HC-KAR

NC: 2026:KHC:17120-DB
CRL.A No. 1098 of 2018
C/W CRL.A No. 880 of 2018
CRL.A No. 1188 of 2018

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF MARCH, 2026

PRESENT
THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ
AND
THE HON'BLE MR. JUSTICE VENKATESH NAIK T
CRIMINAL APPEAL NO.1098 OF 2018 (C)
CONNECTED WITH
CRIMINAL APPEAL NO.880 OF 2018 (C)
AND
CRIMINAL APPEAL NO.1188 OF 2018 (C)

IN CRL.A. NO.1098/2018:

BETWEEN:

NAZRU KHAN @ NAZRU
S/O. ISMAIL KHAN
AGED ABOUT 28 YEARS
OCCUPATION: AGRICULTURIST
RESIDENT OF KADEKAL VILLAGE
SHIVAMOGGA TALUK-577 201
(UNDERGOING SENTENCE).

...APPELLANT

(BY SRI SHIVARAJ N. ARALI, ADVOCATE)

Digitally signed by ANJALI M
Location: High Court of Karnataka

AND:

THE STATE BY TUNGANAGAR POLICE
SHIVAMOGGA
REPRESENTED BY STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
BENGALURU-560 001.

...RESPONDENT

(BY SRI VIJAYA KUMAR MAJAGE, S.P.P-II ALONG WITH
SRI RAHUL RAI K., H.C.G.P.)

* * *

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374(2) OF THE CR.P.C. PRAYING TO SET ASIDE THE JUDGMENT AND ORDER OF CONVICTION DATED 17-4-2018 AND SENTENCE DATED 26-4-2018 PASSED BY THE II ADDITIONAL DISTRICT AND SESSIONS JUDGE, SHIVAMOGGA, IN SESSIONS CASE NO.268 OF 2014 (CRIME NO.328 OF 2009), CONVICTING THE APPELLANT/ACCUSED NO.4 FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 302 AND 397 READ WITH SECTION 34 OF IPC.

IN CRL.A. NO.880/2018:

BETWEEN:

1. SRI ABID KHAN
   S/O. MUNAWAR KHAN
   AGED ABOUT 24 YEARS
   COOLIE.

2. SRI KHALANDAR @ MUNNA
   S/O. ABDUL THOUFEEQ
   AGED ABOUT 27 YEARS
   FRUIT MERCHANT.

   BOTH ARE RESIDING AT
   KADEKAL VILLAGE
   SHIVAMOGGA TALUK & DISTRICT-577 201.

...APPELLANTS

(BY SRI MOHAMED IBRAHIM, ADVOCATE)

AND:

STATE OF KARNATAKA
BY THE SHO OF TUNGANAGAR POLICE STATION
SHIVAMOGGA
REPRESENTED BY STATE PUBLC PROSECUTOR
BENGALURU-01.

...RESPONDENT

(BY SRI VIJAYA KUMAR MAJAGE, S.P.P-II ALONG WITH
SRI RAHUL RAI K., H.C.G.P.)

* * *

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374(2) OF THE CR.P.C. PRAYING TO SET ASIDE THE JUDGMENT AND ORDER OF CONVICTION DATED 17-4-2018 AND SENTENCE DATED 26-4-2018 PASSED BY THE II ADDITIONAL DISTRICT AND SESSIONS JUDGE, SHIVAMOGGA, IN SESSIONS CASE NO.268 OF 2014 (CRIME NO.328 OF 2009), CONVICTING THE APPELLANTS/ACCUSED NOS.1 AND 2 FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 302 AND 397 READ WITH SECTION 34 OF IPC.

IN CRL.A. NO.1188/2018:

BETWEEN:

MR. MUJAHID
S/O. BASHEER KHAN
AGED 39 YEARS
KADEKAL VILLAGE
SHIVAMOGGA TALUK AND DISTRICT.

...APPELLANT

(BY SRI RANGANATH REDDY R., ADVOCATE)

AND:

THE STATE OF KARNATAKA
BY THUNGANAGAR POLICE STATION
SHIVAMOGGA, REPRESENTED BY S.P.P.
HIGH COURT OF KARNATAKA
BENGALURU-01.

...RESPONDENT

(BY SRI VIJAYA KUMAR MAJAGE, S.P.P-II ALONG WITH
SRI RAHUL RAI K., H.C.G.P.)

* * *

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374(2) OF THE CR.P.C. PRAYING TO SET ASIDE THE JUDGMENT AND ORDER OF CONVICTION DATED 17-4-2018 AND SENTENCE DATED 26-4-2018 PASSED BY THE II ADDITIONAL DISTRICT AND SESSIONS JUDGE, SHIVAMOGGA, IN SESSIONS CASE NO.268 OF 2014 (CRIME NO.328 OF 2009), CONVICTING THE APPELLANT/ACCUSED NO.3 FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 302 AND 397 READ WITH SECTION 34 OF IPC.

THESE CRIMINAL APPEALS ARE COMING ON FOR FURTHER HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE MOHAMMAD NAWAZ
and
HON'BLE MR. JUSTICE VENKATESH NAIK T

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE MOHAMMAD NAWAZ)

The judgment and order passed in Sessions Case No.268 of 2014 by the Court of II Additional District and Sessions, Shivamogga, convicting and sentencing the appellants/accused Nos.1 to 4 for the offences punishable under Sections 302 and 397 read with Section 34 of the Indian Penal Code, 1860 (for short, 'IPC') is assailed in these appeals.

2. Criminal Appeal No.880 of 2018 is preferred by accused Nos.1 and 2, Criminal Appeal No.1188 of 2018 is preferred by accused No.3, and Criminal Appeal No.1098 of 2018 is preferred by accused No.4.

3. We have heard the learned counsel appearing for the appellants/accused Nos.1 to 4, the learned State Public Prosecutor for the respondent/State and perused the evidence on record.

4. It is the case of prosecution that on 27.08.2009 at about 8.20 a.m., when the first informant, Malappa (PW3), and Sharana Basava (deceased) were proceeding on a motorcycle, bearing Registration No.KA-15 K-4356, on Yaraganalu Forest Road within the jurisdiction of Tunganagar Police Station, Shivamogga, accused Nos.1 to 4, who had conspired to commit robbery and waiting for the victims, armed with *longs* and clubs, assaulted Sharana Basava, who was riding the motorcycle, with a club on his face, due to which, he sustained grievous injuries and lost control of the motorcycle and hit a tree and sustained head injuries and succumbed to the injuries at the spot. Further, the accused robbed a bag containing a sum of Rs.1,16,655/- and four Nokia mobile sets from

the complainant and thereby, committed the charged offences.

5. The first informant, Malappa (PW3), was working as a Field Assistant Trainee and deceased Sharana Basava was working as a Manager in one SKS Micro Finance Private Limited, Shivamogga. On 27.08.2009 at about 6.45 a.m., they collected a sum of Rs.1,16,655/- and four Nokia mobile sets from PW8-Sabanna (CW11), Branch Manager of SKS Micro Finance Private Limited, in order to distribute the same to the members and thereafter, they were proceeding on the motorcycle, bearing Registration No.KA-15 K-4356, towards Kadekal Village through Lakkinakoppa Circle. It is the case of prosecution that accused Nos.1 to 4, who had conspired to commit robbery, were waiting near the forest road of Yaraganalu to rob the money. Accused No.3 passed on the information about the arrival of the victims, accused Nos.1, 2 and 4, who were armed with *longs* and clubs, waylaid the motorcycle and accused No.1 tried to assault the deceased who was

riding the motorcycle, and when the deceased took the motorcycle to the left side of the road, accused No.2 assaulted on his face with a club, due to which, he lost control and hit a tree and sustained severe head injuries and died at the spot. Further, accused No.4 assaulted the first informant (PW3) with a club on the chest and caused injuries to him and then, robbed the bag containing a cash of Rs.1,16,655/- and four Nokia mobile sets. Immediately, after the incident, PW3 ran towards Kadekal Village and informed the matter to the villagers, whom he met, and from the coin booth, he informed the matter to his Office. PW34-Sub-Inspector of Police, who got the information about the incident, came to the spot and recorded the statement of PW3 as per Ex.P8 at the spot, on the basis of which, an F.I.R. was registered against two unknown persons.

6. PW34 handed over the investigation to PW27-Circle Inspector of Police, who conducted the spot mahazar-Ex.P6 and from the spot, seized a motorcycle,

one club, two helmets, two chappal, one jerkin, one *gutka* packet, one *beedi* packet, sample mud and bloodstained mud. The dead body was shifted to the hospital, wherein inquest mahazar-Ex.P1 was conducted. Post-mortem examination was conducted by PW33.

7. PW28-Investigating Officer took over the further investigation on 6.9.2009 from PW27. The four accused were apprehended on 13.10.2009 and produced before PW28, who recorded their voluntary statements as per Exs.P.44 to 47. Four mobile phones, i.e. one belonging to the deceased and three belonging to the accused were recovered under Ex.P32; one empty bag, one file, one club and one *long* were seized under Ex.P33. Cash of Rs.13,000/- and a towel from accused No.1, cash of Rs.12,000/- and a towel from accused No.2, cash of Rs.11,000/- and a towel from accused No.3, and cash of Rs.9,000/- and a shawl from accused No.4 were recovered under Ex.P36.

8. On 21.11.2009, test identification parade was conducted by PW31 and he submitted his report as per Ex.P58. PW28-Investigating Officer, on completion of investigation, filed charge-sheet against accused Nos.1 to 4.

9. The Post-Mortem examination is conducted by PW.33. The P.M. report is marked as Ex.P48. The cause of death is due to coma as a result of injuries sustained. The following external injuries were noticed:-

1. 5 x 3 cms x brain deep laceration present on right head, 5 cms above brow, horizontal.
2. Head deformed due to fracture of skull, right eyeballs sunken.
3. 3 x 1 cms x subcutaneous tissue deep Laceration present on right nose, vertical, 2 cms medial to medial canthus.
4. 3 x 1 cms x subcutaneous tissue deep laceration present on nose oblique, Right - center, 1 cms medial to injury no.3,
5. Bleeding through the nose present,
6. Fracture of maxilla, in between upper 2 central incisors,

7. Fracture of mandible on right side in between lateral incisor and canine,

8. Bleeding through both ears present.

9. 8 x 5 cms Abrasion present on right lower back, bordering iliac crest, 4cms lateral to midline.

10. It is contended by the learned counsel for appellants that, according to prosecution, one of the accused assaulted on the face of the deceased. However, the death is not on account of the injury to the face, but, due to the injuries sustained to the brain, which the deceased sustained when he lost control of the motorcycle and crashed into a tree. He therefore contended that this is not a case of homicidal death, on the other hand, the victim died on account of accidental injuries.

11. We are unable to accept the said contention of the learned counsel. As per prosecution, the accused in order to commit robbery, were waiting for the victims and one of the accused assaulted the deceased who was riding the motorcycle on his face with a club, due to which, the

deceased lost control of the motorcycle and hit a tree and sustained severe head injuries, etc. As per Post-Mortem report, there are injuries on the nose, fracture of right nose, deep laceration on the nose apart from injuries sustained to the head including fracture of maxilla, mandible on right side etc. Admittedly, the deceased was riding the motorcycle. Even if the accused had no intention to commit the murder and their intention was only to commit robbery, in view of the definition of Section 300 of IPC, if any act is done with the intention of causing such bodily injury, which the offender knows that it is likely to cause death or imminently dangerous that it must, in all probability, cause death or such bodily injury likely to cause death, the offence would fall within the definition of culpable homicide amounting to murder.

12. In order to prove the charges levelled against the accused, the prosecution is mainly relying on the evidence of PW.3-the first informant, who was travelling along with

the deceased on the motorcycle. He being a sole eyewitness to the incident, is a material witness.

13. Ex.P8 is the complaint lodged by PW3. A perusal of the same goes to show that the complaint is lodged against two unknown assailants stating that they came running and one of them was holding a club and assaulted on the face of the deceased. It is further stated that the said two assailants had covered their face with a white towel. In Ex.P8, it is nowhere stated by the first informant about the presence of four accused at the spot.

14. In his deposition, initially PW.3 has stated that when he along with the deceased was proceeding on the motorcycle with a cash of ₹1,06,000/- and 4 mobile phones, towards Kadekkal, two persons came from forest side and assaulted the deceased with a club and one of the accused assaulted him with a club on his chest and then they robbed the bag containing cash and mobile phones and ran away towards the forest. At another breath, he

has stated that four accused assaulted them. He has stated that, when they were near Lakkina Koppa Circle, he saw one person talking on a mobile phone near the trench and while proceeding further, another accused tried to assault Sharanabasava (deceased) with a long, but they escaped, however one more accused assaulted Sharanabasava with a club on his eyes.

15. The learned SPP contended that further statement of the complainant was recorded on the same day, wherein, he has mentioned about the participation of four accused. He contended that four accused are involved in the incident, who conspired together to commit robbery and murder. He further contended that the investigation revealed the involvement of four accused and therefore, after collecting sufficient material, charge sheet was filed against accused Nos.1 to 4.

16. PW.27-CPI has deposed that he has recorded the further statement of the complainant. However, his

evidence does not reveal that in the further statement, PW.3 has revealed the involvement of two more accused or having given their descriptions. In the cross examination of PW.3, he has admitted that he has not given the description to the police about two other accused. Though, he has stated that only later he recalled about the presence of two other accused, he did not mention about the presence of all the four accused at the time of lodging the complaint.

17. According to PW.3, he saw one of the accused talking on a mobile phone near the trench and when they proceeded, another accused tried to assault the deceased with a long, but they escaped and proceeded further, but another accused assaulted the deceased with a club on his face due to which, the deceased lost control of the bike and crashed into a tree and thereafter, another accused came and assaulted him with a club. If the incident as narrated by PW3 had taken place, certainly, he would have mentioned about the presence of four accused and given

their descriptions when he lodged the complaint. It is also relevant to mention that initially, while deposing, PW3 has stated that there were only two accused and thereafter, he has improved his version stating that four accused have committed the offence.

18. Learned SPP vehemently contended that in this case, the Test Identification Parade was conducted, wherein, PW.3 has identified all the four accused and his evidence is corroborated by the evidence of the Tahsildar/PW.31 and his report at Ex.P58.

19. Learned counsel for the appellants contended that the Test Identification Parade was not conducted in accordance with law and even otherwise, the evidence of PW.3 and PW.31 does not indicate that PW.3 has identified the accused persons at the time of incident.

20. After the arrest of the accused, Test Identification Parade was conducted by PW.31-Tahsildar-Taluka Executive Magistrate on 21.11.2009 at District

Prison, Shivamogga. PW.31 has stated that he made to stand four accused along with seven others and conducted the Test Identification twice and PW.3-Malappa identified the four accused in the said Test Identification Parade.

21. PW3 in his evidence has stated that he participated in the Test Identification Parade conducted on 21.11.2009 and he identified the four accused in the said Test Identification Parade.

22. The Apex Court in **Umesh Chandra & Ors. v. State of Uttarakhand** reported in (**2021) 17 SCC 616** has held that a Test Identification Parade is only corroborative evidence and it is held only to ensure that the Investigating Agency prima facie was proceeding in the right direction where the accused may be unknown or there was fleeting glance of the accused. The onus lies on the prosecution to establish that the Test Identification Parade was held in accordance with law. The Test Identification Parade can be gone into by the Court, only

after the prosecution prima facie establishes a valid Test Identification Parade having been held during investigation.

23. In Ex.P8-complaint, PW.3 has specifically stated that two accused, who attacked them had covered their face with a white cloth. The descriptions of two other accused are not stated anywhere by the complainant. When PW3 has specifically asserted that the two accused, who initially attacked them had covered their face with clothes, it is not forthcoming from the evidence of either PW.3 or PW.31 as to how the accused were identified during the Test Identification Parade. In the cross examination of PW.31, he has admitted that at the time of conducting Test Identification Parade, the face of the accused and other participants were not covered leaving their eyes. Even from the evidence of PW.3, it is not revealed as to which of the accused was standing near the trench and talking on the mobile phone and which accused assaulted the deceased. PW.31 has conducted the Test

Identification Parade by asking all the accused to stand together along with others. In the above circumstances, identification of accused Nos.1 to 4 by PW3 in the Test Identification Parade is difficult to believe and the said evidence of PW3 and PW31 does not inspire the confidence of the Court.

24. The learned counsel for the appellants has relied on a decision of the Apex Court reported in **1995 Supp. (4) SCC 448** in the case of **Satrughana alias Satrughana Parida & Ors. v. State of Orissa** to contend that unexplained delay in holding the Test Identification Parade will adversely affect the value of evidence of identification. He further contended that the photos of the four accused were published in a daily newspaper on 15.10.2009. Therefore, the Test Identification Parade will lose its credence.

25. In the present case, the incident took place on 27.08.2009. The accused were arrested on 13.10.2009.

As already observed in the complaint-Ex.P8, PW.3 has stated about the involvement of only two accused. The said accused according to the complainant had covered their face with a white cloth. Further, the details of the two other accused are not given by the complainant. The Test Identification Parade was conducted on 21.11.2009 i.e., after 1 month 8 days from the date of arrest. In the above judgment referred by the learned counsel for the appellant, the Apex Court has observed that where the Identification Parade was conducted after the occurrence in question and after the expiry of the maximum permissible period (15 days) for producing the arrested accused before the Court and in the absence of any explanation for the delay and to show that while taking the accused to and producing before the Court the identity of the accused was not revealed, held exclusive reliance could not be placed on such identification.

26. The evidence of the I.O.-PW28 shows that the accused were arrested on 13.10.2009. He has filed the

requisition before the Court on 29.10.2009, for conducting the Test Identification Parade. The Test Identification Parade was conducted on 21.11.2009. There is no explanation for the delay in either submitting the requisition to the Magistrate for conducting the Test Identification Parade or for conducting the Test Identification Parade belatedly i.e., after 1 month 8 days. From the evidence of PW28 it is also not forthcoming as to whether the prosecution had taken care to ensure that the identity of the accused was not revealed when they were taken to the Court and produced as required by law. We have also noticed that according to PW3-complainant, the Test Identification Parade was conducted 4 times, whereas PW31-Taluka Executive Magistrate has stated that he conducted the Test Identification Parade two times. Hence, there is contradiction. Hence, the Test Identification Parade was not conducted in accordance with law and the identification of the accused by PW3 in the Test Identification Parade is also doubtful.

27. According to the prosecution, all the accused conspired together to commit robbery. The prosecution got examined PWs.9 to 21, 23 and 25 to prove conspiracy. However, all the said witnesses, who according to prosecution, overheard the conspiracy held by the accused in the house of PW13 have turned hostile. They have not supported the case of prosecution. The said witnesses have also denied having given statements to the police as per Exs.P18 to 29, 31 and 41.

28. The prosecution has got examined PWs.4 to 7 to establish that on the date of incident at about 6.00-6.30 a.m. they saw four accused, familiar to them proceeding towards Lakkinakippa Circle and among them one of the accused i.e. accused No.1 holding a long. Both PW4 and PW5 have denied having seen the four accused on 07.08.2009 at about 6.00-6.30 a.m.

29. According to prosecution, the accused robbed four mobile phones, a bag containing cash of

Rs.1,16,665/-. After the arrest of the accused, two mobile phones each were recovered from accused Nos.2 and 3, cash of Rs.13,000/- and a towel from accused No.1, cash of Rs.12,000/- and a towel from accused No.2, cash of Rs.11,000/- and a towel from accused No.3 and cash of Rs.9,000/- and a shawl from accused no. 4. The seizure of the mobile phones are under Ex.P32 and seizure of cash, towels and shawl under Ex.P36.

30. It is contended by the learned SPP that out of the total cash robbed from the deceased, the accused have spent some cash and the balance cash was recovered from them. He further contended that one mobile which was recovered from accused No.2 was the mobile which was robbed from the victims.

31. Even though the prosecution has alleged that 04 mobile phones of the victims were robbed by the accused, 3 mobile phones according to the prosecution, were thrown in the forest. They are not recovered. One mobile

robbed from the victim was allegedly recovered from accused No.2. As rightly contended by the learned counsel for the appellants, recovery of cash from the accused will not by itself lead to a conclusion that the said amount which were in their possession was robbed from the victims. Insofar as the mobile phones are concerned, out of 04 mobile phones, 03 mobile phones are said to be of accused Nos.2 and 3 and 01 Black colour Nokia mobile phone was robbed from the victims.

32. PW24 is the panch witness to all the seizure mahazars namely Exs.32 to 37. Firstly, in the cross-examination, he has admitted that he has worked in S.K.S. Finance Ltd., where the deceased and the complainant were working and he is their close friend. Except him there are no other independent panchas examined. Prosecution has got examined PWs.7 and 8, working as the Unit Manager and Branch Manager of S.K.S. Finance Ltd., Shivamogga Branch. PW8 has stated that the victims had taken a cash of Rs.1,06,000/-, 04

mobile phones with 04 sim cards from their office. However, the said witnesses namely PW7 and PW8 have not identified the mobile phone which was recovered from accused No.2, as the mobile phone given from S.K.S. Finance Ltd. Insofar as the recovery of club and long are concerned, no blood stains were found on the said weapons. The use of long by the accused was not at all stated in the complaint lodged by PW3. Hence, the prosecution has failed to establish the recovery at the instance of the accused.

33. Having meticulously examined the entire evidence and material on record, we are of the view that the evidence of the sole eye witness-PW3 is full of contradictions, omissions and improvements. The Apex Court in **Parvat Singh & Ors. v. State of Madhya Pradesh** reported in (**2020) 4 SCC 33** has held that there can be conviction relying upon evidence/deposition of sole witness, provided it is found to be trustworthy and reliable and if there are no material contradictions and/or

omissions and/or improvements. However, in the case on hand, we have noticed, the testimony of PW.3 suffers from contradictions and improvement and not safe to convict the accused. Further, the conspiracy theory of the prosecution and the recovery of incriminating articles from the accused are also not proved by the prosecution. The Test Identification Parade was not held in accordance with law and the identification of the accused by PW3 in the Test Identification Parade is also doubtful. Hence, the judgment of conviction and sentence passed by the trial Court cannot be sustained in law.

34. For the forgoing reasons, we proceed to pass the following:

O R D E R

i. Appeals are **allowed.**

ii. The Judgment dated 17.04.2018 and Order on Sentence dated 26.04.2018 passed in

S.C.No.268/2014 on the file of II Additional District and Sessions Court, Shivamogga are **set aside**.

iii. Appellants/accused Nos.1 to 4 are **acquitted** of the offences punishable under Section 302 and 397 of IPC.

iv. Fine amount, if any, deposited shall be refunded to the accused.

v. Rest of the order passed by the trial Court is not disturbed.

Sd/-
(MOHAMMAD NAWAZ)
JUDGE

Sd/-
(VENKATESH NAIK T)
JUDGE

KVK, MN, TL
List No.: 1 Sl No.: 15