HC-KAR

IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 4TH DAY OF JUNE, 2025

BEFORE

THE HON'BLE MR. JUSTICE V. SRISHANANDA

CRIMINAL APPEAL NO.200144/2016

(374(Cr.PC)/415(BNSS))

BETWEEN:

MALLAPPA S/O DEVAPPA VAGANGERA,
AGE:26 YEARS, OCC:AGRICULTURE,
R/O. T. BOMMANALLI
TALUK SURPUR.

...APPELLANT

(BY SRI S.S. ASPALLI, ADVOCATE)

Digitally signed by SUMITRA SHERIGAR
Location: HIGH COURT OF KARNATAKA

AND:

1. THE STATE OF KARNATAKA,
   THROUGH SHORAPUR POLICE STATION,
   DISTRICT YADGIR,
   REPRESENTED BY ADDL. SPP,
   HIGH COURT OF KARNATAKA,
   KALABURAGI BENCH.

2. HANMANTHA
S/O BHEEMSHIN SINGH,
AGE: MAJOR, OCC: SERVICE IN GESCOM,
POST VAGANGERA VILLAGE,
TQ. & DIST. YADGIR.

…RESPONDENTS

(BY SRI JAMADAR SHAHABUDDIN, HCGP, FOR R1;
R2–SERVICE OF NOTICE HELD SUFFICEINT V/O DTD.01.02.2025)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374(2) OF CR.P.C., PRAYING TO SET ASIDE THE IMPUGNED JUDGMENT OF CONVICTION DATED:20.09.2016 AND SENTENCE DATED 20.09.2016 PASSED BY THE SESSIONS JUDGE, SPL. COURT AT YADGIR, IN SPL. CASE NO.3/2011 DATED 20.09.2016 AND ACQUIT THE APPELLANT OF ALL CHARGES IN SPL. CASE NO.3/2011 DATED 20.09.2016 ON THE FILE OF THE SESSIONS JUDGE, SPL. COURT AT YADGIR.

THIS APPEAL, COMING ON FOR FINAL HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

ORAL JUDGMENT

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

1. Heard Sri S.S. Aspalli, learned counsel, for the appellant-accused and Sri Jamadar Shahabuddin, learned High Court Government Pleader, for the respondent-State.

2. The accused, who suffered an order of conviction in Special Case No.3/2011 for the offences punishable under Section 323 of IPC and Section 3(1)(x) of SC/ST Prevention of Atrocity Act, is sentenced as under:

> *"The accused is hereby sentenced to pay a fine of Rs.1,000/- in-default S.I. for one month of the offence punishable under Section 323 of Indian Penal Code and further he is sentenced to undergo S.I. for one year and to pay fine of Rs.2,000/- in-default S.I. for two months of the offence punishable under Section 3(1)(x) of SC/ST (P.A.) Act, 1989.*
>
> *The sentences and in-default sentences shall run concurrently.*

Considering the nature of the offence and the injury and humiliation sustained by the complainant, it is just and proper to award compensation of Rs.5,000/- to the complainant acting under Section 357 of Cr.P.C. and the accused is directed to pay the said compensation to the complainant."

3. Facts in the nutshell for the disposal of the present appeal are as under:

A complaint came to be lodged by the Bill Collector of GESCOM by name Hanumantha S/o. Bheemshin Singh with the Surpur Police on 31.10.2010, contending that he is working as a Bill Collector, (Grama Vidyut Prathinidhi (G.V.P.)) and he is resident of Vagangera. His duty is to visit the villages in and around Vagangera and supervise the electricity connection and collect the bill amount.

3.1 As a part of his job, on 31.10.2010 at about 09.00 a.m., he is said to have visited T. Bomanahalli Village for bill collection. At that juncture, the appellant

herein belonging to Kurba Community approached him all of a sudden and abused him in filthy language taking out his caste name and enquired as to why the electricity connection has been disconnected to his house. Complainant replied to him stating that he is not responsible for the alleged disconnection and it is the duty of the Lineman.

3.2 Being enraged with such reply of the complainant, appellant herein said to have kicked him holding the shirt of the complainant and also tried to kick again. At that juncture, near the main entrance of the village, Irapa Kattimani and Devendrappa, who were proceeding near the place of incident, pacified the quarrel. After registering the case in Crime No.51/2010, the Police investigated the matter and filed the charge-sheet against the petitioner for the aforesaid offences.

4. Learned Special Judge secured the presence of the accused and framed the charges for the aforesaid offences after taking cognizance of the alleged offences.

5. Appellant pleaded not guilty, therefore, trial was held. In order to establish the case of prosecution, complainant got examined himself as PW1 and eight more witnesses were examined as PW2 to PW9. Among them, PW2 to 4 have supported the case of prosecution besides the complainant. PWs.5, 6 and 7 turned hostile to the case of the prosecution.

6. Prosecution in all relied on seven documentary evidence, which were exhibited and marked as Exs.P1 to P7, comprising of complaint, letter from GESCOM Department and Spot Mahazar. Exs.P4 and P5 are the portion of Exs.P6 and P7.

7. On conclusion of recording of evidence, learned Special Judge recorded the statement of the accused as is contemplated under Section 313 of Cr.P.C., wherein,

accused has denied the incriminatory materials found against him in the prosecution evidence.

8. Accused did not choose to examine himself nor any witnesses on his behalf, nor furnished any written submissions as is contemplated in Section 313(4) of Cr.P.C.

9. Thereafter, learned Trial Judge heard the parties in detail and on cumulative consideration of oral and documentary evidence placed on record, convicted the accused and sentenced as referred to supra.

10. Being aggrieved by the same, the accused has preferred the present appeal on the following grounds:

> *"4. That, there is inconsistency between the evidence of PW-1 who has filed a complaint and the contents of the complaint which is marked as exhibit P-1, the trial court has not properly appreciated the evidence on record.*
>
> *5. That, there is no evidence on record to show that the electricity to the house of the*

appellant / accused was disconnected for non-payment of the bill at any point of time and for that reason the alleged incident has taken place. The trial court has failed to notice the said facts and in the absence of such evidence the trial court has wrongly convicted the appellant / accused.

6. That, PW-1, PW-2, PW-3 and PW-5 are friends and belongs to same village and PW-3 has also admitted that he is a friend and relative of PW-1. Hence the trial court has failed to notice that PW-1 to PW-3 and PW-5 are interested witnesses and hence there evidence requires to be examined carefully.

7. That the evidence of PW-4 Section Officer of GESCOM is inconsistence with the letter which is marked as Exhibit P-2 and the correction made in a Exhibit P-2 was not noticed by the trial court.

8. That, the evidence and documents on record reveals that the PW-1 has filed a false complaint on false grounds and the trial court has failed to appreciate the fact that, there is inconsistency between the evidence of PW-1, PW-2 and PW-3 regarding the manner in which the incident took place and the spot and the presence of said witnesses.

9. It is submitted that viewed at any angle the impugned judgement of conviction suffers from serious infirmities and question of law and misconception in appreciating evidence of prosecution witnesses.

10. It is submitted by the Appellant, that this Hon'ble Court be pleased to permit their counsel to urge some grounds at the time of argument.

11. It is submitted that no other appeal is pending or filed by the appellant before the any court of law for the same cause of action except the present appeal."

11. Sri S.S. Aspalli, learned counsel for the appellant reiterating the grounds urged in the appeal memorandum contended that the learned Trial Judge failed to note that there are serious discrepancies in the case of the prosecution which were pointed out to the learned Trial Judge.

12. He would further contend that as per the complaint, incident has occurred near the main entrance of

the village, whereas, complainant while deposing before the Court has unequivocally deposed that incident has occurred in the shop of PW7-Devanna. But PW7 has turned hostile to the case of the prosecution and therefore, the prosecution failed to establish place of the incident itself, which has been totally ignored by the learned Trial Judge while convicting the appellant and thus sought for allowing the appeal.

13. *Per contra,* Sri Jamadar Shahabuddin learned High Court Government Pleader appearing for respondent-State while supporting the impugned judgment of conviction and sentence, contended that PWs.1 to 5 have totally supported the case of the prosecution.

14. He would further contend that it is not the quantity of the evidence that is to be appreciated, it is quality of the evidence that needs to be taken into consideration and therefore the finding of conviction

recorded by the learned Trial Judge is just and proper and sought for dismissal of the appeal.

15. He further pointed out that the PWs.1 to 3 have specifically deposed about the accused taking out caste name in the public place and public view would attract all the ingredients of the offence under Section 3(1)(x) of the SC/ST Prevention of Atrocity Act and minor discrepancies elicited in the cross-examination are to be ignored as it is only 2/3rd witnesses who have deposed as per their statements recorded under Section 161 of Cr.P.C., and while appreciating the material evidence, the gist of the case of prosecution must be appreciated from the oral testimony of the witnesses. As such, the findings recorded by the trial Judge are just and proper and sought for dismissal of the appeal.

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, the following points would arise for consideration:

1) Whether the prosecution has successfully established all ingredients to attract the offences under Section 323 of IPC read with Section 3(1)(x) of the SC/ST (PoA) Act?

2) Whether the appellant makes out a case that the impugned judgment of conviction is suffering from legal infirmity and perversity and calls for interference?

3) Whether the sentence is excessive?

4) What order?

Regarding point Nos.1 and 2:-

18. In the case on hand, prosecution in order to establish its case, examined 09 witnesses, among them PWs.1 to 5 have supported the case of the prosecution. PWs.6 and 7 have turned hostile to the case of the prosecution. PW8 is the I.O. and PW9 is the FIR carrier.

Thus, the material witnesses in the case of the prosecution are PWs.1 to 5.

19. PW1 is the complainant, who deposed in line with the complaint averments by stating that on 31.10.2010 he has visited T. Bommanahalli Village as a part of his duty. He further deposed that about 15 days earlier to 31.10.2010, there was disconnection of the electricity to the house of the appellant and in that regard appellant all of a sudden came near grocery shop of PW7 and when complainant was inside the shop of PW7, appellant picked up a quarrel, abused the complainant in filthy language taking his caste name and assaulted and kicked him. The quarrel was pacified by Devendrappa(PW2), Hanumantha(PW5) and Madevappa (PW3).

20. In his cross-examination, he admits that he has not made any entry in the Register maintained in the office that he is visiting T. Bomanalli Village. He denies

the suggestion that he did not state in his complaint that the incident has occurred in the grocery shop of PW7. He has answered that father of the accused and others have pacified the quarrel. He denies the suggestion that in the complaint he has not stated that PW2, PW5 and PW3 have pacified the quarrel. He has answered that the shop of PW7 and main entrance of the village is at a distance of 150 feet and if any quarrel takes place in the main entrance of the village it is not visible to the shop of PW7.

21. PW2 is Devendrappa, who is a student, aged 26 years and resident of Vagnagera. He deposed that he has witnessed the incident that has occurred on 31.10.2010 at about 09.00 a.m., when he was near the shop of PW7. He also deposed that accused/appellant has abused and assaulted and kicked the complainant.

22. In his cross-examination he has answered that shop of PW7 is situated about 200 or 250 feet away from main entrance of the village. He admits that in and

around the shop of PW7 there are several shops and houses. He admits that if some incident occurs in the main entrance of the village, the same is not visible if somebody is near the Shop of PW7. He admitted that in his statement before the Police he has stated that the accused has assaulted the PW1 near the shop.

23. PW3 – Mahadevappa, who is the resident of T. Bomanalli, who is a Social Activist deposed in line with PW2.

24. In his cross-examination, he admits that complainant is his far relative and belonging to the same caste. He also stated that the incident has occurred near the shop of PW7. He admits that CW4 - Suresh and CW5 - Devanna have pacified the quarrel.

25. The Section Officer of the GESCOM is examined as PW4, who stated that at the request of Investigating Officer he has issued a letter, whereunder it has been mentioned that the PW1 has been deputed for bill

collection in T. Bomanalli Village. In his cross-examination, he admits that before visiting any particular village, Bill Collector has to make an entry in the Register. He admits that he has not produced any such Register to the Court.

26. PW5 - Hanumantha is one of the Panch Witnesses to Spot Mahazar marked at Ex.P3 and he has supported the case of the prosecution.

27. In his cross-examination on behalf of the accused, he has answered that he did not know about the incident till the Police arrived in the jeep on the date of Mahazar marked at Ex.P3. Admittedly, the Police have visited the village on 01.11,2010 after registering the case. He admits that on his own he acted as Panch for Ex.P3 - Mahazar.

28. PW6 – Suresh, who is supposed to be one of the eyewitnesses to the incident, has turned hostile to the

case of prosecution. In his cross-examination by the prosecution no useful material is elicited.

29. So also the shop owner, namely - Devanna, who is a star witness to the prosecution did not support the case of the prosecution to any extent and he has specifically stated that he has not seen the incident nor given any statement before the Investigating Officer.

30. In his cross-examination also prosecution is unable to elicit any material so as to probabilise the case of the prosecution.

31. PW8 is the Investigating Officer, who deposed about the registration of the case, taking up the further investigation, conducting Spot Mahazar at Ex.P3, recording of the statements of the witnesses and filing the collection of cash, collection of caste certificate and filing the charge. In his cross-examination, he denies the suggestion that a false case has been foisted by the complainant and

without conducting the investigation in a proper manner, he has filed a false charge-sheet.

32. PW9 is the FIR carrier whose evidence is formal in nature.

33. The above evidence on record is sought to be re-appreciated on behalf of the appellant.

34. On careful consideration of the above evidence on record, admittedly PW1 and PW2 are the residents of Vaganagera. PW1 is the Bill Collector of GESCOM. Admittedly, on 31.10.2011 is a Sunday and he had visited the T. Bommanalli Village. According to PW1 there is no necessity to sign the Register before visiting T. Bommanalli Village, but PW5 specifically answered that whoever the Bill Collectors visit any village, they is bound to make necessary entry in the Register maintained in the GESCOM office. Therefore, the very stand taken by the PW1 that he had visited T. Bommanalli Village for the purpose of bill collection cannot be countenanced in law.

35. Further, PW2 being the relative of PW1, admittedly being the resident of Vagangera had also accompanied PW1. PW2 claims to be a student who is aged 26 years. What education that he was pursuing at the age of 26 is not even spoken to by the prosecution. Therefore, he being the relative and resident of Vagangera, it can be easily inferred that he has accompanied the PW1 to T. Bomanalli Village for some other purpose.

36. According to the PW1 and the complaint averments, the incident has taken place near the main entrance of the village, whereunder, accused all of a sudden came and questioned the PW1 as to why there is disconnection of electricity to his house and picked up the quarrel. But while deposing before the Court, PW1 has stated that the incident has occurred when PW1 was in the shop of PW7. Therefore, oral testimony of PW7, who is a star witness to the prosecution assumes importance. The other witnesses, who supported the case of prosecution,

namely, PW2 and PW3, have stated that the incident has occurred near the grocery shop of PW7. However, PW7 did not support the case of prosecution to any extent and unequivocally deposed before the Court that no incident as alleged by the prosecution has taken place near his shop nor he has witnessed the incident.

37. Therefore, very genesis of the crime and possibility of any incident as is alleged by the prosecution itself is not established by the prosecution with cogent and convincing evidence on record. PW3 is admittedly a relative of PW1 and belonging to the same caste that of PW1.

38. Further, according to PW1, PW5 - Hanumanth has also witnessed the incident. Whereas, as per the prosecution, Hanumanth Hosamani is only a punch witness to Ex.P3 - Panchnama. In his cross-examination, PW5 - Hanumanth has categorically admitted that he did not know about the incident till the Police came on the next

day and he has volunteered to act as Mahazar-witness for Ex.P3 - Panchnama. These discrepancies in the case of prosecution are totally ignored by the learned Trial Judge while passing the impugned judgment.

39. Further, there is no discussion as to the contradictions that are elicited in the cross-examination of the prosecution witnesses and the interested testimony of PW2 and PW3, who are none other than the relatives of PW1 are not tested with the required caution and care while appreciating the testimony of PW1 to PW3.

40. While there is no bar to place reliance on the interested testimony, the Trial Court is required to exercise necessary care and caution to find out the possibility of the false implication of the accused in the incident, especially when the testimony of the interested witnesses are to be appreciated. Such a course is not adopted by the learned Trial Judge while passing the impugned judgment.

41. But the presence of the accused was found near the main entrance as could be seen from the complaint averments and there was a quarrel as there was a disconnection of electricity to house of accused. Therefore, possibility of some altercation between the accused and the complainant cannot be ruled out on the incident. In such altercation, kicking of the PW1 by the accused cannot also be ruled out. However, from the material on record, none of the discrepancies that is pointed out above in the cross-examination of the prosecution witnesses, ingredients to attract the offence punishable under Section 3(1)(x) of the SC/ST Prevention of Atrocity Act, whereby, the prosecution is expected to prove beyond reasonable doubt with cogent evidence that the accused with an intention to degrade or insult the PW1 in public by taking out the caste name, have not been established, the impugned judgment convicting the accused for the aforesaid offence needs to be set aside

while maintaining the conviction of the appellant for the offence under Section 323 IPC.

42. Accordingly in view of the foregoing discussion, Point Nos. 1 and 2 are answered partly in the affirmative.

Regarding point No.3:-

43. Since, this Court has modified the impugned judgment of conviction for the offence under Section 323 IPC, the fine is enhanced in a sum of Rs.10,000/- and Rs.5,000 compensation ordered by the Trial Judge is maintained, ends of justice would be met. Accordingly point No.3 is answered partly in the affirmative.

Regarding point No.4:-

44. In view of the finding of this Court on point Nos.1 to 3 as above, following order is passed:

ORDER

i. The appeal allowed in part.

ii. The impugned judgment is modified as under:

(a) Accused/appellant is acquitted for the offence punishable under Section 3(1)(x) of the SC/ST (PoA) Act and conviction of the accused for the offence under Section 323 is maintained.

(b) Custody period already undergone by the accused is be treated as period of imprisonment for the offence under Section 323 IPC.

(c) For the proved offence under Section 323 of IPC, the appellant is directed to pay fine of Rs.10,000/- inclusive of the fine imposed by the Trial Court to be payable on or before 15.07.2025. Failure to pay the enhanced fine amount would result in Simple Imprisonment of 2 months as a default sentence.

(d) Out of the fine amount, a sum of Rs.5,000/- is ordered to be paid as compensation to PW1 and balance sum of Rs.5,000/- to be appropriated towards the defraying expense of the State.

(e) Office is directed to return the Trial Court Records with copy of this order for issue of modified warrant.

Ordered accordingly.

Sd/-
(V. SRISHANANDA)
JUDGE

SBS
List No.: 1 Sl No.: 56
CT:PK