

CRL.A NO.100556/2024

IN THE HIGH COURT OF KARNATAKA AT DHARWAD

DATED THIS THE 02ND DAY OF SEPTEMBER, 2026

PRESENT

THE HON'BLE MR. JUSTICE H.T.NARENDRA PRASAD

AND

THE HON'BLE MRS JUSTICE RAJESHWARI N.HEGDE

CRIMINAL APPEAL NO.100556 OF 2024

BETWEEN

1. SHEKARAPPA
S/O MUDAKAPPA PUJARI,
AGE. 51 YEARS, OCC. LABOURER,
R/O. BEVOOR VILLAGE,
BAGALKOT, TQ. AND DIST. -
587115.
2. GYANAPPA S/O NILAPPA PUJARI
AGE. 23 YEARS, OCC. STUDENT,
R/O. BEVOOR VILLAGE,
BAGALKOT, TQ. AND DIST-587115.

...APPELLANTS

(BY SRI. J. BASAVARAJ, ADVOCATE)

AND

THE STATE OF KARNATAKA
REPRESENTED BY ITS
STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
BENCH AT DHARWAD-580011
THROUGH BAGALKOT RURAL PS.

...RESPONDENT

(BY SRI. T. HANUMAREDDY, ADDL. SPP.)



CRL.A NO.100556/2024

THIS CRIMINAL APPEAL IS FILED U/S 374 (2) OF CR.P.C. (415 OF BNSS), PRAYING TO CALL FOR RECORDS FROM THE COURT BELOW, ALLOW THIS APPEAL AND SET ASIDE THE JUDGMENT AND ORDER OF CONVICTION 30.08.2024 AND SENTENCE DATED 31.08.2024 PASSED BY THE PRL. DISTRICT AND SESSIONS JUDGE AT BAGALKOTE IN S.C. NO.65/2020 FOR THE OFFENCES PUNISHABLE U/S 302, 504, 506(2) R/W SECTION 34 OF IPC AGAINST ACCUSED NO.1/APPELLANT NO.1 AND U/S 302, 307, 504 AND 506(2) R/W SECTION 34 OF IPC AGAINST ACCUSED NO.2/APPELLANT NO.2 ACQUIT THE APPELLANT NOS.1 AND 2/ACCUSED NOS. 1 AND 2 SET AT LIBERTY FOR THE AFORESAID OFFENCES, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 16.07.2026 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, DELIVERED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE H.T.NARENDRA PRASAD
AND
HON'BLE MRS JUSTICE RAJESHWARI N.HEGDE

CAV JUDGMENT

(PER: HON'BLE MRS JUSTICE RAJESHWARI N.HEGDE)

1. This appeal is filed by the appellants/accused Nos.1 and 2 under Section 374(2) of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C."), challenging the judgment and order of conviction dated 30.08.2024 and sentence dated 31.08.2024 on the file of Principal District

CRL.A NO.100556/2024

and Sessions Judge, at Bagalkote (for short, "trial court") in SC No. 65/2020.

2. The case of the prosecution, in brief, is as under:

a. One Smt. Mahadevi, the complainant filed the complaint before the Bagalkot Rural P.S. on 15.10.2019 bearing Crime No.189/2019 by alleging that she was married to Shivappa Pujari, (the deceased in this case) about 13 years back, through their wedlock they have two children, and that the deceased was working as driver in KSRTC department at Guledagudda Depot.

b. That on 13.10.2019 there was a procession of Valmiki Jayanti in their village and the sister's son of the deceased by name Ayyappa had participated in the cultural activities, their community people namely Gyanappa (Accused No.2) and Srishail (CCL) had also participated. Few boys had lifted said Ayyappa, and started dancing, at that time Gyanappa and Srishail (accused No.2 and CCL) had questioned regarding why they lifted the said Ayyappa. In the mean time they deliberately stepped on the foot of Ayyappa and picked up a quarrel and started to assault him.

CRL.A NO.100556/2024

By the intervention of Anand and Sanju the quarrel was pacified and Ayyappa was brought back to house.

c. Thereafter, all the accused by name Gyanappa, Shekharappa, Shivappa, Muttappa, Srishail, Neelavva , Fakiravva, Dyamavva came together near the house of the complainant and instructed her to advise Ayyappa as to why he was quarrelling on the street, and also threatened Ayyappa if he continues such acts in future. The same was informed by the complainant to her husband (deceased) over the phone.

d. That, on 14.10.2019 at about 9.30 p.m., her husband after finishing his work was returning to the house, and while proceeding on the street in front of the house of accused No.1 Shekharappa, they had picked up a quarrel with the deceased pertaining to the incident which had taken place on 13.10.2019. On hearing the cries of the quarrel, the complainant along with others immediately came out of the house and noticed that the accused No.1 Shekharappa was assaulting the deceased with hands. The complainant, Ayyappa and Anand intervened and pacified

CRL.A NO.100556/2024

the quarrel. At that time, accused No.2 Gyanappa, Accused No.3 Shivappa and accused No.4 Muttappa had caught hold of the deceased. Accused No.1 Shekharappa came out of his house holding a sickle and assaulted on the left portion of the deceased's chest. One Srishail /CCL assaulted with a sickle on the deceased's right hand fingers, due to which deceased had sustained bleeding injuries. Accused No.6 Neelappa, Accused No.7 Fakiravva, accused No. 8 Dyamavva assaulted the deceased with club, kicked with legs and caused the deceased to fall on the ground.

e. When the public arrived, the accused fled from the spot. The complainant noticed that her husband was not in a position to speak, then he was shifted to the Bagalkote District Hospital in an ambulance, where he succumbed to the injuries on the way to the hospital. Hence, the complaint.

3. The police after receipt of the complaint, and after completion of investigation, filed the charge sheet against the accused Nos. 1 to 8 which was registered as SC No. 65/2020 and against CCL before the J. J. Board, later

CRL.A NO.100556/2024

transferred to Children's Court and registered as Spl. Case No.78/2022. Both cases were tried before the Principal District and Sessions Judge, Bagalkote.

4. In SC No. 65/2020, the prosecution produced the oral evidence by examining 16 witnesses as P.W.1 to P.W.16, produced documents as Ex.P-1 to P-40 and material objects M.O 1 to 8. In Spl. Case No. 78/2022, the prosecution produced the oral evidence by examining 16 witnesses as P.W.1 to P.W.16, got marked 19 documents as Ex.P-1 to P-19 and material objects as M.O 1 and 2.

5. After completion of the evidence of the prosecution witnesses, accused in SC No. 65/2020 were examined under Section 313 of Cr.P.C, where they denied the incriminating evidence, appearing against them in the evidence of prosecution witnesses. They did not choose to lead any defence evidence, however, they got marked Ex.D-1 to D-5 i.e., portion of the statement of PW.4 and PW.11.

6. Similarly, CCL in Spl. Case No. 78/2022 was examined under Section 313 of Cr.P.C, whereby he denied the incriminating evidence, appearing against him in the

CRL.A NO.100556/2024

evidence of prosecution witnesses. He did not choose to lead any defence evidence, however, he got marked Ex.D-1 to D-5 i.e., portion of the statement of PW.4 and PW.11.

7. Upon appreciation of the oral and documentary evidence, the trial court clubbed both the cases and pronounced the common judgment vide impugned judgment dated 30.08.2024 whereby accused Nos. 1 and 2 (Shekharappa and Gyanappa) in SC No. 65/2020 are found guilty of certain offences charged against them.

8. Accused No.1 is convicted for the offences punishable under Sections 302, 504 and 506(2) R/w Section 34 of the IPC and acquitted of the offences punishable under Section 143, 147, 148, 341 and 307 R/w 149 of IPC.

9. Accused No.2 is convicted for the offences punishable under Sections 302, 307, 504 and 506(2) R/w Section 34 of the IPC and acquitted of the offences punishable under Section 143, 147, 148, 341 R/w 149 of IPC.

CRL.A NO.100556/2024

10. Remaining accused in SC No. 65/2020 and CCL in Spl. Case No. 78/2022 are acquitted of all the offences charged against them.

11. The trial court has sentenced the accused Nos. 1 and 2 as under:

"Accused Nos.1 & 2 namely Shekarappa S/o Mudakappa Pujari & Gyanappa S/o Nilappa Pujari are each sentenced to undergo imprisonment for life and to pay fine of Rs.5,000/- each (Rupees Five Thousand) and in default to undergo simple imprisonment for a period of one (1) year for the offence punishable under Section 302 read with Sec.34 of IPC.

Further the accused No.2 namely Gyanappa S/o Nilappa Pujari is sentenced to undergo rigorous imprisonment for a period of five (5) years and to pay fine of Rs.2,000/- (Rupees Two Thousand Only) and in default to undergo simple imprisonment for a period of three (3) months for the offence punishable under Section 307 of IPC.

Accused Nos.1 & 2 namely Shekarappa S/o Mudakappa Pujari & Gyanappa S/o Nilappa Pujari are each sentenced to undergo simple imprisonment for a period of three (3) months and to pay fine of Rs.2,000/- (Rupees Two Thousand only) each and in default to undergo simple imprisonment for a period of fifteen (15) days for the offence punishable under Section 504 read with section 34 of IPC.

CRL.A NO.100556/2024

Accused Nos.1 & 2 namely Shekarappa S/o Mudakappa Pujari & Gyanappa S/o Nilappa Pujari are each sentenced to undergo simple imprisonment for a period of six (6) months and to pay fine of Rs.1,000/- each (Rupees One Thousand only) and in default to undergo simple imprisonment for a period of one month for the offence punishable under Section 506 read with Sec.34 of IPC."

All the aforesaid substantial sentences shall run concurrently.

Acting under Section 357 (3) Cr.P.C., it is ordered that both the accused Nos.1 & 2 shall pay an amount of Rs.25,000/- each (Rupees Twenty Five Thousand) to victim P.W.1-Mahadevi W/o: Shivappa Pujari i.e., wife of the deceased towards compensation. If the amount remains unpaid, it shall be recovered from the accused or from their property as per Section 431 Cr.P.C.

It is made clear that even if the accused undergoes the default sentence, they are not absolved of their liability to pay the fine amount in view of the proviso to sub-section (1) of Section 421 Cr.P.C."

12. Being aggrieved by the said judgment of conviction and order of sentence, accused Nos. 1 and 2 have preferred the present appeal on the following grounds:

- a. Order of conviction is bad in law as there are serious inconsistencies in the evidence

CRL.A NO.100556/2024

of prosecution witnesses and it is also opposed to law and facts.

- b. The trial court failed to consider the evidence of prosecution witnesses in proper perspective, failed to examine independent witnesses.
- c. The trial court failed to consider contradiction with reference to injuries said to have been suffered by deceased Shivappa and injured Gyanappa.
- d. In the complaint it is alleged that CCL assaulted the deceased with sickle, but PW.1 in her evidence stated that accused No.2 had assaulted the deceased with sickle, thereby there is a clear element of false implication which is not appreciated by the trial court.
- e. There is discrepancy with regard to recovery of M.Os and blood stain on the M. O.1.
- f. The evidence of pancha witnesses PW.2 and 3 does not corroborate each other.
- g. The trial court failed to appreciate the evidence of PW.4 who claimed to be an injured witness and that he is not truthful witness.
- h. The trial court committed an error in convicting accused No.2 for the offence punishable under Section 307 IPC, though prosecution has failed to produce sufficient evidence and the doctor has admitted that he had not treated the injured as inpatient.

CRL.A NO.100556/2024

- i. The trail court failed to notice that as per the evidence of PW.5, there were 20 to 30 public were present, but the prosecution did not examine any of them, which creates doubt about the case of the prosecution.
- j. PW.5 admitted that quarrel went on until 12.00 in the midnight, and he did not come to inform the out post police which is not appreciated by the trail court.
- k. The trail court has not appreciated that there was a primary health center in the village and after the incident they have taken injured/ deceased to the hospital in an auto, the doctors at PHC treated the injured, thereafter advised to shift for higher treatment, but the prosecution failed to produce any material regarding the same.
- l. The trail court failed to appreciate that PW.8, the doctor who conducted the post mortem, has not stated about the sharpness of the sickle.
- m. The trail court has not properly appreciated the various injuries sustained by the accused No.2 on his leg, hand, face and has stated that those injuries are not serious injuries.
- n. The trail court has not properly appreciated the evidence of PW.11, 13, 14, 15 and 16 in proper perspective.
- o. The trail court failed to appreciate that the incident was a clear case where the witnesses are themselves the aggressors

CRL.A NO.100556/2024

and accused have also suffered injuries which are serious in nature and the trial court has not properly appreciated that the prosecution has suppressed the genesis of the incident.

- p. The trial court failed to appreciate that there was no independent and reliable corroboration, the evidence of interested witnesses cannot be relied upon, there are discrepancies, inconsistencies affecting the case of prosecution and its credibility and erroneously convicted the accused.

13. On these grounds, the appellants prayed for allowing this appeal by setting aside the impugned judgment and to acquit the appellants/ accused 1 and 2 of all the offences.

14. Accordingly, the points that would arise for our consideration are:

- 1. Whether the impugned judgment of conviction and order of sentence passed by the trial Court suffers from illegality, perversity and warranting interference by this Court ?
- 2. Whether the learned Sessions Judge is justified in convicting the accused for the offence punishable under section 302 of IPC?

CRL.A NO.100556/2024

15. For convenient reference, the particulars of the witnesses examined by the prosecution and the substance of their evidence are set out as under:

a) PW1 Mahadevi Pujari, the complainant and wife of the deceased deposes about the incident and the lodging of the complaint and the seizure of the material object.

b) PW2 Yankappa Talawar, is a panch witness i.e. seizure of material object sickle by drawing of Mahazar Ex.P2, and witness to Mahazar Ex.P7 i.e. the collection of viscera from the dead body of the deceased.

c) PW3 Kubanna Pujari is also witness to Ex.P2 and P7.

d) PW4 Gyanesh Balanaik is eyewitness to the incident who has supported the prosecution version.

e) PW5 Ayyappa Gani is eyewitness to the incident who has supported to the prosecution version.

CRL.A NO.100556/2024

f) PW6 Dayanand Biradar is the witness to inquest Mahazar Ex.P11 and deposes about the injury found on the dead body and further he is also witness to seizure Mahazar Ex.P13,i.e., seizure of cloths of deceased.

g) PW7 Jyothi Biradar is an eyewitness to the incident who has supported to the prosecution case.

h) PW8 Dr. Anand Mugadlimath, Department of Forensic Medicine conducted post mortem on the dead body of the deceased as per post mortem report Ex.P14.

i) PW9 Dr. Rahul Joshi treated the injured Gyanesh Manappa Balanaik, Gyanesh Pujari (A2) and Shivappa Pujari, the deceased, on 14.10.2019.

j) PW10 Dr. Vijaya Mahantesh, treated Shekappa Mudakappa Pujari and Gyanesh Pujari (A2), on 15.10.2019.

k) PW11 Inavati Walikar is said to be an eyewitness to the incident.

CRL.A NO.100556/2024

I) PW12, PW13, PW14, PW15 and PW16 are the Police officials who deposed about the investigation and filing of the chargesheet.

Reasoning:

16. The learned Sessions Judge, upon appreciation of the evidence adduced by the prosecution as well as the defence, came to the conclusion that, in S.C. No.65/2020, the prosecution had proved the guilt of accused Nos.1 and 2 beyond reasonable doubt. Accordingly, accused Nos.1 and 2 were convicted, while the remaining accused were acquitted. The CCL concerned in Special Case No.78/2022 was also acquitted.

17. Learned counsel appearing for the appellants contended that there are discrepancies, inconsistencies and material variations in the evidence of the prosecution witnesses. However, the Trial Court failed to properly appreciate the said evidence and, erroneously placing reliance upon the same, proceeded to convict accused Nos.1 and 2.

CRL.A NO.100556/2024

18. It was further contended that, as per the evidence of PW.15, the dead body of the deceased was sent to a private hospital for post-mortem examination. According to the learned counsel, the post-mortem examination ought to have been conducted in a Government Hospital. However, the Investigating Officer has not assigned any reason for sending the dead body to a private hospital. It is, therefore, contended that the manner in which the post-mortem examination was conducted creates a doubt regarding the prosecution case.

19. It was further contended that the Investigating Officer had not conducted any panchanama inside the house of the complainant. It was also argued that, from the evidence of the prosecution witnesses, it is evident that the dispute arose gradually and that the incident did not occur all of a sudden.

20. On an overall appreciation of the evidence of the prosecution witnesses, learned counsel contended that the incident occurred in the course of a sudden quarrel and upon grave and sudden provocation.

CRL.A NO.100556/2024

21. It was further submitted that both the accused have been in custody for a period of about six years and that accused No.2 is a student. Therefore, it was contended that the prosecution had failed to establish any premeditation or preparation on the part of the accused to cause the death of the deceased. Hence, learned counsel sought interference with the judgment of conviction and prayed that the appellants be acquitted of the charges levelled against them.

22. Per contra, learned Additional SPP contended that there are eyewitnesses to the incident and that all the eyewitnesses have deposed consistently that they witnessed the quarrel and saw the accused assaulting the deceased with sickles, thereby causing his death.

23. It was argued that there was no provocation whatsoever on the part of the deceased. With regard to the post-mortem examination having been conducted in a private hospital, it was submitted that, as no forensic expert was available in the Government Hospital, the dead body

CRL.A NO.100556/2024

was taken to a private hospital for post-mortem examination.

24. It was further contended that, when the eyewitnesses had witnessed the incident and their evidence corroborates each other on material particulars, the prosecution has established beyond reasonable doubt that the accused were responsible for causing the death of the deceased. Therefore, it was argued that the Trial Court was justified in convicting the accused for the offence punishable under Section 302 of the IPC. It was further submitted that the ocular evidence of the eyewitnesses is duly corroborated by the medical evidence.

25. We have carefully gone through the evidence available on record. Coming to the evidence of the eyewitnesses, PW.4 has deposed that, on 14.10.2019 at about 9:30 p.m., when he was in his house, he heard a quarrel in front of the house of accused No.1. On coming to the spot, he saw the other accused holding the deceased and assaulting him. He further deposed that accused No.1 brought a sickle and assaulted the deceased on his chest,

CRL.A NO.100556/2024

while accused No.2 went inside the house, brought another sickle and assaulted the deceased on his right hand. He further stated that, when CW.6 intervened to pacify the quarrel, the accused assaulted him as well.

26. Though a suggestion was put to PW.4 on behalf of the accused that he was not present at the time of the incident and that the accused had not assaulted the deceased, nothing material was elicited in the course of his cross-examination to discredit or discard his testimony. PW.5 has also deposed that he witnessed the accused assaulting the deceased with sickles. Though PW.5 was subjected to lengthy cross-examination by the defence, nothing material was elicited to discredit his evidence or render his testimony unreliable.

27. Similarly, PW.11, who is also an eyewitness to the incident, has deposed that the accused assaulted the deceased with sickles. Though all these witnesses were subjected to lengthy cross-examination and suggestions were put to them that they were not present at the time of the incident and that the accused had not assaulted the

CRL.A NO.100556/2024

deceased, nothing material was elicited from their evidence to establish that they were not present at the scene of occurrence or to create any reasonable doubt regarding the credibility and reliability of their testimony.

28. On careful appreciation of the evidence of the eyewitnesses, as rightly contended by the learned Additional SPP, it is evident that there are eyewitnesses who have witnessed the occurrence. Their evidence inspires confidence and has been rightly accepted by the learned Sessions Judge. The testimony of the eyewitnesses is consistent on material particulars and remains unshaken in the course of cross-examination. Therefore, we are of the considered view that the prosecution has established the involvement of the accused in the commission of the offence beyond reasonable doubt.

29. Insofar as the death of the deceased is concerned, it is not in dispute that the deceased died a homicidal death. The evidence of the eyewitnesses establishes that the accused assaulted the deceased with sickles, as a result of which he sustained injuries and

CRL.A NO.100556/2024

succumbed to the same. Thus, the prosecution has established that the accused were responsible for causing the homicidal death of the deceased.

30. Learned counsel appearing for the appellants, during the course of arguments, submitted that, even if this Court comes to the conclusion that the accused were responsible for causing the death of the deceased, there was no motive for them to commit the murder. It was argued that the incident occurred in the course of a quarrel and that the accused assaulted the deceased while exercising their right of private defence and due to sudden provocation. Therefore, it was contended that, in the absence of any prior preparation or premeditation and having regard to the circumstances in which the incident occurred, the accused are entitled to the benefit of the exception to Section 300 of the IPC and that the offence, if any, would amount to culpable homicide not amounting to murder, punishable under Part II of Section 304 of the IPC.

31. Having held that accused Nos.1 and 2 were responsible for causing the homicidal death of the

CRL.A NO.100556/2024

deceased, the next question that arises for our consideration is whether the act committed by them amounts to **"culpable homicide"** within the meaning of Section 299 of the IPC. If the act is found to constitute culpable homicide, the further question that arises for consideration is whether it amounts to **"murder"** punishable under Section 302 of the IPC, or **"culpable homicide not amounting to murder"** punishable under Section 304 of the IPC.

32. For determining when culpable homicide amounts to murder and when it does not, it is necessary to refer to Section 300 of the IPC, which reads as follows:

"300. Murder.—*Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—*

Secondly—If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—

Thirdly—If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—

CRL.A NO.100556/2024

Fourthly—If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

*Exception 1.—**When culpable homicide is not murder.**— Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.*

The above exception is subject to the following provisos:—

First—That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly—That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly—That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation.—Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

Exception 2.— Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

CRL.A NO.100556/2024

Exception 3.— Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.

Exception 4.— Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.

Explanation.— It is immaterial in such cases which party offers the provocation or commits the first assault.

Exception 5.— Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.”

33. A reading of Section 300 of the IPC makes it clear that it consists of two parts. The first part sets out the circumstances in which culpable homicide amounts to murder, while the second part provides for the exceptions under which culpable homicide does not amount to murder. For the purpose of the present case, Clause (4) of Section 300 and Exception (4) thereto are relevant.

CRL.A NO.100556/2024

34. Under Clause (4) of Section 300 of the IPC, culpable homicide amounts to murder if the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury.

35. Exception (4) to Section 300 of the IPC, however, provides that culpable homicide is not murder if it is committed without premeditation, in a sudden fight, in the heat of passion upon a sudden quarrel, and without the offender having taken undue advantage or acted in a cruel or unusual manner. The Exception further makes it clear that, in such cases, it is immaterial which party offered the provocation or committed the first assault.

36. In the present case, the appellants/accused Nos.1 and 2 have not disputed that the deceased died a homicidal death. The principal question, therefore, is whether, having regard to the circumstances in which the

CRL.A NO.100556/2024

incident occurred, the act committed by the accused falls within any of the exceptions to Section 300 of the IPC.

37. Having considered the provisions relating to culpable homicide and murder, as noticed above, we now turn to the facts and circumstances of the present case. As already observed, there are certain serious lapses on the part of the Investigating Officer. In particular, the Investigating Officer has failed to conduct a proper investigation with regard to the injuries sustained by accused No.1 during the incident. Further, although it is the case of the prosecution that accused No.2 was present at the scene of occurrence, he was not arrested on the date of the incident. No satisfactory explanation has been offered by the prosecution for such omission.

38. The aforesaid circumstances assume significance while considering the defence of the accused that the incident occurred in the course of a sudden quarrel and without any premeditation. Therefore, it is necessary to examine whether the prosecution has established that the accused acted with the requisite intention or knowledge so

CRL.A NO.100556/2024

as to bring their acts within the ambit of Section 300 of the IPC, or whether the case falls within Exception (4) to Section 300 of the IPC.

39. As already observed, on perusal of the complaint at Ex.P.1, it is stated that, on the previous day, i.e., on 13.10.2019, Valmiki Jayanti was celebrated in the village of the complainant. During the procession held in connection with the said celebration, a quarrel had taken place with regard to the participation of Ayyappa, who is the son of the deceased's sister, in the cultural activities.

40. It is further alleged that, on the following day, i.e., on 14.10.2019, at about 9:30 p.m., when the deceased was returning to his house after completing his work, and while he was proceeding along the street in front of the house of the accused, the accused picked up a quarrel with him in connection with the incident that had occurred on the previous day. It is alleged that the remaining seven accused also gathered at the spot, assaulted the deceased and caused his death.

CRL.A NO.100556/2024

41. The learned Sessions Judge, upon appreciation of the evidence available on record, convicted accused Nos.1 and 2 and acquitted the remaining accused. Learned counsel appearing for the appellants contended that, having regard to the fact that the learned Sessions Judge, on appreciation of the very same evidence, had acquitted the remaining accused, the conviction of accused Nos.1 and 2 on the basis of such evidence is erroneous. It was, therefore, argued that the impugned judgment of conviction suffers from illegality, irregularity and perversity.

42. Learned counsel appearing for the appellants has relied upon the following judgments in support of his contentions:

- a. ***Ex. Ct. Mahadev v. Director General, Border Security Force and Others***, reported in **(2022) 8 SCC 502**.
- b. ***Suresh Singhal v. State (Delhi Administration)***, reported in **(2017) 2 SCC 737**.
- c. ***Mohammad Khan and Others v. State of Madhya Pradesh***, reported in **(1971) 3 SCC 683**.

CRL.A NO.100556/2024

- d. **Anand Ramachandra Chougule v. Sidraj Laxman Chougala and Others**, reported in **(2019) 8 SCC 50**.
- e. **Jasbir Singh v. State of Punjab**, reported in **(2023) 18 SCC 806**.
- f. **Jharmal and Others v. State of Haryana**, reported in **(1994) 2 SCC 551**.
- g. **Harjit Singh and Others v. Union of India and Others**, reported in **(1994) 2 SCC 553**.
- h. **Darshan Singh v. State of Punjab and Another**, reported in **(2010) 2 SCC 333**.
- i. **State of Punjab v. Gurbux Singh and others**, reported in **1995 Supp (3) SCC 734**.
- j. **Secretary, Hailakandi Bar Association v. State of Assam and Another**, reported in **1995 Supp (3) SCC 736**.
- k. **Rajendra Singh v. State of Haryana**, reported in **(2014) 15 SCC 507**.

43. We have carefully gone through the judgments relied upon by learned counsel appearing for the appellants. The first judgment, reported in **(2022) 8 SCC 502**, relates to the exercise of the right of private defence. It has been observed therein that the right of private defence is essentially a defensive right and is available only when the circumstances justify its exercise.

CRL.A NO.100556/2024

44. In the present case, learned counsel for the appellants contended that, according to the prosecution case, the incident occurred on the street in front of the house of the accused. It was, therefore, argued that, if the accused had any motive or intention to kill the deceased, they could have gone near the house of the deceased and assaulted him there, instead of assaulting him in front of their own house.

45. It was further contended that the deceased had provoked the accused, resulting in a quarrel, and that the accused, while exercising their right of private defence, assaulted the deceased. Learned counsel placed reliance upon the aforesaid decision of the Hon'ble Supreme Court, wherein, having regard to the facts and circumstances of that case, the accused was held guilty of culpable homicide not amounting to murder, falling within Exception (2) to Section 300 of the IPC, and was sentenced to the period already undergone.

46. In another decision, reported in **(2019) 8 SCC 50**, the Hon'ble Supreme Court also considered the scope of

CRL.A NO.100556/2024

the right of private defence. It was observed therein that, where the assault was made on the spur of the moment, without premeditation, and both sides had sustained injuries, the conviction could be altered to one under Section 304 Part I of the IPC.

47. In the present case also, accused No.2, namely, Gyanappa, sustained injuries during the incident. The prosecution examined PW.10, the doctor, who deposed that, on 15.10.2019 at about 3:35 a.m., one Gyanesh Pujari, aged 19 years, came to the hospital for treatment with a history of assault. He had sustained a laceration over the forehead, an incised wound over the right forearm and an abrasion over the right hand. PW.10 issued the wound certificate in respect of the said injuries, which is marked as Ex.P.18.

48. Thus, as rightly contended by learned counsel appearing for the appellants, on careful scrutiny of the oral and documentary evidence available on record, we find that there was no established motive on the part of the accused to cause the death of the deceased and that there was no

CRL.A NO.100556/2024

prior premeditation to commit the offence. The evidence on record further indicates that a quarrel had taken place and that, in the course of the said quarrel, the accused assaulted the deceased with a sickle. The fact that accused No.2 himself sustained injuries during the incident also assumes significance while considering the manner in which the occurrence took place.

49. Having regard to the aforesaid circumstances, coupled with the evidence available on record and the principles laid down in the judgments relied upon by learned counsel appearing for the appellants, we are of the considered opinion that the case falls within the ambit of **Exception (4) to Section 300 of the IPC.**

50. Exception (4) to Section 300 of the IPC specifically provides that it is immaterial which party offered the provocation or committed the first assault. Therefore, having regard to the facts and circumstances of the case, we are of the considered opinion that the learned Trial Court erred in convicting accused Nos.1 and 2 for the offence punishable under Section 302 of the IPC. In our considered

CRL.A NO.100556/2024

view, the acts attributed to accused Nos.1 and 2, on the facts established on record, would amount to **culpable homicide not amounting to murder**, punishable under **Section 304 Part II of the IPC**.

51. In the result, the points raised for consideration are answered accordingly, and we proceed to pass the following:

ORDER

The appeal filed by accused Nos.1 and 2 is allowed in part.

The impugned judgment and order of conviction dated 30.08.2024 and the order of sentence dated 31.08.2024 passed by the Principal District and Sessions Judge, Bagalkot, in S.C. No.65/2020, stand modified.

The judgment of conviction and order of sentence passed against accused Nos.1 and 2 for the offence punishable under Section 302 of the IPC are hereby set aside.

Accused Nos.1 and 2 are acquitted of the offence punishable under Section 302 of the IPC.

However, accused Nos.1 and 2 are found guilty of the offence punishable under Part II of Section 304 of the IPC and are accordingly convicted for the said offence.

CRL.A NO.100556/2024

Accused Nos.1 and 2 are sentenced to undergo rigorous imprisonment for a period of six years and to pay a fine of Rs.50,000/- each.

In default of payment of the fine amount, accused Nos.1 and 2 shall undergo simple imprisonment for a period of one year each.

Insofar as the other offences for which accused Nos.1 and 2 have been convicted are concerned, the conviction and sentence imposed thereunder are maintained.

The substantive sentences shall run concurrently. The sentence imposed in default of payment of fine shall run consecutively.

The period of sentence already undergone by accused Nos.1 and 2 shall be set off in accordance with Section 428 of the Cr.P.C.

Out of the fine amount deposited, a sum of Rs.1,00,000/- shall be paid to the wife and two children of the deceased towards compensation as under:-

Rs.50,000/- to the wife, Rs.25,000/- each to two children and the remaining amount of Rs.5,000/- shall be remitted to the State.

**Sd/-
(H.T.NARENDRA PRASAD)
JUDGE**

**Sd/-
(RAJESHWARI N.HEGDE)
JUDGE**