



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF MARCH, 2025

PRESENT

THE HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR

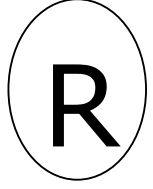
AND

THE HON'BLE MR JUSTICE K. V. ARAVIND

CRIMINAL APPEAL NO. 529 OF 2022

C/W

CRIMINAL APPEAL NO. 534 OF 2022



In Crl.A No. 529/2022

Between:

Frank Anthony @ Frank
S/o Rayappa,
Aged about 30 years,
R/at Thatguppe Village
Uttarahalli Hobli,
Near Kaggalipura,
Kanakapura Main Road,
Bengaluru-560082.

Digitally signed
by VEERENDRA
KUMAR K M
Location: HIGH
COURT OF
KARNATAKA

(By Sri Tigadi Veeranna Gadigeppa, Advocate)

...Appellant

And:

State by CCB P.S.
Represented by State Public Prosecutor
High Court of Karnataka,
Bengaluru-560001.

(By Sri Vijay Kumar Majage, SPP-II)

...Respondent



NC: 2025:KHC:12052-DB
CRL.A No. 529 of 2022
C/W CRL.A No. 534 of 2022

This Criminal Appeal is filed u/s.374(2) Cr.P.C praying to set aside the judgment and order of conviction dated 14.06.2021 passed by the LXIII Additional City Civil and Sessions Judge, (CCH-64), Bengaluru, in S.C.No.729/2010, convicting the appellant/accused for the offence p/u/s 302 and 201 of IPC.

In Crl.A No. 534/2022

Between:

Frank Anthony @ Frank
S/o Rayappa,
Aged about 30 years,
R/at Thatguppe Village
Uttarahalli Hobli,
Near Kaggalipura,
Kanakapura Main Road,
Bengaluru-560082.

...Appellant

(By Sri Tigadi Veeranna Gadigeppa, Advocate)

And:

State by
Rajagopalanagara Police Station,
Represented By State Public Prosecutor,
High Court of Karnataka,
Bengaluru-560001

...Respondent

(By Sri Vijaykumar Majage, SPP-II)

This Criminal Appeal is filed u/s.374(2) Cr.P.C praying to set aside the judgment of conviction and order of



sentence dated 14.06.2021, passed by the LXIII Additional City Civil And Sessions Judge (CCH-64), Bengaluru City, in S.C.No.464/2010, convicting the appellant/accused for the offence p/u/s 120-B, 201, 302 and 404 r/w sec.34 of IPC.

Date on which the appeals were reserved for judgment	29.01.2025
Date on which the judgment was pronounced	21.03.2025

These Criminal Appeals, having been heard & reserved, coming on for pronouncement this day, judgment was delivered therein as under:

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

CAV JUDGMENT

(PER: HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR)

Appellant has stood convicted for life on two counts in connection with trials that he faced in S.C.464/2010 and S.C.729/2010 in the court of Additional City Civil and Sessions Judge (CCH-64), Bengaluru, for the main offence under Section 302 of IPC. Though these two appeals assail the



judgment of conviction, Sri V.G.Tigadi, learned counsel for the appellant, did not question the correctness of conviction judgment, but raised another ground in regard to prejudice caused to the appellant for not holding joint trial. Before delving on the legal issue that he raised, the incidents that led to prosecution of the appellant may be traced here briefly.

2. Two incidents occurred on 09.08.2009. The first incident related to killing of a woman Smt. Lourd Mary, aged 82 years, at 1.00am. In regard to this incident the prosecution stated that there was conspiracy between the appellant and one Srinivas (shown as accused No.2 in S.C.464/2010) to rob the jewellery of that woman. In furtherance of that conspiracy the appellant and Srinivas took Smt. Lourd Mary in a vehicle, i.e., a Tempo Traveller stating that her daughter Rajamma was unwell, and on the way they assaulted the old woman with an



iron rod, robbed her jewellery and then threw the dead body on the road side. To cause disappearance of evidence they dropped a size stone on her and washed the blood stains in the vehicle and on their clothes.

3. The argument of Sri V.G.Tigadi was that though the incidents were different, they having been committed on the same day, the appellant should have been tried in one sessions trial as the offences were not only of same kind, but were committed in one series of acts so connected together as to form the same transaction. He referred to Section 219 of Cr.P.C which states that if a person is accused of more offences than one of the same kind but committed within a span of twelve months, the accused may be tried at one trial but only exception being not more than three being tried in one trial. He also referred to Section 220(1) of Cr.P.C. Though two offences were said to



have been committed on the same day one after another of course with a time interval, it cannot be said that they were distinct offences. In this view not conducting joint trial resulted in a great prejudice being caused to the appellant. He submitted that in both the cases some witnesses were common. In relation to Sessions Case 729/2010, the statement of the appellant under Section 313 of Cr.P.C was first recorded on 28.12.2014. No witness was examined during the year 2013. In connection with Sessions Case 464/2010 after 16.12.2014 till 10.03.2016, no witness was examined. Statement of the appellant under Section 313 of Cr.P.C was recorded in S.C.464/2010 on 24.10.2019. Again Section 313 statement was recorded on 29.12.2018 in connection with S.C.729/2010. Though the judgments were pronounced on the same day, i.e., 14.06.2021 in both the cases, owing to enormous delay in completing the trial, the appellant has not



been able to claim remission under Section 432 Cr.P.C. If the accused had been tried in one case jointly for both the offences, by now he would be entitled for remission. The separate trials affected the appellant's invaluable right of claiming remission and since clear prejudice has been established, this court sitting in appeal can consider it to do justice. In support of his argument he has placed reliance on the judgments of the Supreme Court in ***Nasib Singh Vs. State of Punjab and Another***¹ and ***Muthuramalingam and Others vs State represented by Inspector of Police***². He also referred to Government Orders relating to grant of remission.

4. Sri Vijay Kumar Majage, learned SPP-II, argued that the trial court could have held one trial for both the offences, however conducting separate

¹ [(2022) 2 SCC 89]

² [(2016) 8 SCC 313]



trial cannot be said to be impermissible. No prejudice is caused to the appellant because the trial court has made it clear that the life sentence imposed on him in connection with both the cases would run concurrently. Grant of remission lies within the discretionary power of the Government and the appellant cannot make it a point of argument in the appellate court.

5. We have considered the arguments. Before taking up discussion, it is found expedient to extract here the tabulation made by Sri V.G.Tigadi in regard to the proceedings of the trial in both the cases.

Criminal Appeal 534/2022 (Sessions Case No. 464/2010)	Criminal Appeal 529/2022 (Sessions Case No.729/2010)
12.07.2011: Charge Framed	08.07.2011: Charge Framed.
01.08.2011 to 19.11.2011: PW1 to 9 were examined by prosecution	14.09.2011 to 11.11.2011: PW1 to 12 were examined by prosecution



10.01.2012 to 29.12.2012 : PW10 to 36 were examined by prosecution	11.01.2012 to 13.12.2012: PW13 to 31 were examined by prosecution
06.02.2013 : PW37 was examined by prosecution	During the year 2013: No witness was examined
02.12.2014 to 16.12.2014 : PW38 and 39 were examined by prosecution	04.08.2014 to 11.11.2014: PW32 to 36 were examined by prosecution.
	28.12.2014: Statement of Appellant was recorded under section 313 of Code of Criminal Procedure <i>(correct date of recording is 23.12.2014)</i>
10.03.2016 to 13.06.2016 : PW40 Jayaram (he was already examined as PW7 on 30.09.2011 in Sessions Case No.729/2010), PW41 H.Nagaraju, PW42 Rasha S., (she was already examined as PW31 on 13.12.2012 in Sessions Case No.729/2010) and 43 K.C.Ashok (he was already examined as PW36 on 11.11.2014 in Sessions Case No.729/2010) were examined by prosecution	During the year 2014 to 2018: No witness were examined.
14.11.2017: PW44 Premasai Rai examined (he was already examined as PW34 on 04.08.2014 in Sessions Case No.729/2010)	



11.01.2018: PW45 K.Shivaraju was examined	11.01.2018: PW37 K.Shivaraju was examined.
	29.12.2018: Further statement of Appellant was recorded under section 313 of Code of Criminal Procedure
24.10.2019: Statement of Appellant was recorded under section 313 of Code of Criminal Procedure	

6. Appellant was arrested on 10.12.2009 in S.C.464/2010, and was produced in another case under body warrant, i.e., under Section 267 of Cr.P.C. He was not released on bail and he is in jail even now.

7. Section 219 of Cr.P.C. permits to charge a person of committing more than one offence of same kind and to try him for any number of such offences, but not more than three with a rider that the offences of the same kind must have been committed within a span of twelve months. Sub-section (2) of Section 219 of Cr.P.C explains the



meaning of the expression 'offences of same kind' as punishable with same amount of punishment under same section of IPC, or of any special or local law. And Section 220(1) of Cr.P.C. deals with charging a person with more offences than one if they are committed in one series of acts connected together to form same transaction and holding one trial for every such offence. In order to determine whether series of acts committed constitute same transaction, they must appear to be related in purpose or the cause or effect of one act or an incidental act. Illustrations to sub-section (1) to Section 220 of Cr.P.C. give a clear meaning.

8. Here no doubt two deaths occurred. In the first act the appellant and Srinivas participated, motive for that act was to rob the jewellery of Smt. Lourd Mary. The second act of killing, though took place on the same day, it occurred after considerable gap of time and it was for a different



reason. Srinivas wanted a share in the money realized after selling the robbed jewellery. But the appellant did not like to give him his share; and he feared that Srinivas might one day disclose the incident of killing Lourd Mary. This made him kill Srinivas. Motives being distinct for two offences, it cannot be said that two acts were committed in one series of acts connected with same transaction though they were committed on the same day and look alike. To the instant case Section 219 (1) of Cr.P.C. can be applied.

9. Sections 219 and 220 (1) permit one trial, however separate trials for distinct offences of same type falling under Section 219 cannot be said to be bad. But whenever Section 220(1) is applicable, separate trial cannot be approved of though not bad in procedure since the offences are connected together to form same transaction, witnesses may be common sometime. At what stage the court can



decide as to conducting joint trial and as to the validity of trial if not held jointly is dealt with by the Supreme Court in ***Nasib Singh (supra)***, a decision cited by Sri. V.G.Tigadi. The following paragraphs are extracted from that decision.

"49. The judgment in Chandra Bhal case therefore lays down three significant principles on joint trials:

49.1. A separate trial is not contrary to law even if a joint trial for the offences along with other offences is permissible.

49.2. The possibility of a joint trial has to be decided at the beginning of the trial and not on the basis of the result of the trial.

49.3. The true test is whether any prejudice has been sustained as a result of a separate trial. In other words, a retrial with a direction of a joint trial would be ordered only if there is a failure of justice.

50. In Essar Teleholdings Limited v. Central Bureau of Investigation, Justice R F Nariman,



speaking for a three-Judge Bench reiterated the principles which have been enunciated in Chandra Bhal (supra). Further, it was held that even if the conditions stipulated in Section 223 CrPC to conduct a joint trial have been fulfilled, it may not be desirable to direct a joint trial if a joint trial would (i) prolong the trial; (ii) cause unnecessary wastage of judicial time; and (iii) confuse or cause prejudice to the accused, who had taken part only in some minor offence.

51. From the decisions of this Court on joint trial and separate trials, the following principles can be formulated:

51.1. Section 218 provides that separate trials shall be conducted for distinct offences alleged to be committed by a person. Sections 219 - 221 provide exceptions to this general rule. If a person falls under these exceptions, then a joint trial for the offences which a person is charged with may be conducted. Similarly, under Section 223, a joint trial may be held for persons charged with different offences if any of the clauses in the provision are separately or on a combination satisfied.



51.2. While applying the principles enunciated in Sections 218 - 223 on conducting joint and separate trials, the trial court should apply a two-pronged test, namely, (i) whether conducting a joint/separate trial will prejudice the defence of the accused; and/or (ii) whether conducting a joint/separate trial would cause judicial delay.

51.3. The possibility of conducting a joint trial will have to be determined at the beginning of the trial and not after the trial based on the result of the trial. The Appellate Court may determine the validity of the argument that there ought to have been a separate/joint trial only based on whether the trial had prejudiced the right of accused or the prosecutrix.

51.4. Since the provisions which engraft an exception use the phrase "may" with reference to conducting a joint trial, a separate trial is usually not contrary to law even if a joint trial could be conducted, unless proven to cause a miscarriage of justice.

(emphasis supplied)



10. In the case on hand, undoubtedly enormous delay could have been avoided if the appellant was subjected to one trial. He was arrested on 10.12.2009 and not released on bail. There was no chance that he contributed for delay. The trial court records disclose that they were being tried earlier in different courts, it was on 31.10.2015 they were clubbed. In S.C.No.464/2010, recording of evidence was commenced on 01.08.2011 and was closed on 11.01.2018. The case was adjourned thirty nine times for recording the statement under Section 313 Cr.P.C. and ultimately it was recorded on 24.10.2019. Defence evidence was recorded on 11.03.2020.

11. In S.C.No.729/2010, recording of evidence commenced on 14.09.2011 and was closed on 11.11.2014. Statement under Section 313 Cr.P.C. was first recorded on 23.12.2014. In between



08.04.2015 and 25.07.2015, defence evidence was recorded.

12. Though the judgments in both the cases were pronounced on 14.06.2021 after clubbing of the cases, had it been noticed at the earliest possible time that one trial would do because of offences of same kind being committed by the appellant, the trial would have concluded latest by the end of December, 2015, thus cases were prolonged unnecessarily for 5 years 6 months.

13. The appellant having been able to demonstrate the prejudice caused to him on account of delay, now the actual question is, 'Can the appellant insist on counting the delay period to be set off in order to claim remission under Sections 432 and 433 of Cr.P.C?'



14. It is to be noted here that the trial court has rightly held that two life sentences should run concurrently applying section 427(2) of Cr.P.C.

15. Sri. V.G. Tigadi referred to Government Orders issuing guidelines for the premature release of certain categories of prisoners. He submitted that according to Government Order HD 138 PRA 2013, Bangalore, dated 07-01-2014 prisoners convicted for twenty two types of offences were excluded from the benefit of remission, but those twenty two offences did not include prisoners convicted for two or more murders. That means a prisoner who had been convicted for more than one murder was entitled to claim remission. In the later order of the Government i.e., Order No. 384 PRA 2015 dated 21.07.2016, the Order dated 07.01.2014 was withdrawn and disentitled the prisoners convicted for two or more murders from the benefit of remission.



16. We have perused the Government Order dated 07.01.2014 according to which there was no restriction for a prisoner convicted for offences of more than one murder to claim remission. The said Government Order can be applied to the case of appellant. Since he was arrested on 10.12.2009, his pre-conviction period can be counted for set off in terms of proviso to Section 428 of Cr.P.C. If joint trial had been held, he could have applied for remission. As it is demonstrated that the appellant's interest has been prejudiced on account of joint trial being not held, as has been held by the Hon'ble Supreme Court in para 51.3 of its judgment in ***Nasib Singh(supra)***, we uphold the argument of Sri V.G.Tigadi. And now the following:

ORDER

Appeals stand disposed of. Liberty is given to the appellant to claim remission. The State Government, in its discretion, may in accordance



with its Order HD 138 PRA 2013, Bangalore, dated 07.01.2014 decide whether to grant remission or not to the appellant.

Copy of this judgment shall be forwarded to the Principal Secretary of Department of Home and to the Principal Secretary of Department of Law and Justice, Government of Karnataka, for necessary action.

Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE

Sd/-
(K. V. ARAVIND)
JUDGE

CKL
List No.: 1 Sl No.: 3