

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO(S). 1694/2014

THE STATE OF KARNATAKA

APPELLANT(S)

VERSUS

BATTEGOWDA & ORS.

RESPONDENT(S)

O R D E R

1. Heard learned Additional Advocate General for the appellant-State and the learned senior counsel for the respondents at length.

2. This appeal has been filed by the State of Karnataka, challenging the order of the High Court of Karnataka at Bangalore dated 17.08.2012 wherein the appeal of the accused persons (respondent nos.1 to 3 herein) was partly allowed.

3. The brief facts of the case are that on 18.09.1999 an argument took place between the complainant (PW1) and the

accused near a construction site in their neighborhood between 7 to 8 in the morning. It was alleged that the complainant has sold a piece of land to the mother (Shivamma) of PW5 (Nataraj) and the accused who were father and his two sons claimed a share on the property which was not being given to him. That is the dispute between the parties. It is pertinent to mention here that both the complainant and the accused are blood relatives and inasmuch as Battegowda/Bettegowda (Accused No.1) and PW 1 are real brothers and Accused Nos.2 & 3 are the sons of Accused No.1.

Prosecution case is that on 18.09.1999, at about 6 to 7 a.m., Accused No.1 and his two sons (Accused Nos.2 & 3) had demolished the partly constructed wall on the said land without the knowledge of the complainant about which he came to know at about 8.00 a.m. by the purchaser to whom the land was sold. The complainant also saw that Accused No.1 was standing outside his house and when he was called to come, he refused. Later on, Accused No.1 and his two sons (Accused Nos.2 & 3) picked up a fight with the complainant when he went to the site, Accused No.1 and his elder son K.B.Vijayakumar (Accused No.2) and his second son K.B.Jayakumar @ Suresh (Accused No.3) were present. The complainant wanted to settle the matter with Accused No.1, who was his brother and was trying to console him and had told him that he would be given his share of that land but Accused No.1 refused to listen to any reason. At that time

when he was trying to settle the matter with Accused No.1, his son (Accused No.3) took out a knife from his pocket and stabbed the complainant two or three times on his stomach. The assault was so severe that even parts of his intestines were coming out from his stomach. He caught hold to his stomach and was trying to hold on when Accused No.1 caught hold of him from behind and at that time Accused no.3 stabbed him again on his chest. Meanwhile, the complainant's son K.V.Shashidar (PW7) came up to rescue his father but by the time complainant had collapsed before that he could see that his son was also assaulted by the accused persons with their weapons as the Accused no.2 was having a chopper, and Accused no.3 a knife.

4. The FIR for the said incident was registered for the offences punishable under Sections 341/324/307 read with 34 of the Indian Penal Code (hereinafter called "the IPC"). Police after its investigations, filed charge sheet under the same provisions. The matter was committed to Sessions at Mysore and the Sessions Court ultimately came to the conclusion that there were actually no intention to kill, but considering the nature of the grievous injuries and the weapons used, all the three accused persons were convicted under Sections 326 & 341 read with 34 of the IPC and acquitted them under Section 307 of the IPC and were sentenced for six years RI each along with the stipulated fine and default stipulation.

5. In appeal, the High Court had believed the incident

as such on 18.09.1999, but nevertheless had partly allowed the appeal of the accused persons and reduced the sentence of Accused no.3 (K.B.Jayakumar @ Suresh) to two years RI and acquitted the Accused No.1 i.e. Battegowda/Bettegowda, the father of the Accused Nos.2 & 3 on the ground that there was no enough evidence for his catching hold of the injured person from behind, though he was presents on the spot he had no active role in the said incident. Regarding Accused no.2 (K.B.Vijayakumar) the High Court came to the conclusion that he was carrying a chopper in his hand with which he was not armed when he initially came to the spot, he only brought it later but the injury which he had inflicted on the injured persons were only in the hand which cannot be in the nature of the Section 326 of the IPC and therefore, the conviction was converted from Section 326 to that of Section 324 of the IPC and since he had already undergone the sentence of 16 days by that time, his sentence was also reduced to the period already undergone, although the fine was increased from Rs.1,000/- to Rs.75,000/-. Regarding Accused no.3 (K.B.Jayakumar @ Suresh), sentence was reduced from 6 years to 2 years though conviction under Section 326 was upheld.

6. As far as the finding against Accused no.1, the father, Battegowda/Bettegowda is concerned the High Court had taken a possible view about the presence of the Accused No.1 and therefore we need not enter with that dispute or to the acquittal of the Accused No.1 by the High Court.

7. The crucial question before this Court, however, is whether the Accused No.2 whose conviction was converted from Section 326 to Section 324 of the IPC and he has been sentenced to only 16 days of imprisonment, was proper, inasmuch it has been done after the High Court came to the conclusion that Section 34 of the IPC even for the Accused no.2 is not made out. This finding we are unable to accept. Both Accused Nos.2 & 3 had together assaulted the PW1 & PW7 (father and son). They were armed with deadly weapon whereas the Accused No.3 was armed with a knife and Accused No.2 had in his hand a chopper. Merely for the reason that the injuries inflicted by Accused no.2 (K.B.Vijayakumar) were less than what was inflicted by Accused no.3 (K.B.Jayakumar @ Suresh) and the injuries were not a grievous. Conviction under Section 326 cannot be converted to Section 324. Irrespective of the facts whether the injuries caused to the injured persons (PW1 & PW7) were only on the hand, the fact remained that the presence of Accused no.2 on the spot is as an accomplice of Accused no.3 and hence, Section 34 of the IPC is clearly made out. The case of the defence is that when the Accused Nos.2 & 3 had arrived at the spot, they had no intention to inflict the nature of injuries on the injured persons. Even if it is assumed it is true, it cannot be denied that common intention and the pre-meeting of minds can take place at the spur of the moment itself during the course of the

incident.

8. In this context, learned additional advocate general for the State has relied upon the judgment of this Court in the case of "Dharnidhar vs. State of U.P. & Ors., reported in 2010 (7) SCC 759 para 39, which we also find is applicable to the facts of the case.

9. Although, the High Court came to the conclusion that Section 34 is not made out, no valid reason has been assigned as to how it is so.

10. Considering these facts stated above, we are of the opinion that Section 34 of the IPC is made out in this case for Accused no. 2 and Accused no. 3. Changing the finding from Section 326 to Section 324 of the IPC and the sentence of the Accused No.2 to the period already undergone is therefore wrong.

11. Accordingly, we allow the State's appeal to that extent that we convict the Accused No.2 under Section 326 read with 34 of the IPC and sentence him for the same period as was given by the High Court to Accused No.3 i.e. two years RI along with the fine of ₹ 75,000/-. He shall surrender within a period of four weeks from today and undergo the period of remaining sentence in jail.

12. The present appeal is partly allowed in the above terms.

13. Pending application(s), if any, shall stand disposed

of.

.....J.
[SUDHANSHU DHULIA]

.....J.
[PRASHANT KUMAR MISHRA]

New Delhi;
January 09, 2025.

ITEM NO.105

COURT NO.13

SECTION II-C

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No(s). 1694/2014

THE STATE OF KARNATAKA

APPELLANT(S)

VERSUS

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Date : 09-01-2025 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SUDHANSHU DHULIA
HON'BLE MR. JUSTICE PRASHANT KUMAR MISHRAFor Appellant(s) Mr. Prateek K. Chadha, A.A.G.
Mr. V. N. Raghupathy, AOR
Mr. Sreekar Aechuri, Adv.
Ms. Surbhi Soni, Adv.
Mr. Aniket Chauhaan, Adv.For Respondent(s) Ms. Kiran Suri, Sr. Adv.
Mr. S.J. Amith, Adv.
Ms. Vidushi Garg, Adv.
Dr. Mrs. Vipin Gupta, AORUPON hearing the counsel the Court made the following
O R D E R

The present appeal is partly allowed in terms of the signed order, which is placed on the file.

Pending application(s), if any, shall stand disposed of.

(NIRMALA NEGI)
COURT MASTER (SH)(RENU BALA GAMBHIR)
ASSISTANT REGISTRAR