Karnataka Civil Judge (Mains) 2019 (CJR 24/2018 cycle, held March 2019)

Law Paper III · compulsory paper

Framing of charges and writing of a Judgment in Criminal Case

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 proper plea in the following case. 10 Marks

C C 720/2016

Complainant: Smt.Renuka

And

Accused: Raghavendra

The complainant and accused are known to each other through one of the relative of the complainant and as such they have been family friends since few years. The accused being in dire requirement of some amount on his personal and domestic problems approached the complainant and took a hand loan of Rs.2,50,000/-. In order to repay the above said amount, the accused had issued a cheque bearing No.953639 dated 20.2.2015 for Rs.2,50,000/- drawn on Dena Bank Ltd, K.M.Pura Branch in favour of the complainant. On assurance of the accused, the above said cheque was presented for payment through the Dena Bank Ltd, K.M.Pura Branch by the complainant, which was returned with an endorsement "Funds insufficient" on 6.3.2015. The legal notice was issued by the complainant on 17.3.2015 calling upon the accused to pay the cheque amount. Inspite of service of notice, the accused neither replied to the said notice nor paid the cheque amount. Hence complainant filed the complaint before JMFC Court, K.M.Pura.

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

It is alleged that the Accused No.1 to 4 Raju, Kempa, Mahesh and Chandra were under the impression that CW1 Syed knows where about of his friend Imran and the wife of Accused No.1. In this regard, on 18.2.2013 at about 8.30 p.m., the accused No.1 to 4 with the common intention to commit an offence came near Kempapura Main Road in Maruti Car bearing No.KA-18 ML 6060 and called CW1 over mobile phone and asked him to come to the said spot and when CW1 along with CW2 came to the said spot, the accused No.1 to 4 forcibly took both of them in their car and abducted them to Gollarahalli with intent to secretly and wrongfully confine them in the house of the friend of Accused No.3 Mahesh. Accused No.1 Raju by means of club, Accused No.3 Mahesh, by means of steel rod and Accused No.2 Kempa and Accused No.4 Chandra with their hands assaulted them and caused simple injuries and also threatened that they would take away their life if they inform the said incident to the police.

The complainant gave first information to the Kempapura police station. Police after investigation filed charge sheet alleging offences punishable under Section 365, 342, 323, 324 and 506 r/w Section 34 of the Indian Penal Code, 1860.

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

Judicial Magistrate of First Class, K.M.Pura
CC 615/2010

Complainant: State of Karnataka represented by Kempapura police station

Vs

Accused: Shivanna S/o Ramanna, Aged 40 years, Shanthinagar, K.M.Pura.

Facts of the Case:

On 2.9.2010 at about 7.45 p.m., one Nagaraj S/o Subash, aged 18 years, resident of Shanthinagar, K.M.Pura Taluk, visited Kempapura Police Station along with his mother Savithramma and gave his written complaint to the Sub-Inspector of Police against Shivanna S/o Ramanna of his village alleging that on 2.9.2010 at about 1.00 p.m., the complainant Nagaraj and his servant Subba were cutting the branches of a jack-fruit tree, by climbing it, nearby the house of the complainant and at that time, the accused Shivanna appeared there holding a sickle and started beating the complainant with hands and when his mother Savithramma came to his rescue, the accused assaulted her with sickle causing a bleeding injury on her left hand.

On that complaint of Nagaraj, the P.S.I., registered a case in Cr.No.36/2010 for the offence punishable under Section 323 and 324 I.P.C., against the accused Shivanna. He dispatched F.I.R., to the learned Judicial Magistrate of the First Class (J.M.F.C.) at K.M.Pura, conducted investigation and on completion of the investigation, he filed charge sheet against the accused for the offence punishable under Section 323 and 324 of the Indian Penal Code, 1860.

Charges were read over to the accused. He pleaded not guilty to the charges.

To establish the charges against the accused at the trial before the learned Magistrate, the prosecution let in the evidence of the complainant Nagaraja, his mother Savithramma, the medical witness Dr.Anubhav and Investigation Officer as PW1, PW2, PW3 and PW4 respectively.

PW1 — Nagaraja Duly sworn on 16.8.2011

Examination in Chief by APP

I am living with my parents in the house situated at Shanthinagar, K.M.Pura Taluk. It is about 3 K.M. distance from Kempapura Police Station. There is a jack-fruit tree near my house. On the day of the incident at about 1.00 p.m., I and my servant Subba were engaged in cutting branches of the said tree. We both had climbed the tree. At that time, the accused came there holding a sickle and began shouting at me saying "the tree belongs to me, why are you cutting its branches?". Then I started getting down from the tree. At that time, the accused assaulted me with his hands. Just then my mother Savithramma came to the spot and intervened to prevent him from assaulting me. The accused then assaulted her with his sickle on her left hand and caused a cut injury at the wrist. After so assaulting her, he went away from the spot.

Thereafter, on the same day i.e., on 2.9.2010 at about 7.45 p.m., I and my mother both visited Kempapura Police Station and gave my written complaint to the P.S.I. against the accused. Ex.P1 is the complaint. I have signed it at Ex.P1(a). Then the P.S.I. sent my mother to the hospital. M.O.1 is the said sickle.

Next day morning, P.S.I. visited the spot of offence and examined it in the presence of two Panchas. I pointed out the spot to him. M.O.1 was lying at the spot itself. P.S.I. prepared the spot Mahazar i.e., Panchanama, which is at Ex.P2 and seized M.O.1 thereunder.

Cross examination by Sri K P K Advocate for accused:

The accused is my paternal uncle. The agricultural property situated adjacent to my house property belongs to accused. It is under his personal cultivation. These two properties are divided by a ridge running between them. It is true that the said jack-fruit tree exists just by the side of this ridge. It is true that there is a land dispute between my parents and the accused. It is true to suggest that the said tree lies in the land of the accused.

The accused did not scold my servant Subba. I was getting down from the tree first when the accused attempted to assault me. It is not true to suggest that the accused neither intended to assault me nor did he assault my mother Savithramma with sickle.

Sickle like M.O.1 is available in my house. It is not true to suggest that sickle was not brought and left at the spot by the accused. It is not true to suggest that my mother sustained her injury on being hit by the sickle M.O.1 accidentally when she was cutting and clearing bushes in our property.

We came to Kempapura by bus from our village. Many buses ply to Kempapura via our village. It is not true to suggest that Ex.P1 was not given by me to the P.S.I., on 2.9.2010. It is not true to suggest that I have given false complaint as Ex.P1 against the accused to take revenge against him.

Re-examination: Nil

R.O.I & A.C. Sd/- JMFC.

PW2 - Savitharamma Duly sworn on 16.8.2011

Examination in Chief by APP

PW.1 Nagaraj is my son. At the time of incident, I was standing outside our house. PW1 and our servant Subba were then cutting the branches of a jack-fruit tree situated in our property. The accused came from his neighbouring land and began quarrelling with us stating that the said tree is in his land and it belongs to him. Nagaraj and Subba started getting down from the tree. The accused attempted to assault my son. Then I intervened to pacify and prevent him from assaulting my son Nagaraj. He then suddenly assaulted me with a sickle on my left hand. I sustained a bleeding injury on my left wrist. M.O.1 is the said sickle.

After incident, I and Nagaraj both visited Kempapura Police Station and gave our complaint to the Police. The police sent me to the hospital for my treatment. I was examined by a Doctor in that hospital.

Cross examination by Sri K P K Advocate for Accused:

The accused came to the spot holding a sickle. Nagaraj was getting down from the tree when the accused assaulted me with sickle. Subba is no longer our servant. He lives in our village. It is not true to suggest that the accused did not come to the spot armed with sickle. It is not true to suggest that M.O.1 sickle belongs to us and it does not belong to the accused. It is not true to suggest that sickle was produced by us before the police.

It is not true to suggest that I sustained injury on my hand when I was accidentally hit by M.O.1 sickle while I was cutting and clearing bushes in our land. It is not true to suggest that I am deposing falsely against accused.

Re-examination: Nil.

R.O.I & A.C. Sd/- JMFC

PW3 - Dr.Anubhav Duly sworn on 6.9.2011

Examination in Chief by APP

I am working as an Assistant Surgeon in the Government Hospital at K.M.Pura.

On 2.9.2010 at 8.15 p.m., PW2 Smt.Savithramma came to the hospital accompanied by her son Nagaraj, with the history of sustaining an injury on her left hand due to assault made by one Shivanna. Then I examined her and noticed the following injury on her hand:

"An incised wound of the size 1/2" x 1/2" at the posterior aspect of her left wrist".

It was a simple injury. It could be caused with a weapon like M.O.1 sickle. Ex.P3 is the Wound Certificate of PW2 issued by me to the Investigating Officer.

Cross examination Sri K P K Advocate for Accused:

The age of the injury is not noted by me in Ex.P3. Such an injury could be caused by any sharp edged weapon or object. It could be caused if M.O.1 sickle accidentally hits the hand of a person engaged in cutting and clearing bushes with it.

The above stated injury of PW2 was not a serious injury. If she was assaulted forcibly on her hand with M.O.1, the injury caused to her could have been more serious in nature.

Re-examination: Nil.

R.O.I & A.C. Sd/- JMFC

PW4 - Laxmi Narayan Duly sworn on 06.09.2011

Examination in Chief by APP

I have been working as P.S.I. of Kempapura Police Station for the last about three years.

On 2.9.2010 at about 7.45 p.m., PW1 Nagaraj came to the Police Station along with his mother PW2 Savithramma and gave his written complaint at Ex.P1 to me. On its basis, I registered a case in Cr.No.36/2010 of Kempapura Police Station u/s 323 and 324 I.P.C. against accused. I prepared and dispatched the F.I.R. at Ex.P4 to the learned J.M.F.C., K.M.Pura through P.C.No.313 by name Jayaram. Then I sent PW2 Savithramma to the Government Hospital, K.M.Pura. After she was examined by the Doctor, I examined her and recorded her statement.

Next day morning, I visited the scene of offence and inspected in the presence of two panchas by name Rama and Balu. The spot of incident was pointed out to us by PW1. M.O.1 sickle was found lying at the spot. I prepared the spot panchanama i.e., Mahazar, which is at Ex.P2 and seized M.O.1. Then I examined and recorded the statements of Subba and PW1's father Subhash.

Subsequently, on 20.9.2010, I arrested the accused in his village and produced him before the learned Magistrate for his remand to judicial custody (J.C.).

On 20.11.2010, I collected Ex.P3 Wound Certificate from PW3 Dr.Anubhav. On completion of the investigation, I submitted chargesheet to the Court of the J.M.F.C., K.M.Pura on the same day.

Cross examination by Sri K P K Advocate for accused:

It is true that, as disclosed by the endorsement of the learned Magistrate, Ex.P4 FIR was delivered to him at 1.30 p.m. on 3.9.2010. It is not true to suggest that Ex.P1 was given to me by PW1 on 3.9.2010 at 11.00 a.m., not at 7.45 p.m. on 2.9.2010. There was no blood found on the spot of incident. It is true that the jack-fruit tree was standing by the side of a ridge between the property of CW1 and Accused. I

did not verify any documents or khatha entries to ascertain the owners thereof. I do not know in whose land the said jack-fruit tree was standing. There were wild bushes near the place of offence.

It is not true to suggest that I did not send PW2 Savithramma to the hospital. It is not true to suggest that I have foisted a false case against accused at the instance of PW1 and his parents.

Accused statement U/s 313 of the Code of Criminal Procedure:

The accused was examined under Section 313 of the Code of Criminal Procedure by the learned Magistrate. He denied all the incriminating circumstances. He has stated that he did ask PW1 why he was cutting the branches of the said tree as it was in his land.

Substance of arguments:

The learned Assistant Public Prosecutor (APP) has argued that the evidence of PW1 and PW2 on all material particulars of the alleged incident is consistent and cogent. It also finds ample corroboration from the evidence of PW3 and PW4 and the contents of proved documents Ex.P1 to Ex.P4. It is free from all major infirmities. Therefore, it is sufficient to establish charges levelled against the accused. He argued that the accused is liable to be convicted for the alleged offences.

The learned counsel for the accused has argued that the prosecution evidence is full of material contradictions, omissions and discrepancies on material points. Ex.P1 complaint contradicts PW1 in regard to manner of occurrence. The version of incident as given by PWs.1 and 2 is inherently improbable. The evidence of PW3 Dr.Anubhav does not corroborate it, but it supports the defence version of the incident. Scribe of Ex.P1 complaint and Ex.P4 F.I.R. are material witnesses. Non-examination of scribe of Ex.P1 and Ex.P4 by the prosecution is a vital legal infirmity. The prosecution has not examined the Mahazar witnesses. Hence, place of incident is not proved by the prosecution. Therefore, he prayed for acquittal of the accused for the charges levelled against him.