Karnataka Civil Judge (Mains) 2018

Law Paper III · compulsory paper

Framing of charges and writing of a judgment in Criminal case · Date: 15.07.2018 · Time: 2.00 PM to 5.00 PM · Max Marks: 100

Note: Option is given to the candidates to write answers either in English or in Kannada. If there is any discrepancy in the questions in English language and Kannada language, the questions as framed in English language shall prevail.

1. Frame appropriate charge for the Trial of an accused on the basis of the following charge sheet materials. 15 Marks

It is alleged in the charge sheet filed by Sampige Police Station that on 21.10.2000 at about 9.00 am, on Sampige road near Talavar lane on rough road at Hirikodi village, A1 to 6 i.e., Subhas, Kitti Manja, Ananda, Shekara, Nagaraja alias Naga and Mani formed themselves into an unlawful assembly with an intention to commit an offence against the complainant-Fakirappa on the ground that the complainant had informed the police authorities regarding the theft of wood kept in the backyard of their house and the accused with their common object, committed rioting against the complainant-Fakirappa and C.Ws.4 to 6 by holding weapons like stones, clubs, reaper, sickle and C.Ws.4 Keshava and C.W.6 Narayana have sustained grievous injuries due to the assault made by the accused and the complainant Fakirappa and C.W.5 Gangaraj has sustained simple injuries on their body by the act of the accused and the accused have used vulgar words as 'Bolimagane', 'Sulemagane' against the complainant and C.Ws.4 to 6 with an intention to commit breach of peace and the accused have criminally intimidated the complainant and witnesses by giving threat to their life that if they file any complaint with the police, they are going to kill them and also caused loss by breaking open the front door of the house of C.W.6 Narayana.

Therefore, the complainant Fakirappa has lodged a complaint before the jurisdictional police.

2. When any person under twenty one years of age is found guilty of having committed an offence punishable with imprisonment, tried by you as a Magistrate of the First Class, how would you deal with this case in your Judgment by keeping in view of the provisions of the Probation of Offenders Act, 1958. Explain. 10 Marks

3. Write a considered judgment in the following case by giving valid and cogent reasons assuming rival contentions from the facts. 75 Marks

CC 650/2010

Complainant: State of Karnataka represented by Ganganagar police station
Vs
Accused: 1) Subbaraya S/o Gangadarappa, Aged 40 years, Kelagadde Village, Ganganagar Taluk; 2) Krishnappa S/o Gangadarappa, Aged 38 years, Kelagadde Village, Ganganagar Taluk; 3) Ramesh S/o Muniyappa, Aged 50 years, Ganganagar Taluk

Facts of the case

It is alleged in the charge sheet filed by Ganganagar Police Station that on 03.06.2010 at 5.00 P.M, Accused No.1 to 3 with their common intention to commit an offence, trespassed into the property bearing Sy.No.15 measuring 1 acre 10 guntas situated at Kelagadde village and illegally started to

plough the said land with help of tractor. When CW1 and 2 questioned the act of accused persons by saying that there is a prohibition order issued by the Civil Court, A1 to 3 abused CW1 and 2 in filthy language as Bolimakkale and Sulemakkale and assaulted CW1 and 2 with their hands and pulled the nighty worn by CW1 and it was torn and thereby tried to outrage the modesty of CW1 and all the accused persons gave threat to CW1 and 2 by saying that if they file any complaint with the police, they are going to kill them. Therefore, CW1 Mangala lodged a complaint before jurisdictional police. As such this case came to be registered against the accused on 03.06.2010 at 6.45 P.M. in Crime No.46/2010 for the offences punishable under Section 323, 354, 504, 447, 506 r/w Section 34 of Indian Penal Code and sent FIR to the Civil Judge and JMFC Court, Ganganagar on 04.06.2010 at 10.50 A.M. through PC 1615 of Ganganagar Police Station.

On 04.06.2010, CW9 Hanumantharayappa, ASI went to the spot of occurrence and drew spot mahazar in the presence of CW1 Mangala, CW5 Venkatappa and CW6 Narasimha and seized torn nighty of CW1. On 05.06.2010, CW10 K.Narayana PSI went to the spot of occurrence and recorded the statements of CW3 Ashwath and CW4 Nagappa. On 08.06.2010, CW10 again went to the spot of occurrence and recorded the statement of CW2 Muniyappa. On 21.07.2010, CW10 obtained wound certificate of CW1 and 2 from the General Hospital, Ganganagar and obtained RTC of spot of occurrence from Tahsildhar, Ganganagar Taluk and on completion of investigation, filed charge sheet against the accused.

The accused No.1 to 3 pleaded not guilty to the charge framed by the Magistrate. The prosecution examined in all 8 witnesses as PW1 to PW8 and got marked documents as Ex.P1 to P8 and MO1.

The accused No.1 to 3 were examined under Section 313 of the Code of Criminal Procedure. They denied the entire prosecution case. Accused did not lead any defence evidence.

CW1 - PW1 - Mangala W/o Muniyappa (Duly sworn on 15.08.2012) · **Examination in Chief by APP**

I know the accused. On 03.06.2010 at 5.30 P.M, we were working in our land bearing Sy.No.15 measuring 1 acre 10 guntas situated at Kelagadde village. At that time, all the accused came to our land with tractor and started to plough the land. We tried to stop the accused from ploughing the land. At that time, the accused abused me and my husband Muniyappa in filthy language as Bolimakkale, Sulemakkale and they assaulted me and my husband with their hands and gave threat to our life and pulled my nighty and it was torn. I went to the police station on the same day and lodged a police complaint. Now I see the complaint, it is marked as Ex.P1 and my signature is marked as Ex.P1(a). On the next day, police came to the spot and drew mahazar in my presence. Police seized my nighty. Now I see the mahazar, marked as Ex.P2 and my signature is marked as Ex.P2(a). Now I identify my nighty, marked as MO1. Civil Court granted prohibition order against both of us not to plough the land bearing Sy.No.15. Accused tore my nighty with an intention to outrage my modesty.

Cross examination by Advocate for accused

My native place is Kelagadde Village. My husband's native place is Hanumanthanagar. Since 4-5 years, I have been residing at Kelagadde village. There are two litigation pending in the Civil Court pertaining to Sy.No.15. I do not know whether the accused are owning land in Sy.No.15. I do not know about the action taken against the accused for violation of Court orders. I do not know whether Sy.No.15 belongs to Accused No.1 Subbaraya. It is true that I am running provision store and I used to close the shop daily at 8.00 -9.00 P.M. The land bearing Sy.No.15 is situated at a distance of one kilometer from my

provision store. It is not true to suggest that we interfered with the accused while they were ploughing the land. I do not know the boundaries of Sy.No.15. It is not true to suggest that I am deposing falsely. It is not true to suggest that police did not come to the spot to draw mahazar in my presence. It is not true to suggest that the police did not seize my nighty. It is not true to suggest that I have filed false complaint only to harass the accused.

Re-examination: Nil · R.O.I & A.C. · Sd/- JMFC.

CW2 - PW2 - Muniyappa (Duly sworn on 18.04.2013) · **Examination in Chief by APP**

I know the accused. Myself and CW1 were working in the land bearing Sy.No.15. Accused came to the land bearing Sy.No.15 for ploughing with the help of Tractor inspite of prohibition order passed by the Civil Court. Myself and CW1 questioned the act of the accused. At that time, there was altercation between us and accused. Accused assaulted me and CW1 with their hands. They tore the nighty of CW1. Thereafter, I gave statement before the police. MO1 is the torn nighty of CW1 and it is already marked as MO1.

Cross examination by Advocate for accused

My native place is Hanumanthanagar. CW1 is my wife. I do not know the extent of land owned by my father-in-law in Sy.No.15. It is true that the land owned by Accused is in Sy.No.15. My father-in-law own's land measuring 1 acre 10 guntas in Sy.No.15. It is not true to suggest that we raised quarrel with accused when they were ploughing their own land. It is not true to suggest that I gave complaint against accused through my wife in order to harass them. It is not true to suggest that the accused have not committed any offence. My wife was wearing black dotted nighty at the time of incident. It is not true to suggest that my wife was wearing chudidar dress. It is not true to suggest that I am deposing falsely by giving false complaint to take favorable order in the Civil Cases.

Re-examination: Nil. · R.O.I & A.C. · Sd/- JMFC

CW3 - PW3 - Ashwath (Duly sworn on 22.08.2013) · **Examination in Chief by APP**

I know the accused. I do not know about the quarrel took place between CW1 and 2 and accused. I did not give any statement before the police.

(At this stage, learned APP prays permission to treat this witness as hostile. Permission is accorded. Learned APP is permitted to cross examine the witness)

Cross examination by APP

It is not true to suggest that on 03.06.2010 at 5.00 P.M., the accused trespassed into the land bearing Sy.No.15 belongs to CW1. It is not true to suggest that the accused were illegally ploughing the said land with the help of tractor. It is not true to suggest that when CW1 and 2 questioned the act of the accused, the accused abused CW1 and 2, assaulted them and tore nighty of CW1 with an intention to outrage her modesty and also gave threat to their life. It is not true to suggest that I had witnessed the incident and gave statement before the police. The statement said to have given to police is marked as Ex.P3. It is not true to suggest that I am deposing falsely to help the accused.

Cross examination by Advocate for accused: Nil · Re-examination: Nil. · R.O.I & A.C. · Sd/- JMFC

CW4 - PW4 - Nagappa (Duly sworn on 22.08.2013) · **Examination in Chief by APP**

I know the accused. I do not know about the quarrel took place between CW1 and 2 and accused. I did not give any statement before the police.

(At this stage, learned APP prays permission to treat this witness as hostile. Permission is accorded. Learned APP is permitted to cross examine the witness)

Cross examination by APP

It is not true to suggest that on 03.06.2010 at 5.00 P.M, the accused trespassed into the land bearing Sy.No.15 belongs to CW1. It is not true to suggest that the accused were illegally ploughing the said land with the help of tractor. It is not true to suggest that when CW1 and 2 questioned the act of the accused, the accused abused CW1 and 2 assaulted them and tore nighty of CW1 with an intention to outrage her modesty and also gave threat to their life. It is not true to suggest that I had witnessed the incident and gave statement before the police. The statement said to have given to police is marked as Ex.P4. It is not true to suggest that I am deposing falsely to help the accused.

Cross examination by Advocate for accused: Nil · Re-examination: Nil. · R.O.I & A.C. · Sd/- JMFC

CW5 - PW5 - Venkatappa (Duly sworn on 22.08.2013) · **Examination in Chief by APP**

I know the accused. Police came to the spot of occurrence on the next day of the incident and drew mahazar in my presence. I have signed the mahazar. Now I see Ex.P2 mahazar. My signature is marked as Ex.P2(b). At the time of mahazar, police seized the torn nighty of CW1. Now I identify the nighty, which was already marked as MO1.

Cross examination by Advocate for accused

Police drew mahazar on 03.06.2010. I do not know the boundaries of the place where mahazar was drawn. I do not remember as to what time, the police came to the spot and drew the mahazar. At that time myself, Mangala, Ashwath, Muniyappa, Narasimha were present. It is not true to suggest that I have signed the mahazar in the police station. It is not true to suggest that I am deposing falsely to help CW1.

Re-examination: Nil. · R.O.I & A.C. · Sd/- JMFC

CW7 - PW6 - Dr.Krishna Kumar (Duly sworn on 03.09.2013) · **Examination in Chief by APP**

I was working as Medical Officer in General Hospital, Ganganagar in the year 2010. On 03.06.2010 at 8.10 P.M., One Mangala came to the hospital for treatment with the history of assault. I examined her and found following injuries on her body:

1. A lacerated wound over right hand inner aspect 0.5 x 6 c.m. size
2. A lacerated wound over left hand 0.5 x 6 cms with torn clothes

The above mentioned injuries are simple in nature. I gave wound certificate marked as Ex.P5, my signature is marked as Ex.P5(a).

On the same day at 8.10 P.M., one Muniyappa came to the hospital for treatment with the history of assault. I examined him and found following injuries on his body:

1. Pain and tenderness over Right hand and Right chest and Right back

The above mentioned injuries are simple in nature. I gave wound certificate, marked as Ex.P6, my signature is marked as Ex.P6(a)

Cross examination by Advocate for accused

It is true that the injuries mentioned in Ex.P5 and P6 can be caused if a person tripped and fell down. It is true that the age of the injuries is not mentioned in the wound certificates, but all injuries are

fresh in nature.

Re-examination: Nil · R.O.I. & A.C. · Sd/- JMFC

CW9 - PW7: Hanumantharayappa, ASI (Duly sworn on 03.10.2013) · **Examination in Chief by APP**

I was working as ASI in Ganganagar police station from 09.06.2008 to 22.06.2011. Now I am working as ASI in Hanumanthanagar police station.

On 03.06.2010, when I was in charge of police station at about 6.45 P.M, one Mangala, Kelagadde Village appeared before me and gave written complaint. I registered a case in Crime No.46/2010 and prepared FIR and submitted to the Court. Now I identify my signature in Ex.P1, marked as Ex.P1(b). FIR is marked as Ex.P7, my signature is marked as Ex.P7(a).

On 04.06.2010 at 10.30 A.M., I went to the spot of occurrence and drew mahazar in the presence of CW1 and witnesses CW5 and CW6 and seized torn nighty produced by CW1. Now I see my signature in Ex.P2, marked as Ex.P2(c). Now I see the nighty which was seized by me, which was already marked as MO1. Subsequently, I handed over the case file to CW10 for further investigation.

Cross examination by Advocate for accused

Mangala alone came to the police station to lodge a complaint. She was wearing torn nighty when she came to the police station to lodge a complaint. It is not true to suggest that I have prepared mahazar in the police station and took signature of the witnesses in the police station.

Re-examination: Nil · R.O.I. & A.C. · Sd/- JMFC

CW10 - PW8: K. Narayana, PSI (Duly sworn on 03.10.2013) · **Examination in Chief by APP**

I was working as PSI in Ganganagar police station from 28.08.2008 to 05.07.2011.

On 05.06.2010, I received the case file from CW9 for further investigation and went to the spot of occurrence and recorded the statements of CW3 Ashwath and CW4 Nagappa. I came to know that the accused surrendered before the Court and got released on bail. On 08.06.2010, I went to the village and recorded the statement of CW2 Muniyappa. On 21.07.2010, I obtained wound certificate of CW1 and 2 from General Hospital, Ganganagar. On the same day, I obtained RTC of spot of occurrence from Tahsildar, Ganganagar Taluk. After completion of investigation, I filed charge sheet against accused. Now I see the RTC, marked as Ex.P8. CW3 and 4 gave statement before me as per Ex.P3 and 4.

Cross examination by Advocate for accused

It is true that as per the contents of mahazar, on the western side of spot of occurrence, there is a land of accused No.1 Subbaraya. I have not inquired as to what is the relationship between CW1 and eye witnesses. It is not true to suggest that I have filed false charge sheet without proper investigation.

Re-examination: Nil · R.O.I. & A.C. · Sd/- JMFC

Documents

- Ex.P1: Complaint
- Ex.P2: Mahazar
- Ex.P3: Statement of CW3
- Ex.P4: Statement of CW4
- Ex.P5: Wound certificate of CW1

Ex.P6: Wound certificate of CW2
Ex.P7: First Information Report
Ex.P8: RTC

De Facto IAS