



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 14TH DAY OF JANUARY, 2026

PRESENT

THE HON'BLE MR. JUSTICE H.P.SANDESH

AND

THE HON'BLE MR. JUSTICE VENKATESH NAIK T

CRIMINAL APPEAL NO.104 OF 2018

C/W

CRIMINAL APPEAL NO.1686 OF 2017

IN CRL.A NO. 104/2018

BETWEEN:

THE STATE BY SUB-INSPECTOR OF
POLICE, HARIHARA CITY P.S.
REP. BY STATE PUBLIC PROSECUTOR
HIGH COURT BUILDING
BENGALURU-560 001

...APPELLANT

(BY SMT. RASHMI JADHAV, ADDL. SPP)

AND:

SRI NAGESH S.V.
S/O VITTAL RAO
AGE: 48 YEARS
OCCUPATION: TAILOR,
R/O CHAPPARADAHALLI LAYOUT,
HOSAPETE TOWN
BALLALRY DISTRICT-583 201

...RESPONDENT

(BY SRI CHANDRASHEKAR L, ADVOCATE)





THIS CRL.A. IS FILED U/S.378(1) AND (3) CR.P.C
PRAYING TO SET ASIDE THE PORTION OF THE JUDGMENT AND
ORDER DATED 31.08.2017 PASSED BY THE PRINCIPAL
DISTRICT AND SESSIONS JUDGE, DAVANGERE IN
S.C.NO.135/2016 IN SO FAR AS ACQUITTING THE ACCUSED
FOR THE OFFENCE PUNISHABLE UNDER SECTION 307 OF IPC
AND ETC.

IN CRL.A NO.1686/2017

BETWEEN:

SHRI NAGESH S V
S/O LATE VITTAL RAO
AGED 47 YEARS
R/AT CHAPPARADAHALLI AREA,
HOSPET TOWN
BELLARY DISTRICT

...APPELLANT

(BY SRI CHANDRASHEKAR L, ADVOCATE)

AND:

THE STATE OF KARNATAKA
BY HARIHARA TOWN POLICE STATION
BY STATION HOUSE OFFICER
REP. BY STATE PUBLIC PROSEUCTOR
HIGH COURT BUILDING
BANGALORE-1

...RESPONDENT

(BY SMT. RASHMI JADHAV, ADDL. SPP)



THIS CRL.A. IS FILED U/S.374 OF CR.P.C PRAYING TO SET ASIDE THE JUDGMENT AND ORDER OF CONVICTION DATED 31.08.2017 PASSED BY THE PRINCIPAL DISTRICT AND SESSIONS JUDGE, DAVANAGERE IN S.C.NO.135/2016 - CONVICTING THE APPELLANT/ACCUSED FOR THE OFFENCE P/U/S 498(A) AND 326 OF IPC AND ETC.

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

CORAM: HON'BLE MR. JUSTICE H.P.SANDESH
AND
HON'BLE MR. JUSTICE VENKATESH NAIK T

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE H.P.SANDESH)

Crl.A.No.104/2018 is filed by the State challenging the judgment of acquittal of the accused for the offence punishable under Section 307 of IPC and Crl.A.No.1686/2017 is filed by the accused challenging the judgment of conviction and sentence for the offences punishable under Sections 498A and 326 of IPC by the Trial Court in S.C.No.135/2016 dated 31.08.2017.



2. Heard the learned counsel appearing for the respective parties.

3. The factual matrix of case of the prosecution is that the complainant is the brother of the victim and he is only the son to his father and his father is having 3 daughters. Among them, second daughter is Manjula who married the accused around 20 years back and having 2 children and they lived happily for sometime. Around 3 to 4 years back, accused started suspecting cruelty of the victim and picked up quarrel for silly reasons and used to abuse and assault her. On a particular date of incident, accused assaulted the victim with the razor blade and machete. The complainant came to know all these facts from her sister as well as neighbours. It is also the averment in the complaint that his sister about 2 years back came to her brother's house and was staying with him by doing tailoring work along with her 2 children. Accused was frequently visiting their house and was also picking up the quarrel with her sister.

4. That on 06.06.2016, the complainant came to know from one Nagarajaswamy that accused around 11.00 a.m.,



came and assaulted the victim by means of razor blade on her neck, left jaw, below left eye, right cheek and eye and caused bleeding injuries. The said incident was witnessed by the neighbours and they pacified the quarrel and accused ran away from the spot and thereafter, they shifted the injured to the government hospital at Harihara. The complainant along with his mother visited the hospital and noticed that the accused had assaulted her sister on 4 to 5 parts of the body using razor and chopper and also caused grievous injuries. As a result, she was not in a condition to speak. The accused with an intention to commit murder of Manjula i.e., PW5, assaulted her with deadly weapons.

5. Based on the complaint, case was registered for the offence punishable under Section 498A and 307 of IPC and thereafter, the police have investigated the matter and filed the charge sheet for the offence punishable under Section 498A and 307 of IPC. The accused did not plead guilty and claims trial. Hence, the prosecution examined 13 witnesses as PW1 to PW13 and got marked the documents at Ex.P1 to P17 and also marked MO1 to MO4. The accused was subjected to 313



statement and he has not laid any defence evidence. The Trial Court has appreciated both oral and documentary evidence placed on record since all the witnesses have supported the case of prosecution except PW13 and believed the version of the prosecution. However, not convicted the accused for the offence punishable under Section 307 of IPC but invoked the offence punishable under Section 326 of IPC. Being aggrieved by the acquittal of the accused for the offence punishable under Section 307 of IPC, Crl.A.No.104/2018 is filed by the State and challenging the conviction and sentence for the offence punishable under Section 498A and 326 of IPC, Crl.A.No.1686/2017 is filed by the appellant/accused.

6. The learned Additional SPP - Smt. Rashmi Jadhav appearing for the State would submit that the evidence of PW2 was not properly considered by the Trial Court. PW5 is the injured witness who deposed that accused came prepared with deadly weapons i.e., razor blade and chopper with an intention to commit murder and caused injuries on the vital part of neck as well as on the face. It is the contention of the counsel that when he aimed to commit murder, the victim warded off those



blows, as a result, she sustained injuries to her both the palms. The same is last sighted by the Trial Court. The counsel would submit that even the witnesses who have witnessed this incident deposed that when PW5 came out from the house, they witnessed the assault made by the accused and the same is spoken by PW6 and PW8. PW9 also deposed before the Court that the accused was repeatedly assaulting her mother. The counsel also would submit that the evidence of PW1 is very clear that the injured is caused on the victim by using the weapons which were seized. The counsel also submits that recovery was made at the instance of the accused and recovery witnesses also supported the case of the prosecution. All these materials were not considered by the Trial Court.

7. The learned counsel appearing for the appellant/accused would vehemently contend in this appeal that the Trial Court committed an error in convicting the accused even for the offence committed under Section 498A and 326 of IPC. The counsel would submit that Trial Court failed to notice primarily the admitted facts in the present case which would establish that the accused has been falsely



implicated in the case. The eyewitness deposed that they admitted the victim to the hospital at 11.45 a.m., but according to the prosecution, eyewitnesses have witnessed the incident that accused ran away from the spot after seeing the eyewitnesses i.e., at 11.00 to 11.30 a.m., but incident was taken place at 11.00 to 11.30 a.m. The complainant having received the information, gone to the hospital and saw the victim and then, goes to the police station and lodge the complaint. The complaint was lodged at 12.30 p.m., and the distance between the incident place and the police station is about hardly 3 to 4 kilometers. The counsel also contended that the Trial Court has completely lost its sight on the said facts into consideration. When the said fact was confronted to the IO, he has categorically deposed that the police identified the accused on the basis of identification of the eyewitness. From the chronological events, it appears to be that it almost the perfect case for conviction of the accused and the said reasoning given by the Trial Court is erroneous. The police apprehended the accused on 06.06.2016 at about 02.00 p.m., when the accused got down from the bus. It is also contended that evidence of prosecution is untrustworthy and eye witness -



CW8 has not supported the case of prosecution. Regarding nature of injuries and the evidence of doctor are contradictory to each other. The accused has been roped in the matter only in order to humiliate and harass him and the very appreciation of the evidence by the Trial Court in coming to the conclusion that he committed an offence under Section 326 and 498A of IPC is erroneous.

8. The learned counsel appearing for the State would vehemently contend that the evidence of PW5 is the victim and also the evidence of doctor who has been examined as PW11 is very clear that injuries could be caused by using MO1 to MO3. The counsel also submits that recovery is made at the instance of the accused and recovery witnesses are PW2 and PW7 have supported the case of prosecution for recovery and nothing is elicited to disbelieve the evidence of these witnesses. The counsel also would vehemently contend that the doctor evidence is very clear that the inflicted injuries are by using the razor as well as machete and these weapons could cause the injuries found on the injured. The counsel also would vehemently contend that the eye witnesses are PW6 and PW8



and both of them have supported the case of the prosecution stating that when they heard hue and cry of the victim, they rushed to the spot and found that the injured came out from the house and even accused assaulted her and having noticed the presence of the eye witnesses, accused ran away from the spot. In the evidence of these witnesses also, nothing is elicited with regard to these PW6 and PW8 were not there at the spot.

9. The other witness is PW9 who is the daughter of the accused and also the victim. She also deposes before the Court that the accused was assaulting her mother for small reasons like whenever food was not proper, he used to make the victim stand outside the house in the night and both of them are also sit along with the mother. When PW9 came back to house on that day, people are gathered near to the house and informed about the incident and immediately she rushed to the hospital and mother was not having any conscious and found the injuries all over the face and also on the neck and she regained the conscious after 3 to 4 days. On enquiry, her mother revealed that her father made an attempt to take away her life. The counsel would submit that in her cross-examination,



nothing is elicited with regard to the harassment and also the assault.

10. The counsel also brought to notice of this Court to evidence of the doctor and contend that even in the complaint itself, it is specifically stated that with an intention to take away the life, assault was made and the complaint was also lodged within a span of 1½ hour of the incident that too by her brother. The counsel would vehemently contend that though it not specifically deposed before the Court by PW5 that with an intention to take away the life, accused assaulted her, Court has to take note of the circumstances under which the incident was taken place and also the accused went with the deadly weapons like razor and machete and inflicted injury on the vital part. The counsel also would vehemently contend that the medical evidence is very clear that she has sustained injury to both the palms. Hence, it is a fit case to invoke Section 307 of IPC.

11. The counsel appearing for the accused would submit that though it is stated in the complaint that with an intention to take away the life, PW5-injured who has been



examined before the Court not stated in clear terms that with an intention to take away the life, injuries are inflicted. The counsel would submit that though there are several injuries, those injuries are on the face and no deep injury on the neck. Hence, it is not a clear case of 307 and there must be an intention to take away the life. The counsel also would vehemently contend that during the course of cross examination, a suggestion was made to PW5 that she was having affairs with the two persons and though it is denied, the Trial Court not appreciated the material on record and committed an error in invoking Section 326 of IPC and ought to have acquitted the accused and no trustworthy evidence before the Court in order to accept the case of prosecution. Hence, it requires re-appreciation and acquittal.

12. Having heard the learned counsel appearing for the respective parties and also on perusal of the material on record, the Points that would arise for our considerations are:

1. Whether the Trial Court committed an error in convicting the accused for the offences punishable under Sections 498A and 326 of IPC?



2. Whether the Trial Court committed an error in invoking Section 326 instead of 307 of IPC and committed an error in acquitting the accused for the offence punishable under Section 307 of IPC?

3. What Order?

13. Both the Points for consideration are taken up together since both are interconnected with each other to coming to the conclusion that whether there was an intention to take away the life and also to take note of nature of injuries. Hence, the evidence of each witnesses were also taken together for consideration.

14. The law is set in motion by lodging the complainant by the complainant who is none other than the brother of the injured who has been examined as PW4 and he categorically deposed before the Court that he came to know about the same through PW6 and immediately he rushed to the hospital and lodged the complaint at Ex.P7. On perusal of complaint, it discloses that the specific averment is made in the complaint that he has found the injuries on her neck and also on her hand



and also on her face. It is averred in the complaint that with an intention to take away the life, accused inflicted the injury and in the complaint itself he has stated that this incident was witnessed by Nagaraja Swami and also Leelamma, Prabhavathi, Basavaraju and others. It is also specifically stated that having witnessed the eyewitnesses, he ran away from the spot. The same is stated in the complaint within one and half hour of the incident i.e.,. Ex.P7. The FIR is also registered in terms of Ex.P8 and law was set in motion by registering the case. The wound certificate which is marked as Ex.P10 is very clear regarding the nature of injuries are concerned and injured was taken to the hospital at 11.30 a.m., i.e., within a span of 30 minutes of the incident and found total seven injuries.

15. The evidence of PW5 is that accused is her husband and her marriage was solemnized 23 years ago, having two children who are aged about 13 years and 14 years. At the time of the incident, she was residing along with her brother Manjunatha, who is examined as PW4. Both accused and herself were not residing together. When she was residing along with accused, he was abusing in a filthy language and



used to demand money and she was also doing tailoring work. From the date of incident, she is not doing any work. It is also her evidence that when she was alone in the house, accused came with razor blade and machete and abused her in a filthy language and inflicted injury with razor blade on the left ear, as a result, she sustained cut injury. When she tried to ward off the blows, accused held her hair and inflicted injury near the neck and also on the cheek. As a result, she sustained bleeding injury. The Court also noticed the injury marked on the face and also it is her evidence that using the chopper, assaulted above the neck and also on the back side of the head and shoulder. This incident was witnessed by Nagarajaswamy, Leelavathi and Prabhavathi and they came and rescued her and immediately taken her to hospital in an auto-rickshaw.

16. It is also her evidence that as a result of injury inflicted on her right eye, she is unable to see. The Court also noticed the same and recorded in the deposition itself and also identified MO1 and MO2. This witness was subjected to cross-examination. In the evidence, it is very clear that, earlier, herself, her husband and children were living at Harihara in a



rented house and also lived at Hospete at 13 to 14 years. Due to the difference between them, they are living separately from last 2½ years. In the cross-examination also says she narrated with regard to the incident and abuse made by the accused. She is also deposed that when she was sitting on the sewing machine, the accused came and started assaulting her. She cannot tell which hand was used and she observed the razor blade and also admits that when the incident takes place, on hue and cry, people gathered at the spot and she was shifted to the government hospital near the house. She categorically deposes that when she tried to escape from the clutches of the accused, he held her hair and inflicted the injury. In the cross-examination also withstood the same by narrating how an incident was taken place and even stated that Nagarajaswamy-PW6 who is an eyewitness shifted her to the hospital. The eyewitness PW6 also says that having heard the hue and cry, he rushed to the spot and noticed the accused and accused ran away from the spot and then he shifted the injured to the Hospital in an auto-rickshaw.



17. The witness PW8-Prabhavathi also reiterates the evidence of PW6 wherein she deposed that she also saw the accused while assaulting the victim and at that time, the injured was on the floor with bleeding from her neck. The PW6 shifted the victim to the hospital. She also identifies MO1 and MO2. This witness was also subjected to cross-examination. In the cross-examination, it is stated that PW6 house and also her house are neighbouring houses. It also admits that there is an auto stand near the place of the incident and hospital also at the distance of half a kilometer. She also deposed that if any galata would taken place, the people will gather. But she voluntarily says that more people were not there. Only 4 people came out from their house and witnessed this incident. It is suggested that she might have seen the accused earlier, but, the same was denied. But she categorically deposed that on the date of the incident itself, she saw the accused. The evidence of PW8 is also corroborated with the evidence of PW5 and PW6.

18. The other witness is PW9 who is the daughter of the victim and the accused. She deposes with regard to causing of harassment and committing the cruelty against her mother.



She came to know about the incident when she came back to the house. She says that having regained the conscious by her mother, she revealed that with an intention to take away the life, accused assaulted.

19. The other witness PW11 is a crucial witness i.e., the doctor evidence. PW11 in his evidence deposed that he has issued the wound certificate as per Ex.P10 who stated that there were 6 injuries which as follows:

1. Cut lacerated wound over left mandibular region 10 c.m. x 2 c.m.
2. Cut lacerated wound over left maxillary area 10 x 2 c.m.
3. Cut lacerated wound over right cheek at lateral angle of right eye 8 c.m.
4. cut lacerated wound over anterior neck left side 3 in number 3 c.m. each and right side 2 in No. with avulsed edge 3 c.m.
5. cut lacerated wound over right hand 4 c.m. size 2 in nu. At palmar aspect.
6. Cut lacerated wound over left hand over palm 4 c.m. size.
7. According to feedback from CGH open globe injury type I, zone II, grade V right eye.



20. PW11 also deposes that 7th injury is in respect of eye and she lost the vision in respect of her right eye and the same is a grievous injury and injuries No.1 to 6 are simple in nature and also given the report stating that those injuries could be caused if razor blade was used. This witness was subjected to cross-examination. In the cross-examination, answer is elicited that if MO2 was used, with the tip of the MO2, these type of injury could be caused. It is elicited that he did not mention the opinion of the doctor and also it is elicited that if any person falls on the hard surface with sharp edged weapon the nature of injury which was caused to the eye could be caused.

21. The other witnesses have also supported the case of prosecution except the witness PW13. PW13 is also a neighbouring witness but he did not support the case of the prosecution and it is the case of the prosecution that he also witnessed the incident.

22. Having reassessed both oral and documentary evidence placed on record, it is very clear that the incident was taken place on 06.06.2016 at around 11.00 a.m. and injured



was shifted to the hospital by PW6 within a span of half an hour and also the government hospital is very near to the place of incident i.e., at 11.30 a.m. and the doctor-PW11 treated the injured. The injuries is very clear that cut lacerated wound over left mandibular region, left maxillary, right cheek at lateral angle of right eye 8 c.m., over anterior neck left side 3 in number 3 c.m. each and right side 2 in number with avulsed edge 3 c.m. and over right hand 4 c.m. size 2 in number at palmar aspect. Hence, these two injuries number 5 and 6 clearly discloses that when an attempt was made by the injured to ward off the blows, she had sustained injuries to both the left hand and right hand palms. The injuries found on the anterior neck left side 3 in numbers, 3 c.m. each and right side 2 in number is very clear that injuries on the neck that is also a vital part of human and other injuries also on the face i.e., mandibular region, maxillary area and also right cheek and Court also while recording the evidence of PW5, noticed the injury marks on the face and also on the neck and so also taken note of loss of vision of the right eye of the injured.



23. Having considered the evidence of PW5 and also PW11, it discloses that within a span of half an hour injured was treated by the doctor PW11 and also issued the wound certificate. The Court also took note of nature of injuries 1 to 6 are simple in nature but the injury on the right eye is grievous in nature and also lost the vision of the right eye. No doubt, the Trial Court comes to the conclusion that it is the case of 326 of IPC and not the case of 307 of IPC. But the Sessions Court lost sight of the nature of injuries and sustained the injuries on both the left hand and right hand palms and also the injury to the eye and though injuries number 1 to 6 are simple in nature, but the Court has to take note of intention of the accused by inflicting injury on the face and also on the neck and there were three injuries on the neck in terms of injury number 5 and when the injuries are found on the neck, the neck is also a vital part. Apart from that it is emerged that both accused and also his wife i.e., injured were living separately from last 2½ years to 3 years.

24. It is also important to note that accused went with razor and also the chopper and chopper also seized at the



instance of the accused and mahazar witness also supports the case of the prosecution regarding recovery and FSL report also supports that MO.1 to MO.3 contains the 'O' blood group of the injured. When all these materials were found and also when the complaint itself clear that with an intention to take away the life, he inflicted the injury. The scope and applicability of Section 307 of IPC is also very clear when an attempt was made that it is very clear that it is not necessary that injury capable causing death should have been inflicted what is material to attract, the provision of Section 307 of IPC is the guilty intention or knowledge which all was done, irrespective of result, the intention and knowledge are the matters of inference from totality of circumstances and cannot be measured merely from the results. The trial judge fails to take note of nature of injuries that too on the vital parts of the neck and also the attempt made by the accused and the injured made all her efforts to ward off the blow which the accused was intended to do and as a result, she has sustained injury to both left palm and also the right palm as mentioned in the wound certificate as well as Doctor has deposed the same. No doubt in the cross – examination of the Doctor, a suggestion was made



that if any person falls on the sharp edged weapon, the injury caused to the eye could be caused, but here is a case of direct evidence against the accused that is P.W.5 as well as neighboring witnesses who rushed to the spot and having noticed the role of the accused that is P.W.6 and P.W.8. The witness P.W.6 only shifted injured to the hospital within a span of half an hour in the Auto rickshaw and also it is elicited from the mouth of the witnesses that Hospital is also nearby and there is no any delay in lodging the complaint and even on the very same day in the noon, the accused was apprehended and recovery was made and establishes. When such being the case, the Trial Court lost sight of considering all these totality of circumstances while invoking Section 307 of IPC, but erroneously comes to the conclusion that it is a case of offence punishable under Section 326 of IPC that there was no any intention, but fails to take note of the intention and knowledge are the matters of inference for totality of circumstances and cannot be measured merely from results though sustained simple Injury Nos.1 to 6, but injury No.7 is grievous in nature that too she lost her vision in respect of her right eye. When such being the material on record, the Trial Court committed an



error in coming to the conclusion that it is a case of 326 of IPC and not a case of 307 of IPC. The very approach is erroneous and it requires interference of this Court since the accused went with weapon and caused injury to neck.

25. It is also important to note that accused and victim are the husband and wife and also victim having two children and she is living along with two children and daughter also speaks about the cruelty on the part of the accused that he used to assault the mother and also make them to stay outside the house throughout night and nothing is elicited from the mouth of P.W.9 – daughter that she is deposing against the accused and also no reasons to depose against the father, but only based on the conduct of the accused, she deposes the same.

26. It is important to note that P.W.6 and P.W.8 are the independent witnesses and they are not the related witnesses who have rushed to the spot and deposed before the Court and evidence of all these witnesses were trustworthy except P.W.13 who is an eye witness turned hostile and other two eye witnesses have supported the case of the prosecution and trial



Judge committed an error in acquitting the accused for the offence punishable under Section 307 of IPC. The wound certificate which is produced before the Court is very clear with regard to the nature of injuries and also the evidence of the Doctor-P.W.11 coupled with the evidence of injured P.W.5. It is a case for invoking Section 307 of IPC and do not find any error on the part of invoking Section 498A of IPC and hence, matter requires re-consideration. Having re-assessed the evidence available on record and analyzing the evidence available on record, it is a case for conviction for offence 307 of IPC. The judgment of conviction and sentence for the offence 326 of IPC requires to be set-aside. Hence, we answer both the points accordingly.

27. In view of the discussions made above, we pass the following:

ORDER

- i) The Appeal filed by the State in Crl.A.No.104/2018 is ***allowed.***
- ii) The accused is convicted for the offence punishable under Section 307 of IPC instead of Section 326 of



IPC. The judgment of conviction of the Trial Court for the offence punishable under Section 498A of IPC is confirmed and sentence is also confirmed in respect of 498A of IPC. In respect of the offence under Section 307 of IPC, the accused is sentenced to undergo for a period of five years and pay fine of Rs.1,00,000/-(Rupees One Lakh only). In case of default of payment of fine, undergo another one year default sentence.

- iii) The accused is also entitled for the benefit under Section 428 of Cr.P.C for set-off.
- iv) The Appeal filed by the appellant/accused in CrI.A.No.1686/2017 is ***dismissed***.

Sd/-
(H.P.SANDESH)
JUDGE

Sd/-
(VENKATESH NAIK T)
JUDGE

SN/RHS