

Konanakute Police Station vs Deva Mahara on 11 July, 2024

KABC030035802024

Presented on : 22-01-2024
Registered on : 22-01-2024
Decided on : 11-07-2024
Duration : 0 years, 5 months, 20 days

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

Dated: This the 11th Day of July-2024

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

C.C.No.1866/2024
Judgment U/s.355 of Cr.P.C.

Date of Offence 21.12.2023

Complainant State by Konanakunte Police Station.

(R/by: Learned Senior APP)

V/s.

Accused A1. Deva Mahara
S/o. Ribana Mahara,
Aged about 30 years,
R/at. No.61, Alara Residency
Bohara Layout, Gottigere,
Bengaluru City.

Judgment 2 C.C. No.1866/2024

A2. Sher Bahaddur Bohara
@ Sagar,
S/o. Kalu Bohara,,
Aged about 31 years,
No.G2, Near Tirumala
Hemagiri Meadows Gottigere,
B.G.Road, Bengaluru City.

Offences U/s.323/115, 324/118(1),
341/126(2) 504/352 and
506/351(1)(3) R/w sec., 34/3(5)of
IPC/BNS.

Plea/Charge Recorded on 31.05.2024 and accused persons are pleaded not guilty.

Final Oder Accused No.1 and 2 are Acquitted

Date of Order 11.07.2024

Judgment 3
Thimmaiah.G
30 ACJM, Bengaluru.
th
C.C. No.1866/2024

JUDGMENT

The accused persons are facing trial for the charge sheet submitted by the Konanakunte Police, for the offences punishable U/s.323/115, 324/118(1), 341/126(2), 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 21.12.2023 at around 11.45 pm, within the Jurisdiction of Konanakunte Police Station, in front of Amal Jyothi Convent, Bhagyanagar, the Cw.1 was going by walking, at the time, the accused persons came in separate two wheeler Active Honda vehicle and restrained the Cw.1 from not moving further, further the accused No.1 hit the Cw.1 from backside and for that the Cw.1 questioned the same with accused No.1 in a nepali language, for the accused No.2 hold the shift neck of the Cw.1 and assaulted the Cw.1 with his hands and hit the Cw.1's face and caused injury. Further the accused No.2 with a common intention, assaulted the Cw.1 with a key on the Cw.1's neck and back side of the hip and caused simple bleeding injury. Further the accused No.1 and 2 with a common intention, twist the right arm of the Cw.1 and abused him in filthy language and further give life threat to Judgment 4 C.C. No.1866/2024 the Cw.1 by saying he has give their money within one week otherwise they will murder him and thereby the accused persons have committed the above said alleged offences which are punishable U/s.323/115, 324/118(1), 341/126(2), 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(1), 341/126(2), 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 have denied the same and claim to be tried.

4. In order to prove the charges leveled against the accused persons prosecution has been examined 01 witness out of 09 and during the examination of Cw.1 to 5 got marked the documents as Ex.P1 and P2 in this case the Cw.1 is complainant witness, such being the case, the said Cw.1 was 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 Judgment 5 C.C. No.1866/2024 the accused persons, hence the examination of the accused persons 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 21.12.2023 at around 11.45 pm, within the Jurisdiction of Konanakunte Police Station, in front of Amal Jyothi Convent, Bhagyanagar, the Cw.1 was going by walking, at the time, the accused persons came in separate two wheeler Active Honda vehicle and restrained the Cw.1 from not moving further, and thereby the accused persons have committed the above said alleged offence which are punishable U/sec., 341/126(2), R/w sec., 34/3(5) of IPC/BNS?

Judgment 6 C.C. No.1866/2024

2. Whether the prosecution proves beyond all reasonable doubt that, further the accused No.1 hit the Cw.1 from backside and for that the Cw.1 questioned the same with accused No.1 in a nepali language, for the accused No.2 hold the shift neck of the Cw.1 and assaulted the Cw.1 with his hands and hit the Cw.1's face and caused injury and thereby the accused No.2 has committed the above said alleged offence which are punishable U/s.323/115 R/w sec., 34/3(5) of IPC/BNS?

3. Whether the prosecution proves beyond all reasonable doubt that, Further the accused No.2 with a common intention, assaulted the Cw.1 with a key on the Cw.1's neck and back side of the hip and caused simple bleeding injury and thereby the accused No.2 has committed the above said alleged offence which are punishable 324/118(1) R/w sec., 34/3(5) of IPC/BNS?

4. Whether the prosecution proves beyond all reasonable doubt that, the accused No.1 twist the right arm of the Cw.1 and abused him in filthy language and thereby the accused No.1 has committed the above said alleged offence which are punishable 504/352 R/w sec., 34/3(5)of IPC/BNS?

Judgment 7 C.C. No.1866/2024

5. Whether the prosecution proves beyond all reasonable doubt that, further the accused No.1 and 2 give life threat to the Cw.1 by saying he has give their money within one week otherwise they will have committed the above said alleged offence which are punishable 506/351(1)(3) R/w sec., 34/3(5)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:

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 Judgment 8 C.C. No.1866/2024 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 in this case, he has deposed in his evidence before the court that, he knows the accused persons and they are their relatives and there was no quarrel between Cw.1 and the accused persons. Further he has identified his signature on Ex.P1 and 2, the said documents was signed by him in the police station 1 year ago and he do not know what was written in the said document and further he has not taken any treatment in the hospital regarding the said incident. Accordingly, the learned Senior APP has failed to elicited the contents of Ex.P1 and 2 from the mouth of PW.1.

10. It is crucial to note that PW.1 is the material incident witness to the incident and he has 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 Judgment 9 C.C. No.1866/2024 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 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 Judgment 10 C.C. No.1866/2024 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."

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 witness has 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.

Judgment 11 C.C. No.1866/2024 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 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."

Judgment 12 C.C. No.1866/2024

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 has not stated anything against the accused persons and has turned hostile to the prosecution case. As the complainant witness to the case was 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 is turned hostile to the 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 and 2 are hereby Acquitted of the offences punishable U/s.323/115, 324/118(1), 341/126(2), 504/352 and 506/351(1)(3) R/w sec., 34/3(5)of IPC/BNS.

Judgment 13 C.C. No.1866/2024 The bail bond of Accused No.1 and 2 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 11th day of July- 2024) (Thimmaiah G) 30 ACJM, Bengaluru.

th AN EXURE LIST OF WITNESSES EXAMINED FOR PROSECUTION:

PW.1 : Sri. Ravi Singh 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
Judgment	14	C.C. No.1866/2024

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.

th Judgment 15 C.C. No.1866/2024 Judgment 16 C.C. No.1866/2024