

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 07TH DAY OF JANUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE G BASAVARAJA

CRIMINAL APPEAL NO.241 OF 2014

BETWEEN:

1. H. K. HALES
S/O LATE HANUMANTHAPPA,
AGED ABOUT 46 YEARS,
R/O HULLUGARADIKERI,
PRESENTLY R/AT ARASIKERE ROAD,
VALMIKINAGAR, HARAPANAHALLI,
DAVANAGERE DISTRICT
PIN -570 001.
2. M.V. ANJINAPPA
S/O TUMMANAPPA,
AGED ABOUT 41 YEARS,
PRESENTLY R/AT ARASIKERE ROAD,
VALMIKINAGAR,
HARAPANAHALLI TOWN,
DAVANAGERE DISTRICT-577 001.
3. T. VENKATESH
S/O HUCHCHENGAMMA,
AGED ABOUT 44 YEARS,
R/O VALMIKINAGARA,
PRESENTLY R/AT ARASIKERE ROAD,
HARAPANAHALLI TOWN,
DAVANAGERE DISTRICT-577 001.
4. CHIKKERI BASAPPA
S/O URAPPA,
AGED 50 YEARS,
R/O VALMIKINAGARA,
PRESENTLY R/AT ARASIKERE ROAD,
HARAPANAHALLI TOWN,
DAVANAGERE DISTRICT-577 001.

5. D. ANJINAPPA
S/O DURUGADA HANUMAPPA,
AGED ABOUT 38 YEARS,
R/O GUDIKATTIKERI,
HARAPANAHALLI TOWN,
DAVANAGERE DISTRICT
PIN - 577001

...APPELLANTS

(BY SRI. C. H. JADHAV, SR. COUNSEL FOR
SMT. RASHMI JADHAV, ADV.)

AND:

STATE OF KARNATAKA
BY HARAPANAHALLI POLICE STATION
DAVANAGERE DISTRICT,
REPRESENTED BY
THE STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING,
BANGALORE – 560 001.

...RESPONDENT

(BY SRI. B. LAKSHMAN, HCGP)

THIS CRL.A. IS FILED U/S.374(2) CR.P.C PRAYING TO SET ASIDE THE JUDGMENT AND ORDER OF CONVICTION AND SENTENCE DATED 18.03.2014 PASSED BY THE PRL. SESSIONS JUDGE, AT DAVANAGERE IN S.C.NO.14/2011 - CONVICTING THE APPELLANTS/ACCUSED FOR THE OFFENCE P/U/S 147,323, R/W 149,353 R/W 149 OF IPC AND ACCUSED NO.3 FOR THE OFFENCE P/U/S 114 OF IPC AND ETC.,

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 27.11.2025 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 18th March, 2014 passed in SC No.14 of 2011 by the learned Principal Sessions Judge, Davanagere (for short "the trial Court").

2. For the sake of convenience, parties herein are referred to as per their status before the special court.

3. The brief facts leading to this appeal are that, the Sub-Inspector of Police (Law and Order) Harapanahalli Police Station laid a charge sheet against the accused Nos. 1 to 5 for the offences punishable under Section 143, 147, 504, 323, 114, 506, 307 and 353 read with 149 of Indian Penal Code.

4. It is alleged by the prosecution that on 17.02.2010 at about 12.55 p.m. in the noon, CW1- B.K. Srinivas Murthy was discharging his duty as Municipal Commissioner at Town Municipal Council, Harapanahalli and at that time, the accused formed into an unlawful assembly with an intention to commit offence and entered the chambers of CW1 in the Municipal Council Office and abused him with abusive words with

intention to provoke him to commit offence and further, they threatened him stating that they would kill him and assaulted him with hands and pressed his neck and tried to commit the murder. Accused persons prevented CW1 from discharging his official duties by assaulting him and threatening him. After the incident, CW1 went to Harapanahalli police station and lodged report regarding the incident. On the basis of said report, CW15, who was the Sub-Inspector of Police, Harapanahalli Police Station registered the case against the accused and visited the place of incident and interrogated the accused. After investigation, Investigating Officer submitted the charge-sheet against the accused for the alleged commission of alleged offences. After filing charge sheet, a case was registered in CC No.697 of 2010 and the case was committed to the Court of Session and the same was registered in SC No.14 of 2011. The accused appeared before the Sessions Court and enlarged on bail.

5. Upon hearing on charges, the trial Court has framed the charges for the aforesaid commission of aforesaid offences. The same was read over and explained to the accused. Having understood the same, accused pleaded not guilty and claimed to be tried.

6. To prove the guilt of the accused, the prosecution has examined 14 witnesses as P.Ws.1 to 14 and 19 documents were marked as Exhibits P1 to P19 and iron chair is marked as MO1. On closure of prosecution side evidence, Statement under Section 313 of Cr.P.C., was recorded. The accused have totally, denied the evidence of prosecution witnesses. However, they have not chosen to lead any defence evidence on their behalf.

7. Having heard the arguments on both sides, the trial Court has acquitted accused Nos. 1 to 5 for the offences under Sections 307, 504, 506 of IPC and accused Nos.1 to 5 are convicted for the offence under Section 147, 323 read with Section 149 Indian Penal Code and accused No. 3 is convicted for the offence under Section 114 of Indian Penal Code and the trial Court has passed the sentence against accused Nos. 1 to 5 to undergo simple imprisonment for 6 months for each offences under Section 147 and 323 of Indian Penal Code read with Section 149 of Indian Penal Code and Section 353 read with Section 149 of IPC and also to pay a fine of ₹500/- each for these offences.

8. Accused No. 3 is sentenced to undergo simple imprisonment for 6 months for the offence under Section 114 of Indian Penal Code and to pay a fine of ₹ 500/- and in

default of payment, he shall undergo simple imprisonment for three months.

9. Being aggrieved by the impugned judgment of conviction and order on sentence, the appellant Nos. 1 to 5 have preferred this appeal.

10. The learned Senior Counsel Sri. C.H.Jadhav appearing on behalf of Smt. Rashmi Jadhav for the appellants/accused would submit that the impugned judgment and order passed by the trial Court is contrary to law, evidence and material on record. The trial Court has not properly appreciated the evidence on record, which resulted in miscarriage of justice. There is no independent corroboration to the interested version of the complainant who is examined as PW10, who has a motive to falsely implicate the accused in lieu of the earlier case filed against him by accused No.2. The trial Court has failed to appreciate that earlier on the complaint of accused No.2, a case was registered against PW10 for committing offence under Sections 504, 355, 506, 307 of Indian Penal Code read with Section 3 (1)(x) of SC/ST (POA) Act, 1989 and therefore, he was nurturing ill-will against the accused since the other accused are the witnesses in the said case and supported the complainant therein.

11. The trial Court has rightly acquitted the accused of the offences punishable under Sections 307, 504, 506 of Indian Penal Code, holding that the prosecution has failed to prove the allegations leveled against them, ought to have seen that previous complaint was lodged making false allegation against the accused.

12. The PWs.1 to 8 are the officials of Harapanahalli Municipality who were said to be present in the office when earlier incident took place. All these material witnesses have not supported the case of prosecution.

13. The evidence of P.W.9-Doctor clearly discloses that the names of the accused were not stated by PW10 while giving the history, though the accused are familiar to him. On the other hand, P.W.10 has stated that he was assaulted by some persons which creates doubt about the involvement of the appellants. The panch witnesses-PWs11 and 12 to the mahazar-Ex.P11, have not supported the case of the prosecution.

14. All the appellants are sitting members of Town Municipal Council and were Government Servants. Even assuming that the accused have committed the alleged

offences, the same would be fall within the colour of exercise of power and consequently, in the absence of sanction, the prosecution instituted by PW10 was unsustainable in the law.

15. Though there is no cogent, convincing, trustworthy evidence, trial Court has failed to consider the same and convicted the accused, which is not sustainable under law and on all these grounds, sought to allow the appeal.

16. The learned High Court Government Pleader Sri. B. Lakshman, for respondent-State would submit that the trial Court has properly appreciated the material on record and passed the impugned judgment which is in accordance with law and facts and sought for dismissal of the appeal.

17. Having heard the arguments on both sides and on perusal of the materials placed before this Court, the following points would arise for my consideration:

1. Whether the trial Court has justified in convicting the accused Nos.1 to 5 for the offences punishable under Section 147, 323, 353 read with 149 Indian Penal Code and convicting accused No.3 for the offence under Section 114 of Indian Penal Code?
2. What order?

18. I have examined the materials placed before this court. Harapanahalli Police have submitted the charge-sheet against the accused for the offences under Section 143, 147, 504, 323, 114, 506, 307 and 353 read with 149 of Indian Penal Code.

19. The trial Court has acquitted the accused Nos.1 to 5 for the offences punishable under Section 307, 504 and 506 of Indian Penal Code, however, has convicted accused Nos.1 to 5 for the offence punishable under Section 147, 323, 353 read with 149 of Indian Penal Code; and accused No.3 is convicted for the offence under Section 114 of Indian Penal Code.

20. Before appreciation of evidence on record. It is relevant to mention here as to the essential ingredients to prove the offence under Section 147 of Indian Penal Code. The same reads as under:

"(b) Evidence by Prosecution: For a successful prosecution of a riot case the prosecution must prove:-

- i) that there were five or more persons;*
- ii) that they had a common purpose;*
- iii) that they had begun to execute such purpose;*
- iv) that they intended to help one another by force, if necessary;*

v) *that they had shown such degree of violence which would alarm at least one person of reasonable courage".*

21. To prove the offence under Section 323 read with 149 Indian Penal Code, the essential ingredients are as under:

- "(a) the victim suffered from bodily pain, disease or infirmity;*
- (b) that the accused caused the aforesaid bodily pain etc.;*
- (c) that the accused did so intentionally or with knowledge that in the process hurt would be caused."*

22. To prove the offence under Section 353 Indian Penal Code, the essential ingredients are as under:

"To bring home an offence under Section 353, I.P.C the prosecution is to prove the points (1) or (2) as in Section 352, I.P.C. The prosecution is to prove further

(3) the victim of assault or user of force was a public servant within the meaning of Section 21, I.P.C. (4) the assault or user of force was made on such police servant while he was executing his duty as a public servant;

or

(4) the assault or user of force was made with an intention to prevent or deter the public servant concerned from discharging his duty qua public servant,

or

(5) the assault or user of force was made in consequence of anything done or attempted to be done by the concerned public servant in discharge of his duty qua public servant".

23. This case arise out of the complaint filed by Sri B.K. Srinivasmurthy, Assistant Commissioner, Bengaluru, who was examined as PW10 and the complaint marked as per Exhibit P10. In Exhibit P10, it is stated as under:

"I hereby B.K. Srinivasa Murthy, presently Municipal Commissioner, Grade-II, Town Municipal Council, Harapanahalli was between 12.55 p.m. to 1.15 p.m. today at my chamber attacked by the Counsellor Halesh, Anjinappa, Venkatesh, Chikkeri Basappa and Anjinappa husband of Counsellor Shantamma on the issue of road building in the town, 18% scandal/ruckus created by these counsellors and earlier report by me to the DC on the above of the chief officer at the meeting.

Councilor Halesh held my hand and councillor Anjinappa held my neck tightly while Chikkeri Basappa lifted the chair (office) to hit, the other counsellor Venkatesh was inspiring the above to attempt murder in the office and injure the official on duty seriously. The Anjinappa husband of Councilor Shanthamma had held the legs of me tightly.

As soon as they entered the office they shouted like
ಎವ್ವು ಧಿಮಾಕು ನಿಸಗೆ ನಮ್ಮ ವಿರುದ್ಧವೇ ಹೋಟ್‌ನಲ್ಲಿ INN ಅಡಿಯಲ್ಲಿ ಸ್ವೇಚ್ಚಿನ

ಒಡ್ಡಂಬಾತದ್ದು ಬಗ್ಗೆ ಸಾಫ್ಟ್‌ಗಳನ್ನು ಒದಗಿಸುತ್ತಿರುತ್ತಾರು. ಪುರಸಭೆಯಲ್ಲಿ ಆಗುತ್ತಿರುವ ರನ್ನೆ ಅಗಲೀರಂಜಕ್ಕೆ ಪೆಲ್ಲಿನರೊಂದಿಗೆ, ಎ.ಸಿ. ರೊಂದಿಗೆ ಸೇರಿಕೊಂಡು ತೆರವು ಹಾಕಿದ್ದಿರುತ್ತಾರು. ನಾವು ಇಷ್ಟು ಇಷ್ಟು ವಾಳೆಗಾರಿಕೆ ಮಾಡುತ್ತಿರುತ್ತಾರೆ ಬಂದಿದ್ದಿವೀ. ನಮ್ಮ ವಾಳೆಗಾರಿಕೆಗೆ ತೊಂದರೆ ಮಾಡಿರುತ್ತಾರೆ ಎಂದು ಹೇಳುತ್ತಿರುತ್ತಾರೆ ಸುಗ್ರಿ ಈ ಮೇಲಿನ ಕ್ಷತ್ರ ಎನ್ನಿಂದಾರೆ.

Since we had anticipated this earlier we had requested for the police protection.

This act of them was done in the absence of the police protection on this day, while regarding the absence of police protection, I had called up the PSI requesting for the police protection.

During the happening, when with due all my strength the police intervened and tried to stop them people from attempt to murder. During the police presence, Anjinappa Counsellor had in front of the police over again lifted the chair to attack with Halesh, Chikkeri Basappa (not clear) him to throw the chair on me. PSI Mr. Sajjan, PC's were strongly (not clear) of the same.

The staff Mr. Nagraj, Mr. Uday Singh, Mr. Subbanna, Mr. Basavaraj, Mr. Lingaraju, Mr. Shivanand, Mr. Chidanand, Marigowda and other staff.

To protect myself from these attackers I had to push them in self defence to protect my life from the attempt to murder.

I hereby lodge an complaint against these counsellors on charge of attempt to murder, attack an officer on official duty, damages to public property

(Municipal property) and arrest these people for due proceedings, for if they left free may further endanger the life of me and staff.

Hence this F.I.R. and complaint lodged."

24. The complainant-PW10 B.K. Srinivasmurthy has deposed as to the contents of Exhibit P10.

25. According to the case of the prosecution, PW1-U.Nagaraja, PW2-M.Gurunatha, PW3-B.G.Shivananda, PW4-H.Subbanna, PW5-I.Basavaraja, PW6-Shaik Mehaboob, PW7-H.D.Lingaraja, PW8-Smt.Parimala Karamadi are the eye-witnesses to this incident. All these witnesses have not supported the case of the prosecution. The prosecution has treated all these witnesses as hostile witnesses, with the permission of the Court and cross-examined. In their cross-examination, all these witnesses were categorically denied the statement said to have been recorded by the Investigating Officer under Section 161 of Code of Criminal Procedure, which are marked as Exhibits P1 to P8. Accordingly, prosecution has failed to elicit any favourable answers from these material eye-witnesses.

26. PW9-Dr. K.M.N. Khan, who has treated the injured-PW10 has deposed that on 17.02.2010 one

B.K.Srinivas Murthy was brought to their hospital at 04.15 p.m with the history of assault. He enquired said B.K.Srinivasamurthy, he stated before him that he was assaulted by some person on that day at 01.00 p.m. On examination of the said person, he noticed the following injuries on his body:

1. Abrasion on the root of the left index finger and it was reddish in colour.
2. Pain and tenderness over neck.
3. Pain and tenderness over left shoulder joint.
4. Pain and tenderness over both ankle joints.

27. Further he has deposed that he treated the injured, in his opinion all the injuries found on the body of B.K.Srinivas Murthy were simple in nature. They were caused about 3 to 3½ hours, prior to examining him and he has issued the wound certificate as per Exhibit P9.

28. PW11-K.Rangaswamy, Auto driver and PW12-Althaf said to be the attestor to the spot mahazar Exhibit P11, have not supported to the case of the prosecution.

29. PW13-B.Prakash, Head constable has deposed in his evidence that he has written the spot mahazar as per Exhibit P11.

30. PW14-Mahanthesh E. Sajjan, Police Inspector has deposed as to the investigation conducted by him.

31. The trial Court has convicted the accused only on the sole interested testimony of PW10. Now the question would be, "Whether the trial Court was justified in convicting the accused without cogent or corroborative evidence? In this regard, as already discussed above, all the material witnesses-PW1 to PW8 have not supported the case of the prosecution. Even in their cross-examination the prosecution has failed to elicit any favourable answers from them to substantiate the case of the prosecution.

32. PW10 who was examined after the evidence of all the witnesses, has not whispered anything against PW1 to PW8, who have not supported the case of the prosecution. The reasons for not supporting PW1 to PW8 are not explained by the prosecution through PW10 or from the mouth of PW1 to PW8. During the course of cross-examination of PW10, it is elicited that accused No.2 had given a complaint to police on the date of incident alleging that PW10 had abused him by referring his caste. He also admitted that the case was registered against PW10 in this regard.

33. The appellant counsel has produced the memo along with copy of the FIR No.24/2010, which reveals that M.V.Anjinappa, who is accused No. 2 in this case has filed a complaint against the present complainant/B.K.Srinivas Murthy-PW10. On the basis of this complaint, case was registered by the Harapanahalli Police in Crime No. 24/2010 for the offence under Section 504, 355, 506, 307 of Indian Penal Code read with Section 3(1)(x) of SC/ST (POA) Act, 1989 which reveals that on the date of incident i.e., 17.02.2010 at 12.30 p.m the complainant and his friends i.e., other appellants and others being members of Municipality have enquired as to calling general body meeting. Then PW10 has abused them in filthy language by referring their caste threatened to their life and also attempt to commit murder by stabbing them with knife on the abdomen.

34. PW10 has suppressed this alleged incident in the complaint. Even in his examination-in-chief, he has not whispered as to the registration of the case against him in Crime No.24/2010. Only during the course of cross-examination he has admitted as to the complaint filed by accused No.2-M.V. Anjinappa against him for the aforesaid alleged commission of offences. Apart from this, admittedly he

has stated in Exhibit P10, the alleged clash took place when these accused have questioned, issue of widening of road in the Town, 18% scandal by these Councilors and earlier reported to the Deputy Commissioner on above Chief Officer in a meeting. But the Investigating Officer has not collected any materials in this regard. Even the Investigating Officer has not whispered anything as to the non-production of these material documents regarding widening of road and 18% of scandal as shown in the complaint. Even during the course of trial also, the prosecution has not taken any steps to produce the relevant documents before the Court to substantiate the case of the prosecution. Since there is a case and counter case between the parties, it is quite natural that PW10 being an interested witness has deposed against the accused, in such circumstances, the evidence of PW10-interested witness, requires corroboration. Unfortunately, PW1 to PW8, who are working in the office of PW10, have not supported the case of the prosecution. Additionally, the Investigating Officer has not collected any materials as to the reason for this alleged clash. Additionally, the evidence of PW9-Doctor clearly disclose that, the names of the accused persons were not stated by PW10, while giving the history, though the accused are familiar to PW10.

35. On the other hand, PW10 has stated before the doctor that, he was assaulted by some persons, which creates doubt about the involvement of the appellants in the alleged incident. During the course of examination-in-chief, PW1 has stated that after seeing the police, accused No.4 put down the chair which he was holding. Further, he has admitted that the Sub-Inspector of Police, Harapanahalli Police Station came to his chamber along with other constables while the incident was going on. Afterwards, it appears police have taken the accused to the station. Immediately, he also went to the Harapanahalli Police Station and gave written complaint regarding the incident. This fact is not disclosed in the complaint-Exhibit P10. If really the alleged incident took place as alleged by the prosecution, the concerned Sub-Inspector of Police, who was present on spot at the time of alleged incident, would have registered the case suo-motu, as the alleged offences are cognizable in nature.

36. The Investigating Officer, PW14- Mahanthesh.E.Sajjan, who was working as a Sub-Inspector of Police by that time, has not whispered in his evidence that he had visited the spot at the time of clash. PW14-Investigating Officer has suppressed the material facts. PW10 also

suppressed the fact, while filing complaint that the Sub-Inspector of Police was present at the time of incident.

37. With regard to the mahazar is concerned. It is the case of the prosecution that accused No.4 has tried to assault PW10 with chair. But, same is not disclosed in Exhibit P10. In the complaint and also the evidence, have deposed that police were present. PW10 has not deposed the same in his evidence. He has deposed that the complainant came to the police station and on receiving the complaint he has registered the case. Accordingly, the Investigating Officer has suppressed the fact.

38. The chair is marked as MO.1. In the mahazar, the chair is seized by the police under Mahazar-Exhibit P11. This mahazar was conducted by the police on 17.02.2010. PW14-Investigating Officer has deposed in his evidence that at the time of conducting mahazar, MO.1 was seized. However, Investigating Officer has not deposed on which date he has inserted the same in property register. The Investigating Officer has produced the property Form at PF No.9 of 2010. But this PF was not submitted to the Court on the same day or even on the next day. The PF was submitted to the Court only on 11th March, 2010. The delay in submitting PF before the Court has not been explained by the prosecution. After seizure of this MO.

1 from 17.02.2010 till 11.03.2010, the Investigating Officer has retained the same without the order of the Court as required under Section 102 of Code of Criminal Procedure. Therefore, the seizure of this chair and the mahazar, the contents of the mahazar which is not supported by the panch witnesses will create doubt as to the seizure of chair as well as the contents of the mahazar.

39. Viewed from any angle, I do not find any cogent, consistent, corroborative, trustworthy evidence placed before the Court. Though there is no trustworthy evidence before the Court, the trial Court has convicted the accused only on the basis of sole interested testimony of PW10, which is not sustainable under law. Hence, the trial Court is not justified in convicting the accused for the commission of offence under Section 147, 323, 353 read with 149 of Indian Penal Code.

40. The prosecution has failed to prove the aforesaid essential evidence to prove the guilt of the accused for the aforesaid offences. Hence, I answer point No.1 in the Negative.

Regarding Point No.2:

41. For the aforesated reasons and discussion, I proceed to pass the following:

ORDER

- i) Appeal is allowed.
- ii) The judgment of conviction and order on sentence passed by the Principal Sessions Judge, Davanagere in SC No.14 of 2011 dated 18th March, 2014, is set aside.
- iii) Appellant/accused No.1 to 5 are acquitted for the offence under Section 147, 323, 353, 114 read with Section 149 of Indian Penal Code.
- iv) The fine amount, if any, deposited by the accused shall be returned to them in accordance with law.
- v) Registry is directed to send the copy of the order along with TCR to the concerned Court.

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

Inn/JS