

**IN THE COURT OF JUDICIAL MAGISTRATE OF FIRST CLASS-II,
HOSDURG**

Present: Balu Dinesh

**JUDICIAL FIRST CLASS MAGISTRATE-II
HOSDURG**

4th day of October, 2024/ 12 Aswina 1946

CC 1512/22

Complainant	:	SHO Nileshwaram Police Station Crime No.501/22 Represented by Smt. Arlene S F, APP, GR-II, Hosdurg
Accused	1	Shanil K, aged 31/22 years S/o Tahmban C, Kappanayil House, Puthariyadukkam, Pattena, Perole Village, Kasaragod.
	2	Shanid K, aged 28/22 years S/o Tahmban C, Kappanayil House, Puthariyadukkam, Pattena, Perole Village, Kasaragod. Represented by learned Adv. Van- ishri B, Hosdurg
Offence	:	Section 324 r/w 34 of Indian Penal Code.
Plea	:	Not Guilty
Finding	:	Accused are found not guilty.
Sentence or Order	:	Accused are acquitted u/s 248(1) CrPC.

DESCRIPTION OF ACCUSED

Si no.	Accused	Father's / Husband's Name	Occupation	Residence	Age
1	Shanil K	S/o Tahmban C	-	Kappanayil House, Puthariyadukkam, Pattena, Perole Village, Kasaragod	aged 31/22 years
2	Shanid K	S/o Tahmban C	-	Kappanayil House, Puthariyadukkam, Pattena, Perole Village, Kasaragod.	aged 28/22 years

CALENDER

Offence	Complaint	Appearance	Release on bail	Commencement of trial	Commencement of evidence	Close of trial	Period of Detention during inquiry and trial
17/7/22	17/8/22	5/3/24	5/3/24	24/5/24	24/5/24	27/9/24	NIL

This case coming on for hearing in the presence of Assistant Public Prosecutor, Hosdurg and learned Advocate for the accused on 27th day of September, 2024 and having stood for consideration till this day, the Court delivers the following:

JUDGMENT

1. This is a case instituted upon report of Station House Officer, NIlleshwaram, Police Station, on completion of investigation filed under Section 173(2) of Code of Criminal Procedure in Crime No 501/22. The accused persons are alleged to have committed offence under Section 324 r/w 34 of Indian Penal Code.

PROSECUTION CASE

2. The prosecution case is that on 17/7/22 at 10:30 hours at Pattnea the accused had in furtherance of common intention assembled and the first accused had beaten CW1 with tile piece and the second accused had beaten CW1 with wooden stick. On this ground prosecution alleges that accused had committed offence under Section 324 r/w 34 of Indian Penal Code.
3. Investigation was carried out and upon the completion of investigation, a report under Section 173(2) of Cr. P. C was filed against the accused person alleging the commission of aforesaid offence.

PROCEDURAL FORMALITIES

4. This Court took cognizance under Section 190 (1) (b) of Cr. P. C of the aforesaid offence alleged against the accused and issued summons against the accused under Section 204 Cr. P. C. The accused had appeared before this Court in pursuance of the summons received by them. They were represented by counsel of their choice. The accused were enlarged on bail. The copies of the relevant documents relied on by Prosecution were furnished to the accused and thereby the legal mandate under Section 207 Cr. P. C was complied.
5. After hearing both sides charge was framed for offence punishable under Section 324 r/w 34 of Indian Penal Code and was read over and explained to the accused in their language. The accused pleaded not guilty and claimed to be tried.

EVIDENCE BROUGHT ON RECORD

6. On the side of Prosecution CW1 was examined as PW1 and Exhibit P1/ PW1 was marked. Despite process under Section 82 and 83 Cr.P.C. CW2 was not produced. Hence Court proceeded with trial. Since no incriminating circumstances were brought out in evidence the accused were exempted from examination under Section 313(1) (b) Cr. P. C.
7. The accused did not adduce any evidence on their side.

8. Heard both sides.

On the basis of rival contentions, the following points were raised for consideration:

1. Did the accused persons on 17/7/22 at 10:30 hours at Pattana voluntarily cause hurt to PW1 with tile piece and wooden sticks which could be used as dangerous weapons in furtherance of common intention and thereby committed offence under Section 324 r/w 34 of Indian Penal Code.?
2. If the accused are found guilty and convicted, then what shall be the order as to sentence?

POINT 1

9. The prosecution case is that the accused had committed the offence covered under Section 324 r/w 34 of Indian Penal Code. PW1 stated before the Court that the accused did not voluntarily cause hurt to him. The learned APP had sought permission of this court under Section 154 of the Indian Evidence Act and asked to PW1 some questions that could be asked during cross examination. In spite of this interrogation the prosecution could not elicit any incriminating evidence against the accused. CW2 was not produced by prosecution despite non-bailable warrant issued against CW2 on 19/7/24 and steps under Section 82 of Code of Criminal

Procedure issued on 21/8/24. When the factual chain of circumstances is broken and the version of the prosecution has not been established as was required of it and in the absence of complete chain, the guilt of the accused cannot be inferred and suspicion howsoever grave it may be, cannot take place of proof as that would be miscarriage of justice, which must be avoided. The facts and circumstances, lead to a conclusion that the prosecution has failed to prove its case beyond reasonable doubt against the accused and the accused should be given benefit of doubt. Even Hon"ble Apex Court, in the matter of Sujit Biswas Vs. State of Assam-2013 Cri. L.J. 3140 (SC) has expressed its view on the same line that suspicion howsoever strong cannot assume form of proof and a doubt is not a trivial or mere a probable doubt but a fair doubt based upon reasons and common sence. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. PW1 did not utter any single word against the accused.

Thus, the prosecution had failed to bring out any evidence against the accused and they could not hence be held guilty. Point 1 is found against the prosecution.

POINT 2

10. In the light of the findings above it is concluded that the accused is not guilty of committing offence under Section 324 r/w 34 of Indian Penal Code. Point 2 lost its significance.

Consequently, the accused are acquitted of the offence under Section 324 r/w 34 of Indian Penal Code. The acquittal is made under Section 248(1) CrPC. The accused are set at liberty and their bail bonds are cancelled. PR 734/22 tile piece shall be destroyed after expiry of period of appeal.

Dictated to my CA, verified by me and typewritten into my personal laptop and pronounced by me in the open Court on this the 4th day of October, 2024.

Sd/-

JUDICIAL FIRST CLASS MAGISTRATE-II
HOSDURG

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APPENDIX

Witnesses examined for the Prosecution

PW1 : Sureshan C(injured witness)

CW1

Exhibits marked for the Prosecution

<u>Exhibits</u>	<u>Date</u>	<u>Documents</u>
P1/PW1	:24/5/24	FIS

Witnesses examined for the defence : Nil

Exhibits marked for the defence : Nil

Material Objects marked : Nil

Sd/-

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