

# The State By vs Amith Kumar S/O.Keshavalal on 9 January, 2019

IN THE COURT OF THE LXX ADDL. CITY CIVIL  
& SESSIONS JUDGE & SPECIAL JUDGE, BENGALURU CITY  
(CCH-71)

Dated this the 9th day of January, 2019

:PRESENT:

Sri. MOHAN PRABHU, M.A., LL.M.  
LXX Addl. City Civil & Sessions & Special Judge,  
Bengaluru.

Spl.C.NO. 215/2012

COMPLAINANT: The State by  
Banashankari Police Station,  
BENGALURU  
  
(By Special Public Prosecutor)  
v/s

ACCUSED: 1. Amith Kumar S/o.Keshavalal,  
Aged 26 years,  
r/o as tenant under Sujatha,  
Near Canara Bank's next building,  
Nelligudde Tank Road, Bidadi,  
Ramanagara Dist.

2. Anand Kumar S/o.Durgappa,  
Aged 26 years, R.at.No.21,  
Chammundi complex,  
Arakere, Bengaluru.

3. Satish, S/o.Yuvaraj,  
Aged 29 years,  
R/o.Bommanahalli,  
Behind ISR Hero Honda Godown  
Bengaluru - 69.

2 Spl.C.No:215/2012

4. Vinay S/o.Dayananda Rao,  
R/o.No.458, 2nd Main, 7th Cross,  
MICO layout, BTM 2nd stage,  
Bengaluru-76.

(By Sri.TS, Advocate)

1. Date of commission of offence: 29.3.2012
2. Date of report of occurrence : 21.4.2012
3. Date of commencement of recording of evidence : 3.9.2015
4. Date of closing of evidence : 16.11.2018
5. Name of the Complainant : R.K.Dwarakanath
6. Offences Complained of : U/Sec.3(1)(x) of The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989 and u/s 341, 448, 506 r/w sec.34 of IPC
7. Opinion of the Judge : Accused are acquitted

#### JUDGMENT

The Assistant Commissioner of Police, Banashankari police, Bengaluru has filed the charge sheet against the accused no.1 to 4 for the offences p/u/ss.3(1)(x) of The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989 and u/s 341, 448, 506 r/w 34 of IPC.

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

CW1 Sri.R.K.Dwarakanath is the first informant before the police. CW1 is belongs to Schedule Caste. The accused persons are not belongs to Schedule Caste or Schedule Tribe.

There was business transaction between accused no.1 and CW1 with respect to the computer. CW1 due certain money to accused no.1 towards computer business. The accused no.1 forcing him to pay the balance amount pertaining to the computer business. That on 20.4.2012 at about 7.30 p.m. the accused persons with common intention criminally trespassed House No:10/2 of the complainant which is situated at 14th 'C' Cross, 22nd Main, Padmanabhanagar, Bangalore and criminally intimidated by giving life threat to CW1 and forced him to settle the balance amount pertaining to the computer business, otherwise they will take away his life. The accused no.2 threatened CW1 by keeping a knife near his neck by stating that he will be killed if he failed to return the amount. The accused persons wrongfully restrained CW1 from his further movement. The accused persons abused CW1 in filthy language by taking the name of his caste by abusing him ' °ÉÆ¯ÉAiÄÄ ªÄiÁçUÀ ,ÀÆ¼ÉÄªÄÄPÀì½UÉ °Àt PÉÆLÄÖ C¯ÉAiÄÄ ¯ÉÄPÁçUÉ F QÄ¼ÄÄ eÄw £Ä£Äß ªÄÄPÀì¼Ä£Äß °ÄwÛgÄªÉÄ ,ÉÄj,Ä ¯ÄgÄzÄÄ ¯ªÄÄÄAvÄ eÄwAiÄÄÄªÄgÄ£ÄÄß £ÄªÄÄ ªÄÄ£ÉAiÄÄ M¼ÄUÉ ,ÉÄjÉPÉÆ¼ÄÄªÄªÄÄç®è'. The accused persons by abusing CW1 I the name of caste humiliated and insulted him within public view.

3. Based upon the first information lodged by CW1, Banashankari police registered the case in Cr.No:110/2012 and sent FIR to the court. The Investigating Officer took up the investigation and visited the place of incident and conducted the spot mahazar. The Investigating Officer recorded the statements of the witnesses. The Investigating Officer after collecting all the materials on completion of investigation has filed the charge sheet against the accused no.1 to 4 for the aforesaid offences.

4. This case which was pending before the 2nd Addl. City Civil & Sessions Court and Special Court, Bangalore transferred to this court as per Notification No:ADM1(A) 599/2017 Dt:29.7.2017 after establishing this exclusive Special Court.

5. The accused persons engaged counsel and released on bail. Charge sheet copies furnished to the accused and thereby the provision u/s 207 of Cr.P.C. is duly complied with. After hearing on both sides on 3.2.2014 charge came to be framed against the accused for the offences p/u/ss.448, 506, 341 r/w sec.34 of IPC and u/s 3(1)(x) of The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989 r/w sec.34 of IPC for which the accused pleaded not guilty and claimed to be tried.

6. During trial on the side of the prosecution out of 16 witnesses cited in the charge sheet, 8 witnesses have examined as PW1 to 8 and documents Ex.P1 to P11 are marked.

7. On 20.12.2018 statement of the accused u/s 313 of Cr.P.C. is recorded by putting all the incriminating evidence. The accused persons have denied all the incriminating evidence. No defence evidence is led.

8. I have heard the arguments of the learned Special Public Prosecutor and learned counsel for the accused no.1 to 4 and perused the entire records.

9. Upon hearing the following points arise for my determination:

1) Whether the prosecution proves beyond all reasonable doubt that on 20.4.2012 at about 7.30 p.m. within the jurisdiction of Banashankari police station the accused persons with common intention criminally trespassed into the House No:10/2 belongs to the complainant situated at 14th 'C' Cross, 22nd Main, Padmanabhanagara, Bangalore and have committed the house trespass by unlawfully entering into the house of the complainant/CW1 and thereby the accused have committed the offence p/u/s448 r/w Sec.34 of IPC?

2) Whether the prosecution proves beyond all reasonable doubt that on the above said date, place and time the accused persons with common intention wrongfully restrained CW1 from further movement and thereby the accused persons have committed the offence p/u/s.341 r/w Sec.34 of IPC?

3) Whether the prosecution proves beyond all reasonable doubt that on the above said date, place and time the accused persons with common intention abused CW1 in the name of caste with an intention to humiliate and insult him within public view and thereby the accused persons have committed the offence p/u/s.3(1)(x) of SC & ST (POA) Act, 1989?

4) What order or sentence?

10. 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:- As per final order for the following:

REASONS POINT No.1 to 3 :-

11. These points are taken up together for discussion as they are inter-linked with each other and in order to avoid repetition of facts and evidence.

12. PW1 is the complainant and victim. PW2 and PW3 are the spot mahazar witnesses. PW4 ASI who apprehended the accused no.1. PW5 Tahsildar who issued Ex.P4 report regarding the caste of CW1 complainant and issued Ex.P5 report regarding the caste of accused no.2 and 4 and also issued Ex.P6 report regarding the caste of accused no.3. PW6 who was working as Police Inspector registered the case in Cr.No:110/2012 based on the complaint lodged by CW1 on 21.4.2012. PW7 is the ACP who conducted the further investigation. PW8 is the ACP who has filed the charge sheet after completion of investigation.

13. PW1 R.K.Dwarakanath has deposed that he belongs to Adi Karnataka. He states that he do not know about the caste of the accused. He has deposed that he was running computer and it's peripherals vending shop at KH Double Road, Bangalore. The accused no.1 was the dealer of the computer. He has deposed that he was purchased the computers and it's peripherals from accused no.1 on credit basis. He has done business of Rs.10 lakhs with the accused no.1. Out of which he has paid substantial amount and due sum of Rs.1,60,000/- payable to the accused towards computer and parts purchased by him from the accused no.1. He has issued cheque in favour of the accused no.1 as the said is dishonoured, the accused no.1 had filed case u/s 138 of NI Act against him in 13th ACMM Court, Bangalore in C.C.2759/2010 which is pending. The accused no.1 filled amount of Rs.3 lakhs even though he is due to the extent of Rs.1,60,000/- payable to the accused no.1. That on 29.3.2012 at about 8 a.m. the accused persons came to his house and quarrelled with him. By seeing the same his wife and children started weeping. The accused persons tried to assault him, at that time his wife prevented the accused persons. He has deposed that the accused persons by giving threat to him made him to write in his letterhead that he has due sum of Rs.6 lakhs payable to accused no.1. He has deposed that the accused persons took his signature and his wife's signature on the document and thereafter the accused persons forcibly took them to YES bankers situated at Kadarenahalli and pledged the mangalya chain belongs to his wife and the accused persons received Rs.43,000/- from YES bankers Pawn brokers. He has deposed that on 19.4.2012 he went to the shop

of accused no.1 and gave him Rs.30,000/- for which accused no.1 issued receipt. On 20.4.2012 at about 4.30 p.m. the accused no.1 telephoned his wife's mobile phone and gave life threat to her by stating that if her husband fails to pay the amount he will do away his life. This fact was informed by his wife to him over phone. Immediately thereafter he asked the accused no.1 over phone why he has give such life threat. Then the accused no.1 also gave life threat to him. ON the same day at about 7.30 p.m. he returned to his house at that time his wife and children were not there in the house. They went to Mandya.

14. He has deposed that at about 7 p.m. when he was outside the house the accused persons came there and picked up quarrel with him and two of them caught hold by holding his hands tightly. Then the accused no.1 by holding the knife to his neck abused him in the name of caste by saying 'holeya madiga sulemagane'. The accused no.2 assaulted him with hands on his shoulder and back. At that time his friends Cws.5 and 6 who came there pacified the quarrel. The accused persons gave life threat to him saying that they will kill him. On the next day on 21.4.2012 at about 10 a.m. he went to Banashankari police station and lodged the complaint as per Ex.P1. On the same day the police visited the place of incident and conducted the mahazar as per Ex.P2.

15. During the course of his cross examination by the learned counsel for the accused PW1 admitted the suggestion that the accused no.1 running the computer sales shop at SP Road, Bangalore. PW1 admitted the suggestion that he has purchased computer worth Rs.3,83,000/- from the shop of the accused. He has pleaded his ignorance whether he has issued three cheques in favour of the accused no.1 for payment of computer purchase amount. He has admitted the suggestion that on the basis of the complaint lodged by the accused no.1 case u/s 138 of NI Act registered against him and the case in CC.2759/2010 is pending against him in 13th ACMM Court, Bangalore. He has denied the suggestion that in order to avoid the payment of amount to the accused no.1 he has filed false complaint against the accused even though no such incident was occurred. He has deposed that till accused no.1 filed case in CC.2759/2010 he and accused no.1 were in good terms. During the course of cross examination by learned counsel for accused no.1 PW1 hs deposed that he and his wife went to YES banker in motor cycle. He has deposed that he has written Ex.P1 complaint by sitting in the police station. He has denied the suggestion that he was not residing at Padmanabhanagara. He has denied the suggestion that on 19.4.2012 the accused no.1 was on the way to Rajasthana as he was travelling in train as his marriage to be held between 26.4.2012 and 30.4.2012. PW1 admitted the suggestion that the criminal case in Cr.No:55/2012 of Malur police station and in Cr.No:221/2011 of Malur police station is registered against him. PW1 has denied all other suggestions made to him.

16. PW2 G.S.Nagabhushan has deposed that at about 4 years back Banashankari police came near the house of complainant and conducted the mahazar in his presence as per Ex.P2. During the course of cross examination by the defence PW2 has denied all the suggestions made to him.

17. PW3 Naveenkumar.K. has deposed that on 24.4.2012 when he was sitting in the office of PW1 at that time the police called him to the house of PW1 situated at 2nd floor, 22nd main, 14th cross, Padmanabhanagara and conducted the panchanama as per Ex.P2 in the said house pertaining to quarrel taken place between PW1 and accused persons. In his cross examination by the defence PW3 has denied all the suggestions made to him.

18. PW4 S.C.Puttaswamy, ASI has deposed that on 27.6.2012 he was deputed by ACP, Banashankari Sub-Division in order to trace out the accused. Hence he went along with the complainant to the shop of accused no.1 and apprehended him and brought him to the police station and produced him before ACP at about 9.15 a.m. and submitted his report as per Ex.P3. The oral evidence of PW4 is formal in nature.

19. PW5 Vinod Reddy is the Tahsildar has deposed that he has received the requisition of ACP who sought the caste certificate of the complainant Dwarakanath. Hence after receiving the RI report on 24.9.2012 he sent his report as per Ex.P4 stating that the complainant Dwarakanath belongs to Adi Karnataka Caste. He has deposed that on 19.10.2012 he has submitted his report as per Ex.P5 that accused no.2 Anandakumar belongs to Kuruba caste and accused no.4 Vinodkumar belongs to Marati caste. He has deposed that on 31.10.2012 he has submitted his report as per Ex.P6 by stating that the accused no.3 Satish belongs to Adi Dravida comes under Schedule Caste. During the course of his cross examination by the defence nothing is elicited from his mouth to discard his version and to discard the document Ex.P4 to 6.

20. PW6 who was working as Police Inspector has deposed that on 21.4.2012 at about 7.30 p.m. on the basis of the written complaint as per Ex.P1 lodged by the complainant he has registered the case in Cr.No:110/2012 and sent FIR to the court.

21. PW7 H.B.Veerabhadre Gowda has deposed that on 21.4.2012 he has received Ex.P8 DCP order for investigation and on the same day he has received the case file from CW14 and thereafter on 22.4.2012 he visited the place of incident and conducted the mahazar as per Ex.P2 in the presence of CW2 and 3 as the place of incident was shown by PW1 complainant. He has deposed that on 2.5.2012 he has sent requisition to the Tahsildar to issue caste certificate of the complainant. He has deposed that he also sent requisition to Chinnammanakere Nodal Officer in order to get the call details of three mobile phone numbers. He has deposed that on 27.6.2012 ASI Puttaswamy, HC No:3946 produced the accused no.1 before him. Then he arrested the accused and recorded his voluntary statement and thereafter sent the accused along with remand application to the court. He has deposed that on 31.8.2012 he has received Ex.P9 report of the Tahsildar regarding the caste of the accused no.1. During the course of his cross examination by the learned counsel for the accused PW7 has denied all the suggestions made to him.

22. PW8 Sureshbabu, the then ACP of Banashankari Sub- Division has deposed that he has took up the case file from CW15 on 10.9.2012 for further investigation. He has received Ex.P4 to 6 report of the Tahsildar. He has deposed that on 23.10.2012 the accused no.2 Anandkumar, accused no.3 Satish were appeared before him and produced anticipatory bail order. Accordingly he arrested the accused and recorded the voluntary statement of accused no.2 Anandakumar. Accused no.2 led him to Mysore Road, Nayandahalli, Vrushabhavathi river drainage in order to show him the knife used for commission of the offence. The accused shown the place by saying that it is the place where he has thrown the knife used for the commission of the offence. He has deposed that there was no knife found in that place. However he has conducted the panchanama as per Ex.P11 in the presence of panchas Byataraya and Gangadhara. He has deposed that on completion of the investigation he has filed the charge sheet against the accused.

23. Based upon the above evidence it is to be considered if the prosecution has established the charges framed against the accused beyond all reasonable doubt. In this case except PW1 no other independent eye witnesses have been examined on the side of the prosecution. Despite of sufficient opportunity given to the prosecution the prosecution has not examined CW4 to 6. The prosecution has also not examined CW8 to 10 and CW12. PW2 and 3 are the mahazar witnesses. They are not the eyewitnesses.

24. In this case there is no much dispute regarding the caste of PW1. PW1 has deposed that he belongs to Adi Karnataka Schedule Caste. His oral evidence is supported by PW5 who has issued Ex.P4 report regarding the caste of PW1. PW5 has deposed that after receiving the report of RI he has issued Ex.P4 report regarding the caste of PW1 Dwarakanath by stating that he belongs to Adi Karnataka Caste. PW5 has deposed that the accused no.2 Anandakumar belongs to Kuruba caste, accused no.4 Vinay belongs to Marathi caste. He has issued Ex.P5 report regarding the caste of accused no.2 and 4. PW5 who has issued Ex.P6 report regarding the caste of accused no.3 Satish has deposed that the accused no.3 Satish belongs to Adi Dravida comes under Schedule Caste. The document Ex.P9 report of the Tahsildar regarding the caste of accused no.1 Amithkumar. In Ex.P9 the Tahsildar has mentioned that accused no.1 Amith Kumar belongs to Jain community. This document Ex.P9 is marked through PW7. During the course of cross examination of PW7 nothing is elicited from his mouth to discard his version and to discard the document Ex.P9. Hence from the oral evidence of PW1, 5 and 7 and documents Ex.P5, 5, 6 and 9 it is established that PW1 belongs to Adi Karnataka comes under Schedule Caste and the accused no.1, 2 and 4 do not belong to any SC or ST. The oral evidence of PW5 and document Ex.P6 shows that accused no.3 Satish belongs to Schedule Caste. Even though it is proved that PW1 belongs to Schedule Caste and accused no.1, 2 and 4 do not belong to any SC or ST, the burden is upon the prosecution to show that the accused persons have committed the offences p/u/s.3(1)(x) of SC/ST (POA) Act, 1989 and u/s 341, 448, 506 r/w sec.34 of IPC.

25. From the evidence of PW1 it is clear that the ingredients of the offence u/s 3(1)(x) of SC/ST (POA) Act, 1989 are not attracted. The burden of proof is strictly on the prosecution to establish that there was commission of such an offence and the allegation that the accused had used derogatory expressions with reference to the caste of PW1 in public view with an intention to insult or humiliate him and thus it constituted an offence p/u/s.3(1)(x) of SC/ST (POA) Act, 1989 is required to be established on the basis of evidence which is unimpeachable.

26. On perusal of the oral evidence of PW1 his oral evidence is not corroborating with the documents Ex.P1 complaint regarding the alleged derogatory words used by the accused. PW1 has deposed that on 20.4.2012 at about 7.30 p.m. when he returned to the house at that time his wife and children were not there in the house. He has deposed that at about 7 p.m. when he was outside the house at that time the accused persons came there and two of them caught hold his hands tightly and then the accused no.1 by holding the knife near his neck abused him in the name of caste as 'oÉÆÉªÀiÁçUÀ££ ¨ÉÆ¼ÉªÄÄUÀ££, ÀÆ¼ÉªÄÄUÀ££'. Then the accused no.2 assaulted him with hands on his shoulder and on his back. Then his friends CWs.5 and 6 pacified the quarrel. It is pertinent to note that in Ex.P1 complaint it is mentioned that at about 7.30 p.m. the accused persons criminally trespassed into the house of the complainant and the accused no.1 by holding the collar of

the shirt of the complainant gave life threat to him by saying 'K aÄÄgÄÄçAiÄiÄV °Ät PÉÆqÄÄ E®èçzÄÝgÉ æ£Äß£ÄÄ PÉÆÉ °ÄiÄr, ÄÄvÉÜÄ£ÉÉ'. It is mentioned in the complaint Ex.P1 is that the accused no.2 Anand Kumar removed knife from his pocket and by holding the knife to the neck of the complainant gave life threat to him. It is also mentioned in Ex.P1 complaint is that the accused no.1 abused the complainant by saying 'F °ÉÆÉÄiÄÄ °ÄiÄçUÄ , ÄÆ¼ÄÉÄ °ÄÄPÄ¼UÉ °Ät PÉÆlÄÖ CÉÄiÄÄ °ÄÄPÄVzÉ F QÄ¼ÄÄ eÄw £Ä£Äß °ÄÄPÄ¼Ä£ÄÄß °ÄwÜgÄ°ÄÄ , ÉÄj , Ä °ÄgÄzÄÄ æ °ÄÄÄAvÄ eÄwAiÄÄ °ÄgÄ£ÄÄß £Ä°ÄÄ °ÄÄ£ÉÄiÄÄ M¼ÄUÉ , ÉÄj¹PÉÆ¼ÄÄi°ÄÄç®è'. PW1 in his examination-in-chief deposed quite contrary to the document Ex.P1 by stating that the accused no.1 by showing the knife and putting the knife near his neck abused him in the name of caste. Then the accused no.2 assaulted him with hands on his shoulder and back. In Ex.P1 it is mentioned that it was accused no.2 who hold the knife near the neck of the complainant and gave life threat to him. The oral evidence of PW1 is quite contrary to the document Ex.P1 complaint. It is mentioned in Ex.P1 complaint that the his wife and children due to afraid by seeing the incident left the house and went to Mandya. But quite contrary to the document Ex.P1 complaint PW1 complainant has deposed that when he returned to the house his wife and children were not therein the house. The learned counsel for the accused argued that in order to bring within the meaning of the alleged incident taken place in public view PW1 has deposed is that he came out side the house then the accused came and quarrelled with him. She has submitted that in Ex.P1 it is mentioned that the accused persons criminally trespassed into the house of the complainant and abused him in the name of caste, but quite contrary to this PW1 has deposed when he was outside the house at that time the accused persons came there and quarrelled with him. There is some force in the arguments of the learned counsel for the accused because the intention of PW1 to say that he came out of the house is only in order to bring the alleged incident has taken place in public view. The oral evidence of PW1 is quite contrary to the document Ex.P1 regarding the alleged incident dt.20.4.2012. The derogatory words said to have been used by the accused as stated by PW1 is not corroborating with the document Ex.P1 complaint. The derogatory words which are mentioned in Ex.P1 is not corroborating with the oral evidence of PW1 and also not corroborating with the person who alleged to be abused to PW1. In Ex.P1 it is mentioned that the accused no.2 by holding the knife near the neck of PW1 gave life threat to him by stating that he will kill him. But quite contrary to this PW1 has deposed that the accused no.1 by holding the knife near his neck abused him in the name of caste and abused him in filthy language. The oral evidence of PW1 is not supported by any independent witnesses. The prosecution has not examined CW5 and 6 who are cited as eyewitnesses. The oral evidence of PW1 is not sufficient to hold that the alleged incident has taken place in public view as no other person other than PW1 and unconcerned with the event has deposed about it. There is no cogent material to indicate that the accused no.1 to 4 abused PW1 by naming his caste with an intention to humiliate him in public view, when the evidence on record is appreciated as a whole.

27. PW2 and 3 are the witnesses to Ex.P2 spot mahazar. PW2 has not deposed the date and time of conducting of alleged mahazar. PW3 has deposed that the mahazar was conducted on 24.4.2012. According to the case of the prosecution Ex.P2 mahazar was drawn on 22.4.2012. But quite contrary to the document Ex.P2 PW3 has deposed that Ex.P2 mahazar was conducted on 24.4.2012. Thus in view of the inconsistent version of PWs.2 and 3 the conducting of spot mahazar as per Ex.P2 is also not proved by the prosecution. The oral evidence of PW4, 7 and 8 who are the official witnesses are



formal in nature.

28. In so far as the alleged offence u/s 448 of IPC is concerned PW1 has deposed quite contrary to the Ex.P1 complaint by deposing that when the incident was occurred he was outside the house. It is the case of the prosecution is that on 20.4.2012 at about 7.30 p.m. the accused persons have criminally trespassed into the house No:10/2 of the complainant situated at 4th 'C' cross, 22nd main, Padmanabhanagara, Bangalore. But PW1 in his examination-in-chief has deposed that he was came out from the house at about 7 p.m. At that time the accused persons who came there picked up quarrel with them and two of them caught hold his hands tightly and accused no.1 by showing the knife abused him in the name of caste and accused no.2 assaulted him with hands on his shoulder on his back. There is nothing on record to even remotely satisfy the ingredients of the offence u/s 448 r/w 34 of IPC.

29. In so far as the alleged offence u/s 506 of IPC is concerned, PW1 has deposed that on 20.4.2012 at about 4.30 p.m. the accused no.1 gave life threat to his wife over phone and thereafter when he called accused no.1 over phone in order to ask the same then also the accused gave life threat to him. In this case the call details records are not marked on the side of the prosecution to show that the accused no.1 has given life threat to wife of PW1 over phone and gave life threat to PW1 over phone. PW1 has not deposed anything about giving life threat to him at about 7.30 p.m. on 20.4.2012. It is the specific case of the prosecution is that on 20.4.2012 at about 7.30 p.m. the accused persons criminally trespassed into the house of PW1 and threatened PW1 to settle the balance amount pertaining to computer business and accused no.2 threatened PW1 keeping a knife near his neck by stating that 'you will be killed if fails to return the money'. The oral evidence of PW1 is quite contrary to the case of the prosecution because PW1 has deposed that the accused no.1 by keeping a knife near his neck abused him in the name of caste. PW1 has not deposed anything about giving life threat to him by the accused on 20.4.2012 at about 7.30 p.m.

30. PW1 has much deposed about the accused persons took him to the YES banker and pledged the Mangalya chain of his wife and withdrawn the amount of Rs.43,000/-. During the course of his cross examination PW1 has deposed that he and his wife went to YES banker in a motor cycle. If at all there was any force on the side of the accused what made PW1 and his wife to go in separate motor cycle to the YES banker in order to pledge the gold is not explained. It is undisputed fact that the accused no.1 has filed cheque bounce case u/s 138 of NI Act in CC.No:20759/2010. PW1 admitted that till filing the cheque bounce case he and accused no.1 were in good terms. The very admission made by PW1 regarding filing of the cheque bounce case by accused no.1 against him cannot be ruled out the possibility of a false complaint being lodged in view of their dispute regarding the money transaction of computer business.

31. In this case the accused no.1 has taken contention that as on 20.4.2012 i.e., on the alleged date of incident the accused no.1 was travelled nearly half of his journey as his marriage to be held from 27.4.2012 to 30.4.2012. In order to substantiate this contention the accused no.1 has not stepped into the witness box and also not stated anything about the same in his 313 Cr.P.C. statement. The learned counsel for the accused no.1 has produced wedding card, cancelled train tickets and copy of marriage certificate along with memo dt.28.12.2018. Mere production of the document is not

sufficient to hold that the accused no.1 was on the way to Rajasthan on 20.4.2012. However merely because the accused no.1 has failed to prove his defence that is not pre supposed that accused no.1 along with accused no.2 to 4 went to the house of PW1 complainant situated at Padmanabhanagara. The learned counsel for the accused no.1 submitted that PW1 has created anti dated rental agreement dt.1.6.2007 was prepared in the stamp paper dt.25.7.2007. In this case the rental agreement dt.1.6.2007 is not marked on the side of the prosecution. The xerox copy of the rental agreement dt.1.6.2007 is sent along with the charge sheet. The main contention of the accused is that PW1 was not residing along with his family in Padmanabhanagara. It is the contention of the accused is that room which is situated at Padmanabhanagara was used by PW1 for hideout as several criminal cases pending against PW1. Since the accused persons have not stepped into the witness box, mere taking of such defence that PW1 was not residing in Padmanabhanagara is not sufficient to hold that PW1 was not residing at Padmanabhanagara. The oral evidence of PW1 is not corroborating with the document Ex.P1 complaint regarding the alleged incident dt.20.4.2012. The abusive language which deposed by PW1 is not corroborating with the derogatory words which are mentioned in Ex.P.1. As I already stated in Ex.P1 it is mentioned that the accused persons criminally trespassed into the house of PW1, but PW1 has not deposed anything about the accused persons criminally trespassed into his house on 20.4.2012. The alleged incident was taken place on 20.4.2012 at about 7.30 p.m., but Ex.P1 complaint was lodged on 21.4.2012 at about 7.30 p.m. There is one day delay in lodging the complaint. PW6 Police Inspector who registered the case in Cr.No:110/2012 has deposed that the complainant came to the police station on 21.4.2012 at about 7.30 p.m. and lodged the complaint as per Ex.P1. PW1 in his examination-in-chief has deposed that he went to the police station on 21.4.2012 at about 10 a.m. and lodged the complaint as per Ex.P1. The oral evidence of PW1 regarding the timing of lodging the complaint is not corroborating with the oral evidence of PW6. The document Ex.P1 would go to show that it was received by PW6 at about 7.30 p.m. on 21.4.2012. There is one day delay in lodging the complaint. There is absolutely no explanation by the prosecution about such inordinate delay of one day in lodging the first information. PW1 has taken the stand that on the next day morning itself he has lodged the complaint to the police. This version of PW1 cannot be believed because there is no such complaint to show that PW1 has lodged his complaint at about 10 a.m. on 21.4.2012. By considering the material on record I am of the opinion that one day delay in lodging the first information which is not explained and the same is fatal to the case of the prosecution in the facts and circumstances of this case. The uncorroborated oral evidence of PW1 which is quite contrary to the document Ex.P1 regarding the alleged incident dt.20.4.2012 creates doubt about his version. Hence on an appreciation of the evidence on record I am of the opinion that the prosecution has failed to prove the case against the accused no.1 to 4 for the offences p/u/ss.448, 506, 341 r/w sec.34 of IPC and u/s 3(1)(x) of SC/ST (POA) Act, 1989. The prosecution has failed to bring home the guilt of the accused beyond all reasonable doubt. Hence I answer point no.1 to 3 in the negative.

Point No.4:-

32. In view of my findings on Point No.1 to 3, I proceed to pass the following :-

ORDER Acting under Section 235(1) of Cr.P.C., the accused No.1 Amithkumar, accused no.2 Anand Kumar, accused no.3 Satish and accused no.4 Vinay are

acquitted for the offences p/u/ss.448, 506, 341 r/w Sec.34 of IPC and u/s 3(1)(x) of The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989.

The bail bonds of the accused no.1 to 4 and their sureties shall stand cancelled. (Dictated to the Judgment Writer, transcribed by her, transcript corrected, signed and then pronounced by me in open Court on this the 9th day of January, 2019.) (MOHAN PRABHU) LXX Addl. City Civil & Sessions Judge & Special Judge, Bangalore. ANNEXURE

1.WITNESSES EXAMINED FOR THE PROSECUTION:

|        |                        |
|--------|------------------------|
| P.W.1  | : R.K.Dwarkanath       |
| P.W. 2 | : G.S.Nagabhushan      |
| P.W.3  | : Naveen Kumar.K       |
| P.W.4  | : S.C.Puttaswamy       |
| P.W.5  | : Vinod Reddy          |
| P.W.6  | : Muralidhar           |
| P.W.7  | : H.G.Veerabhadregowda |
| P.W.8  | : Suresh Babu          |

2. DOCUMENTS MARKED FOR THE PROSECUTION:

|           |  |
|-----------|--|
| Ex.P.1    | : Complaint                                    |
| Ex.P.1(a) | : Signature of P.W.1                           |
| Ex.P1(b)  | : Signature of PW6                             |
| Ex.P.2    | : Mahazar                                      |
| Ex.P.2(a) | : Signature of P.W.1                           |
| Ex.P.2(b) | : Signature of P.W.2                           |
| Ex.P.2(c) | : Signature of P.W.3                           |
| Ex.P2(d)  | : Signature of PW7                             |
| Ex.P.3    | : Report of PW4                                |
| Ex.P.4    | : Report of PW5 regarding caste of complainant |
| Ex.P.4(a) | : Signature of PW5                             |
| Ex.P4(b)  | : Signature of PW8                             |
| Ex.P.5    | : Report of PW5                                |
| Ex.P.5(a) | : Signature of PW5                             |
| Ex.P5(b)  | : Signature of PW8                             |
| Ex.P.6    | : Report of PW5                                |
| Ex.P.6(a) | : Signature of PW5                             |
| Ex.P.6(b) | : Signature of PW8                             |
| Ex.P.7    | : FIR  |
| Ex.P.7(a) | : Signature of PW6                             |
| Ex.P.8    | : Order of DCP dt.21.4.2012                    |
| Ex.P8(a)  | : Signature of PW7                             |
| Ex.P.9    | : Report of Tahsildar regarding caste of A1    |
| Ex.P.9(a) | : Signature of PW7                             |
| Ex.P.10   | : Voluntary statement of accused no.2          |

Ex.P.10(a) : Signature of PW8  
Ex.P.11 : Mahazar.  
Ex.P.11(a) : Signature of PW8

3. WITNESSES EXAMINED FOR THE DEFENCE:

Nil

4. DOCUMENTS MARKED FOR THE DEFENCE:

Nil

5. LIST OF MATERIAL OBJECTS:

Nil

(MOHAN PRABHU)

LXX Addl. City Civil & Sessions Judge  
& Special Judge, Bangalore.