



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 26TH DAY OF FEBRUARY, 2026

PRESENT

THE HON'BLE MR. JUSTICE H.P.SANDESH

AND

THE HON'BLE MR. JUSTICE VENKATESH NAIK T

CRIMINAL APPEAL NO.1105 OF 2017 (A)

CONNECTED WITH

CRIMINAL APPEAL NO.420 OF 2017

IN CRL.A. No.1105/2017:

BETWEEN:

STATE BY SUB-INSPECTOR OF POLICE
ULLAL POLICE STATION
MANGALURU
REPRESENTED BY STATE PUBLIC PROSECUTOR
HIGH COURT BUILDING
BENGALURU-01.

...APPELLANT

(BY SMT. RASHMI PATEL, H.C.G.P.)

AND:

1. SRI ASHRAF @ BALLARY ASHRAF

[REDACTED]

2. SRI NAZEEM MUKKACHERRY @ NAZEEM

[REDACTED]





3. SRI AZIZ @ YUROPEAN AZEEZ

[REDACTED]

4. SRI MOHAMMED @ FANCY MOHAMMED

[REDACTED]

5. SRI MOHIDDIN

[REDACTED]

6. SRI KAREEM

[REDACTED]

7. SRI KANDI AKBAR @ KANDE AKBAR

[REDACTED]

8. IRFAN @ DEADLY IRFAN @ MOHAMMED IRFAN

[REDACTED]

...RESPONDENTS

(BY SRI SHAKEER ABBAS M., ADVOCATE,
FOR SRI SHAHUL HAMEED AND SMT. IRFANA NAZEER,
FOR R-1 TO R-8)



THIS CRIMINAL APPEAL IS FILED UNDER SECTION 378(1) AND (3) OF THE CR.P.C. PRAYING TO SET ASIDE THE JUDGMENT AND ORDER DATED 6-3-2017 PASSED IN SESSIONS CASE NO.33 OF 2014 ON THE FILE OF THE III ADDITIONAL DISTRICT AND SESSIONS JUDGE, D.K., MANGALURU, IN SO FAR AS ACQUITTING ACCUSED NOS.2 TO 9/RESPONDENTS OF THE OFFENCES PUNISHABLE UNDER SECTIONS 120B, 143, 144, 147, 148, 504, 326 and 307 READ WITH 149 OF IPC.

IN CRL.A. NO.420/2017:

BETWEEN:

IMTHIYAZ

[REDACTED]

...APPELLANT

(BY SRI MUZAFFER AHMED AND SRI SHAKEER ABBAS M.,
ADVOCATES)

AND:

STATE OF KARNATAKA
THROUGH MANGALURU SOUTH POLICE
MANGALURU, D.K. DISTRICT
REPRESENTED BY STATE PUBLIC PROSECUTOR
HIGH COURT BUILDING
BENGALURU-560 001.

...RESPONDENT

(BY SMT. RASHMI PATEL, H.C.G.P.)

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THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374(2) OF THE CR.P.C. PRAYING TO SET ASIDE THE JUDGMENT AND ORDER DATED 6-3-2017 PASSED BY THE III ADDITIONAL DISTRICT AND SESSIONS JUDGE, D.K., MANGALURU, IN SESSIONS CASE NO.33 OF 2014, CONVICTING THE APPELLANT/ACCUSED NO.1 FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 326 AND 307 OF IPC.

THESE CRIMINAL APPEALS ARE COMING ON FOR HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE H.P.SANDESH
and
HON'BLE MR. JUSTICE VENKATESH NAIK T

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE H.P.SANDESH)

Heard Smt. Rashmi Patel, learned High Court Government Pleader appearing for the State, Sri Muzaffar Ahmed, learned counsel for accused No.1, Sri Shakeer Abbas M., learned counsel for accused Nos.2 to 9, and perused the material available on record.

2. Criminal Appeal No.1105 of 2017 is filed by the State challenging the judgment of acquittal dated 06.03.2017 passed by the III Additional District and Sessions Judge, D.K., Mangaluru, in Sessions Case No.33 of 2014 against accused Nos.2 to 9, whereas Criminal Appeal No.420 of 2017 is filed by accused No.1 being aggrieved by the judgment of conviction and order on sentence for the offences punishable under



Sections 326 and 307 of the Indian Penal Code, 1860 (for short, 'IPC').

3. The factual matrix of the case of the prosecution is that on 18.10.2013 at about 12:20 p.m., at Hosapalli Masjid, situated in Melangadi of Ullal Village, accused Nos.1 to 9, being members of unlawful assembly, armed with deadly weapons like knife and stones, with common object used it for committing rioting. All of them conspired to commit illegal act and caused hurt to PWs.1 and 2, when they were sitting to perform Jumma Namaz. Further, all the accused breached public peace in the same community, entered into the Masjid and accused No.6 intentionally abused PW1 in filthy language and accused No.1 voluntarily caused grievous hurt to PWs.1 and 2 by means of a knife. PW1 was shifted to Nethaji Hospital and PW2 was shifted to Unity Hospital. On the same day, at about 5:00 p.m., after getting information of incident from the Hospital, the Police Inspector-PW12 visited Nethaji Hospital and recorded the statement of PW1 and after returning to the Police Station, he registered the case in Crime No.336 of 2013 for the offences punishable under Sections 143, 147, 148, 324 and 307 read with Section 149 of IPC.



4. The Police recorded the statements of eyewitnesses, who were present at the time of the incident, investigated the matter, collected all materials and filed the charge-sheet. Accused Nos.1 to 9 appeared before the Court, pleaded not guilty and claimed trial. Hence, the prosecution, in order to prove its case, examined PWs.1 to 12, got marked Exs.P1 to P28 and MOs.1 to 9. On closure of the evidence of the prosecution witnesses, the trial Court recorded the statements of accused Nos.1 to 9 under Section 313 of the Code of Criminal Procedure, 1973, and the accused have also led their defence evidence as DWs.1 to 7 and got marked Exs.D1 to D3 since it was dispute between the rival group of the very same religion and community with regard to conducting prayer.

5. The trial Court considered the evidence available on record that there was no conspiracy between accused Nos.2 and 3 and so also, with other accused. In the absence of any material for conspiracy and also overt act of other accused persons, the trial Court came to the conclusion that the prosecution not proved the case against accused Nos.2 to 9 and convicted only accused No.1 taking note of the fact that he inflicted injury on PWs.1 and 2. The trial Court accepted the



evidence of PWs.1 and PW2 and other eyewitnesses, and invoked the offences punishable under Sections 326 and 307 of IPC and imposed rigorous imprisonment for ten years with fine of Rs.5,000/- for both the offences against accused No.1. Being aggrieved by the judgment of acquittal against accused Nos.2 to 9, the State filed Criminal Appeal No.1105 of 2017 and being aggrieved by the judgment of conviction and order on sentence, accused No.1 filed Criminal Appeal No.420 of 2017.

6. Learned High Court Government Pleader appearing for the State would vehemently contend that the incident has taken place inside the Masjid. All the accused by forming unlawful assembly, shared common intention and in furtherance of common object, accused No.1 entered the Masjid with knife and other accused with stones, inflicted injury on the people, who were offering prayer at the Masjid. The trial Court ought not to have extended the benefit of doubt in favour of accused Nos.2 to 9 as PWs.1 to 8 have categorically deposed with regard to the role of each of the accused persons and hence, it requires interference of this Court and prays to set aside the acquittal order passed against accused Nos.2 to 9.



7. Learned counsel for accused No.1 mainly contend that though the incident has taken place inside the Masjid and when many number of persons were present in the Masjid for prayer, but none of them attempted to pacify the incident since there was no such incident as alleged by the prosecution. If any such incident had taken place, the persons offering prayer in the Masjid ought to have prevented the incident. Further, it is contended that that very same PW9-Doctor cannot treat PWs.1 and 2 at the same time at 12.40 p.m. in two different Hospitals and further, the Doctor has categorically admitted the distance between both the Hospital is 10 kms. and hence, it is highly impossible that PWs.1 and 2 sustained injury in the said incident and hence, the case of the prosecution cannot be accepted. Therefore, the trial Court committed error in considering the evidence of PWs.1 and 2 and also the other eyewitnesses. He further contended that the dispute is of the year 2013, that too, with regard to conducting prayer at the Masjid and its administration. Therefore, he prays this Court to take note of the said fact into consideration and allow the appeal filed by accused No.1.



8. *Per contra*, the learned High Court Government Pleader submits that the Court has to take note of nature of injuries inflicted by accused No.1 with knife, that too, on the vital part of PWs.1 and 2. She also submits that PW2 was in the Hospital for twenty-eight days, sustained fracture of rib and spent amount of Rs.4.90 lakh and the same is spoken by PW9-Doctor in his evidence. Therefore, she prays the Court to take note of the said fact into consideration and convict accused No.1.

9. Having heard the learned counsel for respective parties and on perusal of the material available before the Court, i.e., ocular evidence of PWs.1 to 12 as well as the documentary evidence, the points that would arise for consideration of this Court are:

- i. Whether the trial Court committed error in acquitting accused Nos.2 to 9?*
- ii. Whether the trial Court committed error in convicting accused No.1 for the offences punishable under Sections 326 and 307 of IPC and requires interference of this Court?*



10. We have considered both oral and documentary evidence available on record and given our anxious consideration to the evidence of the prosecution witnesses.

11. According to the prosecution, PWs.1 and 2 are the injured eyewitnesses and PWs.3 to 8 are the eyewitnesses. Having considered the material on record, there is minor discrepancy and no major discrepancy. The only discrepancy is with regard to Ex.P4 and Ex.P19-Wound Certificates, issued by PW9-Doctor. The treatments are given by the very same Doctor at 12.40 p.m., but at two different Hospitals at a distance of 7.5 kms. and 2.5 kms. from the place of incident. The fact is that PW2 was taken to Unity Hospital, where he was treated for twenty-eight days for having sustained incised stab wound measuring 8cms x 3cms obliquely placed over the left lower chest at 10th inter costal space. PW1 was in the Hospital for three days and he had sustained incised penetrating injury (stab wound) measuring 10cm x 2cm obliquely placed over the left side of the chest and shoulder junction. The same is evident from the case-sheet and records which have been marked before the trial Court and also PW2 spending Rs.4.90 lakh for



treatment at Unity Hospital, the same is also spoken by PW9-Doctor. No doubt, PW9, in his evidence, says that if PW2 was not given timely treatment, it would have led to the death of him. But the factual aspect is clear that it is not the vital part, but it was below near the rib and there was fracture and the same is supported by X-ray. Though PWs.1 and 2 have deposed regarding intention to take away their life, but they have sustained only one injury. If accused No.1 really had intended to commit the murder, he would have inflicted more number of injuries, but PWs.1 and 2 have sustained only one injury.

12. It is also important to note that the Court has to take note of material contradictions in the evidence of other eyewitnesses and they have also spoken that others have also assaulted with stones, however, there are no stone injuries either on PWs.1 and 2. Hence, the evidence of other witnesses cannot be believed with regard to the injuries caused by others with stones and also it is clear that stones were found outside the Masjid and not inside the Masjid.

13. In order to connect accused Nos.2 and 3, specific allegation is made that both of them have conspired, but there



is no direct evidence with regard to conspiracy and conspiracy would be proved only by placing on record the circumstantial evidence. In order to substantiate the same, no material is placed before the Court either oral evidence, or documentary evidence. Hence, the trial Court, having taken note of the fact that there is no material available against accused Nos.2 to 9, rightly acquitted them.

14. Now, coming to the aspect of injury sustained by PWs.1 and 2. PW1 was treated in the Hospital for three days and PW2 was treated in the Hospital for twenty-eight days, his injury was grievous in nature, same is supported by X-ray and he spent Rs.4.90 lakh towards his treatment. The incident has occurred between the very same religion and the very same sect with regard to conducting prayer and administration of Dargah, and further, the incident had taken place in the year 2013 and when the other accused persons have been acquitted by extending the benefit of doubt and there is no inconsistency in the evidence of the prosecution witnesses with regard to the nature of injury sustained by PW2 that he sustained injury at 12:20 p.m. and was immediately shifted to the Hospital within



twenty minutes, i.e. at 12:40 p.m., and thereby, he was treated. Taking into note of the rival conflict between the same community as well as incident had taken place in the year 2013, it would not be apt for the Court to take note of *mens rea* for invoking Section 307 of IPC. The trial Court committed error in invoking both Sections 326 and 307 of IPC. Therefore, accused No.1 is convicted only for the offence punishable under Section 326 of IPC and the sentence is reduced from ten years to one year with fine of Rs.7.00 lakh taking into consideration of the fact that the incident had taken place between the same sect and same community and now, PW2 and accused No.1 are residing as neighbours and leading happy and peaceful life. Further, there is no criminal antecedent against accused No.1. In view of the discussion made above, we pass the following

ORDER

- i. Criminal Appeal No.1105 of 2017 filed by the State is ***dismissed.***



- ii. The judgment of acquittal dated 06.03.2017 passed by the III Additional District and Sessions Judge, D.K., Mangaluru, in Sessions Case No.33 of 2014 against accused Nos.2 to 9 are confirmed.
- iii. Criminal Appeal No.420 of 2017 filed by accused No.1 is ***allowed-in-part.***
- iv. The impugned judgment of conviction and order on sentence is modified. The appellant/accused No.1 is convicted for the offence punishable under Section 326 of the Indian Penal Code, 1860, and sentenced to undergo simple imprisonment for a period of one year with fine of Rs.7.00 lakh (Rupees seven lakh only).
- v. Accused No.1 is directed to deposit the fine amount of Rs.7.00 lakh and to surrender before the trial Court, on or before 27.04.2026, to serve remaining sentence. Accused No.1 is given set off under Section 428 of the Code of Criminal Procedure, 1973, for the period of sentence, he has already undergone.



- vi. Out of the fine amount of Rs.7.00 lakh, Rs.6.50 lakh is ordered to be released in favour of PW2-Sri Samshuddin, Rs.25,000/- is ordered to be released in favour of PW1-Sri Sawad Abdulla, and Rs.25,000/- to be vested with the State.
- vii. It is made clear that, accused No.1 shall not be granted further time for deposit of fine amount of Rs.7.00 lakh, if it is not paid on or before 27.04.2026.

Registry is directed to send the trial Court records along with copy of this judgment, forthwith.

In view of disposal of main appeals, pending interlocutory applications, if any, stand dismissed.

**Sd/-
(H.P.SANDESH)
JUDGE**

**Sd/-
(VENKATESH NAIK T)
JUDGE**