

Ramamurthy .Y vs Mahesh.B.M on 15 July, 2024

KABC030154292019

Presented on : 01-03-2019
Registered on : 02-03-2019
Decided on : 15-07-2024
Duration : 5 years, 4 months, 14 days

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

Dated: This the 15th Day of July-2024

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

C.C.No.5223/2019
Judgment U/s.355 of Cr.P.C.

Date of Offence 02.03.2022

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

Accused A1. Mahesh.B.A
S/o. Moodalagiri Gowda,
Aged about 44 years,
R/at. No.1, Maruthi Nilaya,
Nagarabhavi Main Road,
Byraveshwara Nagara,
Bengaluru City.

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A2. Prashanth.M
S/o. Madegowda,
Aged about 28 years,
R/at. No.18, Ashwath Layout,
Vasanthapura Main Road,
Near Kannada Rajyostava Flag,
Bengaluru City.

A3. Basavaraju H.D
S/o. Durge Gowda,
Aged about 24 years,
R/at. No.78, Uyalappa village,
Near Government School,

Doddamaralavadi Hobli,
Kanakapura Taluk,
Ramanagara.

Offences	U/sec., 109/49, 323/115, 324/118(1), 341/126(2), 504/352 R/w sec., 34/3(5) of IPC/BNS.
Plea/Charge	Recorded on 22.09.2022 and accused No.1 to 3 are pleaded not guilty.
Final Order	Accused No.1 to 3 are Acquitted
Date of Order	15.07.2024

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JUDGMENT

The accused persons are facing trial for the charge sheet submitted by the Konanakunte Police, for the offences punishable U/sec., 109/49, 323/115, 324/118(1), 341/126(2), 504/352 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 25.05.2017 at about 07.30 PM, within the Jurisdiction of Konanakunte Police Station, Kanakapura Cross, in front of Metal Closure Factory, when the Cw.1 was going in his car bearing Reg.No.KA-03-MK-3878, at that time, the accused persons restrained the Cw.1 from moving forward in the car and due to non payment of loan the accused No.1 told the accused No.2 and 3 to size his car. Further, the Cw.1 told the accused persons due to some personal issues he could not able to pay the loan in time and asked the accused persons to come to his office and will discuss the same. Further, the accused persons with a common intention, abused the Cw.1 in filthy language and further the accused No.2 and 3 assaulted the Cw.1 by their hands and caused simple injury. Further the accused No.3 with a common intention, assaulted the Cw.1 with a helmet on Cw.1's head and back and caused simple injury and sized the Cw.1's car and thereby the accused Judgment 4 C.C. No.5223/2019 persons have committed the above said alleged offences which are punishable U/sec., 109/49, 323/115, 324/118(1), 341/126(2), 504/352 R/w sec., 34/3(5) of IPC/BNS.

3. After filing the charge sheet, cognizance taken for the offences punishable U/sec., 109/49, 323/115, 324/118(1), 341/126(2), 504/352 R/w sec., 34/3(5) of IPC/BNS against the accused persons and the accused persons were 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 prosecution has been examined 01 witness out of 09 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 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 the accused, hence the examination of the Judgment 5 C.C. No.5223/2019 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 25.05.2017 at about 07.30 PM, within the Jurisdiction of Konanakunte Police Station, Kanakapura Cross, in front of Metal Closure Factory, when the Cw.1 was going in his car bearing Reg.No.KA-03-MK-3878, at that time, the accused persons restrained the Cw.1 from moving forward in the car and due to non payment of loan the accused persons are going to seize his car. 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)IPC/BNS?

2. Whether the prosecution proves beyond all reasonable doubt that, the accused persons with a common intention, abused the Cw.1 in filthy language and thereby the accused persons have committed the above said alleged offence which are punishable U/sec., 504/352 R/w sec., 34/3(5)IPC/BNS?

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3. Whether the prosecution proves beyond all reasonable doubt that, the accused No.2 and 3 with a common intention, assaulted the Cw.1 by their hands and caused simple injury and thereby the accused persons have committed the above said alleged offence which are punishable U/sec., 323/115, R/w sec., 34/3(5)of IPC/BNS?

4. Whether the prosecution proves beyond all reasonable doubt that, the accused No.3 with a common intention, assaulted the Cw.1 with a helmet on Cw.1's head and back and caused simple and

thereby the accused No.3 has committed the above said alleged offence which are punishable U/sec., 324/118(1), R/w sec., 34/3(5) of IPC/BNS?

5. Whether the prosecution proves beyond all reasonable doubt that, the accused No.2 and 3 in with a common intention, with a instigation of accused No.1, seized the Cw.1 car and thereby the accused persons have committed the above said alleged offence which are punishable U/sec., 109/49, 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:
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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 he has deposed in his evidence before the court that, he knows the accused persons 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 5 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 injured/material 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 Judgment 8 C.C. No.5223/2019 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 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., Judgment 9 C.C. No.5223/2019 [(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."

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 injured/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 Judgment 10 C.C. No.5223/2019 doubt, since material witness has 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 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 Judgment 11 C.C. No.5223/2019 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 has not stated anything against the accused persons and has turned hostile to the prosecution case. As the complainant who was injured witness 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 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:

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: ORDER:

In the exercise of powers conferred U/Sec. 248(1) of Cr.P.C., the Accused No.1 to 3 are hereby Acquitted of the offences punishable U/sec.,109/49, 323/115, 324/118(1), 341/126(2), 504/352 R/w sec., 34/3(5) of IPC/BNS.

The bail bond of Accused No.1 to 3 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 15th day of July- 2024) (Thimmaiah G) 30 ACJM, Bengaluru.

th AN EXURE LIST OF WITNESSES EXAMINED FOR PROSECUTION:

PW.1

:

Sri.Ramamurthy.Y

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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 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 14 C.C. No.5223/2019 Judgment 15 C.C. No.5223/2019 Judgment 16 C.C. No.5223/2019