

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 8<sup>TH</sup> DAY OF NOVEMBER, 2019

BEFORE

THE HON'BLE MR. JUSTICE K.N. PHANEENDRA

**CRIMINAL APPEAL No. 1310/2010**

BETWEEN :

-----

Mahadeva M  
S/o. Mahadeva B.  
Aged about 26 years  
R/a. No. 103  
7<sup>th</sup> Cross  
Cholurupalya  
Magadi Road  
Bangalore.

... APPELLANT

(By Sri. A.N. Radhakrishna, Adv.)

AND :

-----

State of Karnataka  
By Magadi Road Police  
Rep. by the State  
Public Prosecutor  
High Court Building  
Bangalore.

... RESPONDENT

(By Sri. Honnappa, HCGP)

---

This Criminal Appeal is filed under Section 374(2) of Cr.P.C. with a prayer to set aside judgment of conviction and sentence dated 03.12.2010 passed by the P.O., FTC-V Bangalore in S.C. No. 449/2009 convicting the appellant/accused for the offence punishable under Section 333 of IPC and etc.

This Criminal Appeal coming on for Hearing this day, the Court delivered the following;

### **J U D G M E N T**

This appeal is preferred against the judgment of conviction and sentence dated 03.12.2010 passed by the Fast Track Court-V, Bengaluru city in S.C. No. 449/2009 in convicting the appellant-accused for the offence punishable under Section 333 of IPC and sentenced him to undergo simple imprisonment for one year and to pay a fine of Rs.5,000/- with default sentence that he shall further undergo simple imprisonment for a period of three months.

2. I have heard the arguments of the learned counsel for the appellant and the learned High Court

Government Pleader for the respondent - State.

Carefully perused the entire materials on record.

3. Learned counsel for the appellant submitted that the trial court has not properly appreciated the oral and documentary evidence on record and misconstrued itself that the offence falls under Section 333 of IPC. The material document has not been produced and marked by the prosecution which is the harbinger in this case, that is the particular bus ticket issued by the complainant in favour of the wife of accused. Therefore, the case itself falls to the ground and on that ground itself the accused is entitled to be acquitted.

4. Per contra, the learned High Court Government Pleader submitted that the trial court has in detail considered the oral and documentary evidence on record in just and proper perspective and rendered the

judgment and sentence against the accused and it does not call for interference.

5. Before advertng to the above said submissions made by the learned counsel for parties, it is just and necessary for this Court to have the brief factual aspects of the case.

6. The case of the prosecution is that on 23.09.2008 the accused and his wife were traveling in a BMTTC bus bearing registration No. KA-01-F-1816, route No. 241-C/3 plying from K.R. Market to Yele Kodihalli route. P.W.2 – the complainant by name Umesh was the conductor and P.W.4 – Gurudev was the driver of the said bus. It is the case of the prosecution that P.W.2 was issuing tickets to the passengers and at that time the accused picked up quarrel with him for flimsy reason and obstructed him from discharging his duty as a public servant on the ground that P.W.2 had issued a ticket to the wife of the accused by writing on its

overleaf 'I love you'. On the said ground quarrel took place between P.W.2 and the accused and it is alleged that the accused assaulted P.W.2; he caught hold of his collar, dragged him out, kicked him and assaulted by fist on his nose, chest and caused grievous hurt. He particularly caused fracture of nasal bone and thereby committed an offence under Section 333 of IPC.

7. The prosecution, in order to bring home the guilt of the accused, has examined as many as six witnesses as P.Ws.1 to 6 and got marked 8 documents as Exs.P.1 to 8 and M.Os. 1 and 2 which are the shirt and banian of P.W.2 were also recovered in this case. The accused was examined and statement as required under Section 313 Cr.P.C. was recorded. However, he did not lead any oral evidence on his side. After hearing both the sides, the trial court has passed the impugned judgment and sentenced as noticed supra.

8. The entire case revolves around the evidence of P.W.2 and the evidence of the Investigating Officer. It is the case of the prosecution that as per the evidence of P.W.2 that on that particular day of the incident when the bus reached near Magadi Road tollgate he was issuing tickets. The accused and his wife have boarded the said bus and the accused caught hold the neck collar of P.W.2 and assaulted him on his face, kicked him on the chest etc., on the ground that P.W.2 had issued a ticket to the wife of the accused by writing the words 'I love you' on its overleaf. Therefore, it is stated that while discharging his duty as public servant the incident happened and he suffered grievous injury. Of course, the said version is also supported by the evidence of P.W.3 – the Doctor, who treated him and has issued a certificate as per Ex.P.6 which discloses that X-Ray of nasal bone of P.W.2 was taken which depicts that there was fracture of nasal bone and no other injuries were found on the body of P.W.2. Of

course, the grievous hurt has been caused by the accused as per the evidence of P.W.2. In the course of cross-examination it is suggested that ticket issued to the wife of the accused was destroyed by the complainant himself in order to avoid evidence against him. He also admitted that there were more than 35 passengers present in the bus at that particular point of time. Other than these two important suggestions no worth cross-examination has been done. In the examination-in-chief itself so far as this ticket is concerned, P.W.2 has admitted that he had issued the said ticket to the wife of the accused and the said ticket was given to the accused and accused returned the said ticket and in fact the said ticket was handed over to the police during the course of investigation and the police have taken that ticket and also arrested the accused person on that particular day. But, peculiarly enough neither P.W.2 has produced the said ticket nor the police have produced the same before the Court nor

it is shown to have been seized from the custody of anybody in this case. Therefore, the said ticket is the harbinger in this particular case. What actually was written on the said ticket would have been depicted if that ticket was produced before the Court. If really the allegations made by the accused that P.W.2 had written the words 'I love you' on the overleaf of the said ticket then in such an eventuality it cannot be said that he has not done that particular act while discharging his duty as a public servant. If that were to be proved it becomes unbecoming of a public servant. Therefore, it cannot be said that at the time of discharging his duty as a public servant the incident happened as if this incident happened between two individuals. In that context due to enragement and due to the above said circumstances the accused might have assaulted the injured. Therefore, under the above said circumstances, the Court has to examine whether the said allegation



falls under Section 333 of IPC or not as held by the trial court.

9. It is worth to refer to the provisions of Section 333 of IPC which reads thus:

**“333. Voluntarily causing grievous hurt to deter public servant from his duty.-** *Whoever voluntarily causes grievous hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”*

In order to prove an offence under Section 333 of IPC the prosecution has to prove beyond reasonable doubt

that the accused has caused grievous hurt to any person being a public servant while discharging his duty as such public servant or with an intention to prevent or deter that person or any public servant from discharging his duty as such public servant. Therefore, in this context it is not only to be proved that P.W.2 was a public servant but it is also to be proved that P.W.2 while discharging his duty as a public servant and the accused has deterred him or prevented him from discharging his duty as a public servant. As I have already noted the ticket issued by P.W.2 in such manner as alleged by the accused is produced, in such an eventuality the Court cannot hold that when he was discharging his duty as public servant he has committed the said offence and the Court has to find out what exactly was the offence committed by the accused.

10. Section 335 of IPC may be the answer to the said question which says that:

**“335. Voluntarily causing grievous hurt on provocation.-** *Whoever [voluntarily] causes grievous hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause grievous hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to four years, or with fine which may extend to two thousand rupees, or with both.”*

Therefore, the factual aspects of this case when correspondingly tested with this particular section it is seen that accused has issued a ticket containing the words ‘I love you’ to the wife of accused. Normally in such circumstances one can enrage himself with such particular act as that of accused. Therefore, it can be inferred from the circumstances by the Court that due

to grave and sudden provocation the accused acted in such a manner and assaulted P.W.2 and caused grievous hurt.

11. Looking to the above said circumstances the accused and P.W.2 were earlier not known to each other and it was a sudden act which has taken place on that particular day. There were no previous bad antecedents alleged against the accused. Therefore, in my opinion, instead of sentencing the accused to undergo imprisonment it would be suffice if the Court orders for imposition of fine invoking provisions of Section 335 of IPC.

12. For the above said reasons, the judgment of conviction and sentence passed by the trial court is liable to be set aside. However, the accused has to be held guilty for the offence punishable under Section 335 of IPC. Accordingly, the following;

**ORDER**

- i. The appeal is partly allowed.
- ii. The judgment of conviction and sentence passed in S.C. No. 449/2009 dated 03.12.2010 by Fast Track (Sessions) Judge-V, Bangalore City, in convicting and sentencing the appellant for the offence punishable under Section 333 of IPC is hereby set aside.
- iii. However, the accused/appellant is convicted for the offence punishable under Section 335 of IPC and sentenced to pay a fine of Rs.2,000/-. In default, to undergo simple imprisonment for one month.
- iv. If the fine amount of Rs.5,000/- as ordered by the trial court has already deposited by the accused, out of the said amount a sum of Rs.2,000/- shall be taken as fine and the remaining amount of Rs.3,000/- has to be refunded to the accused on proper identification.

- v. If the fine amount is not deposited by the accused, then the appellant has to deposit the same within a period of one month from the date of receipt of copy of this order.

Sd/-  
JUDGE.

LRS.