

**IN THE COURT OF THE SENIOR CIVIL JUDGE AND J.M.F.C.,
H.D.KOTE**

Present: NATARAJ YADAV .S, M.B.A., LL.B.,
Senior Civil Judge & J.M.F.C.,
H.D.Kote.

Dated this the 4th day of September, 2021

C.C. No. 322/2015

Complainant: The State by Beechanahalli P.S.
(By Learned A.P.P.)

-Vs-

Accused :1 Rajegowda
S/o Ningegowda,
Aged about 50 years,
R/at Nerale Village,
Antharasanthe Hobli,
H.D.Kote Taluk, Mysuru District.

2. Chikkanegowda
S/o Late. Ningegowda,
Aged about 45 years,
R/at Nerale sunkal manti Village,
H.D.Kote Taluk, Mysuru District.

(By Sh.J.Sathisha., Advocate)

Date of the Commission of offence	26.05.2015
Offences Compliance of	U/s. 323/324/354/504 Rw 34 IPC.
Name of the Complainant	Ms. Kalpana
Date of filing of charge sheet	28.07.2015
Date of recording evidence	09.03.2021
Date of pronouncement of Judgment	04.09.2021
Opinion of the Judge	Acquittal

J U D G M E N T

The story of the prosecution in brief is as under:-

Briefly the case of the prosecution is that on 26.05.2015 at about 10.00 A.M within the jurisdiction of H.D.Kote Police Station, Nerale Village, H.D.kote, when the first informant was in her land, they in furtherance of their common intention intentionally insulted her in filthy language knowingly that will provoke her to break the public peace. Further accused used criminal force against first informant with an intention to outrage her modesty by caught holding her hand and dragging and also caused simple hurts on the person of first informant by giving fist and club blows all over her body and threatened them for dire the consequences. Hence, the accused persons are facing trial for the offences punishable under 323/324/354/504/506/34 of the Indian Penal Code, 1860.

2. The FIR was registered. Thereafter, the investigation was completed and charge sheet was filed under section 323/324/354/504/506/34 of the Indian Penal Code, 1860 on 09.11.2015. Cognizance was taken against the accused persons and provision of [Section 207](#) Cr.P.C was complied with after appearance of the accused persons. Thereafter, on the basis of the prima facie material on record, a charge under section 323/324/354/504/506/34 of the Indian Penal Code, 1860 was framed upon the accused persons on 28.12.2020 to which they pleaded not guilty and claimed trial.

3. Thereafter the matter was put up for prosecution evidence. The prosecution has examined seven witnesses namely PW1 Smt.Kalpana

who is the first informant /injured, PW2 Sh.Nanjundegowda and PW4 Sh.Manjunath who are the independent eyewitness have turned hostile and not supported the case of prosecution, PW3 Sh.Devaraju who is the independent punch witness has turned hostile and not supported the case of prosecution, PW6 Sh.Hooda who is the medical officer, PW7 HC Sh.Mahadeva who was the duty officer who registered the FIR and PW5 PSI Sh.Nayak, second IO, who filed charge sheet. The evidence of each of the prosecution witnesses is relevant and is analyzed and discussed later at appropriate places.

4. Statement of the accused persons under [Section 313](#) Cr.P.C was recorded on 03.08.2021 and all the incriminating evidence was put to them in which the accused persons stated that they do not wish to lead defence evidence.

5. Final arguments were advanced by the Ld. APP and the counsel for the accused persons.

6. Ld.APP has argued that the accused in furtherance of their common intention assaulted first informant/injured with Club and fist blows resulting in injuries all over her body and thereby voluntarily caused simple hurts.

Section 323 of the Indian Penal Code, 1860 states as under:

"Punishment for voluntarily causing hurt: Whoever, except in the case provided for by [Section 334](#), voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both".

Section 324 of the Indian Penal Code, 1860 states as under:

"Voluntarily causing hurt by dangerous weapons or means: Whoever, except in the case provided for by section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

7. Hence, to prove the commission of the offence under [section 323/324](#) of the Indian Penal Code, 1860, the prosecution must prove that: (a) the accused caused simple hurts to the injured and (b) such hurts were caused voluntarily by the accused.

8. Ld. APP for the State submits that both the above mentioned essentials have been proved by the prosecution from the sole testimony of PW1. Hence, Ld. APP for the State prays for conviction of the accused persons.

9. Counsel for the accused persons on the other hand has prayed for acquittal submitting that the accused persons have been falsely implicated. It is stated that there was no fight or dispute between the first informant and the accused persons. It is stated that the public witness examined by the prosecution turned hostile and not supported the case of prosecution. No blood stain and torn clothes were seized by the IO in the

present matter. The testimony of PW1 Smt.Kalpana cannot be solely relied upon as she deposed wrong time of incident and alleged before the court that both the accused gave her the club blows on her head. It is thus argued that the deposition of PW1 Smt.Kalpana is not trustworthy keeping in view the aforesaid submissions. Hence, it is prayed that the accused persons be acquitted for the offences charged with.

10. I have gone through the record carefully after hearing the submissions of both the sides. The prosecution has mainly relied upon the testimony of PW1. As per statement given by PW1-Smt.Kalpana to the police during investigation, she was brutally assaulted by giving club blows on her back and fist blows all over her body causing bleeding injuries by the accused persons. It is to be noted that, in her testimony she has only stated that both the accused gave club blows on her head causing bleeding injuries. The version of PW1 either reported in the statement or testimony did not find the corroboration from the medical evidence. P.W.6 who is the doctor treated PW1 has specifically stated that no bleeding injuries were found on the person of PW1 and so also he categorically stated that no multiple injuries found on the person of first informant. To say more particularly no external injuries found on the back of the PW1. Hence, in my opinion the oral version of the injured witness did not find the corroboration from the medical evidence. This contradiction in the testimony of the witnesses and medical evidence is a major one and it erodes the credibility of the witnesses about the injuries sustained by the at the hands of the accused. Further it is also clear that the prosecution has not place true picture of the occurrence before the court without suppressing any part of it. So the benefit of the doubt shall be given to the accused persons. This is also another drawback in the

case of the prosecution. In the regard reliance can be placed upon the decision reported in 1994 CrL Law Journal Page 1385 S.C. between the parties titled as Sri Nivas Vs. Ram Bharose and others wherein the Apex court has held that, “when an oral testimony of the witnesses is irreconcilably in conflict with medical evidence, the prosecution has not placed the true picture of occurrence before the court without suppressing any part of its. So the benefit of doubt should be given to the accused.” In these circumstances, in my considered opinion both the accused are entitled to benefit of doubt as medical evidence falsifies the ocular evidence which is a material contradiction rendering the prosecution story frayed.

11. Further, the independent eyewitnesses PW2-Sh.Nanjundegowda and PW4-Sh.Manjunath have turned hostile and deposed that no incident occurred at their instance and thus there is no corroboration to the testimony of PW1. Further, there was an improvement in the testimony of the complainant from her compliant regarding the assault by accused no.2 also with club. The pendency of the civil litigation and criminal proceedings has been admitted by PW1. Parties were admittedly at loggerheads. Thus, in my opinion testimony of PW1 does not inspire confidence as a whole. She not qualifies to be reliable witness. Further, there is a delay in lodging the compliant which is not satisfactorily explained by the prosecution. Furthermore previous enmity is a double edged sword. Thus, in view thereof the accused is liable to be acquitted of the offence under section 323/324/[149](#) IPC.

12. Further, accused have also been charged u/s 504 [IPC](#). Now, coming to [section](#) 504 IPC none of the prosecution witnesses including the first

informant has deposed that accused have abused first informant in foul words or even otherwise there is nothing to suggest that first informant has felt very insulted and became wild due to the usage of words but controlled her passion for bearing herself from committing any breach of public peace. Thus the prosecution has also failed to prove the charge in respect of the offence punishable under Section 504/34 IPC against the accused.

13. Further, accused have also been charged u/s 354 [IPC](#). In reference to section 354 IPC, neither in the first information, the first informant nor in the statement given to the police PW-1 Smt.Kalpana has stated anything with regard to the accused out raging her modesty. The allegation of outraging the modesty has been added in the supplementary statement. Thus it raises a serious doubt upon the trust worthiness/credibility of the witness why such allegation was not made at first instance. The reason might have been that initially she intended to harp only on the injuries sustained by her but later on under advice she may added such allegation to invoke section 354 IPC. The flip-flop stand of the witness, delay in lodging of the FIR and contradiction regarding the role of the accused person in outraging the modesty of first informant raises serious doubts upon the version of prosecution for the offence levelled U/s 354 IPC benefit of which goes to the accused. Even otherwise I am of the opinion that mere holding the hand and dragging the first informant during the cause of a quarrel cannot be called a deliberate act of outraging the modesty of a female within the meaning of [Section 354 A](#) of the IPC.

14. The Hon'ble High Court of Delhi in Narain Singh @ Lala vs. State of Delhi 2005 (1) LRC 294 (Del) (DB) has also ruled that:

"There must be a chain of evidence so complete as to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

15. Further lastly but not the least, the Hon'ble Supreme Court of India in catena of decisions has also held that:

"In Criminal trial– benefit of doubt– when on the basis of the evidence appearing on record, two views are possible, accused is entitled to benefit of doubt."

16. In view of the facts and circumstances of the case it is crystal clear that the Prosecution has failed to prove its case beyond the shadow of reasonable doubts against the accused for the alleged offence. There is no convincing evidence on the record which could substantiate any charge upon the accused. Hence I proceed to pass the following;

ORDER

In exercise of power vested with this court U/Sec 248[1] [of Criminal Procedure Code](#), it is ordered that accused Rajegowda and Chikkanegowda are acquitted for the offence punishable U/S.323/324/354/504 Rw 34 IPC

The accused Rajegowda and Chikkanegowda are hereby set at liberty.

Their bail bonds and surety bonds shall be in force for 6 months in view of amended provision under Sec.437 (A) of Cr.P.C.

The property seized in P.F.No.38/2015 is hereby ordered to be destroyed after the expiry of appeal period.

(Dictated to the Stenographer on computer, typed by him, revised, corrected and then pronounced by me in the open Court on this the 4th day of September 2021.)

(NATARAJ YADAV .S)
Senior Civil Judge & J.M.F.C
H.D.Kote

ANNEXURE

I. LIST OF WITNESSES_o EXAMINED FOR AND ON BEHALF OF THE PROSECUTION:

PW-1	:	Ms.Kalpana
PW-2	:	Sh.Nanjundegowda
PW-3	:	Sh.Devaraju
PW-4	:	Sh.Manjunath
PW-5	:	Sh.M.Nayaka
PW-6	:	Dr. K.Handa
PW-7	:	Sh.Mahadeva

II. LIST OF DOCUMENTS EXHIBITED FOR AND ON BEHALF OF THE PROSECUTION:

Exhibit P.1	:	Complaint
Exhibit P.1(a)	:	Signature of PW7
Exhibit P.2	:	Spot Mahazar
Exhibit P.2(a)	:	Signature of PW3
Exhibit P.2(b)	:	Signature of PW7
Exhibit P.3	:	Statement of PW2
Exhibit P.4	:	Statement of PW4
Exhibit P.5	:	Wound certificate
Exhibit P.5(a)	:	Signature of PW5

Exhibit P.5(b) : Signature of PW6

III. LIST OF MATERIAL OBJECTS MARKED FOR AND ON
BAHELF OF THE PROSECUTION:-

M.O. No.1 : Club

IV. LIST OF WITNESSES EXAMINED AND DOCUMENTS
EXHIBITS FOR AND ON BEHALF OF THE ACCUSED:-

-NIL-

(NATARAJ YADAV .S)
Senior Civil Judge & J.M.F.C
H.D.Kote