

IN THE COURT OF THE PRL CIVIL JUDGE AND JMFC,
NELAMANGALA.

Dated this 1st day of July 2016.

C C No 983/2007

PRESENT: **Kiran Kumar D Wadigeri, B.A(L).LL.B.,**
Prl.Civil Judge & JMFC, Nelamangala..

Complainant: State by Nelamangala Rural Police Station.
(By A.P.P.)

-Vs.-

Accused: A1. Muddahanumaiah S/o late Kempathimmaiah,
30 years,
A2. Gangamma W/o Muddanahanumaih,
27 years,
A3. Thimmappagowda S/o Muddaveeraiah,
60 years,
A4. Channegowda S/o Thimmappagowda,
25 years,
A5. Jagadeesha S/o Thimmappagowda,
23 years,
A6. Hanumantharaya S/o Rajanna,
20 years,
A7. Rajanna S/o Kempathimmaiah,
25 years,
A8. Narayana S/o Kempathimmaiah,
27 years,

All are R/at Hosapalya village,
Kasaba Hobli, Nelamangala Taluk.

(Accused No.1 by Sri N.L.S., Advocate)
(Accused No.2, 7 & 8 by Sri N.J.R., advocate)
(Accused No.3, 5 by Sri K.N.G., advocate)
(Accused No.4 by Sri N.P.R., Advocate)

J U D G E M E N T

PSI Nelamangala police has filed charge sheet against the accused persons for offences punishable under Sec. 143, 147, 323, 324, 504 326, 506 read with section 149 of IPC.

2. The brief facts of the prosecution case is that on 11.03.2007 within the jurisdiction of Nelamangala police station in Hosapalya village near the house of Cw.1 the accused persons have formed an unlawful assembly by holding clubs. Then at about 8.30 p.m. when the Cw.1 to 4 are in the house of Cw.1, the accused persons came there and brought the Cw.1 outside from his house and abused him in filthy language. Then the accused N.4 assaulted with a club on the head of Cw.2 and caused grievous injuries. The accused No.2 and 5 have kicked the Cw.3 by legs and at that time Cw.4 came to rescue Cw.3 for which the accused No.3 and 6 have assaulted with a club on her both legs and caused simple injury. The Accused No.1, 7 and 8 have assaulted with the hand to Cw.1 and caused simple injury. Then all the accused persons have threatened to take the life of Cw.1 to 4 if they will not withdraw the suit filed by them. Thereafter Cw.5 to 7 came and pacified quarrel. Then the injured persons have been shifted to

Nelamangala government hospital for treatment and then Cw.2 to 4 have been shifted to Nimhans hospital Bengaluru. Then on the same day at about 11 p.m. the complainant has lodged the complaint before Nelamangala police who in turn have registered the crime and sent FIR to the court. Thereafter, IO has conducted spot mahazar, seized material objects, recorded the statements of the witnesses, collected wound certificates and after conducting entire investigation he filed the charge sheet against the accused persons for the said offences.

3. The accused No.1 to 8 are on court bail. The IO in the charge sheet has deleted the accused No.9 to 12. After filing of the charge sheet by IO cognizance was taken for the alleged offences then the charge was read over to the accused persons but they pleaded not guilty and claimed to be tried.

4. Prosecution in all examined Pw.1 to 6 and documents got the marked as Ex.P1 and P2 and Mo.1 to 3 were identified. Then the accused statement as contemplated under section 313 of Cr.P.C is recorded but they denied for the same. Then the accused persons have complied section 437 of Cr.P.C. and furnished surety.

5. The points that would arise for my consideration are as follows:

- 1) Whether the prosecution proves beyond all the reasonable doubt that on 13-03-2007 within the jurisdiction of Nelamangala rural police station at Hosapalya village in front of the house of Cw.1 at about 9-15 p.m. all the accused persons in prosecution of common object have formed an unlawful assembly by holding clubs and thereby they have committed an

offence punishable under section 143, 147 R/w 149 of IPC?

- 2) Whether the prosecution further proves beyond all the reasonable doubt that on the above mentioned place, date and time the accused persons in prosecution of common object have abused Cw.1 to 4 and thereby they have committed the offence punishable under Section 504 r/w 149 of IPC?
- 3) Whether the prosecution further proves beyond all the reasonable doubt that on the above mentioned place, date and time the accused No.4 in prosecution of common object have voluntarily assaulted on the head and shoulder of Cw.2 and caused grievous injury to her and thereby he has committed the offence punishable under Section 326 r/w 149 of IPC?
- 4) Whether the prosecution further proves beyond all the reasonable doubt that on the above mentioned place, date and time the accused No.2 and 5 in prosecution of common object have kicked with the legs to Cw.3, accused No.1, 7 and 8 have assaulted with the hands and kicked with legs to Cw.1 and caused simple hurt and thereby they have committed the offence punishable under Section 323 r/w 149 of IPC?
- 5) Whether the prosecution further proves beyond all the reasonable doubt that on the above mentioned place, date and time of the accused No.3 and 6 in prosecution of common object have assaulted with the legs to Cw.4 and caused simple hurt and thereby they have committed the offence punishable under Section 324 r/w 149 of IPC?
- 6) Whether the prosecution further proves beyond all the reasonable doubt that on the above mentioned place, date and time of the accused persons in prosecution of common object have threatened to to

take lives of Cw.1 to 4 to withdraw the suit filed by them and thereby they have committed the offence punishable under Section 506 r/w 149 of IPC?

7) What Order?

6. Heard and perused the prosecution papers.

7. My findings to the above points are as follows:

POINT NO.1 to 6:- In the Negative

POINT NO.7:- As per final order for the following reasons.

R E A S O N S

8. Point No.1 to 6: To avoid repetition of facts these points are taken together for common discussions. To prove its case the prosecution in all examined Pw.1 to 6. Pw.1 is the complainant and one of the victims to the incident. Pw.2 is said to be the eyewitness to the incident. Pw.3 is another injured witness who has sustained grievous injuries in the alleged incident. Pw.4 is another injured witness and she is the wife of Pw.1 and mother of Pw.3 and 5. Pw.5 is the another injured witness. Pw.6 is one of the panchanama witnesses for spot mahazar which has been marked as Ex.P2. Despite of repeated issuance of summons and warrants to other material witnesses the police have not secured before the court and finally recording of evidence of other material witnesses has been given up.

9. The Pw.1 is the complainant and father of Pw.2 and 3 and husband of Pw.4. In his examination in chief he has deposed that on 11.03.2007 at about 8 or 9 p.m, when he was in his house at that time all the accused persons came there and asked to withdraw the case

and threatened him. There after the accused No.4 has assaulted with a club on the head of Cw.2 and one Seeregowda and accused No.3 have kicked with the legs and assaulted with the hands to Cw.3 and 4. Thereafter he went to police station and lodged the complaint and then he took treatment in the hospital. Further he has deposed that his son and daughter who are Cw.2 and 3 have been shifted to Nimhance hospital. Further he has identified the signature in the complaint and accordingly it has been marked as Ex.P1 and his signature has been marked as P1(a). He has also deposed that the police have conducted spot mahazar in his presence as per Ex.P2 and he identified 3 clubs, which have been marked as M.O.1 to 3.

10. In the cross-examination he admitted about civil dispute in between them and the accused persons. That the motive aspect is always double-edged weapon, either it may be in favour of the accused persons or it may be in favour of the complainant side. Therefore burden lies heavily on the prosecution to prove its case beyond all the reasonable doubt. Further he has admitted that number of quarrels taken place in between them and the accused persons and there is no cordial relationship in between them and accused No.1 is his elder brother.

11. Further Pw.1 has deposed that in the incident his son Cw.2 has sustained bleeding injuries and his clothes were stained with blood. As per his evidence his son has taken treatment as inpatient in Nimheance hospital for one day but the prosecution has not produced any single material to show the said aspect. Further he has deposed that his son has also taken treatment in the K.C.General Hospital but

the Investigating Officer has produced no such document. At one stretch he deposes that after the incident two police constables came to the place of the incident on the same day and at another stretch he deposes that the police have conducted mahazar on the next day of the incident and he does not know who put the signatures to the mahazar and also he could not able to tell the time of conducting mahazar. As per the case of the prosecution in the presence of the Pw.1 police have conducted mahazar. Then the Pw.1 must have known the names of the witness of spot mahazar. Moreover the police have not seized and produced the blood stained cloths of Cw.2 as Pw.1 has stated that the clothes of Cw.2 were stained with blood.

12. Pw.2 is one of the eye witnesses to the incident and as per his evidence on 11.03.2007 at about 9.p.m. quarrel was going on in front of the house of Pw.1 and accordingly had been to the place of the incident where he saw blood was oozing from the head of Cw.2. Further deposed that he doesn't know who has assaulted Cw.2 but he and Cw.7 have pacified the quarrel. Further he has identified the clubs and deposed that accused persons were holding those clubs during the time of the incident. In his cross-examination by the learned APP he admitted entire prosecution case.

13. In the cross-examination by the learned counsel of the accused persons earlier he denied that he has filed a suit in O.S.316/2009 but later he admitted that Pw.1 has given evidence in his favour in the said suit. Then it appears that he is the interested witness. Further he has deposed that the distance between the place of the incident

and his house is about 200 feet and when he reached the place of the incident quarrel was taken place. Then it appears that he has not seen the incident and he has not supported entire prosecution case. Further he has admitted about the civil dispute in between the accused persons and Pw.1.

14. Pw.3 is the sons of Pw.1 and injured witness. In his examination in chief he has supported the prosecution the case and he narrated the incident. In his cross-examination by the learned counsel of the accused persons he has also admitted that there is a civil dispute in respect of their ancestral property against the accused persons. He has also deposed that immediately after the incident he became unconscious and on the next day morning he gained conscious in the Nelamangala hospital and he has been referred to Nimhance hospital for further treatment but the IO has not submitted those records along with the charge sheet to show that Pw.3 has taken treatment in the Nimhance hospital. He has also admitted that his cloths were stained with blood but they have not seized by the police. He has also deposed that he has taken treatment in the K.C. General Hospital for 15 days as inpatient but the IO has produced no such documents. In his examination in chief he has deposed that the accused persons have threatened to kill him as they have already killed his younger brother but in his statement given before the police, he has not stated the same. Then it appears that Pw.3 made improvements in his evidence comparing to his statement given before the I.O.

15. Pw.4 is the wife of Pw.1 and mother of Pw.3 and 5 and in her examination in chief she has also supported the prosecution case. In

the cross-examination she has admitted about civil dispute as admitted by Pw.1 to 3 and she has deposed that about 50-60 persons were gathered during the time of incident but except the interested witnesses no such persons have been cited as charge sheet witnesses by the IO. Further she has deposed that she has also taken treatment in the Nimhance hospital as inpatient for about 4 days.

16. Pw.5 is another injured witness and daughter of Pw.1 and she has also supported the prosecution case. Further she has deposed that before on month of the incident the accused persons have threatened her father to withdraw the case and abused him in filthy languages. Then again on the date of the incident the accused persons came there and further she narrated about the incident. Further she has deposed that before the incident she undergone heart surgery in the Jayadeva Hospital and the accused persons knew about the fact of surgery and assaulted her and she became unconscious in the incident. AIn her cross-examination she has deposed that in the Nelamangala hospital doctors have not given treatment and asked to her to go Jayadeva hospital and accordingly she took treatment in Jayadeva Hospital but IO has not collected any documents to show that the Pw.5 has taken treatment in Jayadeva hospital. Further she has deposed about the earlier incident as stated in her examination in chief she was not present and immediately after sustaining injury she became unconscious and in the Jayadeva Hospital she gained conscious and for that reason she does not know what was happened when she was unconscious. So in her evidence Pw.5 has made lot of improvements comparing to the prosecution case.

17. Pw.6 is one of the mahazar witness spot mahazar, which has been marked as Ex.P2. In his examination in chief he has deposed that on 12.03.2007 when he had been to Hosaplaya village at about 8.30 p.m. police were writing panchanama and as per their instance he put his signature in the panchanama but he does not know the contents of Ex.P2. Further he has also deposed that the police have seized M.O.1 to 3 during that time. However in his cross-examination by the learned APP he admitted that the police have read over the contents of Ex.P2 and there after they obtained his signature but in his cross-examination by the learned counsel of the accused persons he admitted that he is the relative of Cw.1 and he is not the resident of Hospalya village where the incident took place. Further he has deposed that during the time of conducting panchanama about 4-5 persons were present. That Pw.6 is close relative of Pw.1 and police have not called other persons who were present during that time though available to act as mahazar witness. Further he has deposed that he does not know the contents of Ex.P2. Therefore the evidence of Pw.6 is not reliable as he is a interested witness and he doesn't know the contents of Ex.P2.

18. Though all the injured witnesses have supported to prosecution case but in their evidence they made lot of improvements comparing to the prosecution case. Moreover the IO has not collected blood stained cloths of injured persons and evidence of eyewitness is also doubtful. Further it appears that Pw.2 who is the eye witness and Pw.6 who is mahazar witness are the interested witness and as per the evidence of injured witness number of persons have witnessed the incident but the IO has cited only interested witnesses in the charge sheet. Moreover prosecution has failed to examine other

material witnesses who are doctor and IO which is also fatal to the prosecution case. Therefore the prosecution has failed to prove its case beyond all the reasonable doubt and hence the benefit of doubt goes in favour of the accused persons. Hence my findings to points No.1 to 6 are in the negative.

19. Point No.7: in view of the reasons and findings given to point No.1 to 6, the following is made.

ORDER

Accused No.1 to 8 are hereby acquitted under Section 248(1) of Cr.P.C for the offences punishable under Sec. 143, 147, 323, 324, 504 326, 506 read with 149 of IPC.

The bail bond and surety bonds of the accused No.1 to 8 are herewith stand cancelled and they are set at liberty.

M.O.1 to 3 are being worthless and ordered to be destroyed after appeal period is over.

(Dictated to the stenographer, transcribe and typed by him, corrected, signed and pronounced by me in the open court, this the 01st day of July 2016.)

Sd/-
(Kiran Kumar D Wadigeri)
Prl Civil Judge & JMFC,
Nelamangala.

ANNEXURE

List of witnesses examined on behalf of the Prosecution:

Pw.1	Hanumaiah
Pw.2	Thimmappagowda
Pw.3	Suresh

Pw.4 Jayamma
Pw.5 Puspaltha
Pw.6 Kempaiah

List of documents marked on behalf of the Prosecution:

Ex.P1 Complaint
Ex.P1(a) Signature of Pw.1
Ex.P2 Mahazar
Ex.P2(a) Signature of Pw.1
Ex.P2(b) Signature of Pw.6

List of witnesses examined on behalf of the defense: NIL

List of documents marked on behalf of the defense: NIL

List of M.O's marked on behalf of the Prosecution:

M.O.1 to 3 3 Clubs

Sd/-
PrI Civil Judge & JMFC,
Nelamangala.