



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 8<sup>TH</sup> DAY OF JANUARY, 2025**

**BEFORE**

**THE HON'BLE MR JUSTICE V SRISHANANDA**

**CRIMINAL APPEAL NO. 1782 OF 2023**

**BETWEEN:**

1. SRI. MADAN  
S/O KUMARA,  
AGED ABOUT 29 YEARS,  
R/AT BEHIND COURT,  
KUVEMPU NAGARA EXTENSION,  
CHANNARAYAPATNA TOWN,  
HASSAN DISTRICT-573 201.
2. SRI KUMARA @ KUMARACHR  
AGED ABOUT 57 YEARS,  
R/AT BEHIND COURT,  
KUVEMPU NAGARA EXTENSION,  
CHANNARAYAPATNA TOWN,  
HASSAN DISTRICT-573 201.
3. SMT LEELAVATHI  
W/O KUMARACAHAR,  
AGED ABOUT 52 YEARS,  
R/AT BEHIND COURT,  
KUVEMPU NAGARA EXTENSION,  
CHANNARAYAPATNA TOWN,  
HASSAN DISTRICT-573201.

... APPELLANTS

(BY SRI. SATHISHA D J., ADVOCATE)





**AND:**

1. STATE BY CHANNARAYAPATNA  
TOWN POLICE STATION  
CHANNARAYAPATNA,  
HASSAN DISTRICT-573 201  
REPRESENTED BY  
STATE PUBLIC PROSECUTOR  
HIGH COURT OF KARNATAKA  
BANGALORE - 560 001.

... RESPONDENT

(BY SRI. CHANNAPPA ERAPPA, HCGP)

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THIS CRL.A IS FILED U/S.374(2) OF CR.P.C., PRAYING  
TO SET ASIDE THE IMPUGNED JUDGMENT OF CONVICTION  
AND ORDER OF SENTENCE PASSED ON 16.01.2023 BY THE  
LEARNED 4<sup>TH</sup> ADDITIONAL DISTRICT AND SESSIONS JUDGE,  
HASSAN DISTRICT AT CHANNARAYAPATNA IN  
S.C.NO.177/2018 AND DIRECT THE ACQUITTAL OF THE  
APPELLANTS AND ETC.

THIS APPEAL COMING ON FOR ADMISSION THIS DAY,  
JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE V SRISHANANDA



**ORAL JUDGMENT**

Though the matter is listed for admission, by consent of learned counsel appearing for parties, the matter is taken up for final disposal.

The appellants are accused 1 to 3, who suffered an order of conviction for the offences punishable under Sections 341, 323, 324 and 504 read with Section 34 of IPC were sentenced as under:-

**ORDER ON SENTENCE**

*1. I have heard, Sri D.K.M., learned counsel for the accused Nos.1 to 3 and learned Public Prosecutor for State on sentence.*

*ii. Sri D.K.M., learned counsel for the accused Nos.1 to 3 submitted that it has clearly come in the evidence that there is a civil dispute with respect to the house property, wherein both accused family and complainant family residing. It has also come on record that in front portion the accused family residing and back portion of the house the complainant family was residing at the time of incident. With respect to said civil dispute some quarrel might have taken place. The accused persons are not the habitual offenders and there are no other cases pending against them. Accused No.1 is an unmarried, accused No.2 and 3 are husband and wife. The accused No.1 to 3 are the permanent residents of Kuvempu Nagara Extension in Channarayapatna Town and*



*having good name in the locality and if the accused persons are sent behind the Bars the entire family would be put great hardship. Considering all the aforesaid aspect of the matter, he seeks to award only nominal fine amount instead of any sentence of imprisonment by taking lenient view.*

*iii. On the other hand, learned Public Prosecutor for State has submitted that no doubt civil disputes are pending between the parties, but the accused persons have taken law into their own hand, picked up quarrel with the complainant family and assaulted complainant family. Further, the accused persons went to the Hospital, wherein complainant and her family admitted and made an attempt to assault son of complainant in the Hospital also. Taking into consideration of the above, the accused Nos.1 to 3 be convicted for the maximum punishment prescribed under the respective provisions.*

*iv. I have considered the entire case and also taken into consideration the submission made by counsel for accused Nos. 1 to 3 and learned counsel for the Public Prosecutor for the State.*

*v. The accused No.1 to 3 are convicted for the offences punishable U/s.341, 504, 323 and 324 r/w. Section 34 of I.P.C. It has come in the evidence, the accused persons when PW.2 was coming after finishing his work in front of house of accused, intercepted PW.2 and picked up quarrel. accused No.1 to 3 assaulted PW.2 with hands and stone (sic). Further, when PW.1 and 4 came for rescue of PW.2. accused No.1 to 3 assaulted PW.1, 2 and 4 with hands. Accused No.3 also bit PW.1 on her*



*left thumb and index finger. As could be seen from the evidence, no doubt a civil dispute is pending with respect to the house property between the accused family and complainant family. The accused family and complainant family are close relatives. The accused family accused complainant family are residing in the same house. The accused family residing in front portion of the house and complainant family was residing in the back portion of the house. Both family claiming ownership over the said house property. With respect to the said house property both family developed enmity against each other and present incident took place, case and counter cases are registered against each other.*

*vi. The sentence prescribed for the offence punishable Section 341 of Indian Penal Code is simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both. The punishment prescribed for the offence under Section 323 of Indian Penal Code is upto 01-year or with fine, which may extend to Rs.1,000/- or with both. The punishment provided under Section 324 is upto 03 years or with fine, or with both. The punishment provided under Section 504 of Indian Penal Code is upto 02-years or with fine or with both. Considering all the aforesaid attending circumstances, having regard to the gravity of the offences and keeping in mind the year of incident and taking into consideration of submission made by counsel for accused Nos.1 to 3, I find it is just and proper to sentence the accused Nos. 1 to 3 as under;*

ORDER

*The accused Nos.1 to 3 are sentenced to pay fine of Rs.500/- each (One thousand*



*rupees only) (sic) for the offence punishable under Section 341 r/w. 34 of Indian Penal Code. In default to pay fine amount, they shall undergo simple imprisonment for a period of 10 days.*

*The accused Nos. 1 to 3 are sentenced to pay fine of Rs.1,000/- each (One thousand rupees only) for the offence punishable under Section 323 r/w. 34 of Indian Penal Code. In default to pay fine amount, they shall undergo simple imprisonment for a period of one month.*

*The accused No.1 to 3 are sentenced to undergo simple imprisonment for a period of 6 (Six) months and to pay fine of Rs. 10,000/- each (Ten thousand rupees only) for the offence punishable under Section 324 r/w. 34 of Indian Penal Code. In default to pay fine amount, they shall undergo simple imprisonment for a period of two months.*

*The accused No.1 to 3 are sentenced to undergo simple imprisonment for a period of 3 (Three) months and to pay a fine of Rs.5,000/- each (Five thousand rupees only) for the offence punishable under Section 504 r/w. 34 of Indian Penal Code. In default to pay fine amount, they shall undergo simple imprisonment for a period of one to month.*

*On realization of fine amount, out of total fine amount of Rs.49,500/-, a sum of Rs.19,500/- shall be remitted to the State and Rs.10,000/- each is ordered to be released to PW.1- Nagarathna, PW.2 Lohith and PW.6-Bharath as compensation under Section 357 of Code of Criminal Procedure.*

*All the substantial sentences shall run concurrently.*



*M.O.1 to 4 are being worthless, hence, ordered to be destroyed, after appeal period is over or if an appeal is preferred, subject to the result of an appeal.*

*Furnish copy of the judgment and an order of sentence to accused Nos.1 to 3 free of cost forthwith."*

2. Being aggrieved by the same appellants have preferred the present appeal.

3. Facts in the nutshell for disposal of the above appeal are as under:

A crime came to be registered with Channarayapatna Town Police based on the MLC intimation received from Government Hospital, Channarayapatna. Thereafter, Station House Officer of Channarayapatna Town Police visited the Hospital and recorded the statement of one of the injured, viz., Smt.Nagarathna and based on her statement, a crime came to be registered by Channarayapatna Town Police, whereunder, it has been alleged that the husband of complainant died about 17 years earlier and thereafter she has been residing with her



children in Channarayapatna; there were some civil disputes with accused persons with regard to the property owned by the complainant. There were regular quarrels in that regard and when such being the position, on 02.04.2018 at about 9.30 p.m., when the complainant was standing in front of her house, the accused persons appeared there and intercepted the free movement of complainant's son Lohith, who was coming home after finishing the work and picked up a quarrel. When the complainant and her another son Bharath tried to interfere and pacify the incident, the accused persons abused them in filthy language and threatened them to vacate the house.

4. When the same was resisted, accused no.1 assaulted with a stone on the right hand and back of the complainant and when Lohith tried to rescue the complainant, at that juncture, accused no.1 assaulted Lohith with the same stone on his right neck and accused nos.3 and 4 also assaulted Lohith with hands, accused





No.3 bit the left thumb and index finger of Lohith and accused Nos.1 and 2 dragged the complainant and that in the process, the saree of complainant had also fallen off and at that time, when another son of complainant Bharath tried to rescue, accused nos.1 and 2 and 4 assaulted him with hands.

5. At that juncture, somebody intimated the Police and a Police Constable and Home guard reached the place of incident and on they arriving on the scene of offence, the quarrel was pacified and the injured persons were taken to the Government Hospital, Channarayapatna.

6. The Police, after registering the case conducted a detailed investigation, filed the chargesheet against the accused persons, including the abated accused no.4 for the offences punishable under Sections 341, 504, 307, 323, 324, 354(B) and 506 read with Section 34 of IPC.

7. On receipt of charge sheet, learned Trial Magistrate took cognizance and committed the matter to



the Sessions Court, as offence under Section 307 of IPC was exclusively triable by the Sessions Court.

8. Learned Sessions Judge secured the presence of accused persons and based on the material on record, framed the charges. The accused persons pleaded not guilty and therefore, trial was held in order to bring home the guilt of accused persons.

9. The Prosecution in all examined 12 witnesses as PW1 to PW12. Among them, PW1 is the complainant, who is injured and witnesses Lohith and Bharath being two other injured persons, spot mahazar witnesses, doctors who issued the wound certificates of injured persons Smt.Nagarathna, Lohith and Bharath and the Investigation Officer were examined.

10. The Prosecution placed on record 12 documentary evidence, which were exhibited and marked as Exhibits P.1 to P.12 comprising of complaint, statement under Section 164 of Cr.P.C., mahazar, wound certificates of injured witnesses, MLC intimation received by



Channarayapatna Town Police from the Government Hospital, Channarayapatna, Blood Grouping Certificate, FSL Report and statements of witnesses of Prosecution who have turned hostile to the case of prosecution.

11. Detailed cross-examination of prosecution witnesses, especially the injured witnesses and the complainant did not yield any positive material so as to disbelieve the case of Prosecution.

12. The wound certificates marked at Exhibits-P6, P7 and P8 pertaining to Lohith, Smt.Nagarathna and Bharath corroborated the oral testimony of Prosecution witnesses, so also the MLC intimation marked at Exhibit P.9 clearly indicated that in the incident that took place, the injured witnesses have suffered injuries on account of assault made by the accused persons.

13. Thereafter, the statements of accused as is contemplated under Section 313 Cr.P.C. were recorded by the learned Sessions Judge, wherein the accused persons have denied the incriminating evidence.



14. Accused No.3 Smt.Leelavathi was examined as DW1 and placed on record 9 documentary evidence which were exhibited and marked as Exhibits D1 to D9 comprising of Khatha of the property bearing No.31-501-75, Affidavit sworn before the Notary, photographs along with CD, certified copy of the order passed on the application filed under Order 39 Rule 1 and 2 of CPC in O.S.No.71/2012, certified copy of plaint in O.S.No.71/2012, written statement filed in O.S.No.71/2012, original summons issued in O.S.No.490/2021 and plaint in O.S.No.490/2021.

15. The gist of oral testimony of DW1 is only to the extent of establishing before the Court that there was civil dispute and the accused persons had the benefit of temporary injunction in O.S.No.71/2012.

16. Subsequent thereto, learned Sessions Judge, heard the parties in detail and on cumulative consideration of the material on record, convicted the accused for the offences as referred to supra and sentenced the accused



persons as referred to supra. The accused no.4 died during the pendency of sessions trial and therefore, case against accused no.4 stood abated.

17. Being aggrieved by the same, accused nos.1 to 3 are before this Court in this appeal.

18. Sri Sathisha D.J., learned counsel for the appellants reiterating the grounds urged in the appeal memorandum vehemently contended that the incident as is enunciated by the Prosecution did not occur at all and a trivial incident has been blown out of proportion by the complainant which has not been properly appreciated by the Investigation Agency and the learned Sessions Judge convicting the accused has resulted in miscarriage of justice and sought for allowing the appeal.

19. He also contended that the accused persons had the benefit of an order of injunction from the duly constituted Civil Court in O.S.No.71/2012 and certified copy of the said order is marked vide Exhibit D4 before the trial Court which has not been properly considered by the



learned Sessions Judge while passing the order of conviction and sought for allowing the of appeal.

20. He also emphasized that the accused persons did not commit any offence as is alleged against them and in the altercation that took place, when the complainant and her sons tried to violate the order of temporary injunction, fell down on the ground and some injuries might have been caused at that point of time which has not been properly appreciated by the learned Sessions Judge while passing the order of conviction resulting in the miscarriage of justice and therefore, sought for allowing the appeal.

21. Alternatively, Sri Sathisha also contended that in the event of this Court upholding the order of conviction, since the accused persons are not having any criminal antecedents, leniency may be shown or benefit of probation can be granted to the accused persons by enhancing the fine amount reasonably and hence, sought for allowing the appeal to that extent.



22. Per contra, Sri Channappa Erappa, learned High Court Government Pleader appearing on behalf of respondent No.1-State supports the impugned judgment.

23. He pointed out that, if an order of injunction is in favour of accused persons and same is violated, the accused persons were required to approach the Civil Court seeking an order against the complainant and her children for violation of the order of injunction. Merely having an order of injunction in their favour would not *ipso facto* grant licence for the accused persons to assault the complainant and her sons to assault complainant and her children. Therefore, the order of conviction passed by the learned Sessions Judge which is impugned in the present appeal needs no interference by this Court and therefore, sought for dismissal of the appeal.

24. Insofar as alternate submission is concerned, Sri Channappa Erappa contended that the complainant and her children have been assaulted by the accused persons mercilessly in an unprovoked incident, especially when the



complainant was standing in front of her house and therefore, no leniency can be shown.

25. Further, it is contended that, if any leniency is shown by this Court in this appeal, the same would encourage the appellants and similarly placed perpetrators of crime to commit such offences in future and therefore, sought for dismissal of the appeal.

26. Having heard the parties in detail, perused the material on record meticulously including the wound certificates. On such perusal of material on record, the following points would arise for consideration:-

*(i) Whether the Prosecution has successfully established all ingredients to attract the offence under Sections 341, 323, 324 and 504 read with Section 34 of IPC?*

*(ii) Whether the appellants make out a case that the impugned judgment is suffering from legal infirmity and perversity and thus calls for interference?*

*(iii) Whether the sentence is excessive?*





(iv) *What order?*

**In re. point Nos.(i) and (ii):-**

27. In the case on hand, the accused persons and complainant are known to each other, as they are parties to the civil proceedings in O.S.No.71/2012. Further, as per the case of Prosecution, when the complainant was standing outside her house on 02.04.2018 at about 9.30 p.m., accused persons restrained the complainant and her son Lohith who was returning from work place of their free movement and picked up a quarrel. At that juncture, accused no.1 assaulted with a stone on the right hand and back of the complainant and with the same stone, he attacked Lohith on his right neck. The stone which has been seized under mahazar has been marked on behalf of Prosecution as M.O.1.

28. When another son of complainant, Bharath tried to intervene and pacify the quarrel, other accused persons assaulted him with hands. It is also alleged that the



accused persons with an intention to outrage the modesty of complainant, pulled her saree which had fallen on the ground. During such incident, somebody intimated the Police, and a Police Constable and Home Guard arrived at the scene and the quarrel was stopped and the injured persons were shifted to Government Hospital, Channarayapatna.

29. The doctors who examined the injured persons in the Hospital intimated the incident to the Police through MLC report at Exhibit P9. Based on the MLC intimation as at Exhibit P9, Police reached the Hospital and enquired the complainant about the incident. The complainant has narrated the incident with graphic details which was reduced into writing. Based on the same, a crime came to be registered. Since accused no.1 had assaulted Lohith with stone on the neck region, the Police registered the case for offence punishable under Section 307 of IPC as well, apart from other offences. After thorough investigation, Police have filed the chargesheet.



30. As could be seen from the oral testimony of complainant and her two sons alongwith oral testimony of mahazar witnesses, whereunder, bloodstained shirt, T-shirt and blouse of the injured witnesses which are seized, have all supported the case of Prosecution in toto. Suggestion made to the prosecution witnesses that a false case has been foisted against accused persons, as the complainant and her children had violated the order of injunction passed in O.S.No.71/2012, has been denied. Mere marking of certified copy of the orders and plaint and other relevant documents pertaining to the pending civil proceeding between accused and complainant would not *ipso facto* make out a case for the accused persons to take law into their own hands and assault the complainant and her sons mercilessly. The incident having been reported immediately to the jurisdictional police through MLC report and based on the same, the Police having registered the crime, there is no delay in lodging the complaint, whereby the accused cannot maintain a stand that false case has been foisted against them.



31. All these factors have been viewed cumulatively by the learned Sessions Judge while appreciating the case of the parties. On cumulative consideration of the material on record, learned Sessions Judge himself was of the opinion that the ingredients required to attract offence under Section 307 of IPC was not made out so. So also for the offences under Section 354-B and 506 of IPC. Therefore, the learned Trial Judge acquitted the accused for offences under Sections 307, 354B and 506 of IPC.

32. State has not preferred any appeal against acquittal of accused persons for the aforesaid offences, so also the *de-facto* complainant or the victim. Therefore, as far as the State and complainant/victim are concerned, the order of acquittal for the offences punishable under Sections 307, 354-B and 506 of IPC have become final.

33. However, since the incident has been established by Prosecution by placing cogent and convincing evidence on record, learned Sessions Judge by thoroughly discussing the oral and documentary evidence



placed on record and the probative value thereon, was of the considered opinion that the incident having been established by the Prosecution would attract the offence punishable under Sections 341, 323, 324 and 504 read with Section 34 of IPC and convicted the appellants-accused for the aforesaid offences and sentenced as supra.

34. On re-appreciation of the material evidence on record, this Court is of the considered opinion that merely having an order of injunction in their favour would not *ipso facto* make out a case for the accused to pick up a quarrel voluntarily with the complainant and her two sons. Therefore, the ingredients to attract the offences punishable under Sections 341, 323, 324 and 504 of IPC has been made out by the prosecution by placing cogent and convincing evidence.

35. Abusing the complainant and her sons in a filthy language is deposed in detail by the injured witnesses and so also the theory of false implication has been not



established through oral evidence of DW1, who is accused No.3.

36. Mere production of documents marked at Exhibits D1 to D9 were not sufficient enough to consider the plea of self-defence. Therefore, conviction of appellants-accused for the aforesaid offences is just and proper in the attendant facts and circumstances of the case.

Therefore, point No.(i) is answered in the ***affirmative*** and Point No.(ii) in the ***negative***.

**In re. Point No.(iii):-**

37. Admittedly, there is a civil dispute between the complainant and the accused persons. There is no previous complaint even though complainant has stated that there were regular quarrels between the complainant and accused group.

38. In the absence of any criminal antecedents placed on record, the accused persons are to be treated as



first time offenders. Therefore, learned Sessions Judge was bound to consider the question of granting probation. While considering the decision on the order of sentence, learned Trial Judge did not assign any reason as to why the benefit under the Probation of Offenders Act, 1958, is to be denied to the accused persons, as they have been convicted for the first time.

39. It is settled principles of law and requires no emphasis that role assigned to a Trial Judge while passing an order of conviction is all together different from the role assigned to the very same Judge while passing appropriate sentence in a given case for the proved offences.

40. It is also settled principles of law that Courts are required to bear in mind that every sinner has a future and Courts are required to bear in mind that criminal justice system would hate the crime and not the criminal.

41. Keeping these aspects of the matter in the background when material on record is appreciated, since the incident has occurred at the spur of moment and



acquittal of accused persons for the offences punishable under Sections 307, 354-B and 506 of IPC have become final, this Court is of the considered opinion that enhancing the fine amount in a sum of Rs.20,000/- (rupees twenty thousand only) to each of the appellants for the offences punishable under Sections 341, 323, 324 and 504 read with Section 34 of IPC by setting aside the imprisonment ordered by the learned Sessions Judge would meet the ends of justice.

Accordingly, point No.(iii) is answered ***partly*** in the ***affirmative***.

**In re. point No.(iv)**

42. In view of the finding of this Court on point Nos.(i) to (iii) as hereinabove, following order is passed:-

- (a) Appeal is ***allowed in part;***
- (b) While maintaining conviction of accused persons for the offences punishable under Sections 341, 323, 324 and 504 read with Section 34 of IPC, sentence of imprisonment





ordered by the learned Trial Judge is hereby set aside by enhancing the fine amount in a sum of Rs.20,000/- (rupees twenty thousand only) for each of the appellants payable on or before **10.02.2025**, failing which, each of the appellants shall undergo a simple imprisonment for a period of nine months.

**Sd/-**  
**(V SRISHANANDA)**  
**JUDGE**

VGR