



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11TH DAY OF MARCH, 2026

PRESENT

THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ

AND

THE HON'BLE MR. JUSTICE VENKATESH NAIK T

CRIMINAL APPEAL NO. 504 OF 2018 (C)

C/W

CRIMINAL APPEAL NO. 570 OF 2018

CRIMINAL APPEAL NO. 1982 OF 2018

IN CRL.A No. 504/2018

BETWEEN:

MR. YUVARAJ @ APPU
S/O BHASKARA ACHARI,
AGED ABOUT 29 YEARS,
R/AT SHIBARUR VAISHNAVI NILAYA,
DELANTHABETTU VILLAGE,
SOORINJE VILLAGE,
MANGALURU TALUK, D.K.-575 025.

...APPELLANT

(BY SRI. DINESH KUMAR K. RAO, ADVOCATE (P/H))

AND:

THE STATE OF KARNATAKA
THROUGH SURATHKAL POLICE STATION,
REPRESENTED BY
THE STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDINGS,
BANGALORE-560 001.

...RESPONDENT

(BY SMT. RASHMI JADHAV, ADDL. SPP (P/H))



THIS CRL.A. IS FILED U/S.374(2) CR.P.C., PRAYING TO SET ASIDE THE JUDGMENT AND ORDER OF CONVICTION DATED 24.02.2018 AND SENTENCE DATED 27.02.2018 PASSED BY THE IV ADDITIONAL DISTRICT AND SESSIONS JUDGE, D.K., MANGALURU IN S.C.NO.68/2015 - CONVICTING THE APPELLANT/ACCUSED NO.4 FOR THE OFFENCE P/U/S 143, 147, 148, 302, 506, 201 AND 202 R/W 149 OF IPC.

IN CRL.A NO. 570/2018

BETWEEN:

1. MR. LITESH @ LITHU
S/O RAGHUNATHA,
AGED ABOUT 24 YEARS,
R/AT PURNANUGRAHA,
PAPADI KALLU KOTE,
SOORINJE VILLAGE,
MANGALURU TALUK, D.K.-575 025.
2. SHOBHARAJ @ SHOBHI
S/O THIMMAPPA POOJARI,
AGED 27 YEARS,
R/AT KOTIYAN NIVAS,
D.NO.1/76, VIJAYANAGAR,
MADHYA VILLAGE,
MANGALURU TALUK, D.K.-575 023.
3. BHARATH
S/O SURESH KOTYAN,
AGED 23 YEARS,
R/AT SANJEEVINI NILAYA,
KOTE, 5 CENTS SITE, KOTE,
SOORINJE VILLAGE,
MANGALORE TALUK, D.K.-575 025.

...APPELLANTS

(BY SRI. DINESH KUMAR K. RAO, ADVOCATE (P/H))



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CRL.A No. 504 of 2018
C/W CRL.A No. 570 of 2018
CRL.A No. 1982 of 2018

AND:

THE STATE OF KARNATAKA
THROUGH SURATHKAL POLICE STATION,
REPRESENTED BY
THE STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDINGS,
BANGALORE-560 001.

...RESPONDENT

(BY SMT. RASHMI JADHAV, ADDL. SPP (P/H))

THIS CRL.A. IS FILED U/S.374(2) CR.P.C., PRAYING TO
SET ASIDE THE JUDGMENT AND ORDER OF CONVICTION
DATED 24.02.2018 AND SENTENCE DATED 27.02.2018
PASSED BY THE IV ADDITIONAL DISTRICT AND SESSIONS
JUDGE, D.K., MANGALURU IN S.C.NO.68/2015 - CONVICTING
THE APPELLANTS/ACCUSED NO.2 AND 3 FOR THE OFFENCE
P/U/S 143, 147, 148, 302, 506, 201 AND 202 R/W 149 OF IPC
AND APPELLANT/ACCUSED NO.5 FOR THE OFFENCE P/U/S 201
AND 202 R/W 149 OF IPC.

IN CRL.A NO. 1982/2018

BETWEEN:

SRI. SATHISH @ SACHHU @
SATHISH SOORINJE
AGED ABOUT 36 YEARS,
S/O LATE SESHAPPA,
PERMANENT RESIDENT OF
KOTE HOUSE,
SOORINJE VILLAGE AND POST,
VIA: KATIPALLA,
MANGALURU TALUK-560 712.

...APPELLANT

(BY SRI. DINESH KUMAR K. RAO, ADVOCATE (P/H))



NC: 2026:KHC:14535-DB
CRL.A No. 504 of 2018
C/W CRL.A No. 570 of 2018
CRL.A No. 1982 of 2018

AND:

STATE OF KARNATAKA
BY THE STATION HOUSE OFFICER,
SURATKAL POLICE STATION,
MANGALURU-560 712.
REP BY SPP,
HIGH COURT OF KARNATAKA,
HIGH COURT BUILDING,
BENGALURU-01.

...RESPONDENT

(BY SMT. RASHMI JADHAV, ADDL. SPP (P/H))

THIS CRL.A. IS FILED U/S.374(2) CR.P.C., PRAYING TO SET ASIDE THE JUDGMENT OF CONVICTION DATED 24.02.2018 AND SENTENCE DATED 27.02.2018 PASSED BY THE IV ADDITIONAL DISTRICT AND SESSIONS JUDGE, D.K., MANGALORE IN S.C.NO.68/2015 - CONVICTING THE APPELLANT/ACCUSED NO.1 FOR THE OFFENCE P/U/S 143, 147, 148, 302, 506, 201, 202 R/W 149 OF IPC.

THESE APPEALS, COMING ON FOR HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE MOHAMMAD NAWAZ
and
HON'BLE MR. JUSTICE VENKATESH NAIK T

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE MOHAMMAD NAWAZ)

These three appeals arise out of the judgment dated 24-02-2018 and order on sentence dated 27-02-2018 passed by the Court of IV Additional District and Sessions Judge, Dakshina Kannada, Mangalore in SC.No.68/2015.



2. Vide impugned judgment, the Trial Court has convicted accused Nos.1 to 4 for the offence punishable under Sections 143, 147, 148, 302, 506, 201 and 202 read with Section 149 of Indian Penal Code (for short, 'IPC') and accused No.5 for the offence punishable under Sections 201 and 202 read with Section 149 of IPC.

3. CrI.A.No.1982/2018 is preferred by accused No.1, CrI.A.No.570/2018 is preferred by accused Nos.2, 3 and 5 and CrI.A.No.504/2018 is preferred by accused No.4.

4. Heard Sri Dinesh Kumar K. Rao, learned counsel for the appellants, Smt.Rashmi Jadhav, learned Additional SPP for the State and perused the evidence and materials on record.

5. It is the case of prosecution that, accused No.1 was demanding money from deceased-Keshava Shetty and since he had not obliged to the demand of accused No.1, a quarrel had taken place. The deceased had lodged



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a complaint against accused No.1 at Surathkal Police Station and accused No.1 was arrested in the said case and he was sent to jail. Hence, accused No.1 had enmity against the deceased. Further, the deceased along with his friends had gone to the house of accused No.2 and scolded him and his mother and therefore, accused No.2 was also nurturing ill-will against the deceased. Due to the said enmity, accused Nos.1 and 2 decided to commit the murder of Keshava Shetty and conspired with accused Nos.3 and 4 and a child-in-conflict with law (CCL). In furtherance of the said conspiracy hatched by them, on 06.01.2015 at about 6.30 a.m., they formed an unlawful assembly, armed with deadly weapons like Talwars and came near the play ground at Janatha Bettu, in Kuthethur village, Mangalore taluk, wherein the deceased Keshava Shetty was playing badminton with Sampath V. - first informant (PW.3). They chased the deceased towards the forest and assaulted him with the weapons they were carrying, on the head, back, leg, face and other parts of



the body and committed his murder. After committing the murder, to cause disappearance of the evidence, accused No.5 concealed the motorcycle bearing Reg.No.KA-19/EH-0061, with an intention to screen the accused from legal punishment.

6. The incident took place at about 6.25 a.m. on 06.01.2015. Ex.P3 is the complaint lodged by PW.3 - Sampath V. In Ex.P3, it is stated that the deceased Keshava Shetty is the friend of the complainant. Everyday in the morning, they used to play shuttle badminton at Janatha Bettu, situated near the house of the complainant. As usual, the complainant went to play shuttle at about 6.20 a.m. and after five minutes, Keshava Shetty also came to play. When they were playing, at about 6.25 a.m., accused Nos.1 and 2 and two others holding Talwars, came to the place where they were playing. When the complainant tried to stop them, the accused started to attack the deceased. When the deceased started running, all the four chased him and assaulted him with Talwars



indiscriminately on his face, head and other parts of the body. Thereafter, the accused ran towards Kote Soorinje. Immediately, the complainant telephoned to the police and the police came to the spot.

7. In Ex.P3, the complainant has stated that he has seen the accused and he can identify them. He has further stated that since the deceased had not given money to accused No.1 - Sathish, there was a quarrel between them and in this connection, the deceased had lodged a complaint against him and accused No.1 was in prison. Hence, due to the said enmity, accused No.1 along with other accused persons committed the offence. It is further stated that while running away, the accused threatened the complainant with dire consequences, saying that, they will not leave him alone, if he inform others over phone.

8. PW.20, ASI of Surathkal Police Station, on receiving the written complaint sent by the Investigating Officer-CW.37 (PW.29) through ASI-Shivaprakash,



registered a case against accused Nos.1 and 2 and others and forwarded the FIR to the jurisdictional Court. PW.29-CPI, continued with the investigation and on completion of investigation, filed charge sheet against the accused.

9. Before the Trial Court, to establish the guilt of the accused, the prosecution in all examined 30 witnesses and got marked 42 documents and 26 material objects. The defense of the accused was total denial. However, no defense evidence was led.

10. The learned Sessions Judge, vide impugned judgment, came to the conclusion that the evidence of the prosecution witnesses substantiate that accused Nos.1 to 4 along with a juvenile, in furtherance of their common object, formed an unlawful assembly, holding deadly weapons and committed the murder of deceased-Keshava Shetty at Kuthethur, Soorinje village and after committing the murder, accused Nos.1 to 4 and a juvenile have escaped. Further, accused No.5 has hidden the motorcycle and thus the prosecution is able to establish that accused



Nos.1 to 4 have committed the murder and they are liable to be convicted for the offence punishable under Sections 143, 147, 148, 302, 506, 201 and 202 read with Section 149 of IPC and accused No.5 along with other accused have caused disappearance of evidence and omitted to give information and thereby committed the offence under Sections 201 and 202 read with Section 149 of IPC.

11. Assailing the impugned judgment, the learned counsel appearing for the appellants vehemently contended as under:

(i) All the material witnesses including the complainant examined as PW.3, have been treated hostile and they have not supported the case of the prosecution. The complainant examined as PW.3 has not corroborated the complaint averments; his testimony before the Court being the substantial evidence, he has given a go-by to the prosecution case;



(ii) PW.3 has not identified the accused who have committed the offence. According to him, he identified accused No.3 in the Test Identification Parade, whereas PW.18, the Tahsildar has stated that accused No.3 was not identified by PW.3;

(iii) According to PW.3, he gave a complaint at the spot and one more written complaint in the police station and therefore, the first complaint given at the spot has been suppressed;

(iv) The recovery of bloodstained clothes and weapons are not proved in accordance with law. The recovery is not from all the accused. On the other hand, the recovery of weapons has been effected from accused No.2 and recovery of clothes from accused No.3. Further, as per the evidence of panch witness, it is the police who showed the place from where the weapons were concealed. Therefore, the recovery of weapons and bloodstained clothes is doubtful;



(v) The panch witnesses, PWs.12 and 13 to Exs.P16 and P17 under which the Talwars and clothes recovered, have turned hostile and therefore the recovery is not proved;

(vi) The panch witnesses, PWs.10 and 11 for the recovery of mobile phone from accused Nos.1 and 2 under Exs.P14 and P15 have turned hostile;

(vii) Both PWs.1 and 2 have turned hostile and therefore, the case of prosecution that accused No.5 concealed the bike in the house of accused No.2 is also not proved;

(viii) The recovery of talwar - MO.7 from accused No.1 under Ex.P7 is also not proved since PW.17 has turned hostile and the evidence of PW.4 is full of contradictions;

(ix) The complainant - PW.3 has not corroborated the complaint averments in his evidence and there are material discrepancies. He has not identified the accused



persons who have committed the offence. There are contradictions in the evidence of PWs.3 and 18.

12. Per contra, the learned Additional SPP vehemently contended as under:

(i) PW.3 is the star witness, wherein he has lodged the complaint as per Ex.P1, giving minute details of the incident, and he has also identified accused Nos.1 and 2 and named them in the complaint. Further, he has stated that there were two more accused along with accused Nos.1 and 2;

(ii) PW.3 has stated about the money dispute between accused No.1 and the deceased. The motive is also spoken by PWs.7 and 8 - wife and elder brother of the deceased respectively. Hence, the prosecution has proved the motive for accused No.1 to commit the offence, along with other accused persons;



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(iii) There is recovery of bloodstained Talwars and bloodstained clothes belonging to the accused and the FSL report at Ex.P42 supports the prosecution case;

(iv) PW.3 - complainant has given evidence that he has identified accused No.3 in the Test Identification Parade and PW.18 - Tahsildar has clearly deposed that PW.3 has identified accused No.4 - Shobharaj in the Test Identification Parade and therefore, the identification of the said accused is firmly established.

(v) PW.23 - The Doctor who conducted PM report has given opinion regarding the weapons - MOs.4 to 7 stating that the injuries on the dead body is possible with the said weapons;

(vi) The Trial Court, after considering the entire oral and documentary evidence on record has convicted the accused. The reasons assigned by the trial Court are in accordance with law;



13. The dead body was subjected to postmortem examination. The postmortem was conducted by PW.23. The PM report is marked as Ex.P25. The following external injuries were noticed:

- a. Obliquely placed chop wound, 17 x 12 cm x bone deep on the face involving the both eyes and nose with underlying fracture of nasal and facial bones;
- b. Obliquely placed chop wound, 12 x 2 cm x bone deep located on the face, 1.5 cm below injury No.1 with underlying fracture of the nasal and facial bones;
- c. Obliquely placed chop wound, 20 x 3 cm x bone deep located on the face, over both the cheeks and philtrum, with underlying fracture of facial bones including the maxilla;
- d. Obliquely placed chop wound, 14x5 cm x oral cavity deep, over the lower lip. The underlying upper and lower jaw showed comminuted fracture with loss of teeth;



- e. Incised wound, 3 x 1 cm x muscle deep on the left temple;
- f. Incised wound 3 x 0.5 cm on the left cheek;
- g. Incised wound 9 x 1 cm on the left cheek with chop wound of the left ear;
- h. Incised wound, horizontally placed on the chin, measuring 7 x 0.5 cm x muscle deep;
- i. Two chop wounds angled at 25 degree to each other on the back of the head, left side, one measuring 10 x 1 cm x bone deep and the other measuring 10 x 1 cm x bone deep.
- j. Multiple chop wound over lapping each other, over an area of 10 x 14 cm x bone deep on the back of left side of neck and head;
- k. Chop wound, 4 x 1 cm x muscle deep on the back of left side of neck, 0.5 cm below injury No.10;
- l. Stab injury, 5 x 2 cm x muscle deep on the back of left side of neck, 3 cm below injury No.11.



- m. Chop wound, 6 x 1 cm x bone deep on the back of head on the right side;
- n. Obliquely placed incised wound, 2 x 0.5 cm x muscle deep on the front of left side of neck above the clavicle, tailing downwards and medially;
- o. Obliquely placed incised wound, 2.5 x 0.5 cm x muscle deep on the front of left shoulder, tailing downwards and medially;
- p. Stab injury, 3 x 1 cm x muscle deep, on the front of left side of chest, corresponding to 2nd intercostals space;
- q. Stab injury, 2 x 1 cm x muscle deep, on the front of left side of chest, corresponding to 3rd and 4th intercostals space, tailing downwards and medially;
- r. Obliquely placed incised wound, 6 x 1 cm x muscle deep, tailing upwards and medially on the front of right shoulder;
- s. Contusion, reddish, 7 x 2 cm on the front of right arm in its upper third;
- t. Contusion, reddish, 6 x 2 cm on the front of right arm, 6 cm below injury No.19;



- u. Incised wound, 4 x 0.2 cm on the front of right arm, in its lower third;
- v. Obliquely placed stab injury, 3 x 1 cm x bone deep on the back of right forearm in its lower third;
- w. Chop wound, 10 x 3 cm x bone deep involving the back of right fingers at their base (excluding the thumb) with partial amputation of fingers;
- x. Multiple superficial lacerations over an area of 14 x 8 cm, varying in sizes from 5 x 0.5 cm to 1 x 0.2 cm involving the front and outer aspect of left arm and elbow;
- y. Stab injury 3 x 1.5 cm x muscle deep on the back of left forearm in its middle third;
- z. Laceration, 6 x 2 cm x muscle deep, on the back of left forearm in its middle third;
- aa. Chop wound, 4 x 2 cm x bone deep involving the back of left thumb;
- bb. Two incised wounds, 1 x 0.5 cm and 3 x 0.3 cm on the back of left middle finger;



- cc. Stab wound, 4 x 2 cm cavity deep on the front of right side of chest among the anterior axillary line corresponding to 5th intercostals space;
- dd. Stab wound, 3 x 1.5 cm x muscle deep, on the right flank of abdomen;
- ee. Stab injury, 2 x 1.5 cm x muscle deep on the pubic area at the root of penis;
- ff. Stab injury, 2.5 cm 2 cm x muscle deep on the front of left side of chest along mid axillary line corresponding to 6th intercostals space;
- gg. Chop wound, 10 x 1 cm x bone deep involving the left palm;
- hh. Stab wound, 2.5 x 1 cm x muscle deep on the back of right side of neck;
- ii. Incised wound, 10 x 0.1 cm x muscle deep on the back of right shoulder;
- jj. Stab wound, 6 x 2 cm x muscle deep on the back of chest (right side), corresponding to 7th intercostals space.



PW.23 - The Doctor has opined that the deceased died due to haemorrhage as a result of multiple injuries sustained due to sharp force trauma;

14. According to the prosecution, both accused Nos.1 and 2 were nurturing ill-will against the deceased, since he had not obliged to their demand of money and he had also lodged a complaint against accused No.1 at Surathkal Police Station and accused No.1 was arrested in connection with the said case. Further, the deceased had gone to the house of accused No.2 and scolded him and his mother.

15. Insofar as the earlier quarrel and registration of a case against accused No.1 on a complaint lodged by the deceased, the prosecution has got marked Exs.P40 and 41, the FIR and complaint in Crime No.215/2014. The said documents were marked through the Investigating Officer - PW.29. The said FIR was registered against accused No.1 for the offence punishable under Sections 504, 506 and 387 of IPC on 03.08.2014.



16. In Ex.P1, the complainant has stated about some money dispute between the deceased and accused No.1 and lodging of the complaint by the deceased against the said accused. PWs.7 and 8 are the wife and elder brother of the deceased respectively. PW.7 has deposed that accused No.1 had telephoned to her husband demanding money and he was threatening him and in this connection, her husband had lodged a complaint at Surathkal Police Station in the month of August, 2014 and accused No.1 was arrested. PW.8 has also stated that accused No.1 was threatening the deceased to give money and in this connection there was a complaint lodged by the deceased at Surathkal Police Station.

17. From the above material on record, prosecution has been able to show that there was some financial dispute between the deceased and accused No.1 and in this connection, the deceased had lodged a complaint against the said accused and a case was registered and in connection with the said case, accused No.1 was arrested.



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However, there is no material placed on record to show any dispute, quarrel or enmity between the deceased and accused No.2.

18. It is the specific case of the prosecution that in view of the said enmity between the accused and the deceased, accused No.1 held a conspiracy along with other accused persons and on the date of incident, all the accused formed an unlawful assembly armed with Talwars and went to the spot where deceased was playing shuttle badminton with PW3 and they chased the deceased and assaulted him indiscriminately and committed the murder.

19. PW3 is the star witness in this case. As per Ex.P1, he has identified accused Nos. 1 and 2, who came along with two other accused, holding Talwars. He has stated that all the four accused chased the deceased and assaulted him with the weapons they were holding and committed the murder. Further, in Ex.P1, he has stated that he has seen all the accused and he is able to identify them.



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20. In his deposition, PW3 has stated that on 06.01.2015 at about 06.20 a.m. deceased came to play shuttle and at about 06.20-06.30 a.m. when they were ready to play, four accused came holding Talwars and tried to assault the deceased and he tried to stop them. The deceased ran towards the hill and all the four accused chased him and he shouted. He then telephoned to the police. One Jayaprakash (PW4) also came to the spot. By that time, the accused had assaulted the deceased and ran away. He went and saw the deceased and by that time he was already dead. He has further stated that three of the accused ran together and he is not aware as to where another accused ran. He has stated that the police came to the spot in a while and he gave a complaint to them at the spot and he gave a written complaint at the police station, marked as Ex.P3.

21. PW3 has further stated that he was called to identify the two accused in the prison. The Tahsildar conducted the Test Identification Parade. He identified one



Sobharaj (accused No.3) and the other two accused were not shown to him. He has stated that he has given evidence in respect of the case registered against the Child in Conflict with Law (CCL) and the police told him that the said CCL was keeping a watch at the spot. Further, he came to know about accused No.5 after his arrest.

22. PW3 identified MOs.1 to 3, the articles belonging to the deceased. However, he failed to identify MOs.4 to 7, the weapons as well as the clothes of the accused-Mos.19 to 25. PW3 was treated hostile and he was cross-examined by the Public Prosecutor.

23. In the cross-examination, PW3 has admitted that in the complaint he has stated that four accused assaulted the deceased and committed the murder and in his further statement, he has mentioned the name of accused No.2. However, he has denied having stated before the police that he has properly seen accused Nos.1 and 2 at the time of incident and that he came to know



the names of other accused as Shobharaj (A3) and Yuvaraj (A4).

24. In the cross-examination conducted by the defence, PW3 has admitted that the face of the accused were not visible since in the month of January it is little bit dark and he was not able to say as to which direction, the deceased ran. He has stated that the place where the dead body was lying was not visible from the playground and he did not follow the deceased. He has stated that he has seen four persons running away but he has not given their description in the complaint and it took ten minutes to go to the place where the dead body was lying, which was about 80 feet away from the playground. He further stated that he has seen the dead body, but he has not seen as to who assaulted the deceased and he telephoned to the police when the four accused were chasing the deceased and at that time it was about 6.30 a.m. PW3 has further stated that he has seen Shobharaj (accused No.3) in the police station.



25. PW3 being the sole eye witness to the incident, the testimony of PW3 has to be examined carefully.

26. Perusal of the evidence of PW3 clearly goes to show that, in his evidence he has not corroborated the complaint averments. As per Ex.P3, he has identified accused Nos.1 and 2 who came to the spot along with two other accused, holding Talwars. In his testimony, he has stated that four accused came armed with Talwars and they chased the deceased towards the hill. He has not named the said four accused. According to him, in the prison, the Test Identification Parade was conducted by the Tahsildar, wherein he identified one Shobharaj i.e., accused No.3. He has stated that he is not aware of the name of another accused. Further, in the cross-examination conducted by the defence, he has only stated that he has seen four accused running away, but, he has not given their descriptions. Further, stated that the face of the accused were not properly visible. He has stated that it took 10 minutes to reach the place where the dead



body was lying and he did not see as to who assaulted the deceased. He has also stated that he has seen accused No.3-Shobharaj in the police station.

27. PW3 was treated hostile by the prosecution, as he stated in his evidence that he did not see the four accused assaulting the deceased. In the cross-examination conducted by the public prosecutor, he denied having given statement as per Ex.P5, that he saw accused Nos.1 and 2 properly and came to know the names of accused Nos.3 and 4.

28. According to prosecution, after the arrest of the accused, PW18-Taluka Executive Magistrate conducted the Test Identification Parade on 13.02.2015 to enable PW3 to identify accused Nos.3 and 4 who came along with accused Nos.1 and 2 to the spot. PW3 has stated that in the Test Identification Parade, he identified Shobharaj i.e., accused No.3.



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29. Firstly, PW3 has admitted in the cross-examination that he has seen the said Shobharaj in the police station. When he has already seen Shobharaj in the police station i.e., prior to conducting of the Test Identification Parade, then the credibility of the said Test Identification Parade wherein, PW3 is said to have identified the said accused will loose credence. Secondly, according to PW18-Tahsildar, PW3 has failed to identify Shobharaj, i.e., accused No.3, which evidence is contrary to the evidence of PW3. On the other hand, PW18 has stated that PW3 has identified Yuvaraj-accused No.4, on the contrary PW3 has nowhere stated in his evidence that he has identified accused No.4 in the Test Identification Parade.

30. We have also noticed that the Test Identification Parade conducted by PW18 is not in accordance with law. PW18 has admitted that he has conducted Test Identification Parade in respect of each accused only once and there was variance in the height



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and clothes of other persons who were asked to be present along with the accused, for the purpose of identification.

31. The learned Additional SPP contended that PW4 has corroborated the evidence of PW3. She contended that PW4 came to the spot immediately and he saw the accused returning after the incident holding Talwars. Hence, she contended that participation of four accused in the crime is established.

32. According to PW4, the complainant-PW3 telephoned to him stating that the deceased Keshava Shetty and accused No.2 are quarreling. He informed him that about 4 to 5 persons are present. He has stated that he went to the spot from his house which is situated about 50 to 60 meters away. He has stated that by the time he first saw the deceased-Keshav Shetty was murdered and the accused were going away holding Talwars. When he enquired with PW3, he informed him that along with Lithesh-accused No.2 about 4 to 5 persons were present.



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He has stated that by the time he saw, Keshav Shetty was dead and many people came to the spot. He has further stated that he has identified one of the accused who was holding Talwar and that was accused No.2, whom he knew earlier.

33. According to PW4, he was informed about the incident by PW3 over phone. In Ex.P1, though PW3 has stated that he informed about the incident to the police, he has not at all stated that he called PW4 and informed him about the incident. Even in his evidence, PW3 has not stated that he telephoned to PW4 and informed him about the incident. He has only stated in his evidence that even PW4 came to the spot. If his evidence is carefully examined, after PW3 telephoned to the police, PW4 came to the spot and by that time the incident was already over and therefore, the testimony of PW4 that when he came to the spot, he saw four accused going away holding weapons, is difficult to accept.



34. PW4 is also a witness to Ex.P7 i.e., seizure of a Talwar from accused No.1. He has stated that he cannot identify the said Talwar. He was treated hostile by the prosecution.

35. In the cross-examination conducted by the defense, it is elicited that by the time he reached the spot where the deceased was lying, PW3 was present and thereafter PW3 telephoned to the police and he informed him about Lithesh-(accused No.2) and did not give the description of other accused persons.

36. A perusal of his entire evidence goes to show that by the time PW4 went to the spot, the incident had already taken place and the deceased was lying dead and the name of accused No.2 was told to him by PW3. His testimony that he has seen four accused holding weapons and going away and he identified one of the accused as Lithesh is therefore, it is difficult to believe. Further, PW3 himself has denied having stated before the police as per Exs.P5 and 6 wherein he has stated that he has seen



accused Nos.1 and 2 and he came to know the names of two other accused i.e., accused Nos.2 and 3.

37. The Trial Court has failed to appreciate the above aspects, on the contrary held that PW.3 has identified one of the accused in the Test Identification Parade and though turned hostile in identifying the accused Yuvaraj before the Court, PW.18, Tahsildar has deposed that he has conducted Identification Parade and PW.3 has identified the said accused Yuvaraj. The learned Sessions Judge has accepted the evidence of PW.18 holding that he substantiate that PW.3 has identified accused Yuvarja in Identification Parade and his evidence is corroborated with the evidence of DNA test, which shows talwar and cloths of accused Shobharaj and Yuvaraj and other two accused Sathish and Lithesh were blood stained.

38. In the case on hand, Test Identification Parade was conducted in respect of accused Nos.3 and 4 by PW.18 on 13.02.2015. PW.3 was asked to identify the said



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accused namely accused Nos.3 and 4. As per PW.3, he identified Shobharaj i.e., accused No.3 in the identification parade and has not at all stated that he has identified accused Nos.4 i.e., Yuvaraja. Whereas, PW.18 has stated that PW.3 has failed to identify Shobharaj but he identified Yuvaraj. Further, PW.3 in his evidence has stated that he has seen accused Shobharaj in the police station, which is obviously prior to conducting Test Identification Parade.

39. In **Umesh Chandra & Others V/s. State of Uttarakhand in Crl.A.No.801/2021** disposed of on 11.08.2021, the Apex Court has held that a Test Identification Parade under Section 9 of the Evidence Act is not substantive evidence in a criminal prosecution but is only corroborative evidence. The purpose of holding a test identification parade during the stage of investigation is only to ensure that the investigating agency prima-facie was proceeding in the right direction where the accused may be unknown or there was fleeting glance of the accused. Mere identification in the test identification



parade, therefore cannot form the substantive basis for conviction unless there are other facts and circumstances corroborating the identification. Further, test identification parade being a part of the investigation, has to be proved by the prosecution as having been held in accordance with law. The onus lies on the prosecution to establish that the test identification parade was held in accordance with law. It is only after the prosecution prima-facie establishes a valid test identification parade having been held, the question of considering any objection to the same arises. If the prosecution has failed to establish that a test identification parade was properly held by examining the witnesses to the same, there is nothing for the accused to disprove.

40. In the instant case, we have no hesitation to hold that the test identification parade was not conducted in accordance with law, and there is material discrepancy in the evidence of eye witness PW.3 and the Tahsildar - PW.18 with regard to identification of accused



Nos.3 and 4. Hence, PW.3 having seen accused Nos.3 and 4 at the time of incident and also identifying them is doubtful. His evidence does not inspire the confidence of the Court. The findings of the trial Court that there is proper identification of accused Nos.3 and 4 by the witness is therefore, not sustainable.

41. While appreciating the evidence of PW.3, learned Sessions Judge observed that though PW.3 did not support the case of prosecution in its entirety in identifying the accused and departed from the statement purportedly given during the course of investigation, however, his admission is that he had lodged the complaint as per Ex.P3, which indicates that he asserts the existence of the facts mentioned therein. The learned Sessions Judge went on to cull out the contents of Ex.P3-complaint, to hold that there was enmity between the accused and deceased, accused Nos.1 and 2 along with two other persons holding talwar came to the spot and brutally murdered Keshava Shetty and motive behind the murder is money matter. On



the basis of Ex.P3, the learned Sessions Judge, has given a finding that there is no iota of doubt regarding identity of the accused Sathish.

42. It is well settled that the complaint is not substantive evidence by itself, but it is to be corroborated by its maker. The Apex Court way back in the judgment reported in **AIR 1957 SC 366**, in the case of **Nisar Ali V/s. State of Uttar Pradesh** has held that a first information report is not substantive piece of evidence and can only be used to corroborate the statement of the maker under Section 157 of the Evidence Act or to contradict it under Section 145 of the Act. It cannot be used as evidence against the maker at the trial if he himself becomes an accused, nor to corroborate or contradict other witnesses. Further, in the judgment reported in **AIR 1966 SC 119**, in the case of **Aghnoo Nagesia V/s. State of Bihar**, it is held that Section 154 of Cr.P.C. provides for recording of the first information. The said information report as such is not substantive



evidence. It may be used to corroborate the informant under Section 157 of the Evidence Act or to contradict him under Section 145 of the Act, if the informant is not called as a witnesses.

43. In the present case PW.3 has not corroborated the contents of Ex.P3. In his chief examination, he has not at all named 4 accused who are alleged to have chased the deceased and committed his murder. He has not named accused Nos.1 and 2. There is discrepancy with regard to the identification of accused Nos.3 and 4, as held *supra*.

44. In **Joseph V/s. State of Kerala** reported in **(2003) 1 SCC 465**, it is held that where there is a sole witness his evidence has to be accepted with an amount of caution and after testing it on the touchstone of other material on record. In **State of Haryana V/s. Inder Singh and Others** reported in **(2002) 9 SCC 537**, it was held that the testimony of the sole witness must be



confidence-inspiring and beyond suspicion, thus, leaving no doubt in the mind of the Court.

45. It is well settled that the testimony of the sole eye witness should be reliable, should not leave any doubt in the mind of the Court and has to be corroborated by other evidence produced by the prosecution in relation to commission of the crime and involvement of the accused in committing such a crime. Thus the evidence of the sole witness needs to be considered with the caution after testing it against other material. Further, such evidence should inspire confidence. At the same time, deposition of the sole witness can be acted upon, provided it is found to be trustworthy and reliable and there are no material contradictions or omissions or improvements in the case of the prosecution.

46. In **Inder Singh** (*supra*) **reported in (2002) 9 SCC 537**, it is held that it is not the quantity but the quality of the witnesses which matters for determining guilt or innocence of the accused. The testimony of the



sole witness must be confidence-inspiring and beyond suspicious, thus leaving no doubt in the mind of the Court.

47. PW.3 was treated hostile by the prosecution as he was unable to identify the weapon held by the accused and also failed to identify the accused present before the Court. He has stated that he has not seen the 4 accused assaulting the deceased. In the cross examination conducted by the Public Prosecutor, he has denied that in his further statement, he has stated that he had properly seen accused Nos.1 and 2 and he came to know about the names of accused Nos.3 and 4. Hence, PW.3 has not at all corroborated with the contents of Ex.P3. He has clearly stated that he has not seen the 4 accused assaulting the deceased and he has also denied having given further statement as per Ex.P5 that he has properly seen accused Nos.1 and 2, committing the murder and that he came to know about the names of two other accused i.e., accused Nos.3 and 4. There is discrepancy with regard to identification of accused Nos.3 and 4, in the Test



Identification Parade. Hence, we find that the evidence of sole eye witness is not reliable and trustworthy to convict the accused.

48. The prosecution is also relying on the recovery of blood stained weapons cloths at the instance of the accused.

49. Accused No.1 is alleged to have produced the talwar which was seized under mahazar Ex.P7. The prosecution has examined PW-4 and PW-17, panch witnesses under mahazar – Ex.P7. PW-17 has completely turned hostile and not supported the case of the prosecution. He has stated that the police have not seized any articles and accused No.1 – Sathish has not produced anything in his presence. PW-4 has deposed that accused No.1-Sathish has produced the talwar from the bush and police conducted the mahazar - Ex.P7. In the cross-examination, he has stated that he is not aware as to the contents of Ex.P7.



50. The prosecution has examined PW-12 and PW-13, panch witnesses to the seizure mahazar-Ex.P16 and Ex.P17, the seizure of blood stained clothes (MOs.19 to 25) and the seizure of three blood stained Talwars (MOs.-4 to 6).

51. PW-12 has totally turned hostile and not supported the case of the prosecution. He has denied the accused having produced the blood stained weapons and clothes.

52. PW-13 has stated that 2 to 3 Talwars were produced by the three accused, but he is not able to identify them. He has stated that the accused produced the clothes from a bush, but he cannot identify those clothes. He has stated that he has signed Ex.P17 in the police station.

53. PW.13 was treated hostile. In the cross-examination conducted by the Public Prosecutor, he has stated that accused No.2 produced three Talwars and



accused No.3 produced the blood stained clothes. However, according to prosecution, accused Nos.2 and 4 were present in the Police Station who led the Police and Panchas to the spot.

54. In the cross-examination conducted by the defence, he admitted that police have called him in two cases to act as panchas and it was the police who showed the bush to the accused.

55. Though PW-13 has supported the case of prosecution to some extent, in the cross-examination conducted by the Public Prosecutor, he has clearly stated that the bush from where the weapons and clothes were seized, was shown by the police and the police had called him to act as pancha in two cases. His evidence regarding seizure of the weapons and clothes does not inspire confidence of the Court.

56. Further according to prosecution one of the accused i.e., accused No.2 showed all three weapons



concealed in the bush and accused No.3 showed all the clothes worn by the accused. The evidence regarding seizure of blood stained Talwars and blood stained clothes at the instance of the accused is not convincing. The seizure of blood stained Talwars and blood stained clothes alone will not lead to a conclusion that the prosecution has proved the guilt of the accused beyond reasonable doubt and to hold that the said weapons were used by the accused for committing the offence.

57. When the oral evidence of PW-3 and PW-4 is held to be not reliable and trustworthy, the conviction cannot be based on the basis of serology or FSL report indicating that the weapons seized in the case were blood stained and they are matching with the blood group of the deceased.

58. We have reappreciated the entire evidence and material on record. On a careful scrutiny, we find that the prosecution has not established the guilt of the accused beyond reasonable doubt. The evidence of sole



eyewitness suffers from material contradiction and is not reliable and trustworthy. Hence, the judgment and order of conviction passed by the trial Court is not sustainable and is accordingly liable to be set aside. Hence, we proceed to pass the following:

ORDER

- i) Appeals are **allowed**.
- ii) The judgment dated 24.2.2018 and the order on sentence dated 27.2.2018 passed by the Court of 4th Additional District and Sessions Judge, D.K., Mangaluru in Sessions Case No.68/2015 convicting the accused Nos.1 to 4 for the offences punishable under Sections 143, 147, 148, 302, 506, 201, 202 r/w Section 149 of IPC and in respect of accused No.5 for the offence punishable under Sections 201 and 202 read with Section 149 of IPC are set aside.



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- iii) The accused Nos.1 to 5 are acquitted of the said charges levelled against them.
- iv) The fine amount if any deposited shall be refunded to the accused.
- v) The order passed on the application filed under Section 451 and 457 is made absolute.
- vi) Bail bond executed by the accused shall be in force for a period of six months.
- vii) Pending applications, if any, stand disposed of.

Sd/-
(MOHAMMAD NAWAZ)
JUDGE

Sd/-
(VENKATESH NAIK T)
JUDGE