

IN THE HIGH COURT OF KARNATAKA

DHARWAD BENCH



DATED THIS THE 20<sup>TH</sup> DAY OF JULY, 2023

BEFORE

THE HON'BLE MR JUSTICE ANIL B KATTI

CRIMINAL REVISION PETITION NO. 100181 OF 2014

C/W

CRIMINAL APPEAL NO. 100065 OF 2014

CRIMINAL REVISION PETITION NO. 100181 OF 2014

BETWEEN:

1. LAKSHMANA REDDY YANE LAKSHMI REDDY,  
S/O. GADILINGAPPA,  
AGE: 24 YEARS, OCC: AGRICULTURIST,  
R/O. RARAVI VILLAGE, SIRUGUPPA TALUK.
2. VENKATARAO S/O. SRIRAMULU,  
AGE: 47 YEARS, OCC: AGRICULTURIST,  
R/O. NEHRU CAMP, K SUGURU,  
TQ: SIRUGUPPA TALUK.

...PETITIONERS

(BY SRI. M. B. GUNDAWADE FOR SRI. Y. LAKSHMIKANT REDDY,  
ADVOCATES)

**AND:**

THE STATE OF KARNATAKA,  
P.S.I SIRUGUPPA POLICE STATION,  
(BY SPP HIGH COURT OF KARNATAKA, DHARWAD.

...RESPONDENT

(BY SRI. PRAVEEN UPPAR, HCGP FOR RESP.)

# VERDICTUM.IN

- 2 -

**CRL.RP No. 100181 of 2014 C/W**  
**CRL.A No. 100065 of 2014**

THIS CRIMINAL REVISION PETITION IS FILED U/S 397 R/W 401 OF CR.P.C. SEEKING TO SET ASIDE THE ORDER DATED 29.08.12 PASSED BY THE JUDICIAL MAGISTRATE FIRST CLASS COURT, SIRUGUPPA IN C.C.NO.239/2011 AND CONFIRM THE ORDER CRIMINAL APPEAL NO.138/2012 IN THE COURT OF PRL. SESSIONS JUDGE AT BELLARY, DATED 06.09.2013.

**CRIMINAL APPEAL NO. 100065 OF 2014**  
**BETWEEN:**

STATE OF KARNATAKA  
BY P.S.I  
SIRUGUPPA POLICE STATION.

...APPELLANT

(BY SRI. PRAVEEN UPPAR, HCGP FOR APPELLANT)

**AND:**

1. SRI. LAKSHMANAREDDY YANE LAKSHMIREDDY,  
S/O GADLLINGAPPA,  
AGED ABOUT 23 YEARS, OCC. AGRIL.  
R/O RARAVI VILLAGE,  
SIRUGUPPA TALUK.
2. SRI. VENKATARAO, S/O SRIRAMULU,  
AGED ABOUT 47 YEARS, OCC. AGRIL,  
R/O NEHRU CAMP, K. SUGURU,  
SIRUGUPPA TALUK.

...RESPONDENT

(BY SRI. M. B. GUNDAWADE FOR SRI. Y. LAKSHMIKANT REDDY,  
ADVOCATES)

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THIS CRIMINAL REVISION PETITION IS FILED U/S 397 R/W 401 OF CR.P.C. SEEKING TO SET ASIDE THE SENTENCE ON 06.09.2013 IN CRIMINAL APPEAL NO. 138/2012 ON THE FILE OF PRL. SESSIONS JUDGE, BELLARY AND ENHANCE THE SENTENCE AGAINST RESPONDENTS FOR THE OFFENCE PUNISHABLE UNDER SECTION 326, 323 AN 504 OF IPC.

THESE CRIMINAL REVISION PETITION AND CRIMINAL APPEAL COMING ON FOR HEARING AND THE SAME HAVING BEEN HEARD AND RESERVED FOR ORDER ON 10.07.2023, THIS DAY, THE COURT, MADE THE FOLLOWING:

**ORDER**

Appellant/accused Nos.1 and 2 have filed criminal revision petition No.100181/2014 and appellant/State has filed criminal appeal No.100065/2014 feeling aggrieved by judgment of the first appellate Court on the file of Principal Sessions Judge, at Ballari, in Criminal Appeal No.138/2012 dated 06.09.2013.

2. Appellants/accused have challenged the modified judgment of conviction and order of sentence passed by trial Court. Whereas appellant/State has challenged the adequacy of sentence for the offences punishable under Sections 326 and 323 R/w 34 of IPC.

3. Parties to the revision petition and appeal are referred with their ranks as assigned in the trial Court for the sake of convenience.

4. The factual matrix leading to the case of prosecution can be stated in nutshell to the effect that on 05.02.2011 at about 9.30 P.M. while complainant was going to his agricultural land, found accused no.1 was storing mud so as to obstruct the free flow of water in canal. The complainant has asked accused No.1 not to store mud which can cause obstruction for free flow of water. However, accused No.1

started abusing in filthy language and by caught holding both his hands bite on the left ear lobe. Due to which upper portion was cut and fell on the ground. On account of accused No.1 biting, the left ear lobe of complainant suffered grievous injury. Accused Nos.1 and 2 have also assaulted complainant with hands. On these allegations made in the complainant, the investigating officer on competition of investigation filed charge sheet.

5. In response to summons, accused appeared through the counsel. The charge came to be framed against both accused for the offences punishable under Sections 326 and 323 and 504 read with Section 34 of IPC. Accused Nos.1 and 2 pleaded not guilty and claimed to be tried. Prosecution to prove the charges leveled against accused relied on oral evidence of P.Ws.1 to 7 and documents Exs.P.1 to 4.

6. On closure of prosecution evidence, statement of accused under Section 313 of Cr.P.C, came to be recorded. Accused Nos.1 and 2 denied all the incriminating material evidence appearing against them and claimed that false case is filed. The trial Court after appreciation of evidence on record convicted the accused No.1 only for the offence punishable under Section 323 of IPC. Accused Nos.1 and 2 feeling

aggrieved by the judgment of conviction and order of sentence passed by the trial Court, filed appeal on the file of Principal Session Judge, At: Bellary, in criminal appeal No.138/2012. The first appellate Court after re-appreciation of evidence on record has partly allowed the appeal and convicted the accused Nos.1 and 2 for the offences punishable under Sections 323 and 326 R/w 34 of IPC.

7. Appellants/accused have challenged modified judgment of first appellate Court contending that Courts below have not been properly appreciated the evidence on record and recorded improper finding holding that accused are guilty of offences alleged against them. There was no evidence to show that who has bite on left ear lobe of complainant, since it was dark when the incident took place. On account of dispute over sharing the water through the canal, the present false case is filed by the complainant. The evidence of doctor-P.W.5 is inconsistent with complaint allegations as per Ex.P.1, and independent witness P.Ws. 2 and 3. The approach and appreciation of evidence on record are contrary to law and evidence. Therefore, prayed for allowing the revision petition and to set-aside the judgment of the Courts below.

Consequently, to acquit the accused from the charges leveled against him.

8. The State in criminal appeal No.100065/2014 is challenged the adequacy of sentence imposed by the first appellate Court for the proved offences under Sections 323 and 326 of IPC.

9. In response to notice, in criminal revision petition No.100181/2014 learned High Court Government Pleader appeared for respondent and in criminal appeal No.100065/2014 respondents appeared through counsel.

10. Heard the arguments of both sides.

11. On careful perusal of oral and documentary evidence placed on record, it would go to show that incident in question took place on 05.02.2011 at about 9.30 PM when the complainant was proceeding to his agricultural land, he found that accused No.1 was removing mud and putting across the field canal. When the same was questioned by complainant, accused No.1 started abusing in filthy language and bite on the left ear lobe of complainant. Due to which complainant sustained sever bleeding injury and accused No.2 assaulted on complainant with hands. The prosecution to prove the said

allegations mainly relies on the oral evidence of P.W.1, 2 and 3. The said evidence is sought to be corroborated by evidence of doctor-P.W.5 and that of investigating officer P.W.6.

12. P.Ws.1 to 3 during cross of their evidence have deposed to the effect that while complainant was proceeding to his agricultural land, found accused No.1 was removing mud and putting across the field canal. When complainant asked accused No.1 not to put the mud across the field channel, accused No.1 started abusing in filthy language and accused No.1 assaulted by holding hands of complainant bite with teeth on the left ear lobe of complainant. Due to which he suffered bleeding injury. Accused No.2 has assaulted on complainant by means of hands. Their evidence is consistent with regard to manner in which incident took place and complainant-P.W.1 had suffered bite injury over his left ear lobe and top portion was cut and fell on the ground.

13. The learned counsel for accused submits that there is no evidence to show that who has bite out of the two accused on the day of incident, since it was dark. It is pertinent to note that accused No.1 is none other than the neighboring land owner and both of them every day see to their face and there cannot be any difficulty in identifying the accused who

bite on the left ear lobe of complainant. Therefore, the contention of the learned counsel for the accused that accused could not be identified during darkness cannot be legally sustained.

14. The evidence of doctor-P.W.5 would go to show that on 05.02.2011 injured complainant was examined and the left ear lobe was found to be cut and said injury is opined to be grievous in nature and accordingly issued wound certificate as per Ex.P.3. Therefore, oral evidence of P.Ws.1 to 3 is duly corroborated by the evidence of doctor-P.W.5 and wound certificate-Ex.P.3 shows that complainant has suffered bit injury over left ear lobe and said injury is opined to be grievous in nature. Absolutely there are no valid reasons or material evidence that has been brought on record during cross examination of P.Ws.1 to 3 and 5 to disbelieve their evidence that complainant P.W.1 suffered bite injury over his left ear lobe and top portion was cut.

15. Learned counsel for revision petitioner has argued that evidence on record does not meet the legal requirement in terms of Section 326 of IPC. The grievous hurt is not caused by dangerous weapon or means of teeth cannot be an instrument of weapon. In this context of the matter, it is profitable to refer



judgment of **JAMIL HASAN VS. THE STATE** reported in **1974 CRI.L.J. 867** wherein it has been observed and held that:

*"Tooth is an instrument for cutting and serves as weapon of offence and defence and consequently, an injury caused by teeth bite would be an offence under Section 324 or 326, depending upon whether the injury is simple or grievous. The biting off the tip of the nose would be an offence under Section 326."*

16. The Hon'ble Madhya Pradesh High Court in judgment of **CHHOTA @ AKASH VS. THE STATE OF MADHYA PRADESH** by following the aforementioned Allahabad High Court judgment and by referring Division Bench judgment of Hon'ble Delhi High Court in **JAGAT SINGH AND ANOTHER VS STATE** reported in **1984 CRIMINAL LAW JOURNAL PAGE NO.1551**, which has also referred **JAMIL HASAN's** case held as under.

*"The question is whether the tooth is an instrument for cutting within the meaning of Section 324 of IPC. There is difference of opinion whether the tooth is weapon of cutting".*

17. In this context, it is useful to refer the judgment of Hon'ble Apex Court in **SHAKEEL AHMED VS. STATE DELHI**, reported in **(2004) 10 SCC 103**, in order to attract penal action under Section 324 of IPC voluntarily causing hurt by

dangerous weapon or means is required, held that human teeth are not deadly weapon even though injuries were caused grievous hurt. Therefore, conviction was altered to one under Section 325 R/w 34 of IPC as against the offence under Section 326 of IPC.

18. On going through the evidence on record as referred above, virtually there is no any evidence against accused No.2 for offence for having assaulted complainant-P.W.1 by means of hands and caused any voluntarily hurt. Therefore, conviction of accused No.2 for the offence punishable under Section 323 of IPC is unsustainable in law.

19. In view of the reasons stated above, it has been observed and held that though accused has caused bite injury over the left ear lobe of complainant and same is grievous in nature, but in view of judgment of Hon'ble Apex Court referred above in **SHAKEEL AHMED'S** case human teeth are not deadly weapon even though injuries caused were grievous. The offences under Section 325 of IPC is held to be made out. In the present case also, the offence under Section 326 of IPC is not attracted and accused causing injury falls within the ambit of Section 325 of IPC.

20. Now coming to the question of imposition of sentence, learned HCGP has contended that showing undue sympathy for the proved offences is unsustainable in law. In support of his contention reliance is placed on the judgment of Hon'ble Apex Court in **STATED OF MADHYA PRADESH VS. NAJAB KHAN AND OTHERS**, reported in **(2014) 1 SCC (CRI) 153**, wherein it has been observed and held that an undue sympathy for accused is not justified. Rights of victim as well as society at large should be kept in view. Corrective and deterrence principles should be adopted on the basis of the factual matrix sentence should be appropriate and proportionate having regard to nature and gravity of offence, manner in which executed or committed, motive, conduct of accused, nature of weapons used and other relevant facts and circumstances.

21. Learned HCGP also relied another judgment of Hon'ble Apex Court in state of **STATE OF PUNJAB VS. BAWA SINGH** reported in **(2015) 3 SCC 441**, wherein it has been observed and held that undue sympathy not warranted. Rights of victim and Society at large must be kept in mind – prolonged trial is no ground to reduce sentence to meager sentence. Sentence should be commensurate with gravity of offence.

Reduction of sentence by showing undue sympathy is not sustained.

22. In the present case, the offence under Section 325 of IPC is proved against accused No.1 and same is punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to pay fine. Therefore, the imposition of sentence and fine is mandatory for proved offence under Section 325 of IPC. Looking to the facts and circumstances of the case, in my opinion, if accused No.1 is convicted and sentenced to undergo simple imprisonment for a period of three months and to pay fine of Rs.10,000/- in default of payment of fine to under go simple imprisonment of one month is ordered would meets the ends of justice. There is no evidence against accused No.2 that he has assaulted complainant by means of hands and voluntarily caused any hurt which can attract penal action in terms of Section 323 of IPC. Therefore, findings of the first appellate Court in holding accused No.2 guilty for the offence under Section 323 of IPC cannot be sustained. Therefore, in order to modify the sentence and to set-aside the conviction against accused No.2 interference of this Court is required. Consequently, proceed to pass the following:

**ORDER**

The criminal revision petition No.100181/2014 filed by the accused Nos.1 and 2 and criminal appeal No.100065/2014 filed by the State are partly allowed.

The judgment of the first Appellate Court in criminal appeal No.138/2012 on the file of Principal Sessions Judge At Ballari dated 06.09.2013 is hereby modified as under.

Accused No.1 is convicted for the offence under Section 325 of IPC and sentenced to under go simple imprisonment for three months and pay a fine of Rs.10,000/- in default of payment of fine to under go simple imprisonment for one month.

Accused No.2 is acquitted for the offence under Section 323 of IPC.

In view of exercising power under Section 357 of Cr.P.C the entire fine amount is ordered to be paid to injured complainant P.W.1 as compensation.

The registry is directed to transmit the records with the copy of this judgment to trial Court.

**(Sd/-)  
JUDGE**

AC