



CNR: KAHC010090732019

NC: 2026:KHC:45486-DB
CRL.A No. 167 of 2019

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF AUGUST, 2026

PRESENT

THE HON'BLE MR. JUSTICE H.P.SANDESH

AND

THE HON'BLE MR. JUSTICE B.PRAMOD

CRIMINAL APPEAL NO.167 OF 2019 (A)

BETWEEN:

THE STATE OF KARNATAKA
BY CIRCLE POLICE INSPECTOR
BYNDOORU CIRCLE, KUNDAPURA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT BUILDING
BENGALURU-01

...APPELLANT

(BY MR. MOHAMMED AYUB ALI, ADDITIONAL S.P.P.)

AND:

1. K. M. SUNDARA
AGED ABOUT 42 YEARS
S/O. LATE MANJAPPA
R/O. NEAR KEREJADDU
GOVERNMENT PRIMARY SCHOOL
NOOJADI VILLAGE
KUNDAPURA TALUK-576 201
2. NAGARAJA POOJARY
AGED ABOUT 39 YEARS
S/O. BABU POOJARY
R/O. AMMANAMAKKI
NEAR GOVERNMENT PRIMARY SCHOOL
NOOJADI VILLAGE
KUNDAPURA TALUK-576 201
3. SANTHOSHA
AGED ABOUT 31 YEARS

Digitally signed
by
SHARAD
B

Location: HIGH
COURT OF
KARNATAKA



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S/O. LATE MANJAPPA
R/O. NEAR KEREJADDU GOVERNMENT
DURGAPARAMESHWARI TEMPLE
PRIMARY SCHOOL, NOOJADI VILLAGE
KUNDAPURA TALUK-576 201

4. NAGARAJA ALIAS RAJU
AGED ABOUT 37 YEARS
S/O. LATE SHESHU POOJARY
R/O. KALIJADDUKATTU
GANAPATHI TEMPLE, ALURU VILLAGE
KUNDAPURA TALUK-576 201

5. BABU POJARY
AGED ABOUT 66 YEARS
S/O. MANJU POOJARY
R/O. AMMANAMAKKI
NOOJADI VILLAGE
KUNDAPURA ALUK-576 201

...RESPONDENTS

(BY SMT. P. V. KALPANA, ADVOCATE FOR R-1 TO R-5, AMICUS
CURIAE)

THIS CRL.A. IS FILED U/S.378(1) AND (3) CR.P.C BY THE
STATE P.P. FOR THE STATE PRAYING TO GRANT LEAVE TO FILE
AN APPEAL AGAINST THE JUDGMENT AND ORDER OF ACQUITTAL
DATED 04.06.2018 ON THE FILE OF ADDITIONAL DISTRICT AND
SESSIONS JUDGE, UDUPI IN S.C.NO.91/2013 - ACQUITTING THE
RESPONDENTS/ACCUSED FOR THE OFFENCE PUNISHABLE UNDER
SECTION 302 READ WITH SECTION 34 OF IPC AND SECTIONS 3,
5, 25, 27 AND 30 OF INDIAN ARMS ACT, 1959 AND SET ASIDE
THE AFORESAID JUDGMENT AND ORDER DATED 04.06.2018
PASSED IN S.C.NO.91/2013 ON THE FILE OF ADDITIONAL
DISTRICT AND SESSIONS JUDGE AND SPECIAL JUDGE, AT
KUNDAPURA, ACQUITTING THE ACCUSED/RESPONDENTS FOR
THE OFFENCE PUNISHABLE UNDER SECTION 302 READ WITH
SECTION 34 OF IPC AND SECTIONS 3, 5, 25, 27 AND 30 OF
INDIAN ARMS ACT, 1959 AND ALSO CONVICT AND SENTENCE
THE ACCUSED/RESPONDENTS FOR THE OFFENCE PUNISHABLE
UNDER SECTION 302 READ WITH SECTION 34 OF IPC AND
SECTIONS 3, 5, 25, 27 AND 30 OF INDIAN ARMS ACT, 1959.



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THIS APPEAL, COMING ON FOR HEARING, THIS DAY,
JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE H.P.SANDESH
and
HON'BLE MR. JUSTICE B.PRAMOD

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE H.P.SANDESH)

Heard Sri. Mohammed Ayub Ali, learned Addl. SPP for the appellant-State, Smt. P V Kalpana, learned counsel who has been appointed as *Amicus Curiae* on behalf of respondent Nos. 1 to 5 to assist this Court.

2. This appeal is filed by the appellant - State against the judgment and order of acquittal dated 06.06.2018 passed in S.C.No.91/2013 by learned Additional District and Sessions Judge and Special Judge, at Kundapura, for the offences punishable under Sections 302 r/w 34 of IPC and Sections 3, 5, 25, 27 and 30 of Indian Arms Act, 1959.



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3. The brief factual matrix of the case of the prosecution is that:

a) On 10.08.2013, the accused persons committed the murder of deceased by making gunshot on him i.e., accused Nos. 1 to 4 and for committing the murder, they used the gun without obtaining any license to keep the gun belonging to accused No.5 and thereby committed the offences punishable under Sections 3 and 30 of the Arms Act and Section 302 of IPC. Since on the guise of hunting took the victim with prior motive and ill-will committed his murder. Based on the complaint, police have registered the case and investigated the matter and filed the charge sheet, recorded the statement of witnesses and seized the gun belonging to accused No.5 and also recorded the statements of the doctor and the expert. The trial Court having considered both oral and documentary evidence comes to the conclusion that there is an inconsistency in the evidence of prosecution with regard to the motive as well as no definite evidence before the Court, use of the



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said gun belongs to accused No.5 and no time of using of the said gun and evidence of PW.16-expert is inconsistent and so also the FSL report does not support the case of prosecution.

b) The trial Court having considered both oral and documentary evidence available on record, comes to the conclusion that though Post Mortem report discloses it was a gunshot injury and the same corresponds with the evidence of the prosecution witnesses is inconsistent and also took note of the no contents of the motive in the complaint filed at the first instance having borrowed an amount to the tune of Rs.25,000/- by victim from accused Nos.1 and 2 and also there is no any chain of circumstances establishes the case of prosecution and given the benefit of doubt in favour of the accused and acquitted them.

4. Learned Addl. SPP appearing for the appellant-State vehemently contends that the trial court has failed



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to consider the material available on record, particularly the evidence of PWs.4 and 5 and their evidence speaks about they have over heard the discussion of eliminating the deceased in the previous night. The material witnesses PWs.1 to 9, 14 to 22 are not properly considered. He vehemently contends that PWs.6 and 7 in their evidence speak about ill-will among the accused with the deceased. PW.14 is the forensic expert to conduct the post mortem and PW.16 is the Assistant Director of Forensic Lab and he had issued the FSL report and PWs.20 and 22 are the FSL experts. All the material witnesses have supported the case of prosecution, but, the trial judge failed to consider the evidence available on record. The recovery was also made at the instance of the accused No.1. As such, the trial Court ought to have convicted the accused-respondents. The trial judge ought to have considered that it was natural for minor exaggerations, embellishments, in the testimony of witnesses as they are examined after much lapse of time and the trial Court ought not to have



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given much importance to the same, while appreciating the evidence of prosecution witnesses. The very approach of the trial Court is erroneous in acquitting the accused-respondents and hence, it requires interference of this Court.

5. Per contra, Smt. Kalpana, learned *amicus curiae* appearing for the accused-respondents vehemently contend that trial Court having noticed inconsistencies in the evidence and there is no any positive evidence and when the case is rest upon the circumstantial evidence, there is no any establishment of chain link and each chain link is not established to come to a conclusion that accused persons only have committed the offence. She further contends that in the complaint itself it is stated that someone called the deceased victim in the night at 9.00 pm and the victim left the house for hunting and when the call was received by the deceased, the Investigating Officer ought to have collected the CDR to



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find out who had called him and that would have been the crux of the investigation. That has not been done in the present case. The mobile of the deceased also has not been seized and also who made the call was also not investigated by the Investigating Officer. The witnesses who have been examined before the Court as PWs.6 and 7 and their evidence is also not consistent and they have not witnessed the accused persons and they only say that they have over heard about accused persons talking about eliminating the deceased. They are also not aware or have any personal knowledge of the fact of financial transaction between accused Nos. 1 and 2 and the deceased.

6. Learned counsel brought to the notice of this Court to the fact that PW.3 heard about the talks were going on between the accused and the same is also not consistent. He had not seen and even he did not stop and heard about continuing of the transaction. Learned counsel would submit that he did not inform the same either to the



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police or to the family members of the deceased if the accused were talking about to eliminate him. The trial Court took note of even the evidence of PW.16 and the very use of the weapon which was seized and used for committing the offence also there is no positive evidence. The admission on the part of PW.16 is very clear with regard to the use of the very same weapon, though PM report discloses that deceased sustained gun shot injury, the evidence of PW.16 is not consistent with regard to the use of the same and also these accused persons only used the said gun.

7. Learned *amicus curiae* further submits that it is also not the case of the prosecution that the gun belongs to the accused No. 5. The only allegation is that accused Nos. 1 to 4 have collected the gun from accused No. 5 and used the same. The gun belongs to accused No. 5 is also not true. Hence, it is not a case for reversal.



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8. Having heard the learned Addl. SPP Sri. Mohammed Ayub Ali and also Smt. Kalpana, learned *amicus curaie* who appears on behalf of the respondent Nos. 1 to 5 and also having reassessed material available on record, the points that would arise for the consideration of this court are:

"i) Whether the trial Court committed an error in extending the benefit of doubt in favour of the accused Nos. 1 to 5 in acquitting the accused and, whether it requires interference of this Court to prove the guilt of the accused Nos. 1 to 5?

ii) What order? "

Point No.(i):

9. Having heard the respective counsel and also on perusal of the material available on record, no doubt, prosecution relies upon the evidence of PWs. 1 to 23 and also documents at Exhibits P1 to P34 and also the material Objects as MOs.1 to 30.

10. The very factual matrix of the case of the prosecution is that due to the prior ill-will, there was a



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financial transaction between the accused Nos. 1 and 2 and deceased as well as the deceased was having a relationship with the sister-in-law of the accused No.1, there was a motive to eliminate him. It is also the case of the prosecution that with an intention to take away the life, he was taken to hunting by the accused persons and on the guise of hunting, took him and committed the murder.

11. The prosecution mainly relies upon the evidence of PWs. 1 and 2 and their evidence is very similar that the deceased received a phone call at around 09.00 p.m. and he had left the house, but when he did not turn up and the complaint was lodged. On perusal of Ex.P1-complaint, wherein, except stating that deceased received a call on 10.08.2013 at 09.00 p.m., and immediately, he left the house and they were not aware of who had called him, but only found the gunshot injury on his dead body and thereafter, they lodged the complaint. It is stated in the



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complaint that deceased went for hunting along with neighbours, Nagaraj Pujari, Sundara Pujaari and other two persons and the same was informed to him by his cousin brother and due to personal grudge, they might have killed him. Based on this complaint dated 11.08.2013, which was the lodged at 11.00 am, case was registered for the offences punishable under Section 302, r/w 34 of IPC and Sections 3, 5, 25, 27 and 30 of the Arms Act, 1959. The police based on the said complaint, registered Crime No. 63/2013 and accused persons were arrested and recovery of the gun, the same was also seized and has been sent to the expert for examination.

12. Having perused the Post Mortem Report which is marked as Ex.P12, it is clear that cause of death was *"due to Hemorrhage as a result of laceration of heart, secondary to shotgun injury. Approximate time death was 12 to 24 hours prior to conducting of post mortem examination"*. On perusal of this report, it is very clear



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that death was due to an injury sustained by heart and it was in the nature of injury of shot gun injury and hence, it is clear that cause of death is on account of homicidal death.

13. In order to connect the accused persons, the prosecution mainly relies upon the FSL Report, which is marked before the Court as Ex.P13, is clear that the *"bloodstained articles vide Sl.Nos. 17 to 27 were subjected to serological analysis and the specimen cuttings/samples/scrapings were completely utilized for serology work"* and Serology Report is very clear that human blood was found in Item Nos. P4, P26, P27, P28, P29, P30, P31, P32, P33 and P21 are stained with human blood. Blood group of the stains were also A and B group blood. But blood group of the stains in Item No. P4 could not be determined because the results of the tests were inconclusive.



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14. The Court has to take note of the evidence of PW.16-expert, who has been examined before it with regard to the usage of the said gun which was seized. His evidence is that Item Nos. 6 and 7- cement colour shirt and bermuda and no sign of any gunshot in any of the said clothes. Item No. Sl.No.10 also found unfit for chemical test and he gave the report in terms of Ex.P14. The Sl. Nos. 2 to 4 objects are used for gunshot and the report of the expert as per Ex.P14, that SBML gun in Article No. 13 bears signs of discharge, but no opinion regarding the actual date and time of firing, but only bears the signs of discharge, but no opinion regarding the actual date and time of firing, but the very weapon was seized within 2 days of the incident. The presence of GSR was not detected on the garments in Article Nos. P21 and P22 and having perused this evidence of PW.16 and also the Ex. P14, which is not sure about the very usage of the gun and time is also not ascertained and the material evidence



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of this witness is not helpful to the prosecution with regard to the firing and using of the said gun is concerned.

15. Now the other evidence before this Court is also that PWs. 1 and 2 who are the brothers of the deceased victim and it is elicited that there is no any mention of financial dispute between accused Nos.1 and 2 with the deceased. In Ex. P1-complaint, the same is not stated but only an attempt is made by the prosecution that there was a financial dispute to the tune of Rs.25,000/- was borrowed by accused Nos.1 and 2 from the deceased. In order to prove the fact that the deceased was having a relationship with the sister-in-law of the accused No.1 also, there is no any positive evidence before the Court. The answer elicited from the mouth of PWs.1 and 2 is also not sufficient with regard to the motive for committing the murder is concerned. The evidence of PW.3 who claims that when he was proceeding on the previous day at 05.30 p.m., he found Nagaraj, Sundara, Raju and another



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person and all of them were drinking alcohol and accused Nos. 1 and 2 were talking about how to eliminate the deceased, but, he went there after hearing the same. Subsequently, he came to know about all of them went for hunting and body of the deceased was recovered, but, he did not inform the said talks to any relatives and also any other person. This witness was also turned hostile, but his cross-examination was conducted by the learned Public Prosecutor and also the accused side. Wherein, he categorically admits that he did not inform the same to anybody else including the police as well as the relatives of the deceased. His evidence cannot be believed.

16. The other witness PW.4, who only went and found the dead body, but, he categorically says that he is not aware of persons who have committed the murder. The PW.5 also says that on the next day he went and found the dead body and his evidence is also not useful to the prosecution. He categorically admits that with regard



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to the quarrel between the deceased as well as the accused Nos.1 and 2, no complaint was registered and suggestion was made that the deceased never informed the financial transaction and the same was continued. PWs.6 and 7 also speak about the fact that they overheard the discussion between the accused persons, but in the cross-examination, PW.6 categorically admits that when he overheard the sound, it was dark night, and he was not aware of any earlier ill-will in respect of the financial transaction and not aware of the said financial transaction personally. Hence, the evidence of PW.6 also does not come to the aid of prosecution. The PW.7 also says that on the next day he went and found the dead body, but he claims that at around 6.00 p.m., he found the discussion made by the accused, the deceased was taken to hunting and committed his murder. But he says that he did not make any statement before the police and this witness was also treated as hostile. In his cross-examination, he says that police have enquired him. The police might have



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noted in the statement about Rs.25,000/- financial transaction, but, he does not know anything about financial transaction. The evidence of PW.7 also does not help the prosecution.

17. The other witness of PW.8 is only with regard to seizure of five mobile phones of the accused persons and subjected for personal search. He is the signatory to the mahazar at Ex.P6 and also Ex.P7 and also seizure of the gun in terms of Ex.P8 and identifies the mobiles and also the gun. But in his cross-examination, he admits that he is the resident of Sagara and deceased belongs to his community and 4 persons were there in the police station and he cannot tell the details and description of each mobile as to which accused does it belong to. He was sitting in the jeep along with other persons.

18. Having perused the evidence of PWs.1 to 8 and also the evidence of PW.14-Associate Professor, KMC, Manipal, Post Mortem report discloses cause of death but,



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in order to connect the accused persons, the evidence of PW.16 is not helpful to the case of prosecution, as there is no definite evidence before the Court about the use of said weapon and time of using the said gun, there is no positive evidence.

19. Having considered the evidence of all the above witnesses, it can be said that no any chain link is established between each evidence of prosecution witnesses. In a case of circumstantial evidence, there must be a chain link established in respect of each of the chain links and the same is not found in the case on hand. While reversing the acquittal into conviction there must be a positive evidence before the Court and there is no present evidence before the Court. The Hon'ble Supreme Court in the case of **RAJESH PRASAD V. STATE OF BIHAR**, reported in **2022 (3) SCC 471**, while considering the material and approach or reasoning of the High Court, if it is perverse, where incontrovertible evidence has been



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rejected by the High Court, based on suspicion and surmises which are rather unrealistic, at paragraph 31.2.1 of the judgment, has observed thus:

"31.2.1. *Where the approach or reasoning of the High Court is perverse:*

- (a) *Where incontrovertible evidence has been rejected by the High Court based on suspicion and surmises, which are rather unrealistic. [State of Rajasthan v. Sukhpal Singh, (1983) 1 SCC 393 : 1983 SCC (Cri) 213 : AIR 1984 SC 207]] For example, where direct, unanimous accounts of the eyewitnesses, were discounted without cogent reasoning. [State of U.P. v. Shanker 1980 Supp SCC 489 : 1981 SCC (Cri) 428]]*
- (b) *Where the intrinsic merits of the testimony of relatives, living in the same house as the victim, were discounted on the ground that they were "interested" witnesses. [State of U.P. v. Hakim Singh [State of U.P. v. Hakim Singh, (1980) 3 SCC 55 : 1980 SCC (Cri) 534 : AIR 1980 SC 184]]*
- (c) *Where testimony of witnesses had been disbelieved by the High Court, on an unrealistic conjecture of personal motive on the part of witnesses to implicate the accused, when in fact, the witnesses had no axe to grind in the said matter. [State of Rajasthan v. Sukhpal Singh, (1983) 1 SCC 393 : 1983 SCC (Cri) 213 : AIR 1984 SC 207]]*
- (d) *Where dying declaration of the deceased victim was rejected by the High Court on an irrelevant ground that they did not explain the injury found on one of the persons*



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*present at the site of occurrence of the crime.
[Arunachalam v. P.S.R. Sadhanantham]
(1979) 2 SCC 297 : 1979 SCC (Cri) 454]]*

- (e) Where the High Court applied an unrealistic standard of "implicit proof" rather than that of "proof beyond reasonable doubt" and therefore evaluated the evidence in a flawed manner. [State of U.P. v. Ranjha Ram, (1986) 4 SCC 99 : 1986 SCC (Cri) 374]]*
- (f) Where the High Court rejected circumstantial evidence, based on an exaggerated and capricious theory, which were beyond the plea of the accused; [State of Maharashtra v. Champalal Punjaji Shah, (1981) 3 SCC 610 : 1981 SCC (Cri) 762]] or where acquittal rests merely in exaggerated devotion to the rule of benefit of doubt in favour of the accused. [Gurbachan Singh v. Satpal Singh, (1990) 1 SCC 445 : 1990 SCC (Cri) 151]]*
- (g) Where the High Court acquitted the accused on the ground that he had no adequate motive to commit the offence, although, in the said case, there was strong direct evidence establishing the guilt of the accused, thereby making it unnecessary on the part of the prosecution to establish "motive". [State of A.P. v. Bogam Chandraiah, (1986) 3 SCC 637 : 1986 SCC (Cri) 357 : AIR 1986 SC 1899] "*

20. In the light of above discussion, the question of converting the acquittal to a conviction does not arise. The principles laid down by the Hon'ble Apex Court in the case referred *supra*, it is very clear that if any perversity is



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found and also the evidence of the prosecution witnesses are not considered in a proper perspective, which has resulted in miscarriage of justice, then only this Court can reverse the finding of the trial Court and such circumstance is not warranted in the case on hand in view of the evidence available on record. Overall considering the evidence, nothing suggests to come to such a conclusion and the trial court also considering the material available on record rightly comes to a conclusion that prosecution failed to prove the case against the accused persons. When such being the case, we do not find any error on the part of the trial Court in appreciating both oral and documentary evidence, even when oral evidence is not consistent and documentary evidence particularly the Ex.P14 and also the FSL Reports are not consistent with each other with regard to the using of the very weapon for firing the deceased is not a definite evidence.



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21. Under the circumstances, we do not find any ground to reverse the finding of the trial Court and answer the point in ***negative***.

Point No.(ii):

Accordingly, in view of the discussion made hereinabove, we pass the following:

ORDER

The appeal is ***dismissed***.

The Registry is directed to pay the charges of Rs.10,000/- to the learned *Amicus Curiae* Mrs. P V Kalpana for the effective assistance given to this Court on behalf of respondent Nos. 1 to 5.

Sd/-
(H.P.SANDESH)
JUDGE

Sd/-
(B.PRAMOD)
JUDGE