

**IN THE COURT OF I ADDL. SR. CIVIL JUDGE & A.C.J.M.,
KOLAR**

Present : Ganapathi Prashanth.M, B.A., LL.B.,
I Addl. Sr. Civil Judge & A.C.J.M., Kolar.

Dated : This the 6th day of February 2017.

C.C.No.489/2015

Complainant : State by Kolar Rural Police.
(Rep., by APP)

-V/s-

Accused : 1. Fayaz S/o. Inthiyaz,
aged about 25 years,

2. Ayesha W/o. Fayaz,
aged about 23 years,

3. Nayaz S/o. Inthiyaz,
aged about 24 years,

4. Fairoz S/o. Inthiyaz,
aged about 40 years,

5. Asmabanu W/o. Ali,
aged about 23 years,

All are residents of
Khadripura Village, Kolar Taluk.

(Rep., by Sri.G.N.J., Advocate)

J U D G M E N T

This case is registered against the accused No.1 to 5 for the offences punishable under section 143 and 324 r/w Sec.149 of IPC, pursuant to the charge sheet filed by the Sub-Inspector of Police, Kolar Rural Police Station in Cr.No.215/2014 of the said PS.

2. The case of the prosecution in brief is that:

That on 05.04.2014 at about 4 p.m., the accused persons formed unlawful assembly with the common object of committing offence against CW1 - Ayesha in connection with allegation that a jewellery named as *Laccha* is found by the daughter of CW1 and committed the offence of rioting armed with deadly weapons such as wooden club and stone and the accused No.1 voluntarily caused hurt to CW-1 by assaulting her with wooden reaper on her back, the accused No.2 assaulted CW-1 with a stone on her body, the accused No.3 assaulted CW-1 with wooden club on her left hand, the accused No.4 assaulted CW-1 with a wooden club on her body and the accused No.5 assaulted CW-1 with a stone on

her body and thereby committed the offences punishable under section 143, 147, 148 and 324 r/w Sec.149 of IPC.

3. In response to the summons, accused appeared before the court and got enlarged on bail and the copies of the charge sheet and other prosecution papers furnished to the accused under Sec.207 of Cr.P.C. After hearing before charge, as the ingredients of Sec.147 and 148 of IPC are also made out in the charge sheet, cognizance was taken for the said offences and the charge for the offences punishable under Sec. 143, 147, 148 and 324 r/w Sec.149 of IPC are framed and read over to the accused, who pleaded not guilty and claimed to be tried. Hence, summons was issued to the prosecution witnesses.

4. In order to prove the charge leveled against the accused, the prosecution has examined 2 witnesses as PWs-1 and 2 and got marked Exs.P.1 to 4. However, as they are the complainant and eye witness, but turned hostile to the prosecution case, the prayer of the learned APP to issue

process against the remaining witnesses was rejected, as no purpose would be served and hence the prosecution evidence was closed. The statement under Sec.313 of the Cr.P.C. is dispensed-with, as no incriminating materials found against the accused in prosecution evidence.

5. Heard the learned Sr.APP and the learned defence counsel and perused the evidence and materials on record.

6. The following points arise for the consideration of this Court:

1. Whether the prosecution has proved beyond reasonable doubt that on 05.04.2014 at about 4 p.m., the accused persons formed unlawful assembly with the common object of committing offence against CW1 - Ayesha in connection with allegation that a jewellery named as *Laccha* is found by the daughter of CW1 and committed the offence of rioting armed with deadly weapons such as wooden club and stone and the accused No.1 voluntarily caused hurt to CW-1 by assaulting her with wooden reaper on her back, the accused No.2 assaulted CW-1 with a stone on her body, the accused No.3 assaulted CW-1 with wooden club on her left hand, the accused No.4 assaulted CW-1 with a wooden club on her body and the accused No.5 assaulted CW-1 with a stone on her

body and thereby committed the offences punishable under section 143, 147, 148 and 324 r/w Sec.149 of IPC.

2. What order?

7. The findings on the above points are as follows:-

Point No.1 - In the Negative.

Point No.2 - As per the final order,

for the following:-

REASONS

8. **Point No.1:-** The offences that arise for consideration in this proceedings at this juncture are punishable U/Sec. 143, 147, 148 and 324 r/w Sec.149 of IPC.

9. The CW1 who is said to be the complainant is examined as PW-1 and has completely turned hostile to the prosecution case. The complaint is marked as Ex.P.1. She expressed ignorance regarding the contents of Ex.P.1. Further PW-1 has denied having given further statement before the police as per Ex.P.3 with regard to the alleged incident. PW-

1 is also said to be the witness to Ex.P.2 mahazar and though she has identified her signature in Ex.P.2 mahazar, she has denied the contents of Ex.P.2 and turned hostile even with regard to Ex.P.2 mahazar. The CW-2, who is the husband of CW-1 and who is said to be the eye witness is examined as PW-2, who has also completely turned hostile to the prosecution case. In his evidence his statements under Sec.161 of Cr.P.C., is marked as Ex.P.4. He has expressed his ignorance regarding its contents.

10. The PWs-1 & 2 who are the complainant and eye witness have turned totally hostile to the prosecution case and hence, as no purpose would be served by issuing process against remaining prosecution witnesses, the prayer of the learned APP to issue process against the other witnesses was rejected and prosecution evidence was closed and statement under Sec.313 of Cr.P.C. was dispensed-with. Fact remains that, there is no incriminating material appearing against the accused in the evidence of prosecution and hence, the

prosecution has failed to prove the charges leveled against the accused. Hence, point No.1 is answered in the Negative.

11. **Point No.2** :- In view of the findings on point No.1, this Court proceeds to pass the following :-

ORDER

By exercising powers conferred under Sec. 248(1) of the Cr.P.C., the accused No.1 to 5 are hereby acquitted of the offences punishable under Sec. 143, 147, 148 and 324 r/w Sec.149 of IPC.

The bail bonds of the accused and that of their surety shall stand cancelled after the appeal period is over.

(Dictated to the Stenographer directly on the computer, typed by him, corrected, initialed and then pronounced by me in open Court on this the 6th day of February 2017).

(GANAPATHI PRASHANTH.M),
I Addl. Sr. C.J., & ACJM., Kolar.

ANNEXURES

List of witnesses examined for the Prosecution:-

P.W.1	-	Ayesha
P.W.2	-	Chandpasha

List of documents marked for the Prosecution:-

Ex.P.1	-	Complaint
--------	---	-----------

Ex.P.2	-	Mahazar
Ex.P.3	-	Further statement of PW-1
Ex.P.4	-	Statement of PW-2

List of witnesses examined for the Accused:- NIL

List of documents marked for the Accused:- NIL

List of material objects marked:- Nil

I Addl. Sr C.J., & A.C.J.M, Kolar