

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 17TH DAY OF MARCH, 2026
BEFORE
THE HON'BLE MR. JUSTICE G BASAVARAJA
CRIMINAL APPEAL NO.987 OF 2018**

BETWEEN:

1. K J UMESHA
S/O JAVAREGOWDA
AGED ABOUT 23 YEARS,
R/O KEMPISIDDANAHUNDI VILLAGE
NANJANGUD TALUK,
MYSURU DISTRICT - 571 301.
2. K J NAGESHA
S/O JAVAREGOWDA,
AGED ABOUT 26 YEARS,
R/O KEMPISIDDANAHUNDI VILLAGE
NANJANGUD TALUK,
MYSURU DISTRICT - 571 301.

...APPELLANTS

(BY SRI. H.S. CHANDRAMOULI, SENIOR COUNSEL FOR
SRI. RAJATH, ADV.)

AND:

STATE OF KARNATAKA BY
NANJANGUD RURAL POLICE STATION
NANJANGUD, MYSURU - 571 301

REPRESENTED BY
THE STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
HIGH COURT BUILDING
BENGALURU - 560 001.

...RESPONDENT

(BY SRI. B. LAKSHMAN, HCGP)

THIS CRL.A. IS FILED U/S.374(2) CR.P.C PRAYING TO SET ASIDE THE JUDGMENT DATED 25.05.2018 PASSED BY THE I ADDITIONAL SESSIONS JUDGE, MYSURU IN S.C.NO.291/2014 - CONVICTING THE APPELLANT/ACCUSED NO.1 FOR THE OFFENCE P/U/S 307 AND 326 OF IPC AND APPELLANT/ACCUSED NO.2 FOR THE OFFENCE P/U/S 324 OF IPC.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 16.12.2025 AND COMING ON FOR "PRONOUNCEMENT OF JUDGMENT" THIS DAY, THE COURT, DELIVERED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE G BASAVARAJA

CAV JUDGMENT

1. The appellants have preferred this appeal against the judgment of conviction and order of sentence dated 25th May, 2018 passed in SC No.291 of 2014 by the I Additional Sessions Judge, Mysuru (for short "the trial Court").
2. For the sake of convenience, parties herein are referred to as per their status and rank before the trial Court.
3. The prosecution case, in brief, is that P.W.1 and P.W.2, who are brothers, are cousins of Accused No.1 and Accused No.2. Their residential houses as well as their agricultural lands are situated adjacent to each other. It is alleged that for about two years prior to the incident there existed a dispute regarding the boundary of the agricultural lands between the parties. According to the prosecution, Accused No.1 and Accused No.2 had encroached upon the land belonging to P.W.1 and P.W.2 by

breaking the ridge (locally called "Badu" in Kannada) separating the fields, which resulted in frequent quarrels between them.

4. It is further the case of the prosecution that on 03.01.2014, in the morning hours, Accused No.1 again broke the ridge between the fields using a tractor. In the background of this incident, at about 5.30 p.m. on the same day, P.W.2 went near the house of the accused where Accused No.1 and Accused No.2 were sitting on the platform (Jagali) in front of their house and questioned them regarding the breaking of the ridge. At that time, Accused No.1 allegedly abused P.W.2 in vulgar language. When P.W.2 objected to the abusive language used by Accused No.1, the latter went inside the house, brought a machete (M.O.1) and assaulted P.W.2 on the head, causing serious injuries.

5. The prosecution further alleges that upon witnessing the assault on his elder brother, P.W.1 intervened in order to rescue him. At that time, Accused No.2 abused P.W.1 stating that he had come to support his brother, caught hold of P.W.1 and assaulted him with a long machete (M.O.2), thereby causing an injury on the right side of his neck. It is stated that by that time P.W.3 and P.W.4 arrived at the spot, intervened in the matter, and snatched the weapons from the accused.

Thereafter, arrangements were made to shift the injured persons to the hospital.

6. Accordingly, P.W.1 and P.W.2 were taken on a motorbike to the Government Hospital at Nanjangud where they were given first aid treatment and were subsequently referred to K.R. Hospital for further treatment. On the next day, i.e., on 04.01.2014, P.W.8, a Police Constable, visited K.R. Hospital and recorded the complaint of P.W.1 at about 5.00 p.m., which was marked as Ex.P1. Based on the said complaint, a case was registered at 6.15 p.m. in Crime No.09/2014 as per the FIR marked at Ex.P18. During the course of investigation, Accused No.1 was apprehended by P.W.10 on 05.01.2014 and produced before the police station where P.W.13, the Assistant Sub-Inspector, arrested him and produced him before the Court. Thereafter, P.W.13 attempted to conduct the spot mahazar on 06.01.2014 but could not do so due to the non-availability of eyewitnesses to identify the spot. Consequently, the investigation was handed over to P.W.11, the Police Sub-Inspector, who conducted the spot mahazar on 07.01.2014 in the presence of witnesses at the place shown by P.W.4. During the mahazar proceedings, the weapons used in the offence, namely M.O.1 and M.O.2, along with blood-stained clothes marked as M.O.3 and M.O.4, were seized.

7. The Investigating Officer thereafter forwarded the seized material objects to the Regional Forensic Science Laboratory (RFSL) for examination in order to ascertain the presence of blood stains. The RFSL report revealed that M.O.1 to M.O.4 were stained with human blood of 'O' group. The seized weapons were also sent to the doctor concerned for opinion, and the doctor opined that the injuries sustained by P.W.1 and P.W.2 could have been caused by the said weapons. Upon completion of the investigation, the Investigating Officer filed the charge sheet against the accused for the offences alleged against them.

8. The Trial Court framed charges against Accused No.1 and Accused No.2 for the aforesaid offences on 13.02.2015. The accused pleaded not guilty to the charges and claimed to be tried. During the course of the trial, both Accused No.1 and Accused No.2 were on bail and were represented by counsel of their choice. In order to prove its case, the prosecution examined fourteen witnesses as P.W.1 to P.W.14. The prosecution also produced and marked documentary evidence as Exhibits P1 to P22 and material objects as M.O.1 to M.O.4. After the closure of the prosecution evidence, the statements of the accused were recorded under Section 313 of the Code of Criminal Procedure, wherein the incriminating circumstances

appearing in the evidence of the prosecution witnesses were put to them. The accused denied all such incriminating evidence. However, the accused did not choose to lead any defence evidence on their behalf.

9. Having heard the arguments on both sides, the trial Court has convicted accused NO.1 for the offence under Section 307 and 326 IPC and accused No.2 was convicted for the offence under Section 324 IPC. However, the trial court has acquitted the accused Nos.1 and 2 for the offence under Sections 324, 504 r/w 34 IPC and the Trial Court has also acquitted the accused No.2 for the offence under Sections 307, 326, 504 r/w 34 IPC.

10. The learned counsel for the appellant would submit that the alleged incident took place on 03rd January 2014, at about 5:30 p.m., statement was recorded by the Nanjanagudu Police on 04th January, 2014 at about 06.15 p.m. There is an inordinate delay of 28 hours in putting the criminal law into motion. It is the case of the prosecution that after the incident, the injured were at Nanjanagud Government Hospital. Again on 07-01-2014 re-statement was recorded ,in that the injured were admitted on 03.01.2014 at about 7-15PM for treatment in KR Hospital Mysuru. The injured, who were attended by PW6-Dr. Mamata, has not intimated to the local police since

though it is Medico-legal case. According to the prosecution case, the offence was said to have been committed at about 05.30 pm on 03.01.2014. They were in Nanjingudu Hospital at about 06.00 p.m. and thereafter they were shifted to Care Hospital, Mysore. Further, he would submit that prosecution has failed to prove that there was destruction of ridges existing in between the lands of accused no. 1 and 2 and that of PW1 and PW2 as alleged by the prosecution. The observation made by the learned session judge that it is not material is incorrect, as the same is basic cause for the alleged incident. That there is a long delay in lodging the complaint. There is a long delay in seizure of MO1 and 2 from the possession of PW3 and PW4, who are interested witnesses. The delay is only to manipulate the records by artificially creating blood stains of 'O' group as belonging to PW1 and PW2. The learned Sessions judge has failed to notice that No independent witnesses were examined by the prosecution. The learned Judge has failed to appreciate that measurements of injuries were not mentioned in the wound certificate, which creates doubt regarding genuineness of the injuries sustained by PW1 and PW2. The accused no.1 was aged about 19 years and accused no.2 was aged about 23 years and both of them were unmarried as on the date of alleged incident. The alleged dispute was in respect of land

boundary and PW1 and PW2 themselves had allegedly gone to the house of accused no. 1 and PW2. There is no intention or motive to commit murder of PW1 and PW2 or to cause grievous hurt to PW1 and PW2 or to commit any offence. The accused, PW1 and PW2 are residing in the same house bearing No.80 with temporary partitions. They have to see faces of each other every day as they are living under one roof. The alleged incident of boundary dispute had taken place about 2 years back between the parties and no other incident had taken place till the date of the alleged incident. The learned Sessions Judge has failed to notice the same has resulted in grave injustice to the accused. The learned Sessions Judge has wrongly come to the conclusion that non-proof of incident which took place in the morning on 03.01.2014 is not fatal to the case of the prosecution. Since no such incident has taken place, the police have not investigated the same to suppress the truth. Therefore, an adverse inference has to be drawn against the prosecution. That the medical evidence regarding the treatment of PW2 in NIMHANS goes to show that, health of the PW2 was stable and normal on 07.01.2014 and PW2 was not required to be admitted as an inpatient in the hospital. Hence, he was treated as outpatient and sent home. PW14-Sampath, Professor of Neurosurgery, NIMHANS who examined PW2, has

clearly stated in his evidence that condition of PW2 was normal and had sustained mild head injury and therefore he was not admitted as an inpatient. Hence the treatment of PW2 in a private Apollo Hospital, Mysore was only to create false evidence to harass the accused. The private hospital has unnecessarily created false medical records for extraneous reasons and with a view to get money from government under Yashwini scheme. There was no necessity to conduct operation on PW2 by the above-said private hospital. The alleged injury could have been cured only by medicine. The prosecution has suppressed the fact that PW2 was suffering from neuro issue before the alleged incident. There is no prima facie case against the accused. The charges were not properly framed. The learned sessions judge has failed to appreciate that accused no. 1 and 2 and PW1 and PW2 are sons of late C. Jawaregowda and Mr. Kadegowda, who are brothers and are residing under same roof. The accused no. 1 is likely to come in contact with hardened criminals if he is continued in jail. The trial Court has failed to appreciate the evidence in its proper perspective. Though there is no cogent, convincing, clinching evidence to convict the accused, trial Court has convicted the accused, which is not sustainable under law. On all these grounds, it is sought to allow this appeal.

11. As against this, learned HCGP appearing for the respondent-State would submit that the trial Court has properly appreciated the materials and record in accordance with law and facts and hence sought for dismissal of the appeal.

12. Having heard the arguments on both sides, the following points would arise for my consideration:

1. Whether the trial Court is justified in convicting the accused No.1 for the offence under Sections 307 and 326 IPC?
2. Whether the trial Court is justified in convicting the accused no.2 for the offence under Section 324 IPC?
3. What order?

13. My answer to the above point are:

Point No.1: In the Negative

Point No.2: In the Negative

Point No.3: as per final order.

14. **REASONS POINT 1 AND 2:** I have examined the materials placed above the spot. This case arose out of the complaint filed by K. K. Nagaraj son of Kadegowda. The alleged incident took place on 03.01.2014 at 05.30 p.m. near the house of the accused. The complaint filed by the complainant K. K. Nagaraj on 04.01.2014 at 17 hours in the

Surgical Ward of Care Hospital, Mysuru. On the basis of this complaint, the police have registered the case in Crime No.9 of 2014 for the offence under Sections 341, 307, 504, read with 34 IPC. On the basis of the written complaint, the FIR was submitted to the court on 04.01.2014 at 09.30 pm as per Exhibit P18.

15. In First Information Report-Exhibit P18, in Column No.3C, IO has not explained anything as to the delay in filing the complaint. In column 13 of the First Information Report, as to date and time of dispatching the FIR to the court, it is shown as 04.01.2014 at 18.45 hours. However the Judicial Magistrate has endorsed on Exhibit P18 that he has received the FIR on 04.01.2014 at 09.30 p.m. The delay in dispatching this FIR to the court has not been explained by the prosecution. PW2. The prosecution witnesses have also not deposed anything as to delaying of filing the complaint. The non-explanation of delay in filing the complaint will create reasonable doubt as to the alleged incident. It is seen, there is an unexplained delay in lodging the First Information Report, which goes to the root of the prosecution case and renders it doubtful.

16. The alleged incident is stated to have occurred on 03.01.2014 at about 5.30 p.m., whereas the complaint was recorded only on 04.01.2014 at about 5.00 p.m. and the FIR

came to be registered thereafter. The prosecution has not offered any satisfactory or plausible explanation for this delay. It is well settled that prompt lodging of an FIR lends credibility to the prosecution case, whereas unexplained delay creates room for embellishment, deliberation and false implication. In *Rema Raghavan v. State of Kerala* (2024 Supreme (Ker) 1128), the Court held that where there is a delay in lodging the FIR, the prosecution must furnish a plausible explanation and in the absence of such explanation, the delay may prove fatal to the prosecution case. Further, the present case admittedly arises out of a long-standing land and boundary dispute between the parties, indicating prior enmity. In cases involving prior animosity, the possibility of exaggeration or false implication cannot be ruled out, particularly when the FIR is lodged after a considerable delay. The Courts have consistently cautioned that delay in lodging the complaint, coupled with prior enmity, assumes greater significance and requires careful scrutiny. In *Achhar Singh v. State of Punjab* (1984 Supreme (P&H) 369), it was observed that when there exists previous enmity between the parties, delay in lodging the FIR raises a serious doubt regarding the genuineness of the prosecution version and may indicate false implication.

17. In addition to that the prosecution has failed to examine the Investigating Officer, whose evidence is crucial to explain the circumstances surrounding the delay and the manner in which the investigation was conducted. The non-examination of the Investigating Officer causes serious prejudice to the accused, particularly in a case where delay in registration of the FIR is a significant factor requiring clarification. In *Binod Murmu v. State of Jharkhand* (2023 Supreme (Jhk) 270), it was held that non-examination of the Investigating Officer may result in prejudice to the accused, especially when material aspects such as delay in lodging the FIR and investigation procedure remain unexplained. In view of the above settled principles of law, the unexplained delay in lodging the FIR, when considered along with the admitted prior enmity between the parties and the non-examination of the Investigating Officer, creates a serious doubt regarding the veracity of the prosecution case. Such delay provides scope for deliberation and false implication and therefore becomes fatal to the prosecution case. Consequently, the benefit of doubt ought to be extended to the accused.

18. The PW1 KK Nagaraj Has deposed in his evidence that evidence regarding the land dispute between the accused and the complainant. Further he has deposed in his evidence that

Evidence as stated in his complaint. Next for PW2, K. K. Shivanandu, another injured. He has also deposed as to the assault made by the accused.

19. It is further pertinent to note that P.W.3, who has been projected as an eyewitness by the prosecution, is the sister's son of P.W.2. Thus, P.W.3 is a close relative of the injured witness and belongs to the same family. In such circumstances, his evidence cannot be treated as that of an independent witness and therefore requires careful and cautious scrutiny by the Court. When the prosecution case mainly rests upon the testimony of interested witnesses who are closely related to the complainant party, the Court must look for independent corroboration before placing reliance on such testimony.

20. In the present case, except for the evidence of the injured witnesses P.W.1 and P.W.2 and the related witness P.W.3, the prosecution has not examined any independent witness to support its case, though the alleged incident is said to have taken place in front of the house of the accused. Moreover, another alleged eyewitness P.W.4 – Rachaiah, who is also the witness said to have shown the place of occurrence for the spot mahazar (Ex.P7) conducted on 07.01.2014 at about 10.00 a.m., has not supported the prosecution case and has turned hostile.

21. Therefore, when the evidence of P.W.3, who is a close relative of P.W.2, is considered along with the fact that P.W.4 has turned hostile and there is no independent corroboration, the prosecution version becomes doubtful. In criminal cases, where the prosecution relies primarily on the testimony of interested witnesses, the absence of independent corroboration assumes significance. Consequently, these circumstances create a reasonable doubt regarding the prosecution case, entitling the accused to the benefit of doubt.

22. The medical evidence on record does not support the prosecution case with regard to the alleged seriousness of the injuries sustained by P.W.2. The records relating to the treatment of P.W.2 at NIMHANS disclose that when P.W.2 was examined on 07.01.2014, his condition was found to be stable and normal and he was treated only as an outpatient. P.W.14 – Dr. Sampath, Professor of Neurosurgery at NIMHANS, who examined P.W.2, has clearly stated in his evidence that P.W.2 had sustained only a mild head injury and his condition was normal, and therefore there was no necessity to admit him as an inpatient. This medical opinion, according to the learned counsel, casts serious doubt on the prosecution allegation that P.W.2 had sustained grievous or life-threatening injuries so as to attract the offence under Section 307 of the IPC. It can be

observed that the subsequent treatment allegedly taken by P.W.2 at a private hospital, namely Apollo BGS Hospital, Mysuru, appears to be doubtful. According to the defence, the private hospital has created unnecessary medical records and procedures for extraneous reasons. When the specialist doctor at NIMHANS has clearly opined that the injury was only mild and did not require hospitalization, the alleged operation or extensive treatment shown in the private hospital creates serious doubt about the genuineness of the prosecution case regarding the nature of the injuries. According to the learned counsel for the appellants the prosecution has suppressed a material fact that P.W.2 was suffering from epilepsy even prior to the alleged incident, hence suppression of such a material fact affects the credibility of the prosecution case and raises doubt regarding the actual cause and nature of the injuries sustained by P.W.2.

23. The contention of the learned counsel for appellants that the Trial Court failed to properly appreciate the family relationship between the parties. It is clear from the records that the Accused Nos.1 and 2 and P.W.1 and P.W.2 are closely related and belong to the same family, being descendants of late C. Javari Gowda and Kade Gowda, who were full brothers. The parties were residing under the same roof with temporary

partitions. In such circumstances, according to the defence, the allegation that the accused had the intention or motive to commit such a serious offence becomes doubtful.

24. In view of the foregoing discussion and after careful consideration of the entire evidence on record, the Court finds that the prosecution has failed to establish the guilt of accused No.1 and accused No.2 beyond reasonable doubt. The evidence relied upon by the prosecution suffers from multiple infirmities, including reliance on interested witnesses, hostility of a material eyewitness, lack of independent corroboration, delay in lodging the FIR, delay in conducting the spot mahazar, and doubtful medical evidence regarding the injuries of P.W.2. The Court further notes that the accused and the complainant party are closely related and reside under the same roof, and the alleged motive for the incident remains unproved. The injuries said to have been sustained by P.W.2 are minor and do not corroborate the prosecution's claim of grievous hurt or attempt to murder. The conduct of the investigation and seizure of alleged weapons also raise serious doubts regarding the credibility of the prosecution case.

25. However, upon consideration of the material available on record, it is evident that several circumstances create doubt

regarding the prosecution case. In criminal jurisprudence, when such reasonable doubt arises, the benefit of doubt must necessarily go in favour of the accused. Therefore, in the absence of clear and convincing evidence establishing the guilt of the accused beyond reasonable doubt, the conviction recorded by the Trial Court cannot be sustained. Consequently, the accused are entitled to be acquitted of the charges. Hence, I answer point Nos.1 and 2 in the negative.

26. For the aforesaid reasons and discussions, I proceed to pass the following:

ORDER

- i) The appeal is allowed.
- ii) The judgment of conviction and order on sentence dated 25th May, 2018 passed in S.C.No.291 of 2014 by the I Addl. Sessions Judge, Mysuru, is hereby set aside;
- iii) The accused No.1/K.J Umesha is acquitted for the offence punishable under Sections 307 and 326 of IPC.
- iv) The accused No.2/K.J.Nagesha is acquitted for the offence punishable under Sections 324 of IPC.
- v) Bail bond of the accused, if any, and that of their sureties shall stand cancelled.

- vi) Fine amount, if any, deposited by accused is ordered to be refunded to them after appeal period is over.

Registry to send back the Trial Court Records along with copy of this judgment for information and for needful action.

**Sd/-
(G BASAVARAJA)
JUDGE**

Inn