



CNR: KAHC010250012015

NC: 2026:KHC:54128
CRL.A No. 428 of 2015

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 29TH DAY OF SEPTEMBER, 2026
BEFORE**

**THE HON'BLE MR. JUSTICE G BASAVARAJA
CRIMINAL APPEAL NO. 428 OF 2015 (C)**

BETWEEN:

1. SHIVAKUMAR
S/O. SRINIVASA NAIDU,
AGED ABOUT 25 YEARS,
OCC: BMTc CONDUCTOR,
R/A. SONNASETTYHALLI,
CHINTAMANI TALUK,
KOLAR DISTRICT-563125.

...APPELLANT

(BY MS. RAKSHITHA P. SINGH, ADV. FOR
SRI. S BALAKRISHNAN., ADV.)

AND:

1. THE STATE OF KARNATAKA
CHINTAMANI TOWN POLICE STATION,
REP:BY SPP,
HIGH COURT OF KARNATAKA,
BANGALORE-560001.

...RESPONDENT

(BY SRI. K. NAGESHWARAPPA, HCGP)

CRL.A. FILED U/S 374(2) CR.P.C BY THE ADV. FOR THE APPELLANT PRAYING THAT THIS HON'BLE COURT MAY BE PLEASED TO SET ASIDE THE ORDER DATED:17.3.2015, PASSED BY THE P.O., FTC-II, CHINTAMANI, IN S.C.NO.28/2014- CONVICTING THE APPELLANT/ACCUSED FOR THE OFFENCES P/U/S 304 PART II OF IPC.

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



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CORAM: HON'BLE MR. JUSTICE G BASAVARAJA

ORAL JUDGMENT

1. The appellant has preferred this appeal against the judgment of conviction and order on sentence dated 17.03.2015 passed in SC.No.28/2014 by the Adhoc District and Sessions Judge, FTC-II, Chintamani (for short, 'the trial Court').

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

3. Brief facts leading to this appeal are that, the Police Inspector of Chintamani Town, laid charge sheet against the accused under Section 302 of IPC. It is alleged by the prosecution that, on 03.11.2013 at about 11.30 pm at Sonnasettyhalli accused picked up quarrel with his father and stabbed on his chest with scissors and murdered him on the road situated in front of his house. Thus, the accused has committed the alleged offence.



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4. After filing charge sheet, the case was registered in CC.No.95/2014. Thereafter, case was committed to the court of Sessions and same was registered in SC.No.28/2014. Accused appeared before the trial Court and was enlarged on bail. On hearing, the trial Court has framed the charge for the offence under Section 302 of IPC. The same was read over and explained to the accused. Having understood the same, accused pleaded not guilty and claimed to be tried.

5. To prove the guilt of the accused, the prosecution has examined, in all, 18 witnesses as PW1 to PW18, 19 documents were marked as Exs.P1 to P19. 6 material objects were marked as Mos.1 to 6. After closure of prosecution side evidence, statement under Section 313 of Cr.P.C was recorded. Accused has totally denied the evidence appearing against him.

6. Learned Counsel for the accused has filed written arguments. After hearing the arguments of prosecution,



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the trial Court has convicted the accused for the offence under Section 304 Part II of IPC and passed a sentence to undergo simple imprisonment for a period of 3 years and to pay fine of Rs.10,000/-. Being aggrieved by the judgment of conviction and order of sentence, the appellant/accused has preferred this appeal.

7. Learned counsel Smt. Rakshitha P Singh for the appellant, would submit that according to the prosecution, PW1 is witness to the incident and lodged a complaint as per Ex.P1 in the midnight about 12.10 hours on 04.11.2013. PW1 deposed that her husband sustained injury due to fall from the staircase on the gate and sustained injury on his ribs. Further, deposed that at the time of incident the appellant was in Bangalore. PW2 said to be the eye-witness, has deposed that, her father sustained injury due to fall on the gate while getting down from the staircase. She further denied statement recorded by the police as per Ex.P3 and has turned hostile. PW5 and



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PW6 said to be mahazar witnesses, have not supported the case of the prosecution. PW3 and PW4, witnesses to inquest Panchanama-Ex.P4, have not supported to the case of the prosecution. PW17 and PW18 are the police officials whose evidence are not relevant. PW16 is the Assistant Engineer who had drawn sketch Ex.P18. Only on the basis of presumption and assumption, the trial Court has convicted the accused without evidence, which is not sustainable under law. On all these grounds, it is sought for allowing the appeal.

8. As against this, the learned HCGP Sri Nageshwarappa K, would submit that the trial Court has properly appreciated the evidence and materials on record in accordance with law and facts and sought for dismissal of the appeal.

9. I have examined the materials placed before this Court. In all, 23 witnesses were cited in the charge sheet. Out of them, CW1, Smt. Padma is the complainant and



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also attester to the mahazar. CW2 and CW3 are the eye-witness to the incident. CW4 to CW7 are the panchas of inquest panchanama. CW8 to CW10 also deposed as preparing of inquest panchanama. CW11 and CW12 are attesters to the spot mahazar. CW13 to CW16 are the attesters to the seizure panchanama. CW17 has deposed as to the substance of the case of the prosecution. CW18 is the PWD Engineer, has deposed as to the Sketch prepared by him at the instance of police. CW19, Dr.Raghunath has deposed as to issuance of PM report and also examination of the dead body. CW20 is the police constable who has computerized the statement of witnesses. CW21 to CW23 are the police officials who speak about the investigation conducted by them.

10. CW1, Padma said to be the complainant and also attester to the mahazar, has not whispered anything against the accused. She has deposed that the accused is her son and her husband sustained injury due to fall from



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staircase, on the gate and sustained injuries on his ribs. Police took her signature on blank paper. This witness treated as hostile witness with the permission of the Court and cross-examined by the Public Prosecutor. During her cross examination, she has categorically denied the contents of Ex.P1.

11. CW3 Manjula said to be the eye-witness, has not supported the case of the prosecution. This witness also treated as hostile witness with permission of the court and cross-examined. During her cross-examination, she has categorically denied the statement said to have been recorded by the IO under Section 161 of Cr.P.C which is marked as Ex.P3.

12. CW4 Ramesha said to have been attester to the inquest Panchanama, examined as PW3, has admitted the signature on Inquest panchanama Ex.P4. But, he has denied all the other averments. This witness also turned hostile to the case of the prosecution.



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13. CW5, Mahesha, said to be attester to the inquest panchanama has not supported to the case of the prosecution.

14. CW11-Karthik and CW12-Nagraj V, said to be attesters to the spot mahazar Ex.P2, have not supported to the case of the prosecution.

15. CW19 Dr. Raghunath examined as PW7, has deposed as to the examination of dead body and also issuance of PM report as per Ex.P5.

16. CW14 Bhargava, CW15 Narayanswamy, CW16 Manjunath, said to be attesters to the seizure mahazar, have not supported to the case of the prosecution.

17. CW17 Bharath, examined as PW11 has also not supported to the case of the prosecution.

18. CW8 Shankarappa is the elder brother of the deceased.



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19. CW10 Manjunatha has not supported the case of the prosecution.

20. CW13 Gangaraju said to be attester to the seizure mahazar has not supported the case of the prosecution.

21. Other witnesses are the police officials have deposed as to their respective investigation.

22. PW16 Shivananda, Assistant Engineer, has deposed as to the sketch prepared by him as per Ex.P18.

23. On careful examination of the entire evidence on record, it is crystal clear that, all the material witnesses have not supported to the case of the prosecution. Even, the prosecution has treated them as hostile witnesses with the permission of the Court, then also, the prosecution has failed to elicit any favourable answers from them to substantiate the case of the prosecution. Though the prosecution has failed to place the legally acceptable evidence before the Court, the trial Court has convicted the accused for the offence under Section 304 Part-II of



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IPC, which is not sustainable under law. Hence, I proceed to pass the following:

ORDER

- (i) Appeal is **allowed**;
- (ii) The judgment of conviction and order on sentence dated 17.03.2015 passed in SC.No.28/2014 by the Adhoc District and Sessions Judge, FTC- II, Chintamani, is set aside;
- (iii) Accused is acquitted of the offence under Section 304 Part-II of IPC;
- (iv) The trial Court is directed to refund the bail amount, if any, deposited by the appellant;
- (v) The bail bond of the accused/appellant shall stand cancelled.

The Registry is directed to send copy of the judgment along with Trial Court Records to the concerned Court.

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

DHA
LIST NO.: 1 SL NO.: 50