



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13TH DAY OF FEBRUARY, 2025

PRESENT

THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MR. JUSTICE K. V. ARAVIND

CRIMINAL APPEAL No. 1508 OF 2018 (C)

BETWEEN:

1. SRI SHIVALINGEGOWDA @ SHIVALINGA,
S/O LATE RAJANNA,
AGED ABOUT 91 YEARS,
R/O GOWDAGERE VILLAGE,
CHANNAPATNA TALUK,
RAMANAGARA DISTRICT-567160.

...APPELLANT

(BY SRI. M. SHARASS CHANDRA, ADVOCATE)

AND:

1. STATE BY M K DODDI POLICE,
CHANNAPATNA TALUK,
RAMANAGARA DISTRICT,
REP. BY STATE PUBLIC PROSECUTOR
HIGH COURT BUILDINGS,
BANGALORE-01.

...RESPONDENT

(BY SRI VIJAYKUMAR MAJAGE, SPP-II)

THIS CRL.A. IS FILED UNDER SECTION 374(2) OF CR.P.C BY THE ADVOCATE FOR THE APPELLANT PRAYING TO SET ASIDE THE JUDGMENT OF CONVICTION DATED 13.06.2018, PASSED BY THE PRINCIPAL DISTRICT AND SESSIONS JUDGE, RAMANAGARA IN S.C.No.105/2012, CONVICTING THE APPELLANT/ACCUSED FOR THE OFFENCE P/U/S 302 OF IPC.

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



CORAM: HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR
and
HON'BLE MR JUSTICE K. V. ARAVIND

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE K.V. ARAVIND)

The accused in S.C. No. 105/2012 has preferred this appeal challenging the judgment of conviction and order of sentence dated 13.06.2018 passed by the Principal District and Sessions Judge, Ramanagara, whereby the accused has been convicted for the offence punishable under Section 302 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') and sentenced to undergo life imprisonment. Additionally, a fine of ₹5,000/- has been imposed, and in default of payment of fine, the accused is directed to undergo rigorous imprisonment for a period of one month.

2. The case of the prosecution is that on 06.05.2012, at about 8:00 PM, in Gowdagere Village, within the limits of M.K. Doddi Police Station, PW.2 Rajesh, PW.3 Kaleef, and PW.4 Yogesh approached the accused near his grocery



shop and invited him to play cards. The accused stated that he had no money to participate in the game. At that time, the deceased, Shanmuga, who was dumb by birth, arrived at the shop of the accused. Upon noticing that the deceased was in possession of ₹5,000/-, the accused requested him to lend the said amount, promising to return it after winning more money in the card game. The deceased, upon persuasion, handed over ₹5,000/- to the accused. The accused then played the 'Andar-Bahar' card game but lost the entire amount by 9:30 PM. When the deceased, through gestures, insisted on repayment, the accused expressed his inability to return the money. However, as the deceased persistently demanded repayment, a quarrel ensued between them. In the course of the altercation, the accused picked up a wooden club lying nearby and inflicted a fatal blow on the deceased, causing him to collapse. Subsequently, the accused attempted to wake the deceased and, upon receiving no response, moved him to a nearby place. Thereafter, he brought a kerosene lamp and inflicted burn injuries upon



the deceased. On the following day, i.e., 07.05.2012, the family members of the deceased took him to Channapatna Government Hospital, and subsequently, he was shifted to NIMHANS Hospital, Bengaluru, for further treatment. However, despite medical intervention, the deceased succumbed to his injuries on 09.05.2012 at 12:30 AM.

3. The complaint was registered by PW.1 as per Ex.P1. Upon investigation, the prosecution filed a charge sheet for the offence punishable under Section 302 of the IPC. The trial court, based on the evidence of PWs.1, 7, 9, 10, and 11, arrived at the conclusion that the prosecution had proved that the accused had caused the death of the deceased, Shanmuga, and thereby committed an offence under Section 302 of the IPC. Consequently, the trial court convicted the accused and sentenced him to undergo life imprisonment.

4. Heard Sri. M. Sharass Chandra, learned counsel for the appellant and Sri. Vijaykumar Majage, learned SPP-II for the respondent-State.



5. Sri M. Sharass Chandra, learned counsel for the appellant, submits that the conviction of the accused is based on incorrect facts placed by the prosecution. It is contended that the alleged incident occurred on 06.05.2012, whereas the complaint was lodged only on 09.05.2012. Furthermore, no complaint was initially filed alleging assault on the deceased. According to the prosecution, the alleged incident took place at 9:30 PM on 06.05.2012. However, the deceased was admitted to the General Hospital, Channapatna, only on 07.05.2012 at 9:00 PM. The prosecution has not offered any explanation for the delay between the time of the alleged incident and the admission of the deceased to the hospital.

5.1 Learned counsel further submits that the alleged incident occurred near the shop situated in the middle of the village. PWs.2 and 3 have been treated as eyewitnesses; however, their presence at the scene of the incident has not been established. Moreover, the evidence of PW.2 contradicts the case of prosecution. According to



PW.2, the deceased was playing cards and lost money. It is contended that the injuries sustained by the deceased were self-inflicted while he was under the influence of alcohol. It is further submitted that due to political rivalry between PW.7, the brother of the deceased, and the accused, the accused has been falsely implicated in the case.

5.2 Learned counsel, in the alternative, submits that the incident occurred in the course of a sudden quarrel, upon provocation, without premeditation, and in a fit of anger. It is contended that the accused had no intention to cause the death of the deceased. Hence, the present case falls within the exceptions to Section 300 of the IPC. Therefore, it is submitted that the order of conviction and the sentence imposed requires modification by this Court.

6. Sri Vijaykumar Majage, learned SPP-II, submits that the complaint (Ex.P1) was lodged by PW.1, the brother of the deceased. PWs.2, 3, and 4 are eyewitnesses to the incident. The prosecution has established that the incident



occurred when the accused lost the money borrowed from the deceased while playing a card game. When the deceased insisted on the return of his money, the accused inflicted injuries on him using a club. It is further submitted that the accused, out of animosity, caused burn injuries to the deceased and subsequently moved him to a nearby location. If the accused had no intention to kill the deceased, he would have made efforts to provide medical treatment or, at the very least, informed others to facilitate medical assistance. However, the deceased was left unattended until 07.05.2012, when he was found unconscious and admitted to the General Hospital, Channapatna, and thereafter shifted to NIMHANS Hospital, where he succumbed to his injuries. The learned SPP-II further submits that the delay in lodging the complaint was due to the family members being engaged in providing medical treatment to the deceased. It is contended that the trial court has rightly recorded the conviction based on cogent and reliable evidence



establishing the guilt of the accused. Hence, he prays for the dismissal of the appeal.

7. Having heard learned counsel for the parties and perusal of the case papers, it is evident that the testimonies of PWs.1, 2, 3, 4, 7, 11, 13 and 14 are relevant.

8. PW.1, the brother of the deceased, is the complainant as per Ex.P1. The testimony of this witness is based on hearsay information. He has further admitted that the deceased was an alcoholic.

8.1 PW.2 is an eyewitness who was present at the scene of the incident. His evidence discloses that both the accused and the deceased were playing cards. He admits that a quarrel ensued between them over money. He further states that he was present when the accused inflicted injuries on the deceased using a club. He also admits that the shop of the accused is situated in the



middle of the village and has deposed that other villagers were present at the place of the incident.

8.2 PW.3 has been examined as an eyewitness. He has deposed that upon reaching the shop of the accused, he witnessed a quarrel between the accused and the deceased over money. However, he did not speak further on the incident, and the prosecution declared him hostile. During cross-examination, PW.3 admitted that the deceased had sustained injuries on the neck and head due to an assault with a club. He further stated that he had informed the brother of the deceased about the incident. He also admitted that the deceased was an alcoholic.

8.3 PW.4 was examined by the prosecution as an eyewitness. However, he turned hostile. Despite extensive cross-examination by the prosecution, no material evidence could be elicited from his testimony.

8.4 PW.7 is the brother of the deceased and resides in the same village. His deposition is based on hearsay



information. He has admitted that the deceased sustained injuries inflicted with a club and that burn injuries were later caused by the accused. He was informed about the alleged incident on the same day. The defence subjected PW.7 to extensive cross-examination; however, no material evidence of significance was elicited from his testimony.

8.5 PW.11 is the doctor who treated the deceased at the General Hospital, Channapatna, on 07.05.2012 at approximately 9:00 PM, with a history of assault. His testimony discloses the presence of three injuries on the deceased and his inability to move his forelimbs.

8.6 PW.13 is the Investigating Officer who has deposed regarding the course of investigation and the collection of evidence. PW.14 is the doctor who conducted the post-mortem examination on the deceased. He has recorded both external and internal injuries and has opined that the injuries sustained by the deceased are likely to have been caused by MO.1 club.



9. The evidence of PWs.1, 2, 3, 4, and 7 corroborates to establish that the accused and the deceased were playing cards at the shop of the accused. The deceased was insisting the accused to return his money and this led to a quarrel between them. The accused then inflicted injuries on the neck and head of the deceased using a club. As a result, the deceased fell unconscious. The evidence further reveals that, in an attempt to revive the deceased, the accused caused burn injuries. There is a contradiction in the statement of the witnesses regarding the time at which PW.7 was informed about the incident. However, such discrepancies are not of much significance. The prosecution evidence sufficiently establishes that the accused and the deceased were engaged in a card game, a dispute arose between them over money, and in the course of the altercation, the accused inflicted injuries on the deceased. The presence of injuries stands proved through Ex.P11, which certifies that the cause of death was an injury to the spine with a head injury, leading to



cardio-respiratory arrest. The trial court has rightly concluded that the accused caused the homicidal death of the deceased by inflicting injuries with a club and subsequently causing burn injuries.

10. The evidence of PWs.2, 3, 4, and 7 establishes that the cause of the quarrel between the deceased and the accused was the money involved in the card game played by them. The evidence further confirms that the deceased participated in the game, lost money, and was insisting that the accused return the amount. When the accused refused, a quarrel ensued, culminating in the accused inflicting injuries on the deceased. The deceased subsequently fell unconscious, possibly due to the injuries sustained. The accused then caused burn injuries, purportedly with the intention of reviving the deceased. PW.14, as per Ex.P11, has certified the following injuries sustained by the deceased:

- '(i) Abrasion over the right elbow joint measuring 1" X ¼".
- (ii) Abrasion over right wrist measuring 1" X ½". '



11. The opinion of PW.14 establishes that the cause of death was due to an injury to the spine, accompanied by a head injury, resulting in cardio-respiratory arrest. An assessment of the evidence of PWs.2, 3, 4, 11, and 14 indicates that the injuries were inflicted in the heat of passion upon a sudden quarrel, without premeditation and without the accused having taken undue advantage. In view of the foregoing discussion, the facts of the present case would fall within the exceptions to Section 300 of IPC.

12. The examination of the evidence on record, as referred to above, further establishes that although the injuries were inflicted with the knowledge that they were likely to cause death, there was no intention to cause the death of the deceased. The injuries resulted from a sudden quarrel and were inflicted in a fit of anger. The evidence also indicates that the deceased contributed to the provocation leading to the quarrel. Furthermore, the



deceased was not in a position of disadvantage for the accused to exploit or take undue advantage of.

13. The trial court has convicted the accused under Section 302 of IPC and sentenced him to life imprisonment, relying on the testimonies of PWs.2, 3, 4, 7, 11, and 14. However, the trial court erred in failing to consider the applicability of the exceptions to Section 300 of IPC.

14. In light of the foregoing discussion, we are of the considered view that the Exception 4 to Section 300 of IPC is applicable to the present case. Accordingly, the conviction recorded under Section 302 of the IPC requires modification to a conviction under Section 304 Part II of the IPC. The accused has been in judicial custody and has served a sentence of eight years. The sentence already undergone by the accused is found to be proportionate to the offence committed by him. Hence, the sentence is commuted to the period of imprisonment already undergone by the accused.



15. In view of the above, the following:

ORDER

- (i) Appeal is partly allowed.
- (ii) The judgment of the trial court convicting the accused for the offence punishable under Section 302 of IPC and the sentence imposed thereon is set aside. Instead the accused is held guilty of the offence punishable under Section 304 part II of IPC and he is sentenced to imprisonment for the period that he has already spent in jail. He is also directed to pay fine of Rs.5,000/- in default of which he shall undergo further imprisonment for a period of one month.
- (iii) The accused shall be set at liberty forthwith if his presence is not necessary in any other case.



Communicate this order to the jail authorities
forthwith.

**Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE**

**Sd/-
(K. V. ARAVIND)
JUDGE**

VBS/ List No.: 1 SI No.: 12