



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 1ST DAY OF FEBRUARY, 2025

PRESENT

THE HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MR JUSTICE K. V. ARAVIND

CRIMINAL APPEAL NO. 392 OF 2018

Between:

1. Jenukurubara Bolla S/o Mari,
Aged about 50 years,
R/at Penjahalli, Antharasanthe,
H.D. Kote Taluk, Mysore District
2. Jenukurubara Nagappa S/o Linga,
Aged about 39 years,
R/at Bommadu Hadi, Kothuru Village,
Virajpet Taluk, Kodagu District
3. Jenukurubara Dadhu S/o Linga,
Aged about 23 years,
R/at Bommadu Hadi, Kothuru Village,
Virajpet Taluk, Kodagu District

...Appellants

(By Sri Gopal Singh, Advocate-Amicus curiae for A1
(vide order dated 12.01.2024);
Sri H.S.Suresh, Advocate for A2;
Sri Ajay Prabhu, Advocate for A3)

And:

The State of Karnataka
Through Circle Police Inspector
Kutta Circle, Virajpet Taluk
Kodagu District
Represented by the

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



State Public Prosecutor
High Court Buildings
Bengaluru-560001.

...Respondent

(By Sri Vijay Kumar Majage, SPP-II)

This Criminal Appeal is filed u/s. 374(2) Cr.P.C., praying to set aside the judgment and order of conviction dated 17.01.2018 and sentence dated 18.01.2018 passed by the II Additional District and Sessions Judge, Kodagu - Madikeri, sitting at Virajpet in S.C.No.95/2016, convicting the appellants/accused Nos.1 to 3 for the offence p/u/s 302 r/w 34 of IPC.

This Criminal Appeal, coming on for hearing, this day, judgment was delivered therein as under:

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

ORAL JUDGMENT

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

The appellants were the accused in S.C.No.95/2016 on the file of II Additional District and Sessions Judge, Kodagu Madikeri (sitting at Virajpet). They faced trial for the offence under Section 302 read with Section 34 of IPC in relation to an incident dated 27.12.2015 which is as below.



2. PW1-Jenukurubara Madevi and Kariyanna-the deceased were spouses. On 27.12.2015, both of them returned home at 06.30pm after finishing their work. They did not see their second daughter-Pooja in the house and when they enquired their son PW2-Madesh, they came to know that Muthanna-the son of accused No.2 took her with him. Kariyanna left home saying that he would bring back Pooja and while going he took PW2 with him to the house of accused No.2. By 07.30pm, PW1 heard screaming of her husband from the house of accused No.2. Immediately she went there and saw all the three accused quarrelling with her husband. During quarrel accused No.1 took an iron pipe and hit hard on the middle of Kariyanna's head with that pipe. Accused No.2 assaulted on the left wrist of Kariyanna with a firewood piece and then accused No.3 fisted on Kariyanna's chest. Then all of them left that place. Kariyanna was shifted to



Gonikoppa Government Hospital. Kariyanna died around 09.30am on 28.12.2015. PW1 made a report of this incident to the police at 10.30pm on 28.12.2015. On registration of FIR, investigation was held and charge sheet was filed against the three accused for the offence under Section 302 read with Section 34 of IPC.

3. Assessing the evidence brought before the court by the prosecution, the trial court arrived at a conclusion that the prosecution was able to prove its case beyond reasonable doubt. The trial court has held that evidence given by PW1 and PW2 is believable, and their testimony is corroborated by medical evidence as well as recovery of iron pipe and club at the instance of the accused. In regard to motive, it is held that in view of evidence of eye witness being believable, motive pales into insignificance.



4. We have heard the arguments of Sri Gopal Singh, learned advocate for accused No.1, Sri H.S.Suresh, learned advocate for accused No.2, Sri Ajay Prabhu, learned advocate for accused No.3 and Sri Vijayakumar Majage, learned SPP-II for the respondent/State.

5. The prominent witnesses are PW1 and PW2. If their evidence is reassessed, the obtaining picture is this: PW1 is the wife of Kariyanna. If her report to the police Ex.P.1 is seen, it appears that she is an eye witness. She has written that as soon she heard the screaming voice of Kariyanna, she went near the house of accused No.2, and saw her husband being beaten by all the three accused. In her examination in chief also, she has deposed so. But in her cross-examination, her one answer is that, by the time she went there, accused had left that place after assaulting her husband. It was with reference to



this answer all three advocates for the appellants argued that she was not an eye witness and her testimony could not have been relied upon by the trial court. Accepting this argument if evidence of PW1 is ignored, there remains the evidence of PW2. His evidence in chief examination shows that he went with Kariyanna, and was present when the incident occurred. He has given a clear account of what happened in his presence. He has stated that when his father asked accused No.2 about whereabouts of Pooja, accused No.1 gave a blow on his father's head with an iron pipe, accused No.2 assaulted with a club on the right hand and accused No.3 fisted on the chest. He has stated that his mother, i.e., PW1, Kumara-PW3, Prakash-PW4 and he took his father to hospital. His cross examination has gone in vain. In fact some suggestions are given admitting the prosecution case. The argument of Sri Gopal Singh was that since PW2 was a boy of nine years, it was



impossible that Kariyanna would have taken PW2 with him out of the house during night hours. They were all living in forest area and therefore PW2 could not have gone with his father. His presence at the spot was doubtful. Since he is a child witness he could have been tutored. Sri H.S.Suresh argued that PW2 has stated about arrival of one Ravi to the spot but he is not examined.

6. If the entire evidence of PW2 is put to scrutiny, it cannot be said that he has deposed falsehood, nor does he appear to be a tutored witness. For the reason that he is a child witness, an inference that he was tutored cannot be drawn, instead natural flow in his evidence can be seen. Going out of house in a forest place during night is not unusual for the tribals, and moreover the place where the incident occurred was not very far from his house. There are no reasons at all to discard



the evidence attaching weight to points urged by learned counsel, and the trial court has not erred in relying upon the testimony of PW2.

7. PW8 is the doctor who conducted post mortem examination. The injuries noticed by PW8 on the dead body at the time of post mortem examination buttress the testimonies of PW1 and PW2 in regard to overt act of each accused. Non-examination of one Ravi, whose name PW2 has taken, does not have negative impact on the prosecution case as the evidence of PW2 is wholly reliable.

8. The evidence relating to recovery of incriminating articles including an iron pipe and a club is believable. Though the learned counsel tried to point out discrepancy in the evidence in the seizure affected by the Investigating Officer, they are usual defences that hardly affect the prosecution case.



9. As there is ample proof against all the accused pointing out their involvement in causing death of Kariyanna, the next question is whether the act of the accused amounts to murder. Though the defence has failed to bring forth mitigating circumstances, it can be demonstrated from the prosecution case itself that the incident does not fall with the scope of Section 300 of IPC punishable under Section 302 of IPC. If the facts are put to analysis, it can be noticed that if Kariyanna had not gone to meet accused No.2 to question the whereabouts of his daughter, the incident would not have occurred. That means only for the reason that Kariyanna went to that place and questioned accused No.2 there erupted a quarrel between him and accused No.2 which thereafter resulted in injuries being inflicted to Kariyanna leading to his death on the next day. The voluntary statements of accused are available and if they are read excluding the incriminating



portion, it becomes clear that when Kariyanna asked accused No.2 about his daughter, the latter replied that he did not know about it and asked Kariyanna to return home; he also told that all of them could search for her the next day morning. Then there arose a quarrel between Kariyanna and the accused. The quarrel aggravated and in that course the accused resorted to assaulting Kariyanna. This portion of the statement is favourable to the accused. There is no bar for making use of this portion of the voluntary statement. Section 25 of the Indian Evidence Act states that any confession made by an accused should not be proved against him. But there is no bar for the accused making use of his own statement to explain certain circumstances favouring him. There was a sudden fight and in that heat of passion, the accused might have assaulted Kariyanna. There was no premeditation in them. Their intention was to cause injury to see



that Kariyanna would leave that place. There was no direct intention to kill him. The injuries caused by them were likely to cause death and looked in this view the entire incident can be brought within Section 299 of IPC punishable under Section 304 Part I of IPC. Since all the three accused attacked Kariyanna at a time, it is possible to hold that all of them developed common intention to cause injuries to Kariyanna. Sri Ajay Prabhu argued that Kariyanna was not given proper treatment and he would have survived if he had been taken to hospital or proper treatment was given. This argument cannot be accepted because explanation (2) to Section 299 IPC states as below:

Section 299.....

Explanation 2.—Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.



10. For the above reason we hold that the judgment of the trial court requires to be confirmed with some modification to hold that the accused can be punished under Section 304 Part I of IPC instead of Section 302 of IPC. Hence we pass the following:

ORDER

a. Appeal is **partly allowed**.

b. The judgment of conviction is modified.

Conviction of the accused/appellants No.1 to 3 for the offence under Section 302 read with Section 34 of IPC is set aside, instead all the three accused are convicted for the offence under Section 304 Part I read with 34 of IPC and each of them is sentenced to undergo rigorous imprisonment for a period of five years and pay fine of Rs.5,000/-. In default of paying fine, each of the accused shall undergo simple



imprisonment for a period of two months.

- c. Rest of the order on sentence with regard to payment of compensation, is confirmed.*
- d. All the accused are entitled for set off for the period they have spent in the jail.*
- e. Accused No.1 and 2 shall be set at liberty if they have already spent five years in the jail and paid the fine amount, provided their presence is not necessary in connection with any other case/s.*
- f. The trial court shall secure accused No.3 by issuing conviction warrant and commit him to prison.*
- g. Send back the trial court records forthwith with a copy of this judgment.*



High Court Legal Services Committee is hereby directed to remunerate Sri Gopal Singh, amicus curiae who appeared on behalf of accused No.1 by a sum of Rs.10,000/-.

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

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

KMV
List No.: 1 Sl No.: 7