

KADK300006872022



**IN THE COURT OF THE V ADDITIONAL DISTRICT AND
SESSIONS JUDGE, D.K. MANGALURU, SITTING AT
PUTTUR, D.K.**

Dated: This the 20th day of December 2024

Present: **Smt. Saritha.D, B.A.L.L.L.B.,**
V Addl. District and Sessions Judge,
D.K., Mangaluru, sitting at Puttur, D.K.

:: S.C. No.5021/2022 ::

COMPLAINANT		The State By the P.S.I. Puttur Town Police Station, Puttur. D.K.
		(By Learned Public Prosecutor)
- V/S-		
Accused No.12		Riyaz, Aged about 29 years, S/o. M. Mahammad, R/at. Jogibettu house, Peraje village, Bantwal taluk, D.K.,
		(A12 by Sri. R.M.K., Advocate)

1.	Date of offence	:	21/12/2013
2.	Date of report of Offence	:	22/12/2013
15.	Date of arrest of accused No.12		-
16.	Date of release of accused No.12		-

17.	No. of days in custody		-
18.	Date of commencement of Evidence	:	19-11-2024
19.	Date of closing of evidence	:	20-11-2024
20.	Name of the complainant	:	Sri. Jayarama Poojary
21.	Offence complained of	:	U/Sec.307, 395 of IPC.
22.	Opinion of the Judge	:	Charge not proved
23.	Result	:	Accused No.12 is acquitted.

(Saritha.D)

V Addl. District and Sessions Judge,
D.K. Mangaluru, sitting at Puttur, D.K

:: JUDGMENT ::

The Sub-Inspector of Police, Puttur Town Police Station, Puttur has filed charge sheet against the accused No.12 and 11 others for the offence punishable U/Sec.307, 395 of IPC.

2. The brief facts of the prosecution case is that :-

On 21/12/2013 at about 6:30 p.m. the complainant has came to Gadiyara-Guddekodi of Kadila Village, Bantwal Taluk for collection of money as he supplied the red stone. Wherein at near

court yard when the complainant was conversation with CW.2 Zubaida, at that point of time the accused were all being a member of unlawful assembly and with the prior enmity against the complainant, the accused were illegally restrained the complainant and cause life threat to the complainant. Further the accused were all with common object to take away the life of the complainant, the accused were all does an act of causing bodily injury by means of deadly weapons, which such an intention or knowledge and under such circumstances that, if they by that act caused death they would be guilty of murder of the complainant and take away the sum of Rs.4,500/- and mobile hand set from the complainant. Thus according to the complainant the accused No.1 to 12 have committed the alleged offence punishable U/Sec.307, 395 of IPC.

3. After completion of investigation the police have filed the charge sheet in the Court of Prl. Senior Civil Judge and A.C.J.M at Puttur, D.K. against the accused No.1 to 12 for the alleged offences punishable U/Sec.307, 395 of IPC. The said Court took cognizance of the offences against the accused persons and

registered the Case as C.C.No.328/2015. Thereafter Accused No.1 to 9 and 11 appeared before the said Court and were released on bail, but the accused No.10 and 12 remained absent. Hence, The said Court issued NBW against Accused No.10 and 12 - Irfan and Riyaz several times and split up the said case and directed to register a separate case in CC No.1023/2019. Thereafter Accused No.10 remained absent. Hence, The said Court issued NBW against Accused No.10 - Irfan several times and split up the said case and directed to register a separate case.

4. The accused No.12 is in bail. The case against the accused No.12 has been committed to the Court of Sessions for trial U/Sec.209 of Cr.P.C., as the offences are all exclusively triable by Court of Sessions. The accused No.12 appeared through his counsels. Complied the procedure U/Sec. 207 of Cr.P.C. as the prosecution papers supplied to the accused by the learned committal court. After heard counsel for the accused No.12 as per Section 227 of Cr.P.C., the charge has been framed against the accused No.12 for the offences punishable U/Sec.307, 395 of IPC.

Accused No.12 has pleaded not guilty of the offence and he claimed to be tried. Fixed the date for trial.

5. In order to prove the guilt of the accused Nos.12 the prosecution able to examined only thirteen witnesses as P.W.1 to PW.10 out of total nineteen charge sheet sited witnesses and got marked only the thirteen documents as Ex.P.1 to Ex.P.13. In response to the process against to CW.2 and CW.3 the police have reported, CW.2 and CW.3 have been died. Since complainant, eye witnesses and mahazar witnesses turned hostile. Accordingly, prayer of the learned Public Prosecutor have been rejected and evidence of CW.12, CW.14 to CW.19 are dropped as per order sheet dated 20/11/2024. All the witnesses are turned hostile hence the statement of the accused under Section 313 of Cr.P.C., when examined under Section 313 of Cr.P.C. is dispensed.

6. Heard the arguments on both sides.

7. The points that arise for my consideration are as follows:-

- 1. Whether the prosecution proves beyond all reasonable doubt that on 21/12/2013 at**

about 6:30 p.m. the complainant has come to Gadiyara-Guddekodi of Kadila Village, Bantwal Taluk for collection of money as he supplied the red stone. Wherein at near court yard when the complainant was conversation with CW.2 Zubaida, at that point of time the accused were all being a member of unlawful assembly and with the prior enmity against the complainant, the accused were illegally restrained the complainant and cause life threat to the complainant. Further the accused were all with common object to take away the life of the complainant, the accused were all does an act of causing bodily injury by means of deadly weapons, which such an intention or knowledge and under such circumstances that, if they by that act caused death they would be guilty of murder of the complainant and take away the sum of Rs.4,500/- and mobile hand set from the complainant and thereby accused no.12 and 11 others have committed an offence punishable u/Sec.307, 395 of IPC?

2. What Order?

8. My findings on above points are as follows:

Point No.1	::	In the negative
Point No.2	::	As per final order

for the following;

: REASONS :

9. **Points No.1** :- To find out whether the prosecution able to prove the case against the accused, the testimony of all witnesses who were all examined at before the court hereby take much significant role. Thereby the testimony of all witnesses who were all examined at before the court herein below.

10. CW.1 Jayarama Poojary examined as PW.1. According to the prosecution, PW.1 is the complainant as well as injured in this case, though PW.1 got identified his signature available on complaint (certified copy of complaint), the said complaint is marked as per Ex.P1. PW.1 turned hostile in total. In spite of cross-examination nothing of the prosecution case established through the mouth of PW.1. during cross examination by the public prosecutor he denied that he has not given further statement before the police, the certified copy of the further statement is marked Ex.P2. And portion of further statement is marked Ex.P3. As such, the evidence of PW.1 herein not helpful to the prosecution case.

11. CW.4 Smt. Jubaida examined as PW.2. According to the prosecution, PW.2 is the eye witness to the incident. Though she

examined at before the court, PW.2 turned hostile in total. In spite of cross-examination nothing of the prosecution case established through the mouth of PW.2. during cross examination by the public prosecutor he denied that he has not given statement before the police, the certified copy of the statement is marked Ex.P4. and portion of statement is marked Ex.P5.

12. CW.5 Sri. Nithin examined as PW.3. According to the prosecution case, PW.3 is also one of the eye witness to the incident. Though he examined at before the court, PW.3 turned hostile in total. In spite of cross-examination nothing of the prosecution case established through the mouth of PW.3. During cross examination by the public prosecutor he denied that he has not given statement before the police, the certified copy of the portion statement is marked Ex.P6.

13. CW.6 Sri. Sathish examined as PW.4. According to the prosecution, PW.4 is also another one eye witness to the incident. Though he examined at before the court, PW.4 turned hostile in total. In spite of cross-examination nothing of the prosecution case established through the mouth of PW.4. During cross examination by the public prosecutor he denied that he has not

given statement before the police, the certified copy of the portion statement is marked Ex.P7.

14. CW.7 Sri. Nemiraj examined as PW.5. According to the prosecution PW.5 is seizure mahazar witness. Through PW.5 got identified his signature on the seizure mahazar, the certified copy of the seizure mahazar is marked as Ex.P8. PW.5 turned hostile in total. In spite of cross-examination nothing of the prosecution case established through the mouth of PW.5.

15. CW.8 Sri. Shekhara Poojary examined as PW.6. According to the prosecution case. Though he examined at before the court, PW.6 turned hostile in total. In spite of cross-examination nothing of the prosecution case established through the mouth of PW.6. Hence, the certified copy of statement of PW.6 got marked as per Ex.P.9.

16. CW.9 Sri. Chandappa Poojary examined as PW.7. According to the prosecution PW.7 is panch witness to spot mahazar and rough sketch. Through PW.7 got identified his signature available on spot mahazar and rough sketch, the certified copies of spot mahazar and rough sketch are marked as

Ex.P10 and Ex.P11 respectively. PW.7 turned hostile in total. In spite of cross-examination nothing of the prosecution case established through the mouth of PW.7. Accordingly, the testimony of PW.7 is not supported to the prosecution case.

17. CW.10 Sri. Sadashiva examined as PW.8. According to the prosecution PW.8 is seizure mahazar witness. Through PW.8 got identified his signature available on certified copies of Ex.P12 and Ex.P13. PW.8 turned hostile in total. In spite of cross-examination nothing of the prosecution case established through the mouth of PW.8. Accordingly, the testimony of PW.8 is not supported to the prosecution case.

18. CW.11 Sri. Ravishankar examined as PW.9. According to the prosecution PW.9 is also seizure mahazar witness. Through PW.9 got identified his signature available on the certified copies of Ex.P12 and Ex.P13. PW.9 turned hostile in total. In spite of cross-examination nothing of the prosecution case established through the mouth of PW.9. Accordingly, the testimony of PW.9 is not supported to the prosecution case.

19. CW.13 Sri. Praveen examined as PW.10. According to the prosecution PW.10 is also witness to the spot mahazar and rough sketch. Through PW.10 got identified his signature available on certified copies spot mahazar and sopt skech, the said spot mahazar and spot skech are marked as Ex.P10 and Ex.P11. PW.10 turned hostile in total. In spite of cross-examination nothing of the prosecution case established through the mouth of PW.10. Accordingly, the testimony of PW.10 is not supported to the prosecution case.

20. After completion of evidence of PW.1 to PW.10, the Public prosecutor requested to issue witness summons to CW.12, CW.14 to CW.19. Since the complainant and mahazer witnesses are turned hostile, hence the prayer of the learned PP is rejected and CW.12, CW.14 to CW.19 are dropped.

21. It is very clear from the evidence of PW.1 to PW.10 that, the prosecution has not produced clear cut sufficient and positive evidence to prove the incident, presence and involvement or commission of alleged offences by the accused No.12. Therefore, the accused No.12 is entitled for benefit of doubt and deserve to

be acquitted in the present case. With above observations, I hold that the prosecution has failed to prove the guilt of the accused No.12 beyond all reasonable doubt. Hence, I answered the point No.1 in **Negative.**

22. **Point No.2** :- In view of my findings on points, I proceed to pass the following;

: ORDER :

**The accused No.12 found not guilty.
Hence, the accused No.12 is acquitted
U/S 235(1) of Cr.P.C., for the offences
punishable U/Sec.307, 395 of IPC.**

***The bail bond and surety bond
except the bond executed u/Sec.437A of
Cr.P.C., shall stand cancelled.***

(Dictated to the stenographer directly on computer, typed by her, corrected and then pronounced by me in the open Court on this the 20th day of December 2024).

(Saritha.D)

V Addl. District and Sessions Judge,
D.K. Mangaluru, sitting at Puttur, D.K

:: ANNEXURE ::

Witnesses examined for Prosecution:-

PW.1	Jayarama Poojary	CW.1	19-11-2024
PW.2	Smt. Jubaida	CW.4	"
PW.3	Nitin	CW.5	"
PW.4	Sathish	CW.6	"
PW.5	Nemiraj	CW.7	20-11-2024
PW.6	Shekhar Poojary	CW.8	"
PW.7	Chandrappa Poojary	CW.9	"
PW.8	Sadashiva	CW.10	"
PW.9	Ravishankar	CW.11	"
PW.10	Praveen	CW.13	"

Documents exhibited for Prosecution:

Ex.P1	Complaint
Ex.P2	Statement of PW.1
Ex.P3	Further statement of PW.1
Ex.P4	Statement of PW.2
Ex.P5	Further statement of PW.2
Ex.P6	Statement of PW.3
Ex.P7	Statement of PW.4
Ex.P8	Seizure Mahazar
Ex.P9	Statement of PW.6
Ex.P10	Spot mahazar
Ex.P11	Spot sketch
Ex.P12	Seizure mahazar
Ex.P13	Seizure mahazar

Witnesses examined for Defence;

- NIL -

Documents Marked for Defence;

- Nil -

MATERIAL OBJECTS MARKED;

- NIL -

(Saritha D)

V Addl. District and Sessions Judge,
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