

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF APRIL, 2025

PRESENT

THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR

AND

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

CRIMINAL APPEAL No.1071/2019

C/W

CRIMINAL APPEAL No.781/2018

CRIMINAL APPEAL No.765/2019

IN CRL.A. No.1071/2019

BETWEEN:

- 1 . KEERTHI M. E. @ SMILE,
S/O ERAGANGAIAH,
AGED ABOUT 19 YEARS,
R/O NEAR VISHWABHARATHI COLLEGE,
MALLASANDRA VILLAGE,
KASABA HOBLI,
TUMAKURU TALUK-572101.

...APPELLANT

(BY SRI GAURAV G. K., ADVOCATE)

AND:

- 1 . THE STATE OF KARNATAKA,
THROUGH TUMKUR RURAL POLICE,
TUMKUR DISTRICT-572104,
REPRESENTED BY THE LEARNED
STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
BENGALURU.

...RESPONDENT

(BY SRI VIJAYKUMAR MAJAGE, SPP-II A/W
SMT. R. SOWMYA, HCGP)

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 17.04.2018 AND ORDER OF SENTENCE DATED 19.04.2018 PASSED BY THE PRINCIPAL DISTRICT AND SESSIONS JUDGE, TUMAKURU IN S.C.No.38/2017 - CONVICTING THE APPELLANT/ACCUSED No.3 FOR THE OFFENCE P/U/S 120(B) AND 302 R/W 34 OF IPC.

IN CRL.A. No.781/2018

BETWEEN:

- 1 . SRINIVAS B @ SEENA @ GOOGLE,
S/O BABU,
AGED ABOUT 20 YEARS,
RESIDING NEAR KRISHNA TEMPLE,
BIDIRUMALETOTA,
K. R. EXTENSION,
TUMAKURU-572101.

...APPELLANT

(BY SRI M.T. NANAIAH, SENIOR COUNSEL FOR
SRI AVATHI RAVINDRANATH, ADVOCATE)

AND:

- 1 . STATE OF KARNATAKA,
BY TUMAKURU RURAL POLICE,
TUMAKURU-572101,
BY SPECIAL PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA.

...RESPONDENT

(BY SRI VIJAYKUMAR MAJAGE, SPP-II A/W
SMT. R. SOWMYA, HCGP)

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 17.04.2018 AND SENTENCE DATED 19.04.2018 PASSED BY THE PRINCIPAL SESSIONS JUDGE, TUMAKURU IN S.C.No.38/2017 - CONVICTING THE APPELLANT/ACCUSED No.1 FOR THE OFFENCE P/U/S 120(B) AND 302 R/W 34 OF IPC.

IN CRL.A. No.765/2019

BETWEEN:

1 . DHANUSH M. @ DORE,
S/O MURALI,
AGED ABOUT 19 YEARS,
R/O C/O ERAMMA,
NEAR GRAMA PANCHAYATH,
MALLASANDRA VILALGE
KASABA HOBLI,
TUMAKURU TALUK-572101.

...APPELLANT

(BY SRI GAURAV G. K., ADVOCATE)

AND:

1 . THE STATE OF KARNATAKA,
THROUGH TUMKUR RURAL POLICE,
TUMKURU DISTRICT
(REPRRESENTED BY THE
LEARNED STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
BENGALURU)

...RESPONDENT

(BY SRI VIJAYKUMAR MAJAGE, SPP-II A/W
SMT. R. SOWMYA, HCGP)

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 17.04.2018 AND SENTENCE DATED 19.04.2018 PASSED BY THE PRINCIPAL SESSIONS JUDGE, TUMAKURU IN S.C.No.38/2017 - CONVICTING THE APPELLANT/ACCUSED No.2 FOR THE OFFENCE P/U/S 120(B) AND 302 R/W 34 OF IPC.

DATE ON WHICH THE APPEALS WERE RESERVED FOR JUDGMENT	04.02.2025
DATE ON WHICH THE JUDGMENT WAS PRONOUNCED	25.04.2025

THESE CRIMINAL APPEALS HAVING BEEN HEARD AND RESERVED FOR JUDGMENT, 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

C.A.V. JUDGMENT

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

These appeals arise out of the judgment of conviction and order on sentence in S.C. No.38/2017, dated 17.04.2018 passed by the Principal Sessions Judge at Tumakuru.

2. Criminal Appeal No.781/2018 is filed by accused No.1, Criminal Appeal No.765/2019 is filed by accused No.2, and Criminal Appeal No.1071/2019 is filed by accused No.3. The trial Court, by the impugned judgment, convicted all the accused for the offences punishable under Sections 120B and 302 read with Section 34 of the Indian Penal Code, and sentenced each of them to undergo imprisonment for life for the offence punishable under Section 302 of the IPC, and to pay a fine of ₹25,000/- and in default of payment of fine, to undergo further

imprisonment for a period of three years. The trial Court further sentenced each of them to undergo imprisonment for life for the offence punishable under Section 120B of the IPC, and to pay a fine of ₹25,000/-, in default of payment of fine, to undergo further imprisonment for a period of three years. Both sentences were directed to run concurrently.

3. It is the case of the prosecution that the deceased, Chirag, and accused No.1 were good friends. A few months prior to the death of Chirag, he had assaulted accused No.1 by stabbing him with a knife and had also issued threats. Accused No.1, harbouring a grudge and waiting for an opportunity to take revenge, pretended intimacy with Chirag. Accused No.1, along with the other accused assembled at a dhaba known as 'Coffee Kudi Baa' and conspired to commit the murder of Chirag. In furtherance of the said conspiracy, on 07.11.2016, the accused took Chirag and the complainant, Nikhil, on a motorcycle near Kurn Libers Factory in the industrial area, on the road leading from Rangapura to Yallapura. Accused

Nos.1 and 2 took Chirag from that location to a isolated place under the guise of having a personal conversation. At the said place, accused No.2 assaulted Chirag on the head with a long/chopper, causing fatal injuries. While Chirag was lying on the ground, accused No.1 kicked him repeatedly. On hearing the cries of the deceased, the complainant and other witnesses proceeded to the spot, whereupon accused No.2 threatened to kill the complainant and chased him. The complainant fled from the spot on a motorcycle. During the incident, while accused No.2 attempted to assault him, the complainant's shirt was torn. Subsequently, all three accused fled from the scene. The complainant narrated the incident to his brother and lodged a report with police. The Investigating Officer visited the spot, conducted a mahazar, and recovered material objects from the scene of offence. The complainant was produced before the Magistrate and his statement was recorded under Section 164 of the Cr.P.C. Upon completion of investigation, the prosecution filed a charge sheet against the accused for the offence punishable under Section 302 of the IPC.

4. The Sessions Court, upon appreciation of the oral and documentary evidence on record, found accused Nos.1 to 3 guilty of the offences punishable under Sections 302 and 120B of the IPC, and accordingly convicted them and sentenced each of them to undergo imprisonment for life.

5. Heard learned senior counsel Sri. M.T. Nanaiah for Sri. Avathi Ravindranath, learned counsel for the appellant in Criminal Appeal No.781/2018, learned counsel Sri. G.K. Gaurav for the appellants in Criminal Appeal Nos.765/2019 and Criminal Appeal No.1071/2019 and Sri. Vijayakumar Majage, learned SPP-II along with Smt. R. Sowmya, learned HCGP for the respondent State.

6. Sri M.T. Nanaiah, learned senior counsel appearing for the appellant in Criminal Appeal No.781/2018, submits that the motive alleged by the prosecution is the prior enmity between the deceased and accused No.1. Except for the testimony of PW.8, the father of the deceased, there is no material evidence to establish such motive. The prosecution has based its case on the alleged evidence of

PWs.1 and 3, cited as eyewitnesses; however, both witnesses have turned hostile. The other incriminating circumstance relied upon by the prosecution is the recovery of MO.18 and blood-stained clothes. However, the witnesses to the said recovery have not supported the case of the prosecution. The post-mortem report marked as Ex.P.26 certifies that the cause of death was due to multiple injuries sustained by the deceased. However, MO.18, the alleged weapon used to inflict the injuries, was not subjected to scientific examination to establish a nexus between the injuries and the weapon allegedly used.

6.1 Learned senior counsel further submits that the author of the post-mortem report Ex.P.26 has not been examined by the prosecution. The FSL report indicates the presence of human blood on the clothes of the deceased and accused Nos.1 to 3; however, the blood group of the deceased has not been determined. The blood-stained clothes of the accused and MO.18 were allegedly recovered under recovery mahazars Exs.P.31 and P.32, in the presence of PWs.18 and 19. Both these recovery

witnesses have not supported the case of the prosecution. Consequently, the prosecution has failed to establish the recovery in accordance with law. It is contended that the trial Court has recorded a finding of conviction by discrediting the evidence of PWs.1, 18, and 19 based on a hypothetical premise, which, it is submitted, is impermissible while appreciating evidence for the purpose of recording a conviction.

7. Sri G.K. Gaurav, learned counsel appearing for the appellants in Criminal Appeal No.765/2019 and Criminal Appeal No.1071/2019, reiterated the submissions advanced by the learned senior counsel Sri M.T. Nanaiah.

8. On the other hand, Sri Vijaykumar Majage, learned SPP-II appearing for the respondent-State, submits that PW.1 is the complainant and has narrated the incident in detail as per Ex.P.1. A perusal of Ex.P.1 clearly indicates that PW.1 was present along with the deceased and witnessed the incident in which the accused inflicted injuries on the deceased. He further submits that PW.1, while recording his statement under Section 164 of the

Cr.P.C. before the Magistrate, as per Ex.P.3, maintained the same version. Merely because PW.1 turned hostile during the trial, his earlier version as recorded in Ex.P.1 and Ex.P.3 cannot be discarded. It is evident that the accused have won over PW.1. In such a circumstance, it is for the Court to examine the reasons and possibility of the witness turning hostile. The trial Court has rightly disbelieved the testimony of PW.1 recorded during trial and has accepted his statement under Section 164 of the Cr.P.C., as per Ex.P.3. He further submits that the testimony of PW.5, the brother of PW.1, clearly establishes that PW.1 immediately informed him about the alleged incident. The evidence of PW.5 corroborates that PW.1 had knowledge of the incident and was present at the scene of crime at the relevant time.

8.1. It is further submitted that PW.2, the sister of the deceased, was informed by PW.1 about the alleged incident. This fact supports the contention that the testimony of PW.1 during trial is not trustworthy, and that the statement made by him under Section 164 of the

Cr.P.C. is true and reliable. While recording his statement before the Magistrate, PW.1 did not allege any coercion or pressure having been exerted upon him by the prosecution. Therefore, the delay in recording the statement under Section 164 of the Cr.P.C. is not of material significance and does not adversely affect the case of the prosecution.

8.2. He further submits that Ex.P.1 – the complaint – was registered on 07.11.2016, the voluntary statement of PW.1 was recorded on 09.11.2016, and his statement under Section 164 of the Cr.P.C. was recorded on 28.01.2017. A combined reading of Exs.P.1, P.3, and P.5 clearly establishes that PW.1 was present with the deceased throughout the incident and had witnessed the occurrence. His presence at the scene of offence stands corroborated. The trial Court has, therefore, rightly discredited his testimony recorded during trial and accepted the version reflected in his earlier statements.

9. Having considered the submissions of the learned counsel for the parties, it is evident that the homicidal

death of the deceased stands established by the post-mortem report marked as Ex.P.26. What remains for consideration is whether the prosecution has proved that the homicidal death of the deceased was caused by the fatal injuries inflicted by accused Nos.1 to 3 using MO.18.

10. PWs.1, 2, 3, 20, and 21 are the prominent witnesses examined by the prosecution. PW.1 is the complainant, and his complaint has been registered as Ex.P.1. In the said complaint, the complainant has narrated the entire sequence of events, including how accused Nos.1 and 3 met the deceased, the complainant, and PW.3. At the request of accused No.3, they proceeded to Kurn Libers Factory in the industrial area, where accused Nos.1 and 2 allegedly assaulted the deceased with MO.18 – a long/chopper – inflicting fatal injuries, as a result of which Chirag died on the spot. It is further stated in the complaint that when PWs.1 and 3 attempted to intervene to save the deceased, accused No.2 attacked PW.1 with MO.18, causing his shirt to tear, and they fled the scene. Accused Nos.1 to 3 also fled from the spot. Thereafter,

PWs.1 and 3 returned to the scene, found that Chirag had succumbed to the injuries, and informed the brother of PW.1, following which the complaint was lodged, as per Ex.P.1. PW.1 was produced before the Magistrate, and his statement under Section 164 of the Cr.P.C. was recorded as per Ex.P.3. The incident is alleged to have occurred on 07.11.2016, and the statement under Section 164 Cr.P.C. was recorded on 28.01.2017. The contents of Ex.P.3 corroborate the version set out in Ex.P.1. PW.1 was examined during trial in support of the prosecution case. However, he did not support the case of the prosecution and denied his presence at the scene of offence and witnessing the accused assault the deceased. As such, the prosecution treated him as hostile and subjected him to cross-examination. During cross-examination, he denied the suggestion regarding his presence at the crime scene and witnessing the incident. Nevertheless, he admitted that the deceased Chirag had informed him that he had earlier assaulted accused No.1. Although he denied his presence at the crime scene, he admitted that there were bloodstains at the place of incident. He further denied

having voluntarily given the statement under Section 164 Cr.P.C. before the Magistrate.

10.1. PW.2 is the sister of the deceased. She has deposed based on hearsay regarding a prior quarrel between the deceased and accused No.1 during the Ganesha festival in the year 2016. Except for attributing the existence of such a quarrel during the said festival, no material evidence of probative value has been elicited from her deposition by the prosecution.

10.2. PW.3 has been examined by the prosecution as an eyewitness to the incident. As per Ex.P.1, PW.3 was present along with PW.1 and witnessed the occurrence. However, during trial, he did not support the case of the prosecution and was declared hostile. Although the prosecution subjected him to extensive cross-examination, no material or worthwhile information could be elicited from him.

10.3. PW.20 is the Investigating Officer, who has deposed in detail regarding the steps taken by him during

the course of investigation. He has spoken to the registration of the FIR, preparation of the spot mahazar, seizure of material objects including MO.18 and the blood-stained clothes, recording of statements of witnesses, and other procedural aspects of investigation. His testimony also includes the manner in which the accused were apprehended and the recovery effected at their instance. Thus, deposition of PW.20 outlines the flow of investigation and the evidentiary materials gathered in support of the prosecution case.

10.4. PW.21, the Investigating Officer, deposed that based on the voluntary statements of the accused, MOs.2 to 5, as well as MOs.6 and 18, were recovered. The post-mortem report marked as Ex.P.26 certifies that the cause of death was shock and haemorrhage as a result of multiple injuries sustained by the deceased. The FSL report marked as Ex.P.61 confirms the presence of human blood of Group 'A' on items 3 to 12 and 14 to 18. Ex.P.4 is the mahazar recording the recovery of clothes of the complainant, while Ex.P.24 is the mahazar pertaining to

the recovery of the clothes of deceased. Similarly, Exs.P.31 and P.32 are the mahazars evidencing the recovery of the clothes of accused Nos.1 to 3. Ex.P.31 further records the recovery of the weapon, MO.18. The bloodstains found on the clothes of the deceased, the clothes recovered from the accused which were allegedly worn by them at the time of the incident, and the weapon MO.18, were all confirmed to contain human blood of Group 'A', thereby lending support to the case of the prosecution.

10.5. The prosecution has not examined the doctor who conducted the post-mortem examination and issued Ex.P.26 Report. Furthermore, the prosecution has not examined the forensic expert to speak to the contents of the FSL report marked as Ex.P.61. There is also no evidence placed on record by the prosecution to establish that MO.18, the alleged weapon of offence, was subjected to forensic examination to ascertain whether it was used in the commission of the crime.

11. A bare assessment of the evidence relied upon by the prosecution to establish the guilt of the accused reveals that since PWs.1 and 3 who were examined as eyewitnesses turned hostile, proof depended on circumstantial evidence. PW.1, in the complaint marked as Ex.P.1, has narrated the incident alleged to have occurred on 07.11.2016. His statement under Section 164 of Cr.P.C. was recorded on 28.01.2017. The inordinate delay of nearly three months in recording the said statement, coupled with the absence of any explanation for such delay, casts a serious doubt on the fairness and credibility of the investigation. PW.1 has completely denied lodging the complaint and witnessing the incident in question. He has also denied the suggestion put forth by the prosecution that the statement recorded under Section 164 of Cr.P.C. before the Magistrate on 28.01.2017 was made voluntarily. The time gap between the alleged incident and date of recording statement under Section 164 of Cr.P.C. is not so much to be ignored.

12. The motive alleged by the prosecution for the commission of the offence is the prior enmity between the deceased and accused No.1. However, the prosecution has failed to place any substantive evidence on record to establish the said motive. Though PW.8, the father of the deceased, has deposed that the deceased had previously assaulted accused No.1, no corroborative evidence has been adduced to support this claim. In the absence of any independent or supporting material, the testimony of PW.8 is insufficient to conclusively establish the existence of motive.

13. Another circumstance relied upon by the prosecution is the recovery of MO.18, the weapon allegedly used to inflict the fatal injuries on the deceased. Ex.P.32 is the recovery mahazar said to record the recovery of MO.18. PW.18, who was examined as a mahazar witness to Exs.P.31 and P.32, has not supported the case of the prosecution. Though the post-mortem report marked as Ex.P.26 certifies that the death of the deceased was due to multiple injuries, MO.18 was not subjected to forensic

examination to ascertain whether the injuries sustained by the deceased could have been caused by the said weapon. In the absence of any such scientific evidence, it cannot be conclusively held that the fatal injuries were inflicted with MO.18.

14. The other circumstance relied upon by the prosecution is the recovery of the blood-stained clothes of the deceased as per Ex.P.24, and the blood-stained clothes of accused Nos.1 to 3, recorded under Ex.P.31. The FSL report, marked as Ex.P.62, certifies the presence of human blood of 'A' group on the clothes of the deceased as well as those of accused Nos.1 to 3. The accused have not offered any explanation for the presence of such blood stains on their clothes. However, PW.18, who was examined as the mahazar witness to Ex.P.31, has not supported the case of the prosecution. In the absence of any other corroborative evidence, the mere presence of blood stains on the clothes of the accused, said to match the blood group found on the clothes of the deceased, at best, raises a suspicion against the accused. It is a well-

settled position of law that suspicion, however strong, cannot take the place of proof. A conviction cannot be recorded merely on the basis of doubt or suspicion unless the guilt of the accused is established beyond all reasonable doubt.

15. The trial court considered the evidence of PW.1 by accepting his version as per Ex.P.1 and the statement recorded under Section 164 of Cr.P.C., while discrediting his testimony before the Court on the observation that he had turned hostile, having allegedly been won over by the accused. PWs.16 and 18 were examined as recovery witnesses to Exs.P.24, P.31, and P.32. However, both witnesses did not support the prosecution with regard to the alleged recovery. The trial court discredited the testimony of PW.16 on the ground that he was an educated person and that his statement regarding the seizure and recording of the mahazar at the police station was not acceptable. Likewise, the evidence of PWs.18 and 19, witnesses to the recovery mahazars marked as Exs.P.31 and P.32, was disbelieved by the trial court on

the basis that they were seen in the photographs taken at the spot, as per Exs.P.48 to P.53, suggesting a lack of credibility in their version. The trial court further disbelieved the testimony of PW.1 during trial and instead accepted his statement under Section 164 of Cr.P.C., recorded on 28.01.2017, on the reasoning that despite a lapse of two and a half months, he supported the prosecution and narrated the incident before the Magistrate. His failure to support the prosecution during trial was attributed by the trial court to the alleged influence exercised by the accused.

16. On overall assessment of the evidence adduced by the prosecution and as appreciated by the trial court, it can be safely concluded that all the circumstantial links required to establish the commission of the crime by the accused remain unproved. In a case based on circumstantial evidence, it is a well-settled principle of law that all the links in the chain of circumstances must be conclusively established to prove the guilt of the accused beyond reasonable doubt. The only material circumstance

relied upon by the prosecution is the presence of blood stains on the clothes of accused Nos.1 to 3, which were found to match with the blood group detected on the clothes of the deceased. As observed hereinabove, this circumstance, at the most, may give rise to a suspicion. However, mere suspicion, howsoever grave, cannot take the place of proof, and is not sufficient to sustain the conviction of the accused. The order of the trial court suffers from infirmities and cannot be sustained. The conviction recorded is without established evidence.

17. Accordingly the following,

order

- (i) All the three appeals are allowed.
- (ii) The judgment of conviction in S.C. No.38/2017 dated 17.04.2018 passed by the Principal Sessions Judge at Tumakuru convicting accused Nos.1, 2 and 3 is set aside.
- (iii) Accused Nos.1, 2 and 3 are acquitted of the offences charged against them.

- (v) The bail bonds and surety bonds executed by the accused stand cancelled.
- (vii) Registry is directed to send back the trial court records with a copy of this judgment.

Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE

Sd/-
(K. V. ARAVIND)
JUDGE

MV