

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11TH DAY OF SEPTEMBER, 2026

PRESENT

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

AND

THE HON'BLE MR. JUSTICE B.PRAMOD

CRIMINAL APPEAL NO.254 OF 2026 (A)

BETWEEN:

THE STATE OF KARNATAKA
BY THE K.R.PETE RURAL POLICE STATION
MANDYA DISTRICT
REPRESENTED BY
THE STATE PUBLIC PROSECUTOR
HIGH COURT BUILDING
BENGALURU-560 001

...APPELLANT

(BY SRI SUHAS GOWDA M., H.C.G.P.)

AND:

1. SHIVU @ SHIVU M. M.
S/O. MAHENDRA
AGED ABOUT 30 YEARS
R/AT MOODANAHALLI VILLAGE
AKKIBEBBALU HOBLI
K.R.PETE TALUK
MANDYA-571 426

2. BABY @ BABU M. A.
S/O. LATE ANIL
AGED ABOUT 27 YEARS
R/AT MOODANAHALLI VILLAGE
K.R.PETE TALUK
MANDYA-571 426

...RESPONDENTS

(BY SRI SHRIDHARA K., ADVOCATE FOR R-1,
SRI B. T. VENKATESH, ADVOCATE FOR R-2)

Digitally signed
by
SHARAD DAVANI
B
Location: HIGH
COURT OF
KARNATAKA



THIS CRL.A. IS FILED U/S. 378(1) AND (3) CR.PC (FILED U/S. 419(1) AND (3) BNSS) BY THE ADVOCATE FOR THE APPELLANT-STATE AND STATE PP PRAYING TO GRANT LEAVE TO APPEAL AGAINST THE IMPUGNED JUDGMENT AND ORDER OF ACQUITTAL DATED 25.07.2025 PASSED BY THE III ADDITIONAL DISTRICT AND SESSIONS JUDGE, MANDYA (SITTING AT SRIRANGAPATNA) IN S.C.NO.5007/2022 ACQUITTING THE RESPONDENT/ACCUSED NOS.1 AND 2 FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 302 AND 435 READ WITH SECTION 34 OF IPC AND SET ASIDE THE IMPUGNED JUDGMENT AND ORDER OF ACQUITTAL DATED 25.07.2025 PASSED BY THE III ADDITIONAL DISTRICT AND SESSIONS JUDGE, MANDYA (SITTING AT SRIRANGAPATNA) IN S.C.NO.5007/2022 ACQUITTING THE RESPONDENT/ACCUSED NOS.1 AND 2 FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 302 AND 435 READ WITH SECTION 34 IPC BY ALLOWING THIS CRIMINAL APPEAL AND ALSO CONVICT AND SENTENCE THE ACCUSED/RESPONDENT NOS.1 AND 2 FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 302 AND 435 READ WITH SECTION 34 OF IPC.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 01.09.2026, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

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

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE B.PRAMOD)

The present appeal is filed by the State challenging the judgment of acquittal dated 25th July, 2025, passed in S.C. No. 5007 of 2022 by the III Additional District and Sessions Judge, Mandya, for the offences punishable under Sections 302 and 435 read with Section 34 of the Indian Penal Code, and prayed to convict the accused/respondents.

2. Heard Sri Suhas Gowda M., learned HCGP for appellant-State, Sri Shridhara K., learned counsel for respondent No. 1, and Sri B.T. Venkatesh, learned counsel for respondent No. 2.

3. The factual matrix of the case of prosecution before the Trial Court is that accused No.1 and the deceased Raghu belonged to the same family. Accused No. 2 and Accused No. 1 were friends. The mother and sister of the deceased, namely Gowramma and Shruthi, were in cordial terms with some of the people in the village. Accused No. 1, not being satisfied with this fact, asked

Raghu to advise his mother and sister properly. In this regard, there was a quarrel between accused No. 1 and Raghu, which created animosity between them.

4. It is further the case of prosecution that on 25.09.2021 at about 11.30 p.m., deceased Raghu had parked his Hyundai Accent Car bearing registration No. KA-54/6701 about 50 feet away from his house, with the intention to cause damage to the said car. Accused Nos. 1 and 2 came near the car and opened the back left window glass of the car, and accused No. 1 poured petrol on the said car. On that same night, while going to the lavatory, Raghu woke up and came outside, and having noticed somebody roaming near the car, he took the car key from home and found the window glass of the back left door was kept open. Accused Nos. 1 and 2, by pretending that Raghu might lodge a complaint against them regarding damages to the car, and with an intention to kill Raghu, accused No.1 sprinkled the petrol on him and lit fire. As a result, Raghu sustained burn injuries and was admitted to K.R. Hospital at Mysuru. On 29.09.2021 at about 11.00

p.m., he succumbed to the injuries while he was taking treatment.

5. Based on the complaint, a case has been registered in Crime No.0196 of 2021, and the police, after investigation, filed the charge sheet against the accused persons for the offences punishable under Sections 302 and 435 read with Section 34 of the Indian Penal Code. The accused did not plead guilty and claimed trial.

6. The prosecution, in order to prove its case, examined 22 witnesses as PW.1 to PW.22, got marked 40 documents as Exhibit P.1 to Exhibit P.40, and also marked material objects as MO.1 to MO.7. The statement of the accused Nos. 1 and 2 was recorded under Section 313 of the Code of Criminal Procedure, and they denied the incriminating circumstances appearing in the evidence of prosecution witnesses against them. On behalf of the accused, one Thimmegowda and Yogeesh were examined as DW. 1 and DW.2 respectively, and 27 documents were marked as Exhibit D.1 to Exhibit D.27.

7. The Trial Court has noted that in Exhibit P.4, the statement of the deceased, PW. 4 has stated that her husband had given the statement under Exhibit P. 4 in her presence to PW. 18, and she read it over to her husband, and he put his left thumb impression before her. The Trial Court, in paragraph 17, has noted that due to the incident, Raghu sustained burn injuries on both his hands and therefore, he was not in a position to affix his signature on Exhibit P.4. Hence, LTM was taken as per Exhibit P. 4(d). It is also noted that in Exhibit P.4, there are some insertions or added words.

8. It is noted in paragraph 19 that the document produced by the prosecution, especially the portion of the mahazar and Exhibit P.37 sketch drawn by the Investigating Officer, does not disclose the existence of a toilet outside the house of Raghu. It is the case of prosecution that on the date of the incident, he woke up in order to go to the lavatory and came outside. Hence, there is inconsistency in the case of prosecution. It is noted by the Trial Court in paragraph no.24 that there is delay in

recording the statements of material witnesses at the earliest point of time, and there is something fishy in the case of prosecution as has been projected.

9. It is noted by the Trial Court in paragraph 28 that in order to prove drawing up of Exhibit P.1 Mahazar, the prosecution has examined Devaraju as PW.9 and Sathisha as PW.10. It is the evidence of PW.9 that the police have examined the car and they found that some area on the roof of the car was burnt and the petrol smell was emanating. According to him, he has not seen the seizure of MO.1 to MO.6. Further, according to him, he has not seen enmity with Gowramma and, on the contrary, he is in cordial terms.

10. In paragraph 31, it is noted that though PW. 1 has deposed in her chief examination that there is some land dispute, but there is no mention of any litigation pending between the family of Shekara and Mahendra. Hence, the evidence of PW. 1 that in connection with the land dispute, Shivu had made an attempt to kill Raghu is not accepted.

11. In paragraph 32, it is noted that the ill-will between the family of Shekara and Mahendra is nothing but a pigment of imagination, and as per the conversation available in Exhibit D. 20, it is mentioned that there was a conversation that somebody had poured petrol and lit fire to the car. However, the conversation of PW.1 did not mention the presence of Shivu and Babu at the spot, i.e., the accused. The Trial Court, after considering the material available on record, came to the conclusion that the prosecution has failed to prove the charges levelled against the accused beyond reasonable doubt. However, it has noted in paragraph 34 that the death of the victim in the present case is not a natural one, and accordingly acquitted the accused persons.

12. Being aggrieved by the order of acquittal, the State has preferred this present appeal.

13. It is the contention of the learned HCGP for the State that PW.1 is an eye-witness and had informed the incident, and the defense counsel had extensively cross-examined the said witness, but nothing has been elicited

from her mouth to disbelieve her. The evidence of PWs. 1, 2, 3, 4, and 11 has not been properly appreciated, and that PW. 18, the Police Officer who recorded the statement in the Hospital, has clearly supported the case of the prosecution. Minor discrepancies will not risk the case of the prosecution.

14. Per contra, learned counsel appearing for respondent No.2 has contended that the hands of the victim were burnt and affixture of signature on Exhibit P.4 is untenable. Further, there are some insertions in Exhibit P. 4. Further, it is the contention of learned counsel for respondent No.2 that Exhibit P.37 sketch drawn by the Investigating Officer does not show the existence of a toilet outside the house of Raghu, as it is the case of prosecution that Raghu had come out in the night to go to the toilet and the incident had occurred. Further, it is the contention of the learned counsel for respondent No.2 that the Trial Court, after proper appreciation, has passed the order of acquittal and requires no interference.

15. Having considered the contentions of the learned counsels for the respective parties and having perused the material on record, the points that would arise for our consideration of this Court are:

"(i) Whether the Trial Court has committed an error in acquitting the accused for the offences punishable under Sections 302 and 435 read with Section 34 of the Indian Penal Code, and whether it requires interference of this Court to convict the respondents by reversing the judgment of acquittal?"

(ii) What Order?"

Regarding Point No. (i):

16. It is the case of the prosecution that in order to go to the lavatory, Raghu woke up and came outside the house, and he felt somebody roaming near the car, and he took the car key from home, and the incident in question has happened. It is to be noted that Exhibit P.37 sketch drawn by the Investigating Officer does not show or disclose the existence of a toilet outside the house of Raghu, and this omission is in direct contradiction to the version of events advanced by the prosecution and constitutes a material inconsistency in the evidence.

17. In paragraph 17, the Trial Court has noted, admittedly, that the deceased sustained burn injuries, including injuries to both hands. In paragraph 34, during the cross-examination of PW. 17, there is a suggestion that the left thumb impression does not belong to the deceased and that there is no MLC report regarding burn injuries on the left thumb of the deceased. However, the prosecution has not taken the trouble to prove beyond reasonable doubt that the said left thumb impression belongs to Raghu by bringing expert evidence. Nowhere in PW 4's evidence has it been stated that her husband gave the statement under Exhibit P.4 in her presence to PW.18. It is also noted in the same paragraph that when Raghu was receiving treatment, as per the prosecution, his Dying Declaration was recorded by PW.19 as per Exhibit P.13. A perusal of Exhibit P.13 would show that the right thumb impression was taken, and there is a clear variation in the curvature and size of the LTMs available as per Exhibit P.4(a) and Exhibit P.13(b). It is noted that there is no certificate on Exhibit P.4. It is also noted that since Raghu

was suffering from burn injuries, his LTM and RTM were taken on Ex P.4 and Ex P.13. However, merely proving LTM and RTM does not lead to the presumption that the averments made in Exhibit P.4 and Exhibit P.13 were made at the instance of Raghu. A meaningful reading of Exhibit P.4 would show that the same was in the handwriting of PW.18, who had registered the case. It can further be inferred that the certification was made at the police station. In addition to this, there is no certificate on Exhibit P.4 as to who had written the same. Therefore, the only inference would be that the term recited in Exhibit P.4 to the effect that the inserted or added words were inserted by P.W 18 at the police station.

18. It is noted in paragraph 24 that PW. 1 had deposed that she had given a statement at the time of drawing Exhibit P.1 -Mahazar, but such statement is not available in the evidence. Further, PW.3 has deposed that after two months from the date of death of Raghu, he had gone to the police station and given the statement. Further, PW.4 has deposed that at the time of taking

possession of the dead body of Raghu, she had given the statement. This statement of PW.4 is also not available before the trial Court. If really PW.1 and PW.4 had rushed to the spot immediately and Raghu disclosed the incident to them, it is for them to disclose the same to the Investigating Officer at the earliest point of time. There is no explanation from the mouth of PW. 20 as to what was the impediment for them to record the statement of PW. 1 and PW.4 at the earliest point of time. Delay in recording the statement of material witnesses at the earliest point of time creates doubt in the case of the prosecution.

19. In paragraph 25, it is noted that the deceased Raghu nowhere stated that he directly saw the accused persons pouring petrol inside the car, and nowhere stated that accused No. 1 and 2 sprinkled the petrol on his back while he was looking inside the car and lit the fire. There is some reference to accused No.2, "Lo Babu". It is stated by him that by that time he called "Lo Babu", his mother PW.1 came out of the house and gave him water and buttermilk as he was screaming due to pain. But nowhere

has he stated about whether they escaped after lighting the fire. The mother of the deceased, in her evidence, has not stated about the presence of the accused persons after hearing the screaming sound of the deceased. Her evidence in paragraph 5 is just hearsay, as he has stated that the deceased told him that accused Nos. 1 and 2 sprinkled petrol on him, but she has not witnessed the incident. The main documents relied upon by the prosecution are Exhibit P.4, recorded by PW. 18 in the presence of PW.17.

20. The Trial Court has noted in paragraph No. 35 that a perusal of Exhibit P.4 shows that PW.17 has not certified to the effect that Raghu is in a position to give the statement. On the contrary, PW.17 has made an endorsement to the effect that Exhibit P.4 was taken before her. Thus, PW.17 has not made any certification with regard to the health and mental condition of Raghu to give the statement as per Exhibit P.4. It is also noted that no doubt PW.17 has deposed that as he had signed the Exhibit P.4, as per Exhibit P.4(c), the inference is that

Raghu was conscious, oriented, and was capable of giving the statement. But this evidence of PW.17 cannot be accepted as admittedly Raghu was admitted to the hospital due to burn injuries. Therefore, it was for PW.17 to issue a specific certificate or to certify on Exhibit P.4 specifically with regard to the mental and health condition of Raghu to give the statement as per Exhibit P.4. But such a certificate is not available in support of Exhibit P.4.

21. It is also noted in paragraph 25 that Exhibit P.4 simply states that based on old ill-will, Shivu had lit fire on him. But the animosity between Shivu and Raghu or their respective family has not been stated in Exhibit P.4. In addition to this, the overt act of accused No.2 Babu is not stated by Raghu. Even if it is said that Raghu was present along with Shivu, it does not mean to say that accused No.2 had participated in the commission of the crime, and the Trial Court has come to the conclusion that the prosecution has failed to establish the individual overt act of accused Nos. 1 and 2.

22. In paragraph 27, the Trial Court has given a finding that the evidence of PW.1 is in tune with the prosecution in support of drawing up of Mahazar Exhibit P.1 is concerned, and in paragraph 28, it is noted that to prove Exhibit P.1 Mahazar, the prosecution has examined Devaraju as PW. 9 and Sathisha as PW. 10. It is the evidence of PW.9 that the police have examined the car and they found some area on the roof of the car was burnt and petrol smell was emanating. According to him, he has not seen the seizure of MO.1 to MO.6. Further, according to him, he has no enmity with Gowramma and, on the contrary, he is in cordial terms with her. In paragraph 29, it is noted that at the earliest point of time, Raghu has simply stated in Exhibit P.4 that, based on old enmity, Shivu lit fire on him, and it was for the prosecution to prove what the enmity is.

23. The Trial Court has noted in paragraphs 30 and 31 that there is no litigation as such between the parties regarding the land dispute, and the Investigating Officer has not said anything of such enmity with regard to the

land dispute. Further, it is noted in paragraph 32 that the evidence of PW. 1 that during the lifetime of her husband there was no cordiality between the family of Shekara and Mahendra, but in her cross-examination at paragraph 53, she has deposed that in the marriage of Raghu, Mahendra and his wife have performed the marriage rituals and photographs were taken as per Exhibit D.4. The Trial Court has arrived at the conclusion that the evidence of PW.1 in her chief examination to the effect that there was ill-will between the family of Shekara and Mahendra is nothing but a pigment of imagination.

24. The Trial Court, in paragraph 34, on appreciation of the evidence of PW. 1, has concluded that her evidence is not sufficient to hold that the accused have gone near the car and poured the petrol and lit fire, and thereafter fire engulfed Raghu and as a consequence he sustained burn injuries, though it has noted that the death is not a natural one.

25. In the present case, there was a material inconsistency regarding the circumstances of the

incident-the prosecution's version was that the deceased had come outside to use a toilet, yet the sketch prepared by the Investigating Officer did not depict any toilet outside the house, creating a contradiction in the prosecution's narrative.

26. The evidentiary value of the Dying Declaration and the Mahazar (Exhibit P. 4) was severely undermined. The deceased had sustained burn injuries on both hands, yet the prosecution failed to prove beyond reasonable doubt that the left thumb impression on the document was that of the deceased. There was no expert evidence to establish this. Moreover, the document itself contained insertions and additions, and the certification regarding the deceased's mental and physical fitness to give a statement was not properly made by the person who recorded it. The differences in the size and curvature of the thumb impressions on different exhibits further cast doubt on their authenticity and provenance.

27. The testimony of material witnesses exhibited significant delays and inconsistencies. Key witnesses,

including PW.1 and PW.4, did not give their statements to the Investigating Officer at the earliest possible opportunity, and no satisfactory explanation was offered for the delay. The evidence of PW.1 regarding a land dispute and enmity between the families was contradicted by the absence of any pending litigation, and her cross-examination revealed that the families had in fact maintained cordial relations, including participating in marriage rituals together. The Trial Court rightly characterized the claimed ill-will as a "*pigment of imagination*."

28. The overt act of the second accused was never independently established. The deceased's statement, even if accepted, only referred to the first accused by name and did not clearly identify the second accused as a participant. The mother of the deceased, though she testified about what the deceased told her, herself did not witness the incident, making her evidence hearsay in nature.

29. The Apex Court has consistently held that in criminal cases, particularly those relying on circumstantial evidence or where the prosecution case contains material inconsistencies, the benefit of the doubt must be given to the accused. The burden of proving guilt beyond reasonable doubt rests entirely on the prosecution, and this burden is never displaced merely because the Court feels that the accused might be guilty. Only where the evidence is cogent, convincing, and free from reasonable doubt can an acquittal be reversed.

30. The Trial Court by considering the oral and documentary evidence, it rightly comes to the conclusion that the evidence of the prosecution witnesses does not corroborate with each other and there are inconsistencies in the evidence of the prosecution witnesses and contradictions. When such a reasoned order is given by the Trial Court and view of the above discussion, we do not find any ground to interfere with the findings of the Trial Court, and the same does not come within the principles laid down by the Apex Court in the

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reported in ***2024 (3) SCC 544*** and while reversing the judgment of acquittal into conviction, there must be cogent and convincing evidence and only if perversity is found, the Court can reverse the same. Hence, we answer the point No.(i) in the Negative.

Regarding Point No.(ii):

31. In view of the discussions made above, we pass the following:

ORDER

The appeal is ***dismissed***.

Sd/-
(H.P.SANDESH)
JUDGE

Sd/-
(B.PRAMOD)
JUDGE

MKM