



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7TH DAY OF JULY, 2026

PRESENT

THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ

AND

THE HON'BLE MR. JUSTICE G BASAVARAJA

CRIMINAL APPEAL NO. 1162 OF 2018 (C)

BETWEEN:

T. NAVEENA
S/O THIMMEGOWDA
AGED ABOUT 32 YEARS,
R/AT PUTTEGOWDABAJIOOALU VILLAGE,
KIRUGAVALU HOBLI
MALAVALLI TALUK, MANDYA,
PIN CODE NO:571430

...APPELLANT

(BY SRI. RAJU C N., ADVOCATE)

AND:

STATE BY KIRUGAVALU POLICE,
MANDYA, REPRESENTED BY SPP.,
HIGH COURT OF KARNATAKA AT BANGALORE
PIN CODE NO:560001.

...RESPONDENT

(BY SRI. VIJAY KUMAR MAJAGE, SPP II.)

THIS CRL.A. IS FILED U/S.374(2) CR.P.C PRAYING TO SET ASIDE THE JUDGMENT OF CONVICTION DATED 22.06.2018 PASSED BY THE V ADDITIONAL DISTRICT AND SESSIONS JUDGE, MANDYA IN S.C.NO.74/2017 - CONVICTING THE APPELLANT/ACCUSED FOR THE OFFENCE P/U/S 302 OF IPC.

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



CORAM: HON'BLE MR. JUSTICE MOHAMMAD NAWAZ
and
HON'BLE MR. JUSTICE G BASAVARAJA

ORAL JUDGMENT

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

1. The Judgment and order of conviction and sentence passed by the Court of V Additional District and Sessions Judge at Mandya in S.C.No.74/2017, is assailed in this appeal by the appellant/accused.

2. Vide impugned judgment, the Learned Sessions Judge has convicted the accused for the offence punishable under Section 302 of IPC and sentenced him to undergo Rigorous Imprisonment for life and to pay a fine of Rs.50,000/-, in default of payment of fine, to undergo Rigorous Imprisonment for six months.

3. We have heard the learned counsel for the appellant, learned SPP-II for the State and perused the evidence and material on record.

4. Briefly stated, it is the case of the prosecution that, on 15.01.2017 at about 09.30 am, the accused



picked up a quarrel with the deceased, Kariyappa in connection with the change of Khata of the land wherein a house was constructed by his father, and with an intention of committing murder, gave a blow on his head with a club, due to which Kariyappa sustained severe head injuries and succumbed to the same, at about 12.30 p.m. at District Hospital, Mandya.

5. To establish the charge levelled against the accused, the prosecution in all examined 20 witnesses and got marked 23 documents and 6 material objects. The defence of the accused was one of total denial, however, he did not choose to lead any evidence on his behalf.

6. The trial Court, on appreciation of the oral and documentary evidence on record, vide impugned judgment, came to the conclusion that the prosecution has successfully proved the charge levelled against the accused and proceeded to pass the judgment and order of conviction and sentence as noted *supra*.



7. The law was set into motion by the wife of deceased, examined as PW1. The Complaint/Ex.P1 would reveal that the complainant and her husband along with their children have been residing in a rented house in Bengaluru. Deceased Kariyappa was working as a Security Guard at one Silicon Public School. He was owning a land to an extent of one acre at Puttegowdana Koppalu Grama. Accused is the son of his brother Thimmegowda. He was demanding that the said land should be registered in his name. On 13.01.2017, the complainant had come to Puttegowdana Koppalu Grama. On 14.01.2017 at about 10.00 am, deceased Kariyappa had also come to the village. The complaint averments further reveal that, on 15.01.2017, at about 08.30 am, Kariyappa left the house to go to his land and at about 09.40 am, one Chindagirigowda alias Ananda (PW4) informed the complainant that her husband has been assaulted by the accused by means of a club. Immediately, she rushed to the spot and on enquiry, Chindagirigowda informed her



that the accused picked up an altercation with her husband in connection with transfer of the land in his name and thereafter, when her husband was proceeding along with Thimmegowda alias Kati Thimmegowda on a motorcycle, the accused stopped them and assaulted her husband on his head with a club and fled away.

8. The complainant examined as PW1, is admittedly not an eye-witness to the incident. Ex.P1 itself reveals that, she came to know about the incident from PW4/Chindagirigowda alias Ananda.

9. According to the prosecution, PWs.2 to 5 are the eye-witnesses to the incident. It is the contention of the learned counsel for the appellant that, the evidence of the eye witnesses cannot be relied, since in the cross-examination, they have categorically stated that they have not witnessed the incident. It is his contention that, deceased Kariyappa was addicted to alcohol and due to a fall, he sustained injuries to his head and succumbed to



the said injuries, but on account of the dispute, he was falsely implicated in this case.

10. *Per contra*, it is the contention of the learned SPP-II that, a perusal of the evidence of PWs.2 to 5 clearly goes to show that there was a quarrel prior to the actual incident followed by which, the accused has assaulted the deceased with a club on his head. It is contented that the motive is also spoken by PW1 and other witnesses and the Post-mortem report clearly shows that the deceased has sustained injuries to his head and the death is due to head injury. He contended that, a blood-stained club was also recovered at the instance of the accused. The learned SPP-II therefore, contented that, sufficient evidence has been placed on record by the prosecution, on the basis of which, the trial Court has rightly convicted and sentenced the accused.

11. According to the Post-mortem report-Ex.P15, the cause of death is due to head injury sustained. The doctor who conducted Autopsy is examined as PW11. She



has given opinion as per Ex.P16 regarding the club which was seized in the case, stating that, if a person is assaulted with the said club, the injuries noticed in the Post-mortem report could be caused.

12. PW1, in her evidence has deposed that, at about 08.30 am, PW4 came and informed about accused and the deceased quarrelling with each other and the accused assaulting her husband and causing injuries to his head. She rushed to the spot and saw her husband lying with head injury. On enquiry with PW4, he informed that the accused and the deceased have quarrelled near the land and thereafter, when her husband and CW2 (PW2) were proceeding on a motorcycle, accused waylaid their motorcycle and assaulted her husband on the head with a club.

13. In the cross examination, PW1 has stated that she is not aware as to the contents of Ex.P1 and she has only signed the said document. She further admitted that her husband was addicted to consumption of liquor and



she came to know that persons by name Thimmegowda, Raghu, Ananda and Raju requested PW2/Thimmegowda to drop her husband at his house, as he had consumed liquor. Thereafter, Thimmegowda/PW2 left her husband near the house of Raju/PW5. She has admitted that she has no personal knowledge as to how her husband sustained injuries. She further stated that she came to know that due to consumption of alcohol, her husband fell down and sustained injuries. It is also elicited from her evidence that there was no such dispute or enmity between the accused and the deceased.

14. According to PW2, initially, the deceased and accused quarrelled in connection with the land dispute. He along with Chindagirigowda alias Ananda and others, pacified the quarrel and sent the accused to his house. Thereafter, he took the deceased on his motorcycle and proceeded to his house. Near the house of Raju (PW5), deceased requested him to stop. Thereafter, he left the deceased near the house of Raju and went ahead. He has



stated that the accused came running and picked a club which was lying on the ground and assaulted on the neck of the deceased and when the deceased tried to evade the said blow, sustained injuries to the hand. Once again the accused assaulted on the head, due to which the deceased collapsed. The accused then threw the club at the spot and ran away.

15. In the cross-examination, PW2 has stated that on the date of incident, the deceased had consumed alcohol and he was not able to walk properly. Raju (PW5) and others requested him to take the deceased to his house. The deceased was hurling abuses, under the influence of alcohol. About 10 to 15 persons had assembled at the spot. Thereafter, he took the deceased and dropped him near the house of Raju. He has further stated that, after dropping the deceased, he went to his house which is at a distance of one kilometre. When he was in the house, after half-an-hour, he came to know about the incident. He has admitted in the cross-



examination that he is not aware as to who assaulted the deceased.

16. PW2 was cross-examined by the Public Prosecutor, however, he has withstood the admission given by him in the cross-examination conducted by the defence.

17. Similar is the evidence of PW3. The said witness has also spoken about the initial quarrel between the accused and deceased. He has stated that, thereafter he took the accused to his house. After about five minutes when he came to the spot, the deceased was lying on the ground. He has stated that he has not seen as to who assaulted the deceased. In the cross-examination, PW3 has also admitted that the deceased was addicted to consuming liquor and on the date of incident, he had consumed liquor and hurling abuses.

18. The evidence of PW4, also discloses about the initial quarrel between the deceased and accused. He has



stated that in the said quarrel, deceased sustained abrasions to his neck. Thereafter, they pacified the quarrel and sent the deceased to his village in the motorcycle of PW2-Thimmegowda. The accused also went to his house. After 10 to 15 minutes, he heard the screaming sound from the house of Raju and by the time he went to the spot, the deceased had already fallen down.

19. PW5 has been treated hostile by the prosecution as he denied having seen the incident of assault. His evidence goes to show that there was a quarrel between the accused and deceased and himself and others pacified the quarrel and thereafter, PW2-Thimmegowda took the deceased on his motorcycle to drop him at his house. He has stated that, after half an hour, he came to the spot and by that time, the deceased had fallen down. He has also stated that he is not aware as to who assaulted the deceased.

20. From the above, it can be gathered that on the date of incident, there was a quarrel which took place



between the deceased and accused. The quarrel was pacified by others and the accused was sent to his house. PW2 took the deceased on his motorcycle towards his house. In the cross-examination, PW2 has stated that he did not see the accused assaulting the deceased. He has only seen the prior quarrel, but did not see the actual incident of assault. By the time he came to the spot, the deceased had already fallen down. The witnesses have stated that the deceased was addicted to alcohol and on the date of incident he had consumed alcohol and not in a position to walk properly and he was hurling abuses at others.

21. In her cross-examination, PW1 has stated that she learnt that her husband sustained injuries on account of a fall as he had consumed alcohol. All the above witnesses have consistently stated that on the date of incident, the deceased had consumed alcohol. As per FSL report-Ex.P10, Ethyl Alcohol contents were found in Articles Nos.1, 2 and 3, namely the stomach contents etc.



22. The recovery of club at the instance of the accused appears to be doubtful. As per Ex.P1, the accused, after assaulting the deceased, threw the club at the spot and fled away. PW2 in his evidence has also stated that the accused threw the club at the spot and ran away. PW3 has stated that he saw the accused running away and at that time, he was not holding anything in his hand. In Ex.P1, PW1 has stated that she took the club from the spot and kept it in her house. Both the panch witnesses namely PWs.8 and 9 to Ex.P7 under which MO.6-club was seized, have turned hostile. Seizure of club at the instance of the accused is therefore, doubtful and cannot be believed.

23. The learned SPP-II contended that the accused also sustained injuries, which implies that he has committed the offence. He relied on the evidence of the doctor-PW15, who examined the accused and issued the wound certificate-Ex.P18.



24. PW15, in his evidence, has stated that on 19.01.2017, at about 4.45 p.m., the police brought the accused by name T. Naveena with the history of assault and on examination, he found an abrasion measuring 1x1cm on the left side of his neck. He has stated that the said injury is possible when two persons exchange blows with each other.

25. As per the wound certificate-Ex.P18, the age of the injuries is mentioned as 72 hours. The accused was examined by PW15 on 19.01.2017 at about 4.45 pm. The incident took place on 15.01.2017 at about 9.30 am. If the age of the injury is taken into consideration, it cannot be said that the accused sustained those abrasions on 15.01.2017. Even accepting that accused sustained certain abrasion in his neck, according to PW2 to PW5, there was a quarrel between the deceased and the accused. Hence, the injuries could have been sustained during a scuffle.

26. As per Ex.P1, the injured Kariyappa was shifted to District Hospital, Mandya, for treatment immediately



after the incident on 15.01.2017. He succumbed to the injuries at about 12.20 pm, without responding to the treatment. There is no material forthcoming as to whether an MLC intimation was sent to the Police. It is also not forthcoming as to what was the history furnished when the victim was admitted to the District Hospital, Mandya, for treatment. Complaint was lodged with the police by PW1 at about 1.15 pm, however, PW1 has admitted in her evidence that she is not aware as to the contents of Ex.P1.

27. On a careful appreciation of the entire evidence and material on record, we are of the considered view that the prosecution has not established the charge levelled against the accused beyond reasonable doubt. The impugned judgment of conviction and sentence passed by the trial Court is therefore, not sustainable in law. Accordingly, we proceed to pass the following:



O R D E R

- i. Appeal is **allowed**.
- ii. The Judgment and Order dated 22.06.2018 passed by the Court of V Additional District and Sessions Judge, Mandya, in SC No.74/2017, convicting and sentencing the appellant/accused for the offence punishable under Section 302 of IPC is hereby **set aside**.
- iii. The accused is **acquitted** of the offence punishable under Section 302 of IPC.
- iv. His bail bond shall stand cancelled.
- v. If the fine amount has been deposited, it shall be refunded to the accused.

Sd/-
(MOHAMMAD NAWAZ)
JUDGE

Sd/-
(G BASAVARAJA)
JUDGE