



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13TH 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. 1070 OF 2018

Between:

Sri Thachamanda T.Kariappa @ Raja
S/o Late Thimmaiah,
Now aged 66 years,
Agriculturist,
R/o Kalladi Garvale Village,
Suntikoppa Hobli, Somwarpet Taluk
Kodagu District-571201.

...Appellant

(By Sri P.D.Subrahmanya, Advocate)

And:

The State of Karnataka
By Circle Somwarpet Police Station,
Represented by State Public Prosecutor,
High Court of Karnataka,
High Court Building,
Bengaluru-560 001.

...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 dated 11.01.2018 and order of conviction and sentence dated 16.01.2018 passed by the Principal District and Sessions Judge, Kodagu, Madikeri in S.C.No.62/2015 - convicting the appellant/accused for the offence p/u/s 302, 307 of IPC and section 27 of Arms Act.

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KUMAR K M
Location: HIGH
COURT OF
KARNATAKA



Date on which the appeal was reserved for judgment	15.01.2025
Date on which the judgment was pronounced	13.02.2025

This Criminal Appeal, 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)

The accused who has been convicted for the offences punishable under Sections 302 and 307 of IPC, and Section 27 of the Arms Act has preferred this appeal.

2. The accused and Nanjunda, the deceased are brothers. There was a property dispute between them, the accused was grousing against his brother as he was allotted less share when the division of ancestral properties was effected. It was in this background, when Nanjunda and his



wife Bhagyavati (PW2) were treading the path to their coffee estate around 9.30am, on 10.3.2015, the accused shot him dead with his gun. PW2 was walking beside her husband and when the accused shot at his brother, a pellet struck right side of her abdomen and suffered an injury. As she yelled accused started loading the gun again to shoot her. Frightened PW2 started running to escape; the accused chased her for some distance, and then he went near Nanjunda, who had fallen down and again shot on his chest from a close distance. PW1, the sister of the accused and Nanjunda who came to spot hearing gunshot, gave a report of this incident at 11.15am to Somwarpete police as per Ex.P1 on the same day.

3. PW1 to PW30 are the witnesses examined by the prosecution. The Sessions Judge, Madikeri, before whom trial was held, has recorded the reasons that the oral testimonies of PW1 and PW2



are believable in as much as they find corroboration from the testimonies of PW3 and PW4. PW2, the wife of Nanjunda got injured when the incident occurred. The evidence given by PW30, the doctor who examined PW2, fortifies the testimony of PW2. PW17 who conducted autopsy confirmed gunshot injuries. The cross-examination of the prominent witnesses has not been successful. Contradictions pointed out by the defence counsel are negligible, and therefore the case of prosecution has been proved beyond reasonable doubt.

4. We have heard the arguments of Sri P.D.Subrahmanya, learned advocate for the appellant and Sri Vijaykumar Majage, the State Public Prosecutor-II.

5. The first point of argument of Sri P.D.Subrahmanya was with respect to evidence given by PW1 and PW2. He argued that PW1 was



not an eyewitness, but she has deposed as if she was an eyewitness. Her evidence contains improved versions which do not find a place in Ex.P3. The trial court has accepted her evidence as that of an eyewitness, which is an error. So far as evidence of PW2 is concerned, it was his argument that her evidence is unreliable in spite of her being an injured witness because she has not narrated about the happenings of the event prior to and at the time of firing. The prosecution ought to have marked her statement said to have been recorded by PW21. In these circumstances her evidence required corroboration from other evidence. Merely for the reason that the wound certificate as per Ex.P20 shows that PW2 had suffered simple injuries, those injuries are not sufficient to establish involvement of the accused.

5.1 His second point of argument was that according to prosecution, there were two gunshots,



but there is no evidence for the second shot. The prosecution story is that Nanjunda fell down after receiving first gunshot and he was in prone position when there was second firing. That means there should have been an entry wound on the back, which was not found at all.

5.2 Third point of argument was that involvement of accused cannot be established with the help of evidence given by PWs3 to PW6 and PW10 as they are hearsay witnesses to incident. Likewise PWs7 to 9, 11 to 15 and 18 are also hearsay witnesses. PWs14, 15 and 18 have partly supported seizure of MO11 and MO12.

5.3 The fourth limb of argument was that extra judicial confession said to have been made before PW19 is not recorded in Ex.P3 and the said confession is not corroborated by other witnesses including PW3. The evidence of the doctor (PW17) is not conclusive proof, and it is also insufficient to



establish second gunshot. Therefore there is no proof beyond reasonable doubt. The trial court could not have recorded conviction.

6. Sri Vijaykumar Majage argued that oral testimony of PW2 is very reliable as she is injured witness. She was present with her husband when he was shot dead. She saw accused shooting at her husband. In that course she too suffered injuries. Therefore her evidence stands on high pedestal. She has not been discredited in the cross-examination. PW1 saw accused fleeing that place with a gun. Her evidence is very much relevant as she was the first informant. She is the sister of accused and the deceased. There is no chance that she has deposed falsehood. That apart gunshot sound was heard by other witnesses who came to spot immediately. Two gun shot injuries were noticed by the doctor. Accused confessed his guilt before PW19. Ballistic expert's



evidence and medical evidence corroborate the evidence given by PW2. Looked from any angle it cannot be said that prosecution case is not established. The appeal therefore deserves to be dismissed.

7. Now the main question is whether the testimonies of PW1 and PW2 are wholly reliable. It is better to first evaluate the evidence of PW2. Her testimony in examination-in-chief shows that on 10.03.2015 around 09.30am, her husband and she were treading the pathway to go to their coffee estate. The accused armed with a gun suddenly came in their front and opened fire at her husband. The gunshot hit the chest of her husband and she too sustained injuries at that time below right side abdomen. Her husband fell down; accused started loading the cartridge once again; and seeing this she started running towards the road. Once again she heard a gunshot from



the place where her husband had fallen down. She was under shock. PW1 came to that place immediately and took her aside. By that time PW4 Leelavathi and PW5 Karumbaiah and some others came to that place and they took her to government hospital. She stated that her husband died at the spot itself. She identified the gun MO1 and also the clothes and the cap of her husband. She has stated that about 20 to 22 years ago i.e., even before her marriage, her father-in-law had effected partition of the ancestral properties between the accused, her husband and her mother-in-law. Accused was looking after the share given to his mother. In the cross examination it was elicited from her that there was a property dispute between the accused and her husband. If her entire cross examination is perused, nothing worthwhile mentioning here was extracted from her.



8. PW1 is the sister of the deceased and the accused. Her house was situated at a distance of 200 feet from the house of the deceased and the accused. She stated that about 3 months before the incident occurred, a quarrel had taken place between the accused and the deceased in relation to property as accused No.1 had a grouse that he did not receive enough share in the properties. As regards the incident her evidence is that in between 09.00 and 09.45am, as she was going to her old house from new house she heard a gunshot sound from the side of the estates of the accused and the deceased. She rushed towards that place immediately and saw her brother Nanjunda having fallen down and the accused chasing PW2 with a Kovi or gun. She also saw PW2 falling down. Then accused again went near Nanjunda, shot him again and ran away from that place. She saw Nanjunda being dead. She also saw PW2 having sustained injuries on her abdomen. She has stated about



taking PW2 to hospital along with Leelavathi and others and then giving a report to Somwarpet police as per Ex.P1. She too has not been discredited in the cross examination.

9. The evidence given by PW3, PW4, PW5 PW6 and PW7 may also be referred here.

10. PW3 is the son of PW1. He has stated that on 10.03.2015 at 09.30am PW1 and he came to their old house to take coffee to the labours and at that time both of them heard gunshot sound from the side of the house of the accused. His mother rushed towards the spot from where the gunshot sound came and he went towards the house of Rajappa, his paternal uncle. Telling about the gunshot sound to Rajappa he took him towards the house of the accused. He saw Nanjunda lying dead. His mother had already shifted PW2 to the house of Karumbaiah. He went there and saw the injuries that PW2 had sustained



on her abdomen and when he enquired her, he came to know about the incident. He was also a witness to the mahazar drawn as per Ex.P3 in connection with seizing the gun, one empty cartridge and clothes of the accused. He identified all those items.

11. PW4-Leelavathy too has given evidence that on 10.03.2015 around 09.30am she heard two gunshot sounds and screaming voice when she was going towards the house of the accused. She also saw PW1 bringing injured PW2. They all went to the house of Karumbaiah and took PW2 to hospital.

12. PW5-Karumbaiah has also given the evidence in the same way. As he did not speak with regard to property dispute between the accused and the deceased, he was treated hostile witness and cross examined by the public prosecutor. In the cross examination he admitted the suggestions that there were petty quarrels



between the two in respect of property dispute and both of them were advised by him and others not to quarrel like that.

13. PW6 is a relative of PW1 and PW2. Her evidence also shows that on 10.03.2015, when she was in her house, around 10.00am, one person came and informed her husband about the incident. Immediately she and her husband went to the spot on a scooter. At a distance of half kilometer from the house of deceased, they saw PW5 and others taking PW2 in a car and seeing them they stopped the car. She saw PW2 having sustained injuries due to gunshot. She also went to hospital. When PW2 regained consciousness, she told about the incident of accused shooting at her husband.

14. PW7 is the mother of the accused and the deceased. In nutshell her evidence is that she came to know about the incident.



15. From the evidence of all these witnesses, a clear picture is available that what has been deposed by PW2 is believable. It is impossible to hold that PW1 is not an eyewitness. She may not have seen the first gunshot, but she heard the sound, and she came to that place, she saw PW2 being injured and the accused again shooting at the deceased. PW1 rushing towards spot is testified by PW3 who also heard gunshot sound. PW1, PW3, PW4, PW5 and PW6 are consistent in stating that they all took injured PW2 to the hospital. The evidence given by PW1, PW3, PW4 and PW5 cannot be called hearsay evidence, for at the time of incident they were all present at nearby places, and all of them heard gunshot sound. They also took PW2 to hospital. All these events are so closely connected with each other to main incident forming part of same transaction which fall within the ambit of Section 6 of Indian



Evidence Act. Therefore there is corroboration to the oral testimony of PW2.

16. PW17 is the doctor who conducted post mortem examination over dead body of Nanjunda, and Ex.P7 is the post mortem report. Before dissecting the body, he noticed multiple penetrating wounds and found fifty seven pellets inside the body. He stated that there were no exit wounds. He stated that after receiving the FSL report he gave his final opinion for the death to be due to shock and hemorrhage as result of injuries to heart and lungs. The evidence of PW17 also corroborates the testimony of PW2. Since PW1 and PW2 stated that accused shot at Nanjunda two times, and the learned counsel for the accused disputed second shot, evidence given by PW28, the ballistic expert requires to be referred to now. The police sent to him eight articles for his opinion. His examination of all the articles confirmed firing



from article No.1, i.e., the gun and presence of two gunshot holes. He opined that the first hole might have occurred due to firing from approximate range of 2.5 feet to 3 feet. In regard to second hole, the approximate firing range might be beyond 10 feet and within 36 feet. He also noticed a third hole, but according to his opinion, it might have occurred due to impact by wads. The evidence of PW28 confirmed two gunshot penetrating holes. In the cross-examination he answered that, if the firing was from a distance of 2 ½ feet, there would be less chances of occurrence of exit wound. That means, there is corroboration from PW28 also. It may be mentioned here that as per the testimony of PW1 and PW2, the first hole that PW28 noticed was due to second shot, and the second hole was due to first firing. Thus seen the testimonies of PW1 and PW2 cannot be discarded at all.



17. As regards motive, PW5 has stated that there were petty quarrels between the accused and Nanjunda. PW8 has stated that accused himself had asked him about four days prior to 11.11.2014 to come to his house to discuss property matters. He went to the house of the accused on 11.11.2014, that the accused and Nanjunda were present and at that time accused put forth a demand for 60 cents of land. PW9 has also given evidence about participating in the meeting held on 11.11.2014. From this evidence it is clear that accused had a motive to shoot him.

18. So far as seizure of the gun-MO1 and the clothes of the accused is concerned, PW19 has stated that on 10.3.2015, he went to Somwarpete police station where all these articles were seized by the police from the accused and drew up a mahzar as per Ex.P3. He was treated hostile by the prosecution for the reason that he did not



support in the examination-in-chief as regards revelation made by the accused about shooting Nanjunda dead. In the cross-examination by the public prosecutor PW19 admitted that accused made such a statement before him. SPP-II submitted that this was an extra-judicial confession. But it cannot be treated as an extra-judicial confession because even if accused had made such a statement, it was in the police station at the time of seizure of gun and the clothes of the accused. Since it was in the presence of police, no credence can be attached to it. However, the evidence of PW19 can be acted as led to seizure of gun and clothes (MOs1, 9 and 10).

19. From the foregoing discussion a clear conclusion can be drawn that PW2 was an eyewitness to the entire incident. PW1 was an eyewitness so far as second gunshot is concerned. As discussed above their testimonies find



corroboration from other witnesses. Motive is also forthcoming. It is not the defence version that accused was provoked by deceased-Nanjunda. When PW2 and Nanjunda were going towards their coffee estate the accused shot at Nanjunda with his gun. In this view, it can be said that offence under Section 302 of IPC is proved.

20. Accused had licence for the gun possessed by him, but he used it for committing crime. For this reason offence under Section 27 of the Arms Act stands proved. The trial court has rightly recorded conviction for this offence.

21. So far as the offence under Section 307 of IPC is concerned, it may be stated that this offence does not get established. No doubt PW2 suffered injuries when the accused opened fire at his brother-Nanjunda. At that time his intention might be to shoot Nanjunda and because PW2 was standing beside her husband she too sustained



injuries. Her testimony discloses that after her husband fell down accused started loading the cartridge and started going towards her. Afraid of this she started running. But the accused did not shoot at PW2 instead he again shot at his brother-Nanjunda. In this circumstance it is difficult to hold he had intention to make an attempt on the life of PW2. At the best it may amount to an offence punishable under Section 324 of IPC. Therefore conviction for the offence under Section 307 of IPC cannot be sustained instead accused can be convicted for offence under Section 324 of IPC.

22. Now we proceed to pass the following :

ORDER

- (a) Appeal partly succeeds.
- (b) Conviction of the accused for the offences under Section 302 of IPC and



Section 27 of the Arms Act is sustained.
Sentence imposed on him for these two offences is confirmed.

- (c) Conviction of the accused for the offence under Section 307 of IPC is set aside, and he is held guilty of the offence under Section 324 of IPC. He is sentenced to rigorous imprisonment for a period of three years and fine of Rs.10,000/-. In default of payment of fine, accused shall undergo imprisonment for a period of two months.
- (d) Sentence of imprisonment for all the offences is made to run concurrently.
- (e) For the purpose of remission under Section 432 of Cr.P.C, accused is entitled to set off for the period he has already spent in jail.



- (f) Order of the trial court in regard to payment of compensation from the fine amount and direction given to District Legal Services Authority to compensate the victims under Karnataka Victim Compensation Scheme is also sustained.

Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE

Sd/-
(K. V. ARAVIND)
JUDGE

CKL/KMV
List No.: 1 Sl No.: 1