



IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 11TH DAY OF FEBRUARY, 2026
BEFORE
THE HON'BLE MR. JUSTICE G BASAVARAJA
CRIMINAL APPEAL NO. 127 OF 2013 (C)

BETWEEN:

1. MR NOUFOL
S/O R MOHAMMAD
AGED ABOUT 24 YEARS
R/AT KUTHAR PADAV HOUSE
NEAR MUNNUR SCHOOL
MUNNUR VILLAGE
KUKKADAKATTE
MANGALOTE TQ, DK.
2. MR MOHAMMED IRSHAD
S/O IBRAHIM
AGED ABOUT 22 YEARS
R/AT MADAKA HOUSE
AMBLA MOGRU VILLAGE
MANGALORE TQ, DK
3. MR ABDUL SATHAR
S/O MOHAMMAD
AGED ABOUT 24 YEARS
R/A YADATH HOUSE
AMBLA MOGURU VILLAGE
KUTHARPADAV
MANGALORE TQ, DK
4. MR NOUSHAD
S/O UNHI
AGED ABOUT 21 YEARS
R/A MOBINA HOUSE
SURATHKAR, MANGALORE TQ, DK

...APPELLANTS

(BY SRI. SUYOG HERELE E., ADVOCATE)



AND:

STATE OF KARNATAKA
REPRESENTED BY
STATE PUBLIC PROSECUTOR
HIGH COURT BUILDINGS
BANGALORE

...RESPONDENT

(BY SRI. M. DIWAKAR MADDUR, HCGP.,)

THIS CRL.A. IS FILED U/S.374(2) CR.P.C PRAYING TO SET ASIDE THE ORDER DATED:16.10.12/ 24.11.12 PASSED BY THE ADDL.S.J., FTC, PUTTUR, D.K., IN S.C.NO.75/11 - CONVICTING THE APPELLANTS/ACCUSED FOR THE OFFENCE P/U/S 395 OF IPC. AND THE APPELLANTS/ACCUSED ARE SENTENCED TO UNDERGO R.I. FOR A PERIOD OF 5 YEARS EACH.THEY SHALL ALSO SENTENCED TO PAY FINE OF RS.5000/- EACH FOR AN OFFENCE P/U/S 395 OF IPC.

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

CORAM: HON'BLE MR. JUSTICE G BASAVARAJA

ORAL JUDGMENT

The appellants/accused Nos.1 to 4 have preferred this appeal against the judgment of conviction and order on sentence passed by the Additional Session Judge, Fast Track Court, Puttur, D.K. in SC No.75/2011 dated 16.10.2012.

2. For the sake of convenience, the parties herein are referred to as per their status before the trial Court.



3. Brief facts leading to this appeal are that, the Circle Inspector of Police, Belthangady Circle submitted the charge-sheet against the accused for the offence punishable under Section 395 and 397 of Indian Penal Code.

4. It is alleged by the prosecution that, on 24.01.2011 at 05.30 a.m. on Ujire-Charamudi Public Highway, all the accused have committed dacoity on CW1 and CW2, who were proceeding on a motorcycle by assaulting them with iron rod and hands. They have robbed one gold chain, one wallet, cash of Rs.10,000/-, two mobile phones, election identity card, ATM card from the possession of CW1. Thus, the accused have committed the offence punishable under Section 395 and 397 of Indian Penal Code.

5. The accused were released on bail. After filing the charge-sheet, case was registered in CC No.332/2011 on the file of Civil Judge and JMFC, Belthangady. Thereafter, case was submitted to the Court of Sessions and case was registered in SC No. 75/2011.

6. On hearing the charges, the trial Court has framed the charges against the accused for the offence under Section



395 of Indian Penal Code. Same was read over and explained to the accused. Having understood the same, accused No. 1 to 4 pleaded not guilty and claimed to be tried. Accused No.5 is absconding.

7. To prove the guilt of the accused, prosecution has examined 11 witnesses as PW1 to PW11. 18 documents were marked as Exhibit P1 to Exhibit P18. No material objects marked on behalf of the prosecution. On closure of prosecution side evidence, statements of the accused under Section 313 of Code of Criminal Procedure were recorded. The accused have totally denied the evidence of prosecution witnesses. However, they have not chosen to lead any defence evidence on their behalf.

8. Having heard the arguments on both sides, trial Court has convicted accused Nos.1 to 4 for the offence punishable under Section 395 of Indian Penal Code and passed sentence to undergo rigorous imprisonment for a period of 5 years each and to pay fine of Rs.5,000/- each. Being aggrieved by this judgment, the appellants have preferred this appeal.



9. Learned counsel Sri.Suyog Herale for the appellant, would submit that the judgment of conviction and order on sentence passed by the trial Court is highly illegal, unreasonable and arbitrary. The evidence placed on record suffers from contradictions, improvements and omissions from the evidence placed on record, it is clear that there is no nexus between the appellants and the crime. The prosecution has utterly failed to connect the appellants to the alleged crime. The identification of the accused has not been done as required under law. In order to prove the offence under Section 395 of Indian Penal Code, the prosecution is required to demonstrate before the Court conjoint action of 5 or more persons in removing and carrying the valuables of an individual and identify the said persons before the Court as the persons who carried the valuables of the victim and committed the offence of dacoity. PW2 is the friend of the complainant who has seen only 3 persons and he has deposed that two persons were sitting in the car whereas complainant has deposed that 5 persons were standing. The evidence of PW1 and PW2, who were the victims, do not corroborate each other. According to the prosecution, the incident occurred at 05.30 a.m. The place



of incident is a forest area and it was dark and possibility of identifying a person is very remote. Under the circumstance, it is difficult to believe the complainant identifying the accused standing in front of the car. There is also inordinate delay in filing the complaint.

10. The prosecution has failed to prove the recovery in accordance with law. The case of the prosecution stands on the circumstantial evidence and therefore, the alleged recovery with other chain of circumstances is required to be proved by the prosecution. Since, the prosecution has failed to prove the chain of circumstances against the appellants, the Court below ought to have acquitted the appellants. The impugned judgment is highly illegal, arbitrary, unreasonable and opposed to facts and probabilities of the case. On all these grounds, sought for allowing this appeal.

11. As against this, learned High Court Government Pleader Sri.M.Diwakar Maddur, would submit that the trial Court has properly appreciated the evidence on record in proper perspective manner. There are no grounds to interfere with the impugned judgment of conviction and order on



sentence passed by the trial Court and sought for dismissal of the appeal.

12. Having heard the arguments on both sides and on perusal of materials placed before this Court, the following points would arise for my consideration:

1. Whether the trial Court is justified in convicting accused Nos.1 to 4 for the offence punishable under Section 395 of Indian Penal Code?

2. What Order?

Regarding Point No.1:

13. Though the charge-sheet was filed against the accused for the offence punishable under Section 395 and 397 of Indian Penal Code, the trial Court has framed the charge only for the offence punishable under Section 395 of Indian Penal Code. The trial Court has not assigned any reasons for deletion of the offence punishable under Section 397 of Indian Penal Code.



14. The genesis of the case arises from the complaint filed by PW1 as per Exhibit P1, in which it is stated as under:

ವಿಷಯ: ದಿನಾಂಕ 24.01.11 ರಂದು ಬೆಳಗ್ಗಿನ ಜಾವ ಮುಂಡಾಜೆ ಗ್ರಾಮದ ಅಂಬಡತ್ಯರು ಎಂಬಲ್ಲಿ ಅಪರಿಚಿತ ವ್ಯಕ್ತಿಗಳಿಂದ ದರೋಡೆಗೆ ಒಳಗಾದ ಬಗ್ಗೆ ದೂರು.

ನಾನು ಬೆಂಗಳೂರಿನ ಲಾಲ್‌ಬಾಗ್‌ನಲ್ಲಿ ಮಹೇಂದ್ರ ಜನರೇಟರ್ ಸರ್ವಿಸ್ ಸಂಸ್ಥೆಯಲ್ಲಿ ಕೆಲಸ ಮಾಡುತ್ತಿದ್ದೇನೆ. ನನ್ನ ಉರಿನಲ್ಲಿ ನನ್ನ ಅಜ್ಜಿಯ ಉತ್ತರಕ್ರಿಯೆ ಕಾರ್ಯಕ್ರಮ ಇದ್ದುದರಿಂದ ನಾನು ದಿನಾಂಕ 23.01.2011 ರಂದು ರಾತ್ರಿ ಬಸ್ಸಿನಲ್ಲಿ ಬೆಂಗಳೂರಿನಿಂದ ಹೊರಟು ದಿನಾಂಕ 24.01.2011 ರಂದು ಬೆಳಿಗ್ಗೆ ಸುಮಾರು 5.15 ಗಂಟೆಗೆ ಉಜಿರೆಯಲ್ಲಿ ಬಂದು ಬಸ್ಸು ಇಳಿದೆನು. ನಾನು ಮೊದಲೇ ತಿಳಿಸಿದಂತೆ ನನ್ನನ್ನು ಕರೆದುಕೊಂಡು ಹೋಗಲು ನನ್ನ ಸ್ನೇಹಿತ ದಿನೇಶ್ ಎಂಬವರು ಅವರ ಮೋಟಾರ್ ಸೈಕಲ್‌ನಲ್ಲಿ ಉಜಿರೆಗೆ ಬಂದಿದ್ದರು. ಬಳಿಕ ನಾವಿಬ್ಬರೂ ಮೋಟಾರ್ ಸೈಕಲಿನಲ್ಲಿ ಮನೆ ಕಡೆ ಹೋಗುತ್ತ ಬೆಳಗ್ಗಿನ ಜಾವ ಸುಮಾರು 5.30 ಗಂಟೆಗೆ ಮುಂಡಾಜೆ ಗ್ರಾಮದ ಅಂಬಡತ್ಯರು ಎಂಬಲ್ಲಿ ಹೋಗುತ್ತಿರುವಾಗ ನಿರ್ಜನ ಪ್ರದೇಶದಲ್ಲಿ ಒಂದು ಟಾವೆರ ಕಾರು ನಿಂತಿದ್ದು ಅದರಲ್ಲಿದ್ದ 5 ಜನರು ನಮ್ಮ ಮೋಟಾರ್ ಸೈಕಲಿಗೆ ತಡೆ ಉಂಟು ಮಾಡಿ ನಮ್ಮಿಬ್ಬರಿಗೂ ರಾಡ್ ನಿಂದ ಹಾಗೂ ಕೈಗಳಿಂದ ಹಲ್ಲೆ ನಡೆಸಿ ನನ್ನಲ್ಲಿದ್ದ ಈ ಕೆಳಕಂಡ ಸೋತ್ತುಗಳನ್ನು ದರೋಡೆ ಮಾಡಿದರು.

1. ಚಿನ್ನದ ಸರ, ತೂಕ ಸುಮಾರು 2 ಪವನ್
2. ನಗದು ರೂಪಾಯಿ 10 ಸಾವಿರ
3. ನೋಕಿಯಾ 5233 ಮಾದರಿಯ ಮೊಬೈಲ್ ಫೋನ್ ಒಂದು
4. ಸೋನಿ ಎಕ್ಸ್‌ನ್ ಡಬ್ಲ್ಯು 395 ಮೊಬೈಲ್ ಫೋನ್ ಒಂದು
5. ಕರ್ನಾಟಕ ಬ್ಯಾಂಕಿನ ಎಟಿಎಂ ಕಾರ್ಡ್ ಒಂದು
(ಎಕೌಂಟ್ ನಂಬರ್ 0632500102305901)
6. ನನ್ನ ಚುನಾವಣಾ ಗುರುತು ಚೀಟಿ

ಮೇಲ್ಕಂಡ ಸೋತ್ತುಗಳನ್ನು ದೋಚಿ 5 ಜನರು ಕಾರು ಹತ್ತಿ ಉಜಿರೆ ಕಡೆಗೆ ಪರಾರಿಯಾದರು. ನಮಗೆ ಹೆದರಿಕೆ ಮತ್ತು ಗಣಿಗಾರಿಕೆಯಿಂದ ಕಾಲಿನ ನಂಜುವನ್ನು ಗಮನಿಸಲು ಆಗಲಿಲ್ಲ. ಆದರೆ ಕೆಂಪು ಬಣ್ಣದ ಟವೆರ ವಾಹನ ಆಗಿರುತ್ತದೆ. ನನಗೆ ಕಾರ್ಯ ಕ್ರಮದಲ್ಲ ಭಾಗವಹಿಸಲು ಇದ್ದುದರಿಂದ ದಿನೇಶನ ಜೊತೆ ಮನೆಗೆ ಹೋದೆನು. ಅಲ್ಲದೇ ಕಾರಿನ



ನಂಜು ಹಾಗೂ ಆರೋಪಿಗಳ ಬಗ್ಗೆ ಮಾಹಿತಿ ಇಲ್ಲದೆ ಇದ್ದುದರಿಂದ ಕಾರ್ಯಕ್ರಮ ಮುಗಿದ ಬಳಿಕ ಪೊಲೀಸರಿಗೆ ದೂರು ನೀಡುವ ಎಂದು ಸುಮ್ಮನಿದ್ದೆ. ದಿನಾಂಕ 26.01.2011 ರಂದು ಬೆಳಿಗ್ಗೆ ನಾನು ವಿಜಯಕರ್ನಾಟಕ ದಿನಪತ್ರಿಕೆಯನ್ನು ಓದುವ ಸಮಯ ಕೇರಳದಲ್ಲಿ ಕೆಂಪು ಬಣ್ಣದ ಟವರ್ ವಾಹನದಲ್ಲಿ ಬಂದು ದರೋಡೆ ಮಾಡಿದ ತಂಡವನ್ನು ಪೊಲೀಸರು ಹಿಡಿದಿದ್ದಾರೆ ಎಂಬ ಮಾಹಿತಿಯನ್ನು ಓದಿ ನಾನು ಮಾಹಿತಿ ಸಂಗ್ರಹಿಸಿ ಕೇರಳ ರಾಜ್ಯದ ನೀಲೇಶ್ವರ ವೃತ್ತ ನಿರೀಕ್ಷಕರ ಕಛೇರಿಗೆ ಹೋಗಿ ವಿಚಾರ ಮಾಡಿದಾಗ ಅಲ್ಲಿ 4 ಜನ ಆರೋಪಿಗಳಾದ ಸೌಫಲ್, ಮೊಹಮ್ಮದ್, ಇರ್ಶಾದ್, ಅಬ್ದುಲ್ ಸತ್ತಾರ್, ನೌಶದ್ ಎಂಬವರನ್ನು ಹಿಡಿದು ಟವರ್ ವಾಹನ ಕೆಎ. 01ಎಂಎಫ್- 2848 ನ್ನು ಸ್ವಾಧೀನ ಪಡಿಸಿದ ಹಾಗೂ ಒಬ್ಬ ಆರೋಪಿ ರೋಷನ್ ಎಂಬವರು ಪರಾಲಯಾದ ಖಜಾರ ತಿಲಯಿತು. ಪೊಲೀಸರಲ್ಲಿದ್ದ ಅಂದರೆ ಆರೋಪಿಗಳಿಂದ ಸ್ವಾಧೀನ ಪಡಿಸಿದ ನನ್ನ ಚುನಾವಣಾ ಗುರುತು ಚೀಟಿ ಮತ್ತು ಮೊಬೈಲ್‌ಗಳನ್ನು ನೋಡಿ ನನ್ನದೆಂದು ಗುರುತಿಸಿರುತ್ತೇನೆ. ಹಾಗೂ ಆರೋಪಿಗಳು ದರೋಡೆಗೆ ಬಂದ ವಾಹನವನ್ನು ನೋಡಿ ಗುರುತಿಸಿರುತ್ತೇನೆ. ಇದೇ ಆರೋಪಿಗಳು ನನ್ನಿಂದ ದರೋಡೆ ಮಾಡಿದ ಆರೋಪಿಗಳೆಂದು ಪೊಲೀಸರಲ್ಲಿದ್ದ ಫೋಟೋ ನೋಡಿ ಗುರುತಿಸಿರುತ್ತೇನೆ. ಆರೋಪಿಗಳ ಬಗ್ಗೆ ನನ್ನಲ್ಲಿ ಸರಿಯಾದ ಮಾಹಿತಿ ಇಲ್ಲದೆ ಇದ್ದುದರಿಂದ ಹಾಗೂ ಕಾರ್ಯಕ್ರಮದ ಒತ್ತಡದಿಂದ ದೂರು ನೀಡುವಾಗ ತಡವಾಗಿರುತ್ತದೆ. ನನ್ನಿಂದ ದರೋಡೆಯಾದ ಸೊತ್ತುಗಳ ಅಂದಾಜು ಮೌಲ್ಯ ರೂ. 51,000/- ಆಗಬಹುದು. ಈ ಬಗ್ಗೆ ಸೂಕ್ತ ಕಾನೂನು ಕ್ರಮ ಕೈಗೊಂಡು ದರೋಡೆಯಾದ ನನ್ನ ಸೊತ್ತುಗಳನ್ನು ಪತ್ತೆ ಮಾಡಿ ಕೊಡಬೇಕಾಗಿ ಈ ಮೂಲಕ ಬೇಡಿಕೊಳ್ಳುತ್ತೇನೆ."

15. On perusal of this complaint, it is crystal clear that the alleged incident took place on 24.01.2011. Complaint came to be filed on 27.01.2011 at 11.45 a.m. On the basis of this complaint, the Station House Officer of Belthangady Police Station registered the case in Crime No.28/2011 for the offences punishable under Section 395 and 397 of Indian Penal Code and submitted the FIR to the Court on the same day at 03.20 p.m. against accused Nos.1 to 5.



16. PW1-the complainant Avinash has deposed in his evidence that on 24.01.2011 and 25.01.2011, there was a funeral ceremony of his grandmother and since there was work in his house, he could not file a complaint. But this is not shown in Exhibit P1-complaint. A plain reading of the contents of the complaint shows that, at the time of alleged incident, the names of the accused were not known to the complainant-PW1. Only after identifying the accused in the police station, and after identification of his election ID card and mobile, he lodged the complaint on 27.01.2011.

17. On careful examination of the entire evidence of the prosecution witnesses, it is crystal clear that the prosecution has not properly explained the delay in filing the complaint. This will create doubt as to the alleged commission of alleged offence by these accused.

18. PW1 has deposed in his evidence as to the contents of Exhibit P1. Even in the evidence of PW1, he has stated that the accused No.2 has caught hold of his collar. Then another has snatched his gold chain, two mobiles and wallet, which contained Rs.10,000/- cash and he has also identified the



Tavera car. Except this, he has not deposed anything against the other accused. Even in Exhibit P1-complaint he has not deposed as to one of the accused caught hold of his collar and then another accused has snatching the gold chain and mobiles and wallet. Instead of that, he has stated that five persons came and restrained their motorcycle and two accused assaulted him with rods and hands. But same is not deposed in his evidence.

19. PW2-Dinesh Shetty, who was accompanied with PW1, has deposed in his evidence that on 24.01.2011, early morning, he and PW1 were proceeding on a motorcycle towards their village. When they came near Ambattiyaru, they found a Tavera car. Three persons were standing outside the car and the and two of them were sitting in the car. They restrained them and showed one a rod and knife. He started to run on seeing the person holding the rod and he was standing at the distance of 15 feet and saw him holding PW1. This incident took place for about 15 minutes. Then he came near PW1 and then he told that the accused have robbed one mobile, cash and gold chain and also the election ID card and he has identified



only accused No.2. Further he has deposed that after 2 months, police summoned them to the Belthangady police station and Accused No.1 to 4 were in the police station. PW2 has not deposed anything as to why he has not lodged a complaint as to the alleged incident.

20. PW3-Raghav Shetty, said to be the attesor has deposed in his evidence as to the spot Mahazar-Exhibit P6 and Exhibit P7- spot sketch.

21. PW4-Ramananda has deposed in his evidence as to the Mahazar conducted by the police as per Exhibit P8.

22. PW5-Rajesh has deposed in his evidence as to the seizure mahazar conducted by the police as per Exhibit P10.

23. PW6-Vinod, the owner of the Tavera vehicle bearing Registration No.KA01/MF-2848 has deposed in his evidence that prior to 4 days of seizure of this vehicle the accused Noufol and Roshan took this vehicle on rent basis for Rs.1,400/- and they have given Rs.1,000/- advance, and he has identified the accused No.1. After 4 days, vehicle was not returned to him. He called accused No.1 and Roshan (the absconding accused)



over mobile but their mobile phones were switched off. After 7-8, days he came to know that this vehicle is involved in robbery case. Then he went to Kerala police station and identified the Tavera vehicle. During his cross-examination, he has clearly admitted that he has not maintained any documents to show that he has handed over the vehicle to the Noufol and Roshan on rent.

24. PW7-K.Gangadarappa, PSI, PW8-K.Shivappa, Head constable, PW9-T.P.Manoharan, PW10-Vinod, Police Inspector, PW11-M.Sudarshan have deposed as to their respective investigation.

25. On careful examination of the entire evidence on record, it is crystal clear that PW1 has not lodged complaint soon after this alleged incident. PW2 has also not lodged any complaint to the police. PW1 and PW2 have also not given any intimation to the police as to the alleged incident. PW1 has not stated as to the mobile number in the complaint and has also not deposed as to the mobile said to have been robbed by the accused. Even at the time of filing complaint, which was filed after lapse of 3 days, PW1 has identified the photo of the



accused and he has not physically identified the accused in the police station. Even the physical description of the accused are not disclosed in the complaint. The Investigating Officer has not conducted test identification parade. Additionally, the Investigating Officer has not recovered anything from the possession of the accused, except Exhibit P9. Even at the time of trial also, PW1 and PW2 have not identified the accused except accused No.2.

26. Viewed from any angle, I do not find any cogent, convincing, clinching and corroborative evidence to convict the accused for the offence under Section 395 of Indian Penal Code. The trial Court has not properly appreciated the evidence on record in proper perspective manner and convicted the accused, which is not sustainable under law. Hence, I answer point No.1 in the negative.

Regarding Point No.2:

27. For the aforesaid reasons and discussions, I proceed to pass the following:



ORDER

i) Appeal is allowed.

ii) The judgment of conviction and order on sentence passed by the Additional Sessions Judge, Fast Track Judge, at Puttur, D.K. in SC No.75/2011 dated 16.10.2012, is set aside.

iii) Accused No. 1 to 4/appellant No. 1 to 4 are acquitted of the offence under Section 395 of Indian Penal Code.

iv) The trial Court is directed to return the fine amount if any deposited by the accused.

Registry is directed to send the copy of this judgment along with Trial Court records to the trial Court.

**Sd/-
(G BASAVARAJA)
JUDGE**

KBM
List No.: 1 Sl No.: 74