



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9TH DAY OF APRIL, 2026

PRESENT

THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ

AND

THE HON'BLE MR. JUSTICE VENKATESH NAIK T

CRIMINAL APPEAL NO. 2089 OF 2018 (C)

C/W

CRIMINAL APPEAL NO. 2090 OF 2018

IN CRL.A No. 2089/2018

BETWEEN:

MOHAN KUMAR R
S/O RUDRAIAH
AGED ABOUT 23 YEARS
R/O NO.8, 3RD "C" CROSS,
VIVEKANANDANAGARA,
KATTHARIGUPPE MAIN ROAD,
BENGALURU.
(NOW IN JUDICIAL CUSTODY,
CENTRAL PRISON, BANGALORE)

...APPELLANT

(BY SRI. HASHMATH PASHA, SENIOR COUNSEL FOR
SRI. KARIAPPA N.A., ADVOCATE)

AND:

STATE OF KARNATAKA
BY HANUMANTHANGARA POLICE STATION,
BANGALORE CITY - 01.



NC: 2026:KHC:20172-DB
CRL.A No. 2089 of 2018
C/W CRL.A No. 2090 of 2018

(REPRESENTED BY LEARNED
STATE PUBLIC PROSECUTOR)

...RESPONDENT

(BY SRI. RAHUL RAI K., HCGP)

THIS CRL.A. IS FILED U/S.374(2) OF CR.P.C. BY THE
ADVOCATE FOR THE APPELLANT/S PRAYING THAT THIS
HON'BLE COURT MAY BE PLEASED TO SET ASIDE THE
JUDGMENT AND ORDER OF CONVICTION AND SENTENCE
DATED 19.11.2018 PASSED BY THE LXIV ADDITIONAL CITY
CIVIL AND SESSIONS JUDGE, (CCH-65), BENGALURU IN
S.C.NO.645/2013 - CONVICTING THE APPELLANT/ACCUSED
NO.4 FOR THE OFFENCE P/U/S 302 R/W 34 OF IPC.

IN CRL.A NO. 2090/2018

BETWEEN:

CHELUVARAJU @ PAPU
S/O LATE KRISHNAPPA
AGED ABOUT 26 YEARS,
R/O NO.19/9, 1ST MAIN, 2ND CROSS,
VIVEKANANDANAGARA
BSK 3RD STAGE
BENGALURU - 85

...APPELLANT

(BY SRI. HASHMATH PASHA, SENIOR COUNSEL FOR

SRI. KARIAPPA N.A., ADVOCATE)

AND:

STATE OF KARNATAKA BY
HANUMANTHANAGARA POLICE STATION,
BANGALORE CITY



(REPRESENTED BY LEARNED STATE PUBLIC
PROSECUTOR)

...RESPONDENT

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DATED 19.11.2018 PASSED BY THE LXIV ADDITIONAL CITY
CIVIL AND SESSIONS JUDGE, (CCH-65), BENGALURU IN
S.C.NO.645/2013 - CONVICTING THE APPELLANT/A
CCUSED NO.1 FOR THE OFFENCE P/U/S 302 R/W 34 OF
IPC.

THESE APPEALS, 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 VENKATESH NAIK T

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE VENKATESH NAIK T)

Crl.A.No.2089/2018 is filed by the appellant /
accused No.4, whereas, Crl.A.No.2090/2018 is filed by
accused No.1, to set-aside the judgment of conviction and
order of sentence dated 19.11.2018 passed in
S.C.No.645/2013 by the LXIV Additional City Civil and



Sessions Judge, Bengaluru and consequently, acquit the appellants of all the charges.

2. The brief facts of the prosecution case is as under:

The deceased-Shankar is the husband of accused No.6-Smt. Bhagyalakshmi. Since, accused No.1-Cheluvaraju and accused No.6 were in illicit relationship, deceased raised objection to the said relationship. Therefore, accused Nos.1 and 6 hatched a conspiracy to eliminate him with the help of accused Nos.2 to 5. On 29.12.2012 at about 12:00 noon, accused Nos.1 and 3 along with juvenile-in-conflict with law-accused No.2, entered the office of the deceased i.e., M/s. Sinchana Enterprises, situated on Main Road, Near Vidhyapeet Circle, Kathriguppe, Bengaluru City, with deadly weapons and caused fatal injuries on his abdomen, buttock, head and cut his neck and thereby, committed his murder.



3. PW.1, who was working in the office of the deceased lodged a complaint vide Ex.P1 on the same day. PW.20-Manjunath, PSI, registered the case in Crime No.367/2012, against 3 to 4 unknown persons, for the offences punishable under Sections 120B, 143, 144, 147, 148, 302, 114 read with Section 149 of IPC.

4. During the course of investigation, accused No.1 was secured by the Investigating Officer, recorded his voluntary statement and pursuant to his voluntary statement, accused Nos.2 to 6 were secured. Investigating Officer recorded the statement of the witnesses and filed charge sheet for the aforesaid offences.

5. The Jurisdictional Court took cognizance of the offence and committed the matter to the Sessions Court. The trial Court after hearing both the parties, framed charges against the accused persons, which they denied and claimed to be tried.



6. The prosecution in order to prove its case, examined in all 21 witnesses as PWs.1 to 21 and got marked 34 documents as Exs.P1 to P34 and material objects were marked as Mos.1 to 6. For the defense, Ex.D1 is marked.

7. The case of the accused was of total denial. After hearing both side, the trial Court convicted accused Nos.1 and 4 for the offence punishable under Section 302 read with Section 34 of IPC and sentenced them to undergo imprisonment for life and sentenced to pay fine of Rs.25,000/- each, in default to pay fine, sentenced them to serve simple imprisonment for 6 months.

8. Being aggrieved by the judgment of conviction and order of sentence passed by the trial Court, accused Nos.1 and 4 preferred these appeals.

9. We have heard the learned Senior counsel, Sri. Hashmath Pasha for the appellants and learned High



Government Pleader Sri. Rahul Rai. K. for the respondent-State.

10. Learned Senior counsel appearing for the appellants/accused, vehemently contended that, the entire case of prosecution is based on direct version of complainant PW.1, but during trial, he turned hostile to the case of the prosecution. During trial, no witness would speak in respect of inquest mahazar. The doctor who conducted autopsy, is also not examined and the postmortem report is not marked either through doctor or by the Investigating Officer. The Police Inspector, who registered FIR and conducted entire investigation is also not examined. No Scientific Officer from FSL is examined. All the independent witness examined, have not given any incriminating evidence, except the oral testimony of PW.2. PW.2-Manjunath is the only witness, who has partially stated that he saw accused Nos.1 and 4 going out of the shop of deceased-Shankar. The evidence of PW.2 is not reliable. Further, neither in the complaint nor in the



statements of PWs.1 and 2, names of the appellants have been mentioned. The evidence of PW.2 is full of omission, contradictions and improvements. Further, PW.2 has stated that he has not given any statements to the police and he has not given any statements during inquest or spot mahazar. Therefore, the oral testimony of PW.2 is absolutely unreliable. The trial Court, therefore, committed an error in recording conviction against the appellants solely on the basis of incredible testimony of PW.2. The trial Court has disbelieved the major part of the prosecution case by acquitting accused Nos.3, 5, 6 and 7 and also accused Nos.1 and 4 from the charges of conspiracy and there is no reliable evidence on record to prove the alleged illicit relationship between accused Nos.1 and 6. On all these grounds, learned Senior counsel, prays to allow the appeals.

11. Per contra, learned High Court Government Pleader appearing for respondent-State vehemently, contended that PW.2 has identified accused Nos.1 and 4



before the Court, the neighbouring witness, who was running a sanitaryware and hardware shop which is located 3 to 4 shops away from the office of deceased-Shankar, on hearing the voice/screaming sound from the office of the deceased, came towards the shop of the deceased and he saw accused Nos.1, 4 and another person, going out from the office of deceased Shankar. Further, the deceased has sustained in all 34 fatal injuries and the cause of death is due to shock and haemorrhage as a result of injuries sustained.

12. It is further contended that PW.3-Timmegowda, friend of deceased has stated about the illicit relationship of accused Nos.1 and 6. PW.5 Babu has stated about the recoveries at the instance of accused No.7. The spot Mahazar witness PW.6 has stated about the Mahazar-Ex-P2 drawn in his presence and recoveries of MOs.1 to 4, from the scene of occurrence. PW.9-Dinesh, has stated about the presence of accused Nos. 1 to 6 at the scene of occurrence. PW.12-Gangadhar and PW.13-Latha, the



relatives of deceased have stated about the relationship of accused Nos.1 and 6. Hence, there is material against accused Nos.1 and 4. Therefore, the trial Court has rightly convicted accused Nos.1 and 4 for the aforesaid offences. Thus he prays to dismiss the appeals.

13. In view of the submissions made by both the parties, the following points arise for our consideration:

- i) Whether the prosecution has proved beyond reasonable doubt that the appellants committed murder of deceased-Shankar, in the manner stated by the prosecution?
- ii) Whether the Judgment of conviction and order of sentence passed by the trial Court requires interference by this Court?

14. We have perused the entire evidence on record and considered the arguments. The evidence of PW.1, who was working in the office of the deceased, an eye witness to the incident having lodged a complaint vide Ex.P1 has stated that he was working in the office of the



deceased, namely M/s. Sinchana Enterprises. On 29.12.2012, at 9:00 a.m. he came to the office and he was working by preparing the blue print and at 12:00 noon, his owner i.e., deceased-Shankar came to the office, at that time, one customer came and requested the deceased to prepare a estimation for a sum of Rs.10,00,000/-. Thus the deceased agreed and entrusted the work to him. Hence, he was preparing the estimation. At that time, he heard a screaming voice and then, he turned towards his owner, who fell on him sustaining injuries. At that time, three unknown persons, covering their faces by kerchief and helmet, went outside. Thereafter, he came out of the Office by screaming. Immediately, his neighbours came to the office and one person informed the police and accordingly, police came. Thus, he lodged a complaint as per Ex.P1. A spot mahazar vide Ex.P2, a seizure panchanama vide Ex.P3 were conducted and his jeans pant and shirt as Mos.1 and 2



were seized. The Public Prosecutor treated him as a hostile witness and cross examined him.

15. In the cross examination, he denied the suggestion that on 29.12.2012, police conducted seizure panchanama vide Ex-P3 and seized blood stained jeans pant and shirt. He has also denied having conducted spot mahazar at the scene of offence and seizure of MO.1 and MO.2 in his presence. PW.1 failed to identify the accused persons. He also denied about the conspiracy made by the accused persons to eliminate his owner deceased Shankar. He also denied that accused persons entered the office of the deceased and assaulted him with a chopper. Hence, his evidence is not helpful to the case of prosecution.

16. PW.2 Manjunath, who was running a Sanitary and Hardware shop, which is located 3 to 4 shops away from the office of deceased Shankar, has stated that on 29.12.2012 at 12.30 noon, he heard the sound from the office of deceased Shankar. Thus, he immediately went towards the office of the deceased and then informed the matter to the police. But he did not enter the shop and not witnessed the incident. He has



stated that he saw three persons coming out of the shop of the deceased. Hence, he identified accused No.1 Cheluvaraju and accused No.4 Mohanakumar. But before the trial Court, PW.2 has not mentioned the name of these accused persons and he also failed to mention another person, who came out from the office of the deceased. Later, three persons went in Honda Activa two wheeler. PW.2 was cross examined. In the cross examination, he has stated that he informed the police about the incident through land line and he interacted with a Sub Inspector by name Rajegowda. He further admitted that he has given evidence before the Juvenile Justice Board(Ex-D1), wherein, he admitted on 29.12.2012 at 12.30 noon, when he was standing in front of shop, PW.1 Puneeth came and told that 3 to 4 unknown persons entered the office of deceased Shankar by wearing helmets and handkerchief tied to their faces and assaulted the deceased. Thus he informed police about the incident. He also stated that PW.1 did not inform him about the assailants and that he has not given any statement to the police. Thus, he failed to identify the juvenile before the Juvenile Justice Board. Even before the trial court, he has categorically admitted that, he identified accused Nos.1 and 4,



who were coming out of the office of deceased Shankar, for the first time, and he has not stated this aspect before the police.

17. PW.3 Thimmegowdru, is known to deceased Shankar, but he has not stated as to how, when and for what reason, the deceased died. On the date of death of the deceased Shankar, someone informed him about his death. Hence, he went to Victoria Hospital and saw the dead body of Shankar. Therefore, PW.3 was treated as hostile witness and in the cross-examination, he has not supported the case of prosecution. PW.4 Bettegowda, friend of deceased is also a hear-say witness and also witness to inquest mahazar, has stated that there was relationship between accused Nos.1 and 6 and he saw the dead body of the deceased.

18. PW.5 Babu, has denied that he saw accused No.7 proceeding in a two wheeler on 29.12.2012 at 12.30 noon and he turned hostile to the case of the prosecution.

19. PW.6. Devaraja has stated about the spot mahazar drawn in his presence vide Ex.P2 and seizure of MOs.1 to 4.



20. PW.7 Suresh is also witness to seizure mahazar Ex.P7, wherein clothes, watch and mobile of the deceased were recovered, but, he has not supported the case of prosecution.

21. PW.8. Mallesh is a witness to Ex.P9 mahazar, who turned hostile to the case of the prosecution.

22. PW.9 Dinesh has stated about the presence of accused No.6 at the scene of occurrence, but, in the cross-examination, the presence of accused No.6 was denied.

23. PW.10, Ramesh is also a spot mahazar witness, but turned hostile to the case of the prosecution.

24. PWs.11-16 and the 18 to 20 turned hostile to the case of prosecution. Hence, the only evidence available to the prosecution is PW.1, who is an eye witness to the incident, but, he has turned hostile to the case of prosecution.

25. When an eyewitness in a murder case turns hostile, it means he deviated from his previous statement made to the police and failed to support the prosecution. Thus, the statement made in Court remains admissible. The testimony of



a hostile witness cannot form the sole basis for conviction. In this case, one Manjunath examined as PW.2 in JC No.134/2013, before the Juvenile Justice Board has stated in the said proceedings, that on 29.12.2012, at 12.20 noon, when he was standing in front of his shop, PW.1 Punith came and told him that 3 to 4 unknown persons entered the office of deceased by wearing helmets and handkerchiefs tied to their face and assaulted the deceased. Thus, he informed the police about the incident. He has also stated that PW.1 did not inform him about the assailants and he has not given any statement to the police. Therefore, both PW.1 and PW.2 failed to identify the juvenile before the Juvenile Justice Board. Whereas in this case, PW.2 has given a different statement and he identified accused Nos.1 and 4 and in the cross-examination, he admitted that he has not given any statement to the police, stating that he saw accused Nos.1 and 4, who were coming out of the office of deceased Shankar.

26. The evidence of PW.2 given before Juvenile Justice Board and before the trial Court are self-contradictory. If contradictory evidence is given before two different Courts,



severely undermining the credibility of the witness renders his testimony unusable. Further, there are major contradictions and discrepancies in his testimony, in identifying accused Nos.1 and 4 before the trial Court.

27. The perusal of the oral testimony of PW.2 goes to show that he has not mentioned the names of those three persons, as they were not known to him. Since those three persons were not known to him either by name or by face, there should have been a legal step for conducting Test Identification Parade, but, no such steps were taken during investigation. Further, PW.2 admitted that he did not know the facial descriptions of those three persons and he was not knowing their names and on what basis, he could identify them in Court is also not explained by the prosecution. Therefore, the evidence of PW.2 is informal in nature.

28. The oral testimony of PW.2 is impeached by confronting his previous deposition before the Juvenile Justice Board in JC No.134/2013, which is the trial in respect of accused No.2, a juvenile in conflict with law.



29. The deposition of PW.2 before the Juvenile Justice Board was marked as Ex.D1 and PW.2 has admitted the said deposition. Further, PW.2 has not given any information to the police or he has not given any statement to the effect that he had seen accused Nos.1 and 4 going out of the office of the deceased. Infact, PW.2 was only a post occurrence witness and there is no possibility of him observing the movements of any of the assailants and the fact remains that, PW.2 has not given any statement as per his evidence before the police and he has not given statement during inquest or spot mahazar or till arrest of the accused persons. Thus, the oral testimony of PW.2 is unreliable.

30. In the instant case, the Doctor, who conducted the autopsy is not examined and the post-mortem report is also not marked.

31. The case of the prosecution is that the accused entered the office of deceased Shankar and committed the murder. In order to prove this aspect, PWs.1 and 2 have stated about the death of deceased Shankar. The perusal of



post mortem report clearly demonstrates that deceased Shankar sustained in all 22 injuries and the cause of death is due to shock and haemorrhage as a result of injury sustained to neck.

32. The trial Court in its judgment while holding that the death of deceased Shankar as homicidal in nature, observed that the Doctor, who conducted post-mortem are Associate Professor, Department of Forensic Medicine, Victoria, Bowring and Lady Curzon Hospital who are experts and the reports issued by those experts are admissible piece of evidence and that it does not require any formal proof. Hence, the trial Court held that the report of the Chemical Examiner coupled with the opinion of the Doctor is sufficient to hold that the death of Shankar was homicidal in nature.

33. The police inspector who registered the FIR and conducted investigation was also not examined. Neither the articles are marked nor the Scientific Officer, FSL is examined. The Scientific Officer, who examined the articles is also not examined.



34. Therefore, taking into consideration all the facts including that no material is available on record to indicate that the appellants have committed an offence in the manner stated by the prosecution witnesses, in that circumstance, we deem it appropriate to reverse the judgment of conviction and order of sentence passed by the trial Court.

Hence, we pass the following order:-

1. The appeals are ***allowed***.
2. The judgment of conviction and order of sentence passed in S.C.No.645/2013 dated 19.11.2018 by learned LXIV Addl. City Civil & Sessions Judge (CCH-65), Bengaluru is hereby set aside and accused Nos.1 and 4 are acquitted of the above charges. Accused Nos.1 and 4 are set at liberty, if they are not involved in any other case(s). Their bail bond and that of their surety stand cancelled.
3. The fine amount, if any, deposited by them shall be returned to them on proper identification.
4. Pending applications, if any, shall stand disposed of.



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5. Registry shall send copy of this judgment to the trial Court along with trial court records.

Sd/-
(MOHAMMAD NAWAZ)
JUDGE

Sd/-
(VENKATESH NAIK T)
JUDGE

LDC,MN
List No.: 1 Sl No.: 24