

Kumar Swamy Layout Police Station vs Baskar on 27 January, 2025

KABC030598392024

Presented on : 29-10-2024
Registered on : 29-10-2024
Decided on : 27-01-2025
Duration : 0 years, 2 months, 29 days

IN THE COURT OF THE 30TH ADDL.CHIEF
JUDICIAL MAGISTRATE, BENGALURU

Dated: This the 27th day of January-2025

:Present: Sri. Thimmaiah.G B.A., LL.B.
30th ACJM, Bengaluru.

C.C.No.35389/2024

(Judgment U/s.355 of Cr.P.C.)

Date of Offence 15.09.2024

Complainant State by K.S.Layout Police Station.
R/by. Learned Senior APP

V/s.

Accused A1. Bhaskar
S/o. Nagesh,
Aged about 19 years,
R/at.No.191, 21st Cross,
18th Main, 15-E bus stop,
K.S.Layout, Bengaluru City.

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A2. Surya
S/o. Subramani,
Aged about 20 years,
R/at. No.67, 1st Main,
1st Cross, Marikandaiah,
Nagar, Binnipete,
Bengaluru City.

A3. Ajay
(In Juvenile Justice Court)

A4. Shashank
S/o. Nagesh,

Aged about 22 years,
R/at. No.191, 21st Cross,
18th Main, 15-E bus stop,
K.S.Layout, Bengaluru City.

Offences U/s., 115(2), 118, 74, 351(2), 352, of
R/w sec., 3(5) of the BNS.

Plea/Charge Recorded on 04.12.2024 and
accused No.1,2 and to 4 are Pleaded
not guilty.

Final Order Accused No.1, 2 and 4 are Acquitted

Date of Order 27.01.2025

(Thimmaiah.G)
30 Addl.C.J.M., B'lore.
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JUDGMENT

The PSI of K.S.Layout Police Station has filed charge sheet against accused persons for the offences punishable U/s., 115(2), 118, 74, 351(2), 352, of R/w sec., 3(5) of the BNS.

02. The brief facts of the prosecution case are as follows:

It is alleged that, on 15.09.2024 the Cw.1 and 2 came to the house of Cw.3 situated within the jurisdiction of K.S.Layout Police Station, 1st Stage, 14th Main, 18th Cross Road, House No.179 and on the same their was a Ganesha procession was going on, at that time, the accused No.1 touch the hand of the Cw.1 and told that why another area people should to come to our area and assaulted the Cw.1 with hands and caused simple injuries, further the Cw.2 and 3 came to stop the accused No.1 not to assault the Cw.1, at that time the accused No.2 taken the knife and stabbed the Cw.1 by abusing Judgment 4 C.C.No.35389/2024 in filthy language and caused bleeding injury, further the accused persons insulted the modesty of the Cw.1 in public place and given the life threat to the Cw.1 to 3 and thereby the accused persons have committed the above said alleged offences which are punishable U/s., 115(2), 118, 74, 351(2), 352, of R/w sec., 3(5) of the BNS.

3. During the pendency of the the accused No.3 is a minor and sent to the Juvenile Justice Court. After filing the charge sheet, cognizance taken for the offences punishable U/s., 115(2), 118, 74, 351(2), 352, of R/w sec., 3(5) of the BNS against the accused No.1, 2 and 4. The accused No.1, 2 and 4 were released on bail. Copy of the prosecution papers furnished to the accused No.1, 2 and 4 as required U/Sec.207 of Cr.P.C. Heard before charge. Charge has been framed and read over to the

accused No.1, 2 and 4 in kannada language to them wherein they have denied the same and claim to be tried.

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4. In order to prove the charges leveled against the accused persons, prosecution has been examined 02 witnesses out of 11 and during the examination of Cw.1 got marked the documents as Ex.P1 and Ex.P2 in this case the Cw.1 is complainant injured/victim witness and Cw.2 is the eye witnesses such being the case, the said Cw.1 and 2 were turned hostile to the prosecution case. Hence, this court rejected the prayer of the learned Senior APP to examine other charge sheet witnesses, as no purpose would be served in examining them and also the valuable time of the court would be saved. As there is no incriminating evidence against the accused No.1, 2 and 4, hence the examination of the accused persons as required U/Sec.313 of Cr.P.C., has been dispensed with.

5. Heard both sides and perused the evidence available on record.

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6. Upon hearing arguments advanced from both sides and on perusal of materials placed on record, following points arise for consideration.

POINTS

1. Whether the prosecution proves beyond reasonable doubt that, on 15.09.2024 the Cw.1 and 2 came to the house of Cw.3 situated within the jurisdiction of K.S.Layout Police Station, 1st Stage, 14th Main, 18th Cross Road, House No.179 and on the same their was a Ganesha procession was going on, at that time, the accused No.1 touch the hand of the Cw.1 and told that why another area people should to come to our area and assaulted the Cw.1 with hands and caused simple injuries to Cw.1 thereby the accused No.1 has committed an offence punishable U/sec.,115(2) R/w sec., 3(5) of BNS?

2. Whether the prosecution proves beyond reasonable doubt that, further the Cw.2 and 3 came to stop the accused No.1 not to assault the Cw.1 at that time, the accused No.2 abused the Cw.1 in Judgment 7 C.C.No.35389/2024 filthy language thereby the accused No.2 committed an offence punishable U/sec., 352 R/w sec., 3(5) of BNs?

3. Whether the prosecution proves beyond reasonable doubt that, further the accused No.2 taken the knife and stabbed the Cw.1 and caused bleeding injuries to Cw.1 and thereby the accused No.2 has committed an offence punishable U/sec. 118(1) R/w sec., 34 of BNS?

4. Whether the prosecution proves beyond reasonable doubt that, further the accused persons insulted the modesty of the Cw.1 in public place and thereby the accused persons have committed an offence punishable U/sec. 74 R/w sec., 34 of BNS?

5. Whether the prosecution proves beyond reasonable doubt that, further the accused persons given the life threat to the Cw.1 to 3 and thereby the accused persons have committed an offence punishable U/sec. 351(2) R/w sec., 34 of BNS?

6. What order.?

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07. My findings on the above points 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: In The Negative Point No.6: As per final
order REASONS

08. Points No.1 to 5: These points are inter connected to each other and have taken for discussion in common to avoid repetition of the facts and evidence. The case of the prosecution is already narrated at the inception of this judgment hence, without repeating the same, I proceed to appreciate the evidence on records.

9. PW.1 is the complainant/injured she has deposed in her evidence before the court that, the Cw.2 is her husband, Cw.3 is her husband friend and the accused persons are residing in their area and there was no quarrel between the Judgment 9 C.C.No.35389/2024 themselves and the accused persons, further she has identified the signature in the Ex.P1 and Ex.P2 where in he signed the said documents before the police about 01 years ago in the police station and denied the rest of the things which is written in the said documents. Further she had not taken any treatment in hospital with regard to the said incident and further denied the identification of the knife which used in the incident. The PW.2 is the eye witness to the case, he has deposed in his evidence before the court that, Cw.1 is his wife, Cw.3 is his friend and the accused persons are residing in their area and there was no quarrel between the themselves and the accused persons, further he had not taken any treatment in hospital with regard to the said incident and further denied the identification of the knife which used in the incident. Accordingly, the learned Senior APP has failed to elicited the contents of Ex.P1 and 2 from the mouth of Pw.1 and 2.

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10. It is crucial to note that Pw.1 is the only

material/injured/witness and Pw.2 is the eye witness to the incident and they have not supported to the prosecution case. The learned Senior APP made several suggestions to the said witnesses during the cross-examination, but the said witnesses had been denied the all material suggestions, except mere suggestions and denials nothing worth, was elicited in the cross-examination. Regarding the value of suggestions during the cross-examination and burden of proof concerned. The Hon'ble High Court Gujarat in Legal Heirs of Umedmiya R Rathod Vs State of Gujarat, in First Appeal NO. 5952 of 1995 held as under:

"74. It is a settled position of law that mere suggestions are not sufficient to dislodge or disprove the case of the plaintiff. Suggestions in cross-examination have no evidentiary value. In absence of any evidence, nor any material traced in the cross examination in support thereof, the findings so far could not have been Judgment 11 C.C.No.35389/2024 answered in the affirmative by the Trial Court as well as by this Court in the First Appeal.

78. The expression "burden of proof" is used in two senses, i.e. The burden of proving an issue or issues sometimes termed the 'legal burden', and the burden of proof as a matter of adducing evidence during the various stages of the trial. What is called the burden of proof on the pleading should not be confused with the burden of adducing evidence which is described as "shifting". See, observations in Narayan v. Gopal [AIR 1960 SC 100]; Pickup v. Thames Insurance Co., [(1878) 3 QBD 594]; Lakshmana v. Venkateswarlu, [76 Ind APP 202 : (AIR 1949 PC 278); 15 Halsbury (Simond) 267]; HuytonwithRoby Urban District Council v. Hunter, [(1955) 2 All E. R. 398 at p. 400] per Denning L. J. These two aspects of the burden of proof are enunciated in Sections 101 and 102 of the Evidence Act. Section 101 shows that the initial burden of proving a prima facie case in his favor is on the plaintiff. When he gives such evidence as will support a prima facie case, the onus shifts on the defendant to adduce rebutting evidence to meet the case made out Judgment 12 C.C.No.35389/2024 by the plaintiff. As the case continues to develop, the onus may shift back again to the plaintiff."

11. It is the paramount duty of the prosecution to establish the guilt of the accused No.1, 2 and 4 beyond all reasonable doubt. Unless the guilt is established beyond all reasonable doubt, the accused No.1, 2 and 4 can not be held guilty of the alleged offenses.

12. In the present case, it is important to note that the material/injured witness and eye witness have denied the alleged commission of the offences by the accused No.1, 2 and

4. As such the accused No.1, 2 and 4 have certainly would be entitled to benefit of the doubt, since material/injured witness and eye witness have turned hostile to the prosecution case.

On this point held in, (2016) 10 SCC 519 - AIR 2016 SC 4581 in para 56, Hon'ble Apex held thus hereunder:

"56. It is a trite proposition of law, that suspicion however grave, it cannot take the place of proof and that Judgment 13 C.C.No.35389/2024 the prosecution in order to succeed on a criminal charge cannot afford to lodge its case in the realm of "may be true" but has to essentially elevate it to the grade of "must be true". In a criminal prosecution, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof and in a situation where a reasonable doubt is entertained in the backdrop of the evidence available, to prevent miscarriage of justice, benefit of doubt is to be extended to the accused. Such a doubt essentially has to be reasonable and not imaginary, fanciful, intangible or non-existent but as

entertainable by an impartial, prudent and analytical mind, judged on the touchstone of reason and common sense. It is also a primary postulation in criminal jurisprudence that if two views are possible on the evidence available one pointing to the guilt of the accused and the other to his innocence, the one favourable to the accused ought to be adopted."

13. Thus, the above Hon'ble Apex Court decision has opt to the present case on hand and the accused No.1, 2 and 4 are entitled to the benefit of the reasonable doubt. As the Pw.1 Judgment 14 C.C.No.35389/2024 complainant who was injured/victim witness ane eye witness were turned completely hostile to the prosecution case. Hence, this court rejected the prayer of the learned Senior APP to examine other charge sheet witnesses, as no purpose would be served in examining them and also the valuable time of the court would be saved. In view of the material witness and eye witness have turned hostile to the prosecution case and compromise is reported by the parties, the prosecution has not able to prove the alleged offences against the accused No.1, 2 and 4 beyond reasonable doubt. Therefore, I answer to the Points No.1 to 5 in the Negative.

14. POINT NO.6: In view of the above findings on Points No.1 to 5, I proceed to pass the following:

:ORDER:

In the exercise of powers conferred U/Sec. 248(1) of Cr.P.C., the Accused No.1, 2 and 4 are hereby Acquitted of the offences Judgment 15 C.C.No.35389/2024 punishable U/sec., 115(2), 118(1), 74, 352, 351(2) R/w sec., 3(5) of the BNS Act.

The bail bond of Accused No.1,2 and 4 and surety extended for further 6 months in order to comply Sec.437A of Cr.P.C. Thereafter, this bail bond automatically stands cancelled.

(Dictated to the stenographer directly on computer typed by her, corrected by me and then pronounced in the open court on this the 27th day of January-2025) (Thimmaiah.G) 30 A.C.J.M., B'lore.

th ANNEXURE

1. LIST OF THE WITNESS EXAMINED FOR THE PROSECUTION:

P.W.1	:	Smt. Rakshitha
P.W.2	:	Sri. Manoj.K
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2. LIST OF THE DOCUMENTS MARKED FOR THE PROSECUTION:

Ex.P.1	:	Complaint
Ex.P.1(a)	:	Signature of Pw.1
Ex.P.2	:	Spot Mahazar
Ex.P.2(a)	:	Signature of Pw.1

3. LIST OF THE WITNESS EXAMINED AND DOCUMENTS MARKED FOR THE DEFENCE:

NIL

4. LIST OF THE METERIAL OBJECTS MARKED FOR THE PROSECUTION:

NIL Sd/-

(Thimmaiah.G) 30th Addl.C.J.M., B'lore.

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