

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 3RD DAY OF SEPTEMBER, 2026**

**BEFORE**

**THE HON'BLE MR. JUSTICE VENKATESH NAIK T**

**CRIMINAL REVISION PETITION NO. 1426 OF 2018**

**(397(Cr.PC) / 438(BNSS))**

**BETWEEN:**

MUDLAPPA  
S/O GIDDAHANUMANTHAPPA  
AGED ABOUT 26 YEARS,  
RESIDENT OF VENKATESHAPURA VILLAGE,  
TALUK: HOLALKERE  
DISTRICT: CHITRADURGA-577501.

...PETITIONER

(BY SRI. VEERANNA G. TIGADI, ADVOCATE)

**AND:**

STATE OF KARNATAKA  
REPRESENTED BY SUB-INSPECTOR OF POLICE  
HOLALKERE POLICE STATION  
CHITRADURGA DISTRICT  
REPRESENTED BY STATE PUBLIC PROSECUTOR  
HIGH COURT OF KARNATAKA  
BENGALURU-560001.

...RESPONDENT

(BY SRI. CHANNAPPA ERAPPA, HCGP)

THIS CRL.RP IS FILED U/S. 397 R/W 401 CR.P.C  
PRAYING TO SET ASIDE THE IMPUGNED JUDGMENT OF  
CONVICTION AND ORDER OF SENTENCE DATED 05.06.2018 IN  
C.C.NO.14/2018 PASSED BY THE LEARNED SENIOR CIVIL  
JUDGE AND JMFC, HOLALKERE AND IMPUGNED JUDGMENT  
DATED 06.10.2018 IN CRIMINAL APPEAL NO.34/2018 PASSED  
BY THE LEARNED I ADDITIONAL DISTRICT AND SESSIONS

Digitally signed  
by  
NAGARATHNA  
M  
Location: High  
Court of  
Karnataka



JUDGE, CHITRADURGA, AND HE MAY BE ACQUITTED OF ALL THE OFFENCES ALLEGED AGAINST HIM.

THIS CRIMINAL REVISION PETITION HAVING BEEN HEARD AND RESERVED ON 17-08-2026, COMING ON FOR PRONOUNCEMENT, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE VENKATESH NAIK T

**CAV ORDER**

Heard Sri.Veeranna G. Tigadi, learned counsel for the petitioner and Sri.Chennappa Erappa, learned High Court Government Pleader for respondent-State.

2. The petitioner has filed this petition under Section 397 read with Section 401 of Cr.P.C praying to set aside the judgment of conviction and order on sentence dated 05.06.2018 passed by the learned Senior Civil Judge in C.C.No.14/2018 and judgment dated 06.10.2018 passed by I Additional District and Sessions Judge, Chitradurga, in Crl.A.No.34/2018 for the offence under Sections 504, 323, 326 and 506 of IPC and prays to acquit the petitioner for the aforesaid offences.

3. For the sake of convenience, the parties are referred to as per their ranking before the trial Court. The petitioner is the accused and the respondent is complainant/State.

4. The case of the prosecution is that on 17.12.2009 at about 5.00 p.m., near Vekateshapura village, PW1 and PW3 were grazing their sheep at the land of Ramachandrappa. At that time, the accused came to the spot and started shouting at PW1 in filthy language, and asked him as to why he has been grazing sheep in the said land, hence PW1 and PW3 requested him to permit for a night and on the following day, they would vacate the land of Ramachandrappa, at that juncture, the accused assaulted PW1 with a stone (MO1) on his right knee and also assaulted with a stick (MO2) on his back and caused grievous injuries to him. When, PW2 came to pacify the quarrel, the accused also assaulted PW2 with his hands and legs and also gave life threat to him with dire consequence and thereby the accused committed an offence. Hence, PW1 lodged complaint vide Ex.P1 to the

respondent - police against the accused, thereby law was set into motion, the matter was investigated by the police and the investigation officer filed charge sheet against the accused for the aforesaid offences.

5. Soon after receipt of the charge sheet, the trial Court took cognizance, framed the charges against the accused, for which, the accused pleaded not guilty and claimed to be tried. After recording the evidence on record, the trial Court convicted the petitioner for the aforesaid offences.

6. Aggrieved by the judgment of conviction and order on sentence passed by the trial Court, the accused filed Crl.A.No.34/2018 before the First Appellate Court, in turn, the First Appellate Court dismissed the appeal and confirmed the judgment of conviction and order on sentence passed by the trial Court. Aggrieved by the concurrent findings passed by the trial Court as well as the First Appellate Court, the accused preferred this revision petition.

7. The learned counsel for the petitioner contended that, the Courts below have erred in placing reliance upon the evidence of PW1 to PW9, notwithstanding the material contradictions, omissions, improvements and admissions elicited during their cross-examination. It is contended that several prosecution witnesses have not supported the case in material particulars and therefore, their evidence could not have been made the basis for recording a conviction.

8. It is further contended that the prosecution witnesses were strangers to the petitioner/accused and that no test identification parade was conducted. In the absence of test identification procedure and in view of the circumstances surrounding the alleged incident, the identity of the petitioner as the assailant was not established beyond reasonable doubt.

9. The learned counsel placed considerable reliance upon the evidence of PW.7-Dr. Roopa. It is contended that the X-ray (Ex.P6) relied upon by the prosecution bears the date 10.03.2010, whereas the

alleged incident occurred on 17.12.2009. It is further submitted that PW.6 has admitted in her evidence that the date shown on the X-ray was auto-generated. According to the defence, these circumstances create a serious doubt regarding the genuineness and reliability of the medical documents relied upon by the prosecution.

10. It is further contended that PW.6 had admitted that the Wound Certificate does not specify whether the first injury was on the right leg or the left leg. This discrepancy, according to the learned counsel, assumes significance while considering the prosecution version regarding the manner and nature of the assault. It is further contended that the documentary and medical evidence, when considered along with the testimony of the eyewitnesses, does not corroborate the alleged occurrence.

11. It is further contended that the defence taken by the petitioner was not properly considered by either of the Courts below and the defence evidence and circumstances brought out during cross-examination ought

to have been considered while determining whether the prosecution had established the guilt of the accused beyond reasonable doubt.

12. It is further contended that the statement of the accused under Section 313 of the Code of Criminal Procedure was not properly recorded and that the petitioner was not afforded a meaningful and sufficient opportunity to explain the incriminating circumstances appearing against him in the prosecution evidence and failure to comply with the requirements of Section 313 of Cr.P.C. has caused prejudice to the petitioner.

13. Since the provision of Section 326 of the IPC will not be attracted, the same is required to be converted to Section 323 of the IPC. He further submits that 17 years have already elapsed and in order to maintain cordiality in the village, it is just and necessary to impose a fine as compensation to the complainant. On all these grounds, the learned counsel prays to allow the revision petition.

14. Sri. Channappa Erappa, learned High Court Government Pleader, contended that PW1 is the victim and that there was no reason as to why he would falsely implicate the accused. He also opposed the conversion of the offence under Section 326 of the IPC to Section 323 of the IPC, as the accused assaulted PW1 with a stone as well as a stick on his right knee and back, thereby causing grievous injury to him. The doctor who conducted the medical examination found that PW1 had sustained a grievous injury based on the X-ray report. Therefore, the sentence passed by the trial Court and confirmed by the First Appellate Court cannot be interfered with. Hence, he prayed to dismiss the Criminal Revision Petition.

15. On perusal of the oral testimony of the prosecution witnesses, it is seen that the trial Court relied upon the oral testimony of PW1 to PW4 and the medical evidence, viz., the evidence of PW6 and PW9. On perusal of the oral testimony of PW1, it demonstrates that, on the day of the incident, PW1 and PW3 had been to Venkateshapura village for grazing their sheep. On the

same day, at about 5.30 p.m., while they were grazing their sheep in the land of Ramachandrappa, the accused came and questioned PW1 and PW3 as to why they were grazing the sheep in the said land. Hence, PW1 and PW3 requested him that they would vacate the land on the following day morning. Thereafter, the accused abused them in filthy language and intentionally insulted them with an intention to provoke a breach of peace and assaulted PW1 with a stone (MO1) on his right knee. PW3 came and tried to pacify the quarrel, even then, the accused assaulted PW3 with a stick on his hands and legs. In the meanwhile, PW2 and PW4 came and pacified the quarrel. The accused also assaulted PW2 with his hands and legs. Thereafter, PW3 and PW4 shifted the injured PW1 to the hospital for treatment, where PW1 lodged the complaint (Ex.P1). PW1 identified the accused as well as Material Objects Nos.1 and 2. He was cross-examined at length.

16. PW2 - Rudrappa, though shown as an eyewitness to the incident, in his chief-examination, has

stated that he did not see the incident, however, he took PW1 to the hospital, thereby turning hostile to the case of the prosecution. However, in the cross-examination, he has admitted the case of the prosecution. PW2 was cross-examined by the counsel for the accused, wherein he admitted that he was not an eyewitness to the incident and had not seen the accused assaulting PW1 with MOs.1 and 2. He further stated that the police have not recorded his statement. Though the police conducted the spot panchanama vide Ex.P2, the police have not seized anything in his presence. He categorically admitted that he reached the scene of occurrence after half an hour.

17. PW3 - Erappa, another injured eyewitness to the incident, has stated that, on the day of the incident, he and PW1 were grazing sheep in the land of Ramachandrappa. At that time, the accused came and picked up a quarrel with them. The accused assaulted PW1 with a stone on his leg and caused injury. He also intentionally insulted them by using filthy language and criminally intimidated them by threatening to eliminate

them. It is his evidence that the accused also assaulted him on his face with his hands. Thereby, PW3 also turned hostile to the case of the prosecution, and in the cross-examination by the State, he has admitted the case of the prosecution. PW3 was cross-examined by the counsel for the accused, however, nothing has been brought out from his mouth to discredit his testimony.

18. PW4 - Bhootanna, the chance witness, has stated that he saw the incident while grazing sheep at Venkateshpura. At that time, the accused assaulted PW1 with a stone, thereby caused injury to PW1. Therefore, PW3 and PW4 shifted PW1 to the hospital. In the cross-examination, he admitted that, at the moment he reached the spot, PW1 had already sustained an injury on his right leg. This shows that he was not an eyewitness to the incident.

19. PW5 - Erappa is witness to spot mahazar (Ex.P2).

20. PW6 - Dr. Roopa, the Medical Officer who examined PW1, has stated that, on 17.12.2009 at 7.30 p.m., PW1 was brought by PW4 with a history of assault. On examination, she found that PW1 had sustained an injury below the knee measuring 0.5 cm and a cut injury measuring 0.5 cm on the right knee. Hence, she referred PW1 for an X-ray and came to know that injury No.2 was a fracture, whereas injury No.1 was simple in nature. Accordingly, she issued her report as per Ex.P3 - Wound Certificate.

21. PW7 - Sri Udusalappa, the then ASI and PW8 - Sri Odeyar, the then PSI, are the Investigating Officers.

22. PW9 - Dr. S.M. Sridhar, has stated that, on 18.12.2009, PW6 referred PW1 for an X-ray. Accordingly, he conducted the X-ray examination and found that the tibia bone of PW1 was fractured, as per the X-ray film (Ex.P6). In the cross-examination, he admitted that the X-ray film did not indicate the presence of any metal nails and that the same was written in handwriting.

23. Based on the aforesaid evidence, the Courts below placed reliance on the evidence of the injured witness, who was examined as PW1, and found that his evidence was corroborated by the evidence of PW3, who claimed to be an eyewitness. Accordingly, the accused was convicted and sentenced.

24. This Court finds that PW1 is the victim of the assault allegedly committed by the accused. His evidence is clear and cogent with regard to the accused picking up a quarrel with him, abusing him in filthy language, criminally intimidating him, and assaulting him with a stone on his knee. However, there is a contradiction with regard to the assault committed by the accused on PW1. In the complaint, he has stated that the accused assaulted him on his left knee, whereas in his evidence, he has stated that the accused assaulted him with M.O.No.1-stone on his right knee. The inconsistency of evidence of PW1 is a minor discrepancy. A small error in memory or minor difference in taking the story do not destroy the witness credibility. The evidence of PW2 to PW4 and the medical evidence

corroborate that PW1 sustained an injury on his right knee. As PW1 was the victim, in the absence of any material to show as to why he would falsely implicate the accused, his evidence has been rightly relied upon by the Courts below. The evidence of PW3 also corroborates his testimony. Any contradictions in the testimony and prosecution witness cannot go to the very root of the case. Though PW2 to PW4 were partly turned hostile, their entire testimony cannot be discarded, automatically. It is the duty of the Court to separate the grain from the chaff. The Court must accept a creditworthy portion of a partly hostile witness statement, as their testimony stands corroborated by oral testimony of PW1 and medical evidence.

25. Insofar as the contention that, the investigating officer has not conducted test identification parade is concerned, a test identification parade holds corroborative evidentiary value, it strengthens the witness identification of an accused in Court, But, it does not serve as standalone or substantive proof of guilt. The primary

purpose of a test identification parade is to test a witness memory and insure the police investigation is moving in the right direction. Whereas, during trial, the counsel for accused does not disputed the identify of accused. Hence there is no merit consideration in this revision petition.

26. Further, the "scope of revision" refers to the limited authority of a higher Court to review judgment of the trial Court and the First Appellate Court, focusing on correcting errors in jurisdiction or gross legal/factual flaws rather than re-examining the merits of the case. This power is exercised sparingly and is intended to set right a patent defect, not to function as an automatic second appeal. The specific grounds and limitations vary between civil and criminal proceedings. Revisions can address situations where the decision is grossly inaccurate, not supported by evidence, or where relevant evidence was ignored. The review is not a fresh trial. Courts are generally barred from re-examining evidence or substituting their own judgment for the lower Court's on matters of fact unless the findings are demonstrably

perverse or arbitrary. The Hon'ble Apex Court has discussed the applicability and scope of revision in various decisions, which are highlighted hereunder:

A. The Hon'ble Apex Court in the case of **MUNNA DEVI v. STATE OF RAJASTHAN AND ANOTHER** reported in **(2001) 9 SCC 631**, while discussing the scope of Section 397 of the Cr.P.C., at paragraph No.3, has held as under:

*"3. xxx xxx xxx. The revision power under the Code of Criminal Procedure cannot be exercised in a routine and casual manner. While exercising such powers the High Court has no authority to appreciate the evidence in the manner as the trial and the appellate courts are required to do. Revisional powers could be exercised only when it is shown that there is a legal bar against the continuance of the criminal proceedings or the framing of charge or the facts as stated in the first information report even if they are taken at the face value and accepted in their entirety do not constitute the offence for which the accused has been charged."*

B. The Hon'ble Apex Court in the case of **STATE OF TAMIL NADU v. R. SOUNDIRARASU AND OTHERS** reported in **(2023) 6 SCC 768**, at paragraph No.79, has held as under:

"79. Thus, the revisional power cannot be exercised in a casual or mechanical manner. It can only be exercised to correct manifest error of law or procedure which would occasion injustice, if it is not corrected. The revisional power cannot be equated with the appellate power. A Revisional Court cannot undertake meticulous examination of the material on record as it is undertaken by the trial court or the appellate court. This power can only be exercised if there is any legal bar to the continuance of the proceedings or if the facts as stated in the charge-sheet are taken to be true on their face value and accepted in their entirety do not constitute the offence for which the accused has been charged. It is conferred to check grave error of law or procedure."

C. Further, the Hon'ble Apex Court in the case of **STATE OF MAHARASHTRA v. SUJAY MANGESH**

**POYAREKAR** reported in **(2008) 9 SCC 475**, at paragraph No.16, has held as under:

*"16. xxx xxx xxx. Now it is well settled that revisional jurisdiction can be exercised sparingly and only in exceptional cases. A Revisional Court cannot convert itself into a regular court of appeal."*

27. Therefore, the revisional jurisdiction should normally be exercised in exceptional cases, when there is a glaring defect in the proceedings or there is a manifest error of point of law and consequently, there has been a flagrant miscarriage of justice.

28. The residual question is whether the factual position indicates that any grievous hurt was caused and whether the weapon used was a dangerous weapon. The doctor who examined the injured noticed following injuries:

*"1. Abrasion just below the knee (0.5 c.m.).*

*2. Cut wound measuring 0.5 cm on the middle side of the right leg, with bleeding and contusion around the wound."*

29. As per the opinion of the doctor, injuries Nos.1 and 2 are simple in nature, whereas the fracture of the tibia of the right leg is grievous in nature. It shows that the doctor had already opined that injuries Nos.1 and 2 were simple in nature and subsequently added "*fracture of tibia of the right leg, which is grievous in nature*". On perusal of Ex.P6 - X-ray film, it does not indicate any auto-generated date and time on the film, but it is a manually prepared X-ray film. Admittedly, PW6 is not an Orthopedic Surgeon and had simply referred PW1 for a radiological examination. On perusal of the evidence of PW9, Dr. S.M. Sridhar, he has stated that he conducted the X-ray examination of PW1 and gave his report. In the cross-examination, he admitted that the X-ray film was not auto-generated but was manually prepared.

30. The prosecution has not obtained any opinion with regard to M.O.Nos.1 and 2 by placing them before

either PW6 or PW9. There is no clear evidence as to whether the injury caused to PW1 was with M.O.No.1 or M.O.No.2. Further, there is no clear evidence as to the number of days PW1 was in the hospital, as inpatient and there is no reference to the date of admission and discharge in Ex.P3 - Wound Certificate. Even in the oral evidence of PW1 to PW4, there is no reference to the number of days PW1 was in hospital, as an inpatient.

31. With this evidence, learned counsel for the petitioner submitted that the evidence of PW1 and PW3 should not have been relied upon by the Courts below and that the injuries as noticed by the doctor (PW6) do not constitute grievous injuries. Once the doctor had given an opinion that injury Nos.1 and 2 were simple in nature, subsequently, how could he insert that there was a grievous injury? Therefore, there is doubt with regard to the X-ray having been conducted and the opinion of the doctor as to the grievous injury. In addition, it was submitted that the weapon allegedly used cannot be termed as a dangerous weapon so as to attract Section

326 of the IPC. In any event, it was submitted that the accused has suffered imprisonment for a major portion of the sentence awarded and, as more than a decade has already elapsed, the sentence needs to be suitably modified.

32. In response, learned HCGP submitted that PW1 had sustained grievous injury and it was caused by a big stone and therefore Section 326 of IPC has been rightly applied.

33. The Court find that PW1 is the victim of the assault allegedly made by the accused. As he was a victim, in the absence of any material to show as to why he would falsely implicate the accused, his evidence has been rightly relied upon. PW3's evidence has also corroborated his evidence. Hence, it is just and necessary to analyse, Section 325 and 326 of IPC, which read as under:

***325. Punishment for voluntarily causing grievous hurt.—***

*Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall*

*be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.*

**326. Voluntarily causing grievous hurt by dangerous weapons or means—**

*Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.*

Section 325 deals with punishment for voluntarily causing grievous hurt.

Section 326 deals with offence of voluntarily causing hurt by dangerous weapons or means.

34. Section 326 provides that whoever, except in the case provided for by Section 335, voluntarily causes grievous hurt by means of any instrument for shooting,

stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any corrosive substance, or by means of any explosive substance, or by means of any substance which is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years, and also with a liability to pay a fine.

35. Sections 325 and 326, like the two Sections immediately preceding, provide the ordinary punishment and punishment under certain aggravating circumstances of the offences mentioned there under. The two latter sections apply to the case of causing "grievous hurt" and the immediately preceding two sections to the case of "hurt".

"Grievous hurt" has been defined in Section 320 IPC, which reads as follows:

*"320. Grievous hurt.—The following kinds of hurt only are designated as 'grievous':*

*First.—Emasculation.*

*Secondly.—Permanent privation of the sight of either eye.*

*Thirdly.—Permanent privation of the hearing of either ear.*

*Fourthly.—Privation of any member or joint.*

*Fifthly.—Destruction or permanent impairing of the powers of any member or joint.*

*Sixthly.—Permanent disfiguration of the head or face.*

*Seventhly.—Fracture or dislocation of a bone or tooth.*

*Eighthly.—Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.”*

36. Some hurts which are not like those hurts which are mentioned in the first seven clauses, are obviously distinguished from a slight hurt, may nevertheless be more serious. Thus, a wound may cause intense pain, prolonged disease or lasting injury to the victim, although it does not fall within any of the first seven clauses. Before a conviction for the sentence of grievous hurt can be passed, one of the injuries defined in Section 320 must be strictly proved, and the eighth clause is no exception to the general rule of law that a penal statute must be construed strictly.

37. The expression “any instrument which, used as a weapon of offence, is likely to cause death” has to be gauged taking note of the heading of the section. What would constitute a “dangerous weapon” would depend upon the facts of each case and no generalisation can be made.

38. The heading of the section provides some insight into the factors to be considered. The essential ingredients to attract Section 326 are :

- (1) voluntarily causing a hurt;
- (2) hurt caused must be a grievous hurt; and
- (3) the grievous hurt must have been caused by dangerous weapons or means.

39. The Hon'ble Apex Court, in the case of ***State of U.P. v. Indrajeet***, reported in **(2000) 7 SCC 249**, held that there is no such thing as a regular or earmarked weapon for committing murder or, for that matter, causing hurt. Whether a particular article can, per se, cause any serious wound, grievous hurt, or injury has to be

determined factually. The inevitable conclusion is that grievous hurt was caused. It is not that, in every case, a stone would constitute a dangerous weapon. It would depend upon the facts of the case. At this juncture, it would be relevant to note that, in some provisions, e.g., Sections 324 and 326, the expression "dangerous weapon" is used. In some other more serious offences, the expression used is "deadly weapon" (e.g., Sections 397 and 398). That would determine whether, in the case, Section 325 or Section 326 would be applicable.

40. In the instant case considering the size of the stone which was used, as revealed by material on record, it cannot be said that a dangerous weapon was used.

41. The Hon'ble Apex Court in the case of ***Mathai V/s State of Kerala*** reported in ***(2005) 3 SCC 260***, held that use of hand size stone would not constitute a "dangerous weapon" and the facts involved in a particular case, depending upon various factors like size, sharpness, would throw light on the question whether the weapon was a dangerous or deadly weapon or not and therefore,

the conviction was altered from Section 326 of IPC to 325 of IPC.

42. Therefore, the conviction is altered to Section 325 IPC. No hard-and-fast rule can be applied for assessing a proper sentence and a long passage of time cannot always be a determinative factor so far as sentence is concerned. On the peculiar facts of the case, the Court restrict it to the period already undergone. However, considering the submission of learned counsel for the petitioner, it is just and necessary to impose fine in the form of compensation to the accused payable to PW1 (injured). Considering the nature of injury sustained by PW1, a sum of Rs.50,000/- is imposed as fine to the accused in the form of compensation payable to PW1, then it would meet the ends of justice. Hence, the following:

### **ORDER**

- i. The Criminal Revision Petition is ***allowed in part.***
- ii. The judgment of conviction dated 05.06.2018 passed by the learned

Senior Civil Judge in C.C.No.14/2018 and judgment dated 06.10.2018 passed by I Additional District and Sessions Judge, Chitradurga, in Crl.A.No.34/2018, is hereby confirmed.

- iii. Insofar as the sentence of imprisonment is concerned, the same is set aside, and the petitioner/accused is directed to pay a fine of Rs.50,000/- (Rupees Fifty Thousand only), which shall be paid as compensation to PW1.

In view of the disposal of the revision petition, pending interlocutory applications, if any, shall stand dismissed.

**Sd/-  
(VENKATESH NAIK T)  
JUDGE**

AM