



CNR: KAHC010211652017

NC: 2026:KHC:42051
CRL.A No. 263 of 2017

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 6TH DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MR. JUSTICE S RACHAIAH

CRIMINAL APPEAL NO. 263 OF 2017 (A)

BETWEEN:

1. ASHWATH
S/O SHIVANNA
AGED ABOUT 25 YEARS
R/AT.NO.30, 1ST MAIN
2ND CROSS, KRISHNAPPA LAYOUT
NEAR NAGARABHAVI SAINT
JOHN SCHOOL
II STAGE, BENGALURU-40
2. BHASKAR
S/O NARASIMHA
AGED ABOUT 25 YEARS
R/AT NO.323, 2ND CROSS
2ND MAIN, HOSAKEREHALLI
GIRINAGARA, BENGALURU-30
3. VENUGOPAL
S/O.SEENAPPA
AGED ABOUT 24 YEARS
R/AT.NO.221
BHUVANESHWARI NAGAR
AVALAHALLI, K.R.PURAM
BANGALORE-85
4. R CHANDRASHEKAR
S/O.RAMEGOWDA
AGED ABOUT 30 YEARS
R/AT NO.13, 1ST MAIN

Digitally
signed by
SUSHMA
LAKSHMI B
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Location:
High Court
of Karnataka



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DOBIGHAT
HANUMANTHANAGARA
BENGALURE-19, NATIVE
HOMBALE KOPPALU
DEVALAPURA VILLAGE
NAGAMANGALA TALUK
MANDYA DISTRICT-50

5. SUNIL KUMAR
S/O.SHIVANNA
AGED ABOUT 27 YEARS
R/AT NO.HOASKEREHALLI
NEAR DATHATREAY TEMPLE
BANGALORE-40
NATIVE:KALLAHALLI
MADDUR TALUK
MANDYA DISTRICT-20

...APPELLANTS

(BY SRI.SUNIL KUMAR S., ADVOCATE FOR A1,A2,A4 & A5;

SRI.CHANDRAPPA K.N., ADVOCATE FOR A3)

AND:

THE STATE OF KARNATAKA
BY RURAL POLICE STATION
CHIKKAMAGALURU DISTRICT-563123
REP BY SPECIAL PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
BANGALORE-560 001

...RESPONDENT

(BY SMT.RASHMI PATEL, HCGP)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION
.374(2) CR.P.C PRAYING TO SET ASIDE THE JUDGMENT OF
CONVICTION AND SENTENCE DATED 15.12.2016 PASSED BY
THE II ADDITIONAL SESSIONS JUDGE, CHIKKAMAGALURU IN
S.C.NO.52/2013 - CONVICTING THE APPELLANTS/ACCUSED
FOR THE OFFENCE P/U/S 395 OF IPC.



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THIS APPEAL, COMING ON FOR CLARIFICATION, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:
CORAM: HON'BLE MR. JUSTICE S RACHAIAH

ORAL JUDGMENT

This appeal has been filed by the appellants being aggrieved by the judgment of conviction and order on sentence dated 15.12.2016 passed in SC.No.52/2013 on the file of the II Additional Sessions Judge, Chikkamagaluru, wherein, the accused Nos.1 to 5 have been convicted for the offences under Section 395 of IPC.

2. The rank of the parties will be considered henceforth as per their rankings before the Trial Court.

Factual matrix of the case:

3. The case of the prosecution is that on 29.10.2012 at about 02.00 am, the complainant and his companions had parked Chevrolet car near Devarahalli Gate on K.M.Road, accused Nos.1 to 5 came in a alto car and threatened them with knife point and committed



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robbery of gold chain, three mobile handsets etc. The complainant lodged a complaint before the respondent-Police. Upon the said complaint, the respondent-Police conducted investigation and submitted the charge sheet. The Trial Court on appreciating both oral and documentary evidence on record, convicted the accused. Hence, this appeal.

4. The submission of the learned counsel for the appellants that the judgment of conviction and order on sentence passed by the Trial Court is improper and erroneous and also against to the evidence on record. Therefore, the same is liable to be set aside.

5. It is further submitted that the Trial Court failed to appreciate the evidence of P.W.3, 4 and 5, who are stated to be the witness to the seizure mahazar. All these witnesses have turned hostile and not supported the case. When the recovery of the alleged gold ornaments and



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mobile phones is not proved, conviction ought not to have been rendered by the Trial Court.

6. It is further submitted that the evidence of P.W.1, 7 and 8 who are stated to be the eyewitness is inconsistent and improper in respect of identification of the assailants. The Investigating Officer has not conducted identification parade, which is mandatory to the case of the prosecution. In the absence of conducting the identification parade, rendering the conviction to the appellants is held to be erroneous and not proper. Therefore, the conviction rendered by the Trial Court deserves to be set aside. By making such submissions, learned counsel for the appellants prays to allow the appeal.

7. *Per contra*, learned High Court Government Pleader for the respondent-State vehemently justified the judgment of conviction passed by the Trial Court and submitted that mere non-conducting the identification



parade does not take away the case of the prosecution. In fact, the prosecution has proved the recovery of gold chain and mobile handsets from the accused. The accused have not offered any explanations in respect of those items. Therefore, the Trial Court has rightly recorded the conviction by drawing the adverse inference, which is appropriate and proper. Hence, the interference with the said findings may not be justified. Therefore, the conviction rendered by the Trial Court has to be upheld. Making such submissions, learned High Court Government Pleader for respondent-State prays to dismiss the appeal.

8. Having heard the learned counsel for the respective parties and on perusal of the findings of the Trial Court, it appears that on 29.10.2012 at about 02.00 am, the complainant and his inmates had been restrained wrongfully by the accused and they had committed robbery of gold chain and three mobile handsets. Hence, the complainant lodged a complaint. The Trial Court while



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appreciating the evidence of the witnesses opined that the prosecution has proved the case beyond reasonable doubt in respect of identification of accused and also recovery of mobile handsets, gold chain etc. and rendered the conviction.

9. The Trial Court mainly relied on the evidence of PWs.1, 7 and 8 who are stated to be the material witnesses of the case. Now, it is relevant to consider the evidence of the said witnesses for the purpose of re-appreciation.

10. P.W.1 in his evidence stated that he had not seen the accused after the incident, except on the date of the incident. However, he has identified the gold chain marked as M.O.1 and Mobile Phones marked as M.Os.2 to 4.

11. PW.3 stated to be the witness to Mahazar which is marked as Ex.P5, under which, alleged M.Os.1 to 4 were



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seized. However, he has turned hostile and not supported the case in respect of seizure of the articles.

12. PW.4 also not supported the case of the prosecution.

13. PW.5-Gold Appraiser. He was summoned to the Police Station to get the gold chain for weighing. According to him, he weighed the gold chain and affixed the signature to Ex.P5 at Police Station.

14. P.W.7 who is stated to be the inmates of the car stated in his evidence that accused have assaulted the inmates of the car by means of knife and caused injuries after committing the robbery and after taking all the mobile phones and gold chain, they took car key and fled away from the spot. Thereafter, they took one auto and went to the Police Station to lodge complaint. On 20.01.2013, he was summoned to the Police Station and showed mobile phones and one chain to him and he identified them. On going through the evidence of this



witness, the credibility in respect of the incident is probable and not specific. There are some inconsistencies in the evidence in respect of the alleged incident. Relying on the evidence of this witness to render conviction under such circumstances stated supra is erroneous and not proper. It is needless to state that identification parade has not been conducted to identify the accused even after they had been secured in this case.

15. Even the evidence of P.W.8 does not inspire the confidence for the reasons that he also not identified the accused.

16. In the absence of proper identification of accused, mere recovery of the alleged articles stated to have been stolen goods in the absence of the corroboration by the independent witnesses appears to be unnatural and not acceptable. If any conviction is rendered on such evidence, the said conviction is held to be unsustainable and untenable.



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17. Therefore, in the present case, even on going through the evidence of PWs.1, 7 and 8, it can be inferred that these witnesses have failed to identify the accused. Their identification in respect of accused in the Court cannot be said to be identified as per law. Therefore, the prosecution has failed to establish the identity of the accused. Moreover, the mahazar witnesses who suppose to depose about the seizure of M.O.1 to 4 have turned hostile and not supported the case. Therefore, I am of the considered opinion that the prosecution has failed to establish the case. However, the Trial Court rendered the conviction on the basis of probability, which appears to be erroneous and untenable. Therefore, the same is liable to be set aside.

18. Hence, I proceed to pass the following:

ORDER

i) The appeal is ***allowed***.



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ii) The judgment of conviction and order on sentence dated 15.12.2016 passed in SC.No.52/2013 on the file of the II Additional Sessions Judge, Chikkamagaluru is set aside.

iii) The appellants are acquitted for the offences punishable under Section 395 of the Indian Penal Code, 1860.

iv) Bail bonds executed, if any, stands cancelled.

**Sd/-
(S RACHAIAH)
JUDGE**