KADG010022492024

Presented on : 12-07-2024
Registered on : 12-07-2024
Decided on : 02-04-2026
Duration : 1 years, 8 months, 21 days

IN THE COURT OF
II ADDL DISTRICT AND SESSIONS JUDGE DAVANGERE
AT DAVANGERE,DAVANGERE
(Presided Over by SRI. PRAVEEN KUMAR.R.N)

CRL.A/81/2024

APPELLANT:-

1. Suresha S/o Krishnappa,
   Age: 27 years,

2. Ningamma W/o Krishnappa,
   Age: 53 years,

3. Krishnappa S/o Halappa,
   Age: 56 years,

4. Chandrappa S/o Halappa,
   Age: 48 years,

   All are R/o : Kempanahalli,
   Gomala village, Tq: Channagiri,
   Dist: Davanagere.

//Versus//

RESPONDENT:-

State by Santebennuru Police,

Santebennur, Tq: Channagiri.

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Sri.M.C.M.T.,Advocate appearing for Appellants

Public Prosecutor appearing for Respondent

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JUDGMENT

The appellants, being the accused persons, have challenged the judgment and order of conviction passed by the Court of the II Additional Civil Judge and JMFC, Channagiri, in C.C. No. 1165/2022, whereby they have been convicted for the offences punishable under Sections 323, 324, 504 and 506 read with Section 34 of the Indian Penal Code, and have been sentenced to undergo punishment and to pay fine.

2. In order to avoid the confusion I would like to show the rank of the parties same as they stood before the trial court.

3. The factual matrix of the complainant's case runs as under:-

The accused persons and the victims are neighbours. On 07.03.2022, some wooden pieces were allegedly placed in front of the house of the informant, causing obstruction in the pathway. At that time, the informant questioned the accused persons as to why they had put the said wooden pieces in such a manner. It is the case of the prosecution that, at that time, all the accused persons, sharing common intention, picked up a

quarrel and questioned whether the road belonged to the father of the informant. It is further alleged that Accused No.1 abused the informant in filthy language and assaulted him on the chest with a stone, due to which the informant sustained injuries on his chest.

4. It is further the case of the prosecution that the other accused persons assaulted the informant with their hands and legs, thereby causing simple injuries to him. According to the prosecution, when the son of the informant came to rescue him, Accused No.1 assaulted him with the same stone, as a result of which he sustained injuries to his right leg and the little finger of his left leg. It is also alleged that, at the time of the incident, the accused persons threatened the informant and his son with dire consequences. On these grounds, the informant lodged the complaint before the jurisdictional police station.

5. Further, the records would disclose that, after receipt of the information, C.W.8 registered the case, visited the place of occurrence, prepared the spot mahazar as shown by the informant, and recovered one stone from the spot. He thereafter recorded the statements of the relevant witnesses and also collected the wound certificates of the injured persons. Upon completion of the investigation, he filed the charge sheet

against the accused persons. In the meanwhile, notice was issued to the accused persons.

6. After filing of the charge sheet, the Trial Court took cognizance of the offences and issued summons to the accused persons. The accused persons appeared through their counsel. After compliance with Section 207 of Cr.P.C., the Trial Court framed charges against the accused persons and the same were read over and explained to them in Kannada, the language known to them. The records further disclose that the accused persons pleaded not guilty and claimed to be tried.

7. Thereafter, the prosecution, in order to prove its case, examined as many as eight witnesses as P.Ws.1 to 8 and got marked eight documents as Exs.P1 to P8. Further, M.O.1 was also marked. Upon completion of the prosecution evidence, the statements of the accused persons under Section 313 of Cr.P.C. were recorded, wherein the incriminating oral and documentary evidence brought against them was read over and explained to them. The accused persons denied all the incriminating circumstances appearing against them. However, they did not choose to enter the witness box nor did they examine any witness on their behalf.

8. The records further show that, after hearing both sides, the Trial Court arrived at the conclusion that the accused persons had committed the offences charged against them and accordingly , passed the following order:

ORDER

ದಂಡ ಪ್ರಕ್ರಿಯೆ ಸಂಹಿತೆ ಕಲಂ 248 (2) ರಡಿಯಲ್ಲಿ ಪ್ರದತ್ತವಾಗಿರುವ ಅಧಿಕಾರವನ್ನು ಚಲಾಯಿಸಿ ಆರೋಪಿಯತರ ವಿರುದ್ಧ ಮಾಡಲಾದ ಭಾ.ದಂ.ಸಂ.ಕಲಂ.323,324,504,506 ಸಹ ಕಲಂ 34 ಅಡಿಯಲ್ಲಿ ಶಿಕ್ಷಾರ್ಹವಾದ ಅಪರಾಧಗಳಿಂದ ದೋಷಿಗಳೆಂದು ತೀರ್ಮಾನಿಸಿಲಾಗಿದೆ.

ಆರೋಪಿಯತರ ವಿರುದ್ಧ ಮಾಡಲಾದ ಭಾ.ದಂಸಂ.ಕಲಂ.326 ಸಹ ಕಲಂ 34 ಅಡಿಯಲ್ಲಿ ಶಿಕ್ಷಾರ್ಹವಾದ ಅಪರಾಧವನ್ನು ಭಾ.ದಂಸಂ.ಕಲಂ.324 ರ ಅಡಿಯಲ್ಲಿನ ಅಪರಾಧವನ್ನಾಗಿ ಪರಿಗಣಿಸಲಾಗಿದೆ.

ಭಾ.ದಂ.ಸಂ.ಕಲಂ. 323 ಸಹ ಕಲಂ 34 ರ ಅಡಿಯಲ್ಲಿ ಅಪರಾಧಕ್ಕೆ ಆರೋಪಿಗಳಿಗೆ ರೂ.1,000/- ದಂಡ ಮತ್ತು 3 ತಿಂಗಳ ಕಾಲ ಸರಳ ಕಾರಾವಾಸದ ಶಿಕ್ಷೆಯನ್ನು ವಿಧಿಸಲಾಗಿದೆ. ಆರೋಪಿಗಳು ಸದರಿ ದಂಡವನ್ನು ಪಾವತಿಸಲು ತಪ್ಪಿದಲ್ಲಿ 15 ದಿನಗಳ ಕಾಲ ಸರಳ ಕಾರಾವಾಸದ ಶಿಕ್ಷೆಯನ್ನು ವಿಧಿಸಲಾಗಿದೆ.

ಭಾ.ದಂ.ಸಂ.ಕಲಂ. 324 ಸಹ ಕಲಂ 34 ರ ಅಡಿಯಲ್ಲಿ ಅಪರಾಧಕ್ಕೆ ಆರೋಪಿಗಳಿಗೆ ರೂ.4,000/- ದಂಡ ಮತ್ತು 6 ತಿಂಗಳ ಕಾಲ ಸರಳ ಕಾರಾವಾಸದ ಶಿಕ್ಷೆಯನ್ನು ವಿಧಿಸಲಾಗಿದೆ. ಆರೋಪಿಗಳು ಸದರಿ ದಂಡವನ್ನು ಪಾವತಿಸಲು ತಪ್ಪಿದಲ್ಲಿ 30 ದಿನಗಳ ಕಾಲ ಸರಳ ಕಾರಾವಾಸದ ಶಿಕ್ಷೆಯನ್ನು ವಿಧಿಸಲಾಗಿದೆ.

ಭಾ.ದಂ.ಸಂ.ಕಲಂ. 504 ಸಹ ಕಲಂ 34 ರ ಅಡಿಯಲ್ಲಿ ಅಪರಾಧಕ್ಕೆ ಆರೋಪಿಗಳಿಗೆ ರೂ.1,000/- ದಂಡ ಮತ್ತು 3 ತಿಂಗಳ ಕಾಲ ಸರಳ ಕಾರಾವಾಸದ ಶಿಕ್ಷೆಯನ್ನು ವಿಧಿಸಲಾಗಿದೆ. ಆರೋಪಿಗಳು ಸದರಿ ದಂಡವನ್ನು ಪಾವತಿಸಲು ತಪ್ಪಿದಲ್ಲಿ 15 ದಿನಗಳ ಕಾಲ ಸರಳ ಕಾರಾವಾಸದ ಶಿಕ್ಷೆಯನ್ನು ವಿಧಿಸಲಾಗಿದೆ.

ಭಾ.ದಂ.ಸಂ.ಕಲಂ. 506 ಸಹ ಕಲಂ 34 ರ ಅಡಿಯಲ್ಲಿ ಅಪರಾಧಕ್ಕೆ ಆರೋಪಿಗಳಿಗೆ ರೂ.4,000/- ದಂಡ ಮತ್ತು 6 ತಿಂಗಳ ಕಾಲ ಸರಳ ಕಾರಾವಾಸದ ಶಿಕ್ಷೆಯನ್ನು ವಿಧಿಸಲಾಗಿದೆ. ಆರೋಪಿಗಳು ಸದರಿ ದಂಡವನ್ನು ಪಾವತಿಸಲು ತಪ್ಪಿದಲ್ಲಿ 30 ದಿನಗಳ ಕಾಲ ಸರಳ ಕಾರಾವಾಸದ ಶಿಕ್ಷೆಯನ್ನು ವಿಧಿಸಲಾಗಿದೆ.

ಸದರಿ ಎಲ್ಲಾ ಶಿಕ್ಷೆಗಳು ಒಟ್ಟಾಗಿ ಮತ್ತು ಸಮಗ್ರವಾಗಿ ಅನುಭವಿಸುವಂತೆ ಈ ಮೂಲಕ ಆದೇಶಿಸಲಾಗಿದೆ.

ಆಪಾದಿತರು ಮತ್ತು ಜಾಮೀನುದಾರರು ಬರೆದು ಕೊಟ್ಟಿರುವ ಜಾಮೀನು ಮುಚ್ಚಳಿಕೆಗಳನ್ನು ರದ್ದುಗೊಳಿಸಲಾಗಿದೆ.

ಆರೋಪಿಗಳಿಗೆ ತೀರ್ಪಿನ ಪ್ರತಿಯನ್ನು ಉಚಿತವಾಗಿ ಈ ದಿನವೇ ನೀಡಲಾಗಿದೆ.

9. Aggrieved by the said judgment and order of conviction, the appellant/accused preferred this appeal on the following grounds;

a) The impugned judgment of conviction passed in C.C. No.1165/2022 dated 13.06.2024 is illegal, erroneous, and unsustainable in law, and is liable to be set aside in the interest of justice.

b) The learned Trial Court failed to appreciate that wooden logs were placed across the road only to regulate and reduce the speed of tractors used by villagers, and that the accused had no role whatsoever in placing such logs.

c) The Trial Court failed to consider the admitted fact that the complainant and the accused are neighbours and were having prior disputes relating to disposal of household waste, thereby indicating possibility of false implication.

d) The Trial Court failed to appreciate the material discrepancy between the medical evidence and the ocular testimony of PW-1, particularly regarding the nature and cause of injuries allegedly inflicted by a stone.

e) The Trial Court failed to properly appreciate the conduct of the complainant, including his admission regarding involvement in sale of liquor and the circumstances leading to lodging of the complaint, which cast serious doubt on the prosecution case.

f) The Trial Court erred in relying upon the medical evidence at Ex.P-6. The Doctor's version is inherently improbable, considering the distance between his place of travel (Harihar to Santhebennur), lack of direct transport, and his own admission regarding arrival time. The alleged timing of examination at 8:30 a.m. is inconsistent with the prosecution case and renders the medical evidence doubtful.

g) The Trial Court failed to note that there is no scientific or diagnostic support such as X-ray, MRI, or CT scan to substantiate the alleged injuries. In the

absence of such evidence, the medical opinion lacks credibility.

h) The Trial Court failed to consider the Doctor's admission that such injuries could also occur due to a simple fall by slipping, thereby weakening the prosecution version.

i) The Trial Court failed to appreciate that, as per PW-1, the assault was with a 2 kg stone; however, the nature of injuries does not corroborate such an assault. The absence of severe or bleeding injuries and the fact that the complainant was treated as an outpatient further creates doubt.

j) The Trial Court failed to consider that PW-6, an independent witness, turned hostile and did not support the prosecution case.

k) The Trial Court failed to note that PW-5 is closely related to PW-1 and was not even residing in the village at the time of the incident, thereby making his presence doubtful.

l) The Trial Court failed to consider that PW-4 partially turned hostile with respect to the alleged recovery of the stone and the mahazar proceedings.

m) The Trial Court failed to appreciate the admission of PW-3 that he was not present at the time of the incident and that his evidence is hearsay and unreliable.

n) The Trial Court failed to properly consider the evidence of PW-2, who is the son of PW-1 and an interested witness, whose testimony requires cautious scrutiny.

o) The Trial Court erred in ignoring material admissions elicited in the cross-examination of PW-1 regarding his past conduct and the circumstances leading to the alleged incident.

p) The impugned conviction is based on surmises and conjectures and not on proof beyond reasonable doubt.

q) The Trial Court failed to consider material contradictions and inconsistencies in the prosecution evidence.

r) Viewed from any angle, the impugned judgment of conviction is illegal, perverse, and unsustainable, and therefore liable to be set aside in the ends of justice.

10. In view of the foregoing pleased to allow this appeal by setting aside the impugned order of sentence dated 13.06.2024 passed in C.C.No.1165/2022 by the Trial Court and to allow this appeal in the interest of justice and equity.

11. After admission of the appeal, notice was issued to the respondent. The learned Public Prosecutor appeared. This Court heard the arguments advanced by both sides and perused the Trial Court records. Upon consideration of the facts and circumstances of the case, the following points arise for determination:

1) Whether there is any illegality, impropriety or perversity in the judgment passed by the Trial Court warranting interference by this Court?
2) Whether the accused is entitled to the benefit under Section 3 and 4 of the Probation of Offenders Act?
3) What order?

12. My answer to the above points is as under:-

Point No.1 : In the Negative

Point No.2 : In the Affirmative

Point No.3 : As per final order for the following;

REASONS

13. **Point No.1 & 2 :**- These points are interlinked with each other. In order to avoid repetition of facts, they are taken up together for common discussion. Further, the brief facts of the prosecution case have already been set out in the earlier part of this judgment; hence, the same are not repeated here.

14. Nevertheless, it is the case of the prosecution that, on a trivial issue relating to placing wooden pieces across the road, a quarrel ensued between the informant and the accused persons. During the said quarrel, the accused persons allegedly assaulted the informant with a stone and also with their hands and legs. It is further alleged that they also assaulted the son of the informant with the same stone and threatened both of them with dire consequences. Thus, serious allegations have been made by the prosecution against the accused persons.

15. On perusal of the records of the Trial Court, it is seen that the Trial Court, upon appreciation of the evidence, came to the conclusion that the accused persons had committed the offences punishable under Sections 323, 324, 504 and 506 read with Section 34 of the Indian Penal Code. However, the Trial Court acquitted the accused persons for the offence punishable under Section 326 of the Indian Penal Code.

16. At this stage, it is relevant to note that, insofar as the acquittal of the accused persons for the offence punishable under Section 326 of the Indian Penal Code is concerned, the prosecution has not preferred any appeal. Hence, it can be inferred that the prosecution has accepted the said finding of the Trial Court. Now, being the First Appellate Court, this Court is required to examine whether there is any illegality, infirmity, or perversity in the judgment of the Trial Court, warranting interference.

17. During the course of arguments, the learned counsel appearing for the appellants/accused contended that the prosecution has utterly failed to prove the guilt of the accused persons beyond reasonable doubt. He further contended that, despite such failure, the Trial Court erroneously passed the judgment of conviction, which suffers from serious infirmities and perversity. It is also contended that there are material inconsistencies in the testimonies of the injured witnesses and that their evidence is not corroborated by the medical evidence. According to him, the discrepancies between the oral and medical evidence create serious doubt regarding the genuineness of the prosecution case; however, the Trial Court failed to appreciate the same in its proper perspective.

18. The learned counsel further contended that the other witnesses examined by the prosecution, except the interested witnesses, have not supported the case of the prosecution. Despite this, the Trial Court has based the conviction solely on the testimonies of interested witnesses, which, according to him, is not legally sustainable. It is also contended that the seizure of the stone has not been properly proved by the prosecution. He further submitted that the seized stone weighs about 2 kg, and as per the opinion of the doctor, if such a stone had been used to assault a person, it would have resulted in more severe injuries than those reflected in the wound certificates relied upon by the prosecution.

19. It is further contended that the informant and the accused persons are neighbours and that the informant runs a grocery shop. There was a trivial dispute between them regarding dumping of waste materials of the grocery shop in front of the houses of the accused persons. When the accused persons objected to the same, the informant, with a malicious intention, lodged a false complaint against them. According to the learned counsel, the prosecution case has no foundation.

20. The learned counsel also contended that, though the Investigating Officer was aware of these aspects, he failed to conduct a fair investigation and mechanically filed the charge

sheet. It is further contended that the Trial Court failed to give due importance to the inconsistencies in the evidence and wrongly convicted the accused persons. It is also contended that the Trial Court did not afford an opportunity to the accused persons to be heard on the question of sentence.

21. Without prejudice, the learned counsel further contended that even if this Court comes to the conclusion that there is no illegality in the judgment of conviction, the case of the accused persons falls within the ambit of Sections 3 and 4 of the Probation of Offenders Act, and they are entitled to the benefit of the said provisions. It is submitted that an application under Sections 3 and 4 of the Probation of Offenders Act has also been filed. On these grounds, he prayed to allow the appeal and set aside the judgment of the Trial Court.

22. Per contra, the learned Public Prosecutor appearing for the State contended that there is no illegality or perversity in the judgment passed by the Trial Court warranting interference by this Court. He submitted that, in the criminal justice delivery system, the testimony of injured witnesses carries great evidentiary value. In the present case, there are two injured witnesses, both of whom have been examined and have consistently supported the case of the prosecution without any material exaggeration or omission.

23. It is further contended that one of the eyewitnesses has also supported the prosecution case, and his testimony corroborates the evidence of the informant and the other injured witness. The learned Public Prosecutor further submitted that the medical evidence is also in consonance with the oral evidence of the injured witnesses, thereby strengthening the prosecution case.

24. He further contended that the investigation conducted by the Investigating Agency is fair and proper, and merely because some of the witnesses have not supported the prosecution case, it is not a ground to discard the entire prosecution case, especially when the evidence of the reliable witnesses is consistent and trustworthy. It is submitted that, upon proper appreciation of the entire evidence on record, the Trial Court has rightly come to the conclusion that the accused persons have committed the offences and has accordingly passed the order of conviction.

25. Lastly, the learned Public Prosecutor contended that the offences committed by the accused persons are serious in nature and they are not entitled to the benefit under Sections 3 and 4 of the Probation of Offenders Act. On these grounds, he prayed to dismiss the appeal and confirm the judgment of the Trial Court.

26. On going through the records, it would show that the prosecution has examined the following witnesses in order to prove the guilt of the accused persons:

P.W.1 – Informant and injured witness

P.W.2 – Another injured witness and son of the informant

P.Ws.3 and 4 – Panch witnesses to the spot mahazar

P.Ws.5 and 6 – Eye witnesses

P.W.7 – Investigating Officer

P.W.8 – Medical Officer

27. On perusal of the judgment passed by the Trial Court, it is seen that the Trial Court has observed that there was no delay in lodging the complaint and that there is no illegality in the investigation conducted by the Investigating Officer. The Trial Court has further held that there existed a prior dispute between the accused persons and the family of the informant. It has also observed that there is consistency in the testimonies of P.W.1 and P.W.2 and that the same are corroborated by the evidence of the Medical Officer, P.W.8. The Trial Court has also held that the recovery of the material object, namely the stone (M.O.1), has been duly proved by the prosecution. It has further observed that the evidence of the injured witnesses is consistent with the medical evidence and that there is no contrary evidence to disprove the case of the prosecution.

28. Now, this Court proceeds to appreciate the testimony of P.W.1. According to P.W.1, on 07.03.2022, the first accused and other villagers had placed wooden pieces across the road in front of his house, as tractors and other vehicles were moving at high speed. He has further stated that due to the said obstruction, he faced difficulty in crossing the road and therefore requested the persons present to remove the wooden pieces. At that time, the first accused came there, abused him in filthy language, and stated that he himself had placed the wooden pieces on the road. P.W.1 has further deposed that the first accused assaulted him on his chest and left thigh with a stone, and that the other accused persons assaulted his son (P.W.2) with a stone on his leg. He has also stated that all the accused persons assaulted both of them with hands and legs, and that Accused No.4 caught hold of his neck. It is further stated that all the accused persons threatened them with dire consequences.

29. At this stage, on going through the examination-in-chief of P.W.1, it appears natural and there are no apparent grounds to disbelieve the same. However, it is necessary to compare his evidence with the contents of Exhibit P1 (complaint) to ascertain whether there is any material contradiction.

30. On perusal of Exhibit P1, it is stated that villagers had placed wooden pieces across the road in front of his house, as tractors carrying mud were moving at high speed. It is further stated that when he requested them to remove the wooden pieces, the first accused came there, abused him in filthy language, and assaulted him on his chest and left thigh with a stone. It is also stated that the other accused persons came there, abused him, and assaulted him with hands and legs. Further, it is mentioned that when his son (P.W.2) came to rescue him, the first accused assaulted P.W.2 on his right leg with a stone.

31. On comparison of the examination-in-chief of P.W.1 with the contents of Exhibit P1, it is seen that there is substantial consistency with regard to the background of the incident as well as the manner of commission of the offence. The same does not disclose any material exaggeration or embellishment. At this stage, it is also pertinent to note that P.W.1 is aged about 58 years and hails from a rural background. Minor discrepancies, if any, between his oral evidence and the contents of Exhibit P1 cannot be treated as material so as to discard his entire testimony.

32. Now, it is necessary to consider the medical evidence relating to P.W.1. According to P.W.8, the Medical Officer, on

07.03.2022 at about 08.30 a.m., P.W.1 was brought to the hospital with a history of assault. On examination, she found a blunt injury to the chest, difficulty in breathing, and another blunt injury to the lower abdomen. Thus, it is evident that the injured had sustained injuries within a short time from the alleged incident.

33. At this stage, it is relevant to note that P.W.1 has specifically stated that he sustained injuries on his chest and left thigh due to assault by the first accused with a stone. The medical evidence, as spoken to by P.W.8, substantially corroborates the testimony of P.W.1 regarding the injuries sustained by him.

34. The learned counsel for the accused has contended that M.O.1 (stone) weighs about 2 kg and that, if such a stone had been used for assault, the injuries would have been more severe than those reflected in the medical evidence. However, it is pertinent to note that the nature of injury would depend not merely on the weight of the object but also on the force with which it is used and the manner of assault. Therefore, merely because the stone is stated to weigh about 2 kg, it cannot be a ground to discard the otherwise consistent and reliable testimony of the injured witness.

35. Further, at this stage, it is relevant to note that, in several instances, the Hon'ble superior courts have held that the testimony of an injured witness cannot be discarded merely on the ground of trivial inconsistencies. Therefore, in the present case, it is evident that the medical evidence also supports the testimony of P.W.1.

36. Now, it is necessary to consider the cross-examination of P.W.1 conducted by the defence. On perusal of the first part of the cross-examination, it is suggested that the villagers had placed wooden clubs in front of his house, which fact has been admitted by the witness and is not in dispute. Further, it is suggested to the witness that customers who purchased gutkha and pan masala packets from his grocery shop used to throw the empty sachets on the road. In response, the witness admitted the same but stated that he used to clean the area daily.

37. It was further suggested that the witness was selling illicit liquor in his shop. The witness denied the said suggestion, but voluntarily stated that he had sold liquor about two years prior. He also denied the suggestion that there was a quarrel relating to liquor packets or that there were routine disputes between the parties on that account. Thus, it is clear that P.W.1 has denied the suggestion that the dispute arose on account of

littering of sachets or related issues between his family and the accused persons.

38. Further, in paragraph No.2 of the cross-examination, suggestions were again made regarding the wooden clubs placed on the road by the villagers. As already observed, this fact has been admitted by the witness and, therefore, this part of the cross-examination does not carry much relevance. It was also suggested that the accused persons belong to the same caste and are associated with the same political party; however, the witness denied the same. Such suggestions do not appear to be material to the facts of the present case.

39. It was further suggested to the witness regarding the time at which he visited the hospital and the police station. In response, the witness stated that his village is about 24 kilometres away from Santhebennooru and that they first went to the hospital and thereafter to the police station. At this stage, it is pertinent to note that, as per the wound certificate marked as Exhibit P6, the incident occurred at about 07.30 a.m., and the injured P.W.1 was examined at about 08.30 a.m. Thus, it is evident that he sought medical treatment at the earliest point of time. The complaint was lodged on the same day at about 04.30 p.m. Therefore, such delay, if any, is neither inordinate nor sufficient to cast doubt on the prosecution case.

40. Further, it was suggested that the witness was selling liquor in his shop, which caused inconvenience to the accused persons, and that when they objected to the same, he falsely implicated them in this case. However, P.W.1 has denied the said suggestion. At this stage, it is pertinent to observe that merely because there may have been some dispute regarding such issues, it cannot be presumed that the witness would falsely implicate the accused persons and also sustain injuries requiring medical treatment.

41. Thus, upon a careful consideration of the entire evidence of P.W.1, including his cross-examination and the supporting medical evidence, it is clear that his testimony is consistent and trustworthy. Nothing substantial has been elicited in the cross-examination to discredit his version.

42. It is well settled in the criminal justice delivery system that the testimony of an injured witness carries great evidentiary value. When such testimony is found to be consistent and is corroborated by medical evidence, the same can form a reliable basis for conviction even in the absence of independent corroboration.

43. Nevertheless, the prosecution has also examined another injured witness, who is the son of the informant, as P.W.2. On perusal of his examination-in-chief, he has deposed that on

07.03.2022 at about 07.30 a.m., the first accused and other accused persons assaulted P.W.1 with a stone on his chest and thigh, and also assaulted him (P.W.2) on his right leg. He has further stated that the accused persons abused him, his father, and his mother in filthy language and threatened their lives. He has also deposed that the accused persons assaulted both him and P.W.1 with their hands and legs, as a result of which they took treatment at the Government Hospital, Santhebennooru. He has also identified the accused persons before the Court.

44. At this stage, on comparison of the examination-in-chief of this witness with that of P.W.1 as well as the contents of Exhibit P1, it is seen that they are consistent with each other in all material particulars. There are no grounds to discard the testimony of this witness.

45. Further, it is relevant to note that, according to the Medical Officer (P.W.8), on the same day at about 08.30 a.m., she examined P.W.2 and found injuries in the nature of abrasions over the right leg and the left little finger. This indicates that the injuries sustained by P.W.2 are consistent with the nature of the assault alleged, namely, assault with hands, legs, and a stone. Therefore, the medical evidence also supports the testimony of P.W.2.

46. Further, on perusal of the cross-examination of this witness conducted by the defence, it is seen that nothing material has been elicited so as to discredit his testimony. Suggestions were made regarding the wooden clubs placed by the villagers on the road and also regarding the sachets of gutkha and liquor packets. However, these aspects have already been admitted and do not have much relevance to the core issue in the present case.

47. Further, suggestions were made regarding the lodging of the complaint and the taking of medical treatment. The record would show that the witness has answered the questions consistently in line with the prosecution case. Thus, it is evident that nothing substantial has been elicited in the cross-examination to disbelieve the testimony of this witness. His evidence is consistent with that of P.W.1 regarding the occurrence of the incident, and the same is also supported by the medical evidence. Therefore, there is no ground to discard the testimony of P.W.2.

48. It is the contention of the accused persons that both P.W.1 and P.W.2 are related to each other and are interested witnesses, and therefore their evidence cannot be relied upon. In this regard, it is pertinent to note that the Hon’ble superior courts have consistently held that the evidence of related or

interested witnesses cannot be discarded merely on the ground of their relationship. However, it is true that such evidence must be scrutinized with caution.

49. In the present case, upon careful scrutiny, it is seen that the testimonies of both P.W.1 and P.W.2 are consistent, cogent, and reliable. There are no material contradictions or omissions so as to discredit their evidence. Merely because they are father and son, their testimonies cannot be rejected.

50. Furthermore, it is to be noted that both these witnesses are injured witnesses, and their evidence carries great evidentiary value. When such evidence is found to be trustworthy and is corroborated by medical evidence, it cannot be discarded on the sole ground of relationship. Therefore, this Court finds no reason to disbelieve or discard the testimonies of P.W.1 and P.W.2.

51. Further, the record would disclose that the prosecution has also examined P.W.5 and P.W.6 as eyewitnesses to the incident. On perusal of Exhibit P1, it is stated by the informant (P.W.1) that, at the time of the incident, both P.W.5 and P.W.6 came to the spot and intervened to separate the victims from the accused persons.

52. However, on appreciation of the evidence, it is found that P.W.6 has not supported the case of the prosecution either in his examination-in-chief or in his cross-examination and has thus turned hostile. Insofar as P.W.5 is concerned, though he has spoken about the occurrence of the incident, his testimony is not fully consistent with the evidence of P.W.1 and P.W.2, particularly with regard to the specific overt acts attributed to each of the accused persons.

53. At this stage, it is pertinent to note that merely because there are certain inconsistencies in the testimony of eyewitnesses, or because some of the witnesses have not supported the prosecution case, it is not a ground to discard the entire prosecution case, especially when the evidence of the injured witnesses is found to be cogent and reliable. It is also well settled that there may be several reasons for a witness turning hostile, including influence, fear, or local pressures. In the present case, P.W.6 being a resident of the same village as the accused persons, the possibility of his being won over or influenced cannot be ruled out.

54. Therefore, even if the evidence of P.W.5 and P.W.6 is either discarded or not fully relied upon, the consistent and reliable testimonies of P.W.1 and P.W.2, which are duly

corroborated by medical evidence, are sufficient to establish the prosecution case.

55. The prosecution has further examined P.W.3 and P.W.4 as panch witnesses to the spot mahazar. On perusal of the evidence of P.W.3, it is seen that he has not supported the prosecution case in his examination-in-chief with regard to the spot mahazar. However, during the course of cross-examination by the prosecution, he has admitted that the police had called him to the place of the incident and conducted the spot mahazar as per Exhibit P2. Though he has denied the recovery of the material object from the spot, he has admitted his signature on Exhibit P2.

56. Further, during cross-examination by the defence, he has stated that he signed the mahazar at the instance of the informant and that he has deposed before the Court at the instance of the informant. At this stage, the Court must exercise caution while appreciating such evidence. The evidence of P.W.3, to the extent it supports the fact that the police conducted the spot mahazar at the place of occurrence, cannot be brushed aside in its entirety.

57. It is well settled that the principle of *falsus in uno, falsus in omnibus* is not applicable in criminal jurisprudence in India, and the Court is required to separate the truthful part of the

evidence from the untruthful part. In the present case, even if a portion of the testimony of P.W.3 is found to be unreliable, the portion which supports the preparation of the spot mahazar can still be accepted.

58. Further, on perusal of the evidence of P.W.4, another panch witness, it is seen that he has supported the prosecution case to the extent that the police visited the place of the incident and prepared the spot mahazar as per Exhibit P2, and that he has affixed his signature thereto. Though he has not fully supported the prosecution regarding the recovery of the stone or the detailed contents of the mahazar, his evidence lends support to the fact that the spot mahazar was indeed conducted at the place of occurrence.

59. Insofar as the recovery of the stone (M.O.1) is concerned, P.W.1 has clearly deposed about the use of the stone during the incident. The Investigating Officer, P.W.7, has also stated in his evidence that, during the course of preparation of the spot mahazar, he recovered one stone from the place of occurrence, which is marked as M.O.1.

60. At this stage, it is relevant to note that there is no rule of law that the testimony of a police officer must be discarded merely on the ground that he belongs to the police department. However, such evidence must be scrutinized with care and

caution. In the present case, the evidence of P.W.1 and P.W.7 regarding the recovery of the stone is consistent and there is no material contradiction to disbelieve the same. Therefore, it can be held that the prosecution has established the recovery of M.O.1 and the preparation of the spot mahazar at the place of occurrence.

61. Thus, on a cumulative appreciation of the entire evidence on record, it is evident that the testimonies of the injured witnesses, namely P.W.1 and P.W.2, are consistent, cogent, and trustworthy. Their evidence is duly corroborated by the contents of Exhibit P1 as well as the medical evidence. The prosecution has also established, through acceptable evidence, that the spot mahazar was conducted at the place of occurrence and that the material object (stone) was recovered.

62. In view of the above discussion, this Court finds that the prosecution has successfully proved the guilt of the accused persons for the offences for which they have been convicted by the Trial Court. Accordingly, there is no illegality, infirmity, or perversity in the judgment of conviction passed by the Trial Court warranting interference by this Court.

63. However, at this stage, one important aspect requires consideration. It is noticed that, after recording the conviction, the Trial Court has proceeded to pass the order of sentence

without affording an opportunity to the accused persons to be heard on the question of sentence. It is a settled principle of law that, after recording a finding of guilt, the accused must be given an opportunity of hearing on the quantum of sentence before passing the final order.

64. In the present appeal, the learned counsel for the accused has filed an application under Sections 3 and 4 of the Probation of Offenders Act, contending that, even if the conviction is upheld, the accused persons are entitled to the benefit of probation. It is submitted that the offences for which the accused have been convicted fall within the ambit of Sections 3 and 4 of the said Act, and that the accused persons have no criminal antecedents.

65. Though the learned Public Prosecutor has opposed the said prayer, no material has been placed on record to show that the accused persons have any prior criminal history. Further, the offences for which the accused have been convicted are not of such a grave nature so as to exclude the applicability of the provisions of the Probation of Offenders Act.

66. It is well settled by various pronouncements of the Hon'ble superior courts that, where the offences fall within the ambit of Sections 3 and 4 of the Probation of Offenders Act and the accused persons have no criminal antecedents, the Court should

ordinarily extend the benefit of probation, subject to appropriate conditions.

67. In the present case, having regard to the nature of the offences, the circumstances of the case, and the absence of any criminal antecedents, this Court is of the considered opinion that the accused persons are entitled to the benefit of the Probation of Offenders Act.

68. Accordingly, this Court finds that, while the judgment of conviction passed by the Trial Court does not call for interference, the order of sentence requires modification. It is just and proper to direct the release of the accused persons on probation by invoking the provisions of Sections 3 and 4 of the Probation of Offenders Act, subject to appropriate conditions. Hence, interference is warranted only to the limited extent of modification of the sentence. Accordingly, Point No.1 is answered in the Negative and Point No.2 is answered in the Affirmative.

69. Point No.3:- In view of my findings on Point No.1& 2, I proceed to pass the following;

ORDER

The appeal filed by the appellants/accused is hereby dismissed.

The order of conviction passed by the 2nd Addl. Civil Judge and J.M.F.C., Channagiri in CC No.1165/2022 dated 13/06/2022 is confirmed.

However the accused/appellants are entitled for the relief of Sec. 3 and 4 of Probation of Offenders Act.,

It is directed the trial court to release the accused/appellant on probation by taking the sufficient surety.

Further, it is directed to the trial court to send notice to the probationary Officer to collect the criminal antecedents of the accused/appellants and after receiving the same, pass necessary orders.

Further, on going through the Sec.5 of the Probation of Offenders Act it is directed the Accused/appellants to deposit 15,000/- as fine amount.

Out of Rs.15,000/- it is directed the trial court to release Rs.10,000/- as compensation to the victims P.W.1 and P.W.2.

Further remaining Rs.5000/- is treated as litigation expenditure and directed to confiscate to the Government.

Send the copy of this judgment to the trial court alongwith TCR.

(Dictated to the Stenographer directly on the computer, corrected, signed and then pronounced by me in the open court this the 2nd day of April, 2026)

Sd/-

(Praveen Kumar R.N.)
II Addl. District & Sessions Judge,
Davanagere.