

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE G BASAVARAJA

CRIMINAL APPEAL NO.1206 OF 2013

BETWEEN:

1. MR B M THIMMAIAH
S/O MUDLAPPA
AGED ABOUT 45 YEARS
2. B G VENKATESH
S/O GIRIYAPPA
AGED ABOUT 39 YEARS
3. LINGARAJU @ NINGA
S/O MUDLAPPA
AGED 38 YEARS
4. PRAKASH
S/O DODIAIAH
AGED 25 YEARS
5. VENKATESH @ KUMBARARA VENKATESHA
AGED ABOUT 39 YEARS

ALL ARE AGRICULTURISTS,
R/O BYALADALU VILLAGE, KADUR TQ.,
CHIKMAGALORE DIST.-570002

...APPELLANTS

(BY SRI. P. P. HEGDE, SR. ADV. FOR
SRI. VENKATESH SOMAREDDI, ADV.)

AND:

1. THE STATE
REPRESENTED BY SAKHARAYAPATNA
POLICE, SAKHARAYA PATNA
KADUR TQ.

(REPRESENTED BY THE LEARNED
STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
BANGALORE - 560001)

...RESPONDENT

(BY SRI. RANGASWAMY R., HCGP.)

THIS CRL.A. IS FILED U/S.374(2) CR.P.C BY THE ADV.
FOR THE APPELLANTS/ACCUSED 1 TO 5 PRAYING THAT THIS
HON'BLE COURT MAY BE PLEASED TO SET ASIDE THE ORDER
DATED 30.11.2013/2.12.2013 PASSED BY THE I ADDL. DIST.
AND S.J., CHIKMAGALUR IN S.C.NO.58/2010 - CONVICTING
THE APPELLANTS/ACCUSED FOR THE OFFENCE P/U/S 143, 147,
323, 324, 504, 506, 342, 436, 427 R/W 149 OF IPC.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR
JUDGMENT ON 08.12.2025 AND COMING ON FOR
"PRONOUNCEMENT OF ORDERS" THIS DAY, THE COURT,
DELIVERED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE G BASAVARAJA

CAV JUDGMENT

The appellants have preferred this appeal against the
judgment of conviction and order on sentence dated 30th
November, 2013 passed in Sessions Case No.58 of 2010 by the
I Addl. District & Sessions Judge, Chikkamagalur ("trial Court"
for short).

2. For the sake of convenience, the parties herein are
referred as per their status before the trial Court.

3. Brief facts leading to this appeal are that the PSI of
Sakharayapatna Police Station, Kadur Taluk, Chikkamagaluru

District laid the charge-sheet against accused 1 to 5 for the offences punishable under Sections 143, 147, 323, 342, 324, 504, 506, 436 and 427 read with Section 149 Indian Penal Code.

4. It is alleged by the prosecution that on 18th March, 2010 at 08.30 a.m. in Byaladalu Village, at the Fair Price shop of PW1-B.T. Yathisha, all the accused formed unlawful assembly and committed the offence of rioting. Accused No.1-Thimmaiah voluntarily caused hurt to the complainant on his teeth using his hand, accused No.3-Lingaraju, accused No.4-Prakash caused simple hurt by assaulting the complainant on his body. Accused Nos. 1 to 3 also voluntarily caused hurt to PW2-Smt.Latha and caused bodily pain. Thereafter, accused Nos.2 to 5 took PW1-Yathisha from his fair price shop and confined in Kariyamma temple by locking the door. Accused No.2-Venkatesh, voluntarily caused hurt to PW1-Yathisha using a club. Further, all the accused gave threat to the life of PW1-Yathisha and PW2-Smt. Latha and also abused in filthy language.

5. Further, it is alleged that PW1-Yathisha used to run Fair Price shop at Byaladalu Village, Kadur Taluk, for which accused persons have obstructed. At that time, accused 1 and

3 committed mischief by setting fire to kerosene of extent of 1052 litres and destroyed the kerosene and food-grains kept in the shop as well as properties kept in the house belonging to PW1-Yathisha and caused loss to the tune of Rs.20,000/-. Thereby, accused have committed the offences punishable under Sections 143, 147, 342, 323, 324, 504, 506, 436 and 427 read with Section 149 of Indian Penal Code.

6. After filing the charge-sheet, case was registered in CC No.276 of 2010. Thereafter, case was committed to the Court of Sessions which was registered as SC No.58 of 2010. In response to summons, accused appeared before the Court and were enlarged on bail.

7. The trial Court has framed charges for alleged offences, same were read over and explained to the accused. Having understood the same, accused pleaded not guilty and claimed to be tried.

8. To prove the guilt of the accused, in all, 14 witnesses were examined as PW1 to PW14, 26 documents were marked as Exhibits P1 to P26 and 5 material objects were marked as MOs1 to 5. On closure of prosecution side evidence, statements under Section 313 of Code of Criminal Procedure

were recorded. Accused have totally denied the evidence of prosecution witnesses, however, did not choose to lead any defence evidence on their behalf. During the course of cross-examination of prosecution witnesses, 21 documents were marked as Exhibits-D1 to D21 and 6 material objects were marked as MOs.1 to 6.

9. Having heard the arguments on both sides, the trial Court has convicted the accused and passed sentence against accused 1 to 5 to undergo simple imprisonment for a period of 3 years and to pay fine of Rs.10,000/- each for the offence under Section 436 Indian Penal Code. Further, accused were sentenced to undergo simple imprisonment for a period of one year for the offence under Section 324 read with Section 149 of Indian Penal Code. Further, to undergo simple imprisonment for a period of 6 months for the offences punishable under Sections 143, 147, 323, 504, 506, 342 and 427 read with Section 149 of Indian Penal Code. Being aggrieved by the impugned judgment of conviction and order on sentence, appellants/accused 1 to 5 have preferred this appeal.

Submissions on behalf of the accused:

10. Learned Senior Counsel Sri P.P. Hegde, appearing on behalf of Sri. Venkatesh Somareddi, Counsel for appellants, would submit that the impugned judgment of conviction and order on sentence is not sustainable neither in law nor on facts. The trial Court has not properly appreciated the prosecution evidence on record in legal perspective. The evidence of prosecution is intrinsically untrustworthy, contradictory and unreliable. The learned Sessions Judge has convicted the accused on the evidence of PWs1 & 2, who are the spouses and are interested witnesses. The learned Sessions Judge failed to consider the documents Exhibits D1 to D21 marked by the accused. PW1, who runs the fair price shop was not properly distributing the food grains to the card-holders of Byladalu village. Though the license to run the fair shop is cancelled, PW1 was distributing the food grains. Accused tried a lot to stop unlawful activities of PW1. They, on behalf of the villagers, filed application before the Tahshildar, before the DC and also before the Commissioner for Food and Civil Supplies. But the unlawful activities of PW1 along with PW2, did not stop. PW1 and PW2 know that these accused have played main role in cancellation of the distributor-ship licence of PW1, and just in

order to take revenge against these accused, PW1 and PW2 concocted the story and filed the complaint.

11. PW1, in his evidence has stated that accused No.1-Thimmaiah broke one of his teeth by hitting to his lower jaw. But in the statements of Doctors, PW8 and PW9, there is no evidence as to the same. PW1, in his evidence states that stock book is destroyed due to fire. This clearly shows that in order to safeguard himself and make the loss to the Government, he concocted the story. The evidence of prosecution is artificial and unbelievable. The learned Sessions Judge has not taken into consideration the contradictions, improvements and inherent improbabilities in the prosecution case.

12. PWs3 to 7 are the eye-witnesses. Except PW6, all others have turned hostile. His evidence is contradictory to the evidence of PWs1 and 2. The evidence of PWs1 & 2 are not consistent with the medical evidence. Further, the learned counsel has pointed out the omissions and contradictions in the evidence of material witnesses. He would submit that Exhibit D1, the letter issued by the Tahshildar reveals that the license of PW1-Yathisha was cancelled. The accused and other villagers have been protesting against the illegalities committed

by PW1 in the ration distribution. Exhibits D1 to D21 are produced by the defence. In the course of cross-examination, the date of incident is shown as 18th March, 2010. On 15.03.2010 Deputy Commissioner passed an order (Exhibit D3) suspending the licence of the fair price shop of PW1 and directed Tahasildar to make alternative arrangements to distribute the essential commodities.

13. On 18th March, 2010, the Tahshildar issued a consequential order (Exhibit D1) directing the Secretary of VSSN, Baanuru to prepare the stock found in the shop of PW1- B.T. Yathisha in the presence of the villagers and also to take alternative steps for distribution of ration to the card-holders. These proceedings were initiated based on the serious complaints by the villagers with respect to misuse of essential commodities meant for distribution to the card-holders by PW1. In fact, hundreds of villagers lodged the complaint on different occasions against the illegalities of PW1 in distribution of essential commodities to the card-holders.

14. On 23rd December, 2005 the Deputy Commissioner passed an order suspending the licence of PW1. Vide Exhibit D7, one more order was passed on 25th July, 2006 by the Deputy Commissioner, Chikkamagaluru District and as per

Exhibit D8, PW1 was directed to give a bond/undertaking not to repeat any such violations. But PW1 continued to misuse the essential commodities meant for supply to the card-holders and continued to sell the same illegally to third parties and was making unlawful gains. Hundreds of villagers again submitted a complaint dated 22nd September, 2009, and another complaint dated 23rd October, 2009 as per Exhibit D10 was also submitted to the Tahshildar by the villagers. The complaint dated 20th October, 2009 in Exhibit D11 contains serious allegations of misconduct and misuse of the essential commodities by PW1. The said complaint dated 20th October, 2009 is also signed by hundreds of villagers. Mahazar was also prepared by the Food Department on 13th October, 2009 in the presence of villagers as per Exhibit D13, showing serious discrepancies and illegalities committed by PW1.

15. The report dated 26.09.2009 was submitted by the Tahshildar of the Kadur Taluk to the Deputy Commissioner recommending the cancellation of licence of PW1. Exhibit D15- Notice was also issued by the Tahshildar to PW1 as to why his licence should not be cancelled. The Food Inspector submitted a written complaint dated 17th February, 2010 to the Station House Officer, Sakharayapatna Police Station to register a

criminal case against PW1 for indulging in fraudulent acts pertaining to the stock supplied to the Fair Price shop. Even lorry bearing registration No.KA-32/4950 which was used by PW1 for illegal sale of essential commodities, was seized on 17th February, 2010 by the Food Department as seen at Exhibit D17. The said lorry was seized in the presence of villagers by the Food Department as per mahazar-Exhibit D9. The stock in the Fair Price shop of PW1 was verified on 17th February, 2010 in the presence of villagers and serious illegalities were found in this regard and mahazar was drawn by officers of food department on 18th March, 2010.

16. Exhibit P2-mahazar is signed by PWs4 and 5 as per Exhibit P2(b) and (c). Both witnesses turned hostile and have not supported the case of the prosecution.

17. PW6 has deposed in his evidence that, the police rescued him when he was locked in the temple. The Investigating Officer has suppressed this fact and created the case against this accused stating that accused have assaulted PW1. Therefore, PW6 is not an eye-witness and his name is also not shown in the complaint. PW6 has not deposed anything as to the alleged assault to PW2. On all these grounds, it was sought for allowing this appeal.

Submission on behalf of respondent-State:

18. As against this, the learned High Court Government Pleader, Sri R.Rangaswamy appearing for respondent-State, would submit that the prosecution has produced sufficient materials to prove the guilt of the accused. Accordingly, trial Court has properly appreciated the evidence on record in proper perspective. Hence, he sought for dismissal of the appeal.

19. Having heard the arguments on both sides and on perusal of records, the following point would for my consideration:

"Whether the trial court is justified in convicting the accused for the offence punishable under Sections 143, 147, 323, 342, 324, 504, 506, 436 and 427 read with Section 149 of Indian Penal Code?"

20. I have examined the materials place before this court. The investigating officer has submitted charge-sheet against accused 1 to 5 for the offence punishable under Sections 143, 147, 323, 342, 324, 504, 506, 436 and 427 read with 149 of Indian Penal Code.

21. It is alleged by the prosecution that on 18th March, 2010, the investigating officer submitted charge-sheet against accused 1 to 5 for the aforesaid offences. It is alleged by the prosecution that, on 18th March, 2010 at 10:30 am in Byaladalu Village, Kadur Taluk the accused formed unlawful assembly and committed the offence of rioting. Accused No.1-Thimmaiah voluntarily caused hurt to the complainant by breaking a teeth of lower jaw of PW1 by punching him. Accused No.3-Lingaraju and accused No.4-Prakash caused simple hurt by assaulting the complainant on his body. Accused 1 and 3 also voluntarily caused hurt to PW2-Smt. Latha and caused bodily pain to her. Thereafter, accused 2 to 5 took PW1 from Fair Price shop and confined him in Kariyamma Temple by locking the door. Accused No.2-Venkatesh voluntarily caused hurt to PW1 with the help of club. Further, all the accused gave life threat to PWs1 and 2, and also abused them in filthy language.

22. The case of prosecution is that PW1-Yatisha used to run Fair Price shop at the said village for which these accused have obstructed. Accused 1 to 3 committed mischief by setting fire to kerosene to an extent of 1052 liters and destroyed the food grains kept in the shop as well as properties in the house

belonging to PW1 and caused loss to the tune of ₹20,000/- and thereby, committed aforesaid offences.

23. This case arise out of the complaint filed by PW1 as per Exhibit P1. In the complaint it is stated as under:

"ಈ ಮೂಲಕ ತಮ್ಮಲ್ಲಿ ನಿವೇದಿಸಿಕೊಳ್ಳುವುದೇನೆಂದರೆ ಈ ದಿನ ದಿನಾಂಕ 18.03.2010 ರಂದು ಬೆಳಿಗ್ಗೆ 8:30 ಗಂಟೆಯಲ್ಲಿ ನಾನು ನ್ಯಾಯ ಬೆಲೆ ಅಂಗಡಿಯಲ್ಲಿ ಗ್ರಾಹಕರಿಗೆ ಸೀಮೆಎಣ್ಣೆ ಕೊಡುತ್ತಿದ್ದಾಗ ನಮ್ಮ ಗ್ರಾಮದ ವಾಸಿಗಳಾದ (1) ಬಿ ಎಂ ತಿಮ್ಮಯ್ಯ, (2) ಬಿ ಜಿ ವೆಂಕಟೇಶ್, (3) ಲಿಂಗರಾಜು, (4) ಪ್ರಕಾಶ (5) ಕುಂಬಾರರ ಜನಾಂಗದ ವೆಂಕಟೇಶ್ ಇವರುಗಳು ನಮ್ಮ ಅಂಗಡಿಯ ಹತ್ತಿರ ಬಂದು ನನಗೆ ನೀನು ನ್ಯಾಯ ಬೆಲೆ ಅಂಗಡಿಯನ್ನು ಮುಚ್ಚಬೇಕು ಚಿಕ್ಕಮಗಳೂರು ಡಿಸಿ ಸಾಹೇಬರಿಂದ ನಮಗೆ ಅನುಮತಿ ದೊರಕಿದೆ ಇತ್ಯಾದಿಯಾಗಿ ಹೇಳಿದರು ಅದಕ್ಕೆ ನಾನು ನನಗೆ ಕಡೂರು ತಹಶೀಲ್ದಾರಿಂದಾಗಲಿ ಆಹಾರ ಪದಾರ್ಥದ ಅಧಿಕಾರಿಗಳಿಂದಾಗಲಿ ನನಗೆ ಆಜ್ಞೆ ಬಂದಿಲ್ಲ ನಾನು ಮುಚ್ಚುವುದಿಲ್ಲ ಎಂದು ಹೇಳಿದ್ದಕ್ಕೆ ತಿಮ್ಮಯ್ಯ ಎಂಬುವವನು ಕೈಯಿಂದ ಹಲ್ಲೆಗೆ ಗುದ್ದಿ ನೋವುಂಟು ಮಾಡಿದರು ಉಳಿದವರು ನನ್ನನ್ನು ಎಳೆದುಕೊಂಡು ಹೋಗಿ ಕರಿಯಮ್ಮ ದೇವಸ್ಥಾನದಲ್ಲಿ ಕೂಡಿಹಾಕಿದರು ಬಿ.ಜಿ ವೆಂಕಟೇಶ್ ರವರು ದೊಣ್ಣೆಯಿಂದ ಎಡ ಬುಜಕ್ಕೆ ಹೊಡೆದರು. ಲಿಂಗರಾಜು ಪ್ರಕಾಶ ಮತ್ತು ಕುಂಬಾರ ಜನಾಂಗದ ವೆಂಕಟೇಶ್ ರವರುಗಳು ಕೈಯಿಂದ ಮೈ ಕೈಗೆ ಗುದ್ದಿ ನೋವುಂಟು ಮಾಡಿದ್ದಲ್ಲದೆ ಅವಾಚ್ಯ ಶಬ್ದಗಳಿಂದ ಬೈದು ಕೊಲೆ ಮಾಡುತ್ತೇನೆ ಎಂದು ಪ್ರಾಣಬೆದರಿಕೆ ಹಾಕಿದರು ನಂತರ ಬಿ ಎಂ ತಿಮ್ಮಯ್ಯ ಮತ್ತು ಇವರ ತಮ್ಮ ಲಿಂಗರಾಜುರವರು ನಮ್ಮ ನ್ಯಾಯಬೆಲೆ ಅಂಗಡಿಗೆ ಬೆಂಕಿ ಹಚ್ಚಿ ಸುಟ್ಟು ಹಾಕಿರುತ್ತಾರೆ ಬೆಂಕಿ ತಡೆಯಲು ಬಂದ ನನ್ನ ಹೆಂಡತಿ ಶ್ರೀಮತಿ ಲತಾರವರಿಗೆ ಲಿಂಗರಾಜು ಮತ್ತು ತಿಮ್ಮಣ್ಣ ರವರು ಕೈಯಿಂದ ಹೊಡೆದು ಪ್ರಾಣ ಬೆದರಿಕೆ ಹಾಕಿರುತ್ತಾರೆ ಸದರಿ ಗಲಾಟೆಯು ನ್ಯಾಯಬೆಲೆ ಅಂಗಡಿಯನ್ನು ಮುಚ್ಚಿಸಬೇಕೆಂಬ ಉದ್ದೇಶದಿಂದ ಈ ಕೃತ್ಯ ಎಸಗಿರುತ್ತಾರೆ. ಆದ್ದರಿಂದ ಸದರಿ ಮೇಲ್ಕಂಡವರ ವಿರುದ್ಧ ಕಾನೂನು ರೀತಿಯ ಕ್ರಮ ಕೈಗೊಳ್ಳಬೇಕಾಗಿ ಕೋರಿಕೆ."

24. On the basis of the complaint, the Sub-Inspector of Police, Sakhrayapatna Police Station registered case in Crime No.32 of 2010 against accused 1 to 5 for alleged commission of offences and submitted First Information Report to the court.

25. With regard to the offence punishable under Section 143 and 147 read with 149 of Indian Penal Code is concerned, none of the prosecution witnesses have deposed in their evidence that all the accused, having common object, formed unlawful assembly, and in prosecution of the same, accused committed the offences. Though there is no evidence to prove the commission of offence under sections 143 and 147 read with 149 of Indian penal code, the trial Court has convicted the accused for said offences, which is not sustainable under law.

26. With regard to offence punishable under section 342 read with 149 of Indian Penal Code is concerned, in Exhibit P1-complaint, it is stated that the accused 1 to 5 came to the shop of PW1 and informed him to close the Fair Price shop, as they have obtained permission from the Deputy Commissioner Chikkamagaluru to which PW1 told that he has not received any order from the Tahsildar or from the Food Inspector to close the shop. Then the accused No.1-Thimmaiah punched him on his mouth and caused injury. Thereafter, all the

accused dragged him to Kariyamma temple and confined him in the temple by locking the door. B G Venkatesh gave blow to him with club on his left shoulder. Lingaraju, Prakash and Venkatesh gave blow to PW1 with their hands all over his body.

27. PW1 has deposed in his evidence as to the reasons for riot as stated in complaint-Exhibit P1. However, he has deposed in his evidence that accused No.1-Thimmaiah punched on his mouth, as a result, he has lost one tooth of his lower jaw. Accused No.2-Venkatesh gave blow to him with club on his left shoulder. When PW2-Latha came to rescue him, accused 1 to 5 caught hold of her tuft and assaulted her with their hands. Further, he has deposed that accused 1 to 5 dragged him on road to Kariyamma Temple and confined him in the said temple by locking the Door. PW1 has also deposed that accused No.1 has abused him stating "ಸೂಚಿಮಗನೇ ನಿನ್ನನ್ನು ಕೊಲೆ ಮಾಡುತ್ತೇನೆ".

28. PW2-Smt. Latha has deposed in her evidence as to the commencement of riot as stated by the PW1. In addition, she has deposed that accused No.1-Thimmaiah, accused No.3-Lingaraju caught hold of the collar of her husband and dragged him. Accused 1 to 3 gave blow to PW1 with their hands.

Accused No.3-Lingaraju has punched the mouth of her husband. As a result, a tooth of his lower jaw was broken. Thereafter, accused 1 to 5 dragged PW1 to Kariyamma Temple and confined him there by locking the door. PW2 has also deposed in her evidence that all the accused have abused PW1 in filthy language.

29. PW3-Smt. Sarojamma has deposed in her evidence as to the accused assaulting PW1 with their hands and accused number 1 to 5 dragging PW1 to Kariyamma Temple and confining him in the temple by locking the door. She has also deposed that accused have assaulted PW2. This witness was treated as partly hostile witness and was cross-examined by learned Public prosecutor.

30. PW4-Ravindra Nayaka, has not deposed anything against the accused as to the alleged assault and wrongful confinement of PW1 in Kariyamma Temple. He is treated as partly hostile witness. Even in the cross-examination by the Public Prosecutor, he has categorically denied the statement said to have been recorded by the police under Section 161 of Code of Criminal Procedure which is marked as Exhibit P11.

31. PW5-Girish Nayaka said to be the mahazar witness, has not fully supported the case of the prosecution.

32. PW6-Lakshman Nayaka has deposed in his evidence that accused No.1-Thimmaiah and accused No.3-Lingaraju assaulted PW1 with their hands and club. Accused have also dragged PW1 to Kariyamma Temple and confined him there by locking the door. Accused No.1-Thimmaiah, accused No.2-Venkatesh and accused No.3-Lingaraju has caught hold of tuft of PW2-Latha and dragged her.

33. PW7-Gangadharappa has not deposed anything against the accused and turned hostile. Even in the cross-examination made by the public prosecutor, he has categorically denied as to the statement said to have been recorded by the police under Section 161 of Code of Criminal Procedure, which is marked as PW13.

34. PW8-Dr. Usha has deposed in her evidence as to the medical examination and injuries sustained by PW1 as shown in Exhibit P14.

35. PW9-Dr. Manjunath has deposed in his evidence as to examination of PW2-Smt. Latha and having found the injuries as shown in the Exhibit P15-wound certificate.

36. PW10-M.V. Chandramurthy, Food Inspector, has deposed in his evidence as to issuance of Exhibit P25.

37. PW11-Javaraiah, FSTO, Fire station, Chikkamagaluru Town, has deposed in his evidence that on 18th March 2010 at 8:30 pm when he was in the Fire Station, he received message as to setting ablaze the Fair Price Shop of PW1 situated at Byaladalu. Then, along with staff, he proceeded in Fire Engine bearing Registration No.CAG-1738 and tried to extinguish the fire. He has deposed that the kerosene and the items kept in the shop were burnt due to fire.

38. PW12-Sri Byrappa, Grama Panchayat Secretary has deposed as to issuance of assessment extract pertaining to assessment No.140-141 of Byaladalu village as per Exhibits P16 and P17.

39. PW13-D.C. Doddappa Gowda and PW14-M. Vasantha Kumar, Police Sub-Inspector, have deposed as to their respective investigation. Police have also conducted spot mahazar near the Kariyamma temple.

40. With regard to offence under Section 324 read with 149 of Indian Penal Code is concerned, it is the case of the prosecution that accused-B.G Venkatesh gave blow to PW1 with

club on his left shoulder. The investigating officer has not seized the alleged club used for commission of offence. Even in the wound certificate-Exhibit P14 pertaining to injured, it is not disclosed that Venkatesh has assaulted PW1 with club. Investigating officer has not whispered anything as to the non-seizure of the club said to have been used by the accused. Therefore, there is no sufficient evidence to show that the accused have voluntarily caused simple hurt to PW1 by means of club. Accordingly, prosecution has failed to prove the offence under Section 324 read with Section 149 of Indian Penal Code.

41. With regard to offence under Section 323 read with 149 of Indian Penal Code is concerned, to prove the guilt of the accused, prosecution has relied on the evidence of PWs1 to 3 and also the wound certificate-Exhibit P14 issued by PW8-Dr. Usha. She has deposed in her evidence that on 18th March, 2010 at about 10:30 am, PW1 came to the hospital with the history of assault by Thimmaiah, Lingaraju, Prakash and Venkatesh and has examined the injured and found the following injuries:

- Tenderness over left shoulder;
- Abrasion over the lower back;
- Pain in left leg;
- Abrasion over left hand

42. The Doctor has opined that all the injuries are simple in nature. As per complaint-Exhibit P1, only accused No.1-Thimmaiah has punched PW1 with his hands on his mouth and caused pain. Accused Lingaraju, Prakash and Venkatesh also punched PW1 with their hands all over body. PW1 has not stated in the complaint as to the breakage of a tooth of his lower jaw due assault by the accused. For the first time before the court, PW1 has deposed that due to the assault made by accused No.1-Thimmaiah, one tooth of his lower jaw was broken. PW2-Latha, who is none other than the wife of PW1, has also deposed the same in her evidence for the first time before the court. Dr. Usha-PW8 has not whispered anything as to breakage of a tooth as deposed by PWs1 and 2. Even the wound certificate-Exhibit-P14 does not reveal as to the breakage of tooth.

43. With regard to injuries caused to PW2-Latha is concerned, prosecution has produced wound certificate issued by Dr Manjunath-PW9. The wound certificate issued by the Doctor as per Exhibit P15 reveals that she was admitted to hospital on 18th March, 2010 at 12:15 pm with the history of assault by Thimmaiah with bare hands, and she has sustained the following injuries:

Tenderness over both shoulders;
Tenderness over neck and chest;
Tenderness over back of scalp;
Tenderness on the back

Doctor has opined that all the injuries are simple in nature.

44. Except the interested testimonies of PWs 1 to 3, there is no corroborative evidence to substantiate the case of the prosecution. Even the evidence of PW1 is not consistent with the contents of Exhibit P1 and the medical evidence. Evidence of PW1 is also substantiated by other material witnesses. Admittedly, there is a dispute between the complainant and the accused. The trial court has elaborately discussed by referring the documents Exhibit D1 to D21. Since there is enmity between the accused and the complainant prior to the incident, it is not safe to believe the testimonies of PWs1 and 2 to convict the accused for the offence under Section 323 read with 149 of Indian Penal Code.

45. With regard to the injuries caused to PW2-Latha is concerned, in complaint-Exhibit P1 it stated that the accused Lingaraju and Thimmaiah assaulted PW2 with their hands. PW1 has deposed in his evidence that when PW2 came and

intervened to rescue him, accused 1 to 5 caught hold of her tuft and assaulted her with hands. PW2 has deposed in her evidence that CW3-Lingaraju caught hold of her tuft, kicked her, made her to fall and assaulted her with hand on her back and all over her body. She has not deposed anything against accused 1, 2, 4 and 5.

46. PW3-Sarojamma has deposed in her evidence that all the accused have assaulted PW2.

47. PW9-Dr. Manjunath has deposed that he has examined Smt. Latha who came to the hospital with history of assault by accused No.1-Thimmaiah and he has examined and found injuries as shown in Exhibit P15, wherein it is stated that injured came with history of assault by Thimmaiah and she has sustained tenderness over both shoulders, tenderness over neck and chest, tenderness over back and scalp and tenderness on the back. Doctor has opined that the injuries are simple in nature. Evidence of PWs1 to 3 is not consistent with the contents of complaint-Exhibit P1. The wound certificate and evidence of PW9-Dr. Manjunath is also not consistent to the contents of the complaint and evidence of PW2. Since there is no cogent, consistent, corroborative and clinching evidence before this court, the benefit of doubt shall go to the accused.

Accordingly, the prosecution has failed to prove the offence under Section 323 read with 149 of Indian Penal Code.

48. As regards to offence under Section 342 read with 149 of Indian Penal Code is concerned, it is stated in Exhibit P1-complaint that except Thimmaiah, other accused dragged PW1 to Kariyamma Temple and confined him in the Temple by locking the Door. PW1 has deposed that accused 1 to 5 dragged him to temple and confined him in the temple by locking the door. PWs2 and 3 have also deposed same. The evidence of PWs1 to 3 are not consistent to the contents of Exhibit P1. The wound certificate pertaining to PW1 reveals that injured has sustained tenderness over left shoulder, abrasion on the lower back, tenderness over left leg and abrasion over left hand. If really accused 1 to 5 had dragged PW1 from the place of incident till the Temple, he would have sustained abrasion all over the body. Whereas, the wound certificate reveals that he has sustained only abrasions on lower back and left hand. Therefore, the evidence of PWs1 to 3 appears to be exaggerated and cannot be believed.

49. With regard to offence under Sections 504 and 506 read with 149 of Indian Penal Code is concerned, there is

absolutely no evidence to constitute the offence under said sections.

50. With regard to offence punishable under sections 436 and 427 read with 149 of Indian Penal Code is concerned, the complaint-Exhibit P1 reveals that accused Thimmaiah and Lingaraju set fire to the Fair Price shop. PW1 has deposed in his evidence that accused 1 to 5 have set fire to his house where he had kept kerosene in a room. Further, he has deposed that he has informed this incident to his son-Naveen. But the name of Naveen is not forthcoming in the complaint. This evidence of PW1 reveals that PW1 was not present at the time of setting fire to fair shop. The name of Naveen, who is son of the complainant, is also not shown in the complaint. The investigating officer has not cited him as witness and also not examined by the prosecution for the reasons best known to the investigating officer and the prosecution. PW2 has deposed that accused No.1-Thimmaiah and accused No.3-Lingaraju set fire to the Fair Price shop. PW3-Sarojamma has deposed that she cannot say as to who has set fire to the Fair Price shop. This reveals that there is no consistency in evidence of PWs1 and 2 and also the contents of complaint-Exhibit P1. PW2 has admitted in her evidence that accused No.1 is her nephew and

he was convicted in SC No.76 of 2005 on the file of Fast Track Court, Bangalore for offence under Section 498A of Indian Penal Code and has preferred appeal before the High Court in Criminal appeal No.139 of 2006, which was allowed and accused No.1 was acquitted.

Conclusion:

51. As discussed above, there is enmity between the accused and the complaint regarding running of Fair Price Shop. In this regard, the trial court has clearly discussed the documents at Exhibits D1 to D21. For the foregoing reasons, it is not reasonable to convict the accused based on the witness of interested testimony PWs1 and 2 without any supporting evidence. Viewed from any angle, I do not find any cogent, convincing, clinching, corroborative, trustworthy or believable legal evidence to convict the accused for alleged offences. However, the trial court has convicted accused which is not sustainable under law. Accordingly, I answer the point that arose for consideration, in the negative.

52. In the result, I proceed to pass the following:

ORDER

- i) Appeal is allowed;

- ii) The judgment of conviction and order on sentence dated 30th November, 2013 passed in Sessions Case No.58 of 2010 by the I Addl. District & Sessions Judge, Chikkamagalur, is set aside;
- iii) Appellants/accused are acquitted of the offences punishable under Sections 143, 147, 323, 342, 324, 504, 506, 436 and 427 read with Section 149 of Indian Penal Code;
- iv) Bail bond of accused 1 to 5 shall stand cancelled;
- v) Fine amount if any deposited by the accused, shall be returned in accordance with law;

Registry to send the copy of this judgment along with trial court records to the concerned Court.

**Sd/-
(G BASAVARAJA)
JUDGE**

Inn