

KABC010330752018



IN THE COURT OF LXXXI ADDL. CITY CIVIL AND
SESSIONS JUDGE, BENGALURU (CCH-82)

:PRESENT:

Sri. Shivaprasad K.B., B.Com., LL.B.,
LXXXI Addl. City Civil & Sessions Judge,
Bengaluru City (CCH-82)
(Special Court exclusively to deal with criminal cases
related to former and elected MPs/MLAs in the State of Karnataka)

Dated this the 22nd day of September, 2026

Spl.CC. No. 828/2018

COMPLAINANT :

State by;
CID, Bengaluru/Paper Town Police
Station, Bhadravathi.

***(Represented by Special Public
Prosecutor)***

- Vs -

ACCUSED :

1. **Sangamesha**
S/o Bellada Kotrappa,
Aged about 39 years,
Residing at Parvathi Krupa,
O.S.M.Road, Halenagar,
Bhadravathi, Shimoga.
2. **B.K.Mohan**
S/o Bellada Kotrappa,

Aged about 49 years,
Residing at Parvathi Krupa,
O.S.M.Road, Halenagar,
Bhadravathi, Shimoga.

3. Ganesh

S/o B.K.Sangamesha,
Aged about 23 years,
Residing at Parvathi Krupa,
O.S.M.Road, Halenagar,
Bhadravathi, Shimoga.

4. Basavaraj

S/o B.K.Sangamesha,
Aged about 22 years,
Residing at Parvathi Krupa,
O.S.M.Road, Halenagar,
Bhadravathi, Shimoga.

5. Jagadeesh @ Jagannath

S/o Bellada Kotrappa,
Aged about 53 years,
Residing at Nandi Nivasa,
Madavanagar, Tarikere Road,
Bhadravathi, Shimoga
District – 577 201.

**(By Sri.C.H.Hanumantharaya,
Advocate)**

Date of offence	22.05.2010 at 08.30 PM
Date of report of offence	23.05.2010 at 01.45 AM
Name of the complainant	Sri.Mahesh Kumar.C- PW.1
Date of commencement of recording of evidence	29.07.2019

Date of closing of evidence	24.01.2025
Offences complained of	Sec.120-B, 147, 307, 326 r/w Sec.149 of IPC
Opinion of the Judge	The Accused no.1 to 5 are not found guilty for the offences punishable under Sec.120-B, 147, 307, 326/149 of IPC

:: JUDGMENT ::

This is a case wherein, the dropped accused no.1 to 5 in the charge sheet, are facing the charge under Sec.120-B, 147, 307, 326 r/w Sec.149 of IPC, after they added as the accused during the trial of the case on the application under Sec.319 of Cr.P.C.

2. Brief facts of the case;

A FIR at Ex.P33 came to be registered against the accused no.1 to 5 and their companions at 01.45 a.m. on 23.05.2010 by PW.17 H.S.Raju, PSI, Paper Town Police Station, Bhadravathi, for the offences punishable under Sec.120-B, 147, 307 r/w Sec.149 of IPC on the Ex.P1 written complaint of PW.1 Mahesh Kumar. In the complaint, the PW.1 alleged that,

pursuant to the criminal conspiracy of accused no.1 to 5 in the background of political enmity, they followed him, while he was proceeding towards the house of his sister Jayamma PW.2 during evening hours on 22.05.2010. After reaching to the house of PW.2 at about 8.30 p.m., he went to bath room to wash his face and at that time, the said accused came into the house of PW.2 with deadly weapons and asked to call her brother. While the PW.2 pleaded not to murder her brother, the said accused attacked her and PW.1 with deadly weapons like machete and long, and caused grievous injury to PW.2. Thereafter, the PW.2 shifted to the hospital for medical treatment.

3. On the next day, the PW.17 visited the incident spot, seized M.O.1 to 4, drew the mahazar at Ex.P.2, in the presence of panch witnesses, and allegedly recorded the statements of PW.6, PW.8 and CW.12 witnesses, who said to have been stated that one unknown person attacked PW.2. The PW.15

Shivanna, ASI who deputed to secure the accused persons, apprehended the accused No.6 Jagadish S/o Javaraiah at Benne Krishna Circle, Bhadravathi during noon hours on his suspicious behavior. He brought the accused No.6 to the Police Station and produced him before the PW.17 PSI. The PW.17 PSI interrogated the accused No.6 and during interrogation, he allegedly admitted his guilt and gave a disclosure statement to PW.17. The PW.17 recovered the M.O.5 and M.O.6 shirt and pant of accused No.6 by drawing the mahazar at Ex.P14 in the presence of panch witnesses; and recovered machete, bicycle at M.O.7 and 8, beside Benne Krishna Circle and Attiyar building road, Bhadravathi New Town in the presence of Panch witnesses by drawing the mahazar at Ex.P15 allegedly at the instance of accused no.6.

4. During Medical treatment, the PW.2 injured Jayamma, sent her statements to the Investigating officer, narrating the involvement of the accused no.1

to 5. As the investigation was not conducted as regards the allegations of the complaint and statement of PW.2 and without satisfying with the investigation by the Investigation officer, the PW.2 preferred WP No.23617/2010 (G.M.-Police) before the Hon'ble High Court of Karnataka to refer the matter for investigation either to COD or CBI. The Hon'ble High Court, by the order dated 02.09.2010 directed to hand-over the investigation to CID for investigation, and as per the aforesaid order of Hon'ble High Court, PW.19 M.S.Koulapur took-up the matter for investigation from PW.18 M.Venugopal.

5. PW.19 M.S.Koulapur conducted further investigation in the matter, recorded the statements of witnesses, obtained CDRs. After conclusion of his investigation, he laid the charge-sheet against the accused No.6 Jagadish S/o Javaraiah before the learned Civil Judge and Addl. JMFC, Bhadravathi, for

the aforesaid offences and dropped the present accused No.1 to 5.

6. The learned Magistrate took cognizance for the aforesaid offences, registered CC No.1810/2011 and securing the accused No.6 complied the provisions under Sec.207 of Cr.P.C.

7. Further, after compliance of Sec.209 of Cr.P.C., the learned Magistrate committed the matter to District and Sessions Court, Shivamogga, who made-over the said matter to Fast Track Court, Bhadravathi for disposal.

8. At the first instance, the accused No.6 secured from the District Prison, before Fast Track Court, Bhadravathi, and during the proceedings before said court, the court observed that said accused was not capable of giving evidence. An application under Sec.329 of Cr.P.C., came to be filed and an order of stay of further proceedings also came to be passed, till the receipt of report from the NIMHANS, Bengaluru and

Prison Hospital, Shimoga about mental health of said accused. After receipt of the reports, the FTC Court proceeded to frame the charge against the accused no.6 for the offences punishable under Sec.307 and 326 of IPC and on his denial, the matter put for trial. The prosecution led the evidences of PW.1 to 4 witnesses i.e. PW.1, 2, 6 and 7 herein and having found the allegations against the accused No.1 to 5, the prosecution filed an application under Sec.319 of Cr.P.C., to arraign them as accused which came to be allowed by the order dated 21.03.2017. Subsequently, the accused No.6 discharged by the order dated 23.07.2018 holding that from the evidence of PW.1 to 4 no incriminating evidences found against the accused No.6.

9. For better understanding, the events traveled in the manner as mentioned in the table below:

Date	Events
8.30 p.m., on 22.05.2010	Occurrence of incident.

1-45 a.m., on 23.05.2010	FIR registered on the complaint of PW.1 against accused no.1 to 5 and their companions.
During noon hours on 23.05.2010	PW.15 apprehended the accused no.6 at Benne Circle, Bhadravathi Town and thereafter he was arrested by PW.17.
5.20 p.m. on 23.05.2010	Accused No.6 produced before the learned Civil Judge and Addl. JMFC, Bhadravathi and remanded to Judicial custody.
08.06.2010, 01.07.2010, 05.08.2010	Representations/Statements of PW.2 alleging the involvement of the accused no.1 to 5 and unfair investigation.
02.09.2010	Matter handed over to CID for Investigation as per the order dated 02.09.2010 passed in W.P.No.23617/2010 (GM-Police).
09.06.2011	PW.19 Investigating officer, CID submitted the charge sheet against the accused no.6 and learned Magistrate took cognizance of the offence under Sec.307, 326 of IPC.
14.09.2011	Matter committed to Hon'ble Principal District and Session Judge, Shimoga.
29.11.2011	Matter made over to FTC Bhadravathi for disposal.
16.11.2012	Charge framed against accused no.6.
08.12.2016	CW.1 examined as PW.1.

09.12.2016	CW.2 examined as PW.2.
16.12.2016	CW.3 and 4 examined as PW.3 and 4.
27.02.2017	Prosecution filed the application under Sec.319 of Cr.P.C. to add accused no.1 to 5 in the case.
21.03.2017	The application under Sec.319 of Cr.P.C. allowed by IV Addl. District and Session Judge, Bhadravathi.
06.04.2017	The order dated 21.03.2017 came to be set aside and summons treated as show cause notice and directed to provide opportunity to the proposed accused for hearing before proceeding in accordance with law, by Hon'ble High Court of Karnataka in CrI.P.No.2832/2017.
23.07.2018	Accused No.6 discharged by IV Addl. District and Session Judge, Bhadravathi.
26.07.2018	Entire case file transferred to this Special court as this court is exclusive court to deal with the criminal cases against MPs and MLAs.
21.01.2019	The application filed under Sec.319 of Cr.P.C. allowed by this court and issued summons to the accused no.1 to 5.

10. After appearance of accused no.1 to 5 and hearing them and prosecution, this court, framed the charges against the accused No.1 to 5 in the following manner;

Firstly, that you accused Nos.1 to 5 and your followers on 22-05-2010 at 8.30 p.m, at HUDCO Colony, H.No.134/C in Bhadravathi Town, agreed with each other because of political rivalry to do away the life of complainant Mahesh Kumar conspired yourself to commit the offence of murder of complainant punishable with death or imprisonment for life or rigorous imprisonment for term which may exceed 2 years or more did criminal conspiracy to commit an offence punishable u/s 120-B of IPC within the cognizance of this Court.

Secondly, that you accused Nos.1 to 5 along with your followers on the above said date, time and place were the members of an unlawful assembly and in prosecution of the common object of the said assembly armed with Muchchu , longu – deadly weapons to do away the life of complainant committed an offence punishable u/s 147 of IPC and within the cognizance of this Court.

Thirdly, that you accused Nos. 1 to 5 on the above said date, time and place being the members of unlawful assembly when Smt. Jayamma was standing at the door assaulted her with Machchu and longu, deadly weapons on her head and hands caused her grievous injuries with an intention to kill her that by that act, you had caused death of Smt. Jayamma, that you would have been guilty of murdering of Jayamma and caused her injuries and hurt and thereby you have committed an offence punishable u/s 307 r/w 149 of IPC and within the cognizance of this Court.

Fourthly, that you accused Nos. 1 to 5 along with your followers on the above said date, time and place also assaulted the complainant Mahesh Kumar on his head and hands by using machchu and long which are the deadly weapons, voluntarily caused grievous hurt to complainant and thereby committed an offence punishable u/s 326 r/w 149 of IPC and within the cognizance of this Court.

11. On denial of charges leveled against the accused No. 1 to 5, the matter put for trial. During trial, the prosecution examined PW.1 to 19 witnesses,

exhibited Ex.P1 to 39 documents and produced MO.1 to 8 material objects. The defence got marked Ex.D1 to D39 documents.

12. After conclusion of the trial, the accused No.1 to 5 examined under Sec.313 of Cr.P.C. and they denied incriminating materials placed against them. The accused No.1 to 5 have not led any defence evidence.

13. Heard learned Special Public Prosecutor and learned counsel for accused No.1 to 5. The learned SPP also submitted the written arguments and learned counsel for accused No.1 to 5 submitted the Memo of synopsis of the case.

14. The learned SPP relied upon the following authorities;

- i. AIR 1995 Supreme Court Cases 1988 (Dharam Pal and others Vs. State of UP);

ii. (2014)12 Supreme Court Cases 457
(Putchalapalli Naresh Reddy Vs. State
of AP)

iii.(2014)14 Supreme Court Cases 619
(Pargan Singh Vs. State of Punjab and
another);

iv.(2010)9 Supreme Court Cases 567
(C.Muniappan and others Vs. The State
of Tamil Nadu);

v. (2005)8 SCR 690 : 2025 INSC 957
(Gurdeep Singh Vs. The State of
Punjab);

vi. SCR 744 : 2025 INSC 1081 (Rajan
Vs. State of Haryana);

vii. (2004)4 Supreme Court Cases
158 (Zahira Habibulla H Sheik and
another Vs. State of Gujrat and
another);

viii. AIR (2014) Supreme Court
1400 (Hardeep Singh Vs. State of
Punjab and others);

ix. Criminal Appeal No.1389/2012
(Baljinder Singh @ Ladoo and others
Vs. State of Punjab).

15. The learned counsel for the accused No.1 to
5 relied upon following authorities;

- i. (2015)7 Supreme Court Cases 178 (Tomaso Bruno and another Vs. State of Uttar Pradesh);
- ii. 2025 SCC Online SC 1640 (Shail Kumari Vs. State of Chattisgarh);
- iii. 1996 10 SCC 346 (Rehmat Vs. State of Haryana);
- iv. 2025 SCC Online SC 2866 (Punimati Vs. State of Chattisgarh);
- v. 2024 15 SCC 424 (Jai Prakash Tiwari Vs. State of MP);
- vi. 2025 SCC Online 670 (Aslam alias Imran Vs. State of Madhya Pradesh);
- vii. 2026 SCC Online SC 716 (Anand Pujari Vs. State of Karnataka);
- viii. 2025 SCC Online SC 2858 (Manoj Vs. State of Chhatisgarh);
- ix. (1977)2 Kar LJ 13 (Fakrusab Vs. State of Karnataka);
- x. (1974)3 SCC 562 (Babuli alias Narayan Bahera Vs. State of Orissa);
- xi. 2025 SCC Online SC 2152 (Zainul Vs. State of Bihar);
- xii. (2012)5 Supreme Court Cases 690 (Rashmi Rekha Thatoi and another Vs. State of Orissa);
- xiii. 2025 SCC 351 (Sovaran Singh Prajapati Vs. State of Uttar Pradesh);

- xiv. (2019)4 SCC 522 (Digamber Vaishnav and another Vs. State of Chhattisgarh);
- xv. (2016)16 SCC 418 (Harbeer Singh Vs. Sheeshpal and others);
- xvi. 2025 SCC 2270 (Kannaiya Vs. State of Madhya Pradesh);
- xvii. 2024 SCC 2580 (Saheb Vs. State of Maharashtra);
- xviii. (2005)5 SCC 272 (Raja Ram Vs. State of Rajasthan);
- xix. (2017)11 SCC 126 (Virender Singh Vs. State of Haryana).

16. Upon hearing both the sides and perusal of the material evidence on record, the point that arise for consideration are;

Point No.1: Whether the prosecution proved beyond reasonable doubt that, the accused No.1 to 5, in the background of political rivalry, agreed each other and conspired to do away the life of complainant/PW.1:Mahesh Kumar and murder him, which is punishable with death, imprisonment for life or rigorous imprisonment for a term which may extend to 2 year or more, at 08.30 p.m. on 22.05.2010, at the house of

PW.2 Jayamma, House No.134/C, HUDCO Colony, Bhadravathi Town, and thereby accused No.1 to 5 committed the offence punishable under Sec.120-B of IPC?

Point No.2: Whether the prosecution proves beyond reasonable doubt that on the aforesaid date, time and place the accused No.1 to 5, being the members of unlawful assembly and in prosecution of their common object, to do away the life of PW.1 committed rioting and thereby they committed the offence punishable under Sec.147 of IPC?

Point No.3: Whether the prosecution proves beyond reasonable doubt that on the aforesaid date, time and place, the accused No.1 to 5 being members of unlawful assembly, assaulted head and hands of PW.2 Jayamma with chopper and long with an intention to kill her and by that act caused the death of PW.2, the accused No.1 to 5 would have been guilty of murder of PW.2 and thereby they committed the offence punishable under Sec.307 r/w 149 of IPC?

Point No.4: Whether the prosecution proves beyond reasonable doubt that on the aforesaid date, time and place, the accused No.1 to 5 being members of unlawful assembly, assaulted PW.1 Mahesh Kumar on his head and hands with chopper and long and voluntarily caused grievous hurt to

complainant PW.1 and thereby, they committed the offence punishable under Sec.326 r/w 149 of IPC?

Point No.5: What Order?

17. My answer to the above points for consideration are as follows;

Point No.1 : In the Negative,

Point No.2 : In the Negative,

Point No.3 : In the Negative,

Point No.4 : In the Negative,

Point No.5 : As per the final order,

for the following;

REASONS

POINT NO.1 TO 4:

18. Before advertng to the actual contentions raised by the first informant PW.1, 2, 6 and 7 and arguments urged by the learned Special Public Prosecutor, it is necessary to mention the case brought before the court by the prosecution after its investigation. As per the charge sheet column no.17, the case of prosecution in brief are that;

At about 7-8 years back, the accused No.6 was working with PW.1 and the accused No.6 developed ill-will against the PW.1 assuming that PW.1 insulted him, responsible for his declension and mental incapacity, and intended to finish PW.1. In this background, on 22.05.2010 at 08.00 PM, the accused No.6 intending to murder PW.1, came to the house of PW.2 Jayamma assuming that PW.1 could be available at the house of PW.2 and as the PW.1 was not present at the house of PW.2, the accused No.6 assaulted on the head of PW.2 with machete at M.O.7, intending to murder her. While the PW.2 crossed her hands to avoid the assaults from accused No.6, she sustained grievous injuries to her fingers. Thus, in the charge sheet, the prosecution alleged that the accused No.6 committed the offences under Sec.307 and 326 of IPC.

19. Though the complaint at Ex.P1 came to be lodged against the accused No.1 to 5 and others by PW.1 first informant, during investigation, the

investigation authority apprehended the accused No.6, arraigned him as accused no.6 in the case, concluded with a new theory, contrary to the version of the complaint averments.

20. During trial before the learned IV Addl. District and Session Judge, Bhadravathi, the PW.1 first informant, PW.2 Injured, PW.6 and PW.7 relatives of PW.1 and 2 have attributed that the accused no.2 to 5 forcefully entered the house of PW.2 and assaulted PW.2 with dangerous weapons and caused grievous injuries her. So, according to PW.1, 2, 6 and 7, the accused no.2 to 5 are the perpetrators of the crime and not the accused no.6 as concluded by the Investigating authority. In view of allegations against the accused no.1 to 5 and exoneration of accused no.6, the accused no.1 to 5 brought in the case to face the trial, on the application under Sec.319 of Cr.P.C., and matter proceeded against the accused No.1 to 5 before the court, deviating the conclusion arrived by the

investigating authority and case narrated under column No.17 of charge-sheet submitted by the prosecution.

21. From evidence adduced by the PW.1 first informant, PW.2 Injured, PW.6 and PW.7 sister's children of PW.2 and arguments advanced by the learned Public Prosecutor on the basis of their evidences and Ex.P.1 complaint averments, it appears that, it is the specific case of the first informant, injured and their said relatives that PW.1 contested the Legislative Assembly Elections against the accused no.1 and developed his political career, which led to political hatredness by accused no.1 and his followers towards the PW.1. In this background, the followers of accused no.1 interrupted the functions organized by PW.1 during Haladamma fair at Bhadravathi on 20.05.2010 alleging that the accused no.1 who was the local sitting MLA, had not invited. In the background of this development, at 8.30 a.m., on 22.05.2010, the

accused no.2 to 5 and their followers, followed PW.1 to attack him as he had not invited the accused no.1 local MLA, while he was proceeding to the house of his sister PW.2. After reaching to the house of PW.2, the PW.1 went to bath room and at that time, the accused no.2 to 4 forcefully entered the house of PW.2 searching PW.1, attacked PW.2 with dangerous weapons and caused grievous injury to her head and right fingers and committed the charged offences.

22. During the course of arguments, the learned Special Public Prosecutor drawing the attention of the testimonies of PW.1, 2, 6, 7 and other witnesses, submitted that there is no dispute as to time, place of incident and nature of injuries sustained by the PW.2. He contended that the evidence of PW.1, 2, 6, 7 supports the complaint averments and there is no inordinate delay in lodging the complaint against the present accused. He further submitted that the evidence of PW.1 indicates the attempt to murder of

PW.2 and the cross-examination would indicate the political rivalry between the first informant's party and present accused and their followers. The evidence of PW.2 injured witness shows the specific allegation against the accused No.2 to 5. The medical evidence indicates the grievous hurt to the vital parts of PW.2 and the injuries sustained by PW.2 is not disputed by the accused. Further, he submitted that the evidence of PW.6 and 7 who were present during the incident corroborates the evidence of PW.2. There is no material discrepancies or contradictions in the evidences of material witnesses PW.1, 2, 6, 7; and their evidences, coupled with complaint averments and medical evidence adduced clearly proves that the accused no.2 to 5 are the perpetrators of the crime. He relied upon the decision of ***Dharampal and others Vs. State of UP reported in AIR 1995 Supreme Court 1988*** to contend that the eye witnesses version can not be doubted. Further, he relied upon the decision rendered

in ***Puchalapalli Naresh Reddy Vs. State of Andra Pradesh and others reported in (2014)12 SCC 457, and Pargan Singh Vs. State of Punjab and another reported in (2014)14 SCC 619*** to contend that the testimony of the injured witness requires higher degree of credibility and unless there is strong reasons, the evidence of injured witness can not be discarded.

23. He further relied upon the decision rendered in the case of ***Hardeep Singh Vs. State of Punjab and others reported in AIR 2014 SC 1400*** and contended that the 'evidence' under Sec.319 of Cr.P.C. means only the evidence made before the court in relation to the documents and statements produced and can not decide on the basis of material collected during the investigation. In the said case, the Hon'ble Apex Court examined the scope of Sec.319 of Cr.P.C. and nature of evidence required to add a new accused in the case.

24. Further, the learned Public Prosecutor taking through the evidences of Police witnesses and materials on record, he submitted that apprehending the accused No.6 at the alleged point of time at a circle on suspicion in the case creates a doubt about the investigation conducted by the Police. There are doubtful circumstances in arraigning the accused no.6 in the case. The Investigating Officer never inquired the accused No.1 to 5 during the investigation and there is no reason for not inquiring the said accused, though the complaint averments specifically indicates the involvement of accused No.1 to 5. This conduct of Investigating Officer would show that in order to protect the accused No.2 to 5, who are the close relatives of accused No.1, a sitting MLA, the investigating officers conducted a biased, tainted and defective investigation and fixed the accused No.6 a mentally ill person and had dropped the accused no.1 to 5 in the charge sheet. The PW.15 and PW.17 during

investigation acted at the behest of accused no.1. Further, the Investigating Officer PW.17 never attempted to record the statement of PW.2, despite several letters to him and as the PW.17 conducted callous, biased and improper investigation, PW.2 approached Hon'ble High Court and the Hon'ble High Court transferred the matter to CID for investigation. The PW.19 investigating officer had not conducted proper investigation, there is material to show how he got the phone numbers of accused to obtain the CDRs. He approved the illegal, biased investigation of earlier investigation officers to protect the present accused.

25. Further, he contended that the evidence of PW.15, 17 to 19 raises several questions with regard to their investigation process and without any investigation against accused No.1 to 5 the investigation officers exonerated them. The Police made the accused No.6 as scapegoat to protect the accused No.1 to 5 taking advantage of the unsoundness mind of

accused No.6, by creating the documents. Therefore, an action should be taken against the erring Officers for fabrication of the documents.

26. He relied upon the decision of ***Zahira Habibulla H Sheik and another Vs. State of Gujarath and others in (2004)4 SCC 158***, and stressed upon the duty of the court in the administration of justice and upholding the justice. The Hon'ble Apex Court at Para-54 to 56 held that;

54. Though justice is depicted to be blindfolded, as popularly said, it is only a veil not to see who the party before it is while pronouncing judgment on the cause brought before it by enforcing law and administer justice and not to ignore or turn the mind/attention of the court away from the truth of the cause or lis before it, in disregard of its duty to prevent miscarriage of justice. When an ordinary citizen makes a grievance against the mighty administration, any indifference, inaction or lethargy shown in protecting his right guaranteed in law will tend to paralyse by such inaction or lethargic action of courts and erode in stages the faith inbuilt in the judicial system ultimately destroying the very justice-

delivery system of the country itself. Doing justice is the paramount consideration and that duty cannot be abdicated or diluted and diverted by manipulative red herrings.

55. The Courts at the expense of repetition we may state, exist for doing justice to the persons who are affected. The Trial/First Appellate Courts cannot get swayed by abstract technicalities and close their eyes to factors which need to be positively probed and noticed. The Court is not merely to act as a tape recorder recording evidence, overlooking the object of trial i.e. to get at the truth. It cannot be oblivious to the active role to be played for which there is not only ample scope, but sufficient powers conferred under the Code. It has a greater duty and responsibility i.e. to render justice, in a case where the role of the prosecuting agency itself is put in issue and is said to be hand in glove with the accused, parading a mock fight and making a mockery of the criminal justice administration itself.

56. As pithily stated in *Jennison v. Backer* (1972 (1) All E.R. 1006), "The law should not be seen to sit limply, while those who defy it go free and, those who seek its protection lose hope".

Courts have to ensure that accused persons are punished and that the might or authority of the State are not used to shield themselves or their men. It should be ensured that they do not wield such powers which under the Constitution has to be held

only in trust for the public and society at large. If deficiency in investigation or prosecution is visible or can be perceived by lifting the veil trying to hide the realities or covering the obvious deficiencies, Courts have to deal with the same with an iron hand appropriately within the framework of law. It is as much the duty of the prosecutor as of the Court to ensure that full and material facts are brought on record so that there might not be miscarriage of justice. (See Shakila Abdul Gafar Khan (Smt.) V. Vasant Raghunath Dhoble.)

27. Further, he relied upon the decision rendered in the case of ***C.Muniyappan and others Vs. State of Tamilnadu reported in (2010) 9 SCC 567***, wherein the Hon'ble Apex Court at Para-55 highlighted the courts duty in examining the evidences where the lapse occurred in the investigation:

55. There may be highly defective investigation in a case. However, it is to be examined as to whether there is any lapse by the IO and whether due to such lapse any benefit should be given to the accused. The law on this issue is well settled that the defect in the investigation by itself cannot be a ground for acquittal. If primacy is given to such designed or negligent investigations or

to the omissions or lapses by perfunctory investigation, the faith and confidence of the people in the criminal justice administration would be eroded. Where there has been negligence on the part of the investigating agency or omissions, etc. which resulted in defective investigation, there is a legal obligation on the part of the court to examine the prosecution evidence dehors such lapses, carefully, to find out whether the said evidence is reliable or not and to what extent it is reliable and as to whether such lapses affected the object of finding out the truth. Therefore, the investigation is not the solitary area for judicial scrutiny in a criminal trial. The conclusion of the trial in the case cannot be allowed to depend solely on the probity of investigation.

28. He submitted that in view of the faulty investigation, the procedures conducted by the police officer would not be worthy of acceptance and on the other hand, the evidence of PW.1, 2, 6 and 7 placed before this Court are consistent, cogent and reliable, supported with medical evidences and there is no ground to reject their evidences. Thus, the guilt of the accused proved beyond reasonable doubt and prayed

to convict the accused No.1 to 5 for the offences charged against them.

29. On the other hand, during the course of arguments, the learned counsel for the accused No.1 to 5 Sri.C.H.Hanumantharaya, elaborately argued and strenuously contended that the PW.1 was not present during the alleged incident and a concocted, created complaint came to be registered by the PW.1. He pointed out the unsubstantiated versions found in the Ex.P1 complaint and in the evidence of PW.1 and 2. He submitted that there is no corroborative materials to substantiate the contents of Ex.P1. The motive suggested by the first informant is also flimsy as the first informant never considered as worthy political opponent in any of the elections. Nobody examined to prove the animosity between the family of first informant and the accused, and motive suggested not proved.

30. Further, during the course of arguments, the learned counsel for the accused no.1 to 5 contended that the resurrection activities of first informant in respect of Haladamma temple is not proved, there is no documents to show that the first informant arranged Wrestling competition by PW.1, interruption by the followers of accused no.1 are also not proved. Further he contended that though the first informant aware of the unnatural following by certain persons in vehicles, he neither complained to anybody nor noted the numbers or colour of those vehicles. The Driver who is an important witness to show the alleged act of accused persons, and he is not examined and there is no reason why he was not examined in this case. Further his name does not appear in any of the records which came into existence immediately after the incident. Therefore, there is no material to show the presence of the PW.1 at the house of PW.2 during the incident.

31. Further, he pointed out that the evidence on record would indicate that the PW.1 complainant is involved in number of cases and he has the habit of filing the false case against the officials and others which appears from Ex.D3. Further, he submitted that there is no material to show the incident occurred near the Taluk Panchayath office and such incident alleged by PW.2 is not supported by any evidence. Further, taking through the evidence of PW.1 and 2 and the medical records, he submitted that none of the medical records would show that at the first instance PW.1 shifted PW.2 to the Hospital. Further, those documents does not show the names of assailants. The evidence of PW.1 and 2 raises suspicious circumstances which give rise to doubt about the conduct of PW.1 and 2. Further, he contended that the PW.2 though conscious has not revealed the name of assailant to anybody much less at the Hospital. He submitted that the PW.1 though not present at the spot, created the complaint

to lodge a false FIR with ulterior motive as the accused No.1 is a local MLA. Further, he tutored the PW.2 and the relatives PW.6 and 7, obtained a false evidence before the Court to falsely implicate the accused before the Court.

32. Further, he contended that there is no independent evidences to prove the alleged act of accused no.1 to 5. The neighbors are not examined. From the evidence of PW.2, PW.6 and PW.7, he pointed out material omissions, contradictions in their evidences and admissions of the Investigating officers to prove the omissions and contradictions. Further, he submitted that the PW.1 and 2 though unsatisfied with the investigation by Bhadravathi Police, they satisfied with the investigation by CID. The charge sheet is not challenged by the first informant and his family members. The suggestion made to the material witness by the prosecution would indicate the allegation against one accused. Further, prosecution also not

cross examined the PW.3 to 5 and 8 independent witnesses and their evidences are unchallenged by the prosecution. Further, the CDR produced goes to show that the accused no.1 was at Bengaluru on the day of incident. However, the prosecution intentionally not produced the certificate under Sec.65-B of Indian Evidence Act and therefore, adverse inference has to be drawn against the prosecution. Thus, he submitted that the prosecution could not able to prove the guilt against the accused no.1 to 5 beyond reasonable doubt.

33. During the course of arguments, the learned counsel for the accused no.1 to 5 relied upon the decision rendered in the case of ***Jaiprakash Tiwari Vs. State of Madhya Pradesh reported in (2024)15 SCC 424*** wherein settled principle of proving the guilt of the accused and duty of the court reiterated and at Para-29, 30, 32 the Hon'ble Apex Court held as under;

29. It is an established principle of criminal law that the burden of proving the guilt of the accused beyond reasonable doubt is upon the prosecution. Where an accused sets up a defence or offers an explanation, it is well settled that he is not required to prove his defence beyond a reasonable doubt but only by preponderance of probabilities. (See *M. Abbas v. State of Kerala*) Further, it has been held by this Court in *Parminder Kaur v. State of Punjab* that “once a plausible version has been put forth in defence at the Section 313CrPC examination stage, then it is for the prosecution to negate such defence plea”.

30. Moreover, it is the solemn duty of the courts below to consider the defence of the accused. The same must be considered with caution and must be scrutinised by application of mind by the Judge. The court may accept or reject the same, however it cannot be done cursorily. The reasoning and the application of mind must be reflected in writing. However, from the observations extracted above, it is clear that the courts below have failed to undertake this solemn duty. Rather, the evidence of the accused has been dealt with by the court in a casual manner.

* * * *

32. It is the duty of the Court to separate the grain from the chaff and to extract the truth from the mass of evidence. In our opinion, the case of the prosecution is based on mere conjectures and surmises. The High Court

and the trial court failed to consider the above mentioned circumstances while rendering the judgment convicting the accused. The evidence brought on record by the prosecution is insufficient to prove the case against the appellant beyond reasonable doubt.

34. He further referred the decisions of **Anand Jakkappa Pujari @ Gaddadar Vs. State of Karnataka reported in 2026 SCC Online SC 716, Harbir Singh Vs. Sheeshpal and others reported in (2016)16 SCC 418 and Manoj alias Munna Vs. State of Chattisgarh reported in 2015 SCC Online SC 2858**, wherein reiterated the principle of the criminal jurisprudence as to the prosecution's burden to prove its case beyond reasonable doubt.

35. Further, he relied upon the decision in **Shail Kumari Vs. State of Chhattisgarh reported in 2025 SCC Online 1640**, wherein the Hon'ble Apex Court referred the decision rendered in 'Vadivelu Thevar V. State of Madras' classifying the witnesses and principle

to accept or discard the evidence of witnesses. At para-
11 and 12 in the said decision held as under;

11. This Court in the case of *Vadivelu Thevar*
v. *State of Madras* held thus:

“11. In view of these considerations, we have no hesitation in holding that the contention that in a murder case, the court should insist upon plurality of witnesses, is much too broadly stated. Section 134 of the Indian Evidence Act, has categorically laid it down that “no particular number of witnesses shall, in any case, be required for the proof of any fact”. The legislature determined, as long ago as 1872, presumably after due consideration of the pros and cons, that it shall not be necessary for proof or disproof of a fact, to call any particular number of witnesses. In England, both before and after the passing of the Indian Evidence Act, 1872, there have been a number of statutes as set out in *Sarkar's Law of Evidence* — 9th Edn., at pp. 1100 and 1101, forbidding convictions on the testimony of a single witness. The Indian Legislature has not insisted on laying down any such exceptions to the general rule recognized in Section 134 quoted above. The section enshrines the well recognized maxim

that “Evidence has to be weighed and not counted”. Our Legislature has given statutory recognition to the fact that administration of justice may be hampered if a particular number of witnesses were to be insisted upon. It is not seldom that a crime has been committed in the presence of only one witness, leaving aside those cases which are not of uncommon occurrence, where determination of guilt depends entirely on circumstantial evidence. If the legislature were to insist upon plurality of witnesses, cases where the testimony of a single witness only could be available in proof of the crime, would go unpunished. It is here that the discretion of the presiding judge comes into play. The matter thus must depend upon the circumstances of each case and the quality of the evidence of the single witness whose testimony has to be either accepted or rejected. If such a testimony is found by the court to be entirely reliable, there is no legal impediment to the conviction of the accused person on such proof. Even as the guilt of an accused person may be proved by the testimony of a single witness, the innocence of an accused person may be established on the testimony of a single witness, even though a considerable number of witnesses may

be forthcoming to testify to the truth of the case for the prosecution. Hence, in our opinion, it is a sound and well-established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely:

- (1) Wholly reliable.
- (2) Wholly unreliable.
- (3) Neither wholly reliable nor wholly unreliable.

12. In the first category of proof, the court should have no difficulty in coming to its conclusion either way — it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial. There is another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if

courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging subornation of witnesses. Situations may arise and do arise where only a single person is available to give evidence in support of a disputed fact. The court naturally has to weigh carefully such a testimony and if it is satisfied that the evidence is reliable and free from all taints which tend to render oral testimony open to suspicion, it becomes its duty to act upon such testimony. The law reports contain many precedents where the court had to depend and act upon the testimony of a single witness in support of the prosecution. There are exceptions to this rule, for example, in cases of sexual offences or of the testimony of an approver; both these are cases in which the oral testimony is, by its very nature, suspect, being that of a participator in crime. But, where there are no such exceptional reasons operating, it becomes the duty of the court to convict, if it is satisfied that the testimony of a single witness is entirely reliable. We have therefore, no reasons to refuse to act upon the testimony of the first witness, which is the only reliable evidence in support of the prosecution.” **(emphasis supplied)**

12. This Court in *Vadivelu Thevar* (supra) has classified the witnesses into three types: (i)

wholly reliable, (ii) wholly unreliable, and (iii) neither wholly reliable nor wholly unreliable. It has been held that in the first category of cases, there is no difficulty inasmuch as if the testimony of such witness is found to be fully reliable, it may convict or may acquit on the basis of his statement. Even in the second category cases, there is no difficulty that if evidence of such a witness is found to be wholly unreliable, the testimony must be discarded. The difficulty arises only in the case of third type of witnesses, where the Court is required to separate the chaff from grain to arrive at a conclusion. XXXX

36. The learned counsel for the accused no.1 to 5 also relied upon decision of ***Kannaiya Vs. State of Madhya Pradesh reported in 2025 SCC Online SC 2270***, wherein, the aforesaid decision of Vadivelu Thevar referred and in the light of aforesaid principles, examined the veracity of evidence of prosecution witnesses.

37. Further, in the decision rendered in ***Digambar Vaishnav and another Vs. State of Chhattisgarh reported in (2019)4 SCC 522*** relied by the learned counsel for the accused no.1 to 5,

reiterated the well settled principle that if two views are possible on evidence adduced in the case, one binding to the guilt of the accused and the other is to his innocence, the view which is favourable to the accused should be adopted.

38. Further in the decision of ***Babuli @ Narayana Behera Vs. State of Orissa reported in (1974)3 SCC 562*** relied by the accused no.1 to 5, examining the evidence of sole testimony of eye-witness, the Hon'ble Apex Court observed that when there are serious infirmities in the testimony of sole eye-witness, his testimony cannot be accepted. Further in the decision of ***Zainul Vs. State of Bihar, reported in 2025 SCC Online SC 2152***, the Hon'ble Apex Court, having observed that oral testimonies neither corroborate each other nor align with the medical records and various contradictions in the form of material omissions go to the root of the matter,

concluded that the prosecution had not discharged its burden of proof.

39. In the case of ***Rajaram Vs. State of Rajasthan reported in 2005 SCC 272*** relied upon by the accused, the Hon'ble Apex Court considering the evidence of hostile witnesses, held that the defence can rely the evidence of hostile witness and it would be binding on the prosecution when the prosecution did not seek the permission of the court to hear the witness as a hostile witness.

40. Further, in the decision of ***Rehmath Vs. State of Haryana reported in (1996)10 SCC 346*** relied by the learned counsel for accused No.1 to 5, the Hon'ble Apex Court taking note of non-mentioning of the history of the injured, doubted the implication of the accused in the complaint lodged five hours after the incident.

41. Further the learned counsel for the accused No.1 to 5 relied upon the decision reported in ***Tomaso Bruno and another Vs. State of Uttarpradesh reported in (2015)7 SCC 178*** wherein it was observed that omission to produce best evidence renders the prosecution case unreliable and the adverse inference has to be drawn under Sec.114 of Indian Evidence Act, if best required evidence is not produced.

42. Further, in the case of ***Aslam @ Imran Vs. State of Madhya Pradesh reported in 2025 SCC Online SC 670***, relied by the accused, the Hon'ble Apex Court held that the enmity is a double edged weapon and it provides motive as well as possibility of false implication.

43. Further during the course of arguments, the learned counsel for the accused No.1 to 5, taking through the decision of ***Soveran Singh Prajapathi Vs. State of UP reported in 2025 SCC Online SC***

351 highlighted the duties of the Public Prosecutor. The Hon'ble Apex Court examining the duties of Public Prosecutor, considering the earlier decisions observed that the Public Prosecutor has the solemn duty to achieve the fair trial for prosecution as well as for the accused.

44. Having heard the arguments addressed by the learned Special Public Prosecutor and learned counsel for the accused no.1 to 5 and the principles of law evolved, and taking note of the dropped accused No.1 to 5 arraigned as additional accused during trial stage, by filing application under Sec.319 of Cr.P.C., it is incumbent to assess whether the evidence on record de hors the lapses alleged by the learned Public Prosecutor, to rely upon or not, and to what extent such evidence reliable and whether such lapses affected the object of finding out the truth in the case.

45. In the instant case, the written complaint came to be lodged by first informant PW.1, wherein he stated about his defeat in the Legislative Assembly Elections from Bhadravathi Legislative Assembly Constituency and election of accused no.1 in the said election. He alleged the development of political enmity against him from accused No.1 to 5, their family members and followers and their intention to attack him on several occasions. Further, he claims that the accused No.1 to 5 developed ill-will as he received appreciation from the general public since he constructed the main tower (ರಾಜಗೋಪುರ) of Haladamma Temple in Halenagara, Bhadravathi. In these background, the accused No.1 to 5, planned to murder him and his family members and during the Haladamma fair on 20.05.2010 attempted to murder him, due to which the functions at Haladamma fair canceled. He held a press meet and requested the Police for protection and legal action. Further, the first

informant claims that the accused No.1 to 5, their followers with common intention to murder him and his family members in the background of political enmity, followed him with dangerous weapons, while he was proceeding towards the house of PW.2 Jayamma, his sister. After reaching the house of PW.2 Jayamma, he went to wash his face inside the house and at that time, the said accused came and uttered not to leave the PW.1 alive. Further, he claims that when he came to the spot, the PW.2 was pleading not to murder PW.1 and at that time, the accused No.1 to 5 and their companions assaulted him on his head with machete and long. While he shouted, Mohana and Nagaraja came to the spot and rescued PW.2. As PW.2 sustained serious injuries, she was shifted to General Hospital, Bhadravathi and after first aid, she was referred to Nanjappa Hospital, Shivamogga for medical treatment; thereafter as per the advise of Medical Officer, she was taken to Manipal Hospital for higher

treatment. The PW.1 first informant stated that as the PW.2 was not in a position to give the statement, he lodged the complaint. The said complaint came to be lodged at 01.45 a.m., on 23.05.2010 and FIR at Ex.P33 came to be registered by PW.17 PSI against the accused No.1 to 5.

46. During the trial, the ***first informant:*** ***C.Mahesh Kumar***, aged 54 years, Engineer by profession, being PW.1 gave his evidence and it is his evidence that during the year 1999 and 2008, he contested in the Legislative Assembly Elections from Bhadravathi Legislative Assembly Constituency and he defeated in the election, however accused No.1 elected as MLA. Further it is his evidence that the accused No.1 and his family members had the political ill-will against him and his family members. Further, it is his evidence that the resurrection activities of Haladamma Temple performed in his leadership, on the request of villagers and the accused no.1 the MLA of Bhadravathi

Constituency was not invited for the all religion meeting held on 20.05.2010. During such meeting, the followers of accused No.1 interrupted for not inviting the accused no.1 and on the next day, he regretted at the press meet, for the obstruction caused due to act of accused and their followers.

47. Further, it is his evidence that a wrestling competition was also arranged during the fair and accused No.1 was also not invited to said competition. After inauguration of wrestling and holding several several wrestling matches, he left the said place, in his car. Further it is his evidence that while he was proceeding in the car, he observed that a Qualis vehicle and two cars were following him. He told his driver to drive the car enhancing the speed, towards the house of his sister PW.2 and at about 08.30 p.m., he reached to the house of his sister. He asked his driver to take the car, with direction not to stay anywhere and

return, after his telephonic call and accordingly, his driver left with car.

48. Further, it is his evidence that while he went to the house of PW.2 his sister, PW.2 to 4 were present at the house and he asked PW.2 to close the front door stating somebody following him. Further it is his evidence that he went inside to wash his face and at that time, somebody knocked the door. When PW.2 opened the door, the accused No.2 to 4 with machete and sharp weapons, forcibly entered the house and directed PW.2 to call her brother. Further, it is his evidence that, by the time, he came out of the bathroom. At that time, the accused were shouting towards PW.2 and threatening not leave her brother, and the PW.2 was pleading not to do anything to her brother. Further, it is his evidence that the accused No.2 assaulted with machete towards him, which caused hurt to the head of PW.2. While he threw a plastic chair towards the accused, accused No.3 and 5

were holding PW.2. The accused attempted to hit him, however he managed to escape from them. Further, it is his evidence that the accused No.4 assaulted with the sharp weapon towards him and he sustained bleeding injury at his left forehead. The PW.2 in order to rescue her brother, she crossed her hands and she sustained cut injuries to her right four fingers. At that time, a person who was at the compound gate shouted and asked the accused to come out of the house. Therefore, all the accused ran out of the house, threatening to him. One Nagaraj and Mohana, the neighbors rescued PW.2. In the incident the PW.2 sustained cut injuries to her right fingers and she also sustained bleeding injury of 8 inches at her head and she was partially conscious.

49. It is also his further evidence that immediately he shifted PW.2 to General Hospital, Bhadravathi for medical treatment, thereafter she was shifted to Nanjappa Hospital, Shimoga where a

conservative treatment provided to PW.2. Thereafter, on the advise of Medical Officers at Nanjappa Hospital, he sent PW.2 with his brother's son to Manipal Hospital, Bengaluru for higher treatment in an ambulance. He lodged the complaint at Ex.P1 at Paper Town Police Station, Bhadravathi at 01.45 a.m., During morning hours at about 10.30 to 11.00 a.m., the Police visited the incident spot, he has shown the place of incident to Police, they drew the mahazar at Ex.P2 and seized bed sheet, cement concrete piece from the spot.

50. Further, it is his evidence that the Investigating Officer has not taken any action against the accused. However, registered the case against Jagadeesh. He told the Police that there is no connection between Jagadish and the incident and therefore, he submitted the Writ petition through his sister before the Hon'ble High Court of Karnataka. to hand-over the case to CID and the Hon'ble High Court directed the CID for investigation as per Ex.P3.

Further, it is his evidence that he had also sent the Telegrams as per Ex.4 to 6 to Investigating Officer to record his statement. During his evidence, he identified the properties seized and got marked M.O.1 to 8 marked and he has stated that MO.7 machete was not used by the accused.

51. ***PW2 : Jayamma, aged 63 years, who was a Government official is the injured witness in the case*** and it is her evidence that during the year 1996 and 1998 her brother PW.1 contested in the Legislative Assembly election from Bhadravathi Legislative Assembly Constituency and there was political ill-will between accused No.1 and PW.1. Further, it is her evidence that the PW.1 had undertaken resurrection of Haladamma temple situated at Bhadravathi Town, which completed in the year 2010. The inauguration of the said Temple was fixed during village fair in the year 2010 and National level wrestling competition also arranged during the fair.

52. Further, it is her evidence that, on 22.05.2010 at about 10.00 a.m., she had been to Taluk Panchayath office to attend her duty and near her office, K.N.Harsha and B.K.Shivakumar restrained her and told that sitting MLA not invited to the wrestling competition and he should be invited, otherwise, consequences would be different, and asked her to inform PW.1. While she resisted, the said persons threatened that if the MLA is not invited before evening, consequences would be different. Further, it is her evidence that thereafter, she went inside her office, however she could not able to work and she returned to her home at noon.

53. Further, it is her evidence that at about 08.00 p.m., PW.1 came to her house and asked her to prepare tea. The PW.1 went to the bathroom and she locked the door of the house. Further it is her evidence that some persons talking outside and they were pushing the door of the house. While she opened the

door, the accused No.2 to 5 forcibly entered into the house and questioned about PW.1. Further, it is her evidence that the said accused objected for not inviting the accused no.1 and during her resistance, suddenly, the accused No.2 assaulted on her head with iron long. While she attempted to escape, the accused No.3 to 5 held her. Due to such assault, she sustained bleeding injury. While the accused No.1 attempted to assault with Long on her hand, she put her right hand on the head and she sustained cut injuries to her right fingers except thumb finger. Further, during assault with long by accused no.2, she sustained injury to her nose.

54. Further, it is her evidence that as she was shouting, the PW.1 came to the spot and an altercation took-place between him and accused No.2. The accused attempted to assault PW.1 and while she attempted to rescue her brother, she sustained injury over her head due to the assault by accused No.2 with Long and she become semi-unconscious. Thereafter,

the accused threatened with dire consequences and left the house.

55. Further, it is her evidence that one Nagaraja and Mohana came to the spot and shifted her to General Hospital, Bhadravathi for medical treatment. After first aid, she was referred to Nanjappa Hospital, Shimoga for higher treatment. After conservative treatment at Nanjappa Hospital, she was shifted to Manipal Hospital for further treatment. She obtained medical treatment at Manipal Hospital as an inpatient till 28.05.2010. Thereafter, she obtained Medical treatment as an inpatient at SDM Ayurveda Hospital near Udupi for 10 days. She came to Bengaluru for Plastic surgery and as she had to visit the Hospital for 3 days in a week, she was staying at Bengaluru. She could not able to attend her duty for two years due to the injuries and she permanently lost control of her right hand.

56. It is also her further evidence that she sent the typed statements to CPI, Paper Town Police Station, Bhadravathi, narrating the facts regarding the accused and manner of incident. The PW.1 lodged the complaint at Ex.P1 regarding the incident. She identified Ex.P7 to 13 photographs.

57. Further, it is her evidence that the Police had not visited to the Hospital for recording her statement. She forwarded a Compact Disc containing videograph regarding the injuries sustained by her. She sent some letters to the Investigating Officer narrating the incident, naming the accused, and stating that investigation was carrying out on the influence of the accused no.1. However, the Investigating Officer had not attempted to obtain her statement. But, the Investigating Officer submitted the charge-sheet, arraigning a person not concerned to the incident. She submitted letter to Investigating Officer stating that the charge-sheet has not been submitted against the real

accused. She gave the statement to the COD Officers during the COD investigation, however the COD officials have not read-over said statement to her. She did not identify MO.5 to 7. She identified MO.2 to 4.

58. PW.6-Shobha T.H., aged 29 years, homemaker and PW.7-Raghu, aged 27 years, Technician by profession, are the sister's children of PW.1 and 2 and as per the prosecution version, the PW.6 and PW.7 were also present at the house of PW.2 during the incident. It is the **evidence of PW.6 : Shobha T.H.**, that she was residing at the house of her aunt Jayamma for her education purpose and on 22.05.2010 at about 08.00 p.m., her uncle PW.1 came and went to bathroom. At that time, 4-5 persons came to the house, assaulted PW.2 referring the political activity of PW.1. While they shouted, the PW.1 rushed to the spot. The accused attempted to assault PW.1 and at that time, the PW.2 Jayamma tried to rescue PW.1. During the incident, PW.2 sustained cut injuries

to her right fingers. Further, the accused assaulted on the head of Jayamma with machete and she sustained bleeding injury. Further, it is her evidence that an altercation took-place between the accused and PW.1, and thereafter the accused left the spot. Further, it is her evidence that PW.1 and neighbors shifted PW.2 to Hospital. Further, it is also her evidence that on 23.05.2010, the Paper Town Police might have been recorded her statement and 21.01.2011, the CID Police recorded her statement, however the said officials did not read-over such statements to her. She identified the accused No.2 to 5 as assailants in the case.

59. **PW.7 : Raghu T.H is brother of PW.3** and it is his evidence that he was residing at the house of his aunt Jayamma for his study purpose and on 22.05.2010, while he was at the said house, PW.1 also at the said house. At about 07.30 to 08.00 p.m., 4 – 5 persons entered the house and assaulted Jayamma PW.2 with machete and fled away from the house.

Further, it is his evidence that during the incident, two of them were holding PW.2 and two persons assaulted her. PW.1 came to the rescue of PW.2 and those accused attempted to assault PW.1. At that time, PW.2 intervened and she sustained cut injuries to her right fingers. Thereafter, they took PW.2 out of the house and neighbors shifted her to Hospital. Further, it is his evidence that on 23.05.2010, he gave the statement before the Bhadravathi Paper Town Police Station and on 21.01.2011, he gave the statement before the CID Police. He identified the accused No.2 to 5 as assailants in the case.

60. As stated by PW.1 and 2, Nagaraj and Mohan came to the spot at the time of incident. Said Nagaraja examined as PW.8, however Mohana is not examined in this case. It is the evidence of **PW.8 : Nagaraj S/o Jayaram, PW.8, aged 48 years, Engineer by profession** that he had not given any statement before the Police on 23.05.2010. The

prosecution treated him hostile and with the permission of the court, the learned Special Public Prosecutor cross-examined him and during cross-examination, he has stated that PW.1 Mahesh Kumar is familiar to him. However he had not met PW.1 on 22.05.2010. He stated that he does not know about the assault against Jayamma PW.2. However, he stated that several persons present at the spot. He stated that he has not visited the house of PW.2 at any point of time on 22.05.2010. He cannot remember about the visit of the Police Officials. He has stated that on 22.05.2020 at about 8.00-8.30 p.m., he purchased a Vimal soap at a General Store near his house at HUDCO Colony, Bhadravathi.

61. The prosecution cited **PW.3 : Nagaraju S/o Chandappa, aged 56 years, worker at Mysore Paper Mill, PW.4 : Dhanapal S/o Late Babu Padmappa Maragonakoppa, aged 67 years, worker at Mysore Paper Mill, PW.5 : Waheeda Banu w/o**

Mukthiyar Khan, aged about 43 years, worker at Garment Factory as eye witnesses in this case.

62. It is the evidence of ***PW.3 : Nagaraj*** that at about 12 – 13 years back, while he was ironing the clothes, children were shouting at the outside of the house. While he came out of the house, his neighbors also came and found the bleeding injury to the head of PW.2 Jayamma. Thereafter, he, PW.4:Dhanapal and Sathish shifted the injured to Bhadravathi General Hospital, where they found the relatives of Jayamma. After shifting to said Hospital, he returned. The two Police visited near his house at about 01.30 to 02.00 p.m., 20 days after the incident and he gave the statement to them.

63. It is the evidence of ***PW.4 : Dhanapal*** that while he was inside his house, there was commotion at the outside of his house. He came out of the house and found bleeding injury to PW.2. 15 days after the

incident, the Police visited near his house, enquired for 5 minutes. The Police have not shown the statement and he has not stated any other matter.

64. It is the evidence of **PW.6 : Waheeda Banu** that she has not given any statement to the Police regarding the injury to PW.2.

65. On perusal of the cross examination by the accused, they denied their involvement in the incident. In their examination under Sec.313 of Cr.P.C., the accused no.1, 3 stated that due to political reason, the false case registered, the accused no.2 and 5 stated that in order to defame their family false case registered and accused no.4 stated that in order to identify in the political field, PW.1 lodged false case.

66. At this juncture, it is important to note the undisputed facts emerged in the case. It is undisputed fact that the accused no.1 was the MLA of Bhadravathi Legislative Assembly Constituency during the alleged

point of time. The accused no.2 and 5 are the brothers of accused no.1 and accused no.3 and 4 are his children. Further, on careful perusal of the cross examination of PW.1, 2, 6, 7, there is no dispute that the alleged incident occurred at the house of PW.2 situated at HUDCO Colony, Bhadravathi at the alleged point of time. Further, on careful perusal of the cross examination of PW.1, there is no specific denial as to spot and seizure panchanama at Ex.P.2 on the next day of incident and seizure of 1 to 3 at the house of PW.1. So, the evidence of panch witnesses to spot and seizure mahazer at Ex.P.2, PW.9 and 10 have no much importance in the case.

67. Further, on careful perusal of the cross-examination of material witnesses PW.1, 2, 6 and 7, it is not in dispute that the PW.2 sustained injuries to her head and cut injuries to her right fingers. To prove the nature of injuries, the prosecution examined PW.13 Dr.Kavitha, Medical Officer at General Hospital,

Bhadravathi, who treated the PW.2 at the first instance and as per her evidence, at about 08.50 p.m., on 22.05.2010, Smt.Jayamma aged 46 years visited the Hospital with history of assault and she was accompanied by her friends and relatives. On examination, she found following injuries;

i) Crush injury on right hand little finger, right hand index finger and right hand middle finger. On further examination she found suspected fracture.

ii) Cut lacerated wound on frontal bone of 3 cms X 2 cms.

iii) Incised wound on the left part of the upper lips measuring 1 cm X 1 cm

iv) Aberration wound on the tip of nose measuring $\frac{1}{2}$ cm X $\frac{1}{2}$ cm.

68. Further, according to her, she referred the injured to District Hospital, Shivamogga for further

treatment, as she was not able to speak properly, however the injured obtained further treatment at Nanjappa Hospital, Shivamogga. Further, according to her, they forwarded the MLC intimation to the Police as per Ex.P16. The concerned Police requested for wound certificate on the basis of Discharge Summary issued by the Nanjappa Hospital, Shivamogga and on the basis of Discharge Summary at Ex.P17 of Nanjappa Hospital, Shivamogga, she issued the wound certificate at Ex.P18, and she found the following injuries to PW.2;

- i) Multiple, linear lacerated injuries measuring 2 inches X $\frac{1}{2}$ inch X $\frac{1}{2}$ inch over the scalp.
- ii) Multiple lacerated wound of 1 inch X $\frac{1}{2}$ inch X $\frac{1}{4}$ inch over the face and occipital region.
- iii) A lacerated wound of 1 inch X $\frac{1}{2}$ inch X $\frac{1}{2}$ inch over the upper lip.

iv) Multiple lacerated wound of 1 inch X $\frac{1}{2}$ inch X $\frac{1}{4}$ inch over the dorsum of right hand index and little finger, Index finger was hanging with skin flap, Fingers were not flexible.

69. Further, according to her, as per the opinion furnished by the Medical Officer, Nanjappa Hospital, the aforesaid injuries at (i), (ii), (iii) were external injuries and simple in nature; and the injury No.(iv) was internal injury and a grievous injury. She opined that fresh injuries on the right hand were grievous in nature and other injuries were simple in nature and age of such injuries were half an hour to one hour. She submitted the medical report on 02.02.2011 as per Ex.P19, furnished the MLC Register extract at Ex.P20.

70. Further, as per her evidence, on the request for opinion by the Investigating Officer on 17.03.2011 as per Ex.P21, she furnished the opinion at Ex.P22

with regard to the produced machete MO.7. Further, she also furnished copy of MLC Register extract with regard to the examination of weapon on 17.03.2011 as per Ex.P23.

71. In the cross-examination by the accused no.1 to 5, she stated that the injured has not named the assailant while she brought to the Hospital. She admitted that she has not mentioned in Ex.P20 that the PW.2 was unable to speak properly and condition of the injured to tender the statement also not mentioned. She stated that the medical history might have been narrated by the friends or relatives who brought the injured to the Hospital. She admitted that whenever history of assault is given by the relative or friend accompanying the injured, the same is required to be mentioned in the Accident Register and the Medical Officer owes a duty to elicit the name, details of friends or relatives to obtain the information about the nature of assault and history of assault, when the

injured brought to the Hospital. However, the Ex.P16 MLC Intimation, Ex.P18 Wound Certificate, Ex.P20 MLC Register extract would not show the name of the person who gave the medical history and details of the assault. A question was posed to PW.13 that whether she made an attempt to revive the mental condition of the injured to make a statement with respect to history of the assault before referring her to Government Hospital, Shivamogga and she stated that injured sustained head injuries and as such she sent her immediately to the Government Hospital, Shivamogga. It was suggested that the witness had made the entry with respect to name, age and address as mentioned in the Accident Register as per the narration of injured and the witness answered that she does not remember who gave the details. She stated that friends or relatives might have been given the details. On careful perusal of the cross-examination of PW.13, though the evidence of the PW.13 show that she can not name the

person who gave the medical history and she had not followed the procedure required in medico legal cases, the accused does not dispute the aforesaid injuries sustained by PW.2 were seen by the PW.13, while injured brought for treatment and referring the injured to higher center for treatment immediately. Apart from that it is also seen that the accused does not deny that the injured brought to their hospital with history of assault and such injuries could be sustained by assault. Now, the question would be whether the injured sustained aforesaid injuries caused in the incident as alleged by the first informant, injured and their relatives and the present accused are the perpetrators of the crime.

72. PW.1 first informant, PW.2 injured, their relatives PW.6 and 7 gave their evidences as narrated above. According to them, the incident occurred in the background of political enmity and the PW.1, 6 and 7 witnessed the incident. The accused No.1 to 5 seriously

disputed the presence of PW.1 during the alleged incident and took up the contention that with ulterior motive, he laid the false complaint fabricating the facts and he tutored his relative witnesses.

73. Before appreciating the cross-examination of material witnesses by the learned counsel for the accused, it is pertinent to mention that, from the complaint Ex.P1 and FIR at Ex.P.33 and evidence of PW.17, it appears that the said complaint came to be lodged after treatment to PW.2 at Nanjappa Hospital, Shimoga i.e. after sending the PW.2 to Manipal Hospital, Bengaluru with close relatives of PW.1 and 2. According to first informant PW.1, he wrote such complaint at the Paper Town police station, Bhadravathi itself. The said complaint came to be lodged five hours after the incident. On perusal of the said complaint, it appears that the PW.1 could not specify the time and manner of alleged incident. However, in the said complaint, PW.1 made allegations

against the accused no.1 to 5 and his followers and their involvement in the incident. But, the evidence on record indicates that PW.2, 6, 7 specifies the involvement of accused no.2 to 5 and PW.1 specifies the involvement of accused no.2 to 5 and two other persons. None of the witnesses specifies the involvement of the accused no.1 in the incident. It is true that the FIR is not an encyclopedia of the incident. But, it is to be noted that the accused no.1 was sitting MLA, a prominent person in the society and though he was not present at the spot, the PW.1 included his name in the complaint. Be that as it may.

74. On perusal of the cross-examination of PW.1, 2, 6, 7, the learned counsel for accused No.1 to 5 extensively cross-examined them. In the cross-examination of PW.1 first informant, he admitted that he was an accused, charged for the murder of Raghunatha Murthy on the complaint of K.Murthy in SC No.79/2006 before the III Addl. Sessions Court,

Mysore, wherein he was acquitted and Criminal Appeal No.630/2017 preferred by the State of Karnataka is pending. Further, he admitted that one K.N.Jayaprakash filed the complaint in PCR No.5280/2004, in which the Police laid the charge-sheet against him. He also admitted that a case in CC No.6690/2006 is pending before learned IV ACMM, Bengaluru, wherein the Police laid the charge-sheet for the offences punishable under Sec.471, 406, 467, 468 of IPC. Further, he admitted that an Arbitration Case No.246/2009 filed before VI Addl. City Civil Court, Bengaluru against him for recovery, alleging that he borrowed loan of Rs.2,75,000/- from Indus Ind Bank. Further he admitted that he laid the divorce case against his wife Mahadevi in Case No.39/2008 before the learned Civil Judge, Bhadravathi on 02.07.2008 on the ground of desertion and cruelty. Further he admitted that a PCR No.145/2010 registered against him alleging that the cheque which had given to his

wife, got dishonoured and CC No.1787/2010 registered against him before the Judicial Magistrate, Bhadravathi. Further, he admitted the Ex.D2 affidavit submitted during submission of his nomination before the Returning officer in the year 2010, wherein he stated the details of pending cases against him.

75. He also admitted that he filed the Arbitration Appeal No.15/2014 before VI Addl. City Civil Court, Bengaluru and he was appearing in the said case. However, he expressed his ignorance with regard to dismissal of the said case on 11.07.2017. Further he admitted that he filed a suit in OS No.9026/2014 before VII Addl. City Civil Court and the said matter is pending. He also admitted that a case in CC No.8527/2015 registered before learned XXI ACMM with the allegation that he gave a cheque to Meena Bhaskar on 28.11.2014 for Rs.50,00,000/- which came to be dishonoured and in the said case, he was convicted. However, he has stated that there is stay in

the Appeal to the order of conviction. Further he admitted that Crime No.328/2015 came to be registered against him and another person before the Rural Police, Shivamogga, for the offences punishable under Sec.420, 374, 506 r/w Sec.34 of IPC and the Police, after investigation laid the charge-sheet in C.C. No.611/2015 before the learned I Addl. Senior Civil Judge and JMFC, which is pending. Further he admitted that CC No.13233/2015 registered before 21st ACMM against him on the allegation that the cheque issued to Thimmappa Gowda for Rs.25,00,000/- came to be dishonoured and after trial, he was convicted in the said case. He has stated that an order of stay has been passed with regard to the said conviction order. Further, he admitted that on the basis of complaint of Subramaiah, the Managing Trustee of Thadikela Subbaiah Trust, registered CC No.16660/2015 for the offences punishable under Sec.409, 419, 417, 420, 465, 120B, 504, 506 r/w Sec.34 of IPC before learned

JMFC II Court, Shivamogga. Further he admitted that one Singaravelan laid the complaint before the Shivamogga Police Station against him and another in Crime No.327/2015 for the offences punishable under Sec.384, 420, 506 r/w Sec.34 of IPC and said case registered in CC No.612/2015 and after trial he was acquitted. He admitted that he filed the Crl.Misc. No.816/2015 before the Prl. Sessions Court, Shivamogga, which came to be dismissed on 02.07.2015 as per Ex.D.1. Further he admitted that he laid the private complaint in PCR No.434/2015 before learned JMFC II, Shivamogga against Police and others which came to be rejected on 29.04.2015 as per Ex.D3. Further the learned counsel for accused No.1 to 5 elicited that he gave different addresses in those cases. From the evidences elicited during the course of cross-examination of PW.1, it is quite evident that PW.1 first informant is not a lay man. He is a well educated person, was a party in several legal proceedings prior

to and subsequent to the incident and he had the knowledge of civil as well criminal side legal affairs as he personally participated in several court proceedings.

76. Further, on perusal of the cross-examination of PW.1, though the learned counsel for the accused No.1 to 5 during his cross-examination contended that no documents have been produced to show the alleged prominent role in development of Haladamma Temple and he engaged the programs during Haladamma fair, the suggestions put to PW.1 during the cross-examination itself would indicate that the PW.1 resurrected the Haladamma Temple and conducted certain programs during the Haladamma fair. In the cross-examination, at page no.29, the accused No.1 to 5 suggested that;

ಉರಿನ ಮುಖ್ಯಸ್ಥರನ್ನು ಮತ್ತು ಸಮಿತಿಯ ಕಾರ್ಯಕಾರಿ
ಸದಸ್ಯರನ್ನು ಉಪೇಕ್ಷಿಸಿ ನನ್ನ ಪ್ರತಿಷ್ಠೆಯನ್ನು ಹೆಚ್ಚಿಸಿಕೊಳ್ಳಲು
ದೇವಸ್ಥಾನ ಜೀರ್ಣೋದ್ಧಾರ ಮಾಡಿದ್ದೇನೆ ಎಂದರೆ ಸರಿಯಲ್ಲ.
ಜೀರ್ಣೋದ್ಧಾರ ಮಾಡಲು ಕೈಗೊಂಡ ಕೆಲಸಗಳನ್ನು ತೀರಾ

ಕನಿಷ್ಠವಾಗಿತ್ತು ಎಂದರೆ ಸರಿಯಲ್ಲ. ದಿನಾಂಕ 20.05.2010 ರ ಸರ್ವ ಸಮುದಾಯಗಳ ಸಮಾವೇಶ ಕಾರ್ಯಕ್ರಮ 33 ಗ್ರಾಮದ ಮುಖ್ಯಸ್ಥರನ್ನು ಮತ್ತು ಕಾರ್ಯಕಾರಿ ಸಮಿತಿಯ ಸದಸ್ಯರನ್ನು ಸೇರಿಸದೇ ನನಗೆ ಮತ್ತು ನನ್ನ ಅನುಯಾಯಿಗಳಿಗೆ ಮಾತ್ರ ಸೀಮಿತಗೊಂಡಿತ್ತು ಎಂದರೆ ಸರಿಯಲ್ಲ.

ಸದರಿ ಕಾರ್ಯಕ್ರಮ ನನ್ನ ಹಾಗೂ ನನ್ನ ಸಹಚರರಿಗೆ ಸೀಮಿತಗೊಂಡ ಕಾರ್ಯಕ್ರಮವಾಗಿದ್ದರಿಂದ ಭದ್ರಾವತಿ ಶಾಸಕರನ್ನು ಕಾರ್ಯಕ್ರಮಕ್ಕೆ ಆಹ್ವಾನಿಸುವ ಅವಶ್ಯಕತೆ ಇರಲಿಲ್ಲ ಎಂದರೆ ಸರಿಯಲ್ಲ. ಒಬ್ಬ ಶಾಸಕ ಭಾಗವಹಿಸುವಂತಹ ಗುಣಮಟ್ಟದ ಕಾರ್ಯಕ್ರಮ ಆಗಿರಲಿಲ್ಲ ಎಂದರೆ ಸರಿಯಲ್ಲ.

ನಾನು ಉದ್ಘಾಟನೆ ಮಾಡಿದ ಕುಸ್ತಿ ಪಟುಗಳಿಗೆ ಸಂಬಂಧಿಸಿದ್ದು ಆಗಿದ್ದರಿಂದ ಸ್ಥಳೀಯ ಶಾಸಕರನ್ನು ಕರೆಯುವ ಅವಶ್ಯಕತೆ ಇರಲಿಲ್ಲ ಎಂದರೆ ಸರಿಯಲ್ಲ. ನಾನು ಆಯೋಜಿಸಿದ್ದ ಕಾರ್ಯಕ್ರಮದ ಮಟ್ಟ ಕನಿಷ್ಠವಾಗಿದ್ದರಿಂದ ಸ್ಥಳೀಯ ಶಾಸಕರನ್ನು ಕಾರ್ಯಕ್ರಮಕ್ಕೆ ಆಹ್ವಾನಿಸದಿದ್ದರೂ ಕೂಡ ಅವರು ತಪ್ಪಾಗಿ ಭಾವಿಸುವ ಪ್ರಮೇಯ ಇರಲಿಲ್ಲ ಎಂದರೆ ಸರಿಯಲ್ಲ.

77. Thus, the aforesaid suggestions would goes to show that the PW.1 first informant resurrected Haladamma Temple, he arranged certain functions, including wrestling competition, during the Haladamma fair and he inaugurated the wrestling

competition at the fair. It is true that the first informant PW.1 could not specify the followers of the accused no.1 who interrupted the functions and none examined to prove the said functions and interruption by the followers of accused no.1, the aforesaid suggestion evidences that the first informant had arranged the programmes during the Haladamma fare. Therefore, the argument of learned counsel for the accused that there is no material to show that the PW.1 resurrected the Haladamma Temple and he had taken prominent role during the fair and arranged functions would not acceptable, cannot be accepted in the light of aforesaid suggestions of the learned counsel for the accused. However, in so far as the interruption by the followers, except oral testimony of PW.1, there is no corroborative material placed on record.

78. Further, on perusal of the cross-examination of PW.1, it appears that the accused took a specific stand that during the alleged incident the PW.1 was not present at the spot. During cross-examination of PW.1 at Page No.25, the accused no.1 to 5 suggested that;

ಯಾರೋ ಅನಾಮಿಕ ನನ್ನ ಅಕ್ಕ ಪ್ರಾಸಾ-2 ನೇಯವಳ ಮೇಲೆ ಹಲ್ಲೆ ಮಾಡಿ ಆಕೆಗೆ ಏಟಾಗಿದ್ದು ಆ ಸಂದರ್ಭದಲ್ಲಿ ನಾನು ಕುಸ್ತಿ ಪಂದ್ಯದ ಸ್ಥಳದಲ್ಲಿದ್ದೆ ಮತ್ತು ಸದರಿ ವಿಷಯ ಗೊತ್ತಾಗಿ ನಂತರ ನಾನು ರಾತ್ರಿ 8.30 ಅಥವಾ 8.35 ಗಂಟೆಯ ಸಮಯದಲ್ಲಿ ಪ್ರಾಸಾ-2 ನೇಯವಳ ಮನೆಗೆ ಬಂದಿದ್ದು ಎಂದರೆ ಸರಿಯಲ್ಲ. ದಿ: 22.05.2010 ರಂದು ಸಾಯಂಕಾಲ ನಾನು ದೇವಸ್ಥಾನದಿಂದ ಪ್ರಾಸಾ-2 ನೇಯವಳ ಮನೆಗೆ ನನ್ನ ಕಾರಿನಲ್ಲಿ ಬಂದಿದ್ದು ಮತ್ತು ಸದರಿ ಕಾರನ್ನು ಒಬ್ಬ ಚಾಲಕ ಓಡಿಸುತ್ತಿದ್ದ ಎಂದರೆ ಸರಿ. ನಾನು ಆ ರೀತಿ ಮನೆಗೆ ಬಂದ ನಂತರ ನನ್ನ ಅಕ್ಕ ಪ್ರಾಸಾ-2ನೇಯವಳನ್ನು ನಾನೇ ಸ್ವತಃ ಭದ್ರಾವತಿ ಸರಕಾರಿ ಆಸ್ಪತ್ರೆಗೆ ಸಾಗಿಸಿದ್ದು ಎಂದರೆ ಸರಿಯಲ್ಲ. ಪ್ರಾಸಾ-2 ನೇಯವಳನ್ನು ಭದ್ರಾವತಿ ಸರಕಾರಿ ಆಸ್ಪತ್ರೆಯಲ್ಲಿ ವೈದ್ಯರ ಮುಂದೆ ನಾನೇ ಹಾಜರುಪಡಿಸಿದ್ದು ಎಂದರೆ ಸರಿಯಲ್ಲ.

79. So, according to accused, the PW.1 came to the spot after the incident from the place of wrestling

in a car knowing the assault by a unknown person at the house of PW.2. During his cross-examination at Page No.31 and 32, the accused questioned the PW.1 with regard to the alleged following of his Car by unknown persons while he was traveling towards his sister PW.2's house. In such cross-examination, it is elicited that;

ದಿಃ 22.05.2010 ರಂದು ರಾತ್ರಿ 7.30 ರಿಂದ 8.00 ಗಂಟೆಯ ಮಧ್ಯದಲ್ಲಿ ನಾನು ಕುಸ್ತಿ ಪಂದ್ಯಾವಳಿ ಜಾಗವನ್ನು ಬಿಟ್ಟೆನು. ಕುಸ್ತಿ ಪಂದ್ಯಾವಳಿ ಜಾಗವನ್ನು ಬಿಟ್ಟು ನನ್ನ ಕಾರಿನಲ್ಲಿ ಹೋಗುವಾಗ ಒಂದು ಪರ್ಲಾಂಗ್ ದೂರ ಹೋದಾಗ ನಮ್ಮ ಕಾರಿನ ಹಿಂದೆ 2-3 ಕಾರುಗಳು ನಮ್ಮ ಕಾರನ್ನು ಹಿಂಬಾಲಿಸುತ್ತಾ ಬಂತು ಎಂದು ಗಮನಿಸಿದೆ. ನನ್ನ ಕಾರಿನ ಚಾಲಕನಿಗೆ ಹಿಂದೆ ಹಿಂಬಾಲಿಸುವ ಕಾರುಗಳನ್ನು ಗಮನಿಸಿ ಕಾರನ್ನು ವೇಗವಾಗಿ ಚಲಾಯಿಸು ಎಂದು ಹೇಳಿದೆನು. ನನಗೆ ಪ್ರಾಣಭಯವಿದ್ದುದರಿಂದ ಚಾಲಕನಿಗೆ ಕಾರನ್ನು ವೇಗವಾಗಿ ಓಡಿಸಲು ಹೇಳಿದ್ದೀರಾ ಎಂದು ಕೇಳಿದ ಪ್ರಶ್ನೆಗೆ ಪ್ರಾಣಭಯ ಇದ್ದುದರಿಂದ ಅಲ್ಲ ನನ್ನ ಕಾರನ್ನು ಬೇರೆ ಕಾರು ಹಿಂಬಾಲಿಸಿದ್ದರಿಂದ ಆ ರೀತಿ ಹೇಳಿದೆ ಎಂದು ಹೇಳುತ್ತಾರೆ. ಹಿಂದೆ ಬರುವಂತಹ ಕಾರಿಗೆ ಸ್ಥಳಾವಕಾಶ ಮಾಡಿಕೊಡಲು ನನ್ನ ಕಾರಿನ ಚಾಲಕನಿಗೆ ಹೇಳಿಲ್ಲ. ಆ ಸಮಯದಲ್ಲಿ ನಾನು ವಾಪಸ್ಸು ದೇವಸ್ಥಾನಕ್ಕಾಗಲೀ ಅಥವಾ ಕುಸ್ತಿ ಪಂದ್ಯಾವಳಿ

ನಡೆದ ಜಾಗೃತಗಲಿ ಹೋಗಬೇಕು ಎಂದು ಅನಿಸಲಿಲ್ಲ. ಆ ಸಮಯದಲ್ಲಿ ನನ್ನ ಕೈಯಲ್ಲಿ ಮೊಬೈಲ್ ಫೋನ್ ಇತ್ತು. ನನ್ನ ಕಾರನ್ನು ಬೇರೆ ಕಾರಿನವರು ಹಿಂಬಾಲಿಸುತ್ತಿದ್ದಾರೆಂದು ನನಗೆ ಬೇಕಾದವರಿಗೆ ಅಥವಾ ಪೊಲೀಸರಿಗೆ ಮೊಬೈಲ್ ಮುಖಾಂತರ ತಿಳಿಸಬೇಕೆಂದು ಅನಿಸಲಿಲ್ಲ. ನನ್ನ ಕಾರನ್ನು ಬೇರೆ ಕಾರಿನವರು ಹಿಂಬಾಲಿಸದೇ ಇದ್ದುದರಿಂದ ಪೊಲೀಸರಿಗೆ ಅಥವಾ ನನಗೆ ಬೇಕಾದವರಿಗೆ ತಿಳಿಸಬೇಕೆಂದು ಅನಿಸಲಿಲ್ಲ ಎಂದರೆ ಸರಿಯಲ್ಲ. ನನ್ನ ಹಿಂದೆ ಬರುತ್ತಿದ್ದಂತಹ ಕ್ಲಾ ಲೀಸ್ ವಾಹನ ಮತ್ತು ಎರಡು ಕಾರುಗಳ ನಂಬರ್, ಬಣ್ಣ ನೋಟ್ ಮಾಡಲು ಪ್ರಯತ್ನಿಸಿಲ್ಲ. ನನ್ನ ಕಾರನ್ನು ತಿರುಗಿಸಿ ಪೊಲೀಸ್ ಠಾಣೆಗೆ ಹೋಗಬೇಕೆಂದು ನನಗೆ ಅನಿಸಲಿಲ್ಲ. ನನ್ನ ಕಾರನ್ನು ಹಿಂಬಾಲಿಸುವಂತಹ ಕಾರುಗಳನ್ನು ಗಮನಿಸಿದ ಸ್ಥಳದಿಂದ ನನ್ನ ಅಕ್ಕ ಜಯಮ್ಮನ ಮನೆಗೆ 6-7 ಕಿ.ಮೀ. ದೂರವಿತ್ತು. ನನ್ನ ಅಕ್ಕನ ಮನೆಗೆ ಹೋಗುವ ದಾರಿ ಮಧ್ಯ ನನಗೆ ಗೊತ್ತಿದ್ದವರ ಮನೆ ಯಾವುದು ಇರಲಿಲ್ಲ. ನಮ್ಮ ಕಾರನ್ನು ಹಿಂಬಾಲಿಸಿದ್ದವರು ನಮ್ಮ ಕಾರನ್ನು ಓವರ್ ಟೆಕ್ ಮಾಡಲು ಪ್ರಯತ್ನಿಸಿದ್ದಾರಾ ಎನ್ನುವ ಪ್ರಶ್ನೆಗೆ ದಿಕ್ಕು ತಪ್ಪಿಸಲು ಬೇರೆ ಬೇರೆ ದಾರಿಯಲ್ಲಿ ಸುಮಾರು 20 ಕಿ.ಮೀ. ಕ್ರಮಿಸಿದ್ದರಿಂದ ಅವರು ನಮ್ಮ ಕಾರನ್ನು ಓವರ್ ಟೆಕ್ ಮಾಡಲಿಲ್ಲ ಎಂದು ಸಾಕ್ಷಿಯು ಹೇಳುತ್ತಾರೆ. ಆ ರೀತಿ 20 ಕಿ.ಮೀ. ಹೋಗುವಾಗ ನನ್ನ ಅಕ್ಕನಿಗೆ ಫೋನ್ ಮಾಡಿ ಈ ರೀತಿ ಘಟನೆ ನಡೆಯುತ್ತಿದೆ ನಾನು ಮನೆಗೆ ಬರುತ್ತಿದ್ದೇನೆ ಮನೆಯ ಬಾಗಿಲು ತೆರೆದು ಸಿದ್ಧರಾಗಿರಿ ಎಂದು ಫೋನ್ ನಲ್ಲಿ ಹೇಳಿದ್ದೀರಾ ಎನ್ನುವ ಪ್ರಶ್ನೆಗೆ ಆ ರೀತಿ ತಿಳಿಸಬೇಕೆಂದು ಅನಿಸಿಲ್ಲ ಎಂದು ಸಾಕ್ಷಿ ಹೇಳುತ್ತಾರೆ.

ನಾನು ಅಕ್ಕನ ಮನೆಗೆ ಹೊಕ್ಕಿದ ಮೇಲೆ ಕಾರು ತೆಗೆದುಕೊಂಡು
ಬಾ ಎಂದು ನನ್ನ ಚಾಲಕನಿಗೆ ಹೇಳಿಲ್ಲ.

80. The aforesaid evidences of PW.1 indicates that while the PW.1 traveling in his car along with his Driver, 2-3 Cars suspiciously followed him and in order to avoid them, he was traveled for about 20 Kms. The aforesaid evidence of PW.1 indicates creation of some fear in the mind of PW.1 due to abnormal following of three vehicles. However, the PW.1 has not noted those Car numbers, colour of the car or attempted to inform the said aspect either to PW.2 or to his friends through his phone. He had not informed such incident to anybody much-less to his sister PW.2. If really somebody followed him suspiciously during night hours, he would have taken some action to take the help of others to avoid from the persons followed him. It is also worth to mention that though the PW.1 stated that somebody followed him while he was traveling to the house of PW.2, he has not named the driver in the

complaint at Ex.P1. Further, in the chief-examination he could not specify the name of his Driver. As elicited in the cross-examination of PW.1, his Driver name is Ravi. However, said Ravi is not examined in this case. Said Ravi is an important witness in this case, because according to PW.1 said Ravi is his Driver dropped him at the house of PW.1 after long travel in the car on the direction of PW.1, suspecting the followers. There is no corroborative material placed by the first informant to show that the PW.1 came to the house of PW.2 in his Car, driven by Ravi and some suspicious persons abnormally followed him.

81. According to the evidence of PW.1 after reaching to the house of PW.2, he told to PW.2 that somebody following him and asked the PW.2 to close the front door and thereafter, he went inside of the house to wash his face and at that time, somebody knocked the door. As per the evidence of PW.2, the PW.1 after reaching to her house at 08.00 p.m., he

asked her to prepare tea and he went inside the bathroom and at that time, she closed the front door. The evidence of PW.2, does not show any information from PW.1 with regard to suspicious following of some persons, while he was proceeding in the car to the house of PW.2. Further, the evidence of PW.6 and 7 also does not show any complaint of PW.1 with regard to alleged following. From, yet another angle if the circumstances analyzed, in case some persons followed PW.1 in the vehicles for substantial distance and such abnormal following, created some fear and panic in the mind of PW.1, he would have definitely narrated the same to PW.2 after reaching to her home. Thus, the evidence of PW.2, 6 and 7 do not support the version of PW.1 with regard to alleged following of some persons.

82. With regard to the manner of incident, in the chief-examination, the PW.1 stated that while he came out of the bathroom, the accused No.2 to 5 were shouting and threatening to him holding machete and

sharp weapons and the PW.2 was pleading not to do anything to her brother. So, according to PW.1, prior to the alleged assaults with weapons, he came out of the bath room. Further, according to his evidence, after he came out of the bath room, the accused No.2 assaulted towards him with machete, which caused the injury to the head of PW.2, and he threw the plastic chair towards the said accused. Further, according to PW.1, the accused No.3 and 5 were holding PW.2, further all the accused attempted to assault him however he managed to push them; the accused No.4 assaulted with sharp weapon towards him and as such he sustained bleeding injury to his right forehead and at that time, PW.2 in order to save him, intervened and crossed her right hand and she sustained injuries to her fingers. As per the complaint averments, PW.1 has not sustained any injury in the incident. So, the injury stated by PW.1 in his chief-evidence is contradictory to the content of Ex.P1 complaint and a improved version.

Further there is no medical evidence placed by the PW.1 to show that he sustained any blood injury in the incident.

83. Now, if we turn to the evidence of PW.2, according to her, during oral altercation the accused No.2 assaulted on her head with iron Long, she sustained bleeding injury on her head and while she attempted to escape, the accused No.3 to 5 held her. Further the accused No.4 attempted to assault on her head and while she put her right hand on her head she sustained cut injuries to her right fingers. On careful perusal of the evidence of PW.2, it appeared that after such assaults, she was shouting and at that time, PW.1 came to the spot, and the circumstances under which PW.2 sustained injuries to her fingers are contradictory to the evidence of PW.1. Further the evidence of PW.1 and 2 are contradictory with regard to nature of weapon used by accused No.2 also.

84. It is true that the evidence of PW.1 and 2 would indicate that the PW.6 and 7 were present during the incident at the house of PW.2, and PW.6 and 7, the relatives of PW.1 and 2 have specified the presence of PW.1 at the house of PW.2 during the incident. On careful perusal of their chief examinations, according to PW.6, the PW.2 sustained injury to her right fingers while she attempted to rescue PW.1 by assault from accused persons. Such evidence of PW.6 though consistent to the evidence of PW.1 first informant, contradictory to the evidence of PW.2 injured. The evidence of PW.7 indicates that as soon as the assailants entered the house of PW.2, they assaulted PW.2 with machete and according to him, two accused persons held her and two accused persons assaulted her and at that time, the PW.1 intervened and while the said accused attempted to assault PW.1, PW.2 attempted to rescue PW.1 and at that time, she sustained injuries to her right hand. So, the evidence

of PW.7 also inconsistent to the evidence of PW.2 injured. The PW.6 and 7 are the close relatives of PW.1 and 2 and their evidences closely examined, it would indicate inconsistent to the evidence of PW.2 injured with regard to the manner of incident alleged.

85. Further, as per the evidence of PW.1 and 2, Nagaraj and Mohana, came to the house of PW.2 after the incident. CW12 Mohana who is a friend of PW.1 is not examined in this case. The PW.8 Nagaraj S/o Jayaram during his evidence disowns his statement under Sec.161 of Cr.P.C. He has not specified the presence of PW.1 at the incident spot. He was treated hostile by the learned Special Public Prosecutor and during his cross-examination, the learned Special Public Prosecutor has not questioned such witness about the presence of the PW.1 at the spot. In his evidence, there is no material suggesting the presence of PW.1 at the spot.

86. Now, coming to the evidences of eye witnesses cited PW.3 Nagaraj S/o Chandrappa, PW.4 Dhanapal, their evidences would not show the presence of PW.1 at the house of PW.2 during the incident, though they specified that they saw the injured Jayamma at her house and shifted the injured to the hospital. Another eye witness cited PW.5 Waheeda Banu disowns her statement under Sec.161 of Cr.P.C., however the learned Special Public Prosecutor has not subjected this witness for further examination or cross examination. Her evidence also does not indicate the presence of PW.1 at the incident spot.

87. Further, it is seen from the medical documents produced at Ex.P20/Ex.P23 MLC Register extract, it would indicate that the PW.2 brought by friends and relatives, with history of assault. However, those early medical documents would not show the name of assailants. The PW.1 is an well educated person and aware of the legal affairs. If really the PW.1

was present at the house of PW.2 and witnessed the incident, he should have named the assailants before the Medical Officer, while the PW.2 brought to the Hospital for medical treatment, immediately after the incident.

88. Thus, on careful appreciation of evidence on record sequentially, it emerges that there is no independent evidence to show that the PW.1 came to the house of PW.2 in his car, driven by his driver Ravi from the place of Wrestling. Further, the evidence of PW.1 with regard to alleged following by some persons in 3 vehicles, while proceeding towards the house of PW.2 is not established. Ravi, the driver of PW.1 is an important witness and he is not examined. Further, there is no corroborative evidence with regard to complaint to PW.2 as to alleged following by some unknown persons in vehicles. Further, there are inconsistent evidences of PW.1 and other material witnesses PW.2, 6 and 7 regarding manner of incident

alleged. Further, blood injury to PW.1 alleged during his evidence is not corroborated by any evidence and such version is an improved version of PW.1. Further, the PW.1 who knew the legal consequences, could not specify the name of the assailant/s before the medical officer, while PW.2 shifted to the General Hospital, Bhadravathi and Nanjappa Hospital, Shivamogga. Under the said circumstances, there is strong doubt arise about the presence of the PW.1 at the house of PW.2 during the alleged incident and and he witnessed the incident, as rightly contended by the learned counsel for the accused no.1 to 5.

89. Thus, the circumstances raised reasonable doubt about the presence of PW.1 during the incident and therefore, lodging the complaint, he being the eye witness to the incident can not be believed.

90. The PW.2 is injured witness and it is well settled that the evidence of injured witness can not be

discarded without compelling reasons. During evidence, the injured PW.2 gave her evidence as narrated above, wherein she specified presence of PW.1 during the incident. But the circumstances would raises doubt about his presence at her house.

91. Further, according to her, at about 10.00 a.m., while she came to the Taluk Panchayth office, Bhadravathi, K.N.Harsha and B.K.Shivakumar threatened with dire consequences, in case the accused no.1 not invited to the Wrestling competition. Further, according to her, after such threat, she went for her duty, however she could not do her work and as such, she returned to her home during noon. Further, in her evidence, she narrated the incident occurred during night hours and specified the overt acts of accused no.2 to 4. The learned counsel for the accused subjected her for the cross examination with regard to the incident occurred during the morning hours and at

page no.15 of her deposition she gave her evidence in the following manner:

ದಿನಾಂಕ 22.05.2010 ರಂದು ನಾನು ಎಡೆಹಳ್ಳಿ ಕಚೇರಿಯಲ್ಲಿ ಕೆಲಸ ಮಾಡಬೇಕಾಗಿತ್ತು ಎಂದರೆ ನಿಜ. ಆದರೆ ನಾನು ಭದ್ರಾವತಿ ಮುಖ್ಯ ಕಚೇರಿಯಲ್ಲಿ ಕೆಲಸವಿದ್ದರಿಂದ ಹೋಗಿದ್ದೆ ಎಂದು ಸಾಕ್ಷಿ ಸ್ವತಃ ಹೇಳುತ್ತಾರೆ. ನನಗೆ ದಿನಾಂಕ 22.05.2010 ರಂದು ಕೆ.ಎನ್. ಹರ್ಷ ಮತ್ತು ಬಿ.ಕೆ. ಶಿವಕುಮಾರ್ ಹೆದರಿಸಿದ್ದರಿಂದ ಮಾನಸಿಕವಾಗಿ ಗಾಸಿಯಾಗಿತ್ತು ಎಂದರೆ ನಿಜ. ದಿನಾಂಕ 22.05.2010 ರಂದು ನಾನು ಮಧ್ಯಾಹ್ನ 2-30 ಗಂಟೆಯವರೆಗೆ ಭದ್ರಾವತಿ ಮುಖ್ಯ ಕಚೇರಿಯಲ್ಲಿದ್ದೇನು. ಭದ್ರಾವತಿ ತಾಲ್ಲೂಕು ಕಚೇರಿಯಲ್ಲಿ ಸುಮಾರು 35 ಮಂದಿ ಕೆಲಸ ಮಾಡುತ್ತಿದ್ದರು. ದಿನಾಂಕ 22.05.2010 ರಂದು ತಾಲ್ಲೂಕು ಕಚೇರಿಯ ಸಿಬ್ಬಂದಿ ಯಾರಾದರೂ ನನ್ನ ಮನಸ್ಸಿಗೆ ಗಾಸಿಯಾಗಿದ್ದನ್ನು ಗುರುತಿಸಿ, ನನ್ನ ಜೊತೆಗೆ ಮಾತನಾಡಿಲ್ಲ. ಆ ಸಮಯದಲ್ಲಿ 35 ಮಂದಿ ಸಿಬ್ಬಂದಿಯರ ಪೈಕಿ 5 ಮಂದಿ ಮಹಿಳಾ ಸಿಬ್ಬಂದಿ ಇದ್ದರು. ಆ ಮಹಿಳಾ ಸಿಬ್ಬಂದಿಯರ ಪೈಕಿ ಕೆಲವರೊಂದಿಗೆ ನಾನು ಸಲುಗೆಯಿಂದ ಮಾತನಾಡಿಕೊಳ್ಳುತ್ತಿದ್ದೆ. ಕೆ.ಎನ್. ಹರ್ಷ ಮತ್ತು ಬಿ.ಕೆ. ಶಿವಕುಮಾರ್ ನನಗೆ ಬೆದರಿಕೆ ಹಾಕಿದ್ದನ್ನು ನನ್ನ ಜೊತೆ ಸಲುಗೆಯಿಂದ ಇದ್ದ ಮಹಿಳಾ ಸಿಬ್ಬಂದಿಗಳ ಜೊತೆಗೆ ಹಂಚಿಕೊಂಡಿಲ್ಲ.

92. Thus, the aforesaid evidence of PW.2 goes to show that due to the alleged threat, she pained and she could not able to do her duty on that day. Despite the same, she has not shared the alleged threat with her close colleagues. Though she stated that she

shared said incident with her sister Sharada, she has not been examined in this case. Said Shivakumar reported to be died during the pendency of the case. It is seen that at last line of cross-examination at page no.16, PW.2 stated that she had the mobile phone. Further, she stated that her brother PW.1 Mahesh Kumar also had the mobile phone. However, she had not informed the alleged incident occurred near the Taluk Panchayath Office either through mobile phone or personally. Neither the complaint at Ex.P1 nor the evidence of PW.1 does not show the alleged warning by K.N.Harsha and B.K.Shivakumar, though according to PW.1, he met his brother Shivakumar at the Hospital and both of them shifted the PW.2 to Nanjappa Hospital from General Hospital, Bhadravathi. It is also seen from the cross examination of PW.2, Sharada also helped to shift the injured to Manipal Hospital, Bangalore. But there is no whisper as to said Sharada conveyed the information shared by PW.2 with regard

to alleged warning near Taluk Panchayth office, Bhadravathi. Thus, it appears that there is no corroborative material to show the alleged threat of K.N.Harsha and B.K.Shivakumar near the Taluk Panchayath office, Bhadravathi alleged by PW.2.

93. The record goes to show that initially PW.2 treated at Government Hospital, Bhadravathi, and later, she was shifted to Nanjappa Hospital, Shivamogga, thereafter she was shifted to Manipal Hospital, Bengaluru for further treatment. PW.2 stated that she admitted at the said Hospital till 28.05.2010 and thereafter, she obtained medical treatment for 10 days at SDM Ayurveda Hospital near Udupi. Further, she has stated that she came to Bengaluru for plastic surgery to her right hand and after such treatment, she was staying at the house at Bengaluru.

94. As indicated above, the initial Medical documents produced would not show the names of any

of the assailants. As elicited in the evidence of PW.1, the PW.2 was in minimal talking condition. The PW.2 injured, in her cross-examination at page 21 stated that she was in minimal talking condition. Further, the statement of PW.2 in her cross examination at page 32 goes to show that she was in conscious condition prior to the visit to Nanjappa Hospital. It is true that Ex.P16 MLC intimation forwarded by the PW.13 would indicate that the PW.1 was not able to speak properly. However, the evidence of Medical Officer PW.13 carefully appreciated there is no clear evidence as to the condition of PW.2 to give the statement. On the other hand, the substantive evidences elicited during the evidence of PW.1 and 2, it appears that the PW.2 was in talking condition and conscious. However, she did not reveal the name of assailant/s either at the General Hospital, Bhadravathi or Nanjappa Hospital, Shimoga, while she shifted to the said hospitals.

95. Further, it is noticed from the evidence placed on record, as per the evidences of PW.17 Raju PSI and PW.16 Basavarju, PW.17 deputed PW.16 to record the statement of injured PW.2. The Ex.P.32 is the report of PW.16 dated 26.05.2010 and Ex.P.27 is the requisition of PW.17 to record the statement of injured addressed to Chief Medical Officer, Manipal Hospital, Bengaluru. From the endorsement of the medical officer at Ex.P.27(a) and Ex.P.32, it appears that the PW.2 was in intensive care unit at Manipal Hospital, Bengaluru and she was not in the position to give the statement. But, from the evidence of PW.1 and 2, it appeared that while PW.2 shifted to General Hospital and Nanjappa Hospital, she was conscious and in talking condition.

96. However, it is an undisputed fact that the PW.2 discharged from the Manipal Hospital on 28.05.2010. As per the version of PW.2, she sent the letters and videograph in DVD to the police, narrating the incident and involvement of accused No.1 to 5.

During the chief evidence of PW.2, she identified the statement forwarded to CPI, Bhadravathi Town Police Station, and during the chief-evidence, the learned counsel for the accused objected for exhibiting such statements as those statements would be the statements under Sec.161 of Cr.P.C. This Court after hearing, allowed the contention of learned counsel for the accused and did not permit the prosecution for exhibiting her letters and videograph in a DVD, which were said to been sent by the PW.2 to the Police. However, the questions posed during the cross-examination of PW.2 and during the evidence of Investigating officers by the accused regarding the aforesaid letters dated 08.06.2010, 01.07.2010, 05.08.2010, 29.09.2010 and 09.10.2010 would indicate that they do not deny those letters and videograph in a DVD sent by PW.2 during investigation stage, wherein she attributed allegations against the accused No.1 to 5 and biased investigation of the

Police. On careful perusal of the cross-examination of PW.2 and investigating officers regarding those letters/statements, the accused attempted to brought out certain omissions, by commonly questioning on them. Therefore, this court has gone through those statements and found that as per the letter/statement dated 08.06.2010, the PW.2 briefly narrated alleged incident occurred at Taluk Panchayath Office, Bhadravathi and alleged incident occurred at her house; as per the letter/statement dated 01.07.2010, 05.08.2010, 29.09.2010 referring earlier statements, complained about the manner of investigation and false implication of accused no.6 and by the letter/statement dated 09.10.2010 addressed to DGP, COD, narrated the act of accused no.1 to 5, manner of investigation and to take up the matter for investigation. Further, on perusal of the videograph found in DVD, it appears that she narrated the manner of incident as stated in her chief evidence. The

properties of said DVD indicates that the said Videograph accessed and modified on Friday, July 2, 2010. On perusal evidences placed on record with regard to those statement dated 08.06.2010, the omissions brought out by the accused are minor omissions.

97. Further, it is seen from the evidence of PW.2, she stated that she gave the statement before the COD officials. Though she stated that the COD officials have not explained the details of her statements recorded by them, it is undisputed fact that she gave her statement to the COD officials regarding the incident. During her cross-examination, the accused questioned with regard to the said statement and she denied the statements at Ex.D.4 to Ex.D7 and PW.19 investigating officer stated that PW.2 gave such statements. On careful perusal of the said statements, it appears that Ex.D.4, Ex.D5, Ex.D7 are the material contradictions and Ex.D6 would not be a material contradiction, in the light of

suggestion of the accused during course of cross-examination of PW.1 with regard to arrival of the PW.1 to the house of PW.2, where the alleged incident took place.

98. Now, coming to the evidence of PW.6 and 7 the eye-witnesses to the incident, they narrated the incident as indicated above. However, as indicated above there are glaring contradictions in their evidences. On perusal of the the chief evidence of PW.6, she stated that Bhadravathi Town Police might have been recorded her statement on 23.05.2010 and the CID Police recorded her statement on 21.01.2011, however the said Police have not read-over such statement to her. So, her evidence indicates the inquiry of PW.6 on the next day of incident. But, the PW.7 categorically stated that he gave the statement on 23.05.2010 before the Paper Town Police, Bhadravathi and on 21.01.2011 before the CID police. However, the

record would not show his statement before the Paper Town Police, Bhadravathi on 23.05.2010.

99. In the cross examination of PW.6, the accused cross examined on those statement and got marked Ex.D.17 to Ex.D.24 in her cross examination and during cross examination of PW.7, got marked Ex.D26 to Ex.D.37. As indicated above, the learned Special Public Prosecutor vehemently contends the faulty investigation by the police from the inception of the case. Therefore, while examining the record, this court found that though the police station dairy produced indicated that at 10.30 a.m., the PSI proceeded to the spot, returned at 1.30 noon to the police station and at 1.45 p.m. the PW.15 produced the accused no.6 before PSI, thereafter recorded his voluntary statement, the remand application submitted before the learned Magistrate categorically goes to show that after production of accused no.6 at 01.45 p.m., he recorded the voluntary statement of accused no.6, seized the

machete and bicycle and visited the incident spot, drew the panchanama and recorded the statement of witnesses. According to PW.17 Raju PSI, on the said day, recorded the statements of PW.6, PW.8 and CW.12, but he could not specify the place and time of their statements. Under such circumstances, Ex.D.18, Ex.D20, Ex.D.24 exhibited in the statement dated 23.05.2010 said to have been recorded from PW.6 has to be carefully appreciated in the light of manner of investigation conducted by PW.17.

100. However, on careful perusal of the evidence of PW.6 and PW.19 investigating officer, there are material contradictions at Ex.D17, Ex.D19, Ex.D21, Ex.D22, Ex.D23. Further, on careful examination of the evidence of PW.7 and evidence of PW.19, there are material contradictions at Ex.D28 to Ex.D.37. Thus, the PW.6 and 7 denied their statements as to involvement of one unknown person and one unknown person assaulted PW.2.

101. The PW.3 and 4 though stated that they gave the statement few days after the incident and record reveals that as per the prosecution case, their statement recorded on 06.12.2010. Recording of their statement is not denied by those witnesses. On perusal of their cross examination and cross examination of PW.19, it appears material contradictions at Ex.D8, Ex.D9, Ex.D10, Ex.D12 in the evidence of PW.3 and material contradiction at Ex.D.15 in the evidence of PW.4. Further, in his cross examination, at Para-8 he stated as under;

8. xxxxx ನನ್ನ ಹೇಳಿಕೆಯಲ್ಲಿ "ನಾವು ಮನೆಗೆ ಬಂದ ಮೇಲೆ ಜಯಮ್ಮನವರ ಮನೆಯಲ್ಲಿದ್ದ ಹುಡುಗಿ ಶೋಭಾಳನ್ನು ವಿಚಾರಿಸಿದಾಗ ಯಾರೋ ಒಬ್ಬ ವ್ಯಕ್ತಿ ಮನೆಗೆ ಬಂದು ಅಶ್ವತ್ಥ ನಾರಾಯಣರವರ ಮನೆ ಇದೆನಾ ಎಂದು ಕೇಳುತ್ತಿದ್ದ, ನಾವು ಮಾತನಾಡುವುದನ್ನು ಕೇಳಿಸಿಕೊಂಡು ಮನೆಯ ಒಳಗಿನಿಂದ ಆಂಟಿ ಬಂದಾಗ ಅವಳೊಂದಿಗೆ ಮಾತನಾಡುತ್ತಿದ್ದಂತೆ ಅವನ ಬೆನ್ನ ಹಿಂದಿನಿಂದ ಒಂದು ಮಚ್ಚು ತೆಗೆದು ಆಂಟಿಯ ತಲೆಗೆ ಹೊಡೆದನು, ಆಂಟಿಗೆ ರಕ್ತ ಬರುತ್ತಿತ್ತು ಅಂತ ಜಯಮ್ಮನವರ ಮನೆಯಲ್ಲಿ ಇದ್ದ ಮಕ್ಕಳು

ಹೇಳಿದರು ಅಂತ ನನ್ನ ಹೆಂಡತಿ ನನಗೆ ಹೇಳಿದಳು" ಎಂದು ಹೇಳಿದ್ದೇನೆ.

102. Though the evidence of PW.5 Waheeda Bhanu indicated that she has not witnessed the incident, during cross examination, she stated that:

ಒಂದು ದಿನ ರಾತ್ರಿ 8-00 ರಿಂದ 8-30 ಗಂಟೆಗೆ ಜಯಮ್ಮನಿಗೆ ಯಾರೋ ಹೊಡೆದು ಗಾಯ ಮಾಡಿದ್ದಾರೆಂದು ಊರಿನಲ್ಲಿ ಸುದ್ದಿಯಾಗಿತ್ತು ಎಂದರೆ ನಿಜ. ಆ ದಿನ ನನ್ನ ಗಂಡ ನನ್ನ ತಾಯಿ ಮನೆಗೆ ಬಂದು ನನ್ನನ್ನು ಕರೆದುಕೊಂಡು ನಾವು ಒಟ್ಟಿಗೆ ಮನೆಗೆ ಬಂದೆವು ಎಂದರೆ ನಿಜ. ಆಗ ಜಯಮ್ಮನವರ ಮನೆಯ ಮುಂದೆ ಜನ ಸೇರಿದ್ದರು. ಜಯಮ್ಮನ ಮನೆಯಲ್ಲಿ ಮರಿಯಮ್ಮ ಇರಲಿಲ್ಲ ಎಂದರೆ ನಿಜ. ಜಯಮ್ಮನ ಮನೆಯಲ್ಲಿ ಶೋಭಾ ಹುಡುಗಿ ಇದ್ದಳು ಎಂದರೆ ನಿಜ. ಜಯಮ್ಮನಿಗೆ ಹೇಗೆ ಏಟಾಯಿತು ಎಂದು ಶೋಭಾ ಹುಡುಗಿಗೆ ಕೇಳಿದೆ ಎಂದರೆ ನಿಜ. ಜಯಮ್ಮನಿಗೆ ಯಾರೋ ಒಬ್ಬ ಮಚ್ಚಿ ನಿಂದ ಹೊಡೆದು ಓಡಿ ಹೋದ ಜಯಮ್ಮಳನ್ನು ಆಸ್ಪತ್ರೆಗೆ ತೆಗೆದುಕೊಂಡು ಹೋಗಿದ್ದಾರೆ ಎಂದು ಶೋಭಾ ಹೇಳಿದಳು ಎಂದರೆ ನಿಜ. ಆಗ ನನ್ನ ಗಂಡ ನನ್ನ ಜೊತೆಯಲ್ಲಿ ಇದ್ದರು ಎಂದರೆ ನಿಜ. ನನ್ನನ್ನು ಅಲ್ಲಿಯೇ ಬಿಟ್ಟು ನನ್ನ ಗಂಡ ನೋಡಿ ಬರುತ್ತೇನೆಂದು ಆಸ್ಪತ್ರೆಗೆ ಹೋದರು ಎಂದರೆ ನಿಜ. ಜಯಮ್ಮಳನ್ನು ಬೇರೆ ಆಸ್ಪತ್ರೆಗೆ ಕರೆದುಕೊಂಡು ಹೋದರು ಎಂದು ಸ್ವಲ್ಪ ಸಮಯದ ನಂತರ ನನ್ನ ಗಂಡ ವಾಪಸ್ಸು ಬಂದು ಹೇಳಿದರು. ಜಯಮ್ಮನ ಮನೆಯಲ್ಲಿ ಜನರು ಬಂದು ನೋಡುವುದು ಮಾಡುತ್ತಿದ್ದರು. ಆ ಸಮಯದಲ್ಲಿ ಪೊಲೀಸರು ಬಂದರು ಎಂದರೆ ನನಗೆ ಗೊತ್ತಿಲ್ಲ. ನಾನು ಮನೆಯಲ್ಲಿ ಮಲಗಿದ್ದೆನು ನನ್ನ ಗಂಡ ಜನರಲ್ಲಿ ಮಾತನಾಡುತ್ತಾ ಬೀದಿಯಲ್ಲಿ ಇದ್ದರು ಎಂದರೆ ನಿಜ. ನನ್ನ ಗಂಡ ಮನೆಯ ಒಳಗಡೆ ಬರಬೇಕಾದರೆ ರಾತ್ರಿ 12.00

ಗಂಟೆ ಕಳೆದು ಹೋಗಿತ್ತು ಎಂದರೆ ನಿಜ. ಪೊಲೀಸರು ಬಂದಿದ್ದರು ಈ ವಿಚಾರವನ್ನು ಪೊಲೀಸರಿಗೆ ತಿಳಿಸಿದರು ಎಂದು ನನ್ನ ಗಂಡ ನನಗೆ ಹೇಳಿದರು.

15 ದಿವಸ ಬಿಟ್ಟು ಬೆಂಗಳೂರಿನ ಪೊಲೀಸರು ಬಂದಾಗ ನನಗೆ ಗೊತ್ತಿದ್ದ ವಿಚಾರವನ್ನು ಹೇಳಿರುತ್ತೇನೆ. ಲೋಕಲ್ ಪೊಲೀಸರ ಮುಂದೆ ಹೇಳಿದ್ದನ್ನು ಅವರು ಸಿ.ಐ.ಡಿ. ಪೊಲೀಸರಿಗೆ ಹೇಳಿ, ಸಿ.ಐ.ಡಿ. ಪೊಲೀಸರು ನನ್ನನ್ನು ವಿಚಾರಿಸಿದರು ಎಂದರೆ ನಿಜ.

103. It is also seen from the evidence of PW.8 Nagaraj S/o Jayaram, who is cited as eye-witness in the incident, though he avoided the questions of prosecution and initial stage of cross-examination by the learned counsel for the accused, at Para No.9 of his cross-examination, he admits his presence during the alleged incident. As per such evidence, he was present till shifting of PW.2 to the Hospital. The said evidence of PW.8 is extracted below;

ನಾನು ದಿನಾಂಕ 22.05.2010 ರಂದು ನಮ್ಮ ಕುಟುಂಬಸ್ಥರೊಂದಿಗೆ ರಾತ್ರಿ 8.00 ಗಂಟೆಯ ಸಮಯದಲ್ಲಿ ಮನೆಯಲ್ಲಿಯೇ ಇದ್ದೆ. ನಾನು ಆಗಾಗ ವಿಮಲ್ ನ್ನು ಖರೀದಿಸುತ್ತಿದ್ದೆ ಎಂದರೆ ಸಾಕ್ಷಿದಾರರು ಹೌದು ಎಂದು ನುಡಿದು, ವಿಮಲ್ ಸಾಬೂನು ಎಂದು ನುಡಿಯುತ್ತಾರೆ. ನನಗೆ ಆ ಸಮಯದಲ್ಲಿ ಕಿರಾಣಿ ಅಂಗಡಿಯಿಂದ ವಿಮಲ್

ಸಾಬೂನನ್ನು ಖರೀದಿಸಿ ತರುವ ಸಮಯ ಇತ್ತು ಎಂದರೆ ಸರಿ. ನಾನು ಮೇಲ್ಕಾಣಿಸಿದ ದಿನಾಂಕದಂದು ರಾತ್ರಿ 8.30 ರ ಸಮಯದಲ್ಲಿ ಕಿರಾಣಿ ಅಂಗಡಿಯಿಂದ ವಿಮಲ್ ನ್ನು ಖರೀದಿಸಿ ಮನೆಗೆ ಹಿಂತಿರುಗುತ್ತಿದ್ದೆ ಎಂದರೆ ಸರಿ. ಆ ಸಮಯದಲ್ಲಿ ನಾನು ಒಬ್ಬನೇ ಇದ್ದೆ ಎಂದರೆ ಸರಿ. ಆ ಸಮಯದಲ್ಲಿ ಪ್ರಾಸಾ-1 ಜಯಮ್ಮನವರ ಮನೆಯ ಮುಂದೆ ಗಲಾಟೆ ನಡೆಯುತ್ತಿತ್ತು ಎಂದರೆ ಸರಿ. ನಾನು ಆ ಸಮಯದಲ್ಲಿ ನಡೆಯುತ್ತಿದ್ದಂತಹ ಸದ್ದು, ಗದ್ದಲವನ್ನು ಗಮನಿಸಿದಾಗ ಒಬ್ಬ ವ್ಯಕ್ತಿಯು ರಸ್ತೆಯಲ್ಲಿ ಓಡಿ ಹೋಗುತ್ತಿದ್ದನ್ನು ಗಮನಿಸಿದೆ ಎಂದರೆ ಸರಿ. ನನಗೆ ಆ ವ್ಯಕ್ತಿಯು ಸ್ಥಳೀಯ ವ್ಯಕ್ತಿಯಾಗಿರದೇ ಇದ್ದುದರಿಂದ ಆತ ಯಾರು ಎಂದು ತಿಳಿದು ಬರಲಿಲ್ಲ ಎಂದು ಸೂಚಿಸಿದರೆ ಸರಿ. ನಂತರ ನಾನು ಅಲ್ಲಿ ಹೋಗಿ ನೋಡಿದಾಗ ಜಯಮ್ಮನವರ ತಲೆಗೆ ಹಾಗೂ ಬಲಗೈ ಬೆರಳುಗಳಿಗೆ ರಕ್ತಗಾಯವಾಗಿದ್ದು ಕಂಡು ಬಂದಿತ್ತು ಎಂದರೆ ಸರಿ. ಆ ಸಮಯದಲ್ಲಿ ಅಲ್ಲಿದ್ದಂತವರು ಜಯಮ್ಮಳನ್ನು ಯಾವುದೋ ಒಂದು ಆಟೋದಲ್ಲಿ ಸರ್ಕಾರಿ ಆಸ್ಪತ್ರೆಗೆ ಸಾಗಿಸಿದ್ದನ್ನು ನಾನು ನೋಡಿರುತ್ತೇನೆ ಎಂದರೆ ಸರಿ. ನಂತರ ಹೆಚ್ಚಿನ ಚಿಕಿತ್ಸೆಗಾಗಿ ಆಕೆಯನ್ನು ಶಿವಮೊಗ್ಗದ ನಂಜಪ್ಪ ಆಸ್ಪತ್ರೆಗೆ ತೆಗೆದುಕೊಂಡು ಹೋಗುವಂತೆ ಸೂಚಿಸಿದ ವಿಚಾರವು ನಾನು ಗಮನಿಸಿರುತ್ತೇನೆ ಎಂದರೆ ಸರಿಯಲ್ಲ. ಜಯಮ್ಮನವರಿಗೆ ಗಾಯವಾದ ಸ್ಥಳದಲ್ಲಿ ಪ್ರಾಸಾ-4 ಧನಪಾಲ್, ಪ್ರಾಸಾ-5 ಶ್ರೀಮತಿ ವಹಿದಾಬಾನು, ಚಾಸಾ-9 ಸತೀಶ್, ಚಾಸಾ-10 ಶ್ರೀಮತಿ ರೇಣುಕಾ, ಚಾಸಾ-11 ಶ್ರೀಮತಿ ಭಾಗ್ಯಮ್ಮ ಹಾಗೂ ಚಾಸಾ-12 ಶ್ರೀ ಮೋಹನ್ ರವರು ಇದ್ದುದನ್ನು ನಾನು ಗಮನಿಸಿರುತ್ತೇನೆ

ಎಂದರೆ ಸರಿ. ನಾನು ಅಲ್ಲಿ ನೆರೆದಿದ್ದಂತಹ ಗುಂಪು
ಕರಗುವವರೆಗೂ ಅಲ್ಲಿಯೇ ಇದ್ದೆ ಎಂದರೆ ಸರಿ.

104. On perusal of evidence of those witnesses, the learned Public Prosecutor could not brought out any suggestive material to show that those witnesses are not speaking the truth and can not believed. Thus, it also emerges from the evidence placed that one unknown person assaulted PW.2 with machete. Now, the question arises whether 5 accused persons involved in the incident as alleged at complaint Ex.P1 or whether accused No.2 to 5 involved in the alleged incident as per the evidence of PW.1, 2, 6 and 7 or only one unknown person assaulted PW.2 with machete as brought out in the evidences of PW.4, PW.5 and PW.8.

105. The learned Special Public Prosecutor in his oral arguments and written arguments vehemently contended that the Investigating Officers have not conducted the investigation properly as the accused

no.1 was a sitting MLA and the evidence placed on record through PW.1, 2, 6, 7 would clearly establishes the involvement of accused No.2 to 4 and the guilt of those accused proved. It is to be noted that merely the investigation is defective or improper, it would not ipso facto proves the guilt of the accused because there must be cogent evidence to prove the guilt of the accused in the present case as there are three different versions as to the involvement of number of accused.

106. It is seen from the record the PW.1 lodged the complaint against accused No.1 to 5 and FIR registered by PW.17 against them. The evidence of PW.17 would indicate that on 23.05.2010, PW.15 Shivanna and PC-1257 CW.30 produced the accused No.6 and he gave the confessional statement that PW.2 had the illicit relationship with him and since she had not behaved properly with him, he assaulted her. Further, according to him, he recovered blood stained cloths at MO.5 and 6 through the Ex.P14 mahazar and

MO.7 and 8 machete and bicycle through Ex.P15 at the instance of accused no.6.

107. The evidence of PW.15 Shivanna would further indicate that he and CW.30 were deputed to trace the accused persons and while they reached at Bennekrishna Circle at Bhadravathi Town at 12.00 Noon, one person suspiciously behaved on seeing them and therefore, they apprehended, enquired him and they suspected that he may be the accused in this case and therefore, they brought him and produced before PW.17. So, the evidence of PW.15 would goes to show that on suspicion they brought the accused No.6 to the Police Station and he never stated before him with regard to his involvement in this case. As indicated above, the evidence of PW.17 goes to show that during interrogation, the accused no.6 gave the confessional statement and he revealed the cause for the assault against PW.2. However, such confessional statement is not produced in this case. It is also seen that though

as per the evidence of PW.17, the strained relationship of accused No.6 with PW.2 was the cause for the alleged assault against her, the prosecution in his charge-sheet column No.17 brought a new version with regard to the cause for such assault by accused No.6. It is also seen that absolutely there is no material to show the alleged illicit relationship between accused No.6 and PW.2 as stated by PW.17.

108. Further, it is seen that as per the evidence of PW.17, on 23.05.2010 he recorded the statement of PW.6 Shobha, PW.8 Nagaraj and CW.12 Mohan. He has not specified the time of recording of their statement. As indicated above, the remand application submitted goes to show that after arrest, seized M.O.5 and 6, recovered the M.O.7 and 8 on the confessional statement of accused no.6, and thereafter recorded the statement of witnesses. As per the said statements of PW.6, PW.8 and CW.12, one unknown person attacked PW.2 and specified the appearances of such unknown

person. Though on the said day, the accused No.6 apprehended on suspicion, arrested by PW.17, he has not taken any step for test identification of accused No.6, though according to the statement of PW.6, PW.8 and CW.12 one unknown person assaulted PW.2. Further, it is also seen that though the complaint at Ex.P1 indicates specific allegations against the accused No.1 to 5, the PW.17 being the Investigating Officer, has not taken any steps for investigation with regard to their role alleged in this case or test the allegations made in the complaint.

109. It is seen that the PW.17 conducted the investigation from 23.05.2010 to 05.09.2010. It is noticed that indisputably the PW.2 also sent the letter/statement dated 08.06.2010, 01.07.2010, 05.08.2010 and also sent the videograph in a DVD containing the details of the incident and narrating the involvement of accused No.1 to 5 and despite the receipt of those statements of PW.2, the PW.17 not

inclined to investigate into the matters contained in those statements. Further, there is no reason why he has not conducted investigation with regard to the allegations made in the statements of PW.2. Further, there is no reason for not inquiring the accused No.1 to 5 though there is serious allegations have been made in the complaint of PW.1 and the statements of injured PW.2. It appears that the PW.17 deliberately did not conduct the investigation with regard to the allegations of PW.1 and 2.

110. It is seen from the record that the Hon'ble High Court of Karnataka by the order dated 02.09.2010 in WP No.23617/2010 (GM-Police) directed the CID to conduct the investigation as per Ex.P3 and on 05.09.2010 the investigation was handed-over to PW.18 on the directions of SP, Shivamogga. When the order passed by the Hon'ble High Court of Karnataka for investigation of the matter by CID, the higher

authorities of Police transferred this matter to PW.18 for investigation from PW.17.

111. It is true that subsequently PW.18 conducted the part investigation and PW.19 conducted further investigation. It is true that PW.2, 6, 7 gave the statements before the PW.19. However, none of the Investigating Officers have attempted to inquire with regard to the allegations of complaint and the statements of PW.2 injured independently. It is true that the PW.19 issued notices to the PW.1 and 2 for polygraph test. But the PW.19 has not inquired the accused No.1 to 5 at any point of time. Further it is seen from the evidence on record, during the evidence of PW.19, CDRs got marked as Ex.P.39 and as per those documents, the said CDRs relating to the phone numbers of first informant and the injured, accused, However, the evidence on record does not show how the investigating officer come to know about the phone numbers of accused. As indicated above at no point of

time, the investigating officers have not inquired the accused no.1 to 5. Thus, there are number of defects in the investigation and it appears the Investigating Officers totally neglected the contentions of first informant and his sister since the inception of the case and conducted a defective and improper investigation in the matter.

112. Another important matter needs for examination is that whether the Investigating Officers rightly arraigned accused No.6 as an accused in this case. As discussed above, there is no material to show that the accused No.6 had any relationship with PW.2 as stated by the PW.17. Further, it is interesting to note that there is no material placed by the investigation officers to prima-facie substantiate the motive suggested at column no.17 of charge sheet to assault PW.2 by accused no.6, and investigating officer presumed such motive without any basis. Apart from that, according to prosecution the MO.5 to 8 were

seized at the instance of accused No.6 through the Ex.P14 and Ex.P15. However, the panch witnesses PW.11 and 12 have not supported the seizure of those material objects. Further the FSL Report submitted also inconclusive as to the blood stains allegedly found in MO.5 to 7. The prosecution could not able to show that the blood stains found in MO.5 to 7 are belonged to PW.2. No effort has been made by the Investigating Officer to collect the blood sample of PW.2 for the examination of blood stains found in the MO.5 to 7.

113. According to PW.15, the accused No.6 was acted suspiciously and as such he apprehended accused No.6 and produced him before the PW.17. It is seen that the Report of PW.15 at Ex.P31, it does not show the basis for apprehending the accused No.6 at Bennekrishna Circle during noon hours. During the evidence of PW.19, the prosecution produced the medical report at Ex.P37 and it appears that the accused No.6 had admitted at Manasa Hospital,

Shivamogga on 29.12.2004. Further it appears that his mental condition was not proper and he was under constant medical supervision. It appears from the Medical Certificate dated 09.06.2005 of Manasa Nursing Home, the accused No.6 was suffering from Schizo affective disorder. The order sheet maintained at IV Addl. District and Sessions Judge, Bhadravathi, would indicate that the accused No.6 was mentally ill and he was subjected for medical examination at NIMHANS for substantial period during the pendency of the case. The medical records of NIMHANS produced before the Court clearly demonstrates that the accused No.6 was suffering from mental illness. Thus, it appears from the record, as rightly contended by the learned Public Prosecutor that the accused No.6 has been falsely implicated in the case taking advantage of his mental illness. As discussed above, there are glaring defects in the investigation. Therefore, it may be true that in order to help the accused No.1 to 5, who

are politically influential persons, the Investigating officers conducted defective investigation and made the accused No.6 as a scapegoat, projected him as accused. It is seen that a poor, mentally ill person the accused No.6 arrested without any definite basis, he was sent to judicial custody and he was in custody for number of days, despite he was enlarged on default bail, he could not able to furnish the surety and none of his family members were inclined to take him due to his mental disability. The accused No.6 suffered due to deliberate defective investigation by a responsible instrumentality of the State. Therefore, this matter is a fit case to recommend for examination by the Acquittal Review Committee to fix the responsibility for faulty investigation and take appropriate action against those who conducted defective investigation in the case.

114. However, as discussed above, from the defective investigation, it could not conclude that the prosecution proved the guilt of the accused. In this

case, circumstances would indicate the doubt about the presence of PW.1 first informant during the incident as discussed above and his evidence that he witnessed the incident can not be believed. In the absence of cogent evidence to show the presence of the PW.1 at the house of PW.2, the interested testimony of PW.2, 6, 7 with regard to the presence of the PW.1 can not be believable. Even the person who came to the spot after the alleged incident i.e., PW.3 and 4 also could not specify the presence of PW.1 at the spot and his active role at the incident spot. None of the other witnesses specified the presence of PW.1 at the incident spot. The car driver of PW.1 is not examined in this case. Further, the evidence of PW.1, 2, 6, 7 reflects inherent contradictory version with regard to manner of incident. Though, it is an admitted fact that the PW.1 shifted the PW.2 to the Hospitals, at early point of time the name of the assailants was not disclosed before the Medical Officers. Though there is no cogent evidence to

show the presence of PW.1 at the incident spot during the incident, he laid the complaint as if he witnessed the incident. Further, though at the first instance, there was specific allegation against the accused no.1 also in the incident, during the evidence, those witnesses came up with the version that accused no.2 to 4 assaulted PW.2. So, there are several infirmities in the evidence of interested testimony of PW.1, 2, 6, 7 and their evidence can not worthy of acceptance. On the other hand, the evidence placed also emerged one unknown person attacked PW.2. So, there are three set of versions since the complaint. Thus, from the evidence placed, the prosecution could not able to prove the guilt of the accused No.1 to 5, beyond reasonable doubt. Though there are several circumstances to show that the investigation is defective and improper, in the light of the defects arose in the evidence of PW.1, 2, 6, 7 and emergence of a fact that one unknown person assaulted PW.2, the accused

no.1 to 5 are entitle for benefit of doubt. In so far as the compensation to the Victim is concerned, the evidence of PW.1 does not seem truthful and therefore recommending for compensation would not be justified. Thus, I hold the point No.1 to 4 in the **Negative.**

POINT NO.5:

115. Thus, in view of my aforesaid discussion on point No.1 to 4, I proceed to pass the following:

ORDER

Acting under Sec.235(1) of Cr.P.C., the Accused No.1: Sangamesh S/o Bellada Kotrappa, Accused No.2: B.K.Mohan S/o Bellada Kotrappa, Accused No.3: Ganesh S/o B.K.Sangamesh, Accused No.4: Basavaraj S/o B.K.Sangamesh, Accused No.5: Jagadeesh @ Jagannath S/o Bellada Kotrappa, are **acquitted** for the offences punishable under Sec.120-B, 147, 307, 326 r/w 149 of IPC.

The Complainant State is directed to place this case before the Acquittal Review Committee to identify the official/s who responsible for the defective investigation and for appropriate action against such erring official/s.

The bail bonds executed by the accused No.1 to 5 and their sureties shall be in force for a period of six months from this date as required under Section 437-A of Cr.P.C.,

M.O.1 to 6 being worthless are ordered to be destroyed; and M.O.7 Machete, M.O.8 Bicycle being worth is ordered to be confiscated to the State, after expiry of appeal period.

(Dictated to the Stenographer Grade-I typed by her directly on the computer, revised and corrected by me and thereafter pronounced in open court on this the 22nd day of September, 2026)

(Shivaprasad K.B)
LXXXI Addl. City Civil & Sessions Judge,
Bengaluru City (CCH-82)
(Special Court exclusively to deal with criminal cases
related to elected former and sitting MPs/MLAs
in the State of Karnataka)

ANNEXURES**1. Witnesses examined on behalf of the prosecution;**

PW.1	C.Mahesh Kumar
PW.2	C.Jayamma
PW.3	Nagaraju
PW.4	Dhanapal B. Maragonakoppa
PW.5	Waheeda Banu
PW.6	Shobha T.H.
PW.7	Raghu T.H. @ Vasu
PW.8	Nagaraj
PW.9	Shafee
PW.10	Mosas
PW.11	Vinod
PW.12	Veerabhadrapa
PW.13	Dr.Kavitha
PW.14	Dr.Usha Parvathi
PW.15	Shivanna
PW.16	Basavaraju.N
PW.17	H.S.Raju
PW.18	M.Venugopal
PW.19	Mallappa Shivappa Koulapure

2. Witnesses examined by the defence/accused.: Nil

3. Documents exhibited by the prosecution:

Exhibit No.	Document	Through whom exhibited
Ex.P1	Complaint	PW.1
Ex.P1(a)	Signature of PW.1	PW.1
Ex.P1(b)	Signature of PW.17	PW.17
Ex.P2	Mahazar	PW.1
Ex.P2(a) to (d)	Signature of PW.1	PW.1, 9, 10 & 17
Ex.P3 to 6	Telegram	PW.1
Ex.P7 to 13	Photos	PW.2
Ex.P14	Mahazar	PW.11
Ex.P14(a)(b)	Signature	PW.11 & 17
Ex.P15	Mahazar	PW.12
Ex.P15(a)(b)	Signature	PW.12 & 17
Ex.P16	Medico legal intimation	PW.13
Ex.P16(a)	Signature of PW.13	PW.13
Ex.P17	Discharge summary	PW.13

Ex.P18	Wound Certificate	PW.13
Ex.P18(a)	Signature	PW.13
Ex.P19	Medical Report	PW.13
Ex.P19(a)	Signature	PW.13
Ex.P20	Accident Register extract	PW.13
Ex.P21	Letter dated 17.03.2011	PW.13
Ex.P22	Medical Opinion	PW.13
Ex.P22(a)	Signature	PW.13
Ex.P23	Accident register extract	PW.13
Ex.P24	Medico Legal Intimation	With consent
Ex.P25	Medical re-intimation	With consent
Ex.P26	Requisition of PSI dated 26.06.2010	PW.14
Ex.P26(a)	Signature of PW.14	PW.14
Ex.P27	Requisition of PSI dated 26.05.2010	With consent
Ex.P27(a)	Endorsement on Ex.P27	With consent
Ex.P28	Requisition of PSI dated	With

	25.05.2010	consent
Ex.P29	Letter dated 11.12.2019 of Steel Authority of India Ltd.,	With consent
Ex.P30	Letter dated 31.01.2011 of MESCOM	With consent
Ex.P31	Report	PW.15
Ex.P31(a)	Signature	PW.15
Ex.P32	Report	PW.16
Ex.P32(a)	Signature	PW.16
Ex.P33	FIR	PW.17
Ex.P33(a)	Signature	PW.17
Ex.P34	PF No.26/2010	PW.17
Ex.P34(a)(b)	Signature	PW.17
Ex.P35	PF No.27/2010	PW.17
Ex.P35(a)(b)	Signature	PW.17
Ex.P36	PF No.28/2010	PW.17
Ex.P36(a)(b)	Signature	PW.17
Ex.P37 to 39	Medical Reports of Manasa Hospital	PW.19

4. List of Material Objects marked by the prosecution:-

MO.1	Blood stained floor cement pieces	PW.1
MO.2	Bed cover	PW.1
MO.3	Foot rug	PW.1
MO.4	Floor cement piece	PW.1
MO.5	Full arm teri-cotton shirt	PW.1
MO.6	Grey and black pant	PW.1
MO.7	Machete	PW.1
MO.8	Black colour cycle	PW.1

5. Documents exhibited by the Defence/Accused:-

Ex.D1	Certified copy of Orders	PW.1
Ex.D2	Certified copy of affidavit	PW.1
Ex.D3	PCR No.434/2015	PW.1
Ex.D4	Portion of statement of PW.1 dated 26.11.2010	PW.2
Ex.D5	Portion of statement of PW.1 dated 01.02.2011	PW.2
Ex.D6	Portion of statement of PW.1 dated 26.11.2020	PW.2
Ex.D7	Portion of statement of PW.1 dated 26.11.2020	PW.2

Ex.D8 12	to	Portions of statement of PW.3	PW.3
Ex.D13 16	to	Portions of statement of PW.4	PW.4
Ex.D17 24	to	Portions of statement of PW.6	PW.6
Ex.D25 37	to	Portions of statement of PW.7	PW.7
Ex.D38, 39		Witness statement of PW.8	PW.8

**LXXXI Addl. City Civil & Sessions Judge,
Bengaluru City (CCH-82)
(Special Court exclusively to deal with criminal
cases related to elected former and sitting
MPs/MLAs in the State of Karnataka)**