



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF JANUARY, 2025

PRESENT

THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR

AND

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

CRIMINAL APPEAL No. 1722 OF 2017 (C)

BETWEEN:

1. SHARATH POOJARY,
S/O L. BABU POOJARY,
AGED ABOUT 28 YEARS,
R/AT KADIDA HEDDARY,
KARKADA VILLAGE,
UDUPI TALUK,
UDUPI -576225.

...APPELLANT

(BY SRI SUYOG HERELE E., ADVOCATE)

AND:

1. THE STATE OF KARNATAKA,
THROUGH CIRCLE INSPECTOR,
BRAHMAVAR,
REPRESENTED BY THE STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDINGS,
BANGALORE-560 001.

...RESPONDENT

(BY SRI VIJAYKUMAR MAJAGE, SPP-II)

THIS CRL.A. IS FILED U/S.374(2) OF CR.P.C BY THE
ADVOCATE FOR THE APPELLANT PRAYING TO SET ASIDE THE
JUDGMENT AND ORDER OF CONVICTION DATED 01.09.2017
PASSED BY THE ADDITIONAL DISTRICT AND SESSIONS

Digitally signed
by VALLEJ
MARIMUTHU
Location: High
Court of
Karnataka



JUDGE, UDUPI (SITTING AT KUNDAPURA), KUNDAPURA IN S.C.No.9/2015 - CONVICTING THE APPELLANT/ACCUSED FOR THE OFFENCE P/U/S 302 AND 201 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 K.V. ARAVIND)

This appeal is by the accused challenging the judgment of conviction and order on sentence dated 01.09.2017 in S.C.No.9/2015 passed by Additional District and Sessions Judge, Udupi sitting at Kundapura. The accused is convicted for the offence under Section 302 of Indian Penal Code, 1860(for short 'IPC') and sentenced to undergo life imprisonment with fine of Rs.40,000/- and in default of payment of fine, to undergo simple imprisonment for six months. He is also convicted for the offence under Section 201 of IPC and sentenced to three years imprisonment, besides fine of Rs.10,000/- and in



default of payment of fine, to undergo one month simple imprisonment.

2. It is the case of the prosecution that the accused and deceased Vijay Karanth were neighbors. The deceased was chitchatting with PW.5-Deepika, the wife of the accused. The accused mistook this conversation as an illicit relationship between them. At the earlier point, the deceased was near the house of accused; the accused warned him not to have conversation with his wife and threatened the deceased to kill him. On 02.02.2015 at 11.30 a.m., when the deceased came to the house of accused at Karkada Village, Udupi Taluk, the accused questioned the deceased for his frequent visits to his house. These warnings resulted in heated arguments and contemplating that if the illicit relationship of the deceased with the wife of accused became is known to the public, his image would be damaged, the accused brought a knife and stabbed the deceased Vijay Karanth on his left chest, causing grievous injuries. He was taken to Pranav



Hospital at Brahmavar where the deceased succumbed to the injuries at 5.10 p.m. The accused cleaned the blood stains at the crime scene and washed the blood-stained clothes.

3. The police registered the complaint as per Ex.P1 as reported by PW.1-the brother of deceased. The trial court charged the accused for the offences punishable under Sections 302 and 201 of IPC. The trial court held that there were no eyewitnesses, however held that by the recovery of the knife, blood stained clothes and the presence of human blood on the material objects, the opinion in the post mortem report that the cause of death was due to injuries inflicted with MO.4-knife, the prosecution has proved the guilt against the accused. The trial court held that the deceased chitchatting with the accused's wife and suspecting their relationship to be illicit was the motive for the crime. The trial court further considered the cleaning of blood at the crime scene and washing of blood-stained clothes are attempts to screen



the evidence that would prove the offence and accordingly convicted the accused for the offences under Sections 302 and 201 of IPC.

4. Heard Sri Suyog Herele E., learned counsel for the appellant and Sri Vijaykumar Majage, learned SPP-II for the respondent-State.

5. Sri Suyog Herele, learned counsel for the appellant submits that the police registered UDR at the first instance on 02.02.2015 and thereafter on 03.02.2015, the accused was implicated.

5.1. It is submitted that there is a contradiction about the crime scene. The prosecution case is on unproved circumstantial evidence. There are no eyewitnesses to the alleged incident. The witnesses examined by the prosecution have not supported the prosecution case.

5.2. It is submitted that the motive as alleged by the prosecution is not established. The presence of suspicion is insufficient to connect the accused to the crime.



5.3. It is submitted that the panch witness to the recovery mahazar has turned hostile and not supported the prosecution case. Bloodstains are not traced on the recovered clothes.

5.4. The prosecution case is based on recovery. The recovery was made at the instance of the accused. Mere recovery is not sufficient to prove the prosecution case. The prosecution has not followed the requirement of Section 27 of the Indian Evidence Act, 1872 (for short 'the Act'). Hence, the recovery cannot be used against the accused.

5.5. It is submitted that the accused was arrested at 9.30 a.m. on 04.02.2015. However recovery is made between 8.00 a.m. and 9.00 a.m. Recovery made is before the arrest. This recovery would not satisfy the test under Section 27 of the Act.

5.6. It is submitted that the order of conviction made by the trial court is on mere assumption and inferences is not



permissible in the absence of corroborative evidence that would prove the guilt of the accused.

6. Sri Vijaykumar Majage, learned SPP-II for the respondent-State submits that the witnesses have deposed the presence of the deceased in the house of accused. He further submits that P.W.7 has seen the deceased in the house of accused. He further submits that the recovery of material objects was at the instance of the accused. The recovery would establish the motive and the other circumstances behind the accused for committing the crime.

7. We have heard learned counsel for the parties and perused the material on record.

8. The post-mortem report at Ex.P21 confirms that the deceased Vijay Karanth, died due to hemorrhage secondary to perforation of the heart, resulting from sharp force trauma to the left side of the chest. This expert opinion establishes that the cause of death was due to



severe injuries. The prosecution asserts that these injuries were inflicted by the accused, leading to the death of the deceased. In order to determine the veracity of this claim, it is imperative to re-evaluate the evidence placed before the trial court for a proper and thorough assessment.

9. P.W.1, the brother of the deceased, resides in a different location and his testimony is based on hearsay information. He stated that he received information from Rajeevi (P.W.6) and subsequently visited Pranav Hospital at Brahmavar, where he was informed of his brother's death. His deposition, based on hearsay, includes assertions regarding the frequent visits of the deceased to the residence of accused to which the accused objected. This allegedly led to an altercation, culminating in the accused stabbing the deceased.

9.1. Furthermore, the witness testified that the accused attempted to clear the bloodstains, concealed the knife and instructed his grandmother and wife to state that the death of Vijay Karanth was accidental. During cross-



examination, P.W.1 admitted that the complaint at Ex.P1 was written by the police. He also acknowledged that he learnt about the cause of his brother's death the following day through the police. This testimony would prove that the police expressed suspicion against the accused, prepared Ex.P2 accordingly, and obtained his signature. Admitting the signing of Ex.P2, he stated that he was unaware of the actual cause of his brother's death until informed by the police that the accused had killed him.

9.2. P.W.2 was examined to establish the existence of enmity between the accused and the deceased. The prosecution presented PW.2 as an eyewitness to the incident and as a panch witness to Ex.P4. However, this witness turned hostile and did not support the case of prosecution. Although the prosecution cross-examined P.W.2, no material or substantive evidence could be elicited in support of the case of prosecution.

9.3. PW.3, a neighbor, was examined by the prosecution to establish that the deceased was conversing with the



wife of the accused, an act allegedly objected by the accused, thereby leading to enmity and serving as the motive for the offence. However, this witness turned hostile and his testimony does not support the case of prosecution.

9.4. P.W.4, the grandmother of the accused was examined by the prosecution to substantiate the allegation that the deceased was conversing with the wife of the accused, which was purportedly objected by the accused, resulting in a strained relationship between them and that the accused had instructed the deceased not to visit his residence or engage in conversation with his wife. However, PW.4 turned hostile and did not support the prosecution.

9.5. P.W.5, the wife of the accused, was examined by the prosecution to establish that her interactions with the deceased and the alleged intolerance of the accused towards such conversations constituted the motive for the



offence. However, this witness turned hostile and did not support the prosecution.

9.6. P.W.6, a relative of the accused, was examined by the prosecution. However, as this witness had only hearsay knowledge of the incident and subsequently turned hostile, his testimony does not support the prosecution.

9.7. P.W.7, neighbor to both the deceased and the accused, testified that the deceased lived alone and frequently visited the house of the accused. On the day of the incident, P.W.7 had tea and biscuits with the deceased, and they gave a biscuit to the son of the accused before proceeding to work. The witness denied any relationship between the deceased and P.W.5, the wife of the accused. However, P.W.7 stated that when he was at the shop of P.W.2, they learned that the deceased had lost consciousness at the house of P.W.5 and was later taken to Pranav Hospital, where he was declared dead.



9.8. The witness also testified to seeing an injury on the chest of the deceased but denied the suggestion of the prosecution that alleged relationship between the deceased and P.W.5 led to his death. P.W.7 acted as a panch witness to Ex.P11. In cross-examination by the defence, this witness made a contradictory statement, initially claiming to have gone to work that day but later admitting to have stayed at home. P.W.7 confirmed seeing the deceased lying in front of his house with a chest injury and bleeding. This would disprove the case of prosecution in so far as place of incident.

9.9. P.W.8 and P.W.9 testified that they accompanied P.W.8 to the house of deceased, where they found him lying unconscious. They subsequently took him to the hospital. Both witnesses did not express any suspicion regarding the injury over the deceased chest. P.W.8 was a panch witness to Ex.P12, while P.W.9 was a panch witness to Ex.P13. However, both witnesses turned hostile and did not support the case of prosecution. Despite being



cross-examined, no material evidence or substantive information was elicited from their testimonies.

9.10. P.W.10, an auto driver, was examined to corroborate that P.W.7, P.W.8 and PW.9 shifted the deceased to the hospital. However, this witness turned hostile and did not support the prosecution.

9.11. Additionally, PW.10 was a panch witness to Ex.P14. Despite being cross-examined, no material or substantive evidence was elicited from his testimony.

10. P.W.11, a panch witness, was examined to establish Ex.P4 the spot mahazar and Ex.P15 the recovery mahazar. His testimony pertains to the recovery of the clothes and the knife. However, this witness turned hostile and did not support the prosecution's case. During cross-examination, P.W.11 admitted to the suggestion made by defence that he had not been to the spot. He further conceded that there were no bloodstains on M.O.2 and M.O.3 (the clothes). Additionally, he admitted that Ex.P4 and Ex.P15



were signed at the police station, thereby casting doubt on the credibility of the recovery process.

10.1. P.W.12 is the doctor who conducted the autopsy on the deceased as per Ex.P21. This witness testified that a 2cm. long wound was noted on the left side of the chest, which had been sutured. Upon removal of the sutures, a 2.07 cm deep wound extending towards the left side of the chest was identified, along with a fracture of the fifth left rib. Additionally, a 15x10 cm abrasion was noted on the stomach. The cause of death was certified as resulting from the chest injury and excessive bleeding. Furthermore, P.W.12 opined that such an injury could have been inflicted with M.O.4-knife.

10.2. P.W.13, Ayurvedic doctor, was examined to establish the presence of injuries on the chest of the deceased. However, this witness did not provide any treatment to the deceased but only advised that the deceased be taken to Manipal Hospital for further medical treatment.



10.3. P.W.14, an employee of Saligrama Panchayat, was examined to establish that the alleged place of the incident is registered in the name of the accused's mother, P.W.4.

10.4. P.W.15 was examined as a panch witness for Ex.P15 the recovery mahazar under which M.O.2 to M.O.5 were recovered. While he admitted his signature on Ex.P15, he did not support the prosecution, he denied that the recovery of M.O.2 to M.O.5 occurred in his presence. Consequently, the prosecution declared him hostile and subjected him to cross-examination. However, no material information was elicited to substantiate the prosecution's case.

10.5. P.W.16 treating doctor was examined to establish that the cause of death of the deceased was due to the injuries sustained on his chest. This witness has deposed that he treated the deceased and that the deceased succumbed to the injuries while undergoing treatment. However, it is pertinent to note that this witness had advised the relatives of the deceased to shift him to



another hospital for further treatment, which was not acted. In cross-examination, the defence elicited that history of injuries was not recorded in the medical records. The witness admitted this; however, clarified that the history of injuries was informed to him by the persons who had accompanied the deceased.

10.6. PW.17 has deposed that he received the complaint marked as Ex.P1 and registered the case as an unnatural death report (UDR). Subsequently, he received a second complaint, Ex.P2, on 03.02.2015, based on which further investigation was undertaken. This witness has also spoken about the arrest of the accused at 9:30 a.m. on 04.02.2015. In cross-examination, P.W.17 admitted that during his inquiry with local residents, he was informed that the deceased had sustained injuries due to a fall in his house.

10.7. P.W.18, the Investigating Officer, has testified regarding the sequence of investigations undertaken and



stated that the history of injury has been recorded in Ex.P26 as under;

"History:- Fall this morning and was found lying unconscious at home brought by friends, bye standers named Mahendra."

However, on perusal of Ex.P26, recording of case history as stated by this witness is not forthcoming.

11. The entire case of the prosecution is based on circumstantial evidence. The first circumstance pertains to the place of the incident and the second concerns the recovery of incriminating material objects. The prosecution version is that the accused and the deceased were neighbors and that the deceased frequently engaged in conversations with P.W.5, the wife of the accused, despite repeated objections from the accused. It is alleged that when the deceased visited the residence of accused, a confrontation ensued, culminating in the accused inflicting an injury to the deceased with M.O.4, resulting in severe bleeding. The deceased was subsequently taken to the hospital, where he succumbed to the injuries. However, as



per the version of prosecution, the assault occurred at the house of the accused. This version is not corroborated by the witnesses examined. P.Ws.8, 9 & 10 have testified that the deceased was found lying unconscious at his own residence, contradicting the narrative of prosecution. This fact would corroborate with testimony of P.W.17.

12. The prosecution has identified the house of accused as the place of the incident based on information provided by P.W.2 during the preparation of the mahazar as per Ex.P4. However, P.W.2 has turned hostile and denied the alleged place of occurrence. Further, another crucial aspect that requires consideration is, the contradiction in the testimony of P.W.7 regarding the location of the incident and where the deceased was found unconscious. While Ex.P4 (Spot Mahazar) records the house of accused as the crime scene based on P.W.2's statement, Ex.P2 (the second complaint) indicates that the deceased was found unconscious at his own residence. This inconsistency raises doubts about the prosecution's version of events.



13. The second circumstance relied upon by the prosecution is the recovery of Material Objects, namely, the blood-stained clothes and knife, marked as M.Os.2 to 6. The prosecution asserts that these recoveries were made based on the voluntary statement of the accused. For a voluntary statement to be made admissible as evidence under Section 27 of the Indian Evidence Act, 1872, the discovery of new and relevant facts must be a direct consequence of the disclosure made by the accused. However, in the present case, the alleged voluntary statement merely records that the blood-stained clothes and knife were kept at a particular place and would be shown if accused was taken there. To invoke Section 27 of the Indian Evidence Act, the statement of accused must lead to the discovery of a fact unknown to the investigating agency. The statement should provide at least a brief description of the location where the material objects can be found, if not an exact or accurate location. A vague statement such as "the material objects are kept at one place, and if taken, they will be shown" does not



meet the legal threshold under Section 27 of the Indian Evidence Act. This explicit clarity may not be relevant in all cases. However, the prosecution case is on recovery. P.W.11 & P.W.12 panch witnesses to recovery mahazar-Ex.P.15, have not supported the prosecution. It is the evidence of P.W.11 and P.W.12 that Ex.P15 was signed at police station.

14. The Hon'ble Supreme Court in *Udai Bhan Vs. State of Uttar Pradesh*, AIR 1962 SC 1116 has held as under:

"A discovery of a fact includes the object found, the place from which it is produced and the knowledge of the accused as to its existence."

If the above principle is applied to the fact on hand, the statement of the accused leading to the discovery of a fact is not sufficient to invoke Section 27 of the Indian Evidence Act.

15. In the absence of strict compliance with the requirements of Section 27 of the Indian Evidence Act, the case of prosecution based on the recovery of M.Os.2 to 6,



does not inspire confidence and is insufficient to establish the guilt of the accused.

16. The Forensic Report at Ex.P.36 establishes the presence of human blood of Group 'O' on the recovered clothes. However, the Serology Report does not confirm the presence of any bloodstains on the knife marked as M.O.4. In the absence of blood traces on the alleged weapon of offence, the case of prosecution that the accused inflicted fatal injuries with the said knife becomes doubtful. The absence of forensic evidence linking the weapon to the crime weakens the theory of prosecution. Mere recovery of the knife, without corroborative evidence establishing its use in the commission of the offence, does not suffice to prove the guilt of the accused.

17. Since the case of the prosecution is based on circumstantial evidence to establish the guilt of the accused, the determination of the blood group of both the deceased and the accused assumes significance. However, the prosecution has failed to establish the blood group of



either. In the absence of conclusive evidence regarding the blood group of the deceased, the mere presence of bloodstains on the clothes recovered from the accused cannot be held as incriminating evidence to establish his culpability. This aspect attains further significance as the forensic report does not indicate the presence of bloodstains on M.O.4, the weapon allegedly used to inflict the fatal injury on the deceased, which purportedly resulted in severe bleeding and subsequent death. While the presence of bloodstains on the clothes of the accused, if unexplained, may create suspicion, the conviction cannot be recorded solely on the basis of suspicion.

18. The other circumstance relevant for consideration is medical evidence. P.W.21, the autopsy doctor, has opined in Ex.P22 that the injuries sustained by the deceased could have been caused by M.O.4-knife. However, expert opinion, though relevant, cannot be treated as conclusive proof of the accused's guilt unless corroborated by other circumstantial evidence that directly implicates the



accused. The use of MO.4-knife for causing injuries to deceased is not proved by prosecution and remained doubtful. In the present case, it is not safe to conclude guilt of accused on medical evidence.

19. P.W.16, the treating doctor, has testified that the relatives of the deceased were advised to shift him to another hospital for better medical care, but this advice was not heeded. The evidence further establishes that the deceased did not succumb to the injury immediately; rather, he was under medical care for a considerable period. This introduces an element of doubt as to whether the fatal outcome was solely attributable to the alleged act of the accused.

20. Further Ex.P2, second complaint by P.W.1 dated 03.02.2015 was in its entirety based on the information provided by P.W.2. P.W.2 has turned hostile. There is no corroborative evidence to prove the statement in Ex.P2.



21. The trial court, relying primarily on the spot mahazar and the recovery mahazar, concluded that the prosecution had established that the accused caused the death of the deceased by inflicting injuries with M.O.4. It further held that the guilt of the accused was proved beyond reasonable doubt. However, a mere reliance on these mahazars, without corroborative and substantive evidence linking the accused to the crime, does not satisfy the required strict standard of proof.

22. In light of the witnesses testifying contrary to the theory of prosecution regarding the place of the incident and in the absence of any corroborative evidence supporting the prosecution, it can be conclusively held that the prosecution has failed to establish that the accused inflicted injuries to the deceased on his chest in the house of accused. The narrative put forth by the prosecution may, at best, create suspicion. However, mere suspicion, no matter how strong, cannot form the basis for



conviction. A conviction can only be sustained when the prosecution proves the guilt of the accused beyond reasonable doubt. Upon re-appreciation of the evidence, this Court does not find it sufficient to establish the prosecution's case with the required degree of certainty. Furthermore, Ex.P4 – the spot mahazar, which identifies the house of accused as the crime scene is not proved, as the panch witnesses have not supported the prosecution. With regard to the recovery of M.O.4 – Knife and M.Os.2, 3, 5 and 6, blood-stained clothes, the Serology Report (Ex.P36) confirm the presence of human blood of 'O' group on the clothes. However, no blood traces were detected on M.O.4, the alleged weapon of offence.

23. In that view of the matter, the judgment and order of conviction and sentence of the trial Court is without any basis and is liable to be set aside. Accordingly, the following,



ORDER

- i) Appeal is **allowed**.
- ii) The judgment dated 01.09.2017 passed by the Additional District and Sessions Judge, Udupi, Sitting at Kundapura in S.C.No.9/2015 is set-aside.
- iii) The accused is acquitted of the offences punishable under Sections 302 and 201 of IPC. The bail bond and surety bond executed by the accused stand cancelled.
- iv) Send back the trial court records forthwith with a copy of this judgment.

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

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