

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.744/2024

BETWEEN:

1 . SATISH,
S/O CHOWDEGOWDA,
AGED ABOUT 30 YEARS,
R/AT 132, KOPPALU,
AREKRE HOBLI,
GENDEHOSAHALLI POST,
SRIRANGAPATNA TALUK,
MANDYA DISTRICT - 571415.

(NOW IN CENTRAL PRISON,
HINDALAGA, BELAGAVI)

...APPELLANT

(BY SRI KRISHNAPPA N. R., ADVOCATE)

AND:

1 . THE STATE BY
ADUGODI POLICE ,
BY SPP HIGH COURT BUILDING,
HIGH COURT OF KARNATAKA,
BANGALORE - 560001.

...RESPONDENT

(BY SRI VIJAYKUMAR MAJAGE, SPP-II)

THIS CRL.A IS FILED UNDER SECTION 374(2) OF CR.PC BY THE ADVOCATE FOR THE APPELLANT PRAYING TO SET ASIDE THE JUDGMENT OF CONVICTION AND ORDER OF SENTENCE DATED 12.06.2019 PASSED BY THE LX ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU (CCH-57) IN S.C.No.744/2014 C/W S.C.No.772/2016, FOR THE OFFENCE P/U/S 120B, 396, 397, 302, 201 OF IPC.

<i>DATE ON WHICH THE APPEAL WAS RESERVED FOR JUDGMENT</i>	06.02.2025
<i>DATE ON WHICH THE JUDGMENT WAS PRONOUNCED</i>	25.04.2025

THIS CRIMINAL APPEAL 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)

The accused No.4 in S.C. No.744/2014 before LX Additional City Civil and Sessions Judge, Bengaluru has preferred this appeal against the judgment of conviction and order on sentence dated 12.06.2019, whereby the appellant was convicted for the offence punishable under Section 302 of Indian Penal Code, 1860 (hereinafter referred to as 'IPC' for short) and sentenced him to life

imprisonment in addition to fine of Rs.1,00,000/- and term sentences for other offences, which are made to run concurrently.

2. The case of the prosecution is that accused Nos.1 and 2 were running a business concern under the name and style of Impetus Capital Services Private Limited at Mysuru and had suffered losses. In furtherance of a conspiracy with the remaining accused, they decided to rob the valuable jewellery offered for sale by PW.1 Smt. Susheela and her husband the deceased Uday Raj Singh who were residing at Wilson Garden, Bengaluru. Accused Nos.1 and 2 visited the house of the deceased on several occasions to gain their confidence by assuring them of securing good customers for the jewellery.

3. On 25.03.2014 in the morning they visited the house of the deceased and informed them that they would return with prospective buyers. Later, on the same day they returned and requested the deceased to produce the jewellery. When PW.1 handed over a diamond necklace to her husband the accused restrained him and inflicted

multiple stab injuries on his neck and other parts of the body. When PW.1 raised an alarm, one of the accused took her inside the room and stabbed her on the neck causing bleeding injuries due to which she fell unconscious. The deceased succumbed to the injuries and the accused fled the scene with the jewellery. Upon regaining consciousness PW.1 cried for help and was noticed by neighbours, who shifted her to Agadi Nursing Home for treatment. The police were informed and visited the spot along with the dog squad and forensic experts. On the same day at 4.30 p.m. while PWs.23 and 24 were on patrol duty they apprehended accused Nos.2, 4 and 5, who were being chased by the public on allegations of theft. Bloodstains were found on their clothes and the stolen diamond necklace was recovered from their possession. They were taken to the police station where the Inspector of Audugodi Police Station recorded the statement of PW.1 on 25.03.2014 at 4.45 p.m. and based on the said statement a complaint was registered. Upon completion of the investigation a charge sheet was filed alleging commission of offences punishable under Section

302 and other provisions of the IPC. The trial court, upon appreciation of the evidence of PWs.1, 2, 3, and 24, coupled with the seizure of MOs.1 and 2 from accused No.4, held that the prosecution had established the guilt of the accused for offences punishable under Sections 120B, 396, 397, 302, and 201 of the IPC.

4. Heard Sri. Krishnappa N. R., learned counsel for the appellant and Sri. Vijaykumar Majage, learned SPP-II for respondent - State.

5. Sri Krishnappa N.R. learned counsel for the appellant submits that the prosecution has based its case on the evidence of PWs.1, 23 and 24 and the recovery of MOs.1 and 2. It is contended that the prosecution has failed to establish that PW.1 and the deceased were in possession of a diamond necklace worth Rs.18 Crores as alleged. The case of the prosecution is that the accused had robbed the said necklace by injuring PW.1 and causing the death of the deceased. The alleged stolen necklace is claimed to have been recovered as per MOs.1 and 2. However MOs.1 and 2 were not subjected to valuation. Except for the

identification of MOs.1 and 2 by PW.1 there is no independent evidence to establish that the article allegedly robbed and the article recovered are the same. In the absence of such authentication, mere recovery of an article would not be sufficient to connect the accused to the alleged crime.

5.1. PW.1 sustained injuries and was admitted to the hospital around 4.00 p.m. The alleged incident occurred between 2.00 and 2.30 p.m. She was unconscious due to the injuries and was taken to the hospital by the neighbours at 4.00 p.m. Accused No.4 was also arrested at 4.30 p.m. when the public raised an alarm. When the incident is said to have taken place between 2.00 and 2.30 p.m., it is highly improbable that the accused remained at the same location with the stolen article at the time of arrest.

5.2. Accused No.4 was arrested by PWs.23 and 24. The identification of Accused No.4 was made only by PW.24. The evidence of PWs.23 and 24 does not corroborate with the evidence of PW.1.

5.3. It is submitted that as per the case of the prosecution accused No.4 suffered injury and was taken to the hospital for treatment and a wound certificate was issued. Ex.P27 the wound certificate does not record the history of the wound.

5.4. Accused No.4 was identified by PW.1 at the police station. No test identification parade was conducted. PW.1 identified the accused while they were in police custody and in the presence of the Investigating Officer. PW.1 had not seen Accused No.4 earlier and had not provided any description before identifying him. The test identification parade is not in accordance with law and has no evidentiary value.

5.5. Learned counsel further submits that Accused Nos.1, 3, 5 to 7 preferred criminal appeals in CrI.A.Nos.313/2022, 1305/2019, 1307/2019, 1350/2019, and 1035/2020. This Court acquitted accused Nos.3, 5, 6 and 7. The case against the appellant Accused No.4 is identical to that of Accused Nos.3, 5 to 7. This Court by judgment dated 13.02.2024 acquitted Accused Nos.3, 5 to 7. In view of

the same, accused No.4 is entitled to acquittal on identical reasoning.

6. Shri Vijaykumar Majage, learned SPP-II for the respondent-State submits that the appellant Accused No.4 was identified by PW.1 the injured eye witness. Accused No.4 was arrested along with MOs.1 and 2 while attempting to escape after the robbery. He sustained injuries during the alleged incident and was subjected to medical examination as evident from Ex.P27. Learned SPP-II further submits that as observed by this Court in the appeals preferred by accused Nos.1, 3, 5 to 7, accused No.4 stands on a different footing. MOs.1 and 2 were recovered from accused No.4. The appellant cannot seek benefit on parity by relying on the acquittal of Accused Nos.3, 5 to 7.

7. Having heard learned counsel for the parties and upon perusal of the record it is found that PWs.1, 2, 3 and 24 are primary witnesses. PW.1 was examined by the prosecution to provide a full account of the incident. However the evidence of PW.1 suffers from contradictions

and does not establish the involvement of Accused No.4 in the alleged crime. Accused No.4 was identified at the police station in the presence of the Investigating Officer. It is not the case of the prosecution that PW.1 had seen the accused earlier. PW.1 did not provide any description of Accused No.4 before identifying him at the police station. In such circumstances it was incumbent upon the prosecution to conduct a test identification parade which admittedly was not done. On this aspect Accused No.4 stands on the footing same as Accused Nos.3, 5 to 7. This Court in CrI.A.No.313/2022 and other connected matters decided on 13.02.2024 held that PW.1 did not identify the accused with reference to their physical features, the clothes worn by them or any specific identification marks such as scars. It was further held that in the absence of a test identification parade, the evidence of PW.1 regarding identification of Accused Nos.3 to 7 was not satisfactory. In view of the findings recorded by the co-ordinate bench of this Court, the benefit of the same would extend to Accused No.4/appellant. This court does not find any material evidence to take a different view on this aspect.

8. The case of Accused No.4 can at most be distinguished from that of Accused Nos.3 and 5 to 7 due to the recovery of MOs.1 and 2 from his possession. However mere recovery may not in all circumstances be sufficient to prove the guilt of the accused. The recovery must be corroborated by other evidence. As per Ex.P1 the value of the diamond necklace was around Rs.18 Crores and it was an antique piece. Before being shown to the accused it was kept in a bank locker. The deceased and PW.1 intended to sell the necklace to establish an orphanage and had widely publicized its sale. People from various states visited and negotiated for its purchase. Accused Nos.1 and 2 also visited PW.1 and the deceased, claiming to secure better buyers. The evidence of PW.1 is consistent in asserting the value attached to the necklace. However, there is no independent evidence describing the necklace nor any valuation report. PW.1 alleged that the necklace was robbed by the accused and then identified the recovered MOs.1 and 2 as the stolen necklace. However, MOs.1 and 2 were not valued to ascertain whether their worth corresponds to the value stated by

PW.1. There is no evidence adduced by the prosecution to establish that the robbed necklace and the recovered necklace are identical. As the prosecution case is primarily based on recovery, it must be proved with a higher degree of certainty. In the absence of corroborating evidence, it is doubtful whether the item allegedly stolen and the item recovered are the same. Unless the prosecution establishes that the stolen and found articles are identical the conviction cannot be based solely on recovery.

9. PW.1 stated that the diamond necklace was kept in a bank locker and was brought home when the number of intending buyers increased. However the existence of the locker and its operation by PW.1 or the deceased, has not been proved to corroborate their possession of the alleged diamond necklace. In the absence of such evidence the case of the prosecution becomes doubtful.

10. Accused No.4 was arrested at 4.30 p.m. by PWs.23 and 24. As per the evidence of PWs.23 and 24 Accused No.4 was apprehended along with Accused Nos.2 and 5

when the public raised an alarm regarding a chain snatching incident. They were found in possession of MOs.1 and 2. PW.1 stated that the accused visited her house at around 2.00 p.m. She was unconscious due to injuries and upon regaining consciousness she stepped out seeking help. The neighbors admitted her to the hospital. As per Ex.P30 wound certificate issued by Agadi Hospital, PW.1 was admitted at 4.00 p.m. According to PW.1, the entire episode lasted for 15-20 minutes. If the accused entered the house at 2.00 p.m. the incident would have concluded between 2.00-2.30 p.m. If PW.1 was admitted to the hospital at 4.00 p.m. she would have regained consciousness around 3.30 p.m. The public raised an alarm against Accused No.4 alleging chain snatching at 4.30 p.m. It is highly improbable that the accused remained in the same locality for more than an hour with the stolen articles. If the case of prosecution is to be accepted, PW.1 has stated that apart from MOs.1 and 2 the accused also stole a Mangalya chain, bangles, ring, studs, silver articles and Rs.2.5 lakhs cash. However the prosecution recovered only MOs.1 and 2. This omission

casts doubt on the recovery as alleged by the prosecution. When the presence of the accused at the scene and time of the incident appears improbable the recovery of MOs.1 and 2 from Accused No.4 becomes questionable.

11. The prosecution has subjected various material objects to forensic examination. The presence of 'O' group human blood was detected on various items as recorded in Ex.P46. The deceased and PW.1 suffered bleeding injuries and the crime scene contained their blood. However the medical evidence has not identified the blood group of PW.1 and the deceased. In the absence of such determination the presence of blood stains on the weapons allegedly used in the crime and on the clothes of the accused is insufficient to establish guilt. The presence of blood stains may create suspicion but suspicion however strong cannot take the place of proof. Any doubt that arises must enure to the benefit of the accused.

12. The trial court merely relying on the evidence of PW.1 and the recovery of MOs.1 and 2 has concluded that the prosecution has proved the guilt of the accused

beyond reasonable doubt. The trial court has erred in assessing the evidence. The conclusion reached suffers from infirmities and is not sustainable.

13. Additionally, this court in CrI.A. No.313/2022 and connected matters disposed of on 13.02.2024 acquitted accused Nos.3 and 5 to 7 after a detailed consideration of the evidence and for the reasons recorded therein. The case of accused No.4 is identical to that of accused Nos.3 and 5 to 7, as the evidence relied upon by the prosecution does not establish his guilt beyond reasonable doubt. When similarly placed accused have been acquitted, the principle of parity must be applied. In view of the same, accused No.4 also deserves to be acquitted.

14. In the light of the aforesaid findings, the following,

ORDER

- (i) The appeal is allowed.
- (ii) The judgment of conviction and order on sentence dated 12.06.2019 passed in S.C.No.744/2014 by the LX Additional City Civil & Sessions Judge, Bengaluru, is set-aside;

- (iii) The appellant/accused No.4 is hereby acquitted of all the charged offences.
- (iv) The appellant/accused No.4 shall be set at liberty forthwith, if his custody is not required in any other case/s.
- (iv) If the appellant has deposited fine amount with the trial Court, it shall be refunded upon proper identification;
- (v) The Registry is directed to communicate this order to the concerned Jail Authorities.
- (vi) 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**