

Decision – Appeals of S.H. Ramakrishnappa and S.R. Nagesh dismissed. Conviction of S.H. Ramakrishnappa in S.C.No.146/2008 upheld, and acquittal of accused in S.C.No.239/2008 confirmed. [Para 32]

Representing Advocates:

For Petitioner: Sri Shankarappa

For Respondents: Sri K. Nageshwarappa (HCGP), Sri V. Rajanna

J U D G M E N T

CrI.A.No.978/2010 is by accused No.1 by name S.H.Ramakrishnappa, challenging his conviction and sentence for the offence punishable under Section 307 I.P.C, whereby he is sentenced to undergo rigorous imprisonment for a period of 5 years and pay fine of Rs.25,000/- in default undergo further imprisonment for a period of 2 years, in respect of Cr.No.111/2007

Rajanukunte P.S.

2. On the other hand, CrI.A.No.1183/2013 is filed by complainant by name S.R.Nagesh challenging the acquittal of accused Nos.1 to 3 for the offences punishable under Sections 323, 324, 506 r/w Section 34 I.P.C, arising out of Cr.No.112/2007 of Rajanukunte P.S.

3. Having regard to the fact that these two cases are arising out of incident dated 08.10.2007 and the complainant in Cr.No.111/2007 is the wife of accused No.3 in Cr.No.112/2007. Similarly, the complainant in Cr.No.112/2007 is the son of accused No.1 in Cr.No.111/2007. These two appeals are clubbed together and decided by a common order.

4. In Cr.No.111/2007, Smt.H.N. Shyamala filed a complaint alleging that on 08.10.2007, at 9.00 a.m her husband Lokesh was filling mud into the ditch near their house. Accused No.1 Ramakrishnappa's son i.e., accused No.2 Ravi came there and started obstructing the

filling of mud claiming that the said land belongs to them. Accused No.1 Ramakrishnappa assaulted Lokesh on his head and other parts of the body with the club, as a result of which he fell down unconscious. Accused No.2 Ravi kicked him with legs. When she cried for help, they left the place saying that it is enough for the day and gave threat to his life, if again he enter the land. Injured Lokesh was shifted to Sushrusha Hospital, Yelahanka and from there to M.S.Ramaiah Hospital. There is dispute between the family with regard to land in Sy.No.131/1 and it is the reason for the assault.

5. Based on the complaint, the concerned police registered the case in Cr.No.111/2007 against accused Nos.1 and 2 for the offences punishable under Sections 323, 324, 506, Section 34 I.P.C. During spot Mahazar, the club used for committing the offence was seized. The statement of witnesses and further statement of complainant was recorded implicating accused Nos.3 and 4. Second FIR was sent. Statement of injured Lokesh was also recorded. The Investigating Officer arrested accused No.3 and later on he was released on bail. The remaining accused secured anticipatory bail. After completing investigation, the police filed charge sheet against accused Nos.1 to 4 for the offence punishable under Sections 323, 307 r/w Section 34 I.P.C. After committal, it was registered in SC.No.146/2008.

6. So far as SC.No.239/2008 is concerned, one Nagesh, S/o Ramakrishnappa, who is accused No.1 in SC.No.146/2008 filed complaint on 09.10.2007, in respect of the same incident dated 08.10.2007, alleging that Lokesh, who is injured in Cr.No.111/2007 was filling mud in land Sy.No.131/1 and when Ramakrishnappa questioned him, the said Lokesh, Chanrayappa and Manoj assaulted him with hands and kicked with legs and

caused bleeding injuries. Manoj assaulted Ramakrishnappa with stones and they gave threat to his life. Complainant's cousin Ganesha and Manjunatha shifted Ramakrishnappa to the hospital.

7. Based on the said complaint, Rajanukunte police registered case in Cr.No.112/2007 for the offences punishable under Sections 323, 324, 506 r/w Section 34 I.P.C. During investigation, the Investigation Officer has visited the spot and through mahazar seized one club. He has recorded the statements of witnesses and also injured Ramakrishnappa. Accused Nos.1 to 3 secured bail. After completion of investigation, charge sheet is filed only against accused Nos.1 and 2 in CC.No.1290/2008. However, as per the order of the Prl.District and Sessions Judge, Bengaluru Rural District, the trial Court committed this case to the Court of Sessions, since it is an counter case. After committal, it was registered in SC.No.239/2008.

8. In SC.No.146/2008, on behalf of prosecution, 9 witnesses are examined as PW-1 to 9. Ex.P1 to 9 and MO.1 are marked.

9. During the course of their statement under Section 313 Cr.P.C, the accused have denied the incriminating evidence.

10. In fact the accused has led defence evidence by examining one witness as DW-1 one and accused No.1 has examined himself as DW-2. They have relied upon Ex.D1 to 9.

11. In SC.No.239/2008, on behalf of prosecution, PW-1 to 7 are examined. Ex.P1 to 4, MO-1 are marked.

12. During the course of their statement under Section 313 Cr.P.C accused have denied the incriminating evidence.

13. Accused No.2 Lokesh, who is the injured in the other case examined himself as DW-1 and Ex.D1 to 11 are marked.

14. After hearing arguments of both sides, on the same day through separate judgments and orders, the trial Court has acquitted the accused in SC.No.239/2008, holding that the prosecution has failed to bring home guilt to the accused. However, in SC.No.146/2008, though the trial Court acquitted accused Nos.2 to 4 of all the charges, it convicted accused No.1 for the offence punishable under Section 307 I.P.C and sentenced him to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.25,000/-, with default sentence.

15. Being aggrieved by the impugned judgment and order, accused No.1 has filed CrI.A.No.978/2010, contending that the order is capricious, vexatious, perverse and bad in law. It is very much against the principles of natural justice. It lacks proper and convincing reasons and suffers from perversity. The trial Court has erred in believing the evidence of PW-1 to 3 who are close relatives and interested person. Their evidence is full of contradictions. When accused Nos.2 to 4 are acquitted, based on the same evidence, the trial Court is not justified in convicting accused No.1. While PW-1 and 2 have stated that the clothes of PW-2 were not stained with blood, PW-8 who is the doctor has deposed that he has handed over blood stained clothes to the concerned police. But, no such blood stained clothes are seized by the police. However, the trial Court has not appreciated this aspect. Having

regard to the fact that the injured has not sustained bleeding injury, the trial Court has erred in convicting the accused for the offence punishable under Section 307 I.P.C. Viewed from any angle the order is not sustainable and prays to allow and set aside the judgment and order and acquit appellant/accused No.1.

16. So far as Crl.A.No.1183/2013 is concerned,, the complainant has contended that the impugned order is perverse and liable to be set aside. It is not supported by any valid and justifiable reasons. It is illegal, arbitrary, contrary to law and evidence placed on record. The evidence of PW-2 Ramakrishnappa clearly throw the case of the prosecution and it is corroborated by Ex.P4. His evidence is supported by other witnesses. There is also motive for the accused to assault Ramakrishnappa and prays to allow the appeal, convict the accused and sentence them accordingly.

17. So far as Crl.A.No.978/2010 is concerned, the learned counsel representing the complainant as well as the learned High Court Government Pleader supported the impugned judgment and order and prays for dismissal of the appeal.

18. So far as Crl.A.No.1183/2013 is concerned, learned counsel for accused submitted that on 08.10.2007, Ramakrishnappa and others assaulted injured Lokesh, as a result of which he fell down unconscious and regained conscious only after several days. In order to escape from the criminal liability, as an afterthought, a false complaint was filed against Lokesh and others. After examining the oral and documentary evidence placed on record, rightly the trial Court has

acquitted injured Lokesh and others and the impugned judgment and order does not call for interference and prays to dismiss the appeal.

19. Heard elaborate arguments of both sides and perused the record.

20. It is an undisputed fact that there is dispute between the parties with regard to land in Sy.No.131/1 of Sadahalli village. In SC.No.146/2008, during her cross examination, PW-1 who is the complainant and eye witness and the wife of injured Lokesh has admitted that accused persons are in possession of half of the said land. In this regard she has volunteered and stated that they are enjoying this said extent of land for the last 5–6 years, but prior to it, she and members of her family were enjoying the entire extent. It is also not in dispute that on 08.10.2007, Lokesh was getting the pits near his house filled with mud and it was objected to by Ramakrishnappa. In fact, it is also the case of Ramakrishnappa that when he objected Lokesh from filling the pits with mud, he was assaulted by Channarayappa, Lokesh and Manoj. Therefore, the motive for the incident is proved.

21. Now coming to the case of the prosecution in Cr.No.111/2007 (SC.No.146/2008), wherein accused No.1 Ramakrishnappa is convicted for assaulting Lokesh with the club with an intention of causing his death. During the course of her evidence, PW-1 H.N.Shyamala, the wife of injured Lokesh has deposed in unequivocal terms about the incident and stated that after Ramakrishnappa assaulted Lokesh with the club on his head, he fell down unconscious. On hearing her cries, the accused persons left the

place. In the complaint, the complainant has spoken to about the presence of accused No.1 Ramakrishnappa and his son i.e., accused No.2 Ravi. However, in her further statement, she has implicated the other two accused. Even the injured i.e, PW-2 Lokesh has deposed that in the background of civil dispute pending between them, on the date of incident accused No.1 Ramakrishnappa assaulted him with the club on his head, as a result of which he fell down and unconscious. The evidence of the injured and complainant prove the allegations that accused No.1 Ramakrishnappa assaulted Lokesh on his head with the club, as a result of which he fell unconscious. He was treated at the first instance at the Sushrusha Hospital and later at M.S.Ramaiah Hospital.

22. The evidence of PW-6 Dr.Kiran is to the effect that immediately after the incident, injured Lokesh was brought to Sushrusha Hospital and after first aid, he was shifted to M.S.Ramaiah Hospital. PW-8 Dr.Mali Manjunath has treated the injured at M.S.Ramaiah Hospital. His evidence prove the fact that injured Lokesh had sustained depressed fracture on left frontal region. The CT scan revealed left temporo extra-dural haematoma with extensive skull fracture. There was also right haemiparesis upper limb and lower limb, right facial upper motor neuron paresis and he has given opinion that the injuries are grievous in nature and are possible, if assaulted with MO-1 club.

23. However, he has admitted during cross examination that such injuries are possible if a person falls on a hard object when he was chased by somebody. During the cross examination of PW-1 and 2, the accused have taken a defence that injured Lokesh was assaulted by workers from Bihar which they have denied. Of course the defence has failed to prove that on the date of incident or at any other time he was

assaulted by some other persons and at that time he had sustained head injury. Consequently, the accused have taken false defence. On the other hand through the oral and documentary evidence placed on record, the prosecution has proved that on 08.10.2007, Lokesh was assaulted by accused No.1 with a club, as a result of which he sustained head injury and fell down unconscious.

24. One more ground urged by the accused is that during his cross-examination PW-8 Dr.Mali Manjunath has deposed that the clothes of injured Lokesh were blood stained and he has handed them over to the concerned police. He has also deposed that there are documents in the hospital to show that the blood stained clothes of injured were handed over to the police. During her cross-examination PW-1, H.N.Shyamala, who is the wife of injured has deposed that though her husband sustained head injury, his clothes were not stained with blood. In fact, the concerned police have not at all seized any blood stained clothes. PW-8 has also not produced any documents from the hospital to show that he has handed over blood stained clothes of injured to the concerned police. The evidence of PW-8 on this aspect is not supported by any documentary evidence.

25. Having regard to the fact that as a doctor, he attends several cases of injuries, it appears by mistaken notion he has deposed that he has handed over blood stained clothes of injured Lokesh to the police. In fact PW-8, who is the Investigating Officer has deposed that he could not seize the blood stained clothes of injured Lokesh, as they were removed by the hospital authorities. As Lokesh was unconscious for a long time and the Investigating Officer could not question him immediately, it appears he has not paid much attention as to whether the clothes of Lokesh were

blood stained requiring them to be seized. The blood stained clothes of injured by itself is not a substantial piece of evidence, though it would have been a supporting piece of evidence. In the light of the overwhelming evidence placed on record by the prosecution, this Court is of the considered opinion that the fact that the blood stained clothes of injured Lokesh were not seized by the Investigating Officer would not go to the root of the prosecution case.

26. The defence has also come up with a case that on the date of incident accused No.3 S.R. Nagesh worked at Auto Bilz India Limited and thereby to show that he was not present at the spot. DW-1 Venkatramana is examined to prove this fact. However, his cross-examination reveal that he is no longer working in the said company and in Ex.D2 and 3, the employee number is not forthcoming. There is also punching card system and there will be record to show the entry and exit of the concerned employees. He has also admitted that Ex.D2, which is Overall Equipment Efficiency report is not signed by the concerned. He has also admitted that Ex.D3 is not original and it is a true copy. Examination of his evidence indicate that the accused No.3 has made a futile attempt to show that at the time of incident, he was not present at the spot.

27. On the other hand, accused No.1 has given evidence with regard to the other case in which he was allegedly assaulted by injured Lokesh. The evidence placed on record clearly prove that after assault with the club, Lokesh fell down unconscious. He has regained consciousness only at the hospital on subsequent date.

Taking into consideration the oral and documentary evidence placed on record the trial Court has come to a correct conclusion that accused No.1 is guilty of offence punishable under Section 307 I.P.C.

28. So far as the involvement of other accused are concerned, the trial Court has rightly not accepted the case of prosecution that accused 3 and 4 were also present. As far as accused No.2 is concerned, there is no evidence about his involvement. Considering these facts, the trial Court has rightly acquitted accused Nos.2 to 4 and convicted accused No.1 only for the offence punishable under Section 307 I.P.C. This Court finds no justifiable grounds to interfere with the finding of trial Court. Consequently, the appeal filed by accused No.1 in CrI.A.No.978/2010 fails.

29. Now coming to the appeal filed by the complainant in respect of Cr.No.112/2007 (SC.No.239/2008), wherein the allegations are that accused No.4 Lokesh (who is injured in Cr.No.111/2007 and fell unconscious) and three others assaulted Ramakrishnappa in the incident dated 08.10.2007.

Complainant herein is S.R.Nagesh, who is as accused No.3 in Cr.No.111/2007, who claimed *elibi*. He has chosen to file the complaint on 09.10.2007 at 12.30 p.m. Admittedly, he is not an eye witness to the incident, wherein his father and others were assaulted. In the complaint as well as during the course of evidence of PW-1, it is stated that the incident took place in Sy.No.131/1 of Sadehalli village, but PW-3 Manjunath who is the witness to the spot mahazar has deposed that the place of incident is near the house of accused No.3 Lokesh which

is admittedly situated in Sy.No.131/3. In fact, according to the complainant in Cr.No.111/2007, the place of incident is Sy.No.131/3, which fact is established by the prosecution in the other case.

30. During the course of his evidence PW-2, Ramakrishnappa, who is accused in the other case has deposed that the incident took place in Sy.No.131/1 and accused No.1 Channarayappa and accused No.2 Manoj assaulted him with club and stone respectively. He has not deposed about accused No.3 Lokesh assaulting him.

Ex.P4 is the Injury certificate of PW-2, Ramakrishnappa. As per this document, he has suffered simple injuries. He has expressed ignorance as to who shifted him to the hospital. However, Ex.P4 which is the Injury Certificate state that injured came alone (Injured was sent by self.....Accompanied by self....). This falsifies the evidence of PW-1 S.R.Nagesh, that he and Ganesh took the injured Ramakrishnappa to the hospital. PW-7 Dr.Ramesh has deposed that Ramkrishnappa has suffered simple injuries. Looking to the injury suffered by PW-2 Ramakrishnappa, absolutely there was no impediment for him to file the complaint immediately. In fact, the learned jurisdictional Magistrate has received the FIR on 10.10.2007. This also creates doubt as to the bonafides of complaint filed against accused No.3 Lokesh and others, especially after a complaint was filed with regard to assault on accused No.3 Lokesh.

31. As rightly held by the trial Court, there is dispute between the parties in respect of land and Sy.No.131/1 of Sadenahalli, whereas the incident has taken place in Sy.No.131/3, in which the residential house of accused No.3 Lokesh is

situated. This fact goes to show that it is Ramakrishnappa and others who went to the land belonging to accused No.3 Lokesh and assaulted him. Only to escape from the legal liability, the son of Ramakrishnappa has chosen to file a complaint. Having regard to the fact that Lokesh fell down unconscious, there was no possibility of he assaulting Ramkrishnappa. Considering the oral and documentary evidence placed on record, the trial Court has come to a correct conclusion that prosecution has failed to prove the allegations against the accused persons in Cr.No.112/2007 and acquitted them. This Court finds no justifiable grounds to interfere with the said findings.

32. In the result, the appeal filed by compliment in CrI.A.No.1183/2013 also fails and accordingly it is liable to be dismissed. Hence, the following:

ORDER

- (i) CrI.A.No.978/2010 filed by accused No.1, challenging his conviction in S.C.No.146/2008 and CrI.A.No. 1183/2013, filed by complainant, challenging the acquittal of accused Nos.1 to 3 in S.C.No.239/2008 are dismissed.
- (ii) The judgment and order dated 13.09.2010 in SC.No.146/2008 and SC.No.239/2008 on the file of Fast Track Court-II, Bengaluru Rural District Bengaluru are confirmed.
- (iii) The Registry is directed to send back the trial Court records along with copy of this judgment forthwith.

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