

KADK300005902024



**IN THE COURT OF THE V ADDITIONAL DISTRICT AND
SESSIONS JUDGE, D.K. MANGALURU, SITTING AT
PUTTUR, D.K.**

Dated: - This the 1st day of July 2026

PRESENT

SRI. SADANANDA NAGAPPA NAIK., BAL. L.L.B.,
V Additional District And Sessions Judge,
D.K., Mangaluru, sitting at Puttur D.K.

:: Crl.Appeal No./5030/2024 ::

APPELLANT	-	The State, Rep. Kadaba P.S., Puttur Taluk, D.K.
		(Learned Public Prosecutor)
V/s		
RESPONDENT		Vijay K S/o. Koragappa Gowda, Aged about 22 years, R/at. Kallaje House, Ithoor village, Kadaba Taluk, D.K District
		(By Sri. D.P.K. Advocate)

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:: JUDGMENT ::

The appellant/State has preferred this appeal against the judgment passed by the Court of 2nd Additional Civil Judge and J.M.F.C. Puttur in C.C. No.1040/2019 dated 06.03.2024 for

acquitting the respondent/accused for the offences punishable U/Sec.354, 323, 506 of IPC .

2. For the sake of convenience, the parties to the appeal will be referred to as per their ranking assigned to them before the lower court.

3. **The Case of the State/Prosecution is as follows:**

On 07-04-2019 at 12.15 p.m while CW1 (Smt. Asha P) was returning in the place called Kallaje, Ithoor Village, Kadaba Taluk, after going to rural deity festival programme, the accused who waiting on the road near to the house of CW1, puts his hand on her neck and assaulted on her cheeks and dragged her by holding her hand in order to outrage her modesty and also issued a life threat when she tried to escape from his clutches by saying “if she will not come with him, he would not alive her”. As a result, CW-1 sustained injury on her hand and cheeks. Accordingly, CW.1 filed complaint and based on the complaint, the police have registered a case in Crime No.50/2019 for the offence punishable U/sec. 354, 323, 506 of IPC.

4. After investigation of the case, the I.O., has submitted the charge sheet against the accused for the offence punishable U/sec. 354, 323, 506 of IPC before the trial court. On receiving the

charge sheet, learned 2nd Addl. CJ & JMFC Court, Puttur has took cognizance of the alleged offences by registering case in CC No.1040/2019.

5. The trial Court furnished copies of charge sheet and other prosecution papers to the accused persons and complied Sec.207 of Cr.P.C. Thereafter, charges were framed, read over and explained to the accused in the language known to him. The accused pleaded not guilty and claimed trial. The prosecution in order to prove its case, in all examined eight witnesses as PW.1 to PW.9 and got marked 6 documents as per Ex.P1 to Ex.P6 and closed its side.

6. After closure of prosecution side evidence, the statement of accused has been recorded by the trial Court U/Sec.313 of Cr.P.C., wherein the accused has denied the incriminating evidence of prosecution witnesses.

7. After hearing the arguments of Learned A.P.P. and learned counsel for the accused and after formulating the necessary points for consideration, the trial Court by considering the materials on record, held that prosecution has failed to prove the guilt of the accused. Accordingly, accused was acquitted for the offences punishable U/sec. 354, 323, 506 of IPC.

8. Since judgment of the trial court is incorrect and not supported by the reasons and not given justice to the victim i.e., CW.1, the senior law officer, Mangalore has recommended the Government for preferring an appeal against the said judgment. Accordingly, as per the orders of the Government and the Deputy Commissioner, D.K. District, Mangalore has filed the present appeal before this Court.

9. Aggrieved by the said judgment of acquittal, the appellant/State has filed this appeal on the **following grounds ;**

a) The judgment of the acquittal of the accused by the trial court on 06.03.2024 is not proper and justifiable. It is not based on the strong reasons and is not based on any legal basis.

b) The judgment of trial court, which acquitted the accused is on frivolous grounds without properly analyzing the evidence of the key witnesses of this case and identified documents at Ex.P1 to Ex.P6 within the framework of law, without considering the evidence, is not reasonable.

c). In this case, the Trial Court has not considered the evidence of PW2 who is the husband of the Complainant/PW1 and circumstantial witness to the case of the Prosecution, who has informed about the incident by phone by P.W1.

- d) In this case, PW4 is a medical officer, who adduced evidence on Ex.P4 wound certificate after treating PW1.
- e) In this case, the Trial Court has not considered the evidence of PW5 and PW6 who the spot mahazar witnesses.
- f) In this case, the Trial Court has not considered the evidence of PW7, who received the Complaint from PW1 and registered FIR as per Ex.P5.
- g) In this case, the Trial Court has not considered the evidence of PW8 - investigating officer, who has arrested the Accused and produced before the Investigating officer.
- h) In this case, the trial Court has not considered the evidence of PW9 - Investigating officer who recorded the voluntary statement of Accused as per Ex.P6, drew spot mahazar as per Ex.P2, recorded the statement of witnesses, wound certificate as per Ex.P4 and filed chargesheet against the Accused.
- I.) In this case, the Trial Court has not justified in holding that the prosecution failed to prove the case of PW. 1 to 9 by giving supplementary evidence to the prosecution case. The benefit of the statement of the witnesses cannot be given to the accused just because there is a trivial discrepancy. In this regard, the Hon'ble Supreme Court has said in Jarnail Singh State of Panjab (2009) 9 SSC 719 has applied principle that, the evidence of

injured witness should be relied. If this principle is applied and analyzed in this case, it is seen that the Trial Court has glorified the fact that PW. 1 to 3 admitted and testified that there was a civil dispute between them and the accused, in the cross-examination.

j) in a case, Inspector of Police VS Saravanan and another AIR 2009 SC 152, mere marginal variation in the statements of the witness cannot be dubbed as improvements. If this principle is applied and analyzed in this case, it is found that the Trial Court has glorified the statement given by the witnesses in the cross-examination.

k) In this case, it is not possible and not justifiable to hold that the statement of PW. 7 and 9 is contrary to the statement of the witnesses because they are police witnesses. In this case, PW. 1 is an injured witness and PW 2 is the husband of PW. 1 and it is not possible to give much weight to their statement. In State of Gujarath VS Naginbhai Dhulabhai Patel AIR 983 SC 839 and State of Rajasthan Vs Kalki, AIR 1981 SC 1390, it is well settled that evidence of interested witnesses cannot be discarded on the sole ground of interestedness but their evidence should be subjected to the close scrutiny. Interested witness or not necessarily false

witness. When the principles of this judgment are examined, the prosecution has proved the case by the statement of PW. 1 to 8.

l) In a case, D.B. Ramesh @ Doni Ramesh Vs State of Excise Police Criminal Revision Petition No. 779/2020 Dated 07.07.2023 and it is observed that, "there is no legal proposition that evidence of Police officials, unless supported by independent evidence is unworthy of acceptance". The same is not found to have been followed in the judgment given by the Trial Court in this case.

m) In this case, the Trial Court has not found that the P.W. 2 and 3 have testified in the court that they came to know about the incident from P.W. 1 without any delay and this is an exception to Section 6 of the Indian Evidence Act and it is not fair for the Trial Court to hold that they came to know about the incident from P.W. 1 without any delay as hearsay.

On these grounds, the appellant/State prays to set aside the acquittal judgment of the trial court and prays to convict the accused for the offences punishable U/Sec.354, 323, 506 of IPC. in the interest of justice.

10. Trial Court records (TCR) received.

11. Arguments heard on both sides and perused the TCR. The learned Counsel for the respondent has filed memo along with notarized copy of partition deed and computerised copy of CIS in OS No. 47/2019, order of Prl. Senior Civil Judge, Puttur.

12. The points arise for my consideration are as follows:-

- 1. Whether the appellant/State proves that finding of the Trial Court regarding acquittal of the accused person/respondent for the offences punishable U/Sec.354, 323, 506 of IPC. is not sustainable under law?**
- 2. Whether the appellant/State further proves that judgment of the Trial Court in C.C No.1040/2019 dated 06.03.2024 calls for an interference by this Court and is liable to be set aside and accused person/respondent is liable to be convicted for the alleged offences?**
- 3. What Order?**

13. My findings on the above points are as under:

Point No.1	::	In the negative
Point No.2	::	In the negative
Point No.3	::	As per the final order,

for the following:

:: REASONS ::

14. **Points No.1 and 2:-** Both points are interconnected. Therefore, in order to avoid the repetition, I take both the points together for discussion.

15. The State is aggrieved by the acquittal judgment of the trial court in CC No.1040/2019 dated 06.03.2024. Hence, it has preferred the present appeal on various grounds.

16. The Kadaba Police had registered a case against the accused person/respondent for the offences punishable U/Sec.354, 323, 506 of IPC in Crime No.50/2019 and after completion of the investigation, the charge sheet was filed against the said accused for the above said offence.

17. In the said case, the trial court recorded the evidence of 8 witnesses as PW.1 to PW.9 and got marked 6 documents as per Ex.P1 to Ex.P6 and closed its side.

18. On perusal of the evidence, it is evident that, PW1 is the injured and eye witness to the alleged incident. PW2 and PW3 are the hearsay witnesses, who have not witnessed the alleged incident. PW4 is a medical officer, who has treated PW1. PW5 and PW6 are the mahazar witnesses. PW7 to PW9 are the police

officials. Further, it is pertinent to note that, PW2 is the husband of the PW1, PW3 and PW5 are the relative of PW1. PW1 and PW2, in their cross-examination, specifically admitted that, there is a civil dispute between the family of Complainant and the Accused.

19. The PW1 in her chief examination, has re-iterated the Complaint averrments and got marked Ex.P1 to Ex.P3. During her cross-examination, she admitted that, there is a civil dispute between her family and the Accused. The alleged incident was happened in a public road. Further, she has also admitted that, there is very public moving on the way to attend the rural deity festival programme in the shrine. In fact, if the alleged incident is happened on the public road, they might have prevented the incident or there was possibility of seeing the incident by the people. But there are no eye witnesses to the alleged incident. There was no reaction on part of PW1 like screaming, weeping, shouting etc., when accused allegedly caught hold of her hand suddenly or soon after the alleged incident. There is no such evidence in the records. PW1 has deposed that, soon after the incident, she has made a phone call to her husband. The Accused left the spot upon seeing her husband. However, during the cross-examination, she has deposed that, she went to home and called her husband. Then she saw her husband at home. Therefore, the

evidence of PW1 that Accused left the spot upon seeing her husband is not believable. Moreover, after any such incident, it is unlikely that the Accused would wait for husband of victim to come to the spot and then he would leave the spot. As there is civil dispute between the parties, it is likely to make allegations against the Accused for their personal gains. Therefore, the version of PW.1 in the evidence was highly doubtful in nature about the alleged incident. Hence, evidence of PW.1 is not inspiring confidence come to conclusion that accused has committed the offence.

20. Further, on perusal of the evidence of PW4, who is a medical officer, treated the injured-PW1 and issued Ex.P4 wound certificate. He has opined as the injuries found on PW1 is simple in nature. During his cross-examination, he admitted that, Ex.P4 does not contain seal. However, he denied the further contentions of learned Counsel for the Accused. There is no evidence as to about the age of the injury either fresh or old one either in the evidence of PW4 or in the contents of Ex.P4. As such, in the absence of such specific evidence, it cannot opined that, alleged injury mentioned in Ex.P4 are the injury sustained by PW1 on account of alleged incident.

21. In this case, PW9 is the investigating officer, who has filed chargesheet against the Accused, after completion of investigation. However, during his cross-examination, he has admitted that, the alleged incident has happened in the public road. But he has not made any attempt to enquire the public person. He has not examined any independent witnesses. On evidence of PW9, it is clear that, he made the witnesses only relative of the Complainant. Non examination of independent witnesses by the investigating officer is serious lacuna on the part of investigation. Hence, the prosecution case itself doubtful and it creates serious doubt about the alleged incident. Since there are inconsistency evidence, prosecution has utterly failed to prove the guilt of the accused beyond reasonable doubt.

22. It is very clear from the above that, there are full of contradictions, variations, inconsistencies, exaggerations, improvements and discrepancies in the case of the prosecution and evidence on record. Therefore, the accused is entitled for benefit of doubt. Viewing from any angle there is no sufficient legal evidence to bring home the guilt of the accused beyond all reasonable doubt. Hence, I am of the view that, the findings recorded by the trial court in CC No.1040/2019 are correct and they do not call for any interference from this Court. Accordingly,

I record my answer to the above points No.1 and 2 in the **negative.**

23. **Point No.3** : In the result, I proceed to pass the following:-

: ORDER :

The Criminal Appeal filed under section 419, 422, 427 of BNSS 2023 is hereby dismissed.

The Impugned Judgment of acquittal in C.C.No.1040/2019 dated 06.03.2024, on the file of Court of II Addl. Civil Judge and JMFC, Puttur is hereby confirmed.

Send the copy of the Judgment to the Trial Court along with the records.

(Dictated to the stenographer directly on computer, typed by her, corrected by me and then pronounced in the open Court today the 1st day of July 2026)

(Sri. Sadananda Nagappa Naik.)
V Addl. District and Sessions Judge,
D.K., Mangaluru, sitting at Puttur, D.K.