

**HIGH COURT OF KARNATAKA****Bench: Justice Shivashankar Amarannavar****Date of Decision: 22 January, 2024**

Criminal Appeal No. 932 of 2012 &amp; Criminal Appeal No. 926 of 2012

**HARISH ...APPELLANT****Versus****STATE OF KARNATAKA ...RESPONDENT****1. GUNDAIAH****2. BAGURIAH ...APPELLANTS****Versus****STATE OF KARNATAKA ...RESPONDENT****Legislation:**

Sections 307 and 114 of the Indian Penal Code (IPC)

**Subject:** Appeals against conviction for offenses under Section 307 and Section 114 read with Section 307 of IPC.**Headnotes:**

**Attempt to Murder (Section 307 IPC) – Conviction and Sentence – Appellant convicted for attempted murder under Section 307 of IPC, with rigorous imprisonment of five years and a fine of Rs. 5,000; in default, simple imprisonment for one year. Accused 2 and 3 convicted under Section 114 read with Section 307 of IPC, sentenced to simple imprisonment for five years and a fine of Rs. 2,000 each; in default, six months imprisonment. [Para 2]**

Prosecution Case – Incident of Assault – Accused allegedly assaulted PW3 due to enmity and instigation, causing grievous injuries with a chopper. Charge framed against Accused 1 for offence under Section 307 IPC and against Accused 2 and 3 for offence under Section 114 read with Section 307 IPC. [Para 3]

Contradictions and Reliability of Witnesses – Defense contention of false complaint due to enmity and discrepancies in witness statements. Key witnesses PW1, PW3, and PW5 confirming assault by Accused 1, but not fully corroborated by other witnesses. [Para 5]

Assessment of Evidence – Consideration of witness testimonies, wound certificate, and other evidence leading to conviction of Accused 1 for assault under Section 307 IPC. Insufficient evidence against Accused 2 and 3 for instigation under Section 114 read with Section 307 IPC. [Paras 8-12]

Judgment – Accused 1's conviction under Section 307 IPC upheld, whereas Accused 2 and 3 acquitted of charges under Section 114 read with Section 307 IPC due to lack of sufficient evidence. [Para 14]

Referred Cases: None.

Representing Advocates:

Smt. Chittara B.P for Sri T A Karumbaiah for Harish

Sri R Srinivas for Gundaiah and Baguraiah

Sri M.Divakar Maddur, HCGP for the State

## **JUDGMENT**

1. Crl.A. No. 932/2012 is filed by appellant - accused No. 1 and Crl.A. No. 926/2012 is filed by appellant - accused Nos. 2 and 3. Both the appeals are filed praying to set aside the judgment of conviction and order of sentence dated 16.08.2012 passed by the III Additional Sessions Judge at Tumkur in S.C. No. 184/2011.

2. Accused No. 1 has been convicted for offence under Section 307 of IPC and sentenced to undergo rigorous imprisonment for a period of five years and to pay fine of Rs.5,000/- and in default, to undergo simple imprisonment for a period of one year. Accused Nos.2 and 3 are convicted for offence under Section 114 read with Section 307 of IPC and sentenced to undergo simple imprisonment for a period of five years and to pay fine of Rs.2,000/- each and in default, to undergo simple imprisonment for a period of six months.

3. Factual matrix of the prosecution is that on 06.02.2011 at 05.30 pm in Hosakere village, on the road in front of shop of one Nagaraju, accused due to their ill will and enmity against P.W.1 since she was constructing a house and due to ill will that P.W.3 assisted one Shiva to abduct the sister-in-law of accused No. 1, accused Nos.2 and 3 instigated accused No.1 to assault P.W.3. In that respect on 06.02.2011 at 04.00 pm when P.W.5 – mother of P.W.3 was near her house, accused No.1 had gone there and quarreled with her. On hearing news of galata P.W.1 and P.W.3 came from Hosakere from Amruthur. At that time, in furtherance of their common intention accused Nos. 2 and 3 instigated accused No. 1 to assault and murder P.W.3. Accused No.1 assaulted P.W.3 on his face and his lips with a chopper and caused grievous injuries and made an attempt to murder him. Charge has been framed against accused No. 1 for offence under Section 307 read with Section 34 of IPC and against accused Nos. 2 and 3 for offence under Section 114 of Cr.P.C. read with Section 307 of IPC. In order to prove the charge, the prosecution has examined 12 witnesses as P.W.1 to P.W.12 and got marked Ex.P.1 to Ex.P.9 and M.O.1 to M.O.3. Statements of the accused persons have been recorded under Section 313 of Cr.P.C. The trial Court after hearing arguments on both sides formulated points for consideration and after appreciating the evidence on record convicted appellant - accused No. 1 for offence under Section 307 of IPC and accused Nos. 2 and 3 for offence under Section 114 read with Section 307 of IPC and sentenced them as noted above. Said judgment of conviction and order of sentence has been challenged in this appeal.

4. Heard learned counsel for appellants and learned HCGP for respondent – State.

5. Learned counsel for appellant - accused No. 1 would contend that there was enmity between P.W.1 and accused Nos.2 and 3 with regard to a dispute which was pending in civil Court in O.S. No. 256/2009 on the

file of Civil Judge, Kunigal and therefore, a false complaint has been lodged against accused persons. She further contends that P.W.1 in her complaint – Ex.P.1 has stated that P.W.3 became unconscious due to the injury and she took him to the hospital. Per contra, P.W.3 has stated that he was taken to the hospital in an ambulance and he was conscious at that time. She further contended that P.W.1 has deposed that brother of her husband told her over the phone regarding abuse to her mother-in-law and the said brother of husband of P.W.1 has been examined as P.W.2 and he has not supported the case of the prosecution. P.W.1 in her evidence has deposed that in the incident her husband lost his 4 teeth but in the wound certificate – Ex.P.7 same has not been mentioned. She contends that as per Ex.P.1 the alleged incident has taken place in front of shop of one Nagaraja but said Nagaraja has not been examined by the Investigating Officer. There are contradictions in the evidence of P.W.1, P.W.3 and P.W.10. P.W.1 and P.W.5 are relatives of P.W.3 – injured. Eye witnesses P.W.2 and P.W.4 have not supported the case of the prosecution. Even the mahazar – Ex.P.2 regarding seizure of clothes and Ex.P.5 -drawing of spot mahazar has not been proved since P.W.8 panch to Ex.P.2 and P.W.6 and P.W.7 – panchas to Ex.P.5 have not supported the case of the prosecution. On these grounds she prayed to allow the appeal and acquit the appellant - accused No. 1.

6. Learned HCGP would argue that the trial Court on appreciation of the evidence on record has rightly convicted appellant - accused Nos.1 to 3. He supported the reasons assigned by the trial Court. He further argued that evidence of P.W.1, P.W.3 and P.W.5 is sufficient to convict the appellants – accused for offence leveled against them. On these grounds he sought for dismissal of the appeal.

7. On the grounds made out and considering the arguments advanced the following points arise for my consideration:

- I. Whether the trial Court erred in convicting the appellant - accused No. 1 for offence under section 307 of IPC?
- II. Whether the trial Court erred in convicting the appellant - accused Nos. 2 and 3 for offence under Section 114 read with Section 307 of IPC?

**Re. Point Nos. I & II**

8. P.W. 1 is the complainant and she is the wife of the injured – P.W.3. P.W.5 is the mother of P.W.3 and mother-in-law of P.W.1. There was a civil dispute with regard to construction of house between P.W.1 and accused

Nos.2 and 3 and suit was pending as on the date of offence in O.S. No. 256/2009 in Kunigal Civil Court. Same has been admitted by P.W.1 and P.W.3. Even P.W.5 has also admitted the pendency of the said suit in her cross-examination. P.W.1, P.W.3 and P.W.5 have denied that there was enmity between them and accused Nos. 2 and 3. The alleged incident has started when accused No.1 started abusing P.W.5. Accused No.1 started abusing P.W.5 on the ground that his sister-in-law has been kidnapped by persons belonging to Gangamata caste and it is at the instance of P.W.3. At that time appellant - accused No. 1 abused P.W.5 and threatened that he will commit rape on her grand daughter i.e. daughter of P.W.3 who was studying in S.S.L.C. P.W.5 has stated all these aspects in her chief-examination. She has deposed that P.W.1 and P.W.3 came to Hosakere and when they were in front of the shop, appellant - accused No.1 – Harisha assaulted him with chopper on his face and caused injury and in that incident he lost his teeth and he has sustained injury to his lips. P.W.3 has also deposed that on 06.02.2011 when he received phone call regarding abuse to his mother, he and his wife – P.W.1 went from Amruthur to Hosakere on TVS and when they were in front of shop of Nagaraja the accused persons stopped them and appellant - accused No. 1 assaulted him on his face with chopper and he lost his four teeth and sustained injuries to his lip, chin and right shoulder and his clothes became blood stained and he was taken to the hospital. P.W.1 has also deposed corroborating the evidence of P.W. 3 and P.W.5 that on 06.02.2011 when they received information regarding appellant - accused No.1 abusing her mother-in-law, she and her husband – P.W.3 went there and at that time appellant - accused No.1, at the instigation of appellant - accused Nos. 2 and 3 assaulted P.W.3 with chopper on his face and caused injury to his lips and he lost his four teeth and he was taken to the hospital. The wound certificate of P.W.3 is at Ex.P.7. P.W.12 – the Doctor who examined P.W.3 in General Hospital, Kunigal and issued Ex.P.7 – wound certificate has deposed regarding examination of P.W.3 for the injuries sustained with the history of assault and regarding injury sustained by P.W.3 to his lips, chin, chest and on the basis of the opinion of the Dentist, she has stated that P.W.3 has lost his four teeth and opined that the injuries sustained by P.W.1 are grievous injuries. The evidence of P.W.12 and wound certificate – P.W.7 corroborate the evidence of P.W.1, P.W.3 and P.W.5. The contradictions pointed out by the learned counsel for appellant - accused No.1 in the evidence of P.W.1, P.W.3 and P.W.5 are not material contradictions. Even though P.W.2 and

P.W.4 who are eye witnesses to the incident have not supported the case of the prosecution, evidence of P.W.1, P.W.3 and P.W.5 will establish that appellant - accused No.1 assaulted P.W.3 with chopper and caused injuries.

9. P.W.8 is the panch to Ex.P.2 under which the clothes of the injured have been seized in the hospital. P.W.8 has not supported the case of the prosecution. P.W.1 has deposed that she gave shirt and lungi which were blood stained and belonging to P.W.3 the Police seized them under mahazar – Ex.P.2 and she has also identified shirt at M.O.1 and lungi at M.O.2. P.W.3 has also identified his shirt at M.O.1 and lungi at M.O.2. P.W.11 – Head Constable has deposed that on 07.02.2011 he had been to the Hospital and there P.W.1 produced clothes of the injured and he seized them under mahazar as per Ex.P.2 in the presence of panchas and he has identified them which are at M.O.1 and M.O.2. Therefore, the evidence of P.W.11 coupled with the evidence of P.W.1 and P.W.3 will establish the seizure of blood stained clothes of P.W.3 produced by P.W.1 before P.W.11 which were seized under Ex.P.2 – mahazar.

10. P.W.6 and P.W.7 are panchas to Ex.P.5 – spot mahazar. P.W.6 and P.W.7 have not supported the case of the prosecution. P.W.10 – PSI has deposed that on 07.02.2011 he took up further investigation and on the same day he visited Hosakere village and prepared spot mahazar and prepared spot mahazar in the presence of panchas. Said evidence of P.W.10 establishes the drawing of spot mahazar as per Ex.P.5.

11. There was enmity between accused No. 3 and P.W.3 and therefore there was motive for appellant - accused No. 1 to assault P.W.3. Said motive is regarding the kidnapping of one Smt. Latha – sister-in-law of appellant - accused No.1 who is alleged to have been kidnapped at the instance of P.W.3.

12. The accusation leveled against appellant - accused Nos. 2 and 3 (appellants in Crl.A. No. 926/2012) is that they instigated and abetted accused No. 1 to assault and kill P.W.3. P.W.1 has deposed that when they reached Hosakere village, at that time, appellant - accused Nos. 2 and 3 instigated accused No. 1 to hold P.W.3 and kill him. Thereafter, appellant - accused No.1 assaulted P.W.3 with chopper on his face. P.W.3 has not deposed regarding the said instigation of appellant - accused Nos.2 and 3 to accused No.1 to assault him. P.W.3 has only stated that accused stopped him and pulled him. P.W.5 has not stated anything against appellant - accused Nos. 2 and 3. Even she has not stated regarding the presence of

appellant - accused Nos.2 and 3 at the spot at the time of incident. P.W.5 in the cross-examination has only stated that when appellant - accused No.1 was abusing her on 06.02.2011, at that time, appellant - accused No.2 was present there. Therefore, the trial Court has erred in convicting appellant - accused Nos. 2 and 3 for the offence under Section 114 read with Section 307 of IPC.

13. The trial Court, considering the evidence of P.W.1, P.W.3 and P.W.5, evidence of the Doctor – P.W.12, wound certificate – Ex.P.7 has rightly held that appellant - accused No. 1 has assaulted P.W.3 with chopper and caused injuries.

14. In view of the above, point No. I is answered in the negative and point No. II is answered in the affirmative. Accordingly, Crl.A. No. 932/2012 is dismissed. Crl.A. No. 926/2012 is allowed. Appellants - accused Nos. 2 and 3 are acquitted for offence under Section 114 read with Section 307 of IPC.

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