

KADG010010562025



Presented on : 25-03-2025

Registered on : 25-03-2025

Decided on : 01-04-2026

Duration : 01years, 00months, 07days.

**IN THE COURT OF
PRL DISTRICT AND SESSIONS JUDGE DAVANGERE
AT DAVANGERE,**

(Presided Over by SMT. VELA D.K.)

CRL.A/76/2025

APPELLANT/s :-

1. Kumar S/o Late Basavarajappa,
Age : 40 years, Agriculturist,
2. Ramesh alias Ramesh Kumar Basavarajappa,
Age : 24 years, Agriculturist,
Appellant No.1 and 2 are
R/o D.No.172-2 4th Cross, Imam Nagar
Bethur Road, Davanagere.
3. Maruti P S/o Prakash K H
Age: 21 years, R/o No.3992-576
10th Cross Anjaneya Badavane,
Davanagere.
4. Suresh S. S/o Shivamurtheppa
Age: 24 years, R/o No.678-21
5th Cross, Imam Nagar Road
Davanagere.

(By Sri. R.S.V, Advocate)

-VERSUS-

RESPONDENT/s :-

State of Karnataka through PSI,
Rural Police Station,
Davanagere.

(By Learned Public Prosecutor Davanagere)

* * *

J U D G M E N T

1. This Appeal is preferred by the Appellants under Sec.374 (2) of Cr.P.C / Sec.415 (2) of BNSS, against the Judgment of conviction dated 27.02.2025 passed by the Prl, Senior Civil Judge and J.M.F.C, Davanagere in CC No.1263/2019, wherein the Appellants have been convicted under Sec.248(2) of Cr.P.C., for the offences punishable under Sec.448, 323, 324, 504, 506 R/w Sec.34 of IPC.

2. The status of the parties will be referred to hereinafter as their ranking before the Trial Court. The appellants were the accused and the respondent was the complainant before the trial Court.

3. Basically Woman Police Station, Davanagere has filed charge sheet against the accused No.1 to 4 for the offence punishable under Section 448, 323, 324, 504, 506 R/w Sec.34 of IPC. In order to prove the case prosecution has got examined 8 witnesses as PW.1 to 8, got marked documents at Ex.P.1 to 8 and MO No.1.

4. The brief facts of the prosecution have been that :

The marriage of Jyothi D/o Ningappa resident of B, Kalapanahalli village was solemnized with accused No.1 about 2 years ago. All the time while sending said Jyothi to the parental home from her matrimonial home to her parental home, a kind of quarrel would take place. Even on 24.05.2019 during the time of the marriage of the elder brother of Jyothi viz., Suresh was performed, immediately after the marriage since Jyothi had not returned to her husband's home, the accused persons with an intention to assault to CW.5, on 25.05.2019 at 5.30 p.m., had come near the house of CW.5 situated at B Kalapanahalli, abused CW.6 in foul language as “ನಿಮೌನ

ತುಲ, ವಿಂ ದ್ರಿ ಗಾಳಿ ನಮ್ಮ ಮನೆಗೆ ಬರುವುದು ಬಿಟ್ಟು ಇಲ್ಲೇ ನು ಮಾಡುತ್ತೀ "

picked up quarrel that instead of returning to the husband's home, Jyothi had continued to stay in the parental home. CW.5 had requested to allow his daughter to stay for one more day and his daughter would be sent on the next day. Then accused No.3 assaulted the CW.4 by hands and dashed against CW.4 by his head and accused No.2 assaulted CW.1 by hands. When the CW.4 came out side the house, accused No.1 by means of the knife stabbed CW.4 on his right shoulder and caused simple injuries and when the fight was stopped by the CW.1 and 5 to 8 accused persons had threatened their lives and thereby the accused committed the alleged offences.

5. The learned Prl, Senior Civil Judge and JMFC, Davanagere after taking cognizance had issued summons to the accused to appear before the court. The accused had appeared before the court through their counsel and pleaded not guilty and claimed to be tried. In order to prove their case the complainant got himself

examined as PW.1, the brother of the CW.1 viz., CW.4 was examined as PW.2, eye witness CW.5 was examined as PW.3, sister of CW.1 viz., CW.6 was examined as PW.4. The independent witnesses CW.8 and 7 were examined as PW.8 and 5 respectively. The doctor CW.9 was examined as PW.7, IO is examined as PW.6 and closed the evidence. The complaint has been marked as PW.1, spot panchanama has been marked as Ex.P.2. Photograph was marked as Ex.P.3, FIR has been marked as Ex.P.4, Gram panchayath document has been marked as Ex.P.5, wound certificate has been marked as E.P.6 and the statements of witnesses have been marked as Ex.P.7 and 8. The trial judge after hearing both sides proceeded to pass the judgment and convicted the accused No.1 to 4 and sentenced to under go S.I for 3 months and to pay fine of Rs.1,000/- each for the offence punishable under Sec.448 of IPC and in default of payment of fine further the to undergo SI for one month; further sentenced the accused to under go S.I for 3 months and to pay fine of Rs.2,000/- each for the

offence punishable under Sec.323 of IPC and in default of payment of fine to undergo S.I for one month; further sentenced the accused to under go S.I for 6 months and to pay fine of Rs.2,000/- each for the offence punishable under Sec.324 of IPC and in default of payment of fine to undergo SI for one month, further sentenced the accused to under go S.I for 3 months and to pay fine of Rs.2,000/- each for the offence punishable under Sec.504 of IPC and in default of payment of fine to undergo S.I for one month; further sentenced the accused to under go S.I for 3 months and to pay fine of Rs.2,000/- each for the offence punishable under Sec.506 of IPC and in default of payment of fine to undergo S.I for one month. It is further ordered that all the sentences shall run concurrently.

6. Being aggrieved by the judgment of conviction and order of sentence, the accused No.1 to 4/Appellant No.1 to 4 have preferred the present Appeal.

7. The grounds of the Appeal are as follows : -

That the oral evidence of the witnesses have not been properly appreciated and the learned Magistrate has wrongly convicted the accused. In the oral evidence PW.1 has admitted that the accused No.1 to be his sister's husband of complainant, earlier there were no matrimonial disputes between accused No.1 and his wife(PW.4) and only in order to support his sister, the PW.1 has deposed falsely. PW.2 is also the member of the family of CW.1. PW.3 is the father of the complainant. PW.4 is the wife of accused No.1 and has admitted about filing of the suit for partition before the Civil Court. On account of the nature of the matrimonial life of accused No.1 and his wife, false case has been filed and registered against the accused persons and the evidence adduced is not reliable. Hence, the appellants have sought to set aside the judgment of conviction by allowing the appeal.

8. In view of the Appeal filed and in response to the service of notice, the Respondent/Complainant appeared

through learned Public Prosecutor and resisted the Appeal.

9. The Trial Court Records secured.

10. Heard arguments of both side and perused the records.

11. On hearing the Appeal, the points that arise for consideration of the court are : -

P O I N T S

- 1 Does the prosecution proves beyond reasonable doubt that in the matter of sending PW.4 to the house of her parents by accused No.1, on 25.05.2019 at 5.30 p.m. in furtherance of their common interest accused No.1 to 4 intentionally committed house trespass to the house of CW.1 situated at B Kalapanahalli village within the limits of Davanagere Rural Police Station and thereby committed the offence punishable under Section 448 R/w Sec. 34 of IPC ?
- 2 Does the prosecution further proves beyond reasonable doubt that on the above said date, time and place the accused No.2 to 4 in furtherance of their common intention, picked up quarrel with CW.5, in the matter of sending the CW.6 to her husband's home, abused him in foul language and insulted him, so as to

break the public peace and thereby committed the offence punishable under Section 504 R/w Sec. 34 of IPC ?

- 3 Does the prosecution further proves beyond reasonable doubt that on the above said date, time and place, when the CW.5 had requested to allow CW.6 to stay for another one day in the parental home and that he would send CW.6 on the next day, accused No.2 and 3 voluntarily assaulted CW.3 by means of hands, accused No.4 assaulted CW.1 by means of hands and thereby committed the offence punishable under Section 448 R/w Sec. 34 of IPC ?
- 4 Does the prosecution further proves beyond reasonable doubt that on the above said date, time and place, the accused persons in furtherance of their common intention, while CW.1 had come out side the house, the accused No.1 voluntarily stabbed CW.1 by means of knife on his right shoulder and caused simple injuries and thereby committed the offence punishable under Section 324 R/w Sec. 34 of IPC ?
- 5 Does the prosecution further proves beyond reasonable doubt the accused persons in furtherance of their common intention when CW.1 and 5 to 8 had stopped the fight, threatened their lives by stating not to spare them next time, and thereby committed the offence punishable under Section 506 R/w Sec. 34 of IPC ?

- 6 Whether the judgment of conviction passed by the Prl, Senior Civil Judge and J.M.F.C, Davanagere in CC No.1263/2019, dated 27.02.2025 is based on proper appreciation of facts and law ?
- 7 Whether interference by this court in the judgment under appeal is necessary ?
- 8 What order ?

12. The findings on the above points are as follows :-

Point No.1 to 5 : - In the Negative,

Point No.6 : - In the Negative,

Point No.7 : - In the Affirmative,

Point No.8 : - As per final order, for the to 5following :-

R E A S O N S

13. **POINT NO.1 TO 5** : - The prosecution has alleged the commission of offence by the accused persons against the complainant and his family members and therefore, these points being interlinked are discussed

and answered together in order to avoid repetition of facts and circumstances.

14. The admitted facts are that the complainant's sister is PW.4, who is given in marriage to accused No.1. PW.2 is the elder brother of complainant-PW.1. That means he is also the brother of PW.4. PW.3 is the father of PW.4. Accused No.2 is the younger brother of accused No.1, accused No.3 and 4 are cousin brothers of accused No.1 and 2. PW.4 is the wife of accused No.1. The complaint marked at Ex.P.1 is filed on 25.05.2019 at 11.00 p.m. in the night by PW.1 and the allegation has been that there are six children to the parents of PW.1. In their home, PW1 resides along with PW.2 and his parents. The other elder brother Suresh has been residing at Gulbarga and his marriage was fixed on 24.05.2019. In the matter pertaining to sending PW.4 to the parental home on the occasion of marriage of her elder brother, there was said to be quarrel picked up by the in-laws of PW.6. On that day, at 5.30 p.m., the accused No.2 along with his relatives had all of a sudden

entered the house of PW.1 and picked up quarrel and abused his sister in filthy language by stating that instead of returning to the husband's home unnecessarily she was residing in the parental home. The father of PW.3 had requested to send the daughter next day. Then accused No.3 assaulted the PW.2 by hands and pushed his head on PW.2, accused No.4 assaulted the complainant/PW.1 by his hands and accused No.1 all of a sudden by means of the knife assaulted the PW.2 when he came out side the house on his right shoulder. When PW.2 came outside of the house in the mean time, the villagers of Ningappa, Gadigeppa and others cae and stopped the fight. The accused persons in reply told that they have been spared on that day and that next time, they will not be spared. On account of the injuries sustained by the PW.1 in the complaint only it is stated that there was no much injury to the complainant and therefore, he has not been taken to any hospital another brother PW.2 was taken to the C.G. hospital for treatment. Then he has filed the

complaint. The complaint has been filed on the date of incident itself. On 25.05.2019 the alleged incident was occurred oat 5.30 p.m. and the complaint filed is at 9.30 p.m., FIR registered by the IO. PW.6 has identified the regigisterd FIR as per Ex.P.4 and place of crime is described in the Col. No.4(a) of the FIR, as the complainant's house situated at B. Kalapanahalli, Davanagere taluk. The names of accused persons appear in the coloumn No.6 of the FIR. The spot panchanama has been marked as Ex.P.2, which states the place of crime was shown by PW.2 and it is bounded towards east by : house of one Puttamma, west by : House of Ningamma, north by : house of Ningappa, and south by cement road. This panchanama has been drawn on the next day i.e., 26.05.2019 between 10.00 to 11.00 a.m. and photographs of the place of incident has been marked as Ex.P.3. Bethur Grama Panchayath has issued certifying the measurement of the property as per Ex.P.5 dated 27.06.2019. and it is bearing Sy.No.184/2 measuring east - west by 30 ft and north - south by 45 ft

standing in the name of Ningappa S/o Shivappa i.e, PW.3. In the oral evidence, the father of the complainant has been examined as PW.3 who has stated about the marriage of his daughter CW.6 to have taken place with accused No.1 as well as about the assault by hands to have taken place on PW.1. This witness was treated as hostile by the prosecution before the learned Magistrate and the witness has admitted the circumstances that there was house trespass using abusive language by the accused persons that accused No.1 assaulted by means of knife - MO NO.1 on the right shoulder of PW.2 and that the accused persons had threatened their lives. PW.1 the brother of PW.4 and the son of PW.3 has also deposed about filing of complaint and the alleged incident. PW.1 has particularly stated that on the said alleged date of incident, there was statement by the accused persons to send his sister to her husband's home, further that after elders had decided then only would send sister to her husband's house accused, persons are said to have used foul

language the exact words of PW.1 in this regard are as follows :

ತಾಃ 25.05.2019 ರಂದು ಸಂಜೆ 5-30 ಗಂಟೆಗೆ ಆರೋಪಿತರೆಲ್ಲರೂ ಸೇರಿ ನಮ್ಮ ಮನೆಗೆ ಬಂದು ನನ್ನ ತಂಗಿಯನ್ನು ಕಳಿಸಿಕೊಡು ಎಂದು ಒತ್ತಾಯಿಸಿದರು. ನನ್ನ ತಂಗಿಯನ್ನು ತಮ್ಮ ಜೊತೆಗೆ ಕರೆದುಕೊಂಡು ಹೋಗಲು ಬಂದಿದ್ದು ಕೆಟ್ಟದಾಗಿ ಅವಾಚ್ಯ ಶಬ್ದಗಳಿಂದ ಬೈದರು. ಚಾಸಾ 6 ಆ ಕಾಲಕ್ಕೆ ಅವಳಿಗೆ ಅತ್ತೆ ಮನೆಯಲ್ಲಿ ತೊಂದರೆ ಕೊಡುತ್ತಾರೆ ಎಂದು ಹೇಳಿದ್ದರಿಂದ ಹಿರಿಯರನ್ನು ಕೂರಿಸಲು ವಿಚಾರ ಮಾಡಿದೆವು. ಹಿರಿಯರ ಜೊತೆಗೆ ಮಾತನಾಡಿ ಕಳಿಸುತ್ತೇವೆ ಎಂದು ಹೇಳಿದರೂ ಸಹ ಆರೋಪಿತರು ನಮ್ಮ ಮಾತನ್ನು ಕೇಳದೇ ಕೆಟ್ಟದಾಗಿ ಅಂದರೆ ಮಿಡ್ರಿ ಗಾಳಿ, ಊರ ಸೂಳೆ ಅಂತ ಬೈದರು. ಚಾಸಾ 4 ರವರು ನಾವು ಮನೆಯಲ್ಲಿ ಮಾತನಾಡಿ ಪಂಚಾಯಿತಿ ಆದ ನಂತರ ಚಾಸಾ 6 ರವರನ್ನು ಕಳಿಸುತ್ತೇವೆ ಎಂದು ಹೇಳಿದ್ದಕ್ಕೆ 3ನೆ ಆರೋಪಿತನು ಚಾಸಾ 4 ರವರಿಗೆ ಕೈದಯಿಂದ ಗುದ್ದಿದರು, ಕಲ್ಲಿನಿಂದ ಹೊಡೆದರು.

15. This portion of the evidence CW.6 i.e., PW.4 responded by stating that there would be harassment by mother-in-law of PW.4. Thereafter, meeting is held by the villagers and then they would think about sending their sister to her matrimonial home. This fact is not forthcoming in the complaint as well as in the evidence of father of the complainant viz.,PW.3. Sister of the complainant examined as PW.4 in the examination in chief has deposed that after her marriage, accused No.1

had looked after her very well. After 2 to 3 months of marriage has taken place, on 08.05.2017. Subsequently, at the instance of the mother, accused No.1 is said to have harassed the PW.4. On 24.05.2019 on the date of their marriage of their brother, when the marriage has taken place on 08.05.2017 and after 2 to 3 months matrimonial life was happy. It means that till about December 2017 the married life of the PW.4 was happy with accused No.1. PW.4 in the cross-examination has stated that in the matrimonial home her mother-in-law and brother-in-laws are staying and her brother-in-law to have been not yet married and at that time, she was the only lady at home. PW.4 has stated that she used to visit matrimonial home only for half an hour. The distance from the matrimonial home to the parental home is about 2 kilo meters. But the accused had visited the parental home of PW.4 in order to take her to matrimonial home as stated by her in the following words :

ದಿನಾಂಕ 2019 ರಂದು ನನ್ನ ಅಣ್ಣನ ಮದುವೆಗೆ ಹೋಗಿದ್ದೆನು ಅಂದರೆ ಸರಿ. ಮರುದಿನ ನನ್ನ ಗಂಡ ಮತ್ತು ಮೈದುನರು ನನ್ನನ್ನು ಕರದುಕೊಂಡು ಹೋಗಲು ಬಂದಿದ್ದರು ಎಂದರೆ ಸರಿಯಲ್ಲ. ಮೈದುನರಾದ ರಮೇಶ, ಸುರೇಶ ಮಾತ್ರ ಬಂದಿದ್ದರು ಗಂಡ ಬಂದಿರಲಿಲ್ಲ. ನಾನು ತವರು ಮನೆಗೆ ಹೋಗಲು ನಿರಾಕರಿಸಿದ್ದೇನೆ ಎಂದರೆ ಸರಿಯಲ್ಲ. ಮದುವೆಯಾಗಿ 1 ದಿನ ಮಾತ್ರ ಆಗಿದ್ದು ನನ್ನ ತಂದೆ ಅವಳು ಮತ್ತೊಂದು ದಿನ ಇದ್ದು ಬರುತ್ತಳೆ ಎಂದು ಹೇಳಿದ್ದರು.

Whereas PW.1 in his chief examination has stated that it was PW.4 who had replied that she had spoken about harassment by mother-in-law that after panchayath meeting would think over. PW.4 has stated that quarrel used to take place in regard to her visiting parental home. On the other hand, PW.1 in the course of evidence has admitted that his sister PW.4 has filed suit for partition before the Civil Court at Davanagere in OS No.348/2021. Suggestions to PW.1 has been about repeated requests by accused No.1 to send his wife to the matrimonial home and that it was refused by the PW.1. According to PW.1 and PW.2, on that day, accused No.3 had hit on his head, accused No.2 had assaulted PW.1 by hands. Particularly, accused No.1 has caused injuries by means of knife on the

right shoulder whereas PW.4 has stated that accused No.1 has not come on that day. That sentence is repeated as follow ;

ಮೈದುನರಾದ ರಮೇಶ, ಸುರೇಶ ಮಾತ್ರ ಬಂದಿದ್ದರು ಗಂಡ
ಬಂದಿರಲಿಲ್ಲ .

The independent witnesses PW.5 and 8 have totally turned hostile to the case of the prosecution. Their statement before the police have been marked as Ex.P.7 and 8, wherein the presence of accused persons is not forthcoming. From the above discussion presence of accused No.1 is contradicted by his wife PW.4 but the allegation that the accused No.1 is about using the knife against PW.2. The circumstances for the alleged incident about PW.4 to have replied to hold the panchayath meeting and then about returning to the matrimonial home is not in consonance with the version stated by herself, since PW.4 has only

stated that her broth-in-laws accused No.2 and 4 only had come to her parental home on that day.

16. Prosecution has further got examined Medical Officer PW.7, who has deposed to have examined PW.2 and found that there has been laceration measuring 10 X 02 cm with blood and wound certified issued is marked as Ex.P.6. In the wound certificate it is stated that there is no evidence of any fracture impression and hence, PW.2 stated to have suffered simple injury following the assault happened within 2 hours before his medical examination. On that day at 7-8 p.m. the PW.2 was examined by the Medical Officer and the alleged incident was taken place at 5.30 p.m.,

17. Another important aspect forthcoming in the present case is that in the panchanama wherein it is specifically stated that :

ಸ್ಥಳ ಇದೆ ಅಂತ ತೋರಿಸಿದ್ದರ ಮೇರೆಗೆ ಪಂಚರಾದ ನಾವುಗಳು ಸದರಿ ಸ್ಥಳವನ್ನು ಪರಿಶೀಲಿಸಿ ನೋಡಲಾಗಿ ನಿಂಗಪ್ಪ ತಂದೆ ಶಿವಪ್ಪ ರವರ ವಾಸದ ಮನೆಯ ಮುಂಭಾಗದ ಆವರಣವಾಗಿರುತ್ತದೆ. ಪರಿಶೀಲಿಸಿ ನೋಡಲಾಗಿ ಸ್ಥಳದಲ್ಲಿ ಯಾವುದೇ ಕಲೆ ಗುರುತುಗಳು ಕಂಡು ಬಂದಿರುವುದಿಲ್ಲ. ಪಂಚನಾಮೆ ಕಾಲಕ್ಕೆ ತನಗೆ ಕುಮಾರನು ಗಾಯ ಪಡಿಸಿದ ಅಂತ ಹೇಳಿ ಒಂದು

ಚಾಕುವನ್ನು ಹಾಜರ್ ಪಡಿಸಿದ್ದು ಪರಿಶೀಲಿಸಿ ನೋಡಲಾಗಿ ಚಾಕುವಿನ ಮೇಲೆ ಯಾವುದೇ ಕಲೆಗಳು ಕಂಡು ಬಂದಿರುವುದಿಲ್ಲ. 1/2 ಅಡಿ ಉದ್ದವಿದ್ದು ಹಿಂಬದಿಯಲ್ಲಿ ಪ್ಲಾಸ್ಟಿಕ್ ಹಿಡಿಕೈ ಇರುತ್ತದೆ. ಸದರಿ ಚಾಕುವನ್ನು ಮುಂದಿನ ಕ್ರಮಕ್ಕಾಗಿ ಪೋಲೀಸರು ತಮ್ಮ ವಶಕ್ಕೆ ತೆಗೆದುಕೊಂಡರು.

18. Since in this panchanama there is no identification of any marks or any kind of blood mark at the place or weapon, where as in the wound certificate and in the oral evidence, Medical Officer PW.9 has clearly stated that when he examined PW.2 there was blood coming out from the injured part and that his hands and legs were shaking and the exact portion of his evidence is as follows :

ಆತನ ಬಟ್ಟೆಗಳು ರಕ್ತದಿಂದ ಕೂಡಿರುತ್ತವೆ. ಬಲ ಭುಜದ ಮುಂಭಾಗದಲ್ಲಿ ಹರಿದ 10 X 2 ಗಾಯಗಳು ಕಂಡು ಬಂದಿರುತ್ತದೆ. ಹಾಗೂ ರಕ್ತ ಸ್ರಾವ ಕಂಡು ಬರುತ್ತದೆ. ಆಗ ತಾನೇ ರಕ್ತ ಹೊರಬರುವುದು ಕಂಡು ಬಂದಿರುತ್ತದೆ. ಆತ ಕೈ ಕಾಲುಗಳನ್ನು ಅಲ್ಲಾಡಿಸುತ್ತಿದ್ದು "

19. This nature of the evidence of doctor about blood to have been coming out at that time, only and is not in consonance with the nature of the weapon alleged to have been seized as panchanama at Ex.P.2. Moreover, there were no stains or anything such kind as stated in

the panchanama but in the oral evidence of doctor it is stated that cloths of PW.2 were seen with blood. There is no correlation with the version of the doctor as that of with the seizure panchanama marked at Ex.P.2. Another important suggestion to PW.1 has been that :

ದಿನಾಂಕ 25.05.2019 ರಂದು ಸಂಜೆ 5.30 ಗಂಟೆಗೆ 1ನೇ ಆರೋಪಿ ಮತ್ತು ಆತನ ಸಂಬಂಧಿಕರು ಹಾಗೂ ಹಿರಿಯರು ನಮ್ಮ ಮನೆಗೆಂದು 1ನೇ ಆರೋಪಿಯ ಹೆಂಡತಿಯನ್ನು ಕಳುಹಿಸಿಕೊಡಿ ಎಂದು ಕೇಳಿಕೊಂಡಿದ್ದು. ಆಗ 1ನೇ ಆರೋಪಿ ಮೇಲೆ ನಾವೇ ಹಲ್ಲೆ ಮಾಡಿ ಆರೋಪಿತರ ವಿರುದ್ಧ ಸುಳ್ಳು ಪ್ರಕರಣ ದಾಖಲಿಸಿದ್ದೇವೆ ಎಂದರೆ ಸರಿಯಲ್ಲ. 1ನೇ ಆರೋಪಿ ಕೌಟುಂಬಿಕ ನ್ಯಾಯಾಲಯದಲ್ಲಿ ಹೆಂಡತಿ ಮತ್ತು ಮಗುವನ್ನು ಕಳುಹಿಸಿಕೊಡಿ ಎಂದು ಕೇಸು ದಾಖಲು ಮಾಡುತ್ತಾನೆಂದು ತಿಳಿದು ಆತನಿಗಿಂತ ಮುಂಚೆ ನಾವೇ ಈ ದೂರು ದಾಖಲು ಮಾಡಿದ್ದೇವೆ ಎಂದರೆ ಸರಿಯಲ್ಲ.

20. PW.6 I.O. has stated that there was no complaint earlier of any kind filed by the complainant. The evidence of PW.6 has been about the registration of the complaint, drawing of the mahazar and taking photograph marked at Ex.P.3 and recording of statements, issuing of the notice under Section 4(a) to the accused and obtaining the gram panchayath record at Ex.P.5, wound certificate and then filing charge sheet.

21. The above nature of evidence adduced by the prosecution in respect of the offences alleged against the accused there has been major contradictions about the presence of accused No.1 itself. Since wife of accused No.1, who is PW.4 has stated that accused No.1 had not come on that day to her parental home. Nature of the phrases about the incident as stated by the PW.1 is not corroborated by the father of the PW.1 examined as PW.3 as well as sister of the PW.1. Moreover, PW.1, PW.2, PW.4 are brothers and sisters and PW.3 is their father. It is only the evidence of family members that has been appreciated but their evidence as discussed above are not correlating with each other. No doubt the witnesses PW.2 to 4 are interested witnesses. The important fact that is forthcoming from the evidence of PW.1 to 4 has been about the some kind of unhappiness in the marriage between accused No.1 and PW.4. The alleged incident is said to have taken place in regard to the returning of PW.4 to her husband's house from her parents house. Distance between her husband's house

and parental house is only 2 kms. In order to bring his wife to the matrimonial home the husband of the PW.4 went to her parental house and brought her home. In this case, the circumstances stated by the PW.4 has been that on that day her brother-in-laws had only come to the parental home and not her husband. In case, the husband accused No.1 has not come to the parental home of PW.4, then the version or the nature of allegation about the incident would be different. Only the brother-in-laws viz accused No.2 and 4 to have come to the parental home. Such kind of instance is totally different in the absence of accuse No.1, being present along with them. Therefore, the presence of accused persons with common intention have committed the offence is totally not proved by the prosecution. In the present case there is lack of consistent and corroborative evidence in relation to the alleged offences. More over, house trespass cannot arise in case the husband's family are visiting the parental house of the PW.4. The intention required in the commission of

the offences is absent. The facts and circumstance of the case being taken place in the village, the case has been about filing of the suit for partition and also for some kind of marital issues. Therefore, it implies that there were matrimonial issues between the PW.4 and accused No.1. The human tendency is always to exaggerate the small things, that would in turn, affect the life of the parties concerned. However, facts remain that the prosecution has failed to prove the guilt of the accused persons in the light of the aforesaid circumstances beyond reasonable doubt, so as to warrant conviction to the accused persons. Moreover, the knife identified at MO No.1 is as per panchanama to have been produced by the PW.2 But in the complaint, it is not even alleged that if knife was thrown in the spot at the place of crime, then how the knife came to be given by the PW.2 at the time of drawing Ex.P.2 is not forthcoming in the evidence. Hence, point Nos. 1 to 5 are answered in the Negative.

22. **POINT NO.6 AND 7** : The evidence placed before the learned Magistrate clearly shows that there has been major contradiction in the regard to the presence of accused No.1 as well as other accused persons at the time of incident. Further more, narration of the incident in the manner in which it is stated by PW.1 is not forthcoming in the evidence of PW.2 to 4. There is no independent supporting evidence of PW.5 to 8 to the version or the case of the prosecution. The medical evidence adduced is not correlating with the nature of crime narrated in the complaint. These circumstances have not been considered by the learned Magistrate.

23. The important aspect that is forthcoming in the judgment of conviction has been that the trial court has passed the judgment of conviction dated 27.02.2025 and the operative portion reads as follows :

ಆದೇಶ

ದಂಡ ಪುಕ್ತಿಯಾ ಸಂಹಿತೆ ಕಲಂ 248(2) ರಡಿ ಅಧಿಕಾರವನ್ನು
ಚಲಾಯಿಸುತ್ತಾ ಅರೋಪಿತರ ವಿರುದ್ಧ ಮಾಡಲಾದ ಭಾ.ದಂ.ಪು.ಸಂ.

ಕಲಂ 448, 323, 324, 504, 506 ಸಹವಾಚಕ ಕಲಂ 34ರ
ಅಡಿಯಲ್ಲಿ ಅಪರಾಧ ಎಸಗಿದ್ದಾರೆಂದು ತೀರ್ಮಾನಿಸಲಾಗಿದೆ.

ಆರೋಪಿತರ ಮತ್ತು ಜಾಮೀನುದಾರರ ಜಾಮೀನು
ಮುಚ್ಚಳಿಕೆಗಳನ್ನು ರದ್ದುಗೊಳಿಸಲಾಗಿದೆ.

ಆರೋಪಿತರಿಗೆ ತಕ್ಷಣದಲ್ಲಿ ತೀರ್ಪಿನ ಪ್ರತಿಯನ್ನು ಉಚಿತವಾಗಿ
ನೀಡತಕ್ಕದ್ದು.

24. Whereas the order sheet of the trial court dated
5.3.2025 reads as follows :

Suspension of sentence :

Accused have filed application under Sec.389 of
Cr.P.C. seeking for suspension of judgment and
sentence for a period of 30 days as they are
intending to prefer an appeal against the
judgment and sentence before the Appellate
Court. Perused the application. The accused
through out the trial of the case was on bail.

Learned APP filed objection and objected for
suspension of sentences. But, however, in the
interest of justice and equity I.A. filed by the
accused is allowed and order passed by this
court is suspended.

To hear on sentencing and production of surety call on 05.03.2025.

25. It means that in the operative portion of the judgment it is mentioned as bail bonds of the accused to have been canceled. In the judgment of conviction, there cannot arise cancellation of the bail bonds. But the cancellation of the bail bonds is forthcoming in the operative portion of the judgment typed on the order sheet. In the next continuing order sheet the learned Magistrate has proceeded with suspension of sentence, wherein the suspension of sentence and in view of the application filed under Section 389 of Cr.P.C. is allowed and the order passed by the court to be suspended and then posted the matter for hearing on sentencing and production of surety of that order.

26. Next stage appears in the order sheet has been to hear on sentencing and then learned Magistrate has proceeded to pass the order as follows :

Hear on sentencing;

Heard accused counsel and learned APP. Accused counsel submitted that he and the accused are having children and they are bread earner of their family. There are no antecedents against him, hence lenient view may be taken in passing the sentence.

Peruse the entire material on record and submission made by the accused person counsel. By considering the nature of offence, and act attributed by the accused. Hence, I proceed to pass the following :

ORDER

The accused are sentenced to undergo S.I. for a period of 3 months and fine of Rs.1,000/- each for the offence punishable under Section 448 of IPC. In default of payment of fine the accused shall undergo S.I. for one month.

The accused are sentenced to undergo S.I. for a period of 3 months and fine of Rs.2,000/- each for the offence punishable under Section 323 of IPC. In

default of payment of fine the accused shall undergo S.I. for one month.

The accused are sentenced to undergo S.I. for a period of 6 months and fine of Rs.2,000/- each for the offence punishable under Section 324 of IPC. In default of payment of fine the accused shall undergo S.I. for one month.

The accused are sentenced to undergo S.I. for a period of 3 months and fine of Rs.2,000/- each for the offence punishable under Section 504 of IPC. In default of payment of fine the accused shall undergo S.I. for one month.

The accused are sentenced to undergo S.I. for a period of 3 months and fine of Rs.2,000/- each for the offence punishable under Section 506 of IPC. In default of payment of fine the accused shall undergo S.I. for one month.

All the sentences shall go concurrently.

IO filed application under P.O. Act.

Call for report from probationary officer.

27. The order sheet dated 3.4.2025 reads as follows :

P.O. is submitted report. Accused absent. Call on 07.04.2025.

The learned Magistrate has firstly passed the judgment of conviction and then has suspended the sentence and then heard on sentencing. Suspension of sentence will arise only after sentencing is pronounced. Before sentencing the accused report from Proposed Officer has to be secured. The procedure therefore adopted by the learned Magistrate about the cancellation of the bail bonds forthcoming in the order sheet then suspending the sentencing and then hearing on sentencing and thereafter getting the report of Probation Officer etc is not in accordance with the mandatory provisions

under Section 4 of the Probation of Offenders Act. The Probation of Offenders Act mandates calling for the report from the Probation Officer and then to proceed for further orders about sentencing if any. Therefore, there is necessity for interference by the is court in the said judgment of conviction passed by the Senior Civil Judge and JMFC Dvanagere.

28. In view of nature of the approach of the learned Magistrate, nature of the evidence placed before the court by the prosecution, the judgment of the conviction passed by the learned Magistrate is not based on proper appreciation of facts and law and definitely there is need of interference by this court. There has been error committed by the learned Magistrate in appreciating the evidence especially circumstances as well as unhappiness in the relationship between accused No.1 and his wife PW.4 in the background of the pending of the suit for partition, going to the parental home, returning to the matrimonial home and even intention

for the crime is also not forthcoming in the present case. Moreover, under such circumstances and facts especially involving matrimonial disturbances, approach of the court has to be in a more conciliatory manner, than about intention required for the crime. Hence, Point No.6 is answered in the Negative and Point No.7 is answered in the Affirmative.

29. **Point No.8**:- In view of the findings on point No.1 to 7, I proceed to pass the following; -

O R D E R

The Appeal filed by the Appellants under Sec.374(2) of Cr.P.C/Sec.415 (2) of BNSS, is hereby allowed.

Judgment of conviction and sentence passed by the learned Prl. Senior Civil Judge and J.M.F.C, Davanagere in CC No.1263/2019 dated 27.02.2025 is hereby set-aside.

Consequently, the appellants/ accused No.1 to 4 are acquitted for the offences

punishable under Sec. 448, 323, 324, 504, 506 R/w Sec.34 of IPC.

The bail bonds and surety bonds furnished by the accused/appellants No.1 to 4 before the Trial Court is ordered to be continued till completion of Appeal period.

The office is directed to send the Trial Court records along with the copy of this judgment.

(Dictated to the stenographer computerized by her, transcript corrected, revised, signed and then pronounced in the open court on this the 1st day of April, 2026.)

(Vela.D.K)
Pri. District & Sessions Judge,
Davanagere.