

KABC0A0036992021



**IN THE COURT OF LVII ADDL.CITY CIVIL AND
SESSIONS JUDGE, MAYOHALL UNIT, BENGALURU
(CCH-58)**

Present:

Sri.Gangappa Irappa Patil, *B.A., LL.B. (Spl.)*,
LVII Addl.City Civil & Sessions Judge,
Bengaluru.

Dated this the 29th day of September 2023.

Criminal Appeal No.25212/2021

**Appellant/
Complainant :** **Sri.Syed Fairoz**,
S/o. Sri.Basheer,
Aged about 55 years,
R/at No.100, 3rd Cross,
B.S.A. Road, Basappa Line,
D.J.Halli. Bengaluru-560 005.

(Repted by Sri.C.S.R., Adv.)

-Vs-

**Respondents/
Accused:** **1) Sri.Don Basco Predi**,
S/o. Sri.Stanly,
Aged about 42 years,
R/at No.75, 2nd Cross,
B.S.A. Road, Basappa Line,
D.J.Halli, Bengaluru-560 005.

2) Sri.Moses, S/o. Sri.Sagai Rajan,
Aged about 36 years,

R/at No.75, 2nd Cross,
B.S.A. Road, Basappa Line,
D.J.Halli, Bengaluru-560 005.

- 3) **Sri.Shiva** S/o. Sri.S.A.Ram,
Aged about 59 years,
R/at No.106, 2nd Cross,
B.S.A. Road, Basappa Line,
Tannery Road, D.J.Halli,
Bengaluru-560 005.
- 4) **Sri.Rabel** S/o. Sri.Stanly,
Aged about 36 years,
R/at No.75, 2nd Cross,
B.S.A. Road, Basappa Line,
D.J.Halli, Bengaluru-560 005.

(By Sri. S.S., Adv.)

J U D G M E N T

Aggrieved by the Judgment passed by the 11th ACMM, Mayohall Unit, in C.C.No.24237/2012, dtd.18.01.2021 by setting aside the impugned Judgment dtd.18.01.2021, dismissing the said C.C.No.24237/2012 on the file of the learned 11th ACMM, Mayohall Unit, Bengaluru for fresh disposal on merits, this appeal on the following grounds:-

It is contended that the learned Magistrate not recorded the evidence of any witnesses, but passed the Judgment holding that the prosecution not proved the guilt of the accused beyond all reasonable doubt. It also contended that, acquitting the accused without examining the witnesses gives wrong signal to the accused persons

and indirectly it encourages to the accused to repeat the offence in future.

2. There is delay in filing the appeal, in this regard separate application made to condone the delay stating that, after the Judgment file sent to the Head Office and Head Office given permission to file an appeal. Accordingly, on 27.02.2020 the prosecution office received the permission, then sent to the Deputy Commissioner, Bangalore seeking permission to file appeal and obtained a consent. The file returned to the prosecution office on 21.09.2020. During the process of getting consent and due to pressure of work appeal could not be filed intime. Accordingly, prays to condone the delay of filing an appeal.

3. On filing of the appeal summons has been issued to the accused/respondent. The respondent are appeared through their Advocate.

4. TCR called and received.

5. Arguments of both the parties heard. Perused the record.

6. The points that arisen for consideration of this court are as under:-

P O I N T S

1. Whether there is a sufficient reasons to condone the delay in filing appeal by the State?

2. Whether the appellant made-out that the impugned Judgment is illegal and calls for interference?

3. What order?

7. My findings on the above points are as under:-

Point No.1 : In the Affirmative,

Point No.2 : In the Affirmative,

Point No.3 : As per the final order for the following:

REASONS

8. **Point No.1** :- Appellant/complainant submits that From the end of 2019, the area in which he is residing suffered heavy cases of Covid and even few deaths have taken place and there are aged and young children in his place and he is ignorant of rules and regulations to be followed in criminal cases and on account of his delicate health due to diabetic and B.P., which makes him inactive, requiring medical attendance and medication frequently and he was unable to attend and pursue the case in C.C.No.24237/2012 regularly. And in the said condition, he was unable to attend and in the said condition, he was unable to appear for cross-examination on relevant dates and the same was circumstances beyond his control and not wanton and he submit that his wife started developing Covid symptoms during the middle of December, 2020 and other members of his family also started showing such

symptoms one after another and he had to make arrangements to attend on them at home, getting native/Unani medicines and he was unable to give attentions to other matter and the conditions of patients in his house became improved during the 3rd week of October, 2021 and thereafter he contacted his Counsel regarding C.C.No. 24237/2012 on 21.10.2021, he was informed that his complaint in the said C.C.No.24237/2012 came to be disposed of acquitting the respondents/accused No.1 to 4 on 18.01.2021 and thereafter, he made arrangements to apply and obtain certified copies of the said judgment passed in C.C.No.24237/2012 and it was delivered on 21.10.2021.

9. Thereafter, he submit that he consulted his present lawyer and he was advised to prefer the above appeal and it took sometime for him who is still suffering from diabetic and B.P. and it took few days for him to do the needful to get the above appeal prepared and file it now and there is 222 days delay in filing the above appeal and the delay is only on account of bonafide reasons. Further he submits that his daughter-in-law, viz., Smt.Humera Tabassum, W/o. Sri.Syed Akmal @ Khadhar, passed away on account of Covid on 08.12.2020 and he submit that the said Smt.Humera Tabassum is daughter-in-law of PW1, i.e., himself herein and wife of CW2, viz., Sri.Syed Akmal @ Khadhar and daughter-in-law of CW6, viz., Sri.Azam. He

submit that the the Death Certificate regarding the said Smt.Humera Tabassum and the copy of Discharge Summary issued by 'Apurva Mother and Child Hospital', regarding the said Smt.Humera Tabassum is produced herein.

10. By looking into the explanation given by the complainant this court is of the opinion that the delay which caused for preferring the appeal be condoned in the interest of justice. Accordingly, point No.1 answered in ***Affirmative.***

11. **Point No.2**:- Appellant submits that he had filed a criminal complaint against the respondent No.1 to 4 before the D.J.Halli Police on 20.02.2012, stating that he had purchased a house property, old No.33/1, new No.30, situated at Basappa Lane, 3rd Cross, Frazer Town, Bengaluru from one Smt.Zaina Bi and katha of the same stands in the name of the appellant in the municipal records. It is submitted that the 1st respondent Sri.Don Bosco Predi S/o. Sri.Stancy was staying in the said property and the complainant states that on 20.02.2012 around 10-00 P.M., the respondents 1 to 4 holding Club and knife came to the appellant's house alleging that the appellant was responsible for cutting of electricity by KEB and started quarreling with the appellant and the members of his family and the 2nd respondent herein stabbed the

complainant's son, Syed Thousiff on his left shoulder causing bleeding injuries and the other respondents 2 to 4 assaulted the appellant/complainant causing injuries to his hand and bodies and the local police appeared and took the appellant and his son to Doctor Ambedkar Hospital for treatment and after the treatment, the appellant/complainant went to police station and lodged a complaint against the respondents 1 to 4 under IPC Sections 341, 324, 506 r/w. Sec.34 of IPC and the local police initiated criminal proceedings against the respondent No.1 to 4 which came to be registered as C.C.No.24237/2012 before the 11th ACMM., Mayo Hall Unit, Bengaluru.

On receiving the complaint, Police have investigated the matter and filed a charge sheet against the accused persons.

12. Further learned counsel for appellant submits that, after taking cognizance, the Trial Court secured the presence of the accused and released them on bail. On complying the provisions U/Sec.207 Cr.P.C, recorded the charge against the accused. Thereafter summons were issued to the witnesses on 30.11.2018 CW1 examined as PW1 and documents and property were marked. At that time respondent/accused counsel sought time for cross-examination of PW1. Hence, Cross-examination of PW1 was adjourned by binding over the PW1. Thereafter,

summons to other witnesses were issued, but none of the witnesses appeared.

13. Further learned counsel for appellant submits that the trial court not made any effort to secure the witnesses and examined the material witnesses. Without examining the material witnesses and discarding the evidence of PW1 the trial court acquitted respondent/accused.

14. On perusal of the Order Sheet reflects that, the learned Trial Judge not taken pains to verify whether the summons was really been served on the witnesses or not. Further failed to verify whether warrants had been executed or not, but mechanically reissued the summons, warrants and also issued Proclamation. Though the Court issued Proclamation against witnesses, it not bothered to verify Whether it was duly published. In this regard there is no recording in the order sheet and no documents found in the file. So, it is clear that the Trial Court mechanically closed the evidence of the prosecution and pronounced the Judgment on the same day by acquitting the accused.

15. The Trial Court not taken any coercive steps to secure the witnesses. The learned Magistrate not recorded whether summons served, warrant executed or Proclamation duly published, but pronounced the

Judgment without recording the evidence of single witness. The learned Magistrate atleast could have secure the I.O., who filed a charge sheet. So, I am of the opinion that no fair trial conducted by he learned Magistrate.

16. The Prosecution, who conducts the trial as a statuary duty perform and he cannot take things in light manner. It is the duty of the prosecution to assist the Court in proper perspective manner remembering that it is their prime duty to assist the Court in administration of justice. In this case the accused regularly present before the court. Till the prosecution proves the guilt of the accused, the accused is considered to be a innocent. So, by looking into the facts and circumstances in this case this court is of the opinion that the accused should not unnecessarily troubled and at the same time it is necessary to see that justice should not suffer. So, I am of the opinion that it is fit to remand the case for fresh trial with a direction to the prosecution and the Court to secure all the witnesses on the date fixed for trial by the court and to record the evidence then dispose-off the matter in accordance with the law. Accordingly, **Point No.2** is answered in **Affirmative**.

17. **Point No.3**:-In view of the finding on point No.1 and 2, I proceed to pass the following:-

ORDER

The Criminal Appeal No. 25212/2021 filed by the Appellant/Victim u/S. 378(4) of Cr.P.C. is allowed.

The Judgment passed by XI ACMM., Mayo Hall Unit, Bengaluru in C.C.No.24237/2012 dtd. 18.01.2021 is set-aside.

The Trial Court is hereby directed to secure the witness and examine them and dispose-off the matter. The Prosecution shall see the witnesses shall be present before the Court to give evidence on the date fixed by the Trial Court.

Both parties are hereby directed to co-operate with the Court to complete the trial on the date which fixed by the Trial Court and both parties are directed to appear before the Trial Court on **02.11.2023.**

Send back the records to the Trial Court along with the copy of the Judgment.

(Dictated to the Judgment Writer on Computer, corrected and then pronounced by me in the open court on this the 29th day of September, 2023.)

(Sri.Gangappa Irappa Patil)
LVII Addl.City Civil & Sessions Judge,
Mayo Hall Unit, Bengaluru.

**Judgment pronounced in open court
(vide separate Judgment)**

The Criminal Appeal No. 25212/2021 filed by the Appellant/ Victim u/S. 378(4) of Cr.P.C. is allowed.

The Judgment passed by XI ACMM., Mayo Hall Unit, Bengaluru in C.C.No.24237/2012 dtd. 18.01.2021 is set-aside.

The Trial Court is hereby directed to secure the witness and examine them and dispose-off the matter. The Prosecution shall see the witnesses shall be present before the Court to give evidence on the date fixed by the Trial Court.

Both parties are hereby directed to co-operate with the Court to complete the trial on the date which fixed by the Trial Court and both parties are directed to appear before the Trial Court on **02.11.2023.**

Send back the records to the Trial Court along with the copy of the Judgment.

(Sri.Gangappa Irappa Patil)
LVII Addl.City Civil & Sessions Judge,
Mayo Hall Unit, Bengaluru.