

# Kumaraswamy Layout Police Station vs Gopi on 8 July, 2024

KABC030585632023

Presented on : 18-12-2023  
Registered on : 18-12-2023  
Decided on : 08-07-2024  
Duration : 0 years, 6 months, 21 days

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

Dated: This the 08th Day of July-2024

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

C.C.No.33216/2023  
Judgment U/s.355 of Cr.P.C.

Date of Offence 24.09.2023

Complainant State by K.S.Layout Police Station.  
(R/by: Learned Senior APP)  
V/s.

Accused A1. Gopi  
S/o. Late.Nagaraj,  
Aged about 30 years,

A2. Manjunath  
S/o. Late.Shivanna,  
Aged about 37 years,

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A3. Smt. Shankunthala  
W/o. Late.Nagaraj,  
Aged about 48 years,

A4. Smt. Nandini  
W/o. Manjunatha,  
Aged about 32 years,

All are R/at.No.26, 34th Main,  
14th Cross, Vaishnavingara,  
Kumaraswamy Layout,  
Bengaluru City-560078.

Offences U/s.323/115, 324/118,354/74,  
504/352 and 506/351(1)(3) R/w  
sec., 34/3(5)of IPC/BNS.

Plea/Charge Recorded on 03.07.2024 and accused  
persons are pleaded not guilty.

Final Oder Accused No.1 to 4 are Acquitted

Date of Order 08.07.2024

Thimmaiah.G  
30 ACJM, Bengaluru.  
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#### JUDGMENT

The accused persons are facing trial for the charge sheet submitted by the K.S.Layout Police, for the offences punishable U/s.323/115, 324/118,354/74, 504/352 and 506/351(1)(3) R/w sec., 34/3(5)of IPC/BNS.

#### 2. The brief facts of the prosecution case is as follows:

The case of the prosecution is that, on 24-09-2023 at around 11-30 pm, Cw.1 was at her residence, within the Jurisdiction of K.S.Layout, Police Station, at No. 25/1, 32nd Cross, Behind Water Tank, 1st Stage, KS Layout, Bangalore, when Cw.1 heard a loud quarrel in front of the house. Then Cw.1 came outside the house and saw that Cw.5 was talking to the accused persons. Then when Cw.1 went near and saw accused 1 and 2 was abusing the Cw.4 and 5 with filthy language. Further, Cw.1 questioned to the accused No.1 and 2 that you are making a fuss, for that the accused No.1 and 2, abused the Cw.1 and threatened to kill all her family members and the accused No.1 and 2 assaulted the Cw.6 with a stone on his face and caused injury. Further, the accused No.2 and 4 with a common intention, assaulted the Cw.4, 6 to 8 with their hands and caused simple injury, further, the accused No.2 hold the Cw-5's neck, then when Cw.1 who went to stop the fight went away, Cw.1 fell down and fell on her face and Cw.1's jaw teeth which were Judgment 4 C.C. No.33216/2023 shaking fell out. Further, the accused No.3 and 4 insulted with unspoken words to Cw.4 and 5 and assaulted them with your hands and humiliated them in the public, and thereby the accused persons have committed the above said alleged offences which are punishable U/s.323/115, 324/118,354/74, 504/352 and 506/351(1)(3) R/w sec., 34/3(5)of IPC/BNS.

3. After filing the charge sheet, cognizance taken for the offences punishable U/s.323/115, 324/118,354/74, 504/352 and 506/351(1)(3) R/w sec., 34/3(5)of IPC/BNS against the accused persons and the accused persons was released on bail. Copy of the prosecution papers furnished to the accused persons as required U/Sec.207 of Cr.P.C. Heard before charge. Charge has been framed and read over to the accused persons in kannada language to them, wherein they ahve denied the same and claim to be tried.

4. In order to prove the charges leveled against the accused persons prosecution has been examined 05 witness out of 12 and during the examination of Cw.1 to 5 got marked the documents as Ex.P1 to Ex.P.5 in this case the Cw.1 to 5 are complainant/injured witness and eye witnesses, such being the case, the said Cw.1 to 5 were turned hostile to the prosecution case. Hence, this court rejected the prayer of the learned Senior APP to examine other charge sheet witnesses, Judgment 5 C.C. No.33216/2023 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 persons, hence the examination of the accused as required U/Sec.313/351 of Cr.P.C.,/BNSS has been dispensed with.

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

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 all reasonable doubt that, on 24-09-2023 at around 11-30 pm, Cw.1was at her residence, within the Jurisdiction of K.S.Layout, Police Station, at No. 25/1, 32nd Cross, Behind Water Tank, 1st Stage, KS Layout, Bangalore, when Cw.1 heard a loud quarrel in front of the house. Then Cw.1 came outside the house and saw that Cw.5 was talking to the accused persons. Then when Cw.1 went near and saw accused 1 and 2 was abusing the Cw.4 and 5 with filrthy language and thereby the accused persons have committed the above said alleged offence which Judgment 6 C.C. No.33216/2023 are punishable U/sec., 504/352 R/w sec., 34/3(5)of IPC/BNS?

2. Whether the prosecution proves beyond all reasonable doubt that, the accused persons with an common intention, when Cw.1 went near and saw accused 1 and 2 was abusing the Cw.4 and 5 with filrthy language and Cw.1 questioned to the accused No.1 and 2 that you are making a fuss, for that the accused No.1 and 2, abused the Cw.1 and threatened to kill all her family members and thereby the accused has committed the above said alleged offence which are punishable U/s.506/352(2)(3) R/w sec., 34/3(5)of IPC/BNS?

3. Whether the prosecution proves beyond all reasonable doubt that, the accused No.1 and 2 with an common intention, assaulted the Cw.6 with a stone on his face and caused injury and thereby the accused No.1 and 2 has committed the above said alleged offence which are punishable U/sec., 324/118 of IPC/BNS R/w sec., 34/3(5)of IPC/BNS?

4. Whether the prosecution proves beyond all reasonable doubt that, the accused No.1 and 2 with an common intention, assaulted the Cw.4, 6 to 8 Judgment 7 C.C. No.33216/2023 with their hands and cuased simple injury, and thereby the accused has committed the above said alleged offence which are punishable U/s.323/115 R/w sec., 34/3(5)of IPC/BNS?of IPC/BNS?

5. Whether the prosecution proves beyond all reasonable doubt that, the accused No.3 and 4 with an common intention, insulted with unspoken words to Cw.4 and 5 and humiliated them in the public, and thereby the accused No.3 and 4 have committed the above said alleged offence which are punishable U/s.354/74 R/w sec., 34/3(5)of IPC/BNS?of IPC/BNS?

6. What order?

7. My findings to the above points are:

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 for the following:
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#### REASONS

8. 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. Further, I am of the opinion that, I need not repeat the entire case of the complaint here also, since I have already narrated the same at the inception of this judgment.

9. PW.1 is the complainant/injured she has deposed in her evidence before the court that, she knows the accused persons and they are residing little far from her house and Cw.5 is my sister daughter and there was no quarrel between themselves and the accused persons. Further she has identified her signature on Ex.P1 and 2, the said documents was signed by her in the police station 2 year ago and she do not know what was written in it and further she has not taken any treatment regarding the said incident. The PW.2 who is the injured and eye witness to the case, she has deposed in her evidence before the court that, Cw.1 is her mother sister, Cw.6 is her husband and she knows the accused persons and they are residing little far from her house, there was no quarrel between themselves and the accused persons and she has not given any statement before the police regarding the said incident. The PW.3 who is the injured/victim witness to the case, he has deposed in his Judgment 9 C.C. No.33216/2023 evidence before the court that, Cw.1 and 4 are his aunties, Cw.4 is suffering from paralysis decease and he can not move and he is bed ridden, Cw.5 is his wife and Cw.7 is his wife's sister and Cw.8 is wife and Cw.5 is his relative, he knows the accused persons and they are residing little far from her house and there was no quarrel between themselves and the

accused persons and he has not any statement before the police regarding the said incident. The PW.4, who is the eye witness to the case, she has deposed in her evidence before the court that, Cw.1 is her uncle, Cw.4 is her mother suffering from paralysis decease and he can not move and he is bed ridden, Cw.5 is her sister, Cw.6 is her sister husband, Cw.8 is her brother wife and Cw.2 is her uncle and Cw.3 is her uncle daughter, she knows the accused persons and they are residing little far from her house and there was no quarrel between themselves and the accused persons and she has not any statement before the police regarding the said incident. The PW.5 who is the eye witness to the case, she has deposed in her evidence before the court that, Cw.1 and 4 are her aunties, Cw.4 is suffering from paralysis decease and he can not move and he is bed ridden, Cw.5 is her husband sister, Cw.6 is her sister husband, and Cw.2 and 3 are her relatives, she knows the accused persons and they are residing little far from her house and there was no quarrel between themselves and the accused persons and she has Judgment 10 C.C. No.33216/2023 not any statement before the police regarding the said incident. Accordingly, the learned Senior APP has failed to elicited the contents of Ex.P1 to 5 from the mouth of PW.1 to PW.5.

10. It is crucial to note that PW.1 to 5 are the material/eye and incident witnesses 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 have 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 answered in the affirmative by Judgment 11 C.C. No.33216/2023 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 by the plaintiff. As the case continues to develop, the onus may shift back again to the plaintiff."

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11. It is the paramount duty of the prosecution to establish the guilt of the accused persons beyond all reasonable doubt. Unless the guilt is established beyond all reasonable doubt, the accused persons can not be held guilty of the alleged offences.

12. In the present case, it is important to note that the material/eye/injured witnesses have denied the alleged commission of the offences by the accused persons. As such against the accused persons at the initial stage itself, the accused persons have certainly would be entitled to benefit of the doubt, since material/eye witnesses 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 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 Judgment 13 C.C. No.33216/2023 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 persons are entitled to the benefit of the reasonable doubt. The Pw.1 to 5 have not stated anything against the accused persons and has turned hostile to the prosecution case. As the complainant who was injured witness and other eye witnesses to the case 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 witnesses are turned hostile to the Judgment 14 C.C. No.33216/2023 prosecution and compromise is reported by the parties, the prosecution has not able to prove the alleged offences beyond all reasonable doubt. Therefore, with the above observations, I answer to the Point 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 to 4 are hereby Acquitted of the offences punishable U/s.323/115, 324/118,354/74, 504/352 and 506/351(1)(3) R/w sec., 34/3(5)of IPC/BNS.

The bail bond of Accused No.1 to 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 08th day of July- 2024) (Thimmaiah G) 30 ACJM, Bengaluru.

th Judgment 15 C.C. No.33216/2023 AN EXHIBIT LIST OF WITNESSES EXAMINED FOR PROSECUTION:

PW.1	:	Smt. Saraswathi
PW.2	:	Smt. Vidyashri
PW.3	:	Sri. Swagath
PW.4	:	Smt. Divya
PW.5	:	Smt. Kavya

LIST OF DOCUMENTS MARKED FOR PROSECUTION:

Ex.P1	:	Complaint
Ex.P1(a)	:	Signature of Pw.1
Ex.P2	:	Spot Panchanama
Ex.P2(a)	:	Signature of Pw.1
Ex.P3	:	Statement of PW.2
Ex.P4	:	Statment of PW.3
Ex.P5	:	Statement of PW.4
Ex.P6	:	Statement of PW.5

LIST OF WITNESSES EXAMINED FOR DEFENSE:

- NIL-

LIST OF DOCUMENTS MARKED FOR DEFENSE:

-NIL-

LIST OF MARKED MATERIAL OBJECTS:

-NIL-

(Thimmaiah G) 30 ACJM, Bengaluru.

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