

**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 05th day of May, 2022

C.C. No. 563/2019

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

-Vs-

Accused : 1. Mahadeva
S/o Late. Mahadevappa,
Aged about 45 years,

2. Subramanaya
S/o Late. Mahadevappa,
Aged about 43 years,

3. Basappa
S/o Late. Mahadevappa,
Aged about 41 years,

4. Chandra
S/o Late. Mahadevappa,
Aged about 39 years,

All are R/at Antharasathe Village,
H.D.Kote Taluk, Mysuru District.

(By Sh.P.N.Nagendra, Advocate)

Date of the Commission of offence	22.04.2019
Offences Compliance of	U/s.447/504/323/354/341/

	506/34 <u>IPC</u>
Name of the Complainant	Sh. Basavaraju. N.C
Date of filing of charge sheet	17.06.2019
Date of recording evidence	12.10.2021
Date of pronouncement of Judgment	05.05.2022
Opinion of the Judge	Acquittal

J U D G M E N T

BRIEF FACTS & REASONS FOR SUCH DECISION

Accused persons namely Mahadeva, Subramanya, Basappa and Chandra stood trial for the offences u/s.341/447/323/354/504/506/34 IPC pertaining to an incident which emanated upon a complaint addressed by the complainant Sh.Basavaraju to SHO PS Beechanahalli whereupon the IO had made an endorsement and the Duty Officer had subsequently recorded the FIR. Gist of the complaint is as under:-

On 22.04.2019 at about 1:00 PM, the complainant was cultivating his land bearing Sy.no.84, Antharsanthe village. The accused persons in furtherance of their common intention unlawfully trespassed in to the land of complainant and voluntarily obstructed him from proceeding in a direction in which he had right to proceed and used abusive language on him and accused, Subramanya gave fist blows all over the body of complainant. When CW3 Smt.Manjula and CW4 Smt.Sowmya tried to intervene, the accused Basappa misbehaved with CW3 Smt.Manjula by holding her hand and dragging and accused Chandra caused simple hurts to CW4 Smt.Sowmya by giving fist blows all over her body and threatened them for dire the consequences. Thereafter, complainant reported the matter to the police.

2. Investigation commenced and concluded by filing the charge sheet. Compliance of [section 207](#) Cr.P.C was made. Charge was framed on 18.02.2021 wherein all the accused persons opted to face trial.

3. Prosecution evidence comprised of PW-1 Basavaraju (the complainant), PW-2 Smt.Manjula (eyewitness/injured), PW-3 Sh.Pavin Kumar (eyewitness/injured). PW-4 Sh.Girish, who is the relative of complainant and eyewitness, PW-5 Sh.Srinivas (the Spot panchanamma witness), PW-6 ASI Kumar (the Duty Officer), PW-7 Sh.Sowmya (eyewitness/injured) and Sh.Mallikarajuna (eyewitness),

4. Thereupon, the statements of accused persons u/s. 313 [Cr.P.C](#) were recorded wherein they denied the incriminating evidence against them and stated that they have been falsely implicated by the complainant due to the enmity. However, accused persons did not bring any defence witness in the court. Vide order dated 25.04.2020, defence evidence was closed.

5. Arguments heard on behalf of Ld. Defence counsel as well as Ld. APP. Perused the entire record relied upon by the prosecution.

6. The first and foremost is that the complainant and eyewitnesses/injured did not withstood the test of cross examination. Dehors the aforesaid, if the testimonies of witnesses Sh.Basavaraju, Sh.Pavin Kumar, Smt.Manjula and Smt.Sowmya is taken into consideration, even without subjecting them to cross examination, the same would be my conclusion.

7. The reasons are as under:-

(a) The incident pertains to 22.04.2019. Complainant deposed that he PW-2 Smt.Manjula, PW3-Sh.Pavin Kumar and PW-7 Smt.Sowmya sustained multiple injuries including bleeding injuries and the clothes of Smt.Manjula were also torn, whereas nothing of this sort has been mentioned by him in initial complaint Exp1 or in the FIR. Moreover, complainant including PW-2, PW-3 and PW-7 had refused to get themselves medically examined. They have deposed that they sustained only minor injuries thus they refused to get medically examined. No photographs of injuries have been placed on record and even the exact area where the complainant, PW-2, PW-3 and PW-7 had allegedly sustained injuries are not clear from the testimonies of the complainant, PW-2, PW-3 and PW-7.

(b) In her testimony PW-7 Sowmya deposed that the accused persons had not inflicted any injuries to her or PW-1 to PW-3 but they only attempted to cause injuries. Thus, there is a glaring contradiction in her ocular testimony and testimony of other injured witness. In these circumstances, it was all the more important to get the MLC conducted of victims. I may also note that the Complainant, PW-2 and PW-3 also made improvements in their testimony that accused persons also assaulted complainant and PW-2 with clubs and also snatched the Mangala Sutra of PW-3. Hence complainant and PW-2 can be seen making improvements in their statement and they failed to withstand the test of credibility. The said variations and improvements assume importance for the reason that the complainant and PW-2 during their cross examination have also admitted that there were some civil disputes between the accused and them. Be that as it may, there has been brought to fore a possible motive for accused to be falsely implicated in this case.

(c). In the case in hand, no other independent witness has been examined. The presence of persons namely neighbors at the spot is admitted by the prosecution witnesses i.e. PW-2, PW-3 and PW-7. PW-1/complainant has not specifically stated regarding the presence of said persons, however, he has alleged that many persons had gathered at the spot. In cross-examination of PW-3, she stated that the said persons were not cited as witnesses because they were not supporting the version of prosecution being well wishers of the accused. Considering the above said admission on the part of the police official, it is apparent that fair investigation was not carried out by the Investigating Agency. The duty of Investigating Agency is not to compulsorily frame a case against accused but to carry out investigation in a neutral and fair manner by examining the persons who had witnessed the incident irrespective of the fact that whether they support the version of complainant or not. However, in the present case there has been serious lapse on the part of investigating agency by not examining the above said persons.

(d) There is delay in lodging of the FIR which is at the end of complainant himself and no explanation for such delay raises serious doubt over the truthfulness of prosecution story: Time and again, the object and importance of prompt lodging of the First Information Report has been highlighted. Delay in lodging the First Information Report, more often than not, results in embellishment and exaggeration, which is a creature of an afterthought. A delayed report not only gets bereft of the advantage of spontaneity, the danger of the introduction of the coloured version, exaggerated account of the incident or a concocted story as a

result or deliberations and consultations, casting a serious doubt on its veracity. Therefore, it is essential that the delay in lodging the report should be satisfactorily explained. (2008 V AD (Cr.) (SC) 577) State of Andhra Pradesh Vs. M. Madhusudhan Rao). In the present case also, the complaint was filed after delay of 4 days. The alleged incident had taken place on 22.04.2019 but the case was filed only on 25.04.2019. The fact of lodging delayed complaint has been admitted by the witnesses during cross examination. A perusal of complaint Ex.P1 & FIR further show that the complaint Ex.P1 was filed and received at Police Station only on 25.04.2019. No explanation worth the name for delay in filing the Complaint with the police has come on record rather all the statements of complainant are completely silent on this aspect. The complainant has not stated anywhere that she was feeling threatened after accused extended threats to kill the family if the matter was disclosed to anyone and that is why she did not report the matter to police at the earliest. Further after the quarrel, he did not give any call to the PCR at 100 number, it also creates a serious doubt over the truthfulness of prosecution story.

(e). As per the allegations of the complainant, charges have also been framed against the accused under another four heads i.e., u/s.354, 504, 506 & 341 [IPC](#) . In reference to [section 354](#) IPC, in her first statement given to the police PW2 Smt.Manjula has not stated anything with regard to the accused outraging her modesty. The allegation of outraging the modesty has been added in the supplementary statement. Thus, it raises a serious doubt upon the trustworthiness/credibility of the witness that why such allegation was not made at first instance. The reason might have been that initially she intended to harp only on the injury

sustained by her, but later on under advise she may added such allegation to invoke [section 354](#) IPC. Even otherwise it is relevant to observe that a bare perusal of [Section 354 IPC](#) reveal that in order to constitute an offence under said section, the Prosecution must establish that the accused assaulted or used criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty. In the present case, PW2 Smt.Manjula has made no such allegations in her deposition against accused Basappa. There is nothing in her statement that accused Basappa committed any act which was intended to outrage the modesty of PW-3 within the meaning of [Section 354](#) IPC. Merely touching the woman's body i.e., PW3 unintentionally or dragging or giving push or the beatings would not amount to an offence punishable under [section 354](#) of the Indian Penal Code.

(f) With regard to offence under [section](#) 504/506 IPC. In the present case, complainant has only deposed that accused persons had abused him and threatened him, PW-2, PW-3 and PW-7. However, he and other eyewitness/PW2, PW3 and PW7 did not specify the abuses uttered by the accused persons. They further did not specify the exact words uttered by the accused while threatening them. Further there is nothing to suggest that complainant, PW2, PW3 and PW7 have felt very insulted and became wild due to the usage of words but controlled their passion for bearing themselves from committing any breach of public peace and No alarm was also caused in the mind of complainant, PW2, PW3 and PW7. In the absence of specific allegations, the accused persons cannot be held guilty of offence U/s 504/506/34 [IPC](#).

(g) The word “obstruction” or “restraint” implies a desire to proceed in a certain way. Under section 341, it must be established that the complainant was obstructed from proceeding along a particular direction. From the testimony of complainant it is not made out that the complainant was at any point of time wrongfully restrained from moving in any direction. It is not case that the accused caught hold of complainant or that he tried to escape the beatings of the accused but was prevented from doing so by the accused. Therefore, in the absence of any evidence against the accused as regards wrongfully restraining of complainant the accused cannot be held guilty of offence U/s 341 of [IPC](#).

(h) Offence of criminal trespass is defined u/s 441 [IPC](#) and the same is punishable u/s 447 [IPC](#). In order to prove the offences u/s 447 [IPC](#), the prosecution has to prove that the accused persons committed criminal trespass by entering into the field of complainant Sh.Basavaraju. Except the statement of the injured persons, nothing was brought on record that the complainant Sh.Basavaraju was the owner of the field in question where the incident took place. It is one of the essential ingredients of [section 441](#) IPC which defines the offence of criminal trespass. After having proved that the property in question was in possession of the complainant, he would have been required to prove that the accused persons entered the property with an intent to commit an offence or to intimidate him. Unless and until evidence is led in this regard that the spot where the accused persons intruded in belonged to the complainant, no such offence of criminal trespass which is punishable u/s 447 [IPC](#) can be said to have been proved. The accused persons are cannot be held guilty of offence U/s 447 of [IPC](#).

(e) The flip- flop stand of the witnesses, refusal of the to get themselves medically examined, no photographs of injuries, non citing of the public witness as witnesses by the IO and delay in lodging of FIR raises serious doubts upon the version of the complainant, benefit of which goes to the accused.

8. In view of the above discussion above, the prosecution has failed to prove its case against the accused persons. Accordingly, the accused persons namely Mahadeva, Subramanya, Basappa and Chandra are liable to be acquitted for the offence U/s 341/447/323/354/504/506/34 [IPC](#). Consequently, 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 Mahadeva, Subramanya, Basappa and Chandra are acquitted for the offence punishable U/s.447/504/323/354/ 341/ 506/ 34 [IPC](#) .

The accused Mahadeva, Subramanya, Basappa and Chandra 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.37/2019 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 05th day of May, 2022.)

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

ANNEXURE**I. LIST OF WITNESSES EXAMINED FOR AND ON BEHALF OF THE PROSECUTION:**

PW-1	:	Sh. Basavaraju
PW-2	:	Ms. Manjula
PW-3	:	Sh. Papin Kumar
PW-4	:	Sh. Girish
PW-5	:	Sh. Srinivas
PW-6	:	Sh. R. Kumar
PW-7	:	Ms. Sowmya
PW-8	:	Sh. Mallikarjuna

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

Exhibit P.1	:	Complaint
Exhibit P.1 (a)	:	Signature of PW1
Exhibit P.2	:	Spot mahazar
Exhibit P.2 (a)	:	Signature of PW1
Exhibit P.2 (b)	:	Signature of PW5
Exhibit P.3	:	First Information Report
Exhibit P.4	:	RTC
Exhibit P.4 (a)	:	Signature of PW6
Exhibit P.5	:	Mutation register extract
Exhibit P.5 (a)	:	Signature of PW6
Exhibit P.6	:	Statement of PW8

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

M.O.-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