HC-KAR

IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 3RD DAY OF JULY, 2025

PRESENT

THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ

AND

THE HON'BLE Mrs JUSTICE K S HEMALEKHA

CRIMINAL APPEAL NO. 200024 OF 2017
(378(Cr.PC)/419(BNSS)
C/W
CRIMINAL APPEAL NO. 200171 OF 2016

IN CRL.A.NO.200024/2017

BETWEEN:

Digitally signed by BASALINGAPPA SHIVARAJ DHUTTARGAON
Location: HIGH COURT OF KARNATAKA

THE STATE OF KARNATAKA
THROUGH C.P.I. GADWAL POLICE STATION,
REPRESENTED BY THE
ADDITIONAL STATE PUBLIC PROSECUTOR,
KALABURAGI.

...APPELLANT

(BY SRI SIDDALING P. PATIL, ADDL SPP)

AND:

1. SRI. YARRA NARASAPPA @ NARSANNA
   S/O. BHEEMAPPA
   AGE 60 YEARS, OCC:NIL,
   R/O:NEELAHALLI VILLAGE.

2. SRI.SIDDAI RAMAPPA
S/O.SUGANNA
AGE 55 YEARS, OCC:NIL,
R/O:NEELAHALLI VILLAGE.

3. SRI.URABAI THAYAPPA @ THAYANNA
S/O.PEDDA RANGAPPA @ RANGANNA,
MAJOR, OCC:NIL, R/O:NEELAHALLI VILLAGE.

4. SRI.EESAPPA @ EESANNA
S/O.ESHWARAIAH
AGE 30 YEARS, OCC:NIL,
R/O:NEELAHALLI VILLAGE
TQ. & DIST. RAICHUR-585101.

…RESPONDENTS

(BY SRI R.S. LAGALI, ADVOCATE)

THIS CRL.A. IS FILED U/S. 378(1) & (B) OF CR.P.C PRAYING TO: (A) GRANT LEAVE TO APPEAL AGAINST THE IMPUGNED JUDGMENT AND ORDER DATED:03.10.2016 PASSED BY THE PRL. DISTRICT AND SESSIONS JUDGE, AT RAICHUR, IN S.C.NO.39/2012 FOR THE OFFENCE PUNISHABLE UNDER SECTION 302 R/W SEC. 34 OF IPC; (B) SET ASIDE THE JUDGMENT AND ORDER OF ACQUITTAL DATED:03.10.2016 PASSED BY THE PRL. DISTRICT AND SESSIONS JUDGE AT RAICHUR, IN S.C.NO.39/2012; (C) CONVICT THE RESPONDENT/ACCUSED FOR THE OFFENCE PUNISHABLE UNDER SECTION 302 OF R/W SECTION 34 OF IPC, IN THE INTEREST OF JUSTICE AND EQUITY.

IN CRL.A.NO.200171/2016

BETWEEN:

KURAVACHINNA TAYAPPA
S/O.JANGELAPPA
AGE:60 YEARS, OCC:AGRICULTURE,
R/O:NEELAHALLI BLOCK/TESHIL:DHARUR,
DIST:MAHABOOB NAGAR, STATE:TELANGANA.

…APPELLANT

(BY SRI SHIVAKUMAR MALIPATIL, ADVOCATE)

AND:

1. YARRA NARASAPPA @ NARASANNA
   S/O. BHEEMAPPA
   AGE:59 YEARS,

2. SIDDAI RAMAPPA
   S/O. SUGANNA
   AGE:54 YEARS,

3. URABAI THAYAPPA @ THAYANNA
   S/O PEDDA RANGAPPA @ RANGANNA
   AGE:MAJOR,

4. EESAPPA @ EESANNA
   S/O. ESHWARAIAH
   AGE:34 YEARS,
   ALL ARE R/O:NEELAHALLI VILLAGE,

5. STATE OF KARNATAKA
   THROUGH P.S.,
   RAICHUR RURAL
   THE CPI GADWAL POLICE STATION

…RESPONDENTS

(BY SRI MAHADEV S. PATIL, ADV. FOR R1 TO R4;
SRI SIDDALING P. PATIL, ADDL. SPP FOR R5)

THIS CRL.A. IS FILED U/S.372 OF CR.P.C, R/W SEC.378 OF CR.P.C PRAYING TO SET ASIDE THE IMPUGNED JUDGMENT IN S.C.NO.39/2012 PASSED BY PRL. DIST. & SESSION JUDGE AT RAICHUR AND THE ACCUSED/RESPONDANTS NO.1 TO 4 BE CONVICTED AND SENTENCED FOR THE OFFENCE PUNISHABLE UNDER SECTION 302 R/W 34 OF IPC.

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

CORAM: HON'BLE MR. JUSTICE MOHAMMAD NAWAZ
AND
HON'BLE MRS JUSTICE K S HEMALEKHA

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE MOHAMMAD NAWAZ)

The State and the first informant are in appeal against the judgment of acquittal passed by the Trial Court acquitting respondents/accused Nos.1 to 4 of the offence punishable under Section 302 read with Section 34 of IPC.

2. We have heard the learned Additional State Public Prosecutor for the State, learned counsel Sri Shivakumar Malipatil appearing for the complainant and the learned counsel Sri R.S. Lagali for the respondents/accused Nos.1 to 4. Perused the evidence and material on record.

3. The case of prosecution is that on 05.09.2003 at about 10.30 p.m. in Neelahalli village in the land of the complainant, accused Nos.1 to 4 on account of previous enmity, committed the murder of complainant's son Kurava Narasimhalu by assaulting him with a sickle and

thereby committed the offence punishable under Section 302 read with Section 34 of IPC.

4. To establish the charge, prosecution got examined PW-1 to PW-15 and got marked Exs.P-1 to P-13 and M.O.s-1 to 8. The defence got marked Exs.D-1 to D-4, portion of statements of PWs.3 to 5 recorded under Section 161 of Cr.P.C.

5. The learned Sessions Judge, on appreciation of the evidence and material on record, acquitted the accused of the charged offence, holding that the prosecution has miserably failed to prove the alleged offence, beyond reasonable doubt.

6. According to the prosecution, on 05.09.2003 at about 9.00 p.m., the deceased Narasimhalu had been to the land and while he was sleeping, at about 11.00 p.m. the accused persons went to the said land and accused No.1 assaulted him with a sickle on his neck and throat, accused No.2 caught hold his legs, accused No.3 dropped

a boulder on his face and accused No.4 assisted in committing the murder.

7. Law was set into motion by Kurava Thayappa, father of the deceased, by lodging a written complaint as per Ex.P-1, wherein he has stated that his another son Earanna (PW-2) and Malleshi (PW-3) who had been to the land where the deceased was sleeping near the bore-well, returned to the village and informed him that the accused have committed the murder of his eldest son. Immediately he went to the spot and saw the dead body. He has stated that on account of Panchayat Election, the accused were nursing enmity, hence, they have committed the murder of his elder son.

8. It is the contention of the learned Addl. SPP that PW-2, PW-3 and PW-8 have seen the accused near the spot during the relevant point of time and in view of the motive attributed and the fact established by the prosecution that the deceased died a homicidal death and

also recovery of blood stained dhoti from the house of accused No.1, prosecution has established the charge levelled against the accused beyond reasonable doubt. He contended that the reasons assigned by the trial Court to extend the benefit of doubt to the accused and to hold that the prosecution has failed to establish the charge, are not in accordance with law.

9. The learned counsel appearing for the respondents/accused Nos.1 to 4, on the other hand, has contended that the evidence of PW-2, PW-3 and PW-8 who are alleged to have seen the accused near the land, suffers from serious infirmities and therefore, the trial Court has rightly disbelieved their evidence. He contended that as per Ex.P-1, PW-2 and PW-3 have witnessed the accused committing the murder, whereas the said witnesses have not at all deposed before the Court that they have seen the accused persons committing the murder. He further contended that the Investigation Officer has admitted that the witnesses have

not given any statement before him saying that they have seen the accused with the help of electricity light running away and not stated that there was electricity light near the bore-well. He further contended that the sickle which is the alleged weapon used by the accused to commit the murder and to inflict injuries to the neck of the deceased, was not seized and alleged seizure of blood stained dhoti does not throw any light on the prosecution case as the blood group of the stains found on the said dhoti could not be determined as per FSL report. He has therefore, contended that the trial Court, appreciating the oral and documentary evidence and after giving cogent reasons, has rightly acquitted the accused.

10. As per Ex.P-1, PW-2 and PW-3 returned to the village and informed PW-1 that they have seen accused Nos.1 to 3 committing the murder of his elder son. The motive alleged in the complaint is that the accused were nurturing enmity on account of panchayat election which was held sometime prior to the incident.

11. In his evidence, PW-1 has reiterated the complaint averments. He has stated that at about 9.00 p.m. his son Narasimhalu went to the land and did not return even at 10.00 p.m. and therefore, he sent his another son Earanna (PW-2) to search him. At about 10.30 – 11.00 p.m. Earanna (PW-2) and Malleshi (PW-3) came to the house and informed him that the accused have committed the murder of Narasimhalu.

12. Both PW-2 and PW-3 in their evidence have not at all stated that they have seen accused Nos.1 to 4 committing the murder of Narasimhalu. On the other hand, they have stated that when they went to their land in Budadipada, it was about 11.00 p.m. and at that time they saw accused Nos.1 to 4 near the bore-well and when they went near them, the said accused ran away from the spot. They saw the dead body of Narasimhalu lying near the bore-well with injuries over the head and neck.

13. PW-2 and PW-3 have stated that they saw the accused running away with the help of electric light situated near the bore-well. PW-1 has not stated either in Ex.P-1 or in his evidence that he was informed by PW-2 and PW-3 that with the help of electric light they saw the accused committing the murder and running away. The Investigation Officer PW-12 has admitted in the cross-examination that PW-2 and PW-3 have not stated before him that there was electricity light near the bore-well and they saw the accused running away, with the help of electric light.

14. Learned Addl. SPP, drawing the attention of the Court to the sketch map Ex.P-10, contended that an electric pole is situated near the spot and therefore, the witnesses namely PW-2 and PW-3 seeing the accused running away from the spot with the help of said electric light is not ruled out.

15. We have perused the spot panchanama Ex.P-6. In the said document, there is no mention of electric pole near the scene of occurrence. Hence, the presence of electricity light at the spot is doubtful and the evidence of PW-2 and PW-3 that they saw the accused persons running away from the spot after seeing them, with the help of electric light, is difficult to accept.

16. Admittedly, the incident has taken place during night hours. As per Ex.P-1, PW-2 and PW-3 saw accused Nos.1 to 3 and others committing the murder of complainant's son. In their evidence, PW-2 and PW-3 have not stated that they have seen the accused committing the murder. In Ex.P-1 the name of accused No.4 is not at all mentioned. On the other hand, it is stated that along with accused Nos.1 to 3 there were others. Though PW2 to PW-4 have denied that there were others present at the spot, in the cross-examination, the defence has got elicited by marking Exs.D-1 to D-3, portion of their statements recorded under Section 161 of

Cr.P.C. that they saw several others who went away after seeing them.

17. It is the specific case of the prosecution that accused No.1 assaulted the deceased with a sickle on his neck and accused No.3 threw a boulder on his face while accused No.2 caught hold of his legs and accused No.4 assisted them. The sickle is not seized. The blood stained stone alleged to have been thrown on the face of the deceased was seized from the spot. The prosecution is relying on the blood stained dhoti which was seized from the house of accused No.1 to connect the said accused with the crime. According to the prosecution, a dog squad was pressed into service and the dog went to the house of accused No.1 from where a blood stained dhoti was seized. The said dhoti was sent for FSL examination. The FSL report is marked as Ex.P-12. Though we find that the dhoti was blood stained, however, the group of blood stains found on the said dhoti was not determined to

compare with the blood group of the deceased determined from the stains found on his clothes.

18. To prove the homicidal death, the prosecution has examined the doctor-PW-11 and got marked Ex.P-9-postmortem report. As per Ex.P-9, PW-11 has noticed the following injuries:

> "Crushed multiple fracture wounds over the face with frontal bone fracture with visible brain tissue underneath the fracture. Fracture maxilla, fracture mandible, fracture nasal bone, fracture teeth. All caused by heavy object ante mortem in nature.
>
> 2. Laceration wound over the neck measuring 10 X 4 Cm with 4 Cm death on right, 8 Cm in the middle, 10 Cm over the left extreme, caused by heavy object with sharp edged cutting through neuro vascular tissue trachea soft tissue, fracturing the cervical vertebra and injury the spinal cord.
>
> 3. Minor abrasions over the right and left wrist, elbow and hip. Approximate time of death 16 to 19 hours prior to the post mortem examination.

Cause of death hemorrhagic shock due to ploytrama and trachea injury."

19. PW-11 has stated that cause of death was on account of hemorrhagic shock due to polytrauma and trachea injury. In the cross-examination, he has stated that MO-1-stone will not cause injury found on the neck. The prosecution by examining PW-11 and marking Ex.P-9 has established that the death is homicidal in nature.

20. According to the prosecution, due to enmity on account of panchayat election, the accused have committed the murder of complainant's son. PW-2 in his evidence has stated that in the year 2003, his father i.e., PW-1 had won the panchayat election by defeating accused No.1. If his evidence is to be accepted, then accused No.1 had grouse against PW-1 and not the deceased. The case of the prosecution is that on account of the said enmity accused have committed the murder of complaint's son. Therefore, it cannot be held that the

prosecution has established the motive for the accused to commit the murder.

21. Learned Addl. SPP has contended that evidence of PW-2 and PW-3 is corroborated by the evidence of PW-8, who saw the accused near the land during the relevant point of time. The said witness has however, stated in the cross-examination that he did not see any weapon in the hands of accused.

22. According to prosecution, both PW-2 and PW-3 returned to the village and informed PW-1 about the incident, telling him that the accused have committed the murder. Whereas, PW-5 has stated that her husband-PW-2 alone returned to the village and informed about the incident. She has nowhere stated about PW-3 returning to the village and informing PW-1 about the incident.

23. After a careful perusal of the material on record and having re-appreciated the entire evidence, we are of

the considered view that the charge levelled against the accused is not established beyond reasonable doubt.

24. For the foregoing reasons, we pass the following:

ORDER

Both the appeals are ***dismissed***.

Sd/-
(MOHAMMAD NAWAZ)
JUDGE

Sd/-
(K S HEMALEKHA)
JUDGE

SWK,AT
List No.: 1 Sl No.: 33
JLR