



CNR: KAHC010226042016

NC: 2026:KHC:52429
CRL.A No. 298 of 2016

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 22ND DAY OF SEPTEMBER, 2026
BEFORE**

**THE HON'BLE MR. JUSTICE G BASAVARAJA
CRIMINAL APPEAL NO.298 OF 2016 (C)**

BETWEEN:

SRI ZULEEN PASHA @ BABU
S/O FAKRUDDIN SAB,
AGE: 32YEARS,
R/O. DIGUVANETTAKUNTAPALLI,
TALUKA: BAGEPALLI,
CHIKKABALLAPUR DISTRICT-561207.

...APPELLANT

(BY SRI. VEERANNA G. TIGADI., ADVOCATE)

AND:

THE STATE OF KARNATAKA
REPRESENTED BY THE INSPECTOR
OF POLICE, CHELURU POLICE STATION,
TALUK: BAGEPALLI,
DISTRICT: CHIKKABALLAPUR-561207.

...RESPONDENT

(BY SRI. K. NAGESHWARAPPA, HCGP)

CRL.A. FILED U/S.374(2) CR.P.C BY THE ADVOCATE FOR
THE APPELLANT PRAYING THAT THIS HON'BLE COURT MAY BE
PLEASED TO SET ASIDE THE JUDGMENT OF CONVICTION AND
SENTENCE DATED 01.02.2016 PASSED BY THE PRL. DIST. AND
S.J., CHIKKABALLAPURA IN S.C.NO.108/2011 - CONVICTING
THE APPELLANT/ACCUSED NO.1 FOR THE OFFENCE P/U/S
279,338 AND 304(A) OF IPC.

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

CORAM: HON'BLE MR. JUSTICE G BASAVARAJA



CNR: KAHC010226042016

ORAL JUDGMENT

The appellant/Accused No.1 has preferred this appeal against the judgement of conviction and on sentence dated 01.02.2016 passed in SC No.108 of 2011 by the Principal District and Sessions Judge, Chikkaballapura (for short 'the trial Court').

2. The brief facts of this case, as alleged in the charge-sheet, is as under:

3. Prior to filing of charge-sheet, on the basis of complaint failed by PW3 as per Exhibit P7, Chelur Police have registered case in Crime No.3 of 2011 against unknown accused and driver of Tractor Engine number KA-42-T-2126 and trolley KA-42-T-8793 and submitted FIR to the Court. After investigation, investigating officer submitted charge-sheet against accused 1 and 2 for offence punishable under Sections 279, 304, 307, 584 of Indian Penal Code. The learned Magistrate has taken cognizance and case was registered in CC No.294 of 2011. After committal of case to the Sessions Court, it was registered as SC No.108 of 2011. Upon hearing, the trial Court, on 05.07.2014, framed charges for offences punishable



CNR: KAHC010226042016

under Sections 504, 323, 506, 307 and 304 read with 34 of Indian Penal Code. The same was read over and explained to the accused. Accused, having understood the same, pleaded not guilty and claimed to be tried. The learned Sessions Judge, again framed charges on 17.04.2015 against accused 1 and 2 for offence punishable under Section 302, 207, 504, 506, read with 34 of Indian Penal Code. The same were also read over to the accused and explained to them in the language known to them. Accused pleaded not guilty and claim to be tried.

4. To prove the guilt of the accused, the prosecution has in all, examined 11 witnesses as PWs1 to 11, got marked 15 documents as Exhibits P1 to P15. No material objects were marked. Having heard the arguments on both sides, the trial Court has acquitted accused 1 and 2 for offences punishable under Sections 504, 506, 307, 302, read with section 34 of Indian Penal Code. However, the trial Court has convicted accused No.1 for offence under Sections 279, 338 and 304A of Indian Penal Code. Being aggrieved by this judgement of conviction, accused No.1 has preferred this appeal.



CNR: KAHC010226042016

5. The learned Counsel Sri Veeranna G. Tigadi, appearing for the appellant/accused No.1, would submit that the judgment of conviction is illegal, perverse and not maintainable in law. He would submit that the trial court has not properly appreciated the evidence of prosecution witnesses and has ignored the fact that all the material witnesses including PW1-Sri Venkata Reddy, PW2-Sri Eerappa and PW3-Sri Ismail and the complainant, have not supported the case of the prosecution. The trial Court has ignored the fact that the prosecution has failed to establish the scene of offence. The trial Court has also failed to see that the prosecution has failed to establish the identity of the accused. The trial Court has failed to prove the case against both the accused while acquitting the accused No.2, wrongly convicted accused No.1. The trial Court has failed to see that there was no motive or intention for the accused No.1 to commit the offence as alleged against him. The trial Court convicted the accused only on the basis of allegations made in the complaint and the statement of witnesses recorded by the Police which is not a substantive evidence. The trial Court has not given any reasons nor has



CNR: KAHC010226042016

pointed out any evidence on record to convict the accused No.1. Only on the basis of assumptions and presumptions, the trial court has convicted the accused which is not sustainable. On all these grounds, it is sought to allow the appeal.

6. As against this, Sri K. Nageshwarappa, learned High Court Government Pleader, appearing for the respondent-State would fairly submit that the State has not preferred any appeal against the acquittal of accused 1 and 2 for offence under Sections 504, 506, 307, 302 read with 34 of Indian Penal Code. However, he would submit that the trial Court has properly appreciated the evidence on record and convicted the accused No.1 for offence punishable under Section 279, 338 and 304A of Indian penal code and accordingly sought for dismissal of the appeal.

7. Having heard the arguments on both sides and on perusal of material placed before this court, the following points would arise for my consideration:



CNR: KAHC010226042016

NC: 2026:KHC:52429
CRL.A No. 298 of 2016

- i) Whether the appellant/accused No.1 has made out grounds to interfere with the impugned judgement of conviction and order on sentence?
- ii) What order?

8. My answer to the above points are:

Point No.1: in the affirmative

Point No.2: as per final order

Regarding Point No.1:

9. I have examined the materials placed before this court. It is the case of the prosecution Chelur Police have registered case in Crime No.3 of 2011 against unknown accused and driver of Tractor Engine number KA-42-T-2126 and trolley KA-42-T-8793 and submitted FIR to the Court. After investigation, investigating officer submitted charge-sheet against accused 1 and 2 for offence punishable under Sections 279, 304, 307, 584 of Indian Penal Code. To prove the guilt of the accused, the prosecution has, in all, examined 11 witnesses



CNR: KAHC010226042016

**NC: 2026:KHC:52429
CRL.A No. 298 of 2016**

as PWs1 to 11, got marked 15 documents as Exhibits P1 to P15.

10. According to the case of prosecution, PWs1 and 2 are eye-witnesses. PW1-Venkat Reddy has deposed in his evidence that except he being the driver of the Tractor, he was not having any ill-intention to kill the deceased.

11. PW2-Eerappa, has deposed that about five years back while he was going with Mehboob Sab in the vehicle, the vehicle met with an accident and Mehboob Sab succumbed to the injuries sustained in the accident. Later they took treatment in the Hospital at Chintamani. Other witnesses are treated as hostile witness and with the permission of the court and were examined by the Public Prosecutor. During the cross-examination, he has categorically denied as to the statement said to have been recorded by the Investigating Officer under Section 161 of Cr.PC, which are marked as Exhibits P1 and P2 and also denied the photographs Exhibits P3 and P4.



CNR: KAHC010226042016

NC: 2026:KHC:52429
CRL.A No. 298 of 2016

12. PW3-Ismail is the brother of the deceased. He is a hear-say witness. He has not supported the case of the prosecution.

13. PW4-Fatima is the sister of the deceased, and she is also a hear-say witness.

14. PW5-S. Baba Jaan is the Mahazar witness to Exhibit P8.

15. PW6-Azad Baig, has deposed in his evidence as to inquest panchanama conducted by the Police as per Exhibit P9. This witness also has not fully supported the case of the prosecution.

16. PW7-Dr. V. Srinivas, has deposed in his examination as to conducting of post-mortem on the dead body and issuance of Post-mortem report as per Exhibit P10.

17. PW8 Dr. K.C. Chandrashekar, has deposed as to examination of injured Venkat Reddy and also as to giving of opinion stating that he found injury as mentioned in Exhibits P11 and 12-Wound certificates.



CNR: KAHC010226042016

NC: 2026:KHC:52429
CRL.A No. 298 of 2016

18. PW9-Sanjeevappa, Police, Sub-Inspector, PW10-Siddarammegowda, Dy.SP, PW11 Vasanth C., Circle Inspector, have deposed as to their respective investigation.

19. On careful examination of the entire evidence on record, it is clear that none of the material prosecution witnesses has supported the case of the prosecution. However, the trial Court has convicted the accused for the offence and Sections 279, 338 and 304A of Indian Penal Code without any legally acceptable evidence before the court. Only on the basis of presumptions, assumptions and conjunctures, the learned Judge as convicted accused No.1. Viewed from any angle, I do not find any cogent, convincing evidence to convict the appellant/accused No.1 for the offence punishable under Sections 279, 338 and 304A of Indian Penal Code. Accordingly I answer Point No.1, in the affirmative.

Regarding Point No.2:

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



CNR: KAHC010226042016

NC: 2026:KHC:52429
CRL.A No. 298 of 2016

ORDER

- i) Appeal is allowed;
- ii) Judgement of conviction and order on sentence dated 01.02.2016 passed in SC No.108 of 2011 by the Principal District and Sessions Judge, Chikkaballapur, is set aside.
- iii) Appellant/accused No.1 is acquitted for the offences punishable under section 279, 338 and 304A of Indian Penal Code;
- iv) The bail-bond executed by the accused shall stand cancelled;
- v) The trial Court is directed to refund the fine amount deposited by the accused, to him on proper identification.

Registry is directed to send the trial court records, along with copy of this Judgment, to the concerned Court.

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

Inn
LIST NO.: 1 SL NO.: 86