

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.2041/2018

BETWEEN:

1 . SRI V. KARTHIK,
S/O LATE VISHWANATHA,
AGED 29 YEARS,
BUILDING CONTRACTOR,
R/AT CHAMUNDESHWARI NAGAR,
MADIKERI,
KODAGU DISTRICT-571201.

...APPELLANT

(BY SMT. BUDRUNNISA, ADVOCATE)

AND:

1 . STATE OF KARNATAKA,
BY MADIKERI TOWN CIRCLE POLICE,
REPRESENTED BY THE
STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDINGS,
BENGALURU-560 001.

...RESPONDENT

(BY 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 AND ORDER OF CONVICTION AND SENTENCE DATED 16.08.2018 PASSED BY I ADDITIONAL DISTRICT AND SESSIONS JUDGE, KODAGU AT MADIKERI IN S.C.No.56/2017 - CONVICTING THE APPELLANT/ACCUSED FOR THE OFFENCE P/U/S 302 OF IPC.

<i>DATE ON WHICH THE APPEAL WAS RESERVED FOR JUDGMENT</i>	03.02.2025
<i>DATE ON WHICH THE JUDGMENT WAS PRONOUNCED</i>	21.03.2025

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 present appeal arises from the Judgment of conviction and order on sentence dated 16.08.2018, passed by the I Additional District and Sessions Judge, Kodagu, Madikeri in S.C.No.56/2017, whereby the appellant-accused was convicted for the offence punishable under Section 302 of Indian Penal Code, 1860(for the short 'the IPC') and sentenced to undergo life imprisonment along with a fine of Rs.15,000/-.

2. The prosecution alleges that the accused had longstanding enmity with the deceased, Gokul, the brother

of PW.1. On 22.03.2017, at about 10:40 P.M., while the deceased was proceeding to his house on his motorcycle bearing No. KA-12-Q-4059, the accused, who was waiting near the house of Shri Kundiylolanda Muttappa within the limits of Madikeri Town, intercepted him, made him fall on the road, then assaulted him with a knife inflicting multiple injuries on his neck, head, and other parts of his body, and thus caused his death.

3. PW.1 lodged a complaint with the police as per Ex.P1. Upon investigation, a charge sheet was filed against the accused for the offence punishable under Section 302 of the IPC.

4. The trial court examined 18 witnesses, marked 28 exhibits, and exhibited 11 material objects. Relying on the evidence of PW.1, the trial court rejected the defence plea of false implication due to enmity. It further held that the involvement of the deceased in other crimes was inconsequential when the prosecution had established the guilt of the accused in committing murder. The trial court also referred to the evidence of PW.11-Doctor, the

certified wounds and injuries found on the deceased, and the possibility of injuries being caused by MO.7 while concluding the guilt of the accused. As far as discrepancies in the investigation, the court observed that stray admissions by witnesses would not discredit the case of prosecution when supported by sufficient material. Accordingly, the trial court convicted the accused under Section 302 of IPC.

5. Heard Smt. Budrunnisa, learned counsel for the appellant and Smt. R. Sowmya, High Court Government Pleader for respondent-State.

6. Smt. Budrunnisa, learned counsel for the appellant, submits that the identification of the accused by PW.15 is doubtful. It is contended that, as per the evidence of PW.15, the accused was wearing a checked shirt. Ex.P13 records seizure of green half sleeved T-shirt and same is marked as M.O.10.

6.1. Learned counsel further submits that the deceased was involved in multiple criminal cases and was facing trial. It is contended that the deceased was a habitual offender with several enemies, and there was no motive for the accused to commit the murder.

6.2. MO.7—knife was recovered as per Ex.P11-Mahazar. However, the knife was blunt, and the injuries found on the deceased, as certified by the Doctor, could not have been caused by MO.7. PW.11 further admitted that the stab injuries sustained by the deceased were not consistent with those inflicted by MO.7.

6.3. The prosecution has not produced the call detail records of the accused to establish his presence at the crime scene. There is no evidence to substantiate the presence of accused at the place of occurrence or to indicate any motive for causing the death of the deceased. The case of prosecution is based on mere suspicion, without any concrete evidence linking the accused to the death of deceased at the relevant time.

6.4. Learned counsel concludes her submission by contending that the prosecution has failed to establish the guilt beyond reasonable doubt. It is submitted that the order of conviction and sentence is without any legal basis. Accordingly, she prays for setting aside the order of conviction.

7. Smt. R. Sowmya, learned HCGP appearing for the respondent-State, submits that enmity between the accused and the deceased has been established through the evidence of PWs.1 and 2. It is further contended that the accused sustained an injury on the palm, for which no explanation has been offered. Ex.P16-medical certificate corroborates the external injuries mentioned in the post-mortem report that injuries could have been caused with MO.7. Additionally, the recovery of clothes and the FSL report confirms the presence of human blood of 'B' group on the clothes and the knife. On these grounds, learned HCGP prays for dismissal of the appeal.

8. We have considered the submissions of learned counsel for the parties and perused the records.

9. PWs.1, 10, 11, 17, and 18 are the key witnesses in this case. PW.1, who reported the incident, is the sister of the deceased. In her testimony, she stated that on 22.03.2017, at about 8:45 A.M., she left for work and returned home at 6:30 P.M. The deceased had gone out on his motorcycle bearing registration No. KA-12-Q-4059. He had informed her that he had enmity with the accused and was uncertain about what the accused might do to them. When the deceased did not return home by 10:30 P.M., she attempted to contact him. PW.10, Pradeep Kumar, then called and informed her that the deceased had fallen near the pump house and asked her to come near the shop at Kannandabane. She, along with PW.10, PW.12, and CW.19, took an autorickshaw to the location to bring her brother. Upon reaching the scene, they found the motorcycle in the middle of the road and the deceased lying on the ground with injuries on his head, face, and other parts of the body, bleeding profusely. She sought for help, and PW.4 arranged for an

ambulance. The deceased was then taken to Madikeri District Hospital, where the doctor declared him dead.

10. PW.1 further stated that previously accused had come to her house searching for the deceased and had threatened to kill him. She suspected the accused of committing the murder and lodged a complaint as per Ex.P1. She admitted her signature on Ex.P2-spot mahazar, which included the seizure of the motorbike, autorickshaw, and blood-stained mud. She also identified the autorickshaw as per Ex.P3 and the motorbike as per Ex.P4.

10.1. PW.1 was cross-examined by the defence. It was admitted that a few days prior to the incident, the accused had gone to her house with a sickle and threatened to kill her brother. This information was not conveyed to the deceased but was allegedly shared with her mother. However, no complaint was lodged regarding this incident. It is further stated that when the accused was threatening the deceased, it was witnessed by

neighbor Mr. Haridas. The prosecution, however, has not examined Mr. Haridas as a witness.

10.2. PW.1 stated that PW.4 arranged for an ambulance to shift the deceased to Madikeri District Hospital. She admitted that PW.4 accompanied her to the hospital and was present at the crime scene. However, PW.4 had no direct information regarding the incident. He admits his presence at the spot and confirmed arranging the ambulance for transporting the deceased to the hospital.

10.3. PW.10 is the informant who conveyed the news to PW.1. According to PW.1, PW.10 informed her about the death of deceased near the pump house and took her to the spot along with PW.12 and CW.19 in an autorickshaw. As per testimony of PW.10, PW.12 informed him that someone had fallen by the roadside along with a motorbike. PW.10, along with PW.12, went to the location and identified the deceased. He then informed PW.1 and returned to the shop at Kannandabane junction, where PW.1 also arrived. Subsequently, he

accompanied PW.1 and PW.12 back to the spot. PW.10 further stated that when he first reached the scene, the motorbike engine was still running.

10.4. In cross-examination, PW.10 admitted that the distance between the deceased and the motorbike was approximately five feet. He further stated that the headlight and tail lamp were switched on when he initially arrived at the scene. However, he admitted that when he later returned to the spot with PW.1, the engine and lights were switched off.

10.5. PW.11, the doctor who conducted the post-mortem examination, prepared the post-mortem report marked as Ex.P15. He observed 15 wounds on the body of the deceased, including chopped wounds, a cut-throat injury, stab wounds, lacerations, and abrasions. The cause of death was certified as shock and hemorrhage resulting from multiple chop injuries to the head and a cut-throat injury to the neck. Upon examining M.O.7, it was noted that the distal end of the blade was broken and missing. Despite this, the doctor certified that all 15

injuries could have been inflicted using M.O.7. However, during cross-examination, he admitted that chopped and cut injuries could be caused by any sharp-edged weapon. He further stated that Injury Nos. 5, 12, and 13 might have occurred after the deceased had fallen. Additionally, he admitted that if the distal end of the weapon was blunt, it could not have caused stab wounds, and therefore, the stab injuries found on the deceased could not have been inflicted with M.O.7.

10.6. PW.17, the Investigating Officer, deposed regarding the investigation process and evidence collection. He stated that the accused was provided with alternative clothing, and the clothes worn by the accused were seized as per Ex.P13. The prosecution produced Ex.P26, a medical certificate, to establish that the accused had sustained an injury on the left palm. During cross-examination, he admitted that the accused was brought before him at 5:30 A.M., but his clothes were seized only at 6:30 P.M. He also conceded that the seized articles were sent to the RFSL after a delay of 24 days. Additionally, he admits that the blood samples of both the

deceased and the accused were not sent for RFSL examination.

10.7. PW.18, the forensic expert, issued Ex.P28. He admitted that blood samples were not received from the Investigating Officer. However, he certified the presence of 'B' group human blood on articles 1 & 3 to 11.

11. The case of prosecution rests entirely on circumstantial evidence. PW.1, the complainant and sister of the deceased, suspected the accused of causing death of her brother. Her suspicion stems from an alleged threat made by the accused at her house to kill her brother. It is stated that Mr. Haridas was present during this threat; however, he was not examined as a witness. Moreover, no complaint was registered regarding the alleged threat.

12. As per Ex.P1, the deceased had cautioned PW.1 to be careful and to lock the main door, citing enmity with the accused. It is natural for an individual to respond to such instructions, especially when facing a life threat. If the accused had previously threatened to kill the deceased, PW.1 would have likely shared this information

when the deceased expressed concern. However, PW.1 admitted that she did not inform the deceased about the alleged threat. This unusual conduct of PW.1 in not disclosing a serious life threat raises doubts about the reliability of her statement. Furthermore, Ex.P1 indicates that PW.1 merely expressed suspicion against the accused based on the alleged threat. In view of the contradictions in her statement, her evidence cannot be relied upon unless corroborated by other independent evidence

13. The evidence of PW.11 is crucial. As per Ex.P15, fifteen different wounds and injuries were noted on the body of deceased. The prosecution claims that the chopped, cut, and stab wounds were inflicted using M.O.7 (knife). However, PW.11 admitted that death resulted from chopped and cut injuries to the head and throat. He states further that M.O.7 was broken, making it incapable of causing stab wounds. There is no evidence to establish whether the tip of M.O.7 was broken before or after the incident. Considering that some of the fifteen injuries could not have been caused by M.O.7 and no other weapon was recovered, the claim of prosecution that all

injuries leading to the death of deceased were inflicted with M.O.7 cannot be believed. There is no corroborative evidence to support the claim of prosecution.

14. Another circumstance relied upon by the prosecution is the presence of bloodstains on the clothes of the accused. Ex.P20 is the arrest memo, authored by PW.15, who admitted that the accused was wearing a checked shirt and jeans at the time of arrest. However, as per Ex.P13 (seizure memo), the accused was wearing a half-sleeved T-shirt, which was recovered. Ex.P26 further establishes an injury suffered by the accused on his left palm. PW.17 and PW.18 admitted that no blood sample was sent for forensic examination. Both the deceased and the accused had sustained injuries. In the absence of blood group determination, it cannot be stated that the bloodstains found on the clothes of accused belonged to the deceased. While blood group detection may not be necessary in all cases, in a case where the accused is found with bloodstained clothes with injuries, such examination becomes relevant to rule out alternative possibilities. M.O.7 (knife) was recovered at the instance

of the accused and it tested positive for blood traces of Group 'B', which matches the bloodstains found on the clothes of the deceased. The prosecution contends that the injuries sustained by the deceased were inflicted with M.O.7. However, PW.11 admitted that the distal end of M.O.7 was blunt and incapable of causing stab wounds. As per Ex.P15, injury Nos.12 and 13 are stab wounds. Since three types of injuries were found on the deceased and some of them being stab wounds could not have been caused by M.O.7, the case of prosecution remains weak. No other weapon has been presented to account for the stab injuries. PW.11 affirmed that stab wounds require a sharp-edged weapon, yet the prosecution failed to produce any such weapon apart from M.O.7. In view of these findings, the prosecution has failed to establish that M.O.7 was used to inflict the fatal injuries, rendering its case unproved and doubtful.

15. The prosecution places significant reliance on the presence of bloodstains on the clothes of accused, which were found to correspond with those on the clothes

of deceased. However, PW.17 has admitted a delay of 24 days in forwarding the seized articles for forensic examination. Furthermore, it is established that the accused sustained an injury on his right palm and no blood samples were subjected to forensic analysis. In the absence of corroborative evidence, the probative value of scientific evidence must be subjected to a higher degree of scrutiny. Moreover, scientific evidence, in isolation, cannot constitute the sole basis for recording a finding of guilt unless duly supported by other cogent and reliable evidence.

16. PW.10 testified that when they first saw the deceased, the headlight and tail light of the motorcycle were switched on. However, he further stated that when he later visited the spot along with PW.1, both the headlight and tail light had been switched off. This fact would raise suspicion regarding presence of third person in the crime scene. The possibility of accused falling down from his bike cannot be ignored. Ex.P2 records that an autorickshaw bearing No.KA-12-A-6526 was found approximately 200 feet from the location of the body of

deceased, with visible bloodstains on its glass and other parts. The autorickshaw was owned by PW.9, who did not support the case of prosecution. Additionally, the bloodstains found on the autorickshaw were not subjected to forensic examination.

17. The trial court relied on the testimony of PW.1 to establish the motive for the accused in killing the deceased. It held that the history of criminal activities of the deceased was irrelevant. The discrepancies in the seizure of clothes and the delay in sending the seized articles for forensic examination were considered immaterial and not fatal to the case of prosecution. Based on the available evidence, the trial court found that the prosecution had sufficiently proven the guilt of the accused.

18. Upon re-evaluating the evidence on record and the case of prosecution, it is evident that the conviction recorded by trial court suffers from infirmities. The case of prosecution is based on circumstantial evidence, which requires a higher degree of scrutiny. A conviction based on

circumstantial evidence must be established beyond reasonable doubt, with all circumstances forming a complete chain pointing to the accused.

19. In this case, the circumstances presented by the prosecution do not conclusively establish such a chain. PW.1 named the accused merely on suspicion due to an alleged prior threat to the deceased, which has not been proved. Additionally, the accused sustained a cut injury on his right palm. The presence of 'B' group blood stains on the clothes of both the deceased and the accused is a key circumstance relied upon by the prosecution; however, the blood group of the accused has not been identified, rendering this evidence inconclusive. The absence of a forensic report determining the blood group of accused weakens the evidentiary value of this circumstance. Furthermore, the delay in sending the seized articles for forensic examination raises concerns about possible overt-acts.

20. Furthermore, the prosecution asserts that blood stains were found on the autorickshaw allegedly used to

reach the crime scene. However, these blood stains were neither analyzed nor matched with the blood of the deceased or the accused, leaving this piece of evidence unverified.

21. In view of the re-appreciation of the evidence and the findings recorded by the trial court, we are of the view that the judgment and order of the trial court recording conviction of the accused for offence under Section 302 of the IPC suffers from infirmity and is not sustainable. Accordingly, the following:

ORDER

- i) *The appeal is allowed.*
- ii) *The judgment of conviction and order on sentence dated 16.08.2018 passed in S.C.No.56/2017 by the I Additional District & Sessions Judge, Kodagu at Madikeri, is set-aside.*
- iii) *The appellant-accused is hereby acquitted of the charges leveled against him for the offence punishable under Section 302 of the IPC.*

- iv) *The Registry is directed to communicate this order to the concerned Jail Authorities and the Jail Authorities are hereby directed to release the appellant-accused, if his custody is not required in any other cases.*
- v) *If the accused has deposited the fine amount before the trial Court, the same shall be refunded on proper identification.*

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

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

Yn.