

IN THE COURT OF THE VII ADDL. C.M.M., BENGALURU.

Dated this the 14th day of August 2017

Present: Smt. A.M.Nalini Kumari,
B.A.L., LL.M, PGD in IR & PM
VII ADDL. C.M.M., Bengaluru.

JUDGMENT U/S. 355 OF Cr.P.C.:

1. CC NO. : 36324/2011
2. Date of offence : 31.10.2010
3. Complainant : State by Mahalakshmi Layout Police Station
4. Accused :
 1. Shankaragowda @ Shankara @ Ramegowda, 28 years. Sathyanarayana Choultry, J.C.Nagara, Kurubarahalli, Bangalore.
 2. Prabhakara @ Prabha @ Prabhu s/o Puttegowda, 28 years.Both are r/at Sathyanarayana Choultry, J.C.Nagara, Kurubarahalli, Bangalore.
3. Ashok – SPLIT UP.
5. Offences complained of : 341, 323, 324, 504 and 506 r/w 34 of IPC
6. Plea : Accused pleaded not guilty
7. Final order : Acting U/s. 248 (1) Accused No.1 and 2 acquitted

The PSI of Mahalakshmi Layout Police Station, representing the State of Karnataka, has filed the final report as against the accused persons for the offence punishable under Sec. 341, 323, 324, 504 and 506 r/w 34 of IPC.

2. The brief facts of the case of the prosecution is that on 31.10.2010 at 11 p.m. accused came over to the house of C.W.1, abused C.W.1 with filthy language and accused No.1 with a stone assaulted C.W.1 on the head and accused No.2 and 3 assaulted C.W.1 by their hands and legs and also held C.W.1 tightly so that he would not move and when C.W.6 and 7 intervened to pacify the said fight, they have also imposed threat to their life and left the place. Therefore, after completion of investigation charge sheet for the offence punishable under Sec. 341, 323, 324, 504 and 506 r/w 34 of IPC is filed against the accused persons.

3. The accused No.1 and 2 persons appeared through their counsel and were enlarged on bail. Accused No.3 regularly absent. As such split up charge sheet is ordered to be filed as against accused No.3. Prosecution papers are furnished to the accused persons in compliance of 207 of Cr.P.C and after hearing before charge, since no grounds were made out for their discharge, charges were framed, read over to the accused persons in the language known to them on 29.8.2013 and ever since then i.e. for a period of

4 to 5 years witness summons are regularly issued, but the prosecution has failed to secure the material witnesses. Hence, looking into the nature of the offence that could be imposed as against the accused persons for the above alleged offence is more than the period that is consumed for trial. Hence, adhering to the said verdict of Hon'ble Apex Court examination of other witnesses of the prosecution was taken as closed. The incriminating evidence available in the case of the prosecution was read over to the accused persons under Sec. 313 of Cr.P.C. The accused persons having understood the same, denied it to be false and claimed to be tried. As such, the matter was set down for trial. The prosecution in order to prove the guilt of the accused persons had cited C.W.1 to 9 as its charge sheet witnesses, among whom C.W.8 is examined as P.W.1 and got marked Ex.P.1. As such, the matter was posted for arguments.

4. Heard the learned Sr. APP for the prosecution and the learned counsel for the accused persons. Perused the materials available on record.

5. Following points arise for my consideration:

- (1) Whether the prosecution proves beyond reasonable doubt that these accused persons in furtherance of their common intention on 31.10.2010 at 11 p.m. while C.W.1 was at his house accused No.1 to 3 came over to his house by Innova car bearing No. KA-41-3346 and picked up quarrel with C.W.1, abused with filthy language and thereby gave sudden

provocation for C.W.1 to break public piece or to commit such other offence and thereby committed the offence punishable under Sec. 504 r/w 34 of IPC ?

- (2) Whether the prosecution proves beyond reasonable doubt that these accused persons in furtherance of their common intention on the above said date, time and place held C.W.1 tightly and restrained him from moving further and thereby committed the offence punishable under Sec. 341 r/w 34 of IPC?
- (3) Whether the prosecution proves beyond reasonable doubt that these accused persons in furtherance of their common intention on the above said date, time and place by their hands and legs assaulted C.W.1 and thereby committed the offence punishable under Sec. 323 r/w 34 of IPC ?
- (4) Whether the prosecution proves beyond reasonable doubt that these accused persons in furtherance of their common intention on the above said date, time and place assaulted C.W.1 with a stone on his head and voluntarily caused simple injuries by way of deadly weapons and thereby committed the offence punishable under Sec. 324 r/w 34 of IPC ?
- (5) Whether the prosecution proves beyond reasonable doubt that these accused persons in furtherance of their common intention on the above said date, time and place imposed threat to the life of C.W.1 and criminally intimidated C.W.1 and thereby committed the offence punishable under Sec. 506 r/w 34 of IPC ?
- (6) What order ?

6. Having regard to the arguments heard and the materials placed on record, my answer to the above points are :

Point No.1 to 5 : In the negative.

Point No.6 : See final order, for the following :

REASONS**Point No.1 to 5:**

7. The above points are taken together for common consideration since they are formed out of same course of action and transaction.

8. As stated supra, the prosecution in order to prove the guilt of the accused persons had cited C.W.1 to 9 as its charge sheet witnesses, among whom the Medical Officer i.e. C.W.8 is examined as P.W.1. He has stated that on 1.11.2010 at 12.30 a.m. C.W.1 was hospitalised with a history of assault and came with a bleeding injuries and he has examined him and given his report as per Ex.P.1 stating that the above injuries are simple in nature. The accused have not cross-examined the said witness and further C.W.1 who is the injured and C.W.6 and 7 who are the eye witnesses to the said incident are not examined before the Court. Though the charges are framed as on 29.8.2013 ever since then C.W.1 to 7 are issued with witness summons on several occasions i.e. since more than 3 years and C.W.8 is examined on 21.6.2016 and inspite of sufficient opportunity given to the prosecution, the above said witnesses are not secured and examined before the Court. Even the I.O. is not examined before the Court. Hence, noting these aspects and also adhering to the verdict of Hon'ble Apex Court, the alleged offences under Sec. 341, 323, 324, 504 and 506 r/w 34 of IPC are

punishable with imprisonment less than 3 years and that summons itself is issued to the witnesses for more than 4 years. Therefore, adhering to the said verdict of Hon'ble Apex Court, the prosecution side evidence was taken as nil and other witnesses were dropped holding that the prosecution has failed to prove the guilt of the accused persons. Accordingly, I answer the above points in the negative.

Point No. 2 :

9. In view of the reasons stated at point No.1, I proceed to pass the following:

ORDER

Invoking the jurisdiction vested to this Court under Sec. 248(1) of the Criminal Procedure code, the accused No.1 and 2 are acquitted of the offence punishable U/s. 341, 323, 324, 504, and 506 r/w 34 of IPC.

Bail bonds and surety bonds executed by the accused No.1 and 2 and their sureties shall be in force for the period of 6 months.

Case papers and properties shall be preserved for trial of split up accused No.3.

(Dictated to the Stenographer, transcript thereof is computerized and print out taken by him is verified, corrected & then pronounced by me in the Open Court dated this the 14th day of August 2017)

(A.M.NALINI KUMARI),
VII ACMM, BENGALURU.

ANNEXURES:List of witnesses examined on behalf of the Prosecution:

P.W.1 : Vagish

List of documents marked on behalf of the Prosecution:

Ex.P.1 : Wound certificate

List of Material Objects marked on behalf of the Prosecution:

Nil

For defence: - NIL -

VII ACMM, BENGALURU.

