

KADG010029712023



Presented on : 07-08-2023
Registered on : 07-08-2023
Decided on : 13-01-2025
Duration : 01year 05months 06 days

**IN THE COURT OF
PRINCIPAL DISTRICT AND SESSIONS JUDGE,
AT DAVANAGERE,
(Presided Over by SMT. RAJESHWARI N HEGDE)**

CRL.A.69/2023

APPELLANT:

Police Inspector
(Women Police Station)

VERSUS

RESPONDENTS:

1. Ravikumar G.R. S/o Rajappa K.G.
Age: 29 years, Occ: Business,
R/o: Davangere.
2. Rajappa K.G. S/o Late Basappa,
Age: 55 years, Occ: Agriculture,
R/o: Kabbur, Davangere.
3. Manjunath B.R. S/o Ramappa,
Age: 31 years, Occ: Boragondanahalli,
R/o: Davangere.
4. Shivamurthy S.C. S/o Channaveerappa.C.
Age: 38 years, Occ: Emmenaghatta,
Davangere.

5. Shivappa Pujar S/o Mahadevappa Pujar.

Age: 55 years,

R/o: Kabbur, Davangere.

6. Uddan Nagaraj S/o Gangappa,

Age: 35 years,

R/o: Kabbur, Davangere.

7. Nagaraj E. S/o Eshwarappa.

Age: 39 years,

R/o: No.531/18,

Mouneshwara Badavane.

Nituvalli, Davangere.

Advocate for Appellant: by Public Prosecutor.

Advocate for Respondents/accused : No.1 to 4, 6 & 7 by Sri MSM.,

Advocate. A.5 is dead.

JUDGMENT

1. This appeal is assailing the Judgment and order of acquittal passed in C.C.No.1194/2018 by the learned 2nd Addl Senior Civil Judge and JMFC, Davanagere (for short 'trial court') dated 30.12.2022, wherein the respondents No.1 to 8 herein have been acquitted of the offences punishable U/ Ss. 143, 147, 323, 354, 504 R/w 149 of IPC.

2. Rank and status of the parties will be referred to hereinafter as their ranking before the Trial Court for the purpose of convenience. The appellant who is Women Police station Davangere, was the complainant before the trial Court and the respondents were the accused before the trial

Court.

3. Facts in brief are that : ASI Women Police Station, Davangere filed the charge sheet against accused No.1 to 8 alleging that accused No.1 to 8 that on 27.12.2016 in Vishwaguru Jewellery shop situated at Ashoka Road, Davangere and also in C.G.Hospital, Davangere abused the complainant CW.1, assaulted, insulted and thereby committed the offences punishable under Section 143, 147, 323, 354, 504 R/w 149 IPC.

4. After filing the charge sheet, summons issued to the accused and they are on court bail. After hearing the accused regarding framing of charge, the trial court has framed the charge against accused persons for the offences punishable under Secs. 143, 147, 323, 354, 504 R/w 149 IPC. Accused persons are denied the charges levelled against them and pleaded for trial.

5. The prosecution in order to bring home the guilt of accused, examined 12 witnesses as PWs.1 to 12 and got marked 17 documents as Ex.P.1 to P.17.

6. After completion of prosecution evidence, the accused were examined as contemplated under Sec. 313 of Cr.P.C., and they denied the incriminating evidence against them. They did not choose to adduce

any oral evidence or to got mark any documents.

7. The trial court after hearing the learned APP and the counsel for the accused, proceeded to pass the impugned judgment, whereby the trial court has acquitted the accused of the offences punishable under Secs.143, 147, 323, 354, 504 R/w 149 IPC vide impugned judgment dated: 30.01.2022.

8. Being aggrieved by the impugned judgement, the Complainant/State has preferred the present appeal on the following:-

GROUND

i) Trial Judge has erred in acquitting the accused instead of convicting them. The present case is against the women, the complainant who is the victim of the incident deposed about the incident, but the Trial court has not appreciated the evidence of the complainant who is examined as P.W.4 and erroneously acquitted the accused.

ii) the complainant-P.W.4 in the course of evidence deposed that accused No.1 assaulted her with fist on her nose and thereby she sustained grievous injury on her nose which is seen in the wound certificate Ex.P12. Though

the prosecution has produced the evidence of Doctor and the document Ex.P12, and further at the time of framing the charge, the Trial court has not framed the charge against the accused for the offence punishable under Section 325 IPC and thereafter the prosecution has filed application under Section 216 of Cr.P.C. as well under Section 91 R/w 311 Cr.P.C. to recall the evidence of Doctor to establish that complainant P.W.4 has sustained the grievous injuries and the prosecution intended to get mark the documents i.e. X-ray report, pertaining to the wound of the complainant, and the Trial court has framed the charge under Section 325 IPC by allowing the application of the prosecution, thereafter the Trial court issued summons to the Doctor who was examined as P.W.8, at the time of issuing summons to the Doctor P.W.8, to appear before the court and to give further evidence by producing X-ray report, the Trial court not issued the summons to the Doctor PW.8 to bring the said X-ray report and to depose before the court and thereby as there is no specific direction to the witness in the witness summons to bring X-ray report, PW.8 the Doctor did not bring the X-ray report and

therefore the said document could not mark as an exhibit by the prosecution and therefore, the Trial court has come to the conclusion that the prosecution has failed to prove that the accused have committed the offence punishable under Section 325 IPC. Hence, in the operative portion of the judgment, that there is no mention about Section 325 IPC, and hence it is contended that the Trial court has committed an error and this matter may be remanded to the Trial court for fresh disposal directing to consider the offence punishable under Section 325 IPC.

(iii) though the prosecution examined the complainant P.W.4, produced the document Ex.P12 wound certificate and also examined the Doctor P.W.8, the Trial court without appreciating the evidence on record, came to wrong conclusion that the prosecution failed to establish the guilt of the accused. Thereby the trial court has committed illegality in acquitting the accused.

On these grounds, the appellant contended that the impugned judgement passed by the trial court is capricious, arbitrary and oppose to law and on facts and all probabilities of the case. Hence, prayed for

setting aside the impugned judgement by allowing this appeal and to remand the matter to the trial court for fresh consideration by including the Sec.325 IPC.

9. After filing the appeal, notice served on the respondents and in response to the notice, the respondents appeared through their Counsel and resisted the appeal.

10. At the time of filing the appeal, there is 181 days delay in filing the appeal. Learned PP filed application under Sec.5 of Limitation Act seeking condonation of delay of 181 days.

11. Trial Court records secured.

12. Heard the arguments of learned Public Prosecutor and the learned Counsel for the respondents No.1 to 4, 6 and 7 Sri.M.S.M. A.5 reported to be dead during the pendency of this appeal.

13. Perused the records.

14. After hearing the learned PP and the learned counsel for the respondents, after going through the grounds urged in this appeal memo and after going through the reasons assigned by the learned Magistrate after going through the impugned Judgement, the following points do arise for my consideration:-

P O I N T S

(1) Whether the prosecution has made out grounds to condone the delay of 181 days in filing the appeal?

(2) Whether the appellants/prosecution establishes that the Trial court has committed an error while issuing summons to the Doctor PW.8 and not directed him to bring the relevant document and to depose before the court?

(3) Whether the Trial court has not properly appreciated the evidence of the complainant PW.4, evidence of the Doctor PW.8 and wrongly came to the conclusion that the accused are entitled to an acquittal?

(4) Whether the prosecution establishes that this is fit case to remand to the Trial court for fresh disposal?

(5) What order?

15. My answer to the above points are as under:-

Point No.1 : In the Affirmative.

Point No.2 to 4: In the Negative.

Point No.5 : As per final order for the following:-

R E A S O N S

16. POINT No.1:- At the time of filing the appeal the prosecution filed the application under Section 5 of Limitation Act seeking an order to condone the delay of 181 days in filing this appeal.

17. The respondents/accused have not filed any objection on this application and not seriously contested about the delay in filing this appeal. In the affidavit filed along with this application, learned PP has stated that impugned judgment passed by the Trial court was on 30.12.2022 soon after the pronouncement of judgment by filing copy application and copy was received on 07.02.2023 and thereafter it was sent to the higher office for opinion whether the appeal to be filed or not and the procedure in obtaining the permission to file the appeal is delayed because the prosecution Department is the Government Department and thereby there was delay in according permission to file the appeal and therefore it is contended that there is delay in filing the appeal.

18. Considering that the prosecution Department as a Government Department number of matter are pending for opinion and there is all chances of delay in the proceedings and if delay is not condoned this court is of the opinion that the prosecution will be put to hardship and hence this court is of the opinion that the delay in filing the appeal may be condoned. Accordingly, I answer Point No.1 in the Affirmative.

19. Point No.2 to 4: Learned P.P. argued that though the independent witnesses turned hostile to the prosecution case, the victim deposed before the court and her evidence is credit worthy to accept but the Trial court did not accept the evidence of P.W.4 the victim, erroneously acquitted the accused. Further learned P.P. also argued that as per the wound certificate and as per the evidence of Doctor, victim P.W.4 sustained grievous injuries and the Trial court has passed the order on the application of the prosecution to alter the charge and to include Section 325 IPC, instead the Trial court not touched upon the said Section 325 IPC i.e. the P.W.4 sustained grievous hurt. Therefore, learned P.P. argued that this case may be remanded to Trial court to consider the evidence afresh. More particularly for the offence punishable under section 325 IPC.

20. As against the arguments of learned P.P. respondents/accused counsel submitted that in this case

the complainant and the accused No.1 are wife and husband. Matrimonial dispute is pending between them. There are other 5 cases also pending i.e. divorce petition, criminal cases are pending. The Trial court has rightly appreciated the evidence on record and has come to the right conclusion that the prosecution failed to establish the guilt of the accused. Therefore, learned counsel for the accused argued that there is no need to interfere with the Trial court judgment and hence prays for dismissal of the appeal.

21. After hearing the arguments of both sides, now this court has to scrutinize the evidence placed by the prosecution whether from the evidence of prosecution evidence, guilt of the accused were established.

22. For better appreciation, particulars of the witness, sum and substance of their evidence narrated as under:-

23. P.W.1 to P.W.3 said to be the eye witness to the incident but they have not supported the prosecution case. Learned APP treating P.W.1 to P.W.3 as hostile witness, cross examined them. During the cross examination, their statement made before the Investigation Officer confronted to them as per Ex.P1 to Ex.P3. But P.W.1 to P.W.3 denied their statement confronted as per Ex.P1 to Ex.P3. Therefore the evidence of P.W.1 to P.W.3 not make any help to the prosecution case.

24. P.W.4 the complainant deposed that accused No.1 is her husband, she knows other accused. Vishwaguru Jewellery shop situated at Davangere belonged to her husband-accused No.1. There are family matters pending between her and her husband in the family court and the case which was pending in the High Court was dismissed and thereafter that on 27.12.2016 she went to Vishwaguru Jewellery shop at 2-30 p.m. and asked her husband to take her along with him and at that time her husband accused No.1, dragged her tuft, assaulted her on her body, hand and also on chest and further accused No.1 insulted P.W.4 in front of police. She further deposes that workers who are working in the shop, pacified the quarrel, thereafter she went to C.G.Hospital for treatment and when he and her husband were going to take X-ray of her, again accused No.1 to 8 came there and assaulted on her and also assaulted her father. She further deposed that as there was galata in C.G.Hospital, Badavane police came to know about the galata and came to the hospital wherein complainant lodged the complaint as per Ex.P4. She further deposes that 2 days after, police took her to the spot and conducted spot mahazar as per Ex.P5 and took the photographs as per Ex.P6 and Ex.P7. Further the police also took her to C.G.Hospital, X-ray section wherein they have conducted mahazar as per Ex.P8 and photos were taken as per Ex.P9 and Ex.P10.

25. P.W.5 father of the complainant deposed about the assault made by the accused and there is family dispute the complainant and the accused. After he came to know about the incident, he went to C.G.Hospital and the accused 1 to 7 came there and assaulted complainant.

26. P.W.6 is said to be the witness to the spot mahazar Ex.P5 and Ex.P8 but he has not supported the prosecution version. The notice issued to him to stand as witness is marked as Ex.P11. P.W.6 was treated as hostile to the prosecution case and cross examined by the learned APP. Despite of cross examination the prosecution could not elicit favourable evidence in support of prosecution version.

27. P.W.7 another mahazar witness to Ex.P5 and Ex.P8 also not supported the prosecution case. He turned hostile. Though he cross examined by learned APP. Nothing worth elicited to support the prosecution version.

28. P.W.8 Doctor deposed that she has been working in C.G.Hospital as Doctor, that on 27.12.2016, complainant came along with her father to the hospital for treatment. P.W.8 examined the complainant and treated her and came to know that the complainant sustained injury on forehead, headache, abrasions on the face, injury on the nose. She took X-ray and as per the X-ray report there was fracture of nose of the complainant and Doctor opined that injury No.4

is grievous in nature and she issued wound certificate as per Ex.P12.

29. P.W.9 then ASI of Vidyanagar police station deposed that on 29.12.2016 at 3.00 p.m. CW.1 came to Vidyanagar police station and lodged the complaint which is registered by her in Crime No.108/2016 and he sent FIR. Further she deposed that she visited the spot i.e. Vishwaguru Jewellery shop, C.G.Hospital conducted spot mahazar and she has received the wound certificate and after completion of the investigation she filed the charge sheet. Rough sketch marked as Ex.P13 & Ex.P14 and P.W.9 further examined and got marked the FIR as Ex.P17.

30. P.W.10 is said to be the eye witness to the incident. She is the sister of the complainant. She deposed that about the incident.

31. P.W.11 is said to be the eye witness to the but he did not support the prosecution case. His statement made before the Investigation Officer got marked as Ex.P15 but he denied the said statement.

32. P.W.12 is said to be another eye witness to the incident. He has not fully supported the case of the prosecution. Learned APP cross examined P.W.12. During the course of cross examination his statement made before the

Investigation Officer got marked as Ex.P16 but he has denied the said statement.

33. On the basis of the aforesaid evidence of the prosecution witnesses learned P.P argued that P.W.4 injured, P.W.8 Doctor deposed about the incident, evidence of P.W.4 the complainant is corroborated with the evidence of P.W.8 Doctor, and further on the application filed by the prosecution to recall the Doctor, to produce the X-ray report were allowed by the Trial court, despite, Trial court did not consider the evidence and wrongly acquitted the accused. It is argued that it is specific case for remand by giving opportunity to the prosecution to examine the Doctor and to establish the guilt of the accused.

34. Contrary to the argument of the learned P.P. learned counsel for the accused argued that though P.W.4 the victim deposed about the incident but there is matrimonial cases pending before the complainant-PW.4 and the accused No.1, with such grudge, the complainant filed the false case against these accused. He has referred to the cross examination of P.W.4 wherein P.W.4 has admitted certain facts. I have gone through the cross examination of PW.4. In the cross examination, P.W.4 has admitted that accused No.1 has filed the case before the Family court which is admitted by her. But she has denied the correctness of the said case. It is suggested to her that despite the order

passed by the Family court, she did not go with the accused No.1 to lead matrimonial life. Further it is suggested to her that on 25.7.2016 she herself assaulted accused No.1 and about this fact, it was published in the newspaper. It is suggested to her that on 27.12.2016, she herself went to the shop of accused No.1, and broken the glasses of said shop by pelting stones and in that regard criminal case in Crime No.132/2016 registered in Basavanagara police station. She has admitted that there are 3 cases pending against her but she deposes that the said 3 cases are false cases. She has admitted that she is B.Com Graduate. Further she has admitted that soon after the incident on 27.12.2016 she did not lodged the complaint. She further says that as she was tired, she could not lodge the complaint. Further she admitted that in the complaint she did not mention accused No.1 dragged her tuft and assaulted her all over body with legs and hands but she says that in the statement she has stated that fact. Further she stated that she has not taken treatment as inpatient. She took treatment as outpatient. Further she admitted that she has not stated in the complaint that in the C.G.Hospital in front of X-ray Department incident happened. She says that she does not know that there is out police station in C.G.Hospital. It is suggested to her she has filed the false case which is denied by her. Further it is also suggested that her father is a leader in Raita Sangha and she is not

interested to live matrimonial life with accused No.1 and with an intention to grab the property of the accused No.1, she files the false complaint which is denied by her.

35. On perusal of the cross examination of P.W.8 the Doctor, he has deposed that the injuries sustained by P.W.4 can be caused if a person fell on the rough surface. Further P.W.8 admitted that in the wound certificate Ex.P12 there is no mention of blood stained. It is suggested to P.W.8 that the injury sustained by P.W.4 on her nose is false and he has given false certificate which is denied by P.W.8.

36. Learned P.P. categorically argued that in the wound certificate Ex.P12, Doctor has opined that there is fracture of nasal bone on right side and the injury is grievous in nature. Further learned P.P. argued that in the wound certificate Ex.P12, there is mention of history of assault by her husband on 27.12.2016. Learned P.P. argued that there is clear evidence of P.W.8 the Doctor that there is document i.e. Ex.P12 wound certificate and P.W.4 complainant has deposed about the assault made by her husband on her nose. This evidence itself sufficient to prove that P.W.4 sustained grievous injury and thereby the prosecution has established that the accused has committed the offence punishable under Section 325 IPC.

37. I have gone through the complaint Ex.P4. Complaint filed on 29.12.2016 at 3.00 p.m. before the Women police

station, Davangere. On careful reading of the complaint, incident happened on 27.12.2016. It is mentioned that the accused assaulted on her body and they dragged her. Nowhere in the complaint it is mentioned that the accused No.1 assaulted on her nose with his fist, thereby there is improvement in her evidence that she stated that for convenience reference it is reproduced as under.

38. 1 ನೇ ಆರೋಪಿ ತನ್ನ ಬಲಗೈ ಮುಷ್ಟಿಯಿಂದ ನನ್ನ ಮೂಗಿಗೆ ಗುದ್ದಿರುತ್ತಾರೆ. If at all the accused No.1 really assaulted on her nose with his fist, then in the complaint Ex.P4 she could have stated the said very important material fact but in the complaint it is not stated. Only in her evidence she has deposed about the said fact. Thereby it appears that it is an improvement. Further there is no convincing explanation about the delay in filing the complaint. There is 2 days delay in filing the complaint (incident happened on 27.12.2016, whereas the complaint given on 29.12.2016). Though the complainant P.W.4 has stated that as she suffered tiredness on the date of incident, she lodged the complaint after 2 days. When the incident said to have happened in the hospital itself, then the complainant could have immediately lodged the complaint with the out police station situated in C.G.Hospital but she has not lodged the complaint.

39. Learned counsel for the accused/respondent argued that the accused No.1 and the complainant are husband and

wife that there are several cases pending between them before the various courts and those cases are running from 10 to 12 years, and further except the evidence of the complainant P.W.4, other eye witnesses turned hostile to the prosecution, therefore learned counsel for the respondent argued that this is a false case filed by the complainant with grudge against the accused No.1 and therefore prays for acquittal of the accused.

40. On scrutiny of the evidence of the prosecution, in this case there is delay in lodging the complaint, further in the complaint Ex.P4, that there is no mention about the assault made by the accused No.1 on her nose, further the accused No.1 and the complainant are husband and wife. There is matrimonial case pending before the Family court, and the eye witnesses turned hostile to the prosecution, this court is of the opinion that the prosecution has failed to prove the guilt of the accused beyond reasonable doubt. Though the Trial court has failed to discuss about Section 325 IPC as contended in the grounds of appeal and that it is true that the prosecution could not given sufficient opportunity to produce the X-ray report, this court is of the opinion that taking into consideration of the facts and circumstances of the case, prosecution has failed to prove the guilt of the accused beyond reasonable doubt and the Trial court has rightly come to the conclusion that the prosecution has failed to prove the guilt of the accused and the accused are

entitled to an acquittal, this court did not find any merits in this appeal and the grounds urged in this appeal are not substantial and thereby the appeal deserves to be rejected. Accordingly, Point No.2 to 4 answered in the Negative.

41. POINT No.5: In view of my finding on points No.2 to 4 in the Negative, I proceed to pass the following:

42. For the foregoing reasons, I pass the following;

ORDER

The Criminal Appeal is dismissed.

The impugned judgment and sentence passed by the learned II Addl Senior Civil Judge, Davanagere in C.C.No.1194/2018 dated 30.12.2022 is confirmed.

Return trial Court records along with copy of this judgment for reference of the trial Court.

(Typed to my dictation by the Stenographer Grade-II, after his typing, corrected, signed and then pronounced by me in the open Court this the 13th day of January, 2025.)

(RAJESHWARI N.HEGDE)
Principal District & Sessions Judge,
Davanagere.