

IN THE HIGH COURT OF KARNATAKA

CIRCUIT BENCH AT DHARWAD

DATED THIS THE 21ST DAY OF JUNE, 2010

BEFORE

THE HON'BLE MR.JUSTICE JAWAD RAHIM

CRIMINAL REVISION PETITION NO. 2276/2009

BETWEEN:

NINGAPPA,
MANNIKERI VILLAGE,
BILAGI TALUK,
DISTRICT: BAGALKOT.

... PETITIONER

(BY SRI. SANTOSH B. MANE, ADV.,)

AND:

1. GANGADAR BASAPPA JAINAPUR,
AGED ABOUT 27 YEARS,
2. YELLAPPA GANGADHAR JAINAPUR,
AGED ABOUT 27 YEARS,
3. SURESH GANGADHR JAINAPUR,
AGED ABOUT 20 YEARS,
4. SARAWATHI W/O. YELLAPPA JAINAPUR,
AGED ABOUT 20 YEARS,
ALL ARE RESIDENTS OF
MANNIKERI VILLAGE,
BILAGI TALUK,
DIST: BAGALKOT.



5. THE STATE OF KARNATAKA,
THROUGH THE A.S.I.
BILAGI POLICE STATION,
BILAGI,
DIST: BAGALKOT.

... RESPONDENTS

(BY SRI. V.S. KULKARNI, HCGP)

THIS CRIMINAL PETITION IS FILED U/S 397 R/W
401 CR.P.C. PRAYING TO SET ASIDE THE ORDER DATED
12.9.2008 PASSED IN CRL.APPEAL NO.5/2008 BY THE
LEARNED SESSIONS JUDGE, BAGALKOT AND TO CONFIRM
THE ORDER DATED 20.12.2007 PASSED IN
C.C.NO.221/2006 BY THE TRIAL COURT.

THIS PETITION COMING ON FOR ORDER DICTATING
ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

This is Complainant's revision under Section 397 of
Cr.P.C. against the Judgment in Crl.A. No.5/2008 on the file
of the learned Sessions Judge acquitting the respondents for
the offence punishable under Section 326 of IPC and also
recording quantum of sentence imposed.

2. Heard the learned counsel for petitioner and the
respondents.



3. The material allegations on the basis of which the respondents were arraigned, tried and found guilty are:

Petitioner - Ningappa lodged a report alleging at 12.00AM on 05.07.2006 while he was on lands in RS No. 165/2003 of Mannikeri Village respondents formed into an unlawful assembly to prevent him out of the lands and to cause grievous hurt. They committed rioting armed with deadly weapon and assaulted him. He further averred initially the respondent No.1 - Gangadar Basappa Jainapur and others indulged in verbal abuse and then the respondent No.1 inflicted grievous injuries on his right fist with club where he already had injury. The respondent No.2 - Yellappa Gangadhar Jainapur assaulted him on the head while respondent No. 3 - Suresh Gangadhar Jainapur also assaulted him on the thigh resulting in fracture of the cuboid bone. When his wife came to rescue Respondent No.4 - Saraswathi assaulted her causing injuries. The report was registered for the offence punishable under Section 323, 326, 447, 504 read with Section 34 of IPC



and during the course of investigation the Investigating Officer visited the place of occurrence and prepared spot mahazar vide Ex.P3 and sent the injured to the hospital, where they were examined by PW8-Dr. Jayashree. After obtaining wound certificate and recording statement of several witnesses final report is filed.

4. The respondents were arrested and put to trial. They pleaded not guilty.

5. To sustain the charge the prosecution examined in all 9 witnesses and relied on six documents and 4 material objects.

6. The accused put up defence of denial simplicitor, which was not accepted. The trial Court found no incriminating material against accused No.1 to 3 for the offence punishable under Section 447, 504 r/w 34 of IPC and acquitted them. However, they were convicted for the offence punishable under Section 324, 326 of IPC. As regards respondent No.4 is concerned she has been acquitted



of the charges for the offence punishable under Section 447, 504, 326 of IPC. She was found guilty only for the offence punishable under Section 323 of IPC.

7. The respondents questioned their conviction in Crl.A. No.5/2008. Though they reiterated plea of innocence, the learned Sessions Judge found no favour with such plea and confirmed the finding of the trial Court that they caused injuries to the person of the Complainant PW1-Ningappa and his wife PW2-Mahadevi. However, the learned appellate Judge found the offence would not fall within the mischief of Section 326 of IPC as the object used for the assault was not a dangerous weapon. Thus, the learned appellate Judge scalled down the conviction of the respondents 1 to 3 from Section 324 & 326 of IPC to Section 325 of IPC only. On this basis the learned appellate Judge opined the sentence of imprisonment was not justified and hence imposed upon them only sentence of fine of Rs.5,000/- each. As regards respondent No.4 is concerned her conviction for the offence



punishable under Section 323 of IPC is confirmed, imposing fine of Rs.1,000/- only with default sentence.

8. The Complainant is in this revision questioning such order in the appeal.

9. The learned counsel for petitioners would submit the learned appellate Judge has erroneously and unjustifiably converted the offence from Section 326 of IPC to Section 325 of IPC, despite proof that the respondent No.1 to 4 are guilty of causing grievous injuries to the person of PW1-Ningappa (Complainant) and his wife. He submits even if it is accepted that the offence false within mischief of Section 325 of IPC, non imposing of sentence of imprisonment is failure of justice. Thus, he seeks reversal of the Judgment in appeal to confirm the finding of guilt and the sentence passed by the learned trial Judge.

10. Per contra, the learned counsel for respondents would submit accused are not guilty of the offence as alleged against them and therefore, they should be acquitted.



11. At this stage the question would arise is as to whether the accused could seek acquittal in revision under Section 397 of Cr.P.C. filed by the Complainant against inadequacy of the sentence imposed? The answer is obviously in the negative.

12. The conspectus of Cr.P.C. would show if the accused had not questioned his conviction as permissible under Section 374 of Cr.P.C., yet he can seek acquittal if the State Government is in appeal to the High Court against any Judgment and order passed by any other court subordinate to High Court against sentence on the ground of its inadequacy. In such appeal no order is permissible except after giving to the accused reasonable opportunity of being heard against such order and while showing cause the accused may plead for his acquittal or for rejection of sentence. Therefore, to seek relief of acquittal the accused must satisfy the court that appeal under consideration is by the State Government filed under Section 377 of Cr.P.C. Such a relief is not available to the accused if in revision filed



by the Complainant seeking enhancement of sentence invoking Section 397 of Cr.P.C. as in this case. Therefore, the grounds urged by and on behalf of the respondents seeking acquittal does not arise for consideration in this revision. In the result I proceed to consider the grounds urged by the Complainant against the impugned order passed by the learned appellate Judge.

13. The reasoning assigned by the learned appellate Judge would show that he has re-appraised the evidence on record and found that the object used in the assault on PW1-Ningappa and his wife PW2-Mahadevi, was only a club. In fact, he had noticed some of the witnesses state that Complainant and his wife were assaulted by sticks, whereas the Complainant is alleged he used club. The question is whether club comes within the category of dangerous weapon.

14. The learned appellate Judge found from the veracity of the prosecution witnesses, viz., PW1-Ningappa, PW2-Mahadevi and PW4-Channabasappa Mallappa Chabbi,



PW5-Yallappa Shankarappa Nayanegali and PW7-Sangappa Yallappa Kavadi, the respondents herein acted in concert to cause injuries to the person of the victims. He held the prosecution has established through medical evidence of PW8-Dr. Jayashri Mahantappa Yammi, the victim has suffered fracture of right fore arm at middle 2/3rd on radius and dislocation with comminuted fracture on lower end of right fibula and click fracture of cuboid bone. The learned appellate Judge therefore, discounted all contentions of the respondents that the injuries suffered by the victims were not grievous in nature.

15. However, the learned appellate Judge opined that though evidence on record brings nexus between the acts of the respondents and the injuries caused to the person of PW1-Ningappa, the object used for assault by Respondents 1 to 3 was a club which is not a dangerous object referred to in provisions of Section 326 of IPC. Therefore, he held that material objects MO1 to 3 being not dangerous objects, the respondents 1 to 3 cannot be convicted for the offence



punishable under Section 326 of IPC. However, as the Complainant had suffered grievous injuries the offence would be brought within the mischief of Section 325 of IPC.

16. To scale down the offence from Section 326 of IPC to Section 325 of IPC the learned appellate Judge has referred to the provisions of Section 326 of IPC, which spells out 'whoever voluntarily causes grievous hurt by means of any instruments for shooting, stabbing or cutting or any instrument which used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.'

17. It is evident that though the learned appellate Judge had referred to ingredients which constitute the



offence punishable under Section 326 of IPC has mislead himself in belief that club will not come in the category of instruments referred to in Section 326 of IPC. Such an opinion is hardly sustainable. The learned appellate Judge undoubtedly has ignored words appearing mentioned therein, viz., '**..any instrument which used as weapon of offence, is likely to cause death**' This reference in Section 326 of IPC includes a club, which is capable of causing grievous hurt resulting in death. Therefore, the conclusion of the learned appellate Judge club will not be a type of instrument referred to in Section 326 of IPC is incorrect.

18. In fact, the learned appellate Judge should have taken note of the fact that clubs produced during trial marked as MO1 to 3 are capable of causing grievous injuries resulting in death. The learned appellate Judge has further ignored the fact that accused No.1 to 3 had indulged in physical assault resulting in fracture of five bones of the body of PW1. Therefore, on the basis of evidence sufficient



material was brought on record inculcating the accused No.1 to 3 (respondents 1 to 3) for the charge under Section 326 of IPC. Therefore, the order of the learned appellate Judge scaling down the offence from Section 326 of IPC to Section 325 of IPC is hereby reversed and the finding recorded by the learned trial Judge is restored.

19. As regard quantum of sentence it is seen the learned appellate Judge has further ignored the grievous nature of injuries caused to the person of PW1-Ningappa and dispensed with period of imprisonment imposed on them by the learned trial Judge. In fact, the learned trial Judge himself was very liberal in sentencing the respondents 1 to 3 to a period of six months imprisonment with fine of Rs.1,000/- each.

20. In the circumstance, I am inclined to accept the grounds in the revision against the Judgment of the learned appellate Judge. Taking into consideration the nature of injuries caused and the felonious propensity in the overt acts of the respondents 1 to 3, they are sentenced to undergo



imprisonment for a period of three months and to pay a fine of Rs.5,000/- each with default sentence of one month imprisonment. As regards respondent No.4 is concerned she is sentenced to pay fine of Rs.1,000/- in default to undergo imprisonment for a period of one month, is confirmed. The revision is allowed in terms of this order. Respondents 1 to 3 are directed to surrender before the trial Court to undergo sentence.

Sd/-
JUDGE

BS*
VK