



IN THE HIGH COURT OF KARNATAKA AT DHARWAD

DATED THIS THE 25TH DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE V.SRISHANANDA

CRIMINAL REVISION PETITION NO. 100181 OF 2017

(397(CR.PC)/438(BNSS))

C/W

CRIMINAL APPEAL NO. 100323 OF 2017

IN CRL.RP NO. 100181/2017

BETWEEN:

SRI. SHABBIR S/O HAIDERALI KHOJA
AGE: 39 YEARS, OCC: BUSINESS,
R/O: SAMARTH APARTMENT,
ANGOL ROAD, BELAGAVI.

...PETITIONER

(BY SRI. LINGESH V. KATTEMANE, ADVOCATE)

AND:

THE STATE OF KARNATAKA,
THROUGH TILAKWADI POLICE STATION,
NOW REPRESENTED BY SPP,
HIGH COURT OF KARNATAKA,
DHARWAD, BENCH AT DHARWAD.

...RESPONDENT

(BY SRI. PRAVEENA Y. DEVAREDDIYAVARA, HCGP)

THIS CRIMINAL REVISION PETITION IS FILED UNDER SECTION 397 READ WITH 401 OF CR.P.C., SEEKING TO CALL FOR RECORDS AND TO SET ASIDE THE IMPUGNED JUDGMENT OF CONVICTION AND ORDER OF SENTENCE DATED 6.09.2014 PASSED BY THE JMFC, IV BELAGAVI IN C.C.NO. 560 OF 2011 CONFIRMED IN CRL. APPEAL NO. 125 OF 2014 VIDE JUDGMENT DATED 22.04.2017 BY THE COURT IX ADDL. DISTRICT AND SESSIONS JUDGE BELAGAVI AND ACQUIT THE REVISION PETITIONER, IN THE INTEREST OF JUSTICE.





IN CRL.A NO. 100323/2017
BETWEEN:

ISMAT SHABBIR KHOJA
AGE: 41 YEARS, OCC: HOUSEHOLD,
R/O: SANGALI, STATE OF MAHARASHTRA.

...APPELLANT

(BY SRI. MAHESH WODEYAR, ADVOCATE)

AND:

1. SHABBIR KHOJA S/O HIDARALI KHOJA
AGE: 39 YEARS, OCC: BUSINESS,
R/O. GHATAPRABA, GOKAK,
NOW R/O: SAMARTH APARTMENT,
ANGOL ROAD, BELAGAVI.
2. STATE OF KARNATAKA
R/BY ITS STATE PUBLIC PROSECUTOR,
THROUGH TILAKAWADI, POLICE STATION,
HIGH COURT OF KARNATAKA,
DHARWAD BENCH, DHARWAD.

...RESPONDENTS

(BY SRI. LINGESH V. KATTEMANE, ADVOCATE FOR R1;
SRI. PRAVEENA Y. DEVAREDDIYAVARA, HCGP FOR R2)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 372 OF CR.P.C., SEEKING TO CALL FOR RECORDS AND TO ENHANCE THE MAXIMUM SENTENCE TO THE ACCUSED NO.1 FOR THE OFFENCE PUNISHABLE UNDER SECTION 498-A, 323, 324 IPC IS CONCERNED AND AWARD HIGHER COMPENSATION BY MODIFYING THE JUDGEMENT AND ORDER DATED 06.09.2014 PASSED BY THE JMFC-IV BELAGAVI IN C.C.NO.560 OF 2011 AND ETC.,.

THESE PETITION AND APPEAL, COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:



ORAL ORDER

(PER: THE HON'BLE MR. JUSTICE V.SRISHANANDA)

Heard Sri. Lingesh V. Kattemane and Sri. Mahesh Wodeyar, learned counsel for the parties and Sri. Praveena Y. Devareddiyavara, learned High Court Government Pleader for respondent-State.

2. Criminal Revision Petition No.100181/2017 is filed by the accused and Criminal Appeal No.100323/2017 is filed by the defacto complainant.

3. Facts in nutshell which are utmost necessary for disposal of the revision petition and appeal are as under:

3.1. The appellant in Criminal Appeal No.100323/2017 is the wife of Sri. Shabbir Haidarali Khoja as per the Muslim rites and customs. Out of the said wedlock, two daughters are born, namely Alina and Zarika.



3.2. After the marriage, the appellant joined the matrimonial home and resided with her husband and accused Nos.2 to 4 in a same house. Within a short span of time, her father-in-law died. It is alleged that she was subjected to continuous physical and mental harassment by the accused persons, which ultimately resulted in filing a complaint with Tilakwadi Police Station by the appellant.

4. Police after registering the case thoroughly investigated the matter and filed the charge sheet against the revision petitioner and others for the offences punishable under Sections 323, 324, 498A and 504 read with Section 34 of Indian Penal Code, 1860¹.

5. Learned Trial Magistrate took cognizance of the aforesaid offences and issued process. After securing the presence of the accused persons, charges were framed. All the accused persons pleaded not guilty. Therefore, trial was held.

¹ For short, 'IPC'



6. In order to bring home the guilt of the accused persons, eleven witnesses were examined on behalf of the prosecution as PW1 to PW11 and seventeen documentary evidence were placed on record, which were exhibited and marked as Ex.P1 to P17. Among them, PW5 - Ismath is the material witness being the wife of accused No.1, who was subjected to physical and mental cruelty by all the accused persons.

7. Thereafter, accused's statement as is contemplated under Section 313 of Code of Criminal Procedure, 1973², was recorded wherein accused persons denied all the incriminatory materials.

8. After hearing the arguments, learned Trial Magistrate acquitted accused Nos.2 to 4 and convicted the accused No.1 alone and sentenced him as under:

"The accused No.1 is sentenced to undergo simple imprisonment of one year for offence punishable U/Sec.498(A) of IPC.

² For short, 'Cr.P.C.'



The accused No.1 is sentenced to undergo simple imprisonment of six months for offence punishable U/Sec.323 of IPC.

The accused No.1 is sentenced to undergo simple imprisonment of six months for offence punishable U/Sec.324 of IPC.

U/Sec.357 of Cr.P.C. accused No.1 shall pay compensation of Rs.30,000/- to PW.5 Ismath Shabbir Khoja in default he shall further undergo simple imprisonment for six months.”

9. Being aggrieved by the same, it is the accused No.1 who filed an appeal before the IX Additional District and Sessions Judge, Belagavi³, in Criminal Appeal No.125/2014.

10. The State also filed an appeal before the First Appellate Court in Criminal Appeal No.140/2014 acquitting the accused No.2 to 4.

11. Learned Judge in the First Appellate Court after securing the records, heard the arguments of the parties

³ For short, 'First Appellate Court'



and dismissed both the appeals *inter-alia* holding in paragraph Nos.11 to 16 as under:

- *"It can be seen from the records that at the first instance, under the guise of settlement, PW 1 to 3 & 5 have not supported the case of the prosecution to get rid of the proceedings thinking that the matter is settled, but when the accused No.1 did not join the complainant and restore the marital relationship as per the settlement, the witnesses were recalled on the basis of the application filed u/s 311 of Cr.P.C. and further examined. PW 1 to 3-independent witnesses, PW 8 & 10-panch witnesses again have not supported the case of the prosecution, but that itself is not enough to disbelieve the case of the prosecution. In a case of present nature generally independent witnesses will go by their earlier statements for the reason why should they develop animosity with accused persons in future. In such an event the court has to consider the other evidence including the evidence of the victim.*
- *PW 5-complainant has unequivocally given the evidence narrating the incident as to how it has happened at mid night on 12.07.2010. Immediately after the incident, she called her*



sister-in-law/PW 6 over phone, who came along with PW 9 and visited the complainant in the District hospital, Belagavi. PW6 & 9 have deposed accordingly and also with regard to harassment given to PW 5 on the basis of information shared by her.

- *PW 5-complainant was treated by the doctor-PW 4 on the same day. PW 4 has deposed about the treatment given to complainant and her daughter and also about issuing of wound certificates as per Ex.P4 & 5. As per his evidence no external injuries found on the daughter of PW 5 and presence of injuries on PW 5. Nothing has been elicited in his cross examination.*
- *The complainant has set the criminal law into motion by lodging the complainant as per Ex.P6 on the same day without any delay and accordingly, PW7 registered the case against the accused persons as per Ex. P16-FIR. Further investigation done by PW 11 and after completion of the investigation he has filed the charge sheet against the accused persons. Nothing has been elicited in the cross examination of PW 7 and 11 to discard their evidence with regard to the investigation.*



- *The substantial evidence of PW 5-complainant clearly corroborates with the medical evidence and circumstantial evidence of PW 6 & 9. Ex.P5 Wound certificate shows that the complainant suffered with injuries on her face. E-mails produced at Ex.P11 to 15 and filing of a petition under Section 12 of D.V. Act by the complainant before the Court at Mumbai, support the case of the complainant with regard to harassment by accused No1. So, the minor contradictions in the evidence of victim about the timings of incident are not fatal to the case of the prosecution.*
- *Therefore, the evidence of PW5, 4, 6, 9 and Investigating Officer clearly establishes the fact of harassment to the complainant by accused No.1 and assault on her on 12.07.2010. As per the admission of complainant herself, accused No.2 to 4 are residing at Ghataprabha, while herself and accused No.1 along with daughters were residing in Samarth Apartment, Angol Road, Belagavi. By this admission the involvement of accused No.2 to 4 in commission of alleged offences is not believable. The trial court by evaluating the evidence on record, has rightly convicted the accused No.1 for the offences punishable under Section 498(A), 323 & 324*



of IPC and acquitted accused No.2 to 4 from the alleged offences, which in my opinion is in accordance with law and as such, I do not find any reason to interfere with the findings of the trial court. Therefore, I answer point No.1 in the negative."

12. Being further aggrieved by the same, accused No.1 and the defacto complainant have filed the present revision petition and appeal.

13. Learned counsel for the petitioner/accused No.1 reiterating the grounds urged in the revision petition contended that when the learned Trial Magistrate and the learned Judge in the First Appellate Court have recorded the acquittal for the remaining accused on the same set of material evidence ought not to have convicted the present revision petitioner and sought for allowing the revision petition.

13.1.He would further contend that the material evidence in the form of oral testimony of PW1 to PW3 are not sufficient for recording an order of conviction *insofar*



as the appellant has turned hostile to the case of the prosecution though initially they supported the case of the prosecution.

13.2. He would further contend that material evidence in the form of oral testimony of PW5 who is the wife of the revision petitioner is so artificial that no prudent person can vouchsafe the reasoning recorded by the learned Trial Magistrate and the learned Judge in the First Appellate Court *insofar as* conviction of the revision petitioner for the aforesaid offences and sought for allowing the revision petition.

14. *Per contra*, learned High Court Government Pleader and Sri. Mahesh Wodeyar, learned counsel for the defacto complainant would support the impound orders.

15. Learned counsel for the defacto complainant would further contend that an appeal is filed by the defacto complainant before this Court challenging the acquittal of accused Nos.2 to 4 is for the first time and



therefore, appeal of the defacto complainant needs to be allowed by re-appreciating the material evidence on record despite the fact that the State has filed an appeal against the order of acquittal before the District Court which was *per-se* not maintainable and sought for allowing the appeal and dismissal of the revision petition filed by the husband.

16. Having heard the arguments of both sides, this Court perused the material on record meticulously.

17. On such perusal of the material on record, following points would arise for consideration.

- i. Whether the prosecution has successfully established all ingredients to attract the offences punishable under Sections 323, 324 and 498A of IPC *insofar as* accused No.1/revision petitioner?
- ii. Whether the defacto complainant has made out a ground that accused Nos.2 to 4 in C.C.No.560/2011 are also liable for the aforesaid offences?



- iii. Whether the impugned judgment of the learned Trial Magistrate which was confirmed by the First Appellate Court is suffering from legal infirmity or perversity and thus calls for interference?
- iv. Whether the sentence ordered by the learned Trial Magistrate confirmed by the First Appellate Court *insofar as* accused No.1 needs modification?
- v. What order?

Regarding Point Nos.(i) to (iv):

18. In order to avoid the repetition of facts, this Court has taken all these points together.

19. In the case on hand, admittedly the revision petitioner is the husband of PW5. Their marriage took place as per the Muslim rites and customs on 15.09.2002 as soundly.

20. About three months after the marriage, father-in-law of the complainant died and she spent her marital



life with the revision petitioner at Ghataprabha and thereafter, in Belagavi.

21. In the marriage, two daughters are born namely Alina and Zarika. Revision petitioner was doing the business of tours and travels.

22. It is the specific contention of PW5 that revision petitioner used to assault the elder daughter and whenever questioned, he used to physically and mentally harassed the complainant as well. There was a Panchayath convened with regard to the harassment and the revision petitioner had agreed before the Panchayath members that he would not harass the complainant and her daughters and a bond was executed before the Panchayathdars.

23. On 12.07.2010, when the revision petitioner, complainant and daughters were sleeping, at about 03.00 a.m., when her daughter urinated in the bed, revision petitioner started assaulting her and when she tried to



rescue, revision petitioner assaulted her also and pulled her hairs and then dashed her head to the wall and twisted her right hand. She has taken a photograph of the incident.

24. It is also the case of the defacto complainant that accused Nos.2, 3 also joined the accused No.1 in the said assault and accused No.4 has abused her in filthy language.

25. Police after registering the case investigated the matter and filed charge sheet.

26. Before the Trial Magistrate, the complainant was examined as PW5 and reiterated the above aspects with graphic details as to what transpired on 12.07.2010.

27. In her cross- examination, it is elicited that accused No.4 resides in Ghataprabha and so also accused No.3 who carries on the business at Ghataprabha. She admits that soon after the marriage, all of them lived in Ghataprabha.



28. She further admits that within fifteen days of marriage, she had visited her parents' house. She also admitted that soon after the death of her father-in-law, she had come back to Ghataprabha. She admits that in the year 2004, herself and revision petitioner stayed in Sangali for a brief period. But, others resided in Ghataprabha.

29. She admits that she had worked as an employee in a Sales Company for about one month. She admits that as on the date of cross- examination for last four years, she was not residing with accused No.1. She also admits that in the year 2007, through jamath, a panchayat was held.

30. She further admits that since April 2010, accused No.1 has established a separate house at Belagavi and accused Nos.3 and 4 stayed in Ghataprabha itself. She admits that she had joined as an employee in Maratha



Mandal Dental College and there were servants to look after the domestic work and they had a luxurious life.

31. In her further cross-examination, she denies the suggestion that the injury caused her as per the wound certificate is a self-inflicted injury. Detailed cross-examination of PW5 on three different occasions did not yield any positive material so as to deny the fact that she sustained the injury as is found in Ex.P.5.

32. PW6 is a witness who is the sister-in-law of complainant, she has supported the case of the prosecution and in her cross-examination, it is alleged that mother of accused No.1 used to reside in Ghataprabha and there was a separate house in Belagavi established by the accused No.1. She also admitted that she is not an eyewitness to the incident, but she received the telephone call on 12.07.2010 between 03.00 a.m. to 04.00 a.m.

33. Yet another independent witness who supported the case of the prosecution is PW9 deposed that on



12.07.2010, there was a telephone call and PW5 and her daughter were taken to District Hospital on account of the assault made by accused No.1.

34. Testimony of remaining witnesses are formal in nature.

35. In the accused's statement except denying the incriminatory circumstances, accused did not offer any explanation to the incident. Stray suggestion made to PW5 that the abrasion injury found near her eye is a self-inflicted injury. There is no other material to disbelieve the testimony of PW5.

36. Taking note of these aspects of the matter, learned Trial Magistrate convicted accused No.1 and acquitted the other accused persons as there was no positive material evidence on record so as to hold that accused Nos.2 to 4 were also involved in the said incident.



37. Learned Judge in the First Appellate Court as referred to supra has dealt in detail the material evidence in Criminal Appeal No.125/2014 and upheld the conviction.

38. Therefore, having regard to the scope of the Revisional Jurisdiction, this Court did not deem fit to interfere with the concurrent findings of the fact that accused No.1 assaulted PW5 and used to harass PW5 and her children physically and mentally.

39. Having said so, against the order of acquittal *insofar as* accused Nos.2 to 4 are concerned, the State should have filed an appeal before the High Court instead an appeal came to be filed before the District Court.

40. Learned Judge in the First Appellate Court did not raise a point as to maintainability of the appeal before the District Court and did not assign any reason as to the maintainability of the appeal before the First Appellate Court.



41. Nevertheless, a single point is raised stating that whether the conviction of accused No.1 and acquittal of accused Nos.2 to 4 needs interference.

42. Such an approach by the First Appellate Court was *per-se* wrong.

43. Nevertheless, since the appeal itself was not maintainable before the District Court, non-assigning proper reasons for dismissal of the appeal of the State cannot be called in question by the defacto complainant in the appeal filed by her before this Court.

44. However, a separate appeal being filed by the defacto complainant, with a delay of 1070 days, which came to be condoned by this Court by order dated 27.02.2018, thereafter, the appeal is admitted. Therefore, the appeal filed by the defacto complainant is heard on merits as well.

45. It is the argument of the defacto complainant that accused Nos.2 and 3 also joined hands with accused



No.1 in assaulting her and her daughter who had urinated in the bed on 12.07.2010. Accused No.4 said to have abused the complainant and her daughter.

46. Admittedly, material evidence on record including the admission made by PW5 would be sufficient enough to address this issue *inasmuch as* a separate house has been established by accused No.1 at Belagavi and there were servants in the house to attend the domestic work.

47. It is also admission of PW5 and PW9 that remaining accused persons stayed at Ghataprabha alone.

48. Even according to the prosecution, incident has occurred on 12.07.2010 at about 03.00 a.m. It is highly unimaginable that accused Nos.2 to 4 who are residing at Ghataprabha would be present in the house at Belagavi and joined the hands with accused No.1 in assaulting PW5 and her daughter.



49. It is to be noted that as per Ex.P4, no external injuries are noted on the body of her daughter. Therefore, taking note of these aspects of the matter, order of acquittal recorded by the learned Trial Magistrate needs no interference even after re-appreciation of the material evidence on record.

50. There are no specific instances cited regarding the alleged physical or mental harassment earlier to the incident that occurred on 12.07.2010.

51. The alleged bond executed by accused No.1 before the Jamat, where the panchayat has taken place, does not mention about the harassment imparted to the complainant by accused Nos.2 to 4.

52. All these factors when viewed cumulatively, this Court does not find any good reasons to interfere with the order of acquittal *insofar as* accused Nos.2 to 4 are concerned.



53. More so, having regard to the fact that an order of acquittal would reinforce the innocence of the accused and if two views are permissible in a given set of a defacto complainant, despite the fact that a non maintainable appeal came to be filed by the State before the First Appellate Court in Criminal Appeal No.140/2014.

54. From the above discussions, the conviction of accused No.1 and acquittal of accused Nos.2 to 4 needs no interference in this revision petition and appeal in the light of settled principles of law that an order of acquittal reinforce the innocence of an accused and any amount of suspicion would not take the seat of proof.

55. Having said so, the sentence ordered by the learned Trial Magistrate confirmed by the First Appellate Court for the proved offences against accused No.1 is just and proper in the attendant facts and circumstances of the case and no mitigating circumstances are placed either



before this Court so as to interfere with the order of sentence.

56. Since the appeal of the defacto complainant is only with regard to the acquittal of accused Nos.2 to 4, there is no scope for enhancement of the sentence *insofar* as accused No.1 is concerned.

57. Accordingly, Point No.(i) is answered in the affirmative and Point Nos.(ii) to (iv) are answered in the negative.

58. **Regarding Point No.(v):**

59. In view of the findings of this Court on Point Nos.(i) to (iv) as above, the following:

ORDER

- i. Revision Petition filed by accused No.1 in Criminal Revision Petition No.100181/2017 is hereby ***dismissed***.



- ii. Appeal filed by the defacto complainant in Criminal Appeal No.100323/2017 is hereby ***dismissed.***
- iii. Revision petitioner is directed to surrender before the Trial Court for serving the remaining part of the sentence on or before ***15.03.2026.***
- iv. Office is directed to return the Trial Court records with copy of this judgment.

Ordered accordingly.

**Sd/-
(V.SRISHANANDA)
JUDGE**