



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

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DATED THIS THE 9TH 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. 691 OF 2022

C/W

CRIMINAL APPEAL NO. 724 OF 2022

In Crl.A No. 691/2022

Between:

Gurraiah @ Chittibabu
S/o Late Nagaiah
Aged about 20 years
R/at No. 35/1, Nagamma Nilaya
11th Cross, 1st Main, Near LCR School
Gokul, 1st Stage, 1st Phase
Yeshwanthpura, Bengaluru-560022.

...Appellant

(By Sri Syed Salman Khomeini, Advocate)

And:

State of Karnataka
By Yeshwanthpura Police Station
Bengaluru – 560038.
Represented by
The State Public Prosecutor
High Court of Karnataka
High Court Buildings
Bengaluru – 560001.

...Respondent

(By Sri Vijaykumar Majage, SPP-II)

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KUMAR K M
Location: HIGH
COURT OF
KARNATAKA



This Criminal Appeal is filed u/s 374(2) Cr.P.C. praying to set aside the judgment dated 09.12.2021 and sentence dated 13.12.2021 passed by the LVI Additional City Civil and Sessions Judge, Bengaluru in S.C.No.192/2019, convicting the appellant/accused No.1 for the offence p/u/s 302 of IPC.

In Crl.A No. 724/2022

Between:

1. Mr. G.Praveen @ Ompode
S/o Gopi
Aged about 19 years
R/at No. 47, LCR School Road,
11th Cross, Yeshwanthpura
Bengaluru-560054.
2. Mr. Kishore M.,
S/o Mahadev
Aged about 20 years
R/at No. 518, 9th Main,
8th Cross, K.N. Layout,
Yeshwanthpura,
Bengaluru-560022.

...Appellants

(By Sri Prasanna Rao R., Advocate)

And:

State of Karnataka by
Yeshwanthpura Police Station
Represented by SPP
High Court Premises
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 dated 09.12.2021 and order of sentence dated 13.12.2021 passed by the LVI Additional City Civil and Sessions Judge, Bengaluru in S.C.No.192/2019- convicting the appellant/accused no.2 and 3 for the offence p/u/s 307 r/w 34 of IPC.



Date on which the appeals were reserved for judgment	25.02.2025
Date on which the judgment was pronounced	09.04.2025

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)

Crl.A.No.691/2022 is filed by accused No.1 and Crl.A.No.724/2022 is filed by accused Nos.2 and 3. All the three accused faced trial in S.C.No.192/2019 before LVI Additional City Civil and Sessions Judge, Bengaluru (CCH-57) in relation to an incident that occurred in the intervening night of 18/19.10.2018.

2. The name of the deceased is Jagdeep Singh who was working as a chef at Conrad hotel. PW1, PW2, PW4 and Jagdeep Singh were all residing in a rented room at Mathikere, Bengaluru.



PW5-Nidhi and PW6-Nisha were the students of hotel management course and were undergoing training in the hotel where Jagdeep Singh was working. PW4 was also working in the same hotel. On 18.10.2018 at 10.30pm when PW4 was about to leave the hotel after finishing his work, PW5 and PW6 told him that they would like to meet Jagdeep Singh and have dinner with him. Therefore PW4 brought PW5 and PW6 with him, and standing on the road in front of the building where they were living, he made a telephone call to Jagdeep Singh and said that PW5 and PW6 wanted to have dinner with him, and also asked him to bring the key of the motorcycle of PW1. Accordingly Jagdeep Singh brought the key, and all of them decided to have dinner in a nearby restaurant. PW5 and PW6 left that place on the motorcycle as Jagdeep Singh and PW4 had booked for a cab. The time then was 12.15am. As the motorbike moved forward for some distance, they saw three persons coming in



front of them. They went to the place where Jagdeep Singh and PW5 were standing and started altercating with them. They were all drunk. Suddenly one person took a knife and inflicted injury on the neck of Jagdeep Singh. PW4 returned to that place in his motorbike hearing the shoutings. As he interfered, two others inflicted injuries on his head by assaulting with beer bottle and a stone. Jagdeep Singh was bleeding. Therefore PW4 took him on his motorcycle to go to hospital. On the way Jagdeep Singh fell down from the motorbike. Thereafter he was taken to hospital in an auto rickshaw. Ultimately Jagdeep Singh succumbed to injuries. When PW4 was in the hospital his statement was taken by the police at 5.30pm on 19.10.2018. FIR was registered and then charge sheet was filed against all the three accused after investigation.



3. After conclusion of trial, the trial court held accused No.1 guilty of offence punishable under Section 302 of IPC and sentenced him to life imprisonment with fine of Rs.30,000/-, and convicted accused Nos.2 and 3 for the offence under Section 307 read with Section 34 of IPC and sentenced each of them to rigorous imprisonment for ten years and fine of Rs.15,000/-. To arrive at this conclusion the trial court has fully placed reliance on the testimonies of PW1, PW4, PW5 and PW6.

4. Sri Prasanna Rao R, learned counsel for the appellant in Crl.A.No.724/2022 argued that PWs.4, 5 and 6 are the main witnesses, but their evidence is not worth reliable because they cannot be treated as eye witnesses to the incident. Though the prosecution case is that the deceased and PWs.4, 5 and 6 wanted to go to a hotel for dinner and the incident occurred when they were



together, they cannot be called witnesses, at the best they were **witnesses** who do not become **witnesses** to the incident. His further line of argument was that since the incident is said to have taken place during night time, identification of the accused in properly conducted test identification parade ('TIP' for short) was necessary. When TIP was held, person having similar physical traits and features with that of the accused were not made to stand with him. Memoranda of TIP also do not contain signatures of the witnesses. Therefore for these reasons, the identification of the accused in the TIP cannot be held to be sufficient. The investigating officer could have collected CCTV footages of the incident. For all these reasons, even if PW4, PW5 and PW6 can be considered as witnesses to incident, their evidence in regard to identification of accused cannot be believed.



5. On the other hand, Sri Vijaykumar Majage, learned SPP-II argued that the evidence of PW4, PW5 and PW6 cannot be rejected at all. They have stated very clearly that there was light at some distance from the place of incident and the faces of the accused were clearly visible in that light. PW1 was not an eye witness, but his evidence is relevant to the extent of establishing a circumstance of receiving a call by Jagdeep Singh when he and the latter were in the room, and then the latter taking the ignition key of the motorbike and leaving the room to meet PW4, PW5 and PW6. TIP was properly held and the accused were identified. Later on PW4, PW5 and PW6 identified them in the court also. The identification in the court is the substantive evidence to which identification during TIP lends support. Later on PW5 and PW6 showed the place of incident to the police for drawing up spot panchanama. Therefore the findings recorded by



the trial court with regard to identification of accused are correct.

6. Now if the evidence of PW1, PW4 and PW5 is put to analysis, a clear conclusion can be drawn that PW4, PW5 and PW6 were not only eye witnesses to the incident, but they were able to see the accused at that time. Though PW1 has given evidence in the examination-in-chief as though he is an eye witness, in the cross examination he has admitted that he is not an eye witness, but as argued by Sri Vijaykumar Majage, his evidence is relevant only to the extent that he was very much present in the room when Jagdeep Singh left the room taking the key of his motorcycle after receiving a call from PW4. Then his another statement in examination-in-chief is that he received a call around 3.00am and came to know about hospitalization of Jagdeep Singh and PW4; he went to M.S.Ramaiah hospital



immediately and learnt from the doctor that Jagdeep Singh was dead. This statement is also relevant.

7. PW4 has given full account of the incident. His statements in examination in chief depict a picture that PW5 and PW6 wanted to meet Jagdeep Singh who was unwell for some time. PW4 brought both of them with him. As they had decided to go out for dinner, PW4 called Jagdeep Singh to come down the building with motorcycle key. After Jagdeep Singh's arrival, PW4 and PW6 left that place on the motorcycle and Jagdeep Singh and PW5 booked a cab and were waiting for its arrival.

8. As PW4 and PW6 were about to leave, they saw three persons getting into altercation with Jagdeep Singh, and one of them stabbing Jagdeep Singh on his neck with a knife and another assaulting him with a stone on his head.



When he shouted for help, all three left that place. His clothes stained with blood. And then he and Jagdeep Singh went to Ramaiah hospital in an auto rickshaw. Sometime later he was told that Jagdeep Singh had died. When he was again examined in chief on 21.10.2021, he stated that his blood sample was collected for conducting DNA test and also about visiting the jail to identify the accused in the TIP. He identified the accused in the court. He also identified his blood stained clothes as per MO1 to MO5, shoes as per MO6, the knife used by accused as MO7 and cement concrete brick as per MO9.

9. His cross examination is not effective. Some questions were posed in such a way that he could not see the faces of the assailants as it was dark in that place and thereby his identification of the accused stating that they were the very same persons who assaulted him and Jagdeep Singh was



an impossibility. But PW4 stated very firmly that there was sufficient light to see the faces of persons. Very curiously one suggestion given to PW4 has the effect of admitting the involvement of accused in the occurrence of incident. The suggestion which PW4 admitted is like this,

"It is true to suggest that when accused were making galata with Jagdeep Singh, I was not present."

10. If this answer is alone considered, it is possible to construe that the accused altercated with Jagdeep Singh, but PW4 was not present at that place. This kind of meaning cannot be fastened because of his further answers that accused 1 to 3 passed in front of him and he returned to that place i.e., the place of incident after hearing the voice. That means he went to that place after hearing the noise and thus he could see assault on Jagdeep Singh and he also sustained injuries as result of assault on him by



two of the accused. Thus seen, the evidence of PW4 has not been impeached in the cross examination.

11. PW5 and PW6 being eye witnesses have given evidence fully establishing the incident and pointing the accused for assault on Jagdeep Singh as also PW4. Since PW5 was with Jagdeep Singh, she alone could give the reason for eruption of the incident, and in this regard her statement is that the accused came to the place where Jagdeep Singh and she were standing waiting for a car, and asked for a cigarette. Their reply was that they did not have cigarette and then the accused started fighting with them. She has stated that hearing the noise, Suhas i.e., PW4 came back. She has stated how Jagdeep Singh and PW4 were assaulted.

12. PW6 has given evidence in the same manner. And they are not discredited in the cross



examination. In fact PW5 has made it more clear in the cross examination that accused No.1 was holding knife in his right hand and accused 2 and 3 did not have any weapon, but they were holding bottles. PW6 was given a suggestion by the defence counsel, which has the effect of admitting the presence of PW5 and PW6 at the time of incident. The suggestion is,

"It is true to suggest that since we left the place I do not know in which auto they went to hospital."

'Left the place' indicates that they were present at the place of occurrence.

13. Sri Prasanna Rao, learned counsel for the appellant has argued that PW5 and PW6 cannot be considered as witnesses to incident as their testimonies do not indicate that they intended to be **witnesses**, at the best they were only **witnesses**. Both the words contextually take



distinct meanings. **Witness** is one who has seen something directly, and the word **withness** connotes the meaning close association or proximity. Here PW5 and PW6 qualify for the meanings of both the words. Because they were trainers in the hotel where Jagdeep Singh was working as a chef, they might have come to see him with that feeling of withness, and having come, they witnessed the incident which later led to Jagdeep Singh's death and PW4 sustaining injuries. No person can be expected to be having prior intention to witness an incident.

14. Sri Prasanna Rao also made an attempt to discredit PW5 and PW6 by referring to their conduct. He argued that PW5 and PW6 did not go to hospital; if they were present at that time and had seen the incident, they would have gone to hospital. Indeed it is the answer of PW5 and PW6 that they did not go to hospital. As to why they



did not go to hospital is clarified by PW6 who has stated that after the incident, Jagdeep Singh fell down unconscious, that they (PW4, PW5 and PW6) came to main road and shouted for help, that the police vehicle came there and at that time PW4 told them (PW5 and PW6) that they should go to their residence and that he would take the help of police. This explanation is acceptable.

15. It is true that if the testimonies of PW4, PW5 and PW6 are assessed in juxta position with each other, some variations in their statements can be seen, but those variations do not affect their testimonial value.

16. As regards identification of the accused in the TIP, the evidence of PW19 is to be considered. PW18, the investigating officer has given evidence that he requested the Tahsildar to hold TIP in the jail for identification of accused by PW4, PW5 and PW6 (CW1 to CW3). PW19 has stated that after



receiving requisition from CW32 i.e., PW18, he conducted TIP in the Central Prison on 30.10.2018 and during that time, all the three witnesses i.e., PW4, PW5 and PW6 identified the accused, and each of them put signature on the memoranda of identification. Ex.P50, P51 and P52 are the memoranda in regard to identification of accused No.1; Ex.P56 to P58 are the memoranda in regard to identification of accused No.2 and Ex.P53 to P55 are in relation to accused No.3. PW19 has clearly stated that accused 1 to 3 who were present before the court during trial, were the persons identified by PW4, PW5 and PW6 in the TIP. It is true that PW5 and PW6 have not stated that they identified the accused in the jail. This might be due to lapse on the part of Public Prosecutor in not putting that question to them. There is no infirmity in the TIP, and the argument of Prasanna Rao in this regard cannot be accepted.



17. Recovery of incriminating articles is another aspect that points out involvement of accused. PW18 has stated that after arrest of the accused each of them gave confession statement and at that time they revealed the place where they had kept or concealed their blood stained clothes and the knife. On this disclosure each of them led the police and the panch witnesses and produced the articles. Accused No.1 led the recovery team to his house and produced the knife and his blood stained clothes. Accused No.2 also took the police and panchas to his house and produced his blood stained clothes which had been kept by him under a syntex tank. Likewise, accused No.3 took the police and panchas to his house, and produced his clothes which had been kept beneath a cot in the verandah of his house.

18. Ex.P16 is the common mahazar drawn with regard to recoveries effected as per



disclosures made by all the three accused. PW9 and PW10 are the witnesses to Ex.P16, and they have established seizures as stated by PW18.

19. Ex.P61 is the FSL report. This report which has not been challenged indicates that the blood stains were detected on the knife, the clothes of the accused, and the clothes of PW4 and Jagdeep Singh. Report shows that DNA profiling of the blood stains found on seized articles matched with DNA profile of blood samples collected during post mortem examination, and the blood sample of PW4. PW23 is the Assistant Director of FSL (DNA Section). The evidence of PW23 and FSL Report-Ex.P61 further strengthen the prosecution case.

20. Ex.P34 is the wound certificate of PW4. Ex.P35 is the post mortem report. PW15 is the doctor who examined PW4 at 1.30am on 19.10.2018 and he noticed two injuries; cut lacerations over left parietal region and on mid



line. The opinion of PW15 is that cut laceration wound was grievous and injury No.2 was simple. PW16 conducted post mortem examination on the dead body of Jagdeep Singh. In his post mortem report-Ex.P35, he has mentioned to have found four ante mortem injuries, prominent injury being *on the neck which severed the underlying common carotid artery and internal jugular vein.* This injury was on the right side of neck. There was another injury on the left side of the neck. The opinion is that death was on account of injury to neck. Therefore the medical evidence supports the ocular evidence given by PW4, PW5 and PW6.

21. So reassessment of evidence takes us to concur with the findings of the trial court and it is not possible to take another view.

22. Next question is whether accused No.1 can be held guilty of committing murder, and accused Nos.2 and 3 guilty of offence of



attempting to commit murder. It is not in dispute that all the accused were strangers to PW4 and Jagdeep Singh. Intention for the incident is not forthcoming. It appears that the accused wanted to wield their power. Just because there was no intention to kill, it cannot be said that the act committed by accused No.1 did not amount to murder. The injury inflicted by him was sufficient in the ordinary course to cause death, and it cannot be said that he had no knowledge of the consequences of his act. Therefore the trial court has rightly held accused No.1 guilty of the offence of murder. Common intention to cause the death of Jagdeep Singh cannot be attributed to other two accused; such kind of evidence is not available. And with regard to assault on PW4, the trial court has invoked Section 34 against accused 2 and 3. The evidence shows that both of them assaulted PW4 and the injuries caused by them resulted in PW4 sustaining grievous injury on his head. Here



more than the intention, knowledge of consequences of such type of injury is important and it might have led to death. Therefore recording conviction for the offence under Section 307 of IPC is not incorrect.

23. The ultimate conclusion to be drawn from the above discussion is that the judgment and order on sentence passed by the trial court is to be confirmed. Therefore appeals are ***dismissed***.

Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE

Sd/-
(K. V. ARAVIND)
JUDGE

KMV
List No.: 1 Sl No.: 2