IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF OCTOBER, 2023

BEFORE

THE HON'BLE MS.JUSTICE J.M.KHAZI

CRIMINAL APPEAL NO.876 OF 2011

BETWEEN:

SMT. LAKSHMAMMA
W/O NANJAIAH
AGED ABOUT 36 YEARS
RESIDING AT DUNDA VILLAGE,
TURUVEKERE TALUK,
TUMKUR DISTRICT

…APPELLANT

(BY SRI. CLIFTON D.ROZARIO, ADVOCATE FOR
SRI. RAGHUPATHY S & MAITREYI KRISHNAN,
ADVOCATES)

AND:

1. D R SUDEEP
   S/O D N RAJSHEKAR
   AGED ABOUT 22 YEARS

2. SMT JAYAMMA
   W/O D M RAJSHEKAR

3. NATARAJA @ NATESHA
   S/O KRISHNAPPA
   AGED ABOUT 22 YEARS

4. B K SRINIVAS
   S/O D M KRISHNAPPA
   AGED ABOUT 25 YEARS

5. D K SHANKARAIAH
   S/O KRISHNAPPA
   AGED ABOUT 23 YEARS

6. D B SHIVAKUMAR
   S/O LATE BELURAIAH
   AGED ABOUT 39 YEARS

7. HARSHA
   S/O SHIVALINGAIAH
   AGED ABOUT 23 YEARS

8. B S SHIVALINGAIAH
   S/O LATE SHIVANNA
   AGED ABOUT 63 YEARS

9. D N PRAKASH
   S/O LATE NANJUNDAIAH
   AGED ABOUT 49 YEARS

10. GOWRAMMA
    W/O KRISHNAPPA
    AGED ABOUT 48 YEARS

11. SMT KALPANA
    W/O SHIVAKUMAR
    AGED ABOUT 32 YEARS

    ALL RESIDING AT DUNDA VILLAGE,
    TURUVEKERE TALUK
    TUMKUR DISTRICT

12. STATE BY POLICE INSPECTOR
    DANDINASHIVARA POLICE STATION
    TUMKUR

…..RESPONDENTS

(BY SRI. K.G.SADASHIVAIAH, ADVOCATE FOR R-1 TO R-7, R-9 TO R-11;
VIDE ORDER DATED 22/03/2022 APPEAL AGAINST R-8 IS ABATED;
SRI. K.NAGESHWARAPPA, HCGP FOR R-12)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 372 R/W 378 OF CODE OF CRIMINAL PROCEDURE PRAYING TO CALL FOR ENTIRE RECORDS IN SPL.C.NO.288/2008 ON THE FILE OF THE III ADDITIONAL SESSIONS JUDGE AT TUMKUR

AND SPECIAL COURT FOR TRIAL OF CASES UNDER SC/ST (PREVENTION OF ATROCITIES) ACT, 1989 WHICH WAS DISPOSED OFF ON THE 23RD DAY OF JUNE 2011, AND FURTHER BE PLEASED TO SET ASIDE THE JUDGMENT OF ACQUITTAL AND FURTHER BE PLEASED TO CONVICT THE ACCUSED FOR OFFENCES UNDER SECTION 143, 147, 148, 323 AND 324 R/W 149 OF THE INDIAN PENAL CODE AND U/S 3 CLAUSE (l) SUB CLAUSE (x) AND (xi) OF THE SCHEDULED CASTE AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989 IN THE ENDS OF JUSTICE AND EQUITY.

THIS CRIMINAL APPEAL HAVING BEEN HEARD AND RESERVED ON 12.09.2023, COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, THE COURT DELIVERED THE FOLLOWING:

J U D G M E N T

This is complainant's appeal filed under Section 372 r/w Sec.378 of Code of Criminal Procedure (for short, 'Cr.P.C.'), challenging the impugned judgment and order dated 23.06.2011, passed in Spl.C.No.288/2008 by III Addl.Sessions Judge, Tumakuru, by which respondents/accused No.1 to 11 came to be acquitted for the offences punishable u/secs.143, 147, 148, 323, 324 r/w Sec.149 of Indian Penal Code (for short, 'IPC') and Section 3(1)(x) and (xi) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, 'SC and ST (POA) Act).

2. For the sake of convenience, the parties are referred to by their rank before the trial Court.

3. On 14.08.2008, a complaint came to be filed by Smt.Lakshmamma alleging that she and other victims belong to Dalit community whereas accused persons belong to forward community. On 14.08.2008 at 5.30 p.m., all the accused persons barged into the Harijan Colony where all the Dalits are having their residence and referring to their caste, abused them. They assaulted the complainant and others with clubs, stones and caused bleeding injuries.

3.1 Based on the complaint, the concerned police registered the case in Crime No.58/2008 for the offences punishable under Sections 143, 147, 148, 323, 324 r/w Section 149 of IPC and Section 3(1)(x) and (xi) of SC and ST (POA) Act, against accused No.1 to 11 and taken up investigation. The injured have taken treatment at the hospital. The weapons used by the accused to assault the complainant and others were recovered from the spot. The accused persons were arrested and later on they

secured bail. After completing investigation, charge sheet came to be filed only against accused No.1 to 9.

3.2 In fact charge was framed against accused No.1 to 9 and they pleaded not guilty.

3.3 The complainant was examined as PW-1. During the course of her examination-in-chief, she specifically spoke with regard to involvement of accused No.10 Gowramma and accused No.11 Kalpana. Based on it, learned Public Prosecutor filed application under Section 319 Cr.P.C. Vide order dated 17.04.2010, the trial Court allowed the said application and arraigned them as accused No.10 and 11.

3.4 In fact in response to the summons, they appeared and contested the matter. They pleaded not guilty and claimed trial.

3.5 In order to bring home guilt to the accused, prosecution has relied upon the evidence of PWs-1 to 31 and got marked Exs.P1 to 23 and MOs 1 to 11.

3.6 During the course of their statement under Section 313 Cr.P.C., the accused have denied the incriminating evidence.

3.7 Accused have not led any defence evidence.

3.8 Vide the impugned judgment and order, the trial Court acquitted accused No.1 to 11.

4. The State has not challenged the impugned judgment and order.

5. However complainant has come up with this appeal contending that the impugned judgment and order of the trial Court are opposed to law, facts, circumstances and probabilities of the case. The impugned order of the trial Court is illegal, arbitrary and unreasonable. It suffers from error apparent on the face of the record. It has failed to appreciate the evidence in proper perspective. The oral evidence of the witnesses corroborate with each other and the documents placed on record. The reasoning of the trial Court in acquitting the accused is contrary to the evidence on record. The

trial Court has erred in not accepting the case of the prosecution. It has discarded the testimony of eye witnesses as well as the injured based on minor discrepancies, despite the fact that even after thorough cross-examination, their testimony could not be shaken. The impugned judgment and order has resulted in grave miscarriage of justice and prays to allow the appeal, set aside the impugned judgment and order, convict the accused persons and sentence them appropriately.

6. In support of his arguments, learned counsel for complainant has relied upon the following decisions.

i. Masalti V/s State of U.P. **(Masalti)**[1]

ii. State of U.P. V/s Hari Om **(Hari Om)**[2]

iii. Krishna Mochi and others V/s State of Bihar **(Krishna Mochi)**[3]

iv. Gangadhar Behera V/s State of Orissa **(Gangadhar Behera)**[4]

v. Shakila Abdul Gafar Khan V/s Vasant Raghunath Dhobale **(Shakila)**[5]

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[1] *AIR 1965 SC 202*
[2] *(1998)9 SCC 63*
[3] *AIR 2002 SC 1965*
[4] *AIR 2002 SC 3633*
[5] *(2003) 7 SCC 749*

vi. State of Punjab V/s Karnail Singh **(Karnail Singh)**[6]

vii. Zahira Habibulla H.Sheikh V/s State of Gujarat and others **(Zahira Habibulla)**[7]

viii. Surender Singh V/s State of Haryana **(Surender Singh)**[8]

ix. Ananta Deb Singha Mahapatra and others V/s State of West Bengal **(Ananta)**[9]

x. Bhagga and others V/s State of Madhya Pradesh **(Bhagga)**[10]

xi. Pandurang Chandrakant Mhatre and others V/s State of Maharashtra **(Pandurang)**[11]

xii. State of U.P. V/s Krishna Master and others **(Krishna Master)**[12]

xiii. Arumugam Servai V/s State of Tamil Nadu **(Arumugam)**[13]

xiv. Dayal Singh V/s State of Uttaranchal **(Dayal Singh)**[14]

xv. State of Gujarat V/s Kishanbhai etc. **(Kishanbhai)**[15]

xvi. Hari and others V/s the State of Uttar Pradesh **(Hari)**[16]

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[6] *AIR 2003 SC 3609*
[7] *AIR 2004 SC 346*
[8] *(2006) 9 SCC 247*
[9] *AIR 2007 SC 2524*
[10] *AIR 2008 SC 175*
[11] *(2009) 10 SCC 773*
[12] *AIR 2010 SC 3071*
[13] *AIR 2011 SC 1859*
[14] *AIR 2012 SC 3046*
[15] *(2014)5 SCC 108*
[16] *2021 (4) Crimes 442*

7. Learned HCGP appearing for the State has supported the arguments of learned counsel for complainant and prays to allow the appeal.

8. On the other hand, learned counsel appearing for accused has supported the impugned judgment and order and prays to dismiss the appeal.

9. Heard arguments and perused the record.

10. Before going into the merits of the case, it is necessary to refer to the decisions relied upon by the learned counsel for complainant and the ratio in the said decisions.

i. In **Masalti** referred to supra, the Hon'ble Supreme Court held that where a crowd of assailants who are members of an unlawful assembly proceeds to commit an offence in pursuance of common object of the unlawful assembly, it is often not possible for witnesses to describe accurately the part played by each one of the assailants. Appreciation of evidence in such complex case is no doubt a difficult task, but criminal Courts have to do their best in dealing with such cases and it is their duty to sift the evidence carefully and decide which part of it is true and which is not.

ii. In **Hari Om** referred to supra, the Hon'ble Supreme Court held that a over writing in the complaint pertaining to the details of the incident which does not go to the root of the prosecution case and cause any prejudice to the accused shall not be a basis for acquittal.

iii. In **Krishna Mochi** referred to supra, the first informant was not examined. Having regard to the fact that First Information Report is not a substantive piece of evidence, his non-examination would not affect the prosecution case. On facts, this decision is not applicable to the case on hand.

iv. In **Gangadhar Behera** referred to supra, the Hon'ble Supreme Court held that merely because witnesses are close relatives they cannot be termed as not independent witnesses and that they are partisan and that their evidence require corroboration.

v. In **Shakila,** referred to supra, referring to the observation in ***Jennison v. Backer*** 1972 (1) All ER 1006, that *"the law should not be seen as to sit limbly, while those who defy it go free and those who seek its protection loose hope"*, the Hon'ble Supreme Court held that Courts have to ensure that the accused persons are punished and if deficiency in investigation or prosecution is visible or can be perceived by lifting the veil trying to hide the realities or covering the deficiencies, deal with the same appropriately within the framework of law. Justice has no favourite, except

truth. It is as much the duty of the prosecutor as of the Court to ensure that full and material facts are brought on record so that there might not be miscarriage of justice.

vi. In **Karnail Singh,** referred to supra, the Hon'ble Supreme Court held that on facts it is proved that the incident took place at 11-00 p.m, First Information Report given at the police chowki at 8-00 a.m. on the next day, registering of the case at 9-35 a.m. and it reached the Magistrate at 3-00 p.m. However, without there being any material to the contrary, the High Court erroneously concluded that the FIR was lodged at 2-00 p.m. The evidence of PW-1 and 2 is clearly cogent, but without proper analysis of their evidence the High Court doubted their presence and erred in reversing the conviction.

vii. In **Zahira Habibulla** referred to supra, the Hon'ble Supreme Court held that the object of criminal trial is to meet out justice and to convict the guilty and protect the innocent, the trial should be a search for the truth and not a bout over technicalities, and must be conducted under such rules as will protect the innocent and punish the guilty. The proof of charge which has to be beyond reasonable doubt must depend upon judicial evaluation of the totality of evidence, oral and circumstantial and not by an isolated scrutiny.

viii. In **Surender Singh** referred to supra, the Hon'ble Supreme Court has held that the testimony of an

injured witness has it own relevancy and efficacy. The fact that the witness is injured at the time and in the same occurrence lends support to the testimony that the witness was present during occurrence and he saw the happening with his own eyes.

ix. In **Ananta** referred to supra, On appreciation of the facts and circumstances, the Hon'ble Supreme Court held that the FIR was not anti-dated, anti-timed and manufactured for the mere reasons that there is over writing with regard to the date.

x. In **Bhagga** referred to supra, the Hon'ble Supreme Court held that merely because the witnesses are belong to one family cannot be a reason to disbelieve their evidence, especially when their presence of scene of occurrence at the time of incident is proved.

xi. In **Pandurang** referred to supra, on appreciation of the evidence led by the prosecution, the Hon'ble Supreme Court held that the witnesses have spoken to about the overt acts of the accused and the trial Court has erred in ignoring their testimony.

xii. In **Krishna Master** referred to supra, the Hon'ble Supreme Court held that while appreciating the testimony of the witnesses, based on variations or infirmities in the matter of trivial details, the High Court is not justified in upsetting the conviction rendered by the trial Court, without proper appreciation of the evidence and held that orders of Court can be modified

to serve interest of justice, when factual errors are committed by the decision givers.

xiii. In **Arumugam** referred to supra, the Hon'ble Supreme Court held that uses of words with intent to insult is an offence under the SC/ST (POA) Act.

xiv. In **Dayal Singh** referred to supra, the Hon'ble Supreme Court held that if the investigation is perfunctory, it becomes the duty of the Court to see the evidence given in Court should be relied upon and such lapses ignored. For the mistake committed by the investigating officer deliberately or otherwise, the prosecution case cannot suffer. It would not be right in acquitting the accused persons solely on the ground of such defect in investigation and to do so would tantamount to playing in the hands of the Investigating Officer, if investigation is designedly defective.

xv. In **Kishanbhai** referred to supra, the Hon'ble Supreme Court gave directions that in case of acquittal the concerned investigating/prosecution officials responsible for such acquittal must necessarily be identified and they shall suffer the consequences of such lapse by appropriate departmental action, whenever called for, etc.

xvi. In **Hari** referred to supra, the Hon'ble Supreme Court held that the contradictions and inconsistency in the evidence of eye witnesses which are trivial in nature would not go to the root of the prosecution case.

11. In the light of the ratio in the above decisions of the Hon'ble Supreme Court, it is necessary to examine the appeal filed by the complainant challenging the acquittal of the accused persons.

12. Thus, it is the specific case of the prosecution that on 14.08.2008, in the morning, at the request of PW-11 Gopalakrishnan, PW-19 Shivamurty and PW-20 Dilip went to his land and were removing fencing stones and accused No.1 D.R. Sudeep, who is a cousin of PW-11 came and assaulted PW-19 and PW-20 and in this regard PW-19 lodged a complaint. However, police promised to call accused No.1 D.R.Sudeep and he came back home. This enraged the accused persons that though belong to Schedule Caste, they have the audacity of filing complaint against accused persons who belong to forward community. In this background, all the accused persons armed with clubs and stones formed into an unlawful assembly, at around 5:30 p.m. barged into the Harijan Colony and indiscriminately assaulted the complainant and others. Accused abused them in filthy

language referring to their caste. Based on the complaint filed by PW-1 Lakshmamma, case was registered and after conducting detailed investigation charge sheet came to be filed against accused Nos.1 to 9. Though there were specific allegations against accused Nos.10 and 11, for reasons best known to him the Investigating Officer did not choose to file charge sheet against them. However, based on the evidence of PW-1, the learned Public Prosecutor filed application under Section 319 Cr.P.C and accordingly they were summoned and the trial against accused Nos.10 and 11 was continued.

13. Despite prosecution placing on record the testimony of witnesses who are also injured and also the evidence of Medical Officer who treated the injured and the testimony of Investigating Officers, the trial Court disbelieved the case of the prosecution and acquitted the accused, which is being challenged by the complainant in this appeal under Section 372 Cr.P.C. Having regard to the fact that this is a statutory appeal filed by the complainant, it is necessary to re-appreciate the oral and

documentary evidence placed on record and to ascertain whether the findings of the trial Court is contrary to the evidence placed on record and as such perverse calling for interference by this Court.

14. As held by the Full Bench of the Hon'ble Supreme Court in ***Vijay Pal Singh and Others Vs. State of Uttarkhand***[17], unless the judgment is based on no material or is perverse or view taken by the trial Court is wholly unreasonable or is not a plausible view or there is non-consideration of any evidence or there is palpable misreading of evidence, Appellate Court will not be justified in interfering with the order of acquittal. In the light of the ratio of the Hon'ble Supreme Court in this decision and also the decisions relied upon by the complainant and the grounds urged by the complainant, it is necessary to examine whether it is a fit case calling for interference by this Court.

15. Having regard to the fact that the prosecution has pressed into service provisions of Scheduled Caste

[17] *(2014) 15 SSCC 163*

and Scheduled Tribes (Prevention of Atrocities) Act, at the outset it is necessary for the prosecution to prove that the complainant and injured witnesses i.e victims belongs to Scheduled Caste, whereas accused belongs to forward community and the accused persons committed the offences in question for the reason that the victims belong to Scheduled Caste. The Tahsildar who is cited as CW-27 has issued the certificate at Ex.P1 stating that injured Manjunatha, Narasimha Murthy, Kempaobalaiah, Govindaraju, Kempaobalaiah, S/o Buddhaiah, Umesha, Venkatesh and Mahalakshmamma (PW-5, 6, 7, 4, 9, 16, 8, and 10) belong to Adi Karnataka, which comes under Schedule Caste and accused No.1 to 6 Belongs to Vakkaligara community and accused Nos.7 to 11 belong to Lingayat community.

16. In this regard, on 17.04.2010, learned Public Prosecutor has filed a memo stating that the caste certificate (Ex.P1) is an undisputed document and the same may be marked as provided under Section 294 Cr.P.C. The accused have not disputed that complainant

and injured belong to Scheduled Caste, whereas the accused persons are coming under forward category. Accordingly, the caste certificate is marked as Ex.P1 and CW-27 who has issued the same is given up. Thus, the prosecution has proved that PW-5, 6, 7, 4, 9, 16, 8, and 10 belong to Aadi Karnataka coming under Schedule Caste category, whereas accused Nos.1 to 6 are Vokkaligas and accused Nos.7 to 11 belong to Lingayat community.

17. Now, coming to the motive aspect i.e reason for the accused persons to attack complainant and others. The evidence of PW-11 Gopalakrishna, PW-19 Shivamurthy and PW-20 Dilip prove that there is a dispute between accused No.1 D.R.Sudeep and PW-11 Gopalakrishna with regard to land and also after accused No.8 B.S. Shivalingaiah became the head of the Temple, he stopped the practice of sacrificing of buffaloes and for this reason there was enmity between the accused persons and PW-11 Gopalakrishna. Their evidence further prove the fact that on 14.08.2008, in the morning PW-

11, Gopalakrishna took PW-19 Shivmurthy and PW-20 Dilip to his land to remove stones pitched in the land and this was objected to by accused No.1 Sudeep and in fact he assaulted PW-19 Shivmurthy. Accordingly, PW-19 Shivamurthy went to police station and lodged complaint. The police assured that they would summon accused No.1. However, before anything could be done, the incident in respect of which the present case came to be filed occurred in the evening.

18. The testimony of PW-11, 19 and 20 is corroborated by the evidence of PW-27 H.N.Nanjundaiah, Head Constable-139. At the relevant point of time he was working at Dandinashivara Police Station. He has deposed in unequivocal terms that on the date of incident at 4-00 p.m., PW-19 Shivmurthy came to the police station and filed a criminal complaint. On the basis of it, he registered NCR.No.125/2008 and informed his Higher Officer. He issued a notice to accused No.1 Sudeep (wrongly Typed as Dilip), through Police Constable-789. He returned and informed that accused No.1 Sudeep was

not found and his mother is informed. However, at 5:30 p.m. the present incident took place.

19. Unfortunately, in this case the Investigating Officer has not produced the documents viz., the complaint filed by PW-19 Shivmurthy and the NCR.No.125/2008 i.e case registered by PW-27 H.N.Nanjundaiah. It appears the prosecution has also not chosen to summon the same and consequently the said complaint and NCR.No.125/2008 are not marked.

20. However, the testimony of PW-19, 20 and 27 prove the motive for the accused persons to attack the complainant and others on 14.08.2008. In fact the injured/eyewitnesses to incident which took place at the Harijan colony in the evening of 14.08.2008 have in unequivocal terms deposed that while carrying out assault on them, the accused persons were shouting and challenging them saying that despite belonging to Scheduled Caste, how dare they are to file a complaint against them. Hearing the shouting of accused they realised that accused have initiated tirade against them

as PW-19 Shivamurthy chose to file a complaint against No.1 Sudeep in respect of the incident that took place in the morning at the land of PW-11 Gopalakrishna.

21. Though, PW-1, 5 to 10 and 16 are not the eyewitnesses to the incident that took place in the land of PW-11 Gopalakrishna on the morning of 14.08.2008, from the shouting of the accused and later on through PW-11, 19 and 20, they came to know about the motive for the accused persons to assault them. Thus, through the testimony of these witnesses, the prosecution has proved the motive for the accused persons to carry out the assault on the persons belonging to Scheduled Caste, by entering the Harijan Colony.

22. Now coming to the actual incident dated 14.08.2008 that took place at around 5.30 p.m. at the Harijan colony. It is not in dispute that PWs-1 to 10, 16 to 25 are residents of Harijan colony. Though, PW-21 to 25 are cited as eyewitnesses to the incident, they have not supported the prosecution case and turned hostile. During the cross-examination they have disputed that

when the incident took place they were present and seen accused persons assaulting the complainant and other injured. However, PWs-1, 4 to 10, 16 to 20 have supported the prosecution case. Their evidence prove the fact that on 14.08.2008 at around 5:30 p.m, all the accused persons entered the Harijan colony. They were shouting that despite belonging to Schedule Caste, how dare they are to file complaint against people belonging to forward community and so saying they assaulted the residents of Harijan colony.

23. PW-4 Govindaraju and PW-6 Narasimha Murthy are the sons of PW-1 Lakshmamma. PW-1 has deposed that accused No.2 Jayamma, accused No.10 Gowramma and accused No.11 Kalpana assaulted them with stones. Accused No.6 Shivakumar, accused No.7 Harsha, accused No.1 Sudeep (wrongly typed as Dilip), accused No.3 Nataraja, accused No.5 Shankaraiah, accused No.4 Srinivasa (Seena) assaulted them with clubs. PW-4 Govindaraju sustained injury to his head whereas she suffered injury to her right hand.

24. In this regard PW-4 Govindaraju has deposed that all the accused persons came abusing the residents of colony i.e., residents of Harijan colony in filthy language referring to their caste. Their house is the second house in the colony and the accused indiscriminately assaulted whoever they came across. Accused No.5 Shankaraiah assaulted on his head with a club and accused No.6 Shivakumar assaulted on his fore head, accused No.1 Sudeep assaulted with the club on his back and accused No.7 Harsha assaulted on his legs. He suffered bleeding head injury and when his mother (PW-1 Lakshmamma) and brother (PW-6, Narasimha Murthy) came to his rescue, they were also assaulted. PW-3 Venkatesh, PW-16 Umesh, PW-7 Kempahobalaiah and PW-10 Mahalakshmamma were also assaulted.

25. PW-6 Narasimha Murthy has also deposed that when his mother tried to rescue PW-4 Govindaraju, she was assaulted by the accused persons and when he went to the rescue of his mother, he was also assaulted by accused No.2 Jayamma and accused No.7 Harsha

assaulted him with stones. His brother was assaulted indiscriminately as a result of which he sustained bleeding injuries to his head and they took him inside the house. The accused persons assaulted PW-8 Venkatesha, PW-10 Mahalakshmamma, PW-7 Kempahobalaiah and PW-5 Manjunatha.

26. PW-5 Manjunatha has also deposed that on 14.08.2008 at 5:30 p.m, he returned after grazing sheep. All the accused came to their colony holding clubs, accused No.4 Srinivasa and accused No.5 Shankaraiah assaulted PW-4 Govindaraju with clubs. When they went to his rescue, they viz PW-8 Venkatesh, PW-10, Mahalakshmamma, PW-7 Kempahobalaiah, PW-9 Kempahobalaiah, PW-16 Umesh and PW-1 Lakshmamma also sustained injuries. Accused No.5 Shankaraiah assaulted him with hands and also abused referring to their caste.

27. PW-7 Kempahobalaiah has deposed that on 14.08.2008 at around 5-00 to 5:30 p.m, accused Nos.1 to 11 came to the colony. They were abusing the

residents of the colony referring to their caste and they were holding stones and clubs. They were pelting stones, one of which fell on his head and he sustained injury. His mother forcibly took him inside the house and he stayed in there. He has further deposed that PW-4 Govindaraju was taken to the hospital and at the hospital he found PW-5 Manjunatha, PW-9 Kempaobalaiah, PW-6, Narasimha Murthy, PW-3 Venkatesha, PW-10 Mahalashmamma and PW-1 Lakshmamma with injuries.

28. PW-8 Venkatesha has also deposed that on 14.08.2008 at 5:30 p.m, when he was near his house in the colony, all the accused persons entered colony holding stones and clubs. They were agitated. They assaulted PW-4 Govindaraju and he sustained injury and when he went to the rescue of Govindaraju, he sustained injury to his head from the backside and he fell down and lost conscious. PW-4 Govindaraju, PW-6 Narasimha Murthy, PW-1, Lakshmamma, PW-7 Kempaobalaiah, PW-9 Kempaobalaiah, and PW-5 Manjunatha also sustained injuries and all of them were taken to the hospital.

29. PW-9 Kempaobalaiah has also deposed that on 14.08.2008, when he returned to the colony, he found accused persons abusing the residents of the colony and before he could realise what is happening, he sustained injury to his head and lost conscious and he was taken to the hospital.

30. PW-10 Mahalakshmamma has also deposed that on the date of incident on hearing commotion in the colony, she came out of the house and found accused persons assaulting PW-4 Govindaraju with the clubs. Herself, PW-8 Venkatesh, PW-1 Lakshmamma, PW-6, Narasimha Murthy went to his rescue and they also sustained injuries. Someone assaulted her on her shoulder, but she could not see who the said person was and they were taken to the police station and from there to the hospital.

31. PW-16 Umesh has also deposed that on 14.08.2008 at 5:30 p.m, the accused persons entered the colony hurling abuses. They were holding clubs and stones. He came out of the house and suddenly accused

persons started assaulting PW-4 Govindaraju with clubs. Accused No.5 Shankaraiah, accused No.4 Srinivasa and accused No.7 Harsha assaulted them. They indiscriminately assaulted whoever they came across them. Accused No.9 Prakash and accused No.8 Shivalingaiah assaulted him with hands. Out of fear he ran away. Later he found that PW-4 Govindaraju, PW-1 Lakshmamma, PW-6 Narasimha Murthy, PW-9 Kempaoblaiah, PW-7 Kempaobalaiah, PW-10 Mahalakshmamma and PW-8 Venkatesh also sustained injuries.

32. As already noted PW-19 Shivmurthy and PW-20 Dilip have spoken to about the motive for the accused persons to carry out assault on the members of the Harijan colony. In addition, PW-20 Dilip has deposed that after they lodged complaint and he went to the colony in the evening, the accused persons came armed with clubs and stones. They assaulted PW-4 Govindaraju, PW-6 Narasimha Murthy, PW-1 Lakshmamma, PW-9 Kempaobalaiah, PW-7 Kempaobalaiah and PW-8

Venkatesh. They were abusing the residents of colony referring to their caste. They also caused damage to plastic pots at the house of PW-1 Lakshmamma. So far as PW-19 Shivamurthy is concerned, he has deposed that when the accused persons came in a group and barged into the colony fearing for his life he ran away.

33. Perusal of the testimony of PW-1, 4 to 11, 16, 19 and 20 clearly proves the complicity of accused persons in the crime. It is relevant to note that except PW-1 Lakshmamma, PW-4 Govindaraju and PW-6 Narasimha Murthy, who are mother and sons are residing in the same house, the rest of the witnesses are residents of different houses. The house of PW-1, 4 and 6 is the second house in the colony. Consequently, they were the first to be targeted by the accused persons. On hearing the commotion, when the remaining witnesses came to their rescue, they were also assaulted by the accused persons.

34. The cumulative reading of the evidence of the injured witness clearly prove the complicity of the

accused persons and the reason for the assault carried out on them is the fact that PW-19 and 20 choose to complain the high-handed act of accused No.1 Sudeep in assaulting them when they went to work in the land of PW-11 Gopalakrishna. They were angry that PW-19 and 20 had the audacity of complaining against them despite belonging to Scheduled Caste. Being injured their presence at the scene of occurrence is guaranteed the evidence of these witnesses lend support to the prosecution case. Absolutely, they have no motive to falsely implicate the accused persons.

35. The testimony of the injured witnesses is supported by the injury certificates at Ex.P7 to 13 and 22. PW-15 Dr Jagadeesh has treated them. At the relevant point of time he was working at Primary Health Centre, Dandashivara. His evidence prove the fact that the date of incident i.e on 14.08.2008 (wrongly typed as 18.08.2008, because in all the injury certificates, the date of examination is noted as 14.08.2008) from 6.15 and onwards he has examined PW-6 Narasimha Murthy,

PW-5 Manjunath, PW-7 Kempaobalaiah, PW-8 Venkatesh, PW-9 Kempaobalaiah, PW-1 Lakshmamma and PW-4 Govindaraju, who were brought with the history of assault with clubs and stones and treated them. He has issued the injury certificates at Ex.P7 to 12 and the accident register extract at Ex.P13. He has given the nature of the injury sustained by these witnesses.

36. During his cross-examination, he has denied that even though the injured did not give the information, he on his own noted that they were assaulted by a group of people. He has denied that none of the injured came to him and that due to pressure he has given false certificates. Despite detailed cross-examination, the defence has failed to dislodge his testimony. In his capacity as the Medical Officer he has treated the injured and issued the injury certificates. Absolutely he had nothing to favour the injured to give false evidence against the accused persons.

37. It is the specific case of the prosecution that the incident took place on 14.08.2008. Complainant got

the complaint written through some other person. In fact, during her cross-examination, she is unable to recollect whether it was written by her son or any other person. Having regard to the fact that both her sons were injured, in all probabilities they are not the scribes of the complaint. In fact, during their cross-examination, the defence has not elicited anything with regard to they being the scribe of the complaint.

38. However, during his cross-examination, PW-5 Manjunath has deposed that initially the complaint was written by Kempaobalaiah. Since he did not specify the date and time, he i.e PW-5 Manjunath once again wrote the complaint. However, the defence has not chosen to cross-examine him with regard to insertion of date 14.08.2008 in the complaint. When the defence had the opportunity to seek clarification of the date in the complaint, it has not chosen to do so. But has chosen to cross-examine PW-31 Mahadevaiah, who has registered the case with regard to the said insertion. Though PW-31 Mahadevaiah has admitted that the date 14.80.2008 is

inserted in between second and third line, he has denied that originally in the complaint, date was not forthcoming and it has been inserted subsequently.

39. It is relevant to note that in the complaint it is stated that the incident took place in the evening of the day when the complaint was lodged. However, the date 14.08.2008 is inserted in between second and third line of the complaint. The defence has made much of this fact and the trial Court has also given undue importance to it by observing that the complaint was lodged and case was registered on the next day i.e the complaint and FIR are anti-dated.

40. In fact, the defence has cross-examined PW-31 Mahadevaiah, ASI, who has registered the case and transmitted FIR to the Court with regard to the said insertion. He has denied the suggestion that the case was not registered on that day and no incident has taken place on 14.08.2008. At the outset as evident from the endorsement made on the complaint it is received by PW-31 Mahadevaiah on 14.08.2008 at 9-00 p.m. Since

there were several injured persons including the complainant, immediately they were taken to the hospital and after treatment, complaint came to be lodged at 9-00 p.m. Consequently, at the first available opportunity the complaint was filed and based on it the Investigating Officer has registered the case.

41. The Jurisdictional Magistrate has received the complaint on 15.08.2008 at 7:30 a.m. It appears, probably in order not to disturb the Magistrate during night time or having regard to the fact that the injuries sustained by the injured were not fatal, the complaint and FIR are handed over to the jurisdictional Magistrate on the next day morning at the earliest available opportunity. Had the incident has taken place on 15.08.2008, then the Jurisdictional Magistrate could not have received the complaint and FIR at 7:30 a.m. Consequently, there is no delay whatsoever either in filing the complaint, registering the case or transmitting the FIR. Consequently, there was nothing to be gained by the complainant or the Investigating Officer by inserting

the date 14.08.2008. It appears in the complaint, the date was not specified and when particularly questioned by the Investigating Officer or the scribe of the complaint on his own has inserted the date in between the second and third line of the complaint.

42. PW-3 D.T.Venkatesh, who is witness to the spot-cum-seizure Mahazar dated 15.08.2008 has clearly stated that the mahazar was drawn on the next day of the incident. No suggestion is made either to PW-1 Lakshmamma - complainant or to PW-31 Mahadevaiah, who has registered the case that the complaint was anti-dated and in what way the insertion of the date 14.08.2008 in the complaint has prejudiced the accused persons. In the impugned judgment, at para-25, the learned trial Judge has made an observation that the evidence of PW-27 prove that on the complaint of one Shivamurty (PW-19) he has registered NCR.No.125/2008 on 15.08.2008 and thereafter the complaint at Ex.P2 was registered and it is conveniently anti-dated as 14.08.2008.

43. At the outset it is relevant to note that the complaint filed by PW-19 Shivamurthy as well as NCR.No.125/2008 are not produced before the Court and in the absence of the said document, only based on the oral evidence of PW-27 that he registered NCR.No.125/2008 on 15.08.2008 cannot be taken as a gospel truth and on that basis the complaint at Ex.P2 as anti-dated.

44. The testimony of PW-27 that he registered in NCR.No.125/2008 on 15.08.2008 appears to be a mistake. Para No.2 of his examination-in-chief makes it evident that the incident in respect of which the present case has arisen and took place on the same evening at 5:30 p.m and he along with ASI Mahadevaiah (PW-31) went to the spot and with the help of 2-3 persons he sent the injured to the hospital. Admittedly the injured are treated on 14.08.2008 itself. It goes to show that the incident took place on 14.08.2008 and on the same day complaint was filed.

45. In fact, no suggestion is made to PW-27 that the complaint and FIR are anti-dated. His cross-examination also revealed that the morning incident took place on 14.08.2008 and before he could summon accused No.1, on the same day evening incident at Harijan colony took place. In fact, PW-31 Mahadevaiah, ASI, who has registered the present case has deposed that PW-1 Lakshmamma came to the police station on 14.08.2008 at 9-00 p.m and lodged complaint and on the basis of it, he registered the case in Cr.No.58/2008. This clarifies that PW-27 has either wrongly stated the date of the morning incident as 15.08.2008 instead of 14.08.2008 or it is wrongly typed.

46. However, without examining the entire evidence on record, including the documents, the trial Court has erred in making an observation that the complainant and FIR are anti-dated and thereby thrown away the entire prosecution case as false and set up. The trial Court cannot stop by just making an observation that the complaint and FIR are anti-dated. It has to state

as to how the prosecution is benefited by it or the accused are prejudiced.

47. The trial Court has not at all examined the testimony of injured/eyewitnesses and given reasons as to why he would not believe their evidence, except making an observation at para No-31 that the prosecution case create lot of doubt and the complaint at Ex.P2 is created. It has observed that thousands of persons have participated in the incident which is not even the case of the prosecution. Of course a number of persons have acted in a concerted manner and after detailed investigation, the Investigating Officer has arraigned those persons against whom the evidence has come as accused. That itself would not make the prosecution case false or concocted.

48. The trial Court has also made an observation that during investigation, the Investigating Officer has requested the Court to include offence under Section 307 I.P.C, but the charge sheet is not filed for the said offence. Of course, looking to the nature of the injury, at

the stage of investigation, the Investigating Officer has requested the Court to include offence under Section 307 I.P.C. However, after receipt of the injury certificates, in his wisdom, the Investigating Officer has not included the offence punishable under Section 307 I.P.C. in the charge sheet. The same cannot be find fault with and disbelieve the case of the prosecution, especially when the witnesses have consistently and categorically deposed with regard to the complicity of the accused persons in the crime.

49. Of course, the evidence of PW-31 Mahadevaiah, PW-29 Prabhakar, prove investigation. PW-28 and 30 have apprehended some of the accused persons. Their evidence supports and corroborate with the testimony of injured/eyewitnesses to the incident. Despite lengthy cross-examination of these witnesses, the defence has failed to bring out anything inconsistent with the case of the prosecution.

50. Without examining the oral and documentary evidence placed on record, the trial Court has hurriedly

come to a wrong conclusion that the prosecution failed to bring home guilt to the accused. The view taken by the trial Court is wholly unreasonable and is not a plausible view. Certainly, there is non-consideration of evidence placed on record. There is also palpable misreading of evidence and consequently, the conclusions arrived at by the trial Court is perverse. It is a fit case to interfere in exercise of Appellate jurisdiction of this Court and accordingly, I proceed to pass the following:

ORDER

(i) The appeal filed by complainant under Section 372 r/w Section 378 Cr.P.C. is allowed.

(ii) Accused Nos.1 to 11 are convicted for the offences punishable under Sections 143, 147, 148, 323, 324 r/w Section 149 of IPC and Section 3(1)(x) and (xi) of SC and ST (POA) Act.

Sd/-
JUDGE

RR

JMKJ:
16.11.2023

ORDER ON SENTENCE

Heard accused Nos.1 to 7 and 9 to 11, the learned Senior counsel representing them as well as learned counsel for complainant and learned High Court Government Pleader on sentence.

2. Accused Nos.1 to 7 and 9 to 11 have sought for taking lenient view in imposing the punishment and have filed separate affidavit with documents.

2.1 In the affidavit, accused No.1 has stated that he is a graduate, an agriculturist by profession. He is having the responsibility of taking care of his aged-ailing parents. He has produced copies of medicals records pertaining to his parents.

2.2 In the affidavit, accused No.2 has stated that she is suffering from arthritis and dependent on her son. She has produced copies of medicals records pertaining to her treatment.

2.3 In the affidavit, accused No.3 has stated that he is an agriculturist having responsibility of taking care of his two brothers, mother, wife and minor children. He has produced copies of medicals records pertaining to his mother Gowramma.

2.4 In the affidavit, accused No.4, who is brother of accused No.3 has stated that he is an agriculturist having responsibility of taking care of his two brothers, mother, wife and minor children. He has produced copies of medicals records pertaining to his mother.

2.5 In the affidavit, accused No.5, who is brother of accused No.3 has stated that he is an agriculturist having responsibility of taking care of his two brothers and mother. He has produced copies of medicals records pertaining to his mother.

2.6 In the affidavit, accused No.6 has stated that he has done C-P.Ed and an agriculturist by profession. He is having responsibility of taking care of his wife, two sons and daughter. He is suffering from heart ailment. He

has produced copies of medicals records pertaining to him.

2.7 In the affidavit, accused No.7has stated that he is an agriculturist having responsibility of taking care of his mother, wife, two daughters and a son.

2.8 Accused No.8 is reported to be dead and consequently, appeal against him is abated.

2.9 In the affidavit, accused No.9 has stated that he is an agriculturist having responsibility of repaying the loan. He is suffering from nerve damage in his feet. His wife is suffering from slip disc. His family consist of his wife, son, daughter-in-law and grand son. He has produced copies of medicals records pertaining to him and his wife.

2.10 In the affidavit, accused No.10 has stated that her family consist of a son and his family and she is dependent on them. Since 10 years she is suffering from arthritis. She is no other than the mother of accused

Nos.3 to 5. She has produced copies of medicals records pertaining to her.

2.11 In the affidavit, accused No.11 has stated that she is a house wife and her family consist of husband, two sons and a daughter. She is suffering from health issues. She has produced copies of medicals records pertaining to her.

3. On the other hand learned counsel representing the complainant submitted that the allegations against the accused are proved by the overwhelming evidence placed on record. All of them have taken active participation. The complainant had to fight against their might in all these 15 years. Relying upon the decision of the Hon'ble Supreme Court in State of Madhya Pradesh Vs. Vikram Das (***Vikram Das***)[18] and Patan Jamal Vali Vs. State of Andhra Pradesh (***Patan Jamal***)[19], learned counsel for complainant submits that minimum sentence is prescribed for the offences punishable under Sections 3(1) (x) and 3(1) (xi) of

[18] *(2019) 4 SCC 125*
[19] *AIR 2021 SC 2190*

SC/ST (POA) Act, and taking into consideration the concerted manner in which the accused have carried out the assault on the complainant and others, appropriate punishment may be imposed.

4. In this appeal accused No.1 to 11 are convicted for the offences punishable under Sections 143, 147, 148, 323, 324 r/w Section 149 I.P.C and Sections 3(1) (x) and 3(1) (xi) of SC/ST (POA) Act.

5. The punishment prescribed for the offence under Section 143 I.P.C with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

6. The punishment prescribed for the offence under Section 147 I.P.C with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

7. The punishment prescribed for the offence under Section 148 I.P.C with imprisonment of either

description for a term which may extend to three years, or with fine, or with both.

8. The punishment prescribed for the offence under Section 323 I.P.C with imprisonment of either description for a term which may extend to one year, or with fine, which may extend to Rs.1,000/- or with both.

9. The punishment prescribed for the offence under Section 324 I.P.C with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

10. The punishment prescribed for the offences under Sections 3 (1) (x) and 3(1) (xi) SC/ST (POA) Act, is with imprisonment for a term which shall not be less than six months, but which may extend to five years and with fine each.

11. Though at this stage, the accused have come up with several reasons for taking lenient view, this Court cannot lost the sight of the fact that without any justification, the accused have chosen to enter the

Harijan colony and indiscriminately assault the complainant and others for the simple reason that two of them approached the police and complain against accused No.1 Sudeep with regard to an incident which took place in the land of PW-19 Shivamurthy. The accused have chosen to assault complainant and others for the simple reason that though they belong to Schedule Caste, they had the courage or audacity of complaining against person belonging to forward community. Keeping in mind these aspects, this Court is of the considered opinion that it would be appropriate to sentence accused Nos.1 to 7 and 9 to 11 as under:

11.1) Accused Nos. 1 to 7 and 9 to 11 are sentenced to undergo imprisonment for two months each for the offence punishable under Section 143 r/w/s 149 I.P.C

11.2) Accused Nos. 1 to 7 and 9 to 11 are sentenced to undergo imprisonment for six months and pay fine of Rs.500/, in default to undergo simple

imprisonment for one month each for the offence punishable under Section 147 r/w/s 149 I.P.C

11.3) Accused Nos. 1 to 7 and 9 to 11 are sentenced to undergo imprisonment for six months and pay fine of Rs.500/- in default to undergo simple imprisonment for one month each for the offence punishable under Section 148 r/w/s 149 I.P.C.

11.4) Accused Nos. 1 to 7 and 9 to 11 are sentenced to undergo imprisonment for four months and pay fine of Rs.500/- in default to undergo simple imprisonment for one month each for the offence punishable under Section 323 r/w/s 149 I.P.C.

11.5) Accused Nos. 1 to 7 and 9 to 11 are sentenced to undergo imprisonment for one year and pay fine of Rs.1,000/- in default to undergo simple imprisonment for three months each for the offence punishable under Section 324 r/w/s 149 I.P.C.

11.6) Accused Nos. 1 to 7 and 9 to 11 are sentenced to undergo imprisonment for one year and pay

fine of Rs.3,000/- in default to undergo simple imprisonment for three months each for the offence punishable under Section 3 (1) (x) SC/ST (POA) Act r/w/s 149 I.P.C.

11.7) Accused Nos. 1 to 7 and 9 to 11 are sentenced to undergo imprisonment for one year and pay fine of Rs.3,000/- in default to undergo simple imprisonment for three months each for the offence punishable under Section 3 (1) (xi) (POA) Act r/w/s 149 I.P.C.

12. All the substantive sentences shall run concurrently.

13. The entire fine amount realized shall be paid to the PW-1 Smt.Lakshmamma by way of compensation.

14. Issue conviction warrant against accused Nos.1 to 7 and 9 to 11.

15. Registry is directed to supply free copy of judgment and order to accused Nos. 1 to 7 and 9 to 11 forthwith.

15. Registry is directed to send back the TCR along with copy of the judgment and order.

Sd/-
JUDGE

RR
List No.: 1 Sl No.: 45