

**IN THE COURT OF THE LVIII ADDL. CITY CIVIL AND
SESSIONS JUDGE (CCH-59), BENGALURU CITY.**

Dated this the 6th day of April, 2023

PRESENT:

**Sri.N.Krishnaiah, B.Sc.,LL.B,
LVIII Addl. City Civil & Sessions Judge (CCH-59),
Bengaluru City.**

SESSIONS CASE NO.778/2020

COMPLAINANT:

The State of Karnataka by:
Kamakshipalya Police Station,
Bangalore.

(By learned Public Prosecutor)-

-V/S-

ACCUSED NO.4 :

Prakash @ Hullu,
S/o Mahadevaiah,
Aged about 24 years,
Residing at 5th Cross,
Vrushabhavathi Nagar,
Kamakshipalya,
Bengaluru.

(A4 by Sri.G.Ananthkumar,
Advocate

- | | |
|----------------------------------|------------|
| 1. Date of commission of offence | 05.10.2014 |
| 2. Date of report of occurrence | 05.10.2014 |

3. Date of arrest of the A-4	05.10.2014
Released on	16.10.2014
Period of custody	10 days
4. Date of commencement of Evidence	15.03.2023
5. Date of closing of evidence	29.03.2023
6. Name of the Complainant	D.B.Boraiah
7. Offence complained of	399 and 402 of IPC
8. Opinion of the Judge	Offences not proved
9. Order of sentence	Accused found not guilty and acquitted for the offences punishable under sections 399 and 402 of IPC

: J U D G M E N T :

The Police Inspector of Kamakshipalya police station, Bengaluru City has laid this split up charge sheet against the accused No.4 for the offences punishable under sections 399 and 402 of IPC.

2. The brief facts in nut-shell of the case of prosecution is that, on 05.10.2014 at about 7-30 pm, near water Tank situated at Pipe Line Road, Sunkadakatte, within the jurisdiction of Kamakshipalya Police Station, this accused No.4 along with absconded accused Nos.1 to 3 and 5 have assembled together and they were preparing for committing dacoity on the public by holding deadly weapons like clubs, long, knife and chilly powder packet in their hands. Based on the credible information, CW-1-The Police Sub Inspector of Kamakshipalya Police Station along with panch witnesses CW-2 and 3 and his staff CW-4 to 7 made raid and caught hold accused Nos.1 to 4 and recovered two clubs, long, knife and chilly powder packet by drawing a mahazar at Ex.P.1. The accused Nos.5 was ran away and escaped from the spot. Subsequently, he brought these accused Nos.1 to 4 to the Police Station along with the seized material objects and produced before SHO/CW-8-Police Inspector with a report at Ex.P.2.

3. Based on the said report, CW-8- The Police Inspector has registered this case in crime No.393/2014 for the offences punishable under sections 399 and 402 of IPC against accused Nos.1 to 5 and send FIR. Subsequently, he has followed the procedure of arrest and recorded the voluntary statements of accused Nos.1 to 4. After medical examination, he has produced the accused Nos.1 to 4 before the Learned Magistrate. On subsequent date, they were released on bail. He has recorded the statements of CW-2 to 7. He has further investigated this case and filed this charge sheet against the accused Nos.1, 2, 4 and 5 for the offences punishable under sections 399 and 402 of IPC before the learned Magistrate and separate charge sheet is filed against accused No.3, who was Juvenile offender.

4. After submitting the charge sheet, the Learned Magistrate has taken cognizance and registered a case. Since this accused No.4 had been absconded. Original case came to be split up and a separate case came to be registered

against this accused No.4. After securing this accused No.4 and complying section 207 of Cr.P.C., the Learned Magistrate has committed this case for trial as the offences punishable under sections 399 and 402 of IPC are exclusively triable by the Court of Sessions.

5. After receipt of the records, the Hon'ble Principal City Civil and Sessions Judge, has registered this case, made over the same to this Court for trial in accordance with law. In response to the summons, the accused No.4 appeared before the court through his counsel and he was released on bail.

6. On subsequent date, after hearing both the parties, being satisfied with the prima facie materials on record, this court has framed the charges against this accused No.4 for the offences punishable under sections 399 and 402 of IPC. When read over the same to the accused, he pleaded not

guilty and claimed to be tried. Hence, the matter was posted for prosecution evidence.

7. To bring home the guilt of the accused, among 8 charge sheet witnesses, the prosecution got examined in all, 2 witnesses as PW-1 and 2 and produced 2 documents and got marked Ex.P.1 and 2 and also identified 4 material objects and got marked as M.O.1 to 4. After closing the evidence of the prosecution, the statement of the accused under section 313 of Cr.P.C., was recorded. The accused has denied all the incriminating circumstances, elicited from the prosecution witnesses and he has not chosen to lead any defence evidence. Hence, the matter was posted for arguments on merits.

8. In view of the rival contentions made by both parties, the following points that would arise for my consideration are:-

1. Whether the prosecution proves beyond all reasonable doubt that on 05.10.2014 at

about 7-30 pm, near water Tank situated at Pipe Line Road, Sunkadakatte, within the jurisdiction of Kamakshipalya Police Station, this accused No.4 along with other accused persons were assembled and making preparation by holding deadly weapons like clubs, long, knife and chilly powder packet with an intention to commit dacoity on the public and thereby committed an offence punishable under section 399 of I.P.C?

2. Whether the prosecution further proves beyond all reasonable doubt that this accused No.4 along with other accused were assembled in that particular spot for the purpose of committing dacoity on the public and thereby committed an offence punishable under section 402 of IPC?

3. What order?

9. I have heard the arguments on both sides and perused the materials placed on record.

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 - As per final order,

for the following:-

: REASONS :

11. **POINT NOS.1 AND 2:** Since both points are inter linked with each other, they are taken up together for discussion, in order to avoid repetition of facts and evidence.

12. In order to prove the guilt of the accused, the prosecution got examined the Police officers, who made raid and caught hold this accused No.4 along with other accused as PW-1 and 2. In spite of sufficient opportunity was given, the prosecution has not secured CW-2 and 3, who are the independent panch witnesses and not examined. CW-8, who is an Investigating officer is reported as dead. Hence, their evidence is not available before this court.

13. No doubt, as submitted by the learned Public Prosecutor, PW-1, the then Police Sub Inspector and PW-2-the then Head Constable of Kamakshipalya Police Station, during the course of their evidence, have clearly deposed that based on the credible information, on 05.10.2014 at about 7-10 pm, they went to the place of the incident along with his staff CW-4, 6 and 7 and two independent panch witnesses CW-2 and 3, made raid and caught hold this accused No.4 and other accused persons and recovered two clubs, one knife, one long and chilly powder packet from the custody of accused Nos.1 to 4 by drawing a mahazar at Ex.P.1. They have also identified the accused No.4, as he was also present in the spot along with other accused and identified seized material objects at M.O.1 to 4. PW-1 has further stated that, he brought the accused Nos.1 to 4 along with seized material objects to the police station and prepared a report at Ex.P.2 and produced before SHO/CW-8.

14. But, as rightly pointed out by the learned counsel for the accused, except the evidence by these PW-1 and 2, who are the police officers, who initiated this proceeding, absolutely there is no corroborative evidence by any one of the independent panch witness. Even according to the evidence of PW-1 and 2 police officers, based on the credible information, they confirmed that, in that particular spot, this accused No.4 along with other accused were assembled and preparing for committing dacoity by holding deadly weapons. Then, they called two independent panch witnesses CW-2 and 3 and made raid in their presence. They caught hold this accused No.4 and other accused and recovered M.O.1 to 4 by drawing a mahazar in the presence of CW-2 and 3.

15. So, it is not the case of the prosecution that, at the time of the alleged raid and recovery made, except police officers, none of the independent panch witnesses were present. Even according to the case of the prosecution, the said incident was occurred in a public place, by the side of

public road at about 7-30 pm in the heart of the city. When such being the case, in the absence of any corroborative evidence by any one of the independent panch witness solely based on the evidence of these police officers PW-1 and 2, who are the interested witnesses, it cannot be held that, the prosecution has proved the guilt of the accused. Therefore, the prosecution has not placed any consisting and corroborative evidence to prove any of the charges leveled against this accused. Hence, it creates a serious doubt about the involvement of this accused in the alleged incident. Therefore, the prosecution has utterly failed to prove any of the ingredients of the alleged offences by producing any consisting and corroborative evidence beyond reasonable doubt. Therefore, without any alternative, the benefit of doubt should be extended to this accused No.4 and he is entitled for acquittal. In view of the aforesaid reasons, I answer point Nos.1 and 2 in the “Negative”

16. **POINT NO.3:-** In the result, for the reasons stated above, I proceed to pass the following:-

O R D E R

The accused No.4 is found not guilty. Hence, by acting under section 235(1) of Cr.P.C., the accused No.4 is hereby acquitted for the offences punishable under sections 399 and 402 of Indian Penal Code.

The bail bond of the accused No.4 and his surety stands canceled.

The original record and also M.O.1 to 4 may be retained till disposal of the split up case registered against accused No.5.

(Dictated to the Judgment Writer directly on computer, corrected, signed and then pronounced by me in the open court on this the 6th day of April 2023)

**(N.KRISHNAIAH)
LVIII ADDL.CITY CIVIL AND
SESSIONS JUDGE (CCH-59)
BENGALURU CITY.**

ANNEXURE**1. LIST OF WITNESSES EXAMINED FOR PROSECUTION:**

P.W.1	D.B.Boraiah
P.W.2	Naganna

2. LIST OF DOCUMENTS EXHIBITED FOR PROSECUTION:

Ex.P.1	Mahazar
Ex.P.1(a)	Signature
Ex.P.2	Report
Ex.P.2(a)	Signature

3. LIST OF WITNESSES EXAMINED & DOCUMENTS EXHIBITED FOR ACCUSED:

- NIL -

4. LIST OF MATERIAL OBJECTS PRODUCED AND GOT MARKED FOR PROSECUTION:

M.O.1	One club
M.O.2	Long
M.O.3	Knife
M.O.4	Chilly powder packet

**(N.KRISHNAIAH)
LVIII ADDL.CITY CIVIL AND
SESSIONS JUDGE (CCH-59)
BENGALURU CITY.**

**Judgment pronounced in the Open Court
(vide separately)**

ORDER

The accused No.4 is found not guilty. Hence, by acting under section 235(1) of Cr.P.C., the accused No.4 is hereby acquitted for the offences punishable under sections 399 and 402 of Indian Penal Code.

The bail bond of the accused No.4 and his surety stands canceled.

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