

IN THE COURT OF THE IV ADDL. SESSIONS JUDGE AT GULBARGA.

Dated this the 17th day of December 2013.

Present : Shri Shivanagouda, B.Com. LL.B.(Spl),
IV Addl. Sessions Judge, Gulbarga.

Session Case No. 154/2011.

Complainant:

The State through Farthabad Police
Station.

(By Addl. Public Prosecutor)

//Versus//

Accused Persons:

1. Prakash s/o Bhagavantaraya Kaba,
age : 35 years, Occ: lineman work,
2. **Huleppa s/o Prabhu Balakal, age:
40 years, Occ: private work –
Dead**
3. Gunnu s/o Golalappa Kaba, age: 25
years, Occ: Agriculture
4. Suryakant s/o Gurappa Kaba,
age : 35 years, occu : agriculture
5. Shivalingappa s/o Sharanappa
Haraval, age : 40 years, Occ:
Agriculture
6. Vinod s/o Mohanchandra Bastalkar,
age: 25 years, Occ: Agriculture
7. Sharanu s/o Keshavarao Malagatti,
age: 50 years, Occ: Agriculture
8. Mahadevappa s/o Gurudayya
Dengimath, age: 50 years, Occ:
Agriculture

9. Ningappa s/o Doddappa Kaba, age 50 years, Occ: Agriculture
10. Raghu s/o Rachappa Yalasangi, Age: 28 years, Occ: Agriculture
11. Ambarish s/o Rachappa Yalasangi, age: 28 years, Occ: Agriculture
12. Mallinath s/o Basanna Vagdargi, age: 45 years, Occ: Agriculture
13. Anandappa s/o Sharanappa Mulsavalgi, age: 45 years, Occ: Agriculture,
14. Ashok s/o Shrimanth Enagundi, age: 30 years, Occ: Agriculture
15. Devu s/o Shambulingayya Hiremath, age: 25 years, Occ: Publicity work
16. Kallappa s/o Hanamant Kaba, age: 28 years, Occ: Agriculture
17. Annaraya s/o Sangannabasappa Hebbal, age: 50 years, Occ: coolie
18. Vishwanath alias Isu s/o Siddagondappa Kaba, age: 40 years, Occ: Agriculture
19. Basanna s/o Chandrappa Maratur, age: 55 years, Occ: Agriculture
20. Vijaykumar s/o Sangannabasappa Hebbal (Haraval), age : 45 years, Occ: Agriculture
20. Basavaraj s/o Sharanappa alias Shantappa Uppin, age: 35 years, Occ: Agriculture
- 21. Siddappa s/o Sivagondayya Pujari, age: 40 years, Occ: Shaphered –DEAD**
22. Beleppa s/o Halappa Busa, age: 40 years, Occ: Agriculture,
23. Imamsab s/o Ladlesab, age: 40 years, Occ: Agriculture
24. Mareppa s/o Bhimasha Pannadi, age : 45 years, Occ: coolie work
25. Mallinath s/o Fakeerappa Allolli, age: 22 years, Occ: coolie;

All R/o Honna Kiranagi, Tq.Gulbarga.

(By Sri Subhash Konin, Advocate)

Date of Commission of Offence	: 19.05.2009
Date of Report of offence	: 19.05.2009
Arrest of the Accused	: A-1 to 21, 23 to 26 obtained Anticipatory bail.
Name of the complainant	: Gurupadappa S/o Baburao Warad Secretary, G.P.Kiranagi.
Offences complained of	: Ss. 143,147,448,436,506 R/w S.149 of Indian Penal Code and Ss. 3 & 4 of Prevention of Damage to Property Act.
Date of Recording of evidence	: 25.11.2013.
Date of Closing of evidence	: 10.12.2013
Opinion of the Judge	: Accused found not guilty.

J U D G E M E N T

1. This is a Charge-sheet submitted by the Sub Inspector of Police, Farthabad Police Station against the accused persons for the offences punishable under sections 143,147,448,436,506 R/w S. 149 of Indian Penal Code and under sections 3 and 4 of Prevention of Damage to Property Act. During the course of trial, accused No.2 and 22 reported to be dead. Hence case against them abated. The brief facts of the case of the prosecution are that one Gurupadappa

S/o Baburao Warad, Secretary Gram Panchayat, Kiranagi has lodged complaint before Farthabad Police Station on 19.05.2009. It is alleged in the complaint that on 19.05.2009 at 08.00 a.m. he had been to Nagur Gram Panchayat as he was in-charge of said Gram Panchayat. At 01.30 p.m. after completion of duty he returned to Gulbarga. At 07.00 p.m. Smt Lalitabai W/o Sumitrappa and Smt Jagadevi Kadadi, President and Vice President, Gram Panchayat, Kiranagi and other members of Gram Panchayat informed the complainant over telephone that, villagers are destroying the furniture of Gram panchayat office and also setting fire to the Gram Panchayat office on the ground of demand of drinking water. Immediately, complainant rushed to Kiranagi village on motorcycle and found damage to the meeting hall, table, windows, chairs and one almairah were damaged and he also found damage to the cement roof and compound wall and purposely records were destroyed by setting fire. On enquiry with President and Vice President of Gram Panchayat who told before him that the accused persons have committed the said acts. Complainant also stated the accused have caused loss to the tune of `2.50 lakh. Hence sought legal action against them.

On the basis of said complaint a case in Cr.No.89/2009 registered against the accused for the above said offences and took up investigation.

During the course of investigation, Investigating officer conducted spot panchanama and seized incriminating materials under mahazars. The accused persons No.1 to 21 and 23 to 26 obtained anticipatory bail in CrI.Misc.No.1152/2010 dated 19.11.2010. Investigating officer has also recorded statement of witnesses and after collecting necessary documents submitted Charge-sheet against the accused for the above said offences.

2. On the submission of Charge-sheet, the committal magistrate took cognizance of the offence and supplied the copies of Charge-sheet to the accused. The case was committed to the Sessions Court since the offence under section 436 of Indian Penal Code is exclusively triable by the Court of Sessions. After receipt of committal records, this case was made over to this Court for disposal in accordance with law. This court secured the presence of accused. Accused have engaged the counsel of their choice to defend his case. After hearing both sides, charge for the offences punishable under Section 143,147,448,436,506 R/w S. 149 of Indian

Penal Code and under sections 3 and 4 of Prevention of Damage to Property Act is framed against the accused. When the charge is read over to the accused, accused denied the charge and claim to be tried. The prosecution examined PW 1 to 17, got marked the documents Ex.P-1 to P-17 and also got identified material objects 1 to 4. After conclusion of the trial, the statement of the accused under Section 313 of Code of Criminal Procedure were recorded. Accused has denied the same as false. Further the accused have submitted that there is no defence evidence on his behalf.

3. Heard the arguments on both sides. The points that arise for consideration are:

- 1) Whether prosecution proves that on 19.05.2009 at about 07.00 p.m. at Gram Panchayat office Kiranagi, accused formed unlawful assembly, in order to commit criminal acts, committed the offence of rioting, wrongfully trespassed into the office of Gram Panchayat, destroyed the properties of said Gram Panchayat by setting fire to the furniture and records, caused loss to the tune of Rs.2.50 lakh, gave threat to the life of CW 2 to 15 and

have destroyed the property of Gram Panchayat and thereby committed the offences punishable under sections 143, 147, 448, 506, 436 R/w S. 149 of Indian Penal Code and under sections 3 and 4 of Prevention of Damage to Property Act, 1984?

2) What order?

4. My findings on the above points are as under:

- 1) Negative
- 2) As per final order.

REASONS

5. **Point No.1**:- The prosecution has examined 20 witnesses as PW 1 to PW 20 and got marked documents Ex.P-1 to P-17 and identified MO 1 to 4. PW 1 Gurupadappa is the complainant of this case. He has deposed before the court that he is working as Secretary Gram Panchayat at Kiranagi since one year. He has lodged complaint as per Ex.P-1. Accused belong to his village. He has lodged complaint against 26 persons. 4-5 years back he lodged complaint for setting fire to the office of Gram Panchayat. At that time he was in Gulbarga and said fact was

informed to him by the President and Vice President. When he rushed to the spot all were burnt and police were there. Table and chairs were also burnt. About Rs.2.50 lakh loss was caused. Name of accused persons was told by the President and now he is unable to say their names. At this stage, the prosecution treated him hostile and cross examined. In the cross examination PW 1 denied that he has mentioned the names of accused in the complaint. However, PW 1 identified the photo as per Ex.P-2 about the burnt articles. As per the contents of complaint Ex.P-1, it is stated that the names of accused were told by president and vice president. Therefore, as per the contents of complaint, PW 1 is not an eye witness to the incident. He only rushed to the spot after hearing the message of setting fire to the gram panchayat. PW 1 has only set the law into motion and his evidence is not helpful to the prosecution case to prove the guilt of the accused.

6. PW 2 Lalitabai W/o Sumitrappa has deposed before the court that she is the president of Gram panchayat Kiranagi since five years. Accused persons are of her village. PW 2 further deposed that during night hours fire was set and at that time she was in the house and there is no power supply. Her husband informed about

setting of fire to panchayat office. Then she went and found table, chair and records were all burnt. Police have not recorded her statement. PW 2 has not supported the case of prosecution and turned hostile. In the cross examination the learned prosecutor has made suggestion in tune with contents of her statement Ex.P-3, but PW 2 has denied the same. As such, prosecution has failed to prove the contents of Ex.P-3 to bring home guilt against accused.

7. PW 3 Jagadevi W/o Basavaraj has deposed before the court that she is the Vice president of Gram panchayat Kiranagi. PW 3 has stated that she does not know the accused persons. PW 1 Gurupadappa was the secretary. She does not know anything in this case. At 09.00 p.m. her husband informed about ablaze to the panchayat office and she has not seen personally. Thereafter PW 3 went there and found table and chairs were burnt. She does not know who set fire. Police have not recorded her statement. PW 3 too has not supported the case of prosecution and turned hostile. In the cross examination the learned prosecutor has made suggestion with contents of her statement Ex.P-4, but PW 3 has denied the same. As such, prosecution has failed to prove the contents of Ex.P-3 to bring home guilt against accused.

8. PW 4 Vishwanath S/o Parappagouda, PW 5 Vishwanth S/o Shantayya, PW 6 Mallinath S/o Shivalingappa, PW 7 Gurunath S/o Shantamallappa, PW 8 Babu S/o Bhimanna, PW 9 Shivanand S/o Bhimsha, PW 10 Guranna S/o Bhimaraya, PW 11 Sharadabai, PW 12 Dakshayani, PW 13 Eligibeth and PW 16 Iranna are the members of the gram panchayat Honna Kiranagi. As per the case of prosecution the members of the Gram panchayat have come to know the names of accused who have set fire to the office of panchayat from Secretary Gurupadappa PW 1. But the above witnesses have not supported the case of prosecution and turned hostile. PW 4, 5, PW 10, PW 16 have stated that on the date of alleged incident they were out of station and not in the Kiranagi village. Though these witnesses have cross-examined by the learned prosecutor, nothing is elicited from them to prove the contents of their statements Ex.P-5 to P-14 and P-16, to prove the guilt of the accused.

9. PW 14 Basavaraj S/o Sharanappa is the punch witness for Ex.P-15. He has deposed before the court that he identified mahazar Ex.P-15 and he does not know the contents of Ex.P-15. PW 14 further deposed that the police have convened peace

meeting and at that time police took burnt articles MO 1 two bricks, MO 2 one iron gate, MO 3 cement roof, MO 4 steel chair. Said MO 1 to 4 were seized in his presence. In the cross examination of learned counsel for the accused PW 14 admitted that police have not read over the panchanama and he only put his signature on it.

10. PW 15 Sumitrappa is co-punch for Ex.P-15. He has deposed before the court that police have took his signature on Ex.P-15 on the spot and police seized MO 1 to 4 in his presence. In the cross examination PW 15 admitted that police have not read over the contents of panchanama. Therefore, the prosecution has not proved the contents of seizure panchanama Ex.P-15 though PW 14 and 15 supported the case of prosecution, but they have admitted in their cross examination that the police have not read over the contents of panchanama Ex.P-15.

11. PW 17 Srimanth Illal PSI, the Investigating officer of this case. PW 17 has deposed before the court that on 19.05.2009 at 08.30 p.m. Gurupadappa has lodged complaint Ex.P-1. He registered a case in Cr.No.89/2009 and issued FIR Ex.P-17. PW 17 further deposed that on 20.05.2009 he visited the spot and conducted panchanama Ex.P-15 in the presence of Basavaraj and

Shivaputra and seized some burnt articles from the spot. Thereafter he took up photographs of the spot. PW 17 further deposed that he recorded the statements of witnesses at 11.00 a.m. and kept pending the investigation for tracing the accused. On 13.02.2010 since investigation was completed, he submitted Charge-sheet against the accused persons.

In the cross examination PW 17 stated that on 19.05.2009 police have no information about the agitation for supply of drinking water and also no information about who have agitating and for what purpose. In the cross examination Ex.D-1 positive photos marked and PW 17 admitted that women folk of Kiranagi village are making agitation with water pots. PW 17 further admitted about the scarcity of water in Kiranagi village and no borewell in the village. PW 17 also admitted water was supplied from Farthabad. PW 17 stated that the complainant has mentioned names of all the accused in the complaint on the information furnished to complainant by the President.

12. The learned counsel for the accused persons during the course of arguments submitted that on the date of alleged incident, the women folk and children were making agitation in the day time

and by taking undue advantage of such agitation, some miscreants have set fire to the office of panchayat and accused persons are not responsible for the said act. The said submission appears to be acceptable. On perusal of Ex.D-1 four photographs it reveals that on 19.05.2009 there was agitation by the women folk of the village for demanding water. Ex.D-1 also discloses that in the said agitation women folk and children were participated. Apart from that the sole evidence of PW 17 is not helpful for the prosecution to prove that the accused are responsible for causing damage to the office of panchayat and they have set fire. Since all the material witnesses including complainant, president, vice president and members of the Gram Panchayat have all turned hostile to the case of prosecution.

13. On perusal of entire evidence of prosecution, it clearly reveals that the prosecution has miserably failed to prove the offences alleged against the accused persons. The accused persons are entitled for acquittal. Hence, I answer point No.1 in the negative.

14. **Point No.2:** In view of my finding on point No.1, I proceed to pass the following:

ORDER

Acting under section 235(1) of Code of Criminal Procedure accused No.1, 3 to 21 and 23 to 26 are acquitted for the offences punishable under section Ss. 143, 147, 448, 506, 436 R/w S. 149 of Indian Penal Code and under sections 3 and 4 of Prevention of Damages to Property Act, 1984.

Case against accused No.2 and 22 abated since they are dead.

The bail-bonds of accused No.1, 3 to 21 and 23 to 26 stand cancelled.

MO 1 to 4 being worthless are ordered to be destroyed after the appeal period.

[Dictated to the Judgement Writer directly on computer, script corrected and pronounced by me in the open court on this the 17th day of December, 2013].

(Shivanagouda),
IV Addl. Sessions Judge,
Gulbarga.

***MK**

APPENDIX

Witnesses examined on behalf of Prosecution.

PW-1: Gurupadappa S/o Baburao
PW-2: Lalitabai W/o Sumitrappa
PW-3: Jagadevi W/o Basavaraj
PW-4: Vishwanath S/o Parappagouda
PW-5: Vishwanath S/o Shantayya
PW-6: Mallinath S/o Shivalingappa
PW-7: Gurunath S/o Shantamallappa
PW-8: Babu S/o Bhimanna
PW-9: Shivanand S/o Bhimsha
PW-10 Guranna S/o Bhimaraya
PW-11 Sharadabai W/o Harischandra
PW-12 Dakshayani W/o Somasekhar
PW-13 Eligebeth W/o Yesumitra
PW-14 Basavaraj S/o Sharanappa
PW-15 Sumitrappa S/o Dharmanna
PW-16 Iranna S/o Gurulingappa
PW-17 Srimanth Illal, PSI, Basavakalyan.

Witnesses examined on behalf of defence.

- NIL -

Exhibits marked on behalf of prosecution.

Ex.P-1: Complaint

P-1(a): Sign of PW 1

P-1(b): Sign of PW 17

Ex.P-2: 08 positive photos

Ex.P-3 to P-14: Statements of PW 2 to PW 13

Ex.P-15: Spot panchanama

P-15(a): Sign of PW 14

P-15(b): Sign of PW 15

P-15(c): Sign of PW 17

Ex.P-16: Statement of PW 16

Ex.P-17: F.I.R.

P-17(a): Sign of PW 17

Exhibits marked on behalf of defence

Ex.D-1: Four positive photos

Material objects marked on behalf of Prosecution

M.O.1: Two burnt bricks

M.O.2: One iron gate

M.O.3: One burnt Cement roof

M.O.4: One burnt chair

**IV Addl. Sessions Judge,
Gulbarga.**

***MK.**

Judgement pronounced in open Court

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