IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF MARCH, 2025

BEFORE

THE HON'BLE MR JUSTICE S RACHAIAH

CRIMINAL REVISION PETITION NO. 1438 OF 2016

BETWEEN:

DINESH @ HUKRAPPA
S/O KUNDA @ KESHAVA,
AGED ABOUT 23 YEARS,
KATTADABAILU HOUSE,
KURIYA VILLAGE,
PUTTUR TALUK-574210

...PETITIONER

(BY SRI. B.S. PRASAD, ADVOCATE)

AND:

THE STATE OF KARNATAKA,
THROUGH RURAL POLICE STATION, PUTTUR DK,
REPRESENTED BY ITS STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING,
HIGH COURT OF KARNATAKA,
BANGALORE-560001

...RESPONDENT

(BY SRI. K. NAGESWARAPPA, HCGP)

Digitally signed by RENUKA
Location: HIGH COURT OF KARNATAKA

THIS CRL.RP IS FILED U/S.397 R/W 401 CR.P.C PRAYING TO ALLOW THIS REVISION PETITION AND SET ASIDE THE JUDGMENT AND THE ORDER DATED 15.07.2016 PASSED BY THE LEARNED V ADDL. DISTRICT JUDGE, D.K., MANGALURU SITTING AT PUTTUR IN CRL.A.NO.5034/2015 AND ALSO THE JUDGMENT AND ORDER DATED 4.11.2015 PASSED BY THE LEARNED ADDL. SENIOR CIVIL JUDGE AND JMFC AT PUTTUR, DK IN C.C.NO.676/2014 AND ETC.

THIS CRIMINAL REVISION PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 05.03.2025, COMING ON FOR PRONOUNCEMENT OF ORDER, THROUGH VIDEO CONFERENCING, THIS DAY, THE COURT MADE THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE S RACHAIAH

CAV ORDER

1. This Criminal Revision Petition is filed by the petitioner, being aggrieved by the judgment of conviction and order on sentence dated 04.11.2015 in C.C.No.676/2014 (Old No.776/2008) on the file of Additional Senior Civil Judge and J.M.F.C., Puttur, D.K and its confirmation judgment and order dated 15.07.2016 in Crl.A.No.5034/2015 on the file of V Additional District and Sessions Judge, D.K., Mangaluru, Sitting at Puttur, D.K, seeking to set aside the concurrent findings recorded by the Courts below.

2. The ranks of the parties in the Trial Court will be considered henceforth for convenience.

Brief facts of the case:

3. It is the case of the prosecution that the complainant is the daughter of Modenkila, resident of Idabettu House, Kuria Village, Puttur Taluk. It is stated that when she was going towards the shop situated near her house, on 07.12.2007 at about 1.00 p.m., the accused restrained her by touching her body and tried to outrage her

modesty. When she raised hue and cry, her mother came to the spot and rescued her. Further, he threatened them that if the complainant would not accompany him, he would kill her. Being afraid by the act of the accused, she lodged a complaint on the following day after having consulted the family members. The jurisdictional police have registered a case in Crime No.133/2007 and conducted investigation and submitted the charge sheet.

4. To prove the case of the prosecution, the prosecution examined six witnesses as PWs.1 to 6 and got marked three documents as Exs.P1 to P3. On the other hand, on behalf of the accused only one document was marked as per Ex.D1. The Trial Court after appreciating the oral and documentary evidence on record, convicted the petitioner/accused for the offence punishable under Section 354 of Indian Penal Code (for short 'IPC') and acquitted him for the offence punishable under Section 506 of IPC. On appeal being filed, the same was confirmed by the Appellate Court.

5. Heard Sri.B.S.Prasad, learned counsel for the petitioner and Sri. K.Nageshwarappa, learned HCGP for the respondent - State.

6. It is the submission of the learned counsel for the petitioner that the concurrent findings of the Courts below are contrary to the law and on evidence. Therefore, the findings are required to be set aside.

7. It is further submitted that the Courts below have failed to note that in the absence of independent witnesses, reliance could not be placed on the evidence of solitary witness when it is not in consonance with the facts of the case. The evidence of PW.2 and the complainant ought not to have been considered for the reason that they are the interested witnesses.

8. It is further submitted that there is a delay in filing the complaint. It would also indicate that they deliberately registered a case against the petitioner in order to trouble him. The Courts below have failed to take note of the evidence and also failed to apply the law properly. Consequently, the impugned judgments are passed which are required to be set aside. Making such submissions,

the learned counsel for the petitioner prays to allow the petition.

9. Per contra, the learned High Court Government Pleader for the respondent – State justified the concurrent findings of the Courts below and he further submitted that the evidence of PW.2 and the complainant are reliable and acceptable for the reason that in spite of having conducted the lengthy cross-examination, they supported the case of the prosecution by withstanding the said cross-examination. Therefore, the Courts below have acted upon their evidence and recorded the conviction, which is proper and relevant. Hence, it may not be appropriate to interfere with the said findings. Making such submissions, the learned HCGP prays to dismiss the petition.

10. Having heard the learned counsel for the respective parties and also perused the findings of the Courts below, it can be gathered from the facts that the complainant was a minor as on the date of the alleged incident. When she was going to the shop which was situated near her house, the accused restrained her and outraged her

modesty. Immediately, after she raised the alarm, her mother rescued her and thereafter, they lodged a complaint.

11. Before adverting to the discussion of the evidence, it is essential to refer the judgment of the Hon'ble Supreme Court in the case of ***RAJU PANDURANG MAHALE v. STATE OF MAHARASTHRA AND ANOTHER***[1], wherein the Hon'ble Supreme Court held in paragraph Nos.11 to 13 which reads as under:

> ***"11.*** *Coming to the question as to whether Section 354 of the Act has any application, it is to be noted that the provision makes penal the assault or use of criminal force on a woman to outrage her modesty. The essential ingredients of offence under Section 354 IPC are:*
>
> *(a) That the assault must be on a woman.*
>
> *(b) That the accused must have used criminal force on her.*
>
> *(c) That the criminal force must have been used on the woman intending thereby to outrage her modesty.*

[1] (2004) 4 SCC 371

12. *What constitutes an outrage to female modesty is nowhere defined. The essence of a woman's modesty is her sex. The culpable intention of the accused is the crux of the matter. The reaction of the woman is very relevant, but its absence is not always decisive. Modesty in this section is an attribute associated with female human beings as a class. It is a virtue which attaches to a female owing to her sex. The act of pulling a woman, removing her saree, coupled with a request for sexual intercourse, is such as would be an outrage to the modesty of a woman; and knowledge, that modesty is likely to be outraged, is sufficient to constitute the offence without any deliberate intention having such outrage alone for its object. As indicated above, the word "modesty" is not defined in IPC. The Shorter Oxford Dictionary (3rd Edn.) defines the word "modesty" in relation to a woman as follows:*

"Decorous in manner and conduct; not forward or lewd; Shamefast; Scrupulously chaste."

13. *Modesty is defined as the quality of being modest; and in relation to a woman, "womanly propriety of behaviour; scrupulous chastity of thought, speech and conduct". It is the reserve or sense of shame proceeding from instinctive aversion to impure or coarse suggestions. As observed by Justice Patteson in R. v. James Lloyd [(1836) 7 C&P 317 : 173 ER 141] :*

In order to find the accused guilty of an assault with intent to commit a rape, court must be satisfied that the accused, when he laid hold of the prosecutrix, not only desired to gratify his passions upon her person but that he intended to do so at all events, and notwithstanding any resistance on her part.

The point of distinction between an offence of attempt to commit rape and to commit indecent assault is that there should be some action on the part of the accused which would show that he was just going to have sexual connection with her.

> ***14.****Webster's Third New International Dictionary of the English language defines modesty as "freedom from coarseness, indelicacy or indecency : a regard for propriety in dress, speech or conduct". In the Oxford English Dictionary (1933 Edn.), the meaning of the word "modesty" is given as "womanly propriety of behaviour; scrupulous chastity of thought, speech and conduct (in man or woman); reserve or sense of shame proceeding from instinctive aversion to impure or coarse suggestions".*

12. On careful reading of the above dictum of the Hon'ble Supreme Court, no doubt, the word 'modesty' has not been defined in the Indian Penal Code. However, the essence of a woman's modesty is her sex. The culpable intention of the accused is the crux of the matter.

13. Having considered the principles laid down by the Hon'ble Supreme Court and also the ingredients referred in the said judgment, it is appropriate to discuss the evidence of all the witnesses in detail to arrive at a conclusion as to whether the findings of the Courts below are appropriate or not.

14. PW.1 being the complainant had deposed in her evidence that she knew the accused. When she was going to the shop, the accused was coming in the opposite direction had restrained her and tried to outrage her modesty.

15. PW.2 is the mother of the complainant. She deposed in her evidence that after hearing the hue and cry of her daughter, she went to the spot and saw that the accused was holding her daughter.

16. PW.3 being the brother of P.W.1 and son of PW.2 is a hearsay witness to the incident.

17. PW.4 is the friend of PW.3. He is also hearsay witness.

18. PW.5 stated to be the mahazar witness, she has turned hostile.

19. PW.6 is the PSI. He had conducted the investigation and submitted the charge sheet.

20. On reading of the evidence of all the witnesses, none of the independent witnesses have been examined to substantiate the incident.

21. On careful reading of the evidence of PWs.1 and 2, both have admitted that PW.1 knew the accused prior to the incident and they were going to coolie work together.

Merely on the strength of the evidence of PW.1, it cannot be said that the accused had committed the offence under Section 354 of IPC for the reason that the Investigating Officer ought to have collected the clothes of the victim to send the clothes to FSL report in order to prove the finger prints of the accused. If at all, if he had touched the clothes of the victim, the finger prints could have been there and it would be the best evidence to prove that she had been outraged by the accused. It is needless to say that mere making allegations that she had been subjected to outraged the modesty, that cannot be considered as the fact has been proved.

22. Even assuming that she had raised hue and cry in the road for help, some one must have heard the said hue and cry and should have come to the spot to rescue the victim. As per the evidence of PW.1, she admitted that there are some other houses also situated in and around the place of occurrence and none of the independent witnesses have been cited in the charge sheet and none of the independent witnesses have been examined to substantiate the incident, therefore, it creates doubt

about the incident. The said doubt could have been given to the accused / petitioner as a benefit of doubt. As the Courts below have failed to extend such benefit, interference with the findings and setting aside the concurrent findings of rendering the conviction is justified.

23. In the light of the observation made above, I proceed to pass the following:

ORDER

(i) The Criminal Revision Petition is *allowed.*

(ii) The judgment of conviction and order on sentence dated 04.11.2015 passed in C.C.No.676/2014 (Old No.776/2008) by the Additional Senior Civil Judge and J.M.F.C., Puttur, D.K and the judgment and order dated 15.07.2016 passed in Crl.A.No.5034/2015 by the V Additional District and Sessions Judge, D.K., Mangaluru, Sitting at Puttur, D.K, are set aside.

(iii) The petitioner is acquitted for the offence under Section 354 of IPC.

(iv) Bail bonds executed, if any, stand cancelled.

Sd/-
(S RACHAIAH)
JUDGE

UN
List No.: 19 Sl No.: 2
CT:PK