

**IN THE COURT OF IX ADDL.DISTRICT AND SESSIONS
JUDGE, BENGALURU RURAL DISTRICT, BENGALURU.**

DATED THIS THE 5th DAY OF NOVEMBER, 2019

PRESENT: Sri.J.V.VIJAYANANDA,
B.Com.,LL.B.
IX Addl. District & Sessions Judge,
Bengaluru Rural District, Bengaluru.

S.C.120/2019

COMPLAINANT : STATE OF KARNATAKA,
NANDAGUDI POLICE STATION
BENGALURU RURAL DISTRICT.

[By: Public Prosecutor]

V/s.

ACCUSED : A1- MANJUNATH
A2- VISHWANATHA
A3- RAJANNA
A4- VENKATESHAPPA
A5- KALAMMA
A6- GAYITHRI
A7- MUNEGOWDA

[By : Sri.M.S.-Advocate]

ORDER ON DISCHARGE APPLICATION

The accused No.1 to 7 have filed this application U/sec.227 of Cr.P.C. and prayed to discharge them for the offence U/sec.307 of Indian Penal Code and send back records to the learned Magistrate to try other offences.

2. In the application it is contended that there are no material on record to frame charge against accused persons for the offence U/sec.307 of Indian Penal Code. Moreover, the wound certificate of CW.1 and 2 says that the wounds said to have sustained by them are simple in nature and the C.T. scan says no fracture except hemorrhage and even the objects seized are not deadly weapons. Among other grounds the accused No.1 to 7 prayed allow the application.

3. The learned counsel for the accused No.1 to 7 has filed another application seeking additional grounds and further contended that the allegation made against accused

persons not attracting the offence U/sec.307 of Indian Penal Code. The accused persons have no intention to assault the prosecution witnesses. The injured not stated the name of accused at the time of narrating the history. Section 127 of Indian Penal Code has no application to the facts of case so also section 148 of Indian Penal Code.

4. There are no grounds to attract any of the offences alleged against accused persons. Civil dispute is pending before the II Addl. Senior Civil Judge, Bengaluru Rural District, Bengaluru filed by accused No.7. Accused No.4 and 5 are aged persons, no overtact is attributed against them. The entire prosecution materials if taken into consideration the case will not fall U/sec.307 of Indian Penal Code. Among other grounds the accused persons prayed to allow the application.

5. On the other hand the learned Public Prosecutor has filed objection to the application and further contended that the Hon'ble Supreme Court in number of cases have held that if the intention is to murder the injury sustained whether simple or grievous will not effect the case on hand. There are sufficient grounds and materials which attract the offence U/sec.307 of Indian Penal Code. Among other grounds, the learned Public Prosecutor prayed to reject the application.

6. From the above facts, the following points that arise for my considerations:

1] Whether the accused No.1 to 7 have made out a ground to discharge them from this case for the offence U/sec.307 of IPC ?

2] What Order?

7. The learned counsel for the accused has filed written arguments. This court heard the learned Public Prosecutor and perused entire file.

8. My answers to the above points are as follows:

Point No.1 : In the Negative;

Point No.2 : As per final order
for the following:

REASONS

9. **Point No.1:-** At the outset the complainant police registered the F.I.R. against accused No.1 to 7 based upon the complaint of one Santhosh S/o Srinivas for the offences U/sec.143, 147, 148, 323, 504, 506, 307, 354 read with Section 149 of Indian Penal Code. After investigation the investigation officer has charge sheeted the accused persons for the above referred offences.

10. The brief allegation of the prosecution is that the accused persons and CW.1 to 5 are the relatives. There is a dispute between family members of accused No.1 and family members of CW.4 about the land in Sy.No.171 measuring 13

acre 4 guntas and in this regard there was enmity between them. On 13.10.2018 at 11:00 a.m. when the accused persons by opening the drainage in the land in Sy.No.171 and were trying to remove the stone slabs, at that time CW.4 Krishnappa has visited the spot and asked the accused to stop the work till completion of Panchayath decision and accordingly made to stop the work.

11. The accused persons did not heeded to the request of CW.4 but on the same day at 4:00 p.m. accused No.1 to 7 with common intention formed group by holding iron rods and club came to said place and were trying to remove the stone slabs. At that time, CW.1 to 3 tried to prevent accused persons from removing the stone slabs, but the accused persons scolded CW.4 in filthy language as " ಸೂಳೆ ಮಕ್ಕಳಾ, ಲೋಫರ್ ನನ್ನ ಮಕ್ಕಳಾ" and stated that if anybody visits he spot they would kill at least one person. Thereafter, the accused

persons with an intention to kill CW.1 and thereby accused No.1 assaulted CW.1 with iron rod on his head, caused blood injury and made attempt to kill him. Accused No.3 by holding his hand has twisted the right hand and assaulted with club. Accused No.2 snatched club from the hand of accused No.3 and assaulted CW.2 on his hand. Accused No.4 to 7 assaulted CW.1 to 3 with hands and legs and caused injuries.

12. It appears, during the course of investigation the investigation officer has visited the spot, prepared the spot mahazar, seized the eucalyptus tree and one iron rod, collected wound certificates of injured Kamalakshi and also collected RTC extracts. Further, the investigation officer recorded the statements of injured and after completion of investigation has filed charge sheet against the accused persons for the above referred offences. The investigation officer has recorded the statements of all the injured

witnesses, he stated that the accused persons with an intention to kill them and complainant assaulted and caused injuries. No doubt in the wound certificate the doctor has opined that the injuries sustained are simple in nature, merely because the injuries sustained are simple in nature, based upon the same at this stage no inference can be drawn that section 307 of Indian Penal Code has no application to the case on hand. As rightly pointed out by the learned Public Prosecutor in several catena of judgments, out Hon'ble Supreme Court has held that if the intention is to murder the injury sustained whether simple or grievous injury had no effect and the offence U/sec.307 can be taken into knowledge only based upon the nature of injuries sustained. The injured witnesses have categorically stated that the accused persons with an intention to kill them assaulted with clubs. It is needless to say that the life of any individual cannot be taken by using

clubs and by hitting to the vital parts of the body. There is prima facie allegation of assault with club on the head. The medical certificate and the photographs, prima facie indicates about cause of injuries to the vital part of the body. Infact the investigation officer during the course of investigation has seized the clubs used for commission of the offence. In the opinion of this court, there are sufficient grounds and materials to frame the charge against accused persons even for the offence U/sec.307 of Indian Penal Code. Absolutely, no grounds are made out to discharge the accused persons for the offence U/sec.307 of Indian Penal Code. Accordingly, I answered point No.1 in the Negative.

13. **Point No.2:-** For reasons given to point No.1, I proceed to pass the following:

ORDER

The application filed U/sec.227 of Cr.P.C. is rejected.

(Dictated to the Stenographer, after computerized by her corrected signed and then pronounced by me in open court on this day of 5th day of November, 2019)

(J.V. VIJAYANANDA)

IX Addl. District & Sessions Judge,
Bengaluru Rural District, Bengaluru.