

N.R. Murthy Vs. P.D. Narayan

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Court : Karnataka

Decided On : Aug-02-1956

Reported in : AIR1957Kant18; AIR1957Mys18; 1957CriLJ209; ILR1956KAR241

Judge : Padmanabhiah and ;Sreenivasa Rau, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 256, 258(1) and 259;
[Indian Penal Code \(IPC\), 1860](#) - Sections 323

Appeal No. : Criminal Appeal No. 24 of 1956

Appellant : N.R. Murthy

Respondent : P.D. Narayan

Advocate for Def. : F.R. Xavier, Adv.

Advocate for Pet/Ap. : V.R. Govindarajulu, Adv.

Judgement :

1. This is an appeal preferred by the appellant-complainant against the order of the learned First Class Magistrate, Civil Station, Bangalore, in C. C. No. 611 of 1955, acquitting the respondent-accused of an offence under Section 323, I. P. C.
2. The facts that have given rise to this appeal are briefly as under:

3. The appellant and respondent were the complainant and accused respectively in C. C. No. 611 of 1955 on the file of the learned First Class Magistrate, Civil Station. The case for the complainant was that he and the accused are two of the Committee Members of the Bangalore Committee of Mysore State Football Association, that a monthly meeting of that Association was held on 4-5-1955 at No. 113. B. Brigade Road, that, when one of the subjects was being discussed, the complainant got up to speak which the accused opposed, that after obtaining the permission of the President the complainant got up to speak, that the accused sprang up and caught hold of the complainant's collar and assaulted him which resulted in injury to the complainant and that the accused thereby committed an offence under Section 323, I. P. C.

4. Three P. Ws. were examined including the complainant. A charge under Section 323, I. P. C. was framed against the accused and subsequently the case was posted for further cross-examination of the prosecution witnesses. On 12-12-1955 the complainant and the prosecution witnesses were absent and the learned Magistrate acquitted the accused under Section 258(1) of the Cri. p. C. as the complainant and the witnesses were absent and as they were not available for further cross-examination at the hands of the accused. It is against that order of acquittal that this appeal is preferred.

5. The point that arises for consideration is whether the order of acquittal is proper and whether it has to be upheld. It appears to us that the order cannot legally be sustained. From a perusal of the order-sheet in the case and on the facts admitted before us. It is clear that no attempt was made by the Court to secure the attendance of the prosecution witnesses for subjecting them to further cross-examination at the hands of the accused. The observation of the learned Magistrate in the course of his order that the prosecution witnesses could not be secured in spite of a number of adjournments is not correct. From a perusal of the order of the learned Magistrate, it appears to us that the Magistrate is under an impression that it is the duty of the complainant to secure the witnesses for purposes of further cross-examination and that on default on the part of the complainant in this behalf the accused is entitled to an acquittal. The Magistrate appears to be in error in this view.

6. in a warrant case, after a charge is framed, the complainant will be out of the picture and it is the duty of the court to secure such of the witnesses for the prosecution as are required by the accused for further cross-examination. This view is supported by the case reported in *Raisingh Chamar v. Patia Chamar*, 20 Cri LJ 763 : (AIR 1918 Nag 76) (A). Under such circumstances, no duty is cast upon the complainant to secure the witnesses for the prosecution unless he had undertaken to produce them.

In this connection, the case reported in *Sagnir Uddin v. Mt. Munni*. SO Cri LJ 674 : (AIR 1949 All 1428) (B) may be perused. The proper procedure to be adopted by a Magistrate under such circumstances is to make all efforts to secure the attendance of the witnesses, if so required by issue of coercive process. It is illegal to acquit the accused on account of the absence of the complainant as that procedure in such cases is not contemplated under Section 259 of the Cri. P. C., or on account of the absence of the prosecution witnesses without taking adequate steps to secure their attendance.

7. The next point that arises for consideration is whether the circumstances in the case are such as to induce us to interfere with an order of acquittal and to order a retrial. If the accused has acted in the way as alleged in the complaint, his conduct is really reprehensible. Both the complainant and the accused are members of an Association which is supposed to consist of men with some decency, culture and education. Such conduct on the part of individual members does not rebound to their credit and will have the effect of undermining the reputation of the Association which it is the duty of every member to safeguard. Considering the nature of the alleged offence and the circumstances under which it is said to have been committed and also the time that has elapsed, we are of opinion that no interference is called for.

8. in the result, this appeal is dismissed.

9. Appeal dismissed.