TITLE SHEET FOR JUDGMENTS IN SESSIONS CASES

IN THE COURT OF THE PRINCIPAL DISTRICT AND SESSIONS JUDGE AT MYSURU

Dated this the 9th day of February, 2021

PRESENT

Sri. Ramachandra D. Huddar, ***B.Com., LL.M.***,
Prl. District & Sessions Judge,
Mysuru.

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SESSIONS CASE No.272/2017

Complainant: State by Nanjangudu Rural Police Station

Vs.

Accused:

1. Natesha S/o Basavaraju, aged about 29 years, R/at 4th Cross, Shankarapura, Nanjanagud Taluk, Mysuru District.

2. Dhanaraj S/o late Basavaraju, Aged about 24 years, R/at 2nd Cross, Shankarapura, Nanjanagud Taluk, Mysuru District.

3. Kumar S/o Mahadeva, Aged about 23 years, R/at 2nd Cross, Ramamandira Road, Shankarapura, Nanjanagud Taluk, Mysuru District.

4. Nanjappa S/o late Nanjaiah, Aged about 25 years, R/at 2nd Cross, Shankarapura, Nanjanagud Taluk, Mysuru District.

5. Devaraju S/o late Kalaiah, Aged about 26 years, R/at Shankarapura, Nanjanagud Taluk, Mysuru District.

6. Murthy @ Katle S/o late Dasi, Aged about 28 years, R/at 3rd Cross, Shankarapura, Nanjanagud Taluk, Mysuru District.

7. Krishna @ Sudhakara Juttu Nalli S/o Nanjundaiah, Aged about 30 years, R/at Shankarapura, Nanjanagud Taluk, Mysuru District.

8. Manju S/o Nanjundaiah, Aged about 25 years, R/at #4457, 4th Cross, Shankarapura, Nanjanagud Taluk, Mysuru District.

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Date of offence	:	18.12.2016
Date of report of offence	:	19.12.2016
Name of the Complainant	:	Deepak
Date of commencing of evidence	:	01.08.2019
Date of closing of evidence	:	18.11.2020
Offence/s complained of	:	Under Sections 143, 147, 148, 323, 324, 307 r/w Section 149 of I.P.C.
Opinion of the Judge	:	Charges levelled against the accused for the offences

punishable under Sections 143, 147, 148, 323, 324 and converted offence under Section 325 r/w Section 149 of I.P.C. **are proved**.

Charges levelled against the accused for the offences punishable under Section 326, 307 r/w Section 149 of I.P.C. **are not proved**.

State represented by : **Learned Public Prosecutor**

Defence represented by : **A.1 by Sri.G.P.Chandrashekar, Advocate**
A.2 to 8 by Sri.M.D.Chandrashekar, Advocate

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(**Ramachandra D. Huddar**)
Prl. District & Sessions Judge,
Mysuru.

JUDGMENT

Accused No.1 to 8 have been charge-sheeted by P.S.I., Nanjangudu Rural Police Station for the offences punishable under Section 143, 147, 148, 323, 324, 307 r/w Section 149 of I.P.C.

2. Brief and relevant facts leading to the case of the prosecution are as under:

That, complainant Deepak S/o Ramaiah, when he was taking treatment in the Hospital on 19.12.2016, gave his statement at 02.15 p.m. on that day before H.C.176 Krishna stating that, in the address so stated in the complaint, he is running a Bar by name Akshay Bar. He is also residing with his family members along with his brother Prathap. He is running the said Bar since from more than 7 years from the date of filing complaint. On the previous day at 09.00 a.m., he started his Bar and at 11.30 p.m., he went to his house after closure of the Bar. At 12.30 midnight, the worker working in the Bar i.e. Cashier by name Sunil called him on telephone and informed that some persons have come there and making galata to open the Bar. Immediately, complainant came to the Bar and noticed the presence of one Natesha i.e. accused No.1 along with him another person was there. He told that why they are doing galata in front of the Bar and consoled them and sent them away.

It is alleged in the complaint that, on 18.12.2016 as usual, he opened the Bar in the morning hours and at 11.30 p.m. on that day, he completed the business of the Bar and put off the light and came outside the Bar. At that time, he noticed the presence of one person. He asked his brother Prathap to start the Car. Then he enquired the person who was standing there that who is he. At that time, the said person suddenly took out a wooden reaper and assaulted on

the person of the complainant. At the same time, 5 persons who were hiding themselves in the bush suddenly came in a group and assaulted the complainant by using the machete and wooden reapers on the body of this complainant. In the said group, accused No.1 was also there. The said persons are the friends of accused No.1. Because of this assault on the complainant by using machete and wooden reapers, he sustained injuries on his left cheek as well as on his right ear, head etc. There was an assault by wooden reaper on both of his hands. He sustained too much pain and he cried. At that time, his brother Prathap came running who was near the Car and tried to rescue this complainant. Even the said persons came there assaulted him also by using wooden reapers on his head, face and all over the body and caused him bodily pain. Workers who were working in the Bar came out and on seeing them, the persons came there being the assailants ran away from the said place. The workers in the Bar shifted these injured to the Hospital i.e. Narayana Hrudayalaya Hospital, Mysuru.

Thus, he alleges that, there was an attempt to cause murder of himself and his brother Prathap by the said assailants. With these allegations, he submitted his statement in the Hospital before P.W.9 H.Krishna being the Head Constable at the relevant time in Nanjangudu Rural Police Station.

3. The records of this case do reveal that, this P.W.9, on receipt of the MLC Intimation, went to the Hospital at 11.30 a.m. on 19.12.2016 and recorded the statement of complainant as per Ex.P.1. Came to the Police Station and submitted the statement to P.W.8.

4. This P.W.8 registered the crime in Crime No.287/2016 and prepared the F.I.R. as per Ex.P.13. This P.W.8 on 21.12.2016 went to the scene of offence and conducted the Spot Mahazar in between 05.00 p.m. and 06.00 p.m. as per Ex.P.2. Seized the machete and 2 wooden reapers under Panchanama-Ex.P.2 and marked as M.Os.No.1 to 3. Prepared the Sketch of the scene of offence as per Ex.P.14. Recorded the statements of the witnesses by name Prathap, Ravi, Sunil, Krishnappa, Harsha. On that day itself, accused No.1 was produced before him and he arrested him and produced before the Court. On 07.01.2017, P.W.9 produced accused No.8 before him and he arrested him and produced him before the Court. On 22.01.2017, he sent the seized articles for the purpose of chemical analysis to the F.S.L. During crime stage itself, the accused obtained the anticipatory bail and he released them on bail. Recorded the further statement of Krishnappa, Harsha, Sunil, Prathap, Deepak, Papanna, Ravi and statement of Ramaiah. He obtained the F.S.L. Report as per Ex.P.7. Obtained the Wound Certificates of Deepak and Prathap as per Exs.P.3 and P.4. MLC Extract is secured by him as per Ex.P.8. After completion of the investigation, he filed the Charge-sheet before the Jurisdictional Magistrate.

5. The Jurisdictional Magistrate, after filing Charge-sheet, took the cognizance of the offences. Presence of the accused secured. Furnished all the police papers to the accused persons as contemplated under Section 207 of Cr.P.C. As the offences are exclusively triable by the Sessions Court, the Jurisdictional Magistrate committed this case to the Sessions Court for trial.

6. After committal of this case to this Court, presence of the accused is secured and they are enlarged on bail.

7. After hearing both the sides, initially Charges against the accused persons are framed for the offences punishable under Section 143, 147, 148, 323, 326, 307 r/w Section 149 of I.P.C. in Kannada i.e. in the language known to them. Subsequently, once again additional charge is framed against the accused persons for the offence punishable under Section 324 r/w Section 149 of I.P.C. and read over and explained to them in Kannada. For both the charges, accused pleaded not guilty and claimed to be tried.

8. Prosecution, to bring home the guilt of the accused persons, examined in all 9 witnesses from P.Ws.1 to 9 and got marked Exs.P.1 to P.14 with respective signatures thereon and M.Os.No.1 to 3. Closed prosecution evidence. On behalf of the defence, Exs.D.1 to D.3 are marked.

8. After closure of the evidence of prosecution, accused No.1 to 8 are questioned under Section 313 of Cr.P.C. so as to enable them to answer the incriminating circumstances appearing in the evidence of the prosecution. They denied their complicity in

the crime and did not choose to lead any defence evidence on their behalf.

9. Heard the arguments of learned Public Prosecutor and learned counsels for accused at length. Meticulously perused the records.

10. The points that would arise for my consideration are as under:

1. **Whether prosecution proves beyond all reasonable doubt that, on 18.12.2016 at about 11.30 p.m., in front of Akshay Bar situated at Nanjangudu-Gundlupete Road, accused No.1 to 8 herein formed themselves an unlawful assembly with a common object to assault P.Ws.1 and 2 and thereby committed an offence punishable under Section 143 r/w Section 149 of I.P.C. ?**

2. **Whether prosecution further proves beyond all reasonable doubt that, on the above said date, time and place, the accused No.1 to 8 being the members of an unlawful assembly and in prosecution of the said common object committed rioting and thereby committed an offence punishable under Section 147 r/w Section 149 of I.P.C. ?**

3. **Whether prosecution further proves beyond all reasonable doubt that, on the above said date, time and place, the accused No.1 to 8 by forming an unlawful assembly and in prosecution of the common object of such assembly committed rioting by holding deadly weapons like machete and wooden reapers and thereby committed an offence punishable under Section 148 r/w Section 149 of I.P.C. ?**

4. **Whether prosecution further proves beyond all reasonable doubt that, on the above said**

date, time and place, the accused herein by forming themselves an unlawful assembly in prosecution of the common object assaulted P.Ws.1 and 2 and voluntarily caused simple injuries on their person and thereby committed an offence punishable under Section 323 r/w Section 149 of I.P.C. ?

5. Whether prosecution further proves beyond all reasonable doubt that, on the above said date, time and place, the accused No.1 to 8 by forming themselves an unlawful assembly in prosecution of the common object, voluntarily caused simple injuries on the person of P.Ws.1 and 2 by dangerous weapons like machete and wooden reapers and thereby committed an offence punishable under Section 324 r/w Section 149 of I.P.C. ?

6. Whether prosecution further proves beyond all reasonable doubt that, on the above said date, time and place, the accused No.1 to 8 herein being formed themselves an unlawful assembly in prosecution of the said common object voluntarily caused grievous hurt to P.Ws.1 and 2 with machete and wooden reapers and thereby committed an offence punishable under Section 326 r/w Section 149 of I.P.C. ?

Or

Whether prosecution further proves beyond all reasonable doubt that, on the above said date, time and place, the accused No.1 to 8 herein being formed themselves an unlawful assembly in prosecution of the said common object voluntarily caused grievous hurt to P.Ws.1 and 2 with machete and wooden reapers and thereby, committed an offence punishable under Section 325 r/w Section 149 of I.P.C. ?

7. **Whether prosecution further proves beyond all reasonable doubt that, on the above said date, time and place, the accused herein by forming an unlawful assembly in prosecution of the common object assaulted P.Ws.1 and 2 with machete and wooden reapers and attempted to cause their murder with such knowledge or information that if by that act they have caused death of P.Ws.1 and 2 and thus guilty of murder and thereby committed an offence punishable under Section 307 r/w Section 149 of I.P.C. ?**

8. **What order or sentence ?**

11. My answers to the above points are as under:

Point No.1 ::	In the **affirmative**
Point No.2 ::	In the **affirmative**
Point No.3 ::	In the **affirmative**
Point No.4 ::	In the **affirmative**
Point No.5 ::	In the **affirmative**
Point No.6 ::	In the **affirmative** for offence under Section **325 of I.P.C.**
Point No.7 ::	In the **negative**
Point No.8 ::	As per final order for the following:

REASONS

12. **Points No.1 to 7:**

These points are inextricably mixed up with each other. The finding to be given on one point has a direct bearing on other points as in one and the same transaction, the offences have taken place as per the case of the prosecution. Therefore, I

would like to discuss them together so as to avoid repetition of discussion and confusion.

13. In order to assess the incident, it would be better to first narrate the injuries found on the body of two injured persons i.e. P.W.1 and P.W.2. The prosecution story says that, on 08.12.2016, as usual, the complainant Deepak opened the Bar in the morning hours and at 11.30 p.m., he closed the same. When he came out of the said Bar and asked his brother to take out the Car, at that time, he noticed the presence of one person in front of the Akshay Bar. When complainant enquired him as to who is he, the said person by using the wooden reaper assaulted on his person. At the same time, 5 persons who were hiding themselves in the bush, suddenly came in a group and assaulted the complainant by using machete, wooden reaper etc., on the body of this complainant. In the said group, accused No.1 Natesh was there. It is specifically stated by the complainant that, the other persons are his friends. He was assaulted with machete on his person and he sustained injuries on his left cheek as well as on his right ear. He also sustained injuries on his head, to his both the hands. He did not withstood the pain and he cried. At that time, P.W.2-his brother also came there to rescue the complainant. To him also, the said persons assaulted by using the same weapons. At that time, the workers who were working in the Bar came out and at that time, on seeing them, the said persons ran away. The complainant and his brother were shifted to the Hospital. They took treatment at Narayana Hrudayalaya.

14. In this case, Dr.Manjunath, Dr.Naveen, Dr.Sayyad are examined as P.Ws.5 to 7. They have stated in their respective evidence about the treatment being administered on these P.Ws.1 and 2. In this case, Exs.P.3 and P.4 are the Wound Certificates. These Wound Certificates reveal the nature of the injuries being sustained by P.Ws.1 and 2. As per Ex.P.3, following are the injuries being sustained by P.W.1:

(I) Injuries sustained over head and face

a) Around 2 hours old, contused swelling over ® parietal region of scalp head, with underlying tenderness.

b) Left side of face has swollen, tender, with (L) peri-orbital Ecchymosys with surrounding abrasions.

c) Fresh lacerated injury over ® lower part of ear machete.. 2x1x1 cms with underlying tenderness and small lacerated injury over upper lip.

CT Scan of Head: EDH over parietal convexity fracture of parietal bone. Fracture of both maxilla bone of face with haemosinus (L) orbital fracture.

(II) Complained of pain over left side of chest on examination had blunt injury with tenderness.

(III) Complained of pain over ® forearm and over both hands. On examination, had tender contused swelling.

In above said injuries, injury No.(I) is grievous in nature, rest all are simple in nature.

15. As per Ex.P.4, following are the injuries being sustained by P.W.2:

(1) Around 2 hours old, fresh lacerated injury over left frontal region of scalp head, machete.. 5x2x bone

depth cms with surrounding swelling and underlying tenderness.

(2) Complained of pain over nose, since the incident, on examination, had tender swelling over bridge of nose.

CT Scan Head, Undisplaced fracture of left nasal bone with scalp haemotoma.

In above said injuries, injury No (2) is grievous in nature (1) is simple in nature.

16. As per the opinion of the Doctor, under Ex.P.3, the injury No.1 is grievous in nature and rest of the injuries are simple in nature. As per Ex.P.4, injury No.2 is grievous in nature and other injuries are simple in nature. Ex.P.5 is the Medico Legal Intimation submitted to the Police by the Hospital Authorities narrating the nature of the injuries being sustained and time of examination.

17. Thus, the charges against these accused persons are, that these accused persons in prosecution of their common object by forming an unlawful assembly committed the offences against these P.Ws.1 and 2 of causing simple injuries, grievous injuries and there was an attempt to cause murder of these P.Ws.1 and 2 and P.Ws.1 and 2 have sustained grievous injuries on their person.

18. As per the prosecution papers, P.W.1 lodged a complaint when he was in the Hospital. Injuries found on the person of P.Ws.1 and 2 in occurrence lends assurance that these accused

persons were very much present at the scene of offence. That means, these accused persons never deny about their presence at the spot at the time of incident. The Doctor has given opinion about the nature of the injuries.

19. Now, we have to read the evidence being placed on record by the prosecution, to know that, whether these accused persons being assailants have caused the injuries being sustained by these P.Ws.1 and 2.

20. P.W.1 being the complainant and injured has specifically stated in his examination-in-chief about the incident. As per the case of the prosecution, there was some animosity between accused No.1 and this complainant on the ground that about 2 days back, accused No.1 and another person asked about the opening of the Bar, at that time, the complainant consoled them. As per the case of prosecution, complainant did not open the Bar. Because of not opening the Bar and not providing liquor to accused persons, this incident has taken place.

21. In the examination-in-chief, this P.W.1 has stated that, on the previous day, accused No.1 and accused No.7 came near the Bar i.e. on 17.12.2016 at 11.30 p.m. By that time, complainant by closing the Bar went to his house. At 12.30 midnight on that day, C.W.5 called him stating that there was a demand to open the shutter etc. The complainant went to his Bar and consoled them. On the day of incident, when this complainant was standing outside the Bar, at that time, these accused persons came there. In specific terms, this complainant states in Para-9 of his examination-in-chief as under:

ನ್ಯಾಯಾಲಯದೆದುರು ಹಾಜರಿರುವ **2** ನೇ ಆರೋಪಿ ಮಚ್ಚಿನಿಂದ ನನ್ನ ಕೆನ್ನೆ ಮೇಲೆ ಹೊಡೆದಿದ್ದ**.** ನ್ಯಾಯಾಲಯದೆದುರು ಹಾಜರಿರುವ **1** ನೇ ಆರೋಪಿ ರೀಪೀಸ್ ಪಟ್ಟಿಯಿಂದ ನನ್ನ ಕಿವಿಗೆ ಹಾಗೂ ತಲೆಗೆ ಹೊಡೆದಿದ್ದ**.** ನ್ಯಾಯಾಲಯದೆದುರು ಹಾಜರಿರುವ **3** ನೇ ಆರೋಪಿ ನನ್ನ ಎದೆಗೆ ರೀಪೀಸ್ ಪಟ್ಟಿಯಿಂದ ಹೊಡೆದಿದ್ದ**. 4** ಹಾಗೂ **5** ಆರೋಪಿಗಳು ರೀಪೀಸ್ ಪಟ್ಟಿಯಿಂದ ನನ್ನ ಕೈಗಳಿಗೆ ಹೊಡೆದಿದ್ದರು**. 6** ಹಾಗೂ **8** ಆರೋಪಿಗಳನ್ನು ನನ್ನ ತಮ್ಮನಿಗೆ ಹೊಡೆದಿದ್ದರು**. 1** ನೇ ಆರೋಪಿ ರೀಪೀಸ್ ಪಟ್ಟಿಯಿಂದ ನನ್ನ ತಮ್ಮನ ಮೂಗಿಗೆ ಹಾಗೂ **2** ನೇ ಆರೋಪಿ ನನ್ನ ತಮ್ಮನ ತಲೆಗೆ ಮಚ್ಚಿನಿಂದ ಹೊಡೆದಿದ್ದರು**. 7** ನೇ ಆರೋಪಿ ಮದ್ಯ ಕೊಡದಿದ್ದ ಕಾರಣ ನಿಮ್ಮನ್ನು ಕೊಲೆ ಮಾಡುತ್ತೇವೆ ಅಂತ ಬೆದರಿಸಿದ್ದ**.** ಮಚ್ಚು ಹಾಗೂ ರೀಪೀಸ್ ಪಟ್ಟಿತೋರಿಸಿದರೆ ಗುರುತಿಸುತ್ತೇನೆ**.**

22. As per the evidence spoken to by P.W.1, accused No.2 assaulted him with machete on his cheek, accused No.1 assaulted him with wooden reaper on his ear, head etc., accused No.3 assaulted him on his chest by using wooden reaper, accused No.4 and 5 assaulted him with wooden reaper and accused No.6 and 8 assaulted his brother. Accused No.1 assaulted his brother by using wooden reaper on his nose, accused No.2 assaulted his brother with machete, accused No.7 gave a threat that, if no liquor is given, he will kill them.

23. This P.W.1 has been thoroughly cross-examined by the counsel for accused No.1 as well as other accused persons.

24. It is brought on record in the cross-examination that, accused No.1 is a Bharathiya Janatha political party worker. But, this P.W.1 has deposed ignorance about the same. He admits that, himself and accused No.1 belongs to same community. He admits that, accused No.1 is not that rich as that of P.W.1. It is

suggested to P.W.1 that, 2-3 times, the congress minister warned this accused No.1 through this P.W.1 etc. But, this suggestion is denied. So, as per the defence, there was a political motive to book the case against these accused persons and because of that, a false case has been foisted against these accused persons. But, this P.W.1 has denied about the said motive i.e. of political grudge.

25. It is elicited that, when the accused No.1 gave a threat on the previous day, there was no difficulty for him to lodge a complaint. It is suggested that, as there was putting off the light in front of the Bar, therefore there was no possibility of any seeing the face of accused persons. But, P.W.1 says that, there was a street light. On the previous day, accused No.1 was not there. He speaks with regard to the coming of all these accused persons in a group from the bush and assaulting on his person. Though lengthy cross-examination is directed to this P.W.1, but he has withstood the test of cross-examination. There may be certain contradictions, omissions in the evidence of P.W.1, but they will not shake the basic evidence of this P.W.1 with regard to the assault on his person by the accused persons in the manner stated in the examination-in-chief.

26. He has been cross-examined by counsel for accused No.2 to 8 also. It is elicited that, as accused persons were coming to the Bar of the complainant since more than 5-6 years, therefore he knew them. He admits that, there was no illwill between himself and accused persons. That means, this suggestion goes to establish that, accused persons are known to this complainant,

but there was no illwill. That means, the complainant knew these accused persons as per the suggestion directed to this P.W.1. Though counsel for accused No.2 to 8 directed the cross-examination to P.W.1, but nothing worth is elicited.

27. P.W.2 is another injured being brother of the complainant. He too corroborates the evidence of P.W.1 in material particulars and he says that, in the said incident at 11.30 p.m. on 18.12.2016, when himself and his brother were coming out after closing the Bar and complainant asked him to take out the Car. At that time, one person was standing there and when P.,W.1 went to enquire the said person, accused assaulted him. There were 5-6 persons holding the machete and wooden reapers. His brother sustained injuries on his left head, cheek, so also right ear. According to him, all the accused persons assaulted his brother by using the wooden reapers. When he went to rescue his brother, accused No.2 assaulted him by using machete on his head, accused No.1 assaulted him by using wooden reaper on his nose, accused No.4 took out the wooden reaper from accused No.1 and assaulted him on his back and accused No.7 and 8 also assaulted him with the same wooden reaper. So, this evidence of P.W.2 is corroborative in nature with that of the evidence of P.W.1.

28. He is consistent that, after the incident, all the persons ran away from the said place and injured were taken to the Hospital . He identifies M.Os. No.1 to 3 so marked in this case as the weapons being used by the accused persons in the commission of the crime.

29. It is elicited that, there was no illwill between himself and accused No.1. He knew these accused persons as per his evidence. In the cross-examination, he says that, before his arrival, his brother sustained injuries on his head. One Kumar has assaulted his brother. That Kumar is none else than accused No.3. He further says that, on seeing the assault on his brother, he was scared. It is suggested that, as there was assault on the person of this P.W.1, he could not understand who has assaulted whom. This suggestion reads as under:

> ನನ್ನ ಅಣ್ಣನಿಗೆ ಹೊಡೆಯುತ್ತಿದ್ದುದದನ್ನು ನೋಡಿ ನನಗೆ ಗಾಬರಿಯಾಯಿತು. ಆದ್ದರಿಂದ ನನಗೆ ಯಾರು ಯಾವ ವಸ್ತುವಿನಿಂದ ಹೊಡೆದರು ಅಂತ ಗೊತ್ತಾಗಲಿಲ್ಲ ಎಂದರೆ ಸರಿಯಲ್ಲ.

So, this suggestion directed to this P.W.2 goes to establish that, these accused persons were very much present at the spot and they have assaulted this P.W.1 and P.W.2.

30. According to his evidence, the accused No.1 was on the right side of the Bar. When complainant cried, he came to know that the accused No.1 was there at the spot. Before the incident, he was not knowing the accused No.1. He says about the presence of street light at that time. He says that, he has not given the statement before the Police that, as it was a dark, therefore he has not identified the persons who have assaulted him and his brother. He says that, M.O.2 was in the hands of accused No.1 and M.O.1 was in the hands of Kumar and accused No.3 was also holding a wooden reaper. It is stated that, as the clothes being worn by them were bloodstained, therefore they have been given to the Police at the time of investigation etc.

But, those bloodstained clothes have not been produced before the Court by the Investigation Officer. It is much submitted by the counsel for the accused that, as the bloodstained clothes are not seized by the Police, therefore, it is fatal to the case of the prosecution. P.Ws.1 and 2 are the injured witnesses in this case. It is elicited from the mouth of this P.W.2 that, when the said incident tookplace, there was a light to identify the faces of the persons who were gathered there. There is no further denial of this fact by the defence. He says that, on 18.12.2016 itself, the Police took the clothes. The incident has taken place in the year 2016 and this P.W.2 has given evidence before the Court on 01.08.2019 i.e. after lapse of nearly 3 years. So, we cannot expect the human memory like a video clipping. May be there are some minor contradictions and omissions, but they will not shake the evidence of this P.W.1 and P.W.2.

31. P.W.3 Papanna is an eyewitness being a Cashier and a Cook in the said Bar. He says that, on 18.12.2016 at 11.30 p.m., there was a galata. When P.Ws.1 and 2 after closing the counter came out of the Bar, at that time, P.W.1 asked accused No.3 that why he is standing there. At that time, accused No.3 by using the wooden reaper assaulted the complainant-P.W.1 on his chest. P.W.2 also came there who was removing the Car at that time and about 6-7 persons came there and assaulted P.Ws.1 and 2. He also speaks about the nature of the injuries being sustained by P.Ws.1 and 2. Himself and other bar workers came out and at that time, by throwing the said weapons, the said persons ran away from the said place. This P.W.3 called the Ambulance and shifted the injured to the Hospital.

32. It is stated by him that, on 21.12.2016, when the Police came there at about 05.00 p.m., he was very much present. In between 05.00 and 06.00 p.m., the Police conducted Panchanama under Ex.P.2 and seized M.Os.No.1 to 3. There is no cross-examination directed to this P.W.3 by the defence about the preparation of the Panchanama and presence of this P.W.3 showing the scene of offence to the Police. Not even a single sentence is directed to this P.W.3 denying about preparation of the Panchanama by the Police in the presence of this P.W.3.

33. This P.W.3 has been partly declared as hostile, but in the cross-examination directed by learned Public Prosecutor, he says about the weapons being used by the accused persons in the commission of the crime against P.Ws.1 and 2.

34. P.W.3 has been directed with severe cross-examination by the counsel for accused. But, he has withstood the test of cross-examination. It is elicited that, at a distance of 20-25 feet, there is a tube-light from the door of the said Bar. If the Bar lights are put off, one cannot see the faces etc. He denied all the suggestions. According to him, accused No.3 was standing at a distance of 10 feet. He was wearing black colour T-shirt and Jeans Pant. He says that, he cannot say that who was holding which weapon at the time of incident. But the demeanor of this P.W.3 has to be taken into consideration. When certain questions are asked with regard to the holding of the weapons, he saw the accused persons and kept mum. With regard to the demeanor of this P.W.3, it is noted by the Court. That means, on seeing the

accused persons, he did not speak anything, perhaps because of fear etc. Another suggestion is directed to this P.W.3 as under:

ಆರೋಪಿಗಳು ಯಾವುದೇ ವಸ್ತುಗಳನ್ನು ಅಲ್ಲಿ ಬಿಸಾಕಿ ಹೋಗಿಲ್ಲ ಎಂದರೆ ಸರಿಯಲ್ಲ.

35. This suggestion directed to this P.W.3 goes to establish that, accused were very much present at the spot and did not throw any weapons there. So, presence of these accused persons at the spot is clearly admitted by the defence while cross-examining P.W.3.

36. Though this P.W.3 is directed with severe cross-examination, but nothing worth is elicited so as to disbelieve his version given in the examination-in-chief.

37. P.W.4 is scene of offence pancha. But, he has been trued hostile. Nothing worth is elicited. We have the evidence of P.W.3 being the person who has shown the scene of offence to the Police. For that, there is no cross-examination. We have the evidence of P.W.8 being the Investigation Officer who has conducted the Panchanama under Ex.P.2. So, if the evidence of P.Ws.3 and 8 is compared and scrutinized, it is proved that, Panchanama as per Ex.P.2 is being conducted in the manner stated by the prosecution and contents of Ex.P.2 have been spoken to by P.W.3 which has not been denied by the defence. Therefore, Ex.P.2 is duly proved in accordance with law by the prosecution from the evidence of P.Ws.3 and 8.

38. P.W.5 Dr.Manjunath has spoken about the injuries being sustained by P.Ws.1 and 2 and about their medically examining

them. According to his evidence, the injuries were two hours old. This P.W.5 has been cross-examined at length. But, nothing worth is elicited. A question is directed to this P.W.5 stating that, if a person is assaulted by using M.O.No.2 and 3, there is a possibility of length the breadth of injuries to the extent of more than 5-6 cms. For this, the answer is that, it depends upon the force and time of the impact on the person. That means, the injuries noticed in the Wound Certificates depend upon the force being used by accused persons while assaulting. According to P.W.5, the fracture so mentioned in Ex.P.3 is a simple fracture.

39. He also has examined P.W.2 and says that, there is a possibility of sustaining cut injuries by this P.W.2. He also says that, haemorrhage may be caused because of blood clot etc. He says that, the injuries so stated in Ex.P.4 are not fatal to the life. The injury No.2 is possible if a person comes in contact with hard surface by falling form the staircase etc. This suggeston is not directed to P.W.2. No such evidence is brought on record in the cross-examination stating that P.W.2 fell from the staircase and sustained injuries. For the first time, the said question is directed to this P.W.5. He has not collected any bloodstained clothes worn by the injured etc. But, P.W.2 says that Police have collected the bloodstained clothes. But, it is not fatal to the case of the prosecution when injured have come before the Court to speak about the injuries being sustained by them because of the act of these accused persons i.e. accused No.1 to 8.

40. P.W.6 Dr.Naveen is a Doctor who was very much present when P.W.1 gave a statement before the Police as per Ex.P.1. He

identified his signature as per Ex.P.1(b). That means, when the Police recorded the statement of P.W.1, this P.W.6 was very much present in the Hospital. He says that, the case sheet is silent about recording of statement before the Police etc. But, presence of this P.W.6 being a Doctor at the Hospital where P.W.1 was admitted for treatment is not disputed seriously by the defence. That means, in his presence only, the Police have recorded the statement of P.W.1. Nothing worth is elicited from the mouth of this P.W.6 so as to disbelieve his evidence given in the examination-in-chief.

41. P.W.7 Dr.Syed is a Doctor who has issued Exs.P.8 and P.9 being the Medico Legal Cases and identified his signature when this P.Ws.1 and 2 are admitted in the Hospital and he has prepared the Medico Legal Intimation and sent to the Police Station. According to him, this doctor has only given first aid treatment to the injured persons. Giving first aid treatment is not disputed by the defence also.

42. It is stated by this P.W.7 that, before coming to the Narayana Hrudayalaya, these P.Ws.1 and 2 have taken the first aid treatment. When they sustained grievous injuries on their person that too fracture of nose as well as other injuries being fatal to the body, they must have taken first aid treatment. They must have gone to Narayana Hrudayalaya for further treatment. When they went to the said Hospital, as per the evidence of Doctors, injuries were two hours old. So, such an evidence though spoken to by this witness, is not fatal to the case of the

prosecution. Nothing worth is elicited from the mouth of this witness.

43. P.W.8 being the Investigation Officer in this case, has spoken about the investigation so did by him. Though lengthy cross-examination is directed to this P.W.8, but he has withstood the test of cross-examination. Nothing worth is elicited from the mouth of this witness. He has not recorded the further statement of the complainant in the Hospital. P.W.9 is a person recorded the statement of P.W.1 in the Hospital and they came to police station, submitted the said statement/complaint to P.W.8. This P.W.9 also has arrested accused No.8 and produced him before P.W.8.

44. From the evidence spoken to by the witnesses in this case, it is proved that, there was an assault by these accused No.1 to 8 on these P.Ws.1 and 2. The Wound Certificates prove the same. Ex.P.2-Panchanama is not disputed by the defence. There is no cross-examination directed to P.W.3 as stated supra. The Wound Certificates show about the nature of the injuries being sustained by the injured. There was a Medico Legal Intimation to the Police as per Ex.P.5. Ex.P.7 is the F.S.L. Report wherein no bloodstain is detected in Articles No.1 to 3. No witness has spoken about the same i.e. about staining of blood on this M.Os.1 to 3. The other documents also help the case of the prosecution in proving the injuries being sustained by this P.Ws.1 and 2. Ex.P.8 is the Medico Legal Abstract being maintained by the Hospital, so also Ex.P.10. Ex.P.12 is a Medico Legal Intimation again. Ex.P.13 is

the F.I.R. and Ex.P.14 is the Sketch. Scene of offence is also not disputed by the defence.

45. In a case of present nature, when injured witnesses have come before the Court to speak about the nature of the injuries being sustained by them, law with regard to the appreciation of the evidence of injured witnesses is very much settled. That means, the evidence of the stamped witnesses must be given due weightage as their presence on the place of occurrence cannot be doubted. The statements of P.Ws.1 and 2 being the injured is generally considered to be very reliable and law says that it is unlikely that these P.Ws.1 and 2 have spared the actual assailants in order to falsely implicate someone else. No such evidence has been brought on record. That means, the law says that, the testimony of injured witnesses has its own relevancy and efficacy as they have sustained injuries at the time and place of occurrence and this lends support to their testimony that they were present at the time of occurrence. Therefore, the testimony of an injured witness is accorded a special status in law. Such a witness comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant/s in order to falsely implicate someone. So to say, the law says that, convincing evidence is required to discredit an injured witness.

46. With regard to the appreciation of the evidence in the case of injured witnesses, the law is very much settled as under:

In ***Abdul Sayeed v. State of M.P.*** - **(2010) 10 SCC 259**, Hon'ble Supreme Court of India has held as under:

> "28. The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. ''Convincing evidence is required to discredit an injured witness.' [Vide Ramlagan Singh v. State of Bihar - (1973) 3 SCC 881, Malkhan Singh v. State of U.P. - (1975) 3 SCC 311, Machhi Singh v. State of Punjab - (1983) 3 SCC 470, Appabhai v. State of Gujarat - 1988 Supp SCC 241, Bonkya v. State of Maharashtra -(1995) 6 SCC 447, Bhag Singh v. State of Punjab -(1997) 7 SCC 712, Mohar v. State of U.P.-(2002) 7 SCC 606, Dinesh Kumar v. State of Rajasthan-(2008) 8 SCC 270, Vishnu v. State of Rajasthan -(2009) 10 SCC 477, Annareddy Sambasiva Reddy v. State of A.P.-(2009) 12 SCC 546 and Balraje v. State of Maharashtra- (2010) 6 SCC 673.]

47. In ***Jarnail Singh v. State of Punjab***-**(2009) 9 SCC 719**, the Hon'ble Supreme Court of India has reiterated the special evidentiary status accorded to the testimony of an injured accused and relying on its earlier judgments held as under:

> ''28. Darshan Singh (PW 4) was an injured witness. He had been examined by the doctor. His testimony could not be brushed aside lightly. He had given full details of the incident as he was present at the time when the assailants reached the tubewell. In Shivalingappa Kallayanappa v. State of Karnataka-1994 Supp (3) SCC 235 this Court has held that the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the reason that his presence on the scene stands established in case it is proved that he suffered the injury during the said incident".

48. In State of U.P. v. Kishan Chand-(2004) 7 SCC 629 a similar view has been reiterated observing that the testimony of a stamped witness has its own relevance and efficacy. The fact that the witness sustained injuries at the time and place of occurrence, lends support to his testimony that he was present during the occurrence. In case the injured witness is subjected to lengthy cross-examination and nothing can be elicited to discard his testimony, it should be relied upon (vide Krishan v. State of Haryana-(2006) 12 SCC 459. Thus, we are of the considered opinion that evidence of Darshan Singh (PW 4) has rightly been relied upon by the courts below.'

49. The law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein."

50. In this case, the defence has failed to demonstrate from the informant's testimony such discrepancies, omissions and improvements that would have caused the Court to reject such testimony after testing it on the anvil of the law laid down by the Hon'ble Supreme Court of India in various Judgments.

51. In this context, I may fruitfully reproduce a passage from State of U.P. v. M.K. Anthony- (1985) 1 SCC 505:

> "10. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper-technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. ..."

52. In Harijana Thirupala v. Public Prosecutor, High Court of A.P.- (2002) 6 SCC 470, it is held that,

> "11. .... In appreciating the evidence the approach of the court must be integrated not truncated or isolated. In other words, the impact of the evidence in totality on the prosecution case or innocence of the accused has to be kept in mind in coming to the conclusion as to the guilt or otherwise of the accused. In reaching a conclusion about the guilt of the accused, the court has to appreciate, analyse and assess the evidence placed before it by the yardstick of probabilities, its intrinsic value and the animus of witnesses."

53. In Ugar Ahir v. State of Bihar-AIR 1965 SC 277, a three-Judge Bench of the Hon'ble Supreme Court of India held:

> "7. The maxim falsus in uno, falsu in omnibus (false in one thing, false in everything) is neither a sound rule of law nor a rule of practice. Hardly one comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggerations, embroideries or embellishments. It is, therefore, the duty of the court to scrutinise the evidence carefully and, in terms of the felicitous metaphor, separate the grain from the chaff. But, it cannot obviously disbelieve the substratum of the prosecution case or the material parts of the evidence and reconstruct a story of its own out of the rest."

54. In Krishna Mochi v. State of Bihar-(2002) 6 SCC 81, the Hon'ble Apex Court ruled that:

> "32. .... The court while appreciating the evidence should not lose sight of these realities of life and cannot afford to take an unrealistic approach by sitting in an ivory tower. I find that in recent times the tendency to acquit an accused easily is galloping fast. It is very easy to pass an order of acquittal on the basis of minor points raised in the case by a short judgment so as to achieve the yardstick of disposal. Some discrepancy is bound to be there in each and every case which should not weigh with the court so long it does not materially affect the prosecution case. In case discrepancies pointed out are in the realm of pebbles, the court should tread upon it, but if the same are boulders, the court should not make an attempt to jump over the same. These days when crime is looming large and humanity is suffering and the society is so much affected thereby, duties and responsibilities of the courts have become much more. Now the maxim "let hundred guilty persons be acquitted, but not a single innocent be convicted" is, in practice, changing the world over and courts have been compelled to accept that "society suffers by wrong convictions and it equally suffers by wrong acquittals". I find that this Court in recent times has conscientiously taken notice of these facts from time to time".

55. In Inder Singh Hon'ble Krishna Iyer, J. laid down that:

> "Proof beyond reasonable doubt is a guideline, not a fetish and guilty man cannot get away with it because truth suffers some infirmity when projected through human processes."

56. In the case of State of U.P. v. Anil Singh-1988 (Supp.) SCC 686, it was held that a Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. One is as important as the other. Both are public duties which the Judge has to perform.

57. keeping in mind the principles laid down in the aforesaid Judgments, if the said principles are applied to the present facts of this case, in this case, P.Ws.1 and 2 being the injured witnesses have supported the case of prosecution about the injuries being sustained by them because of the assault on them by these accused No.1 to 8.

58. It is held by the Hon'ble Supreme Court of India in **Bhajan Singh @ Harbhajan Singh and others Vs. State of Haryana** reported in **(2011) 7 SCC Page-421** that, “evidence of the stamped witness must be given due weightage as his presence on the place of occurrence cannot be doubted. His statement is generally considered to be very reliable and it is unlikely that he has spared the actual assailant in order to falsely implicate someone else”.

59. No doubt, it is argued by the counsel for the defence that, no offence has been committed and because of political motive, this case has been foisted against these accused persons. The

motive as raised by the accused persons in this case is that, there was a political motive behind this crime etc. But, P.Ws.1 and 2 have denied the said motive. Here, accused No.1 and others wanted liquor and they demanded to open the Bar, there was a galata. Thereafter, the accused persons came to the said Bar and assaulted P.Ws.1 and 2. So, the emphatic motive for commission of the crime against P.Ws.1 and 2 is that, P.W.1 has not permitted the accused persons to take the liquor after 11.30 p.m. In a case of this nature, the motive does not play an important role, because, P.Ws.1 and 2 have spoken before the Court about assault on them by these accused persons. So, when there is sufficient direct evidence regarding the commission of the offence by these assailants i.e. accused No.1 to 8, the question of motive will not loom large in the mind of the Court, though motive is a double edged weapon and the key question for consideration, is whether the prosecution had convincingly and satisfactorily established the guilt of all or any of the accused beyond reasonable doubt by letting in reliable and cogent evidence. But, proof of the existence of a motive is not necessary for a conviction for any offence.

60. In the light of the above facts and law laid down by the Hon'ble Supreme Court of India in the Judgments stated supra, here in this case, P.Ws.1 and 2 are the natural witnesses who were present at the spot at the time of occurrence, who are examined before the Court by the prosecution. P.W.3 being the eyewitness has supported the case of the prosecution about his presence and assault on the person of these P.Ws.1 and 2 by these accused persons. There is no hard and fast rule that the

worker working under P.W.1 can never be a true witness to the occurrence. He is an employee. He was very much present at the scene of offence at the relevant time. It cannot be stated that, said P.W.3 always depose falsely before the Court. It will always depends upon the facts and circumstances of a given case. No doubt, evidence of the interested witnesses have to be scrutinized by the Court. But, P.W.3 is a natural witness who has witnessed the said assault on the person of P.Ws.1 and 2. So, under law, there is no bar to believe the evidence of this P.W.3 being a natural eyewitness.

61. The law says that, A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. There was no animosity between the accused persons and these P.Ws.1 to 3. P.Ws.1 and 2 says that, they have no animosity. So, when they have no animosity, how can they implicate these accused persons falsely.

62. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact that this P.W.3 is worker under P.Ws.1 and 2 is not a ground to disbelieve his evidence. A foundation is not laid by the defence that, he is an interested witness. This foundation is often a sure guarantee of truth. Each case must be judged on its own facts. The observations so did above with regard to the

involvement of these accused persons in the commission of the crime, it is quite natural to expect such an evidence from P.W.3. Especially in criminal cases, the public do not come forward to give evidence and public is reluctant to appear and depose before the Court. But it is a well established principle of law that, testimony of a witness otherwise inspiring confidence cannot be discarded on the ground that he being a relation or a worker. But the term interersted postulates that the person concerned must have some direct interest in seeing the accused persons being convicted somehow or the other either because of animosity or some other reasons. But, no such foundation is laid by the defence that these accused persons are falsely implicated by the complainant.

63. If all these factual features are put together, it can be stated that, P.Ws.1 and 2 being the victims in the hands of the accused persons have sustained injuries on their person and they have sustained grievous injuries, simple injuries and thus have sustained injuries as defined under the Indian Penal Code. Therefore, the prosecution is able to prove that, these accused persons have committed the offences against P.Ws.1 and 2 in the manner stated in the complaint.

64. With regard to the injuries being sustained by P.Ws.1 and 2 as narrated in the foregoing Paras, as per Ex.P.3 and P.4-the Wound Certificates, under Ex.P.3, it is stated by P.W.5 by name Dr.Manjunath that, injury No.1 is grievous in nature and rest of all the injuries are simple in nature. In Ex.P.4, he states that, the injury No.1 is grievous in nature and injury No.2 is simple in

nature. As per the case of the prosecution and the charge framed against the accused persons is for the offences under Section 143, 147, 148, 323, 326, 307 r/w Section 149 of I.P.C. and additional charge for the offence under Section 324 r/w Section 149 of I.P.C.

65. So far as charges with regard to the attempt to cause murder, there is no such evidence spoken to by P.Ws.1 and 2 in their respective evidence that there was an attempt to cause their murder by these accused persons with a knowledge or information that if by that act they had caused death of those persons etc. and thereby guilty of murder. The ingredients of Section 307 of I.P.C. are missing in this case in the evidence of P.W.1 and P.W.2. That means, the comprehensive evidence of the witnesses do demonstrate that, the ingredients to prove the offence of attempt to cause murder are missing. Therefore, in view of the gravity of the injuries stated in Exs.P.3 and P.4, it cannot be stated that, the offence under Section 307 of I.P.C. is proved against the accused persons. Even it has come in the evidence of the Doctor that, the injuries so sustained are not life threatening or dangerous to the life of P.Ws.1 and 2. The Doctors have spoken before the Court that, the fracture so sustained is simple in nature. That means, in view of the clear evidence of the Doctor, it can be stated that, the offence against the accused persons under Section 307 r/w Section 149 of I.P.C. is not duly proved in accordance with law.

66. Even charges are framed against the accused persons alleging the offence under Section 326 r/w Section 149 of I.P.C.

Whether the injuries being sustained by P.Ws.1 and 2 are really grievous in nature has to be ascertained from the Wound Certificates-Exs.P.3 and P.4. No doubt in Wound Certificate-Ex.P.3, it is stated that, injury No.1 is grievous in nature being sustained by P.W.1 Deepak and in Wound Certificate-Ex.P.4, it is stated that, injury No.2 sustained by P.W.2 Prathap is grievous in nature. It has come in the evidence of Doctor that, there is a simple fracture.

67. Section 320 of I.P.C. defines what is “grievous hurt”. There are 8 types of grievous hurts being described in the said Section 320 of I.P.C. On perusal of the Wound Certificates and the evidence of P.Ws.1 and 2, the ingredients of this Section 320 of I.P.C. are not fulfilled by the prosecution. No doubt, there is a fracture being sustained to the nose of P.W.2. But, any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits is considered as “grievous hurt” as per this Section. But, in this case, P.W.1 is discharged from the Hospital within a period of 10 days and within a period of 3 days, P.W.2 is discharged from the Hospital. P.W.1 was able to give a statement before the Police in the Hospital. There is no evidence that the injuries so sustained by these P.Ws.1 and 2 restrained them from discharging their ordinary pursuits during the space of 20 days wherein they suffered severe bodily or unable to follow their ordinary pursuits. No such ingredients have been fulfilled by the prosecution through the evidence of P.Ws.1 and 2. Therefore, in view of the Doctors' evidence and evidence of P.W.1 and P.W.2, it is ruled out that, the injuries so sustained by P.Ws.1

and 2 are grievous in nature in the manner stated in the charge. Thus, the offence under Section 326 of I.P.C. is also not duly proved in accordance with law.

68. Now, coming to the injuries being sustained by these P.Ws.1 and 2 and what type of injuries have to be attributed to such injuries. So far as assault on the person of P.Ws.1 and 2 by these accused persons is duly proved in accordance with law. Section 321 of I.P.C. speaks of “voluntarily causing hurt”. That means, whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said “voluntarily to cause hurt”. Section 322 of I.P.C. speaks of “voluntarily causing grievous hurt”. Section 323 of I.P.C. speaks of “punishment for voluntarily causing hurt”. In this case, there was assault on P.Ws.1 and 2 by hands also. That means, whoever except in the case provided for by Section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

69. Here, in this case, Section 324 of I.P.C. is attracted. This Section speaks of “voluntarily causing hurt by dangerous weapons or means”. In this case, by the wooden reaper and by machete, there was assault on the person of these P.Ws.1 and 2. It has come in the evidence of P.Ws.1 and 2 that, accused No.1 assaulted with wooden reaper, accused No.2 assaulted with machete, accused No.3 assaulted with wooden reaper, accused

No.4 and 5 assaulted with hands on this P.W.1. So far as assault on P.W.2 is concerned, it has come in his evidence that, accused No.6 and 8 assaulted this P.W.2 and accused No.7 gave threat to kill as no liquor is provided to him. Accused No.1 assaulted P.W.2 with wooden reaper and accused No.2 assaulted P.W.2 with machete. So, in the evidence of P.W.2, it is straightaway stated that, accused No.2 assaulted him with machete and accused No.1 assaulted him on his nose by using the wooden reaper. Accused No.4 assaulted with wooden reaper. So also, accused No.7 and 8 assaulted with wooden reaper. That means, these P.Ws.1 and 2 have sustained injuries on their respective persons as accused have used these dangerous weapons.

70. So, on reading the definition of this “voluntarily causing hurt by dangerous weapons”, the expression “An instrument” used as a weapon of offence is likely to cause death should be construed with reference to the nature of the instrument and not the manner of its use. What has to be established by the prosecution is that, the accused voluntarily caused hurt and that such hurt was caused by means of an instrument referred to in Section 324 of I.P.C. Here, the medical evidence showed that, the P.Ws.1 and 2 have sustained injuries as mentioned in Exs.P.3 and P.4 and P.W.3-the eyewitness supported the case of the prosecution with regard to the injuries being sustained because of the assault by these accused persons. Thus, when P.W.3-eyewitness was present at the time of incident and both oral and medical evidence establish that these accused persons being the assailants by using the wooden reaper and machete on the person of these P.Ws.1 and 2, assaulted P.W.2 on his nose by

wooden reaper, then, under the provisions of the Indian Penal Code, the weapons are the deadly weapons and they are produced before the Court. Thus, when the P.W.1 and P.W.2 have sustained multiple injuries on their person, but as per the evidence of the Doctor, injuries are not sufficient to cause death in the ordinary course of nature nor likely to cause death when no attempt made by the accused to cause serious injury on any vital part of the body even when injuries were caused with these wooden reaper and machete. Thus, accused persons are held liable to be convicted under Section 325 r/w Section 149 of I.P.C. Because, accused were armed with deadly weapons like wooden reaper and the machete and by using the same, the accused named above have assaulted these P.Ws.1 and 2. multiple injuries have been sustained by P.Ws.1 and 2. Even it is proved by the prosecution that, these accused persons also have given a life threat to these P.Ws.1 and 2.

71. Now, the question comes, that whether all these accused persons are liable for offences punishable under Section 143, 147, 148, 323, 324, 325 r/w Section 149 of I.P.C.

72. It has come in the evidence that, all these accused persons by forming themselves an unlawful assembly in prosecution of the said common object have assaulted these P.W.1 and P.W.2. It is established by the prosecution that, these accused No.1 to 8 formed an unlawful assembly and committed the offence. On reading the provisions of Section 149 of I.P.C., how the constructive liability has to be fastened on the accused persons has been well discussed under Section 149 of I.P.C. Section 149

is an instance of a constructive criminal liability. If the requirements stated in the Section are satisfied, then it is not necessary that each accused should have committed specific overt act. So to say, to attract the mischief of Section 149, it is not necessary that each of the accused must commit some illegal overt act. An assembly which is not unlawful when assembled may subsequently become an unlawful assembly, as held by the Hon'ble Supreme Court of India in a Judgment in ***Ramesh Vs. State of Haryana*** reported in **2011 Cri. L.J. Page-80 (SC)**.

73. The Hon'ble Supreme Court of India in another Judgment reported in **2010 Cri. L.J. Page-3854 (SC)**, has held that, “once it is established that the unlawful assembly had common object, it is not necessary that all persons forming the unlawful assembly must be shown to have committed some overt act. For the purpose of incurring the vicarious liability for the offence committed by a member of such unlawful assembly under the provision, the liability of other members of the unlawful assembly for the offence committed during the continuance of the occurrence, rests upon the fact whether the other members knew before hand that the offence actually committed was likely to be committed in prosecution of the common object”.

74. Therefore, the expression 'in prosecution of common object' have to be strictly construed. There must be community of object. A 'common object' does not require a prior concert and a common meeting of minds before the attack. It is enough if each member of the unlawful assembly has the same object in view and their number is five or more and that they act as an

assembly to achieve that object. Thus, if this principle is applied to the present facts of this case, these accused No.1 to 8, with an animosity of not supplying the liquor to the accused No.1 and 3 and with that animosity between these accused persons and P.W.1 and P.W.2, all these accused No.1 to 8 being armed with deadly weapons like wooden reaper and machete, and accused No.1 assaulted P.W.1 by using wooden reaper, accused No.2 assaulted him with machete, accused No.3 assaulted him with wooden reaper, accused No.4 and 5 assaulted him with hands. So also, accused No.1 assaulted P.W.2 with wooden reaper, accused No.2 assaulted him with machete, accused No.6 and 8 assaulted him and so also, accused No.7 gave a threat to kill P.W.1 and P.W.2 as no liquor is being supplied or provided. There was an attack by these accused persons on the victims i.e. P.W.1 and P.W.2 which was preplanned and premeditated because, already on the previous day, there was some demand made by the accused persons; on the following day when P.W.1 and P.W.2 have closed their Bar and came out to go to their house, all these accused persons acted in furtherance of the common object to cause injuries on the person of these P.W.1 and P.W.2 and in furtherance of the said common object have committed the offence. The accused persons appeared at the scene of offence with lethal weapons in their hands and mercilessly assaulted these P.Ws.1 and 2 by surrounding them. This clearly exhibits their common object to cause injuries on these P.Ws.1 and 2.

75. In another Judgment of the Hon'ble Supreme Court of India in ***Lalji Vs. State of U.P.*** reported in **(1989) 1 SCC Page-437**, it is held that, "***if it is found that the accused persons***

formed an unlawful assembly and committed the offence, every member of such unlawful assembly would remain liable and no proof of any particular role or act on the part of any particular accused is requisite". Thus, formation of an unlawful assembly with the common object being the basic ingredient for invoking Section 324 r/w Section 149 of I.P.C. It is established in this case i.e. in a comprehension of the evidence on record, in my view, the fact that the accused No.1 to 8 assembled by forming an unlawful assembly armed with machete and wooden reaper in their hands and they indulged in assault on these P.Ws.1 and 2. It is evident on the face of the record with the consistent testimonies of P.W.1 and P.W.2 being injured and P.W3 being the eyewitness who also have testified to the fact of assault by an assembly over these P.Ws.1 and 2. Further, these P.Ws.1 and 2 have identified these accused persons as the real assailants. Therefore, the argument of the counsel for the accused that because of political animosity, false case has been foisted against these accused persons cannot be accepted in view of the clear and cogent evidence being led by the prosecution.

76. It is settled principle of law under the Indian Evidence Act that, the quality of the evidence that matters and not the quantity. Even the testimony of a single witness may be sufficient to establish the identity of the accused as members of an unlawful assembly, but when the size of assembly is quite large and P.W.3 has witnessed the incident in this case and P.Ws.1 and 2 deposed identifying these accused persons as the real assailants on them in general terms, it would be useful to

adopt the test of consistency of more than one witness so as to remove any doubt about identity of accused as the members of the assembly in question. In this case, P.Ws.1 and 2 have identified the accused persons, so also P.W.3 has identified these accused persons as the members of the said assembly. There is consistency in the evidence of all these witnesses. When there is a consistent account of the incident spoken to by P.Ws.1 and 2, the requirement of consistency cannot be overstretched as if to search for repetition of each and every name of the accused in each and every testimony. That means, the comprehension of overall evidence on record is requisite, and mere counting of heads or mere recitation of names or omission of any name in the testimony of any particular witness cannot be decisive of the matter.

77. As per the testimony of P.W.1 and P.W.2, these accused persons have committed the offence against them and P.W.3 is an eyewitness to the said incident. Therefore, all these accused persons are held liable being the members of an unlawful assembly and prosecution is able to prove the guilt of the accused for the offences punishable under Section 143, 147, 148, 323, 324, 325 r/w Section 149 of I.P.C. So far as offence under Section 326 and 307 r/w Section 149 of I.P.C., the prosecution has failed to prove the guilt of the accused beyond all reasonable doubts. That benefit has to be given to the accused and they are to be acquitted of the charges under Section 326 and 307 r/w Section 149 of I.P.C. Hence, accused No.1 to 8 are found guilty for the offences punishable under Section 143, 147, 148, 323, 324, 325 r/w Section 149 of I.P.C. They are not found guilty for

the offences punishable under Section 326 and 307 r/w Section 149 of I.P.C. Hence, I record my findings on **points No.1 to 6** in the **affirmative** and **point No.7** in the **negative**.

78. **Point No.8:**

As a consequence of the aforesaid discussion, I pass the following:

ORDER

Accused No.1 to 8 are found guilty for the offences punishable under Section 143, 147, 148, 323, 324, 325 r/w Section 149 of I.P.C.

Order regarding sentence will be passed after hearing the accused on the question of sentence.

(Dictated to the Judgment Writer, transcribed by her on Computer, revised corrected and then pronounced by me in the open court on this the **9th day of February, 2021**.)

(**Ramachandra D. Huddar**)
Prl. District and Sessions Judge,
Mysuru.

:R:

ORDER ON SENTENCE

Heard the learned Public Prosecutor and learned counsels for the accused on the question of sentence.

The learned Public Prosecutor submits that, as the accused are found guilty for the aforesaid offences, the severe sentence has to be imposed on them as they tried to assault P.W.1 and

P.W.2 mercilessly etc. She submits that, there are no mitigating circumstances so as to show any leniency.

As against this submission, the learned counsels for the accused persons submit that, the accused are innocent and they are quite young. They submit that, they have been falsely implicated in this case etc. He prays to show leniency in imposing the sentence.

I have given my anxious consideration to the arguments of both the sides.

With regard to the sentencing in India, the Indian Penal Code prescribe offences and punishment for the same. For many offences, only the maximum punishment is prescribed and for some offences, the minimum is prescribed. The Court has got wide discretion in awarding the sentence within the statutory limits. There is now no guidance to the Court in regard to selecting the most appropriate sentence given in the circumstances of the case. Therefore, each Court has to exercise discretion according to its own judgment. Hence, no uniformity.

In ***Bachan Singh Vs. State of Punjab*** (**AIR 1980 SC Page-898**), the Hon'ble Apex Court while interpreting Section 354(3) and 235(2) of Cr.P.C., elaborated two aspects, firstly that the extreme penalty can be inflicted only in gravest cases of extreme culpability and secondly, in making the choice of sentence due regard must be paid to the circumstances of the offender also.

According to the case of the prosecution, in this case, the victims are innocent, helpless and only on the ground that these accused persons were not provided the liquor, with that grudge, offence has been committed on these P.W.1 and P.W.2. Here, aggravating circumstances are to be taken into consideration. The aggravating circumstances may be summarized as under:

1. **That, offences are related to the commission of the crimes against these P.W.1 and P.W.2 of assaulting, causing hurt to them,**
2. **The motive for commission of the crime is, not providing of the liquor to the accused persons,**
3. **Accused persons formed themselves an unlawful assembly armed with deadly weapons like wooden reapers and machete,**
4. **The accused persons committed the offence at 11.30 p.m. in the night, when complainant and his brother have come out of the Bar and were preparing to go to house, one person was seen at the scene of offence initially and thereafter when there was an enquiry did by complainant, all the accused persons suddenly attacked him in a group with deadly weapons.**

As per the defence, there are some mitigating circumstances to show leniency. They are, age of the accused as they are quite young persons and they are the first offenders etc. Except this, there are no mitigating circumstances appearing as submitted by the counsel for the accused to show leniency.

The testimony of P.Ws.1 and 2 and P.W.3 has brought home the guilt of the accused persons. While determining the questions relating to sentencing policy, the Court has to follow certain principles laid down by the Hon'ble Supreme Court of India. In ***Rajendra Pralhadrao Wasnik Vs. State of***

Maharashtra (**AIR 2012 SC Page-1377**), it is held by the Hon'ble Supreme Court of India that, "***sentence policy stated broadly, these are the accepted indicators for the exercise of judicial discretion, but it is always preferred not to fetter the judicial discretion by attempting to make the excessive enumeration, in one way or another. In other words, these are the considerations which may collectively or otherwise weigh in the mind of the Court, while exercising its jurisdiction***".

Keeping in mind the aforesaid principles, as the accused persons are found guilty for the offences under Section 143, 147, 148, 323, 324, 325 r/w Section 149 of I.P.C., we have to see the punishment prescribed for the said offences.

So far as offence under Section 143 is concerned, the punishment prescribed for the said offence is, imprisonment of either description for a term which may extend to six months, or with fine, or with both. The punishment prescribed for offence of rioting i.e. under Section 147 of I.P.C. is, imprisonment of either description for a term which may extend to two years, or with fine, or with both. So far as offence under Section 148 of I.P.C. is concerned, the punishment prescribed for this offence is, imprisonment of either description for a term which may extend to three years, or with fine, or with both. So far as offence under Section 323 of I.P.C. is concerned, the punishment prescribed for the said offence is, imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both. So far as offence under Section 324 of I.P.C. is concerned, the punishment prescribed for

the said offence is, imprisonment of either description for a term which may extend to three years, or with fine, or with both. So far as offence under Section 325 of I.P.C. is concerned, the punishment prescribed for the said offence is, imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

When such a punishment is prescribed for the aforesaid offences, in view of the facts so brought on record by the prosecution as well as the date of offence till the conclusion of the trial, if certain leniency is shown to the accused persons in imposing sentence, it would meet the ends of justice. Therefore, the accused No.1 to 8 are sentenced as under:

ORDER

Acting under Section 235(2) of Cr.P.C., the accused No.1 to 8 are sentenced to undergo Simple Imprisonment for a period of 6 months each and are liable to pay a fine of Rs.500/- (Rupees five hundred only) each and in default of payment of fine, they shall further undergo Simple Imprisonment for one month for the offence punishable under Section 143 r/w Section 149 of I.P.C.

Further, the accused No.1 to 8 are sentenced to undergo Simple Imprisonment for a period of 6 months each and are liable to pay a fine of Rs.500/- (Rupees five hundred only) each and in default of payment of fine, they shall further undergo Simple Imprisonment for one month for the offence punishable under Section 147 r/w Section 149 of I.P.C.

The accused No.1 to 8 are further sentenced to undergo Simple Imprisonment for a period of 6 months each and are liable to pay a fine of Rs.500/- (Rupees five

hundred only) each and in default of payment of fine, they shall further undergo Simple Imprisonment for one month for the offence punishable under Section 148 r/w Section 149 of I.P.C.

The accused No.1 to 8 are further sentenced to undergo Simple Imprisonment for a period of 3 months each and are liable to pay a fine of Rs.1,000/- (Rupees one thousand only) each and in default of payment of fine, they shall further undergo Simple Imprisonment for one month for the offence punishable under Section 323 r/w Section 149 of I.P.C.

Further, the accused No.1 to 8 are sentenced to undergo Simple Imprisonment for a period of 6 months each and are liable to pay a fine of Rs.2,000/- (Rupees two thousand only) each and in default of payment of fine, they shall further undergo Simple Imprisonment for 3 months for the offence punishable under Section 324 r/w Section 149 of I.P.C.

The accused No.1 to 8 are further sentenced to undergo Rigorous/Simple Imprisonment for a period of 3 years each and are liable to pay a fine of Rs.3,000/- (Rupees three thousand only) each and in default of payment of fine, they shall further undergo Simple Imprisonment for 6 months for the offence punishable under Section 325 r/w Section 149 of I.P.C.

All the sentences shall run concurrently.

Accused No.1 to 8 are acquitted of the charges under Section 326 and 307 r/w Section 149 of I.P.C.

Out of the fine amount of Rs.60,000/- (Rupees sixty thousand only), Rs.25,000/- (Rupees twentyfive thousand only) each is to be paid as compensation to P.Ws.1 and 2

under Section 357 of Cr.P.C. and remaining Rs.10,000/- (Rupees ten thousand only) is to be deposited to the Government Head towards fine.

The accused No.1 to 8 are entitled for set off under Section 428 of Cr.P.C. in respect of the period of detention undergone by them, if any, during the investigation, enquiry or trial in this case.

M.Os.1 to 3 being worthless are to be destroyed after the expiry of the appeal period.

Disposal of properties shall take place after the appeal period is over, in case of appeal, after disposal of appeal, whichever is later.

The bail bonds of the accused No.1 to 8 stand cancelled.

Supply the copy of the Judgment free of cost to the accused.

Send a copy of the Judgment to the District Magistrate as contemplated under Section 365 of Cr.P.C.

(Dictated to the Judgment Writer in open Court, transcribed by her on Computer and after corrections, signed and pronounced by me in the open Court on this the **9th day of February, 2021**.)

(**Ramachandra D. Huddar**)
Prl. District and Sessions Judge,
Mysuru.

:R:

ANNEXURE

List of Witnesses examined on behalf of Prosecution:

P.W.1 : Deepak

P.W.2 : Prathap

P.W.3 : Papanna

P.W.4 : Shivakumar

P.W.5 : Dr.Manjunath

P.W.6 : Dr.Naveen

P.W.7 : Dr.Sayyad

P.W.8 : Puneeth

P.W.9 : H.Krishna

List of Witnesses examined on behalf of Accused:

NIL

List of Documents exhibited on behalf of Prosecution:

Ex.P.1	:	Complaint
Ex.P.1(a)	:	Signature of P.W.1
Ex.P.1(b)	:	Signature of P.W.6
Ex.P.1(c)	:	Signature of P.W.8
Ex.P.2	:	Spot Mahazar
Ex.P.2(a)	:	Signature of witness
Ex.P.2(b)	:	Signature of P.W.4
Ex.P.2(c)	:	Signature of P.W.8
Ex.P.3	:	Wound Certificate
Ex.P.3(a)	:	Signature of P.W.5
Ex.P.4	:	Wound Certificate
Ex.P.4(a)	:	Signature of P.W.5
Ex.P.5	:	MLC Memo
Ex.P.5(a)	:	Signature of junior doctor
Ex.P.6	:	Report
Ex.P.7	:	F.S.L. Report
Ex.P.8 & 9	:	MLC Abstracts

Ex.P.8(a) & 9(a)	:	Signature of P.W.7
Ex.P.10 & 11	:	MLC Abstracts
Ex.P.10(a) & 11(a)	:	Signature of P.W.7
Ex.P.12	:	Police Intimation
Ex.P.12(a)	:	Signature of P.W.7
Ex.P 13	:	FIR
Ex.P.13(a)	:	Signature of P.W.8
Ex.P.14	:	Rough Sketch
Ex.P.14(a)	:	Signature of P.W.8

List of Exhibits marked on behalf of Accused:

Ex.D.1	**:**	Portion of Ex.P.1
Ex.D.2	:	Portion of Statement of P.W.1
Ex.D.3	:	Portion of Statement of P.W.2

List of Material Objects marked in the case:

M.O.1	:	Machete
M.O.2 & 3	:	Wooden Reapers

Prl. District and Sessions Judge,
Mysuru.

:R: