offences punishable under Sections 504, 324, 326, 307, 506 r/w Section 34 of IPC in Sessions Case NO.86/2013 - 3 - CRL.A No.1289 of 2016 dated 11.01.2016 passed by the I-Addl. Sessions Judge a Chikkamagaluru. This criminal appeal coming on for dictating judgment this day, K. Somashekar .J., delivered the following:

## **JUDGMENT**

In this appeal the appellant / State is challenging the judgment of acquittal rendered by the I Addl.Sessions Judge, Chikkamagaluru in S.C.No.86/2013 dated 11.01.2016 whereby accused were acquitted for the offences under Section 504, 324, 326, 307 and 506 r/w 34 of IPC, 1860. Whereas the appellant/State is seeking intervention by re- appreciation of the evidence and so also, revisiting of the impugned judgment of acquittal and consideration of the grounds as urged therein. Consequently, to set-aside the acquittal judgment rendered by the trial Court and convict the accused of the offences which they have been charged.

2. Heard learned HCGP for State and learned counsel Sri K.S.Ganesha for respondent Nos. 1 to 4. Perused the judgment of acquittal in S.C.No.86/2013.-. 4 - CRL.A No.1289 of 2016 3. The brief facts of the appeal are as under: It is transpired in the case of the prosecution that on 20.05.2013 at around 6.30 p.m. PW.1 being the complainant was sitting in front his house, by the time accused Nos.1 to 4 abused him in filthy language and told them it is already rained and if

anybody comes to the land, there will not be good signs. By saying so accused Nos.1 and 2 were abusing the complainant that the partition is not correct, and they have suffered some sort of injustice. In the meanwhile of that kind of exchange of words, altercation took in between them and accused No.1 assaulted PW.8 on his head part with iron rod. As a result he sustained some injuries. It is further transpired in the complaint that while PW.8 had come forwarded to pacify the incident, accused No.2 came and assaulted with means of chopper on his face saying that he would finish him. Since he went back during the assault, he sustained injuries on his nose and also on the ear. In pursuance of the act of the accused, on filing of complaint - 5 - CRL.A No.1289 of 2016 by the complainant namely Puttaswamy who is examined as PW.1 and so also, being injured and based upon his complaint, criminal law was set into motion by recording FIR at Ex.P10. Subsequent to registration of the crime PW.14 being investigating officer took up the case for investigation and investigated the case in entirety and laid charge sheet against the accused before the committal Court.

4. Subsequent to laying of the charge sheet by the investigating officer, the case was committed to the Court of Sessions by the committal Magistrate by compliance of Section 207 of Cr.P.C. relating to Section 209 of Cr.P.C. Subsequent to committing the case to the Court of Sessions whereby the trial Court had secured the presence of accused for facing of trial and accordingly, the case in S.C.No.86/2013 has been registered and also assigned the said case. The trial Court heard the learned Public Prosecutor for State and the defense counsel for accused relating to framing of charge. On finding prima-face case in the charge sheet materials, charges were prepared and the - 6 - CRL.A No.1289 of 2016 same were read over to the accused in the language known to them and charges for the offence under Section 504, 324, 327, 307 and 506 r/w Section 34 of IPC was framed against the accused persons. The accused did not pleaded guilty but claimed to be tried. Accordingly, the plea of the accused were recorded respectively.

5. Subsequent to framing of charge wherein the prosecution let in the evidence by subjecting to examination of PWs.1 to 14 and got several documents as per Ex.P1 to P11 and so also, M.Os.1 to 9. Subsequent to closure of the evidence on the

part of the prosecution whereby the accused were subjected to examination as required under Section 313 of Cr.P.C. for incriminating evidence appeared against them wherein the accused denied the truth of the evidence of the prosecution adduced. Accordingly, it was recorded separately. Subsequent to recording the incriminating statement as required under the relevant provisions of Cr.P.C. the accused were called upon to entering into any defense evidence as contemplated under Section 233 of - 7 - CRL.A No.1289 of 2016 Cr.P.C. But the accused did not come forward to lead any defense evidence. Accordingly, it was recorded.

6. Subsequently the trial Court heard arguments advanced by learned Public Prosecutor for State and the defense counsel for accused. The trial Court raised the points for consideration based upon the offences lugged against the accused persons. Thereafter, on appreciation of oral and documentary evidence on record and by assigning reasons, the trial Court rendered the judgment of acquittal.

7. PW.1 is the injured and author of the complaint at Ex.P1. Based upon his complaint criminal law was set into motion. There was dispute in between him and also the accused persons in respect of the property. For that reason only was some altercation took in between them and wherein accused Nos.1 and 2 were raising their voice towards the complainant that the partition was not correct and saying so picked up quarrel with the complainant. By that time, PW.8 - Gangadhar came forward to pacify the incident, then accused Nos.1 and 2 with a greater anguish - 8 - CRL.A No.1289 of 2016 went inside their house and accused No.1 brought iron rod and assaulted PW.8 and caused infliction of injuries as found in the wound certificate. Accused No.2 had come forward to assault PW.1 with means of chopper by chosen his face and saying that he would finish him. Due to the assault made, he sustained injury on the part of his nose. PW.1 withstood to the contents of Ex.P1 complaint and he also supported the case of the prosecution. But in the cross-examination, he admits that his house and also house of the accused are side by side and further admitted that there are house of his relatives. But accused persons picked up quarrel with the complainant in respect of the properties in respect of Sy.No.16, but he denied the suggestion made that he dont have any connection in the land bearing Sy.No.16. The land bearing Sy.No.16 was measuring 20 acres. Out of that the partition was effected in

between one Kariyappa, Hanumanna, Ramanna and Govindappa and they were allotted five acres each. When the accused was shouting, relating to incorrect partition, CW.6 - Gangadhara - 9 - CRL.A No.1289 of 2016 and CW.7 Murtappa were also present. He admits that there are houses of one Manjappa, Veerappa and Kariappa at the scene of crime. But this PW.1 has denied the suggestion made in respect of land in Sy.,No.16 and also specifically denied that he is nothing to do with the landed property. This is the evidence of PW.1 relating to the content in Ex.P1 of the complaint.

8. PW.2 is the witness relating to Ex.P2 - Spot mahazar under which MOs.1 to 4 were seized by the IO. But this witness has turned hostile and supported the case of the prosecution. Therefore, he was subjected to cross- examination at length. But nothing worthwhile has been elicited relating to prove the guilt against the accused. He has specifically stated in the cross-examination that he does not know any facts about Ex.P2 - spot mahazar, but admitted that on the request of the police he has subscribed his signature on Ex.P2. He also admits that he has no information about this case.-. 10 - CRL.A No.1289 of 2016 9. PW.3 is also the witness who has been secured relating to Ex.P5 - seizure mahazar under which MOs.5 to 9 were seized and got it marked. Even though this witness has supported the prosecution case, but in the cross- examination on behalf of accused persons, he stated that while subscribing his signature to Ex.P5, except the police, nobody were present and he subscribed his signature only on the request of the police. He has specifically that he does not know the contents made in Ex.P5 relating to seizure of MO.1 to 5. Therefore, the evidence of PWs.1, 2 and 3 runs contrary to the contents at Ex.P2 of the spot mahazar and so also, Ex.P5 of seizure mahazar. This evidence was considered by the trial Court and arrived at a opinion that the prosecution has failed to establish the guilt against the accused persons beyond all reasonable doubt.

10. Wherein the trial Court was commanding the evidence of PW.4 - Doctor who was working at Mc Gann Hospita, Shivamogga and who treated PW.8 - Gangadhara who is injured. He noted two injuries inflicted over the - 11 - CRL.A No.1289 of 2016 person of PW.8 and issued Ex.P6, the case sheet. In the cross-examination he admits that if a person falls on a hard and rough surface, the

injuries sustained by PW.8 could be caused. He has stated that he has written the history of the injury as said by the injured himself.

11. PW.5 is the eyewitness to the incident and in his evidence has stated that he has not stated anything about accused Nos.3 and 4 but supported the case of the prosecution only against accused Nos.1 and 2. But this witness has turned round his version of the statement. But in the cross-examination he has admitted all suggestions made to him and he states that CWs.1 to 12 do not go to the house of the accused persons and also admits that accused persons are separate and he and his brothers are separate and he does not know the date of the incident. He specifically states that incident took place in two minutes and during the incident, the villagers by name Erappa, Manjappa were also present. The chopper and iron road are blood stained.-. 12 - CRL.A No.1289 of 2016 12. PW.6 is also the eye witness and he has supported the case of the prosecution relating to accused Nos.3 and 4 throwing chilli powder and assaulting PWs.1, 8 and Parvathamma. But in the cross-examination has specifically stated that he has given the documents in respect of the lands and he denied that Sy.No.16 belongs to accused Nos.1 and 2. A suit for partition has been filed by him in respect of the said survey number and has given documents in this regard to the police. He tried to pacify the situation and he has not sustained any injuries. Therefore, the evidence of PWs.5 and 6 who are the eye witnesses are contradictory to each other and further contradictory to the evidence of PWs.1, 2 and 3.

13. PW.8 - Gangadhara is the injured person and he has supported the case of prosecution but in the cross- examination says that the incident occurred at 7 p.m. He states that he cannot say the period of incident and admits that there is dispute between him and accused No.1 in respect of Sy.No.16 and he has not given the document - 13 - CRL.A No.1289 of 2016 pertaining to Sy.No.16 to the IO. He admits that he has no right over the property in question. When the incident occurred there were five persons on his side and five persons on the side of accused persons. Since there was darkness he cannot says as to how many persons were present at that time. He states that he does not know what is written in Ex.P5 and on its perusal it shows that it is written in Birur police Station.

14. PW.10 is also eye witness and supported the case of prosecution. In the cross-examination he states that he has not sustained any injuries or bloodstains. PW.11 is also eye witness and he has supported the case of prosecution. In the cross-examination he states that this incident occurred for only one minute. He says that he does not know who quarreled and what was the arguments that went on. He states that there was no blood stains at the scene of crime.

15. PW.12 is the Doctor who treated PWs.1, 8 and 5. He issued wound certificates as per Exs.P7, P8 and P9. In - 14 - CRL.A No.1289 of 2016 the cross - examination he admits that in Ex.P9 the name of Pradeep is deleted and name of Santosh is written. But he states that he has not written in Ex.P8 that which CT scan report he has written Ex.P8. He specifically states that the bones around the eye have been fractured and he has not mentioned this fact in the MLC register. He admits that if the persons indulged in dragging each other on the stones shown in Ex.P3 and P4 the injuries mentioned in Ex.P7 to P9 can occur.

16. PW.13 is the Head Constable who recorded the statement of PW.1 and produced before the IO. In the cross- examination he states that when he recorded the statement under Ex.P1, no Doctor was present. He did not take the opinion of the doctor whether PW.1 was in good state of health to give a statement relating to the incident.

17. PW.14 being the IO has investigated the case and filed the charge sheet. In the cross-examination he says that during investigation, he came to know that there is a land dispute between the accused persons and PW.1. He - 15 - CRL.A No.1289 of 2016 states that he has not investigated as to in which survey number the dispute was going on. He has not investigated whether PW.1 has got any land and admits that in Ex.P7 to P9 the time of incident is not mentioned. He has further stated specifically that he has not investigated relating to deleting the name of Pradeep and inserting the name of Santosh in Ex.P9. He has not investigated whether there is any civil dispute pending between the parties in respect of the lands. M.Os.1 to 4 were produced by CW.8 from the house of PW.1 who is the author of the complaint and also being an injured. These are all the evidence let in by the prosecution to prove the guilt of the accused persons. The evidence on

record on the part of the prosecution has been disclosed that in the village all the persons are with PW.1 and his supporters. There are nobody to support the accused persons. The house of the accused persons and PW.1 is situated side by side. It appears that there is a civil dispute in respect of Sy.No.16 of Horithimmanahalli village. PW.5 has stated that at the time of this incident except - 16 - CRL.A No.1289 of 2016 accused Nos.1 and 2 nobody was present. The persons who are examined before the Court are all close relatives of PW.1. PW.5 says that blood was stained to the chopper and the iron rod. Ex.P2 is the mahazar under which chopper and iron rod were seized. A perusal of Ex.P2 shows that there were no signs of offence or blood at the scene of crime. Even it is noted in Ex.P2 that accused persons threw away MOs.1 to 4 and ran away from the scene of crime. Even Ex.P2, it is noted that there are no blood stains of MOs.1 to 4. The investigating officer has also stated that he has not investigated whether there are civil cases pending between the parties in respect of the land dispute.

18. The prosecution has produced plethora of citations which indicated in paragraph 28 of the impugned judgment. But the evidence adduced by the prosecution does not inspire confidence of the court of law to hold that accused Nos.1 to 4 had common intention to commit the murder by infliction of injuries. Even at a cursory glance of the evidence that the trial Court has arrived at a conclusion that - 17 - CRL.A No.1289 of 2016 though the prosecution has let in evidence but the same does not prove the ingredients of Sections 307, 326 or 324 of IPC. Even several documents have been got marked but assessing the evidence of prosecution it does not inspire the confidence of Court of law to hold that the accused persons with an intention to eliminate PW.1 assaulted him with means of chopper and iron rod. From the evidence available on record, it appears that there is a civil dispute between the parties and even the documents produced by accused No.1 indicates that Sy.No.16 of Hori Thimmanahalli in respect of which the present incident occurred stands in the name of accused No.3. Therefore, it is made it clear from the evidence on record that PW.1 and the witnesses with a view to knock off the property belonging to accused No.3 have falsely implicated the accused persons in this case. These are all the observations made by the trial Court and had come to the conclusion that the prosecution has failed to prove the guilt against the accused by facilitating worthwhile evidence and consequently,



they are entitled for acquittal.-. 18 - CRL.A No.1289 of 2016 Accordingly, rendering the acquittal judgment which has been challenged under this appeal by urging various grounds.

19. Whereas learned HCGP for State has taken us through the evidence of PW.1, 5, 6, 7, 8, 10 and 11 who are the witnesses on the part of the prosecution and who have given evidence to prove the guilt against accused. But their evidence has not been properly appreciated by the trial Court since they are the material witnesses to the case of the prosecution relating to the incident narrated in the complaint at Ex.P1. Their evidence cannot be discarded in a lighter way. Further, the trial Court has failed to appreciate the evidence of PW.1, 5, 6, 7 and 8 who are the injured eye witnesses to the case of the prosecution and so also, the contents of Ex.P4, P6 and P9 which are wound certificates of the injured eye witnesses. The trial court has misdirected the evidence and also misinterpreted the evidence and rendering the acquittal judgment though there are sufficient incriminating materials both oral and documentary collected - 19 - CRL.A No.1289 of 2016 against the accused Nos.1 to 4 and the commission of offences punishable under Sections 504, 324, 326, 307, 506 r/w 34 of IPC are proved beyond reasonable doubt. Despite that the trial Court did not appreciate the evidence in a proper perspective manner but rendering the acquittal judgment by consideration of the grounds urged therein. The trial Court has not drawn proper inference on the basis of evidence on record and also not properly recorded the findings on the charges leveled against the accused. The trial court ought to have considered that accused Nos.1 to 4 have committed the alleged offences with an intention to eliminate PW.1 and PW.2 but arrived at a conclusion by rendering the acquittal judgment. Therefore, in this appeal it requires re-appreciation of the evidence and also revisiting of the impugned judgment and consequently, seeking for reversal of the acquittal judgment and to convict the accused for which they have been charged.-. 20 - CRL.A No.1289 of 2016 20. In support of his contentions learned HCGP for State has placed reliance on the following judgments of the Honble Supreme Court: (i) (2011) 4 SCC324- State of Uttar Pradesh vs. Naresh and others wherein it is relevant to refer foot note - C : Criminal trial - witnesses - injured witness - creditability of testimony of injured witness must be given due weightage - his presence cannot be doubted - it is unlikely that he would spare actual assailant in

order to falsely implicate someone else - PW.5 who had suffered gunshot injuries disbelieved by High Court, without assigning cogent reasons - held, mere contradictions on trivial matters could not render injured eyewitnesses deposition untrustworthy. The issues has been addressed in paras 26 and 27 of the judgment. (ii) 2022 LiveLaw (SC) 482- Surendran vs. State of Kerala (Crl.A.No.1080/2019). In this judgment is held that - 21 - CRL.A No.1289 of 2016 the evidence tendered by the related or interested witness cannot be discarded on that ground alone. However, as a rule of prudence, the Court may scrutinize the evidence of such related or interested witness more carefully.

21. On contrary, learned counsel for respondents has given more credentiality to the evidence of PWs.5 and 6 who are the eye witnesses and they have not supported the prosecution. PW.5 has specifically stated relating to the role accused Nos.3 and 4 and he has been treated hostile on the part of the prosecution and he has given a go-by to the version of his statement. But CWs.1 to 12 have cited as witnesses in the charge sheet by the investigating officer they had gone to the house of accused persons. But admitted that accused persons are separately residing and his brothers are also separately residing more so, he does not know the date of incident. When the incident occurred as indicated in Ex.P1 - complaint, the villagers namely Earappa and Manjappa were also present. Even they used deadly weapons such as chopper and also iron rod. But the - 22 - CRL.A No.1289 of 2016 evidence of PW.5 runs contrary to the evidence of PW.6 being the eye witnesses and so also, contrary to the evidence of PW.1 injured and PW.5 - Murtappa and PW.8 - Gangadhar. But the evidence of PW.5 and PW.6 being the eye witnesses runs contrary to the evidence of PW.1 who is the injured. PW.10 and PW.11 are also the eye witnesses and their evidence also runs contrary to the evidence of PW.14 being the IO who investigated the case and laid the charge sheet against the accused and further contradictory to the evidence of PW.13 being the Head Constable who recorded the statement of PW.1. The evidence on record shows that in the village all the persons are with PW.1 and his supporters. There is nobody to support the accused persons. The house of the accused persons and PW.1 is situated side by side. PW.5 specifically stated that incident occurred for two minutes. PW.8 - Gangadhar says that he cannot say the duration of the incident. PW.11 in his evidence state that the incident occurred

only for one minute. But there is also evidence to show that CWs.1 to 12 - 23 - CRL.A No.1289 of 2016 do not go to the house of the accused persons. There are houses of Erappa and Manjappa at the scene of crime but they have not been made as witnesses in this case. The persons examined before the Court are all close relatives of PW.1. PW.5 states that blood was stained to the chopper and the iron rod. Ex.P2 is the mahazar under which chopper and iron rod were seized. But there were no signs of offence or blood at the spot. It is pertinent to note that PW.6 has produced MOs.1 to 4 from his house. Even though the witnesses have been subjected to examination as under the relevant provisions of Code of Criminal Procedure for enabling them to answer to incriminating evidence appeared against them. But the counsel for respondent Nos.1 to 4 / accused mainly contended that accused No.1 in his examination under Section 313 Cr.P.C. has produced two RTC extracts and one mutation register extract. The RTC extracts show that it stands in the name of his mother accused No.3 - Sarojamma. The mutation is made out in the name of accused No.3. The above documents are in - 24 - CRL.A No.1289 of 2016 respect of Sy.No.16 of Horithimmanahalli village. It appears that there is a civil dispute between the parties in respect of partition of the family properties and accused persons are isolated by PW.1 and his supporters in the village. Therefore, a prudent man can infer that there was some civil dispute emerged in between the accused persons and consequently, the civil in nature turned into criminal in nature.

22. PW.12 is the Doctor who issued wound certificates at Exs.P7, P8 and P9 wherein the injured had sustained some injuries because of the assault made with means of chopper and iron rod. But iron rod is not at all mentioned in the wound certificates. The witnesses to Ex.P2 and P5 have not supported the case of the prosecution. The witnesses examined in the case are all interested witnesses who have given evidence in support of PW.1. But the evidence adduced by the prosecution does not absolutely inspire confidence in securing the conviction as contended by learned HCGP. Even at a cursory glance of the evidence - 25 - CRL.A No.1289 of 2016 of the injured and the ingredients of the offences which leveled against the accused person does not prove the offence committed by the accused persons. There is evidence of only interested witnesses and supported PW.1 and they have got ill will against the accused persons. There is settled

principles of law that even though interested witnesses or relative and their evidence have to be scrutinized carefully and cautiously. But what are the evidence on the part of the prosecution are required to be considered. But in the instant case there was some civil dispute emerged in between the parties. Therefore, even on close scrutiny of the evidence adduced by the prosecution it does not inspire the confidence of the court of law to hold that the accused persons with an intention to eliminate PW.1 assaulted him and also infliction of injuries over his person. The documents produced by accused No.1 indicate that Sy.No.16 of Hori Thimmanahalli in respect of which the present incident occurred stands in the name of accused No.3. Therefore, it is clear from the evidence on record that - 26 - CRL.A No.1289 of 2016 PW.1 and the witnesses cited in the charge sheet with a view to knock off the property belonging to accused No.3 have falsely implicated the accused persons in this case. It is contended that the trial Court has rightly come to the conclusion by rendering the acquittal judgment relating to the offences. Therefore, in this appeal it does not call for interference of the impugned judgment. Even the evidence of PWs.1, 5 and 8 who are injured witnesses and they have taken treatment by the Doctor who issued wound certificates at Ex.P7 to P9 but their evidence founds to be camouflage. Therefore, it does not arise for call for interference of the impugned judgment and consequently, the appeal filed by the State deserves to be dismissed as devoid of merits.

23. It is in this backdrop of the contentions made by learned HCGP for State and so also, learned counsel for respondents/accused, there is no doubt about noticing in the incriminating statement recorded by the trial Court even after the completion of evidence let in on the part of the prosecution. Accused No.1 in his examination under - 27 - CRL.A No.1289 of 2016 Section 313 Cr.P.C. has produced two RTC extracts and one mutation register extract. The RTC extracts indicates that it stands in the name of accused No.3 - Sarojamma. The mutation is also made out in the name of accused No.3. Therefore, a prudent man can infer that there was civil dispute emerged in between the complainant and the accused persons. The above documents are in respect of Sy.No.16 of Horithimmanahalli village. But it appears that there is a civil dispute between the parties in respect of the partition of the family properties. It is also made clear from the evidence on record that the

accused persons are isolated by PW.1 and his supporters in the village. The name of Pradeep is deleted in Ex.P9. Further, the IO has stated that he has not investigated as to why the name of Pradeep is deleted in Ex.P9. This contention is made by learned counsel for respondents during the course of his arguments and also counter to the arguments made by learned HCGP for state. As in the holistic approach of the investigating agency and the papers reveals that he has not investigated - 28 - CRL.A No.1289 of 2016 as to why the name of Pradeep is deleted. But Exs.P7 to P9 indicated that injured persons alleged to have sustained injuries because of the assault made by chopper and club. But the use of iron rod is not at all mentioned in the wound certificates at Ex.P7 to P9 which itself indicates that the theory put in by the prosecution founds to be camouflage and there shall some somersault on the part of the prosecution. But Ex.P2 - spot mahazar and Ex.P5 - seizure mahazar and the witnesses to that mahazars have not supported the case of the prosecution even though they were subjected to examination and also incisive cross- examination has been done but nothing worthwhile has been elicited relating to the contents of Ex.P2 and P5. The contention of learned HCGP that based upon the evidence of PWs.1, 5 and 8 who are the eye witnesses who subjected to examination on the part of the prosecution are also interested witnesses. The evidence which adduced by the prosecution even at a cursory glance of evidence of the panch witnesses coupled with the evidence of PW.14 being - 29 - CRL.A No.1289 of 2016 the IO who conducted the spot mahazar and seizure mahazar as per Exs.P2 and P5 does not corroborate with any independent witnesses. Even PW.2 - Erappa who has been secured as panch witness in respect of Ex.P2 - spot mahazar and PW.3 - Vasanth who was secured as panch witness in respect of Ex.P3 - seizure mahazar, but they did not withstood their version and the fulcrum of the mahazar and have been given goby and also has been diluted. Therefore, it would create some doubt in the theory of the prosecution and more so, it does not repose confidence in the theory put forth by the prosecution. PW.7 being the panch witness in respect of Ex.P5 - seizure mahazar conducted by PW.14 being the IO and this witness has also turned around relating to its contents. But the evidence of PWs.2, 3 and 7 runs contrary to each other and contradictory to the evidence of PW.14 who laid the charge sheet against the accused by drawing the mahazar and also seized the MO.1 - chopper,

MO.2 and 3 - clubs and MO.4 - iron rod.-. 30 - CRL.A No.1289 of 2016 24. PW.10 - Pradeep is also the eye witness. Even at a cursory glance of this eye witness even the entirety of the evidence inclusive of the cross-examination even taken into consideration of this evidence their evidence has been contradictory to the evidence of PW.1 - Puttaswamy who is the author of the complaint at Ex.P1 and so also, being the injured and further contradictory to the evidence of PW.5 - Murthappa and PW.8 - Gangadhara. Even the prosecution has facilitated certain evidence and even facilitating certain reliances in support of the case. But having gone through the entire decisions rendered and also facilitated by the prosecution even taken into consideration of the pith and substance of the aforesaid reliances relating to the intention to prove the commission of murder of PWs.1 and 2 even made attempt to take away their life, but the act done by the person and even the burden is on the prosecution and it alone has to prove that the accused had made an attempt to take away life of injured PWs.1 and 2. But in the case on hand no witnesses have stated that the accused persons had - 31 - CRL.A No.1289 of 2016 intention to eliminate PW.1 - Puttaswamy who is injured and also author of complaint at Ex.P1. At a cursory glance of entire evidence of injured and inclusive of evidence of PW.12 being the Doctor whereby issued wound certificates - Exs.P7, P8 and P9 but it does not inspire confidence of the court and so also, prove the ingredients of the offences under Sections 307, 326, or 324 of IPC.

25. But common intention as described under Section 34 of IPC, it has to be assessed and considered it is based upon the involvement of the person being an accused. But the act done by several persons in furtherance of the common intention it has to be proved by the prosecution and it is the domain vested with the prosecution only relating to the overt act attributed to the individual accused person. Section 34 of IPC will be attracted as essentially it involves vicarious liability but if participation of the accused in the crime is proved and common intention is absent, Section 34 cannot be invoked. In other words, it requires a pre-arranged plan and pre-supposes prior concert, therefore, - 32 - CRL.A No.1289 of 2016 there must be prior meeting of minds. Common intention means a pre-oriented plan and acting in pursuance to the plan, thus common intention must exist prior to the commission of the act in a point of time. This issue has been extensively held by the Honble Supreme Court in Shaymal ghosh v. State of West

Bengal (AIR 2012 SC3539).

26. Even taking into consideration the given peculiar facts and circumstances of the case relating to major offence under Section 307 of IPC which has been lugged against the accused, but a clear distinction between common intention and common object is that common intention denotes action in concert and necessarily postulates the existence of a pre- arranged plan implying a prior meeting of the minds, while common object does not necessarily require proof of prior meeting of minds or pre-concert. Though there is a substantial difference between the two sections namely 34 and 149, they also to some extent overlap and it is a question to be determined on the facts of each case. But - 33 - CRL.A No.1289 of 2016 there is difference in operation of Section 34 and Section 149. But Section 149 relating to common object and Section 34 relating to common intention. But relating to ingredients of Section 34 lugged against the accused, it is sought to be proved only on circumstantial evidence, the allegations of common intention under Section 34 normally cannot be established in absence of meeting of mind, the overt act of the accused, by their conduct, by using the weapons by their utterance of words. But in order to bring a case under Section 34 it is not necessary that there must be a prior conspiracy or pre-meditation, the common intention can be formed in the course of occurrence. This issue has been extensively addressed by the Honble Supreme Court in various judgments. But the common intention it may be formed in the course of occurrence. The participation in the criminal act keeping in view Section 34 of IPC, there should be two or more accused, two factors must be established, firstly common intention, and secondly, participation of accused in the commission of an offence. If common - 34 - CRL.A No.1289 of 2016 intention is proved but no overt act is attributed to the individual accused, Section 34 will be attracted as essentially it involves vicarious liability but if participation of the accused in the crime is proved and common intention is absent, Section 34 cannot be invoked. But it is the domain vested with the prosecution to prove the guilt against the accused by facilitating worthwhile evidence and establish the guilt of the accused relating to the ingredients of each offence.

27. However, in the instant case, it is require to looking into Section 326 of IPC relating to voluntarily causing grievous hurt by dangerous weapons or means. But necessarily in this provision except in the case provided for by Section 335, voluntarily causes grievous hurt by means of any instruments. But the trial Court has appreciated the evidence on the part of the prosecution dwelling in detail of the ingredients of offences under Sections 324, 326, 307 and 506 r/w 34 of IPC. But arrival at a conclusion that the prosecution has failed to establish the guilt against the - 35 - CRL.A No.1289 of 2016 accused with beyond all reasonable doubt. But in respect of Sy.No.16 of land situated in the limit of Horithimmanahalli Village, there was some partition affected and wherein the partition was incorrect and because of the reason there was some altercation took in between the complainant and accused persons. But a prudent man can infer that civil in nature of dispute has turned into criminal in nature and criminal prosecution has been lugged against the accused by registering the crime and recording FIR and even following the requirements under the relevant provisions of Code of Criminal Procedure. Mere because of filing of the charge sheet it cannot be said unless the charges are proved by the prosecution by facilitating the worthwhile evidence it cannot be held that the prosecution has proved the guilt against the accused beyond all reasonable doubt. Whereas the trial Court commanding the evidence of the injured PW.1 who is the author of the complaint and evidence of PW.5 and so also, PW.8 - Gangadhara who the injured relating to the wound certificates as per Exs.P7 to P9. But as already held - 36 - CRL.A No.1289 of 2016 that the civil in nature has been turned into criminal in nature and consequently, criminal prosecution has been held against the accused persons. But it is the domain vested with the prosecution to prove the guilt against the accused persons by facilitating the worthwhile evidence. But as the Doctrine of criminal justice delivery system that the prosecution has to prove the guilt against the accused by acceptable and convincing evidence in terms of cogent, corroborative and acceptable evidence and then only it can secure the conviction against the accused persons. But even the acquittal judgment has been challenged by the State based upon the evidence of injured witnesses and so also, the wound certificates. But in this judgment of acquittal no perversity, absurdity or illegality or any infirmity has been committed by the trial Court for intervention and more so, it



is settled principles of law that the Court must slow down while interfering with the impugned judgment of acquittal.-. 37 - CRL.A No.1289 of 2016 28. It is relevant to refer Section 134 of the Evidence Act 1872. It is well-known principle of law that reliance can be based upon even solitary statement of witness if the Court comes to the conclusion that the said statement is the true and correct version of the case of the prosecution. This issue has been extensively addressed by the Honble Supreme Court in the case of Raja v. State (1997) 2 Crimes 175 (Del). Further in the case of State of Uttar Pradesh v. Kishanpal, 2008 (8) JT650 it is held that credentiality must be given to the quality of evidence. It is the quality of evidence and not quantity which is required to be judged by the court to place credence on the statement of witnesses.

29. It is relevant to refer requirement as to number of witnesses and this aspect is concerned, the law of evidence does not require any particular number of witnesses to be examined in order to prove a given fact. However, faced with the testimony of a single witness, the court may classify the - 38 - CRL.A No.1289 of 2016 oral testimony of a single witness, the court may classify the oral testimony 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. This has been extensively addressed by the Honble Supreme Court of India in the case of Lallu Manjhi Vs. State of Jharkhand, AIR 2003 SC854 30. Therefore, there is settled principles of law that the evidence let in by the prosecution has to be assessed carefully and cautiously and it should not be brushed aside. But in the instant case, the civil in nature of the dispute - 39 - CRL.A No.1289 of 2016 emerged in between the complainant and accused persons turned into criminal in nature due to the incorrect partition effected between the parties and as such there was some altercation took in between them as a resultant, criminal prosecution has been initiated. Though the prosecution has let in evidence of the injured witnesses and also production of injury certificates, but the evidence of the injured witnesses have been shattered and it does not inspire the confidence of the Court of law and

so also, free from doubt and more so, the prosecution has to prove the guilt against the accused with beyond all reasonable doubt. Consequently, the trial Court has rendered the acquittal judgment by assigning reasons and so also, sound reasons by commanding the evidence of the injured witnesses and interested witnesses. Therefore, in this appeal it does not arise for call for interference as stated by the learned HCGP for State by urging various grounds. Consequently, we are of the opinion that the appeal preferred by the State - 40 - CRL.A No.1289 of 2016 deserves to be rejected being devoid of merits. Accordingly, we proceed to pass the following:

#### ORDER

The Criminal Appeal filed by the appellant / State under Section 378(1) and (3) of Cr.P.C. is hereby rejected. Consequently, the judgment of acquittal rendered by the court of I-Addl. Sessions Judge, Chikkamagaluru in S.C.No.86/2013 dated 11.01.2016 is hereby confirmed. Sd/- JUDGE Sd/- JUDGE DKB

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