



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7TH 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.972 OF 2017 (A)

BETWEEN:

STATE BY KORATAGERE POLICE
REP. BY STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING,
BENGALURU-1.

... APPELLANT

(BY SRI HARISH GANAPATHY, HCGP)

AND:

1. RAMAKRISHNA @ KITTI
(SPLIT UP IN S.C.5032/2015)
S/O KADARAPPA @ JANJAPPA,
AGED 41 YEARS,
REAL ESTATE DEALTER,
NEAR YELLAMMAGUDI,
LINJAMPALLI ROAD, MARKET STREET,
HINDUPURA, ANANTHAPURA DISTRICT,
ANDHRA PRADESH - 515201.
2. MANJUNATHA
S/O. LATE V.K. KAMAIHA,
AGE 32 YEARS, DRIVER,
ADARSHANAGARA,
ARISHINAKUNTE,
NELAMANGALA TALUK,
BENGALURU RURAL DISTRICT-562123.



3. SUMANTHAKUMAR .K
S/O. KAMAIAH A M,
AGE 28 YEARS,
STUDENT, ADARSH NAGAR,
NELAMANGALA TALUK.
4. SHIVAKUMAR @ SHIVA
S/O. NANJAPPA,
AGE 31 YEARS,
BEHIND GRAMA PANCHAYATH
OFFICE, ADARSH NAGAR,
NELAMANGALA TALUK.
5. NAVEENA PRASAD
S/O. LATE BASAVARAJU,
AGE 32 YEARS,
SHIVAPURA COLONY,
KEMPAMMADEVINAGARA,
SHIVANAPURA POST,
DASANAPURA HOBLI,
BENGALURU NORTH-562123.

... RESPONDENTS

(BY SRI N.S. SAMPANGI RAMAIAH, ADVOCATE APPEARED
AS A AMICUS CURIAE ON BEHALF OF R-1;
SRI AMBAJI RAO NAJRE, ADVOCATE FOR R-2 TO R-5)

THIS CRL.A. IS FILED U/S.378(1) AND (3) CR.P.C PRAYING
TO GRANT LEAVE TO APPEAL AGAINST THE JUDGMENT DATED
27.01.2017 PASSED BY IV ADDL. DIST. AND S.J., MADHUGIRI IN
S.C.NO.203/2012 AND S.C.NO.5032/2015 ACQUITTING THE
ACCUSED OF THE OFFENCES P/U/S 395, 307, 201 OF IPC.

THIS 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 MRS JUSTICE K.S. HEMALEKHA)

Aggrieved by the judgment of acquittal in SC No.203/2012 and SC No.5032/2015 dated 27.01.2017 on the file of the IV Additional District and Sessions Judge at Madhugiri (hereinafter referred as 'Sessions Court' for short), the State is before this Court in this criminal appeal.

2. According to prosecution, when PW.3 was waiting at Yallapura Aralimara bus stop to go to Pavagada, accused persons offered to drop PW.3 at Madhugiri in a Toyota Qualis car. The driver-accused No.2 took a turn to Siddarabetta. Accused Nos.3 and 5 slapped PW.3, covered his face with a towel, accused Nos.1 and 4 threatened PW.3 with churis causing simple injuries. They took PW.3's valuables mobile phone, ATM card, watch and Rs.1000/- and goldfinger ring. They threw PW.3 near the tank Bund, removed his clothes and chappals, tied his hands, and pushed him down the tank bund, causing multiple injuries. FIR came to be registered, and the accused were charge-sheeted and tried.



3. The prosecution examined 24 witnesses, marked 67 documents and 23 material objects. The Sessions Court, upon consideration that the independent witnesses have turned hostile, recorded that assuming the accused were apprehended, it would not establish that the accused were involved in the alleged incident.

4. Heard Sri Harish Ganapathy, learned HCGP for the appellant and Sri N.S. Sampangi Ramaiah, learned Amicus Curiae for respondent No.1 and Sri Ambaji Rao Najre, learned counsel for respondent Nos.2 to 5.

5. Learned HCGP appearing for the State would argue that the essential ingredients to constitute an offence of dacoity had been clearly made out and the evidence on record fully supported the said charge, wherein the accused persons had jointly committed robbery and recovery of material objects from the accused persons would substantiate the said fact. It is submitted that the Trial Court has failed to consider that the evidence of PW.1 corroborated the evidence of PW.11, who was a circumstantial witness,



with that of PW.23-the Doctor who treated PW.3 and issued a wound certificate as Ex.P40. It is submitted that the mere fact that the independent mahazar witness has not supported the case of the prosecution would not result in giving the benefit of doubt to the accused. It is submitted that the Trial Court failed to consider that the investigation officers have traced out accused persons on the basis of the Call Detail Records (CDR) of the mobile phone of the complainant, which was used by accused No.5 whereby a strong inference can be drawn from this circumstance, which discloses that the incident in question indeed took place in the manner narrated by the prosecution and accused No.5 had taken possession of the mobile phone of the injured victim. The Sessions Court has totally discarded the evidence of the prosecution witnesses, stating a minor discrepancy which does not touch the core of the case and is not fatal to the case of the prosecution, more so when the presence of the accused on the scene stands established from the evidence of injured witness.



6. *Per contra*, learned counsel appearing for the accused would submit that the injured/victim-PW.3 is a lecturer by profession. The evidence of PW.3 plays a pivotal role in as much as there is contradiction in the complaint and the evidence of PW.3. PW.3 does not correctly state the name of the vehicle in which he was abducted and also the amount which was snatched from him. The Sessions Court on considering the evidence in its totality has appreciated, analyzed and assessed probabilities to arrive at a right conclusion that the prosecution has failed to establish any nexus between the accused and the incident and held that the accused is entitled to benefit of doubt.

7. We have considered the contentions urged by the learned counsel for the parties and perused the material on record.

8. Section 395 of the Indian Penal Code (IPC) pertains to the punishment for dacoity. According to this section, anyone who commits dacoity shall be punished with imprisonment for life or with rigorous imprisonment for a



term which may be extended to 10 years and shall also be liable for fine. Dacoity, as defined under Section 391 of IPC, invokes the conjoint commission or attempted commission of robbery by 5 or more persons. This means that 5 or more individuals act together to commit or attempt to commit robbery or to commit dacoity. To establish conviction under Section 395, the prosecution has to establish and place evidence showing that the persons have committed or attempted to commit robbery and the individuals/accused must have acted together with the common intention during the commission or attempt of robbery.

9. The complaint at Ex.P6 states that while PW.3, was standing at the bus stop around 6.00 pm in the month of January to go to Pavagada, accused persons came in a white Toyota qualis and offered to drop him at Madhugiri, that they closed his face with a towel, that they took away valuables, a Nokia mobile phone, ATM card, watch, amount of Rs.1000/- and also took the Gold finger ring. Thereafter they took him to the tank bund, removed his clothes and chappals, tied his hands and pushed him down the tank



bund. The evidence of PW.3 is to the effect that the accused persons snatched Rs.500/- from him and further that the vehicle in which he was abducted was Tata Sumo. But the fact remains that the amount snatched was Rs.1000/-, the vehicle seized was a Tata Qualis and thus there is inconsistency. In this context, it is also necessary to look into the evidence of independent witnesses.

10. PW.1 and PW.4 are panch witnesses to Ex.P1 drawn at Bedoni Tank, the spot where he was thrown. They denied signing the mahazar and turned hostile to the case of prosecution.

11. PW.2 and PW.6 are witnesses to the seizure mahazars at Exs.P3 and P4 under which gold finger ring MO.4 and Nokia Mobile MO.5 were seized at the instance of accused No 4. PWs.5, 8 and 15 are witnesses to Ex.P14-mahazar at the place from where PW.3 was abducted. Ex.P15 is another mahazar at the place where ATM card and sim of PW.3 had been thrown. Ex.P16 is the mahazar drawn in connection with recovery of the clothes and chappal of



PW.3 at the instance of accused No.1. Ex.P17 is the mahazar drawn in relation to recovery of the stolen articles at the instance of accused No.1. But these witnesses turned hostile. PW.9 is a witness to Exs.P19 to 21 seizure of Toyota Qualis, Mobile phones of accused Nos.1 and 3, but turned hostile. PWs.11, 14 and 20 panch witnesses to Exs.P24 to 27 also turned hostile to the case of prosecution. All the independent witnesses turned hostile weakening the case of prosecution. Added to this, in the cross examination, PW.3-complainant categorically admits that when the spot mahazar at Bedoni Tank was drawn, except the complainant and the Police nobody else was present, making the Court to disbelieve the version of the panch witnesses PWs.1 and 4.

12. The complainant-PW.3 stated that his face was covered with a cloth. The abduction took place at 6.00 p.m. in January. During that time of the year, it is usually quite dark. Visibility is poor in such conditions. Recognizing someone in the dark is already challenging. If his face is further covered with a towel, it becomes even more difficult. This further obscures their facial features. As a result,



identification becomes nearly impossible. Given the circumstances, it is extremely difficult to believe that the victim was able to recognize the accused persons. If the entire evidence of PW.3 and other independent witnesses are put to scrutiny, it can be said that the incident has occurred but it cannot be inferred that the accused persons are guilty of charges.

13. The Sessions Court considering all these aspects appreciated the evidence in a right perspective and rightly acquitted the accused. It is settled law that the presumption of the innocence of an accused person is reinforced by an order of acquittal and a heavy onus rests on the prosecution in an appeal from such an order to prove that the order is manifestly erroneous. After re-appreciation of evidence, we find no reason to overturn the order of acquittal as the findings of the Sessions Court were the possible findings that could be arrived at and hence the following:

ORDER

- i. Appeal is ***dismissed.***



- ii. Accused No.1 shall be set at liberty forthwith, if his presence is not necessary in any other case.
- iii. Rs.10,000/- shall be paid as remuneration to Sri N.S.Sampangi Ramaiah, Advocate for the accused for the services rendered as Amicus Curiae.

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

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