



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF MARCH, 2025

PRESENT

THE HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MRS JUSTICE K.S. HEMALEKHA

CRIMINAL APPEAL NO. 2108 OF 2017

Between:

The State of Karnataka
through Urva Police Station,
Mangaluru, Dakshina Kannada,
Represented By State Public Prosecutor,
High Court Building,
Bengaluru-560 001.

...Appellant

(By Smt. Rashmi Jadhav, Addl.S.P.P.,)

And:

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

1. Somashekar
Aged about 40 years,
S/o Kariyappa,
R/o Burudakatte Grama,
Hosadurga Taluk,
Chitradurga District
Presently residing in
Shivanna Compound
Vamanjoor Check Post,
Vamanjoor, Mangaluru-575028
2. Mahanthesha Honnappa Annigeri
Aged about 34 years,
S/o Honnappa,
R/o Nandihalli, Hosneeralagi Post,
Haveri District, Savanoor Taluk,



Presently residing in
Near Peter's House, Jalligudde,
Kottara Chowki, Kavoor Post,
Mangaluru-575 015.

...Respondents

(By Sri Abhishek K., Advocate for R1;
Sri P.Karunakar, Advocate for R2)

This Criminal Appeal is filed u/s.378(1) and (3) Cr.P.C. praying to grant leave to appeal against the judgment and order dated 28.02.2017 passed by the IV Additional District and Sessions Judge, Dakshina Kannada, Mangaluru, in S.C.No.17/2012 acquitting the respondents/accused for the offence p/u/s 363, 392 and 302 read with section 34 of IPC.

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

CORAM: HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR
and
HON'BLE MRS JUSTICE K.S. HEMALEKHA

ORAL JUDGMENT

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

The State has preferred this appeal challenging the acquittal judgment in S.C.No.17/2012 on the file of IV Additional District and Sessions Judge, Dakshina Kannada, Mangaluru.

2. On 26.08.2011, PW1 – S. Naveen made a report to Vim Police Station, Mangaluru, about missing of his nephew, Govardhan, who was working as pump operator



at Mangaluru City Municipal Corporation and running a taxi after completing his shift work at the Corporation. Initially a man missing complaint was registered by the police. After four days the dead body of Govardhan was found near a place called Nandalike. The investigation revealed that accused Nos.1 and 2 hired the taxi of Govardhan on the pretext of going to Karkala, but their intention was to rob money from him. Having taken Govardhan with this actual intention, they attacked and killed him near Nandalike. They threw the dead body by the side of a road between Belman and Kinnigoli. To their unfortune, they did not find much money in the purse of Govardhan; he had just Rs.50/-, a mobile phone and an ATM card. After taking these items, they abandoned the car and left that place. Ultimately charge sheet was filed for the offences punishable under Sections 363, 392 and 302 read with Section 34 of IPC.

3. After conclusion of trial, the learned Sessions Judge examined the circumstances that the prosecution was required to establish and found that the evidence



brought on record did not complete the chain of circumstances. The Sessions Judge disbelieved the testimonies of PW5 and PW12 in regard to both accused being lastly seen with deceased, and held that the extra judicial confession said to have been made by accused No.2 before PW14 was an impossibility. The impugned judgment also shows that no sanctity was attached to evidence on identification of the accused by PW12 in the Test Identification Parade, and evidence in regard to accused themselves showing the place of incident. Finding that evidence led by the prosecution was unsatisfactory, the Sessions Judge acquitted the accused of the offences charged against them.

4. We heard the arguments of Smt. Rashmi Jadhav, learned Additional State Public Prosecutor, and learned advocates Sri. Abhishek K for accused No.1 and Sri. P. Karunakar for accused No.2.

5. Smt. Rashmi Jadhav firstly focused her argument on the evidence given by PW5 and PW12, who according to her established the fact of accused being found in the



company of the deceased. PW5 traveled in the car for some distance to show the place where the accused wanted to go. His evidence shows that he saw accused No.1 sitting with Govardhan, who was driving the car. PW12 has very clearly stated that he was able to recognize the face of the accused when they were sitting inside the car, and he also stated that he identified them when TIP was held. PW5 and PW12 have stated to have seen the accused and Govardhan for the last time. TIP is proved by PW12. In addition there were recoveries of the purse, a pen drive and ATM card that belonged to Govardhan. Accused also showed the same place where they had thrown the dead body, so it confirmed their involvement. This being the evidence, the Sessions Judge should not have acquitted the accused, thus argued Smt. Rashmi Jadhav.

6. Sri. Abhishek argued that PW5 and PW12 were planted only for the purpose of establishing last seen theory. Their evidence discloses that they did not see any car much less anybody sitting inside it. PW5 has clearly



stated he could not see the face of the person sitting behind the driver's seat as it was dark inside the car. PW12 might have stated that he saw the persons sitting inside the car and later identifying them in the TIP, but his answers in the cross-examination destroys his statements in examination in chief. Therefore their evidence cannot be believed at all. Then in regard to certain recoveries and the place of incident being shown by the accused, Sri Abhishek argued that the accused were not arrested on 04.10.2011, they were taken to custody even before 02.10.2011 as evidenced by Ex.D3. The accused were shown to PW5 and PW12 in the police station and thereafter TIP was held. If PW12 stated that he identified the accused in the TIP, it was a tainted identification. Govardhan was a Dalit, and because of pressure brought on the police by Dalit organizations, and the discussion in the News Channels, the police filed charge sheet against the accused to escape from further comments on their efficacy. The trial court has found the circumstances being



not proved to record acquittal. This judgment cannot be interfered with.

7. Sri P.Karunakar adopted the argument of Sri Abhishek K.

8. Keeping in mind the points that the learned counsel raised in their argument, we have perused the evidence, and upon re-appreciation, the inferences that can be drawn are as follows :

The motive posited by the prosecution is that the accused wanted to commit robbery, and they hired the car of Govardhan in that pretext. Telling Govardhan that they wanted to go to a place near Karkala where their car had stuck because of breakdown, they engaged the car driven by Govardhan and killed him enroute when he showed resistance while robbing him of whatever he had. This was the motive, but unfortunately Govardhan had with him just Rs.50/-, ATM card and a pen drive which he had kept in his purse. Of course PW34, the investigating officer, has given evidence regarding recovery which aspect will be dealt with later. The evidence given by



PW11 discloses that on 25.08.2011 at about 7.10 p.m, he received a call from Govardhan who asked him over the phone as to how much money he could charge the persons who wanted to hire his taxi to go to and return from Karkala. He replied that he would charge Rs.900/-. Thereafter he came to know about missing of Govardhan and tracing of his dead body.

9. As missing of Govardhan and his homicidal death is not disputed, it is not necessary to refer here the oral testimonies of the witnesses examined in that behalf. As argued by Smt. Rashmi Jadhav and learned counsel for accused, PW5 and PW12 are the main witnesses to prove last seen theory. PW5 has stated in examination-in-chief that at about 9.00 p.m on 25.08.2011, he was a pillion rider on the motor cycle ridden by Dinesh. They stopped their motorcycle at a place where PW12 was standing. When Dinesh and PW12 were talking, an Indica car came and stopped their beside. The car driver asked PW12 the route to go to Durga Parameshwari temple gate. As PW5 wanted to go towards Nitte, he sat inside the car saying



that he would show the gate. After getting into car he saw one person sitting in the car and he identified in the court by stating the person found wearing red colour shirt was the one seen by him when he sat in the car. But PW5 did not identify the second accused, and also stated that he did not see any one in the police station and that he did not give any statement by identifying the accused in the TIP. As this statement was contrary to prosecution case, he was treated hostile and cross-examined by the public prosecutor, and even then he refuted the suggestions in regard to identifying the accused in the police station as also in the TIP. When he was cross examined by the defence counsel, he answered that he could not see the faces of the persons sitting inside the car as it was dark. He also admitted a suggestion that he could only identify accused No.1.

10. PW12 has also stated that one day about two and half years ago when he was standing near Kedinje Circle at about 10 p.m the car stopped by his side, and its driver asked him whether he knew the place where a car



had stuck due to mechanical failure. As PW12 said he did not know that place, the driver again said that the car had stuck near arch of a temple. And the other person sitting inside the car made it more clear that the arch was that of a Devi temple. By that time his friend Dayanandashetty, i.e., PW5 came to that place and saying that he would show the arch sat inside the car and all of them left. He has stated that on the next day he read in the newspaper about missing of Govardhan. He also received the news that a dead body was found near Kinnigoli road. He went there and saw the dead body of the car driver who had spoken to him last night. His further evidence is that when he went to police station, the police showed him the accused and he identified them and revealed the reason as to how he could identify them. He has also stated about identifying the accused in the jail in the presence of Tahsildar. Certain answers elicited from him in the cross-examination make his testimony in examination in chief unbelievable. He answered that he could see the face of the driver in the glow of the street light but could not see



the faces of others sitting in the car as it was dark inside. When questioned as to how he could identify the accused in the TIP, he answered that as he had seen them in the car and again in the police station, he could identify the accused before the Tahsildar.

11. Now if the answers given by PW5 and PW12 are collated it figures out that due to darkness inside the car they could not have seen the faces of accused, and of course, they might have seen the driver in the street light. PW5 states that he saw only one i.e., the first accused, and his clear answer is that he did not participate in TIP. But though PW12 has stated that he had been to jail to identify the accused in the presence of the Tahsildar, this identification is tainted because according to him, the accused were already shown to him in the police station. Even if it is assumed that the police had not shown the accused, because of his another answer that he could not see the faces of the persons sitting in the car as it was dark inside the car, it is doubtful that he would be able to



identify the accused in the TIP. Therefore identification of the accused by PW5 and PW12 fails.

12. The next circumstance is extra judicial confession of accused No.2 before PW14. It is the evidence of PW14 that accused No.2 was working under him as the driver of a tipper lorry and on 3.10.2011 at 7.00 p.m accused No.2 confessed before him about killing a taxi driver and also told that accused No.2 sought his help as he was being searched by the police. He identified accused No.2. Before evaluating the evidence of PW14, the evidence in regard to recoveries effected by the investigating officer after the arrest of the accused may be referred here.

13. It is the evidence of PW34 that second accused was arrested on 04.10.2011 and the first accused was arrested on 05.10.2011. After the arrest of accused, certain recoveries were effected in the presence of panchas on the basis of disclosure statement given by second accused as per Ex.P49. Ex.P19 is the mahazar drawn in that regard. And after the arrest of the first accused he too gave confession statement which contained



disclosure part as per Ex.P50. The recovery based on disclosures is doubtful because the defence has been able to probabalize its stand that the accused were actually taken to custody on 02.10.2011 itself. PW34, the investigating officer, has found it convenient to take ignorance for the questions put to him in the cross examination about news published in the Newspapers that the accused were arrested on 02.10.2011. Ex.D3 is the Newspaper, Vijaya Karnataka, dated 02.10.2011 in which it was published that the police had arrested two persons in connection with killing of Govardhan. DW2 was the Editor of Vijaya Karnataka, and he was examined to prove the publication of news item as per Ex.D3. Of course he admitted in the cross examination that he was unable to confirm the authenticity of the news reported to the press, but the possibility of accused being taken to custody much before the date of formal arrest cannot be ruled out. If defence version is believable, the recovery of incriminating articles pales into insignificance. Likewise, it becomes impossible to believe that accused No.2 would have



confessed the guilt on 03.10.2011 before PW14 as according to Ex.D3 both accused were in police custody.

14. No doubt the post mortem report and evidence of PW27 indicate that the death was homicidal. As three main circumstances as discussed above fail for lack of convincing evidence, there is no need to discuss further. As the findings recorded by the Sessions Judge do not appear to be incorrect, the appeal fails and it is dismissed.

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

**Sd/-
(K.S. HEMALEKHA)
JUDGE**

CKL
List No.: 1 Sl No.: 21