HC-KAR
NC: 2026:KHC:62188-DB
CRL.A No. 232 of 2023
CNR: KAHC010067382023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11TH DAY OF NOVEMBER, 2026

PRESENT

THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ

AND

THE HON'BLE MR. JUSTICE B.PRAMOD

CRIMINAL APPEAL NO. 232 OF 2023 (C)

BETWEEN:

ZUHAID AHAMED KHAN @ ZUHAIB
S/O SYED AHAMED KHAN,
AGED ABOUT 25 YEARS,
R/AT 4TH CROSS,
VINOBHA NAGARA,
TUMAKURU TOWN,
TUMAKURU-572 101.

...APPELLANT

(BY SRI. MRC MANOHAR, ADVOCATE)

Digitally signed by LAKSHMI T
Location: High Court of Karnataka

AND:

THE STATE OF KARNATAKA
BY TILAK PARK POLICE STATION,
TUMAKURU,
BY STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING,
BENGALURU-560 001.

...RESPONDENT

(BY SRI. VIJAYKUMAR MAJAGE, SPP-II ALONG WITH
SRI. SUDHINDRA B.S., HCGP)

THIS CRL.A. IS FILED U/S.374(2) CR.P.C., PRAYING TO CALL FOR THE RECORDS AND SET ASIDE THE JUDGMENT AND

CNR: KAHC010067382023

ORDER DATED 17.01.2023 PASSED BY THE PRINCIPAL DISTRICT AND SESSIONS JUDGE, TUMAKURU IN S.C.NO.113/2018 REGISTERED BY TILAK PARK POLICE STATION, BENGALURU FOR THE OFFENCES PUNISHABLE UNDER SECTION 302 OF INDIAN PENAL CODE AGAINST THE APPELLANT AND ACQUIT THE APPELLANT.

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 B.PRAMOD

ORAL JUDGMENT

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

Accused has preferred this appeal, aggrieved by the judgment and order of conviction and sentenced dated 17.01.2023, passed against him by the Court of the Principal District and Sessions Judge, Tumkuru, in Sessions Case No.113 of 2018, whereby he was convicted for the offence punishable under Section 302 of IPC and sentenced to undergo rigorous life imprisonment and to

pay fine of Rs.50,000/-, in default of payment of fine, to undergo S.I. for a further period of six months.

2. We have heard Sri. MRC. Manohar, learned counsel for the appellant, Sri. Vijay Kumar Majage, learned SPP-II for the State and perused the evidence and material on record.

3. In a nutshell, the case of the prosecution is that the accused and deceased were working in Honnasiri Mahendra HD Motors Service Centre situated near Ranichannamma Circle, Ring road Tumkur Town, Tumkur. The deceased Vijay Kumar was working in a cordial manner and he had gained a good reputation, which was not liked by the accused and he was quarrelling with the deceased. Hence, the complainant, the brother-in-law of the deceased, who was also working as an electrician in the service center had warned the accused not to quarrel with the deceased. The accused had threatened the complainant not to interfere in his personal affairs. On

30.04.2018 at about 04:30 p.m., when the deceased and the accused were working in the washing section, the accused inserted a compressed air nozzle to the anal part of the deceased. Due to the air pressure, the deceased sustained severe injuries. He was shifted by the complainant and other co-workers to THS Hospital, wherein he was provided first aid and on the advice of the doctor, he was shifted for higher treatment to Siddaganga Hospital, Tumakuru, wherein he died on account of the injuries sustained by him, on 02.05.2018 at about 06:20 p.m.

4. The trial Court, based on the oral and documentary evidence adduced by the prosecution, particularly the evidence of PW3, an eyewitness to the incident, and the medical evidence held that, because of the injury to the anus i.e. multiple serosa injury on the anus, perforation of large intestine, Vijaykumar succumbed to those injuries, even though surgery was conducted and he could not recover from the injury and

these facts clearly and categorically establish that only with an intention to kill him, the accused had inserted air compressor machine in the anus of the deceased. The trial Court further held that the accused was a senior workman in the service station and he knew the weight of the air compressor machine and also the pressure of air which comes out from its pipe and thus, he was definitely aware that there will be every chance of death of the person. Hence, holding that the prosecution has proved beyond reasonable doubt that the accused had an intention to kill the deceased, convicted him for the offence punishable under Section 302 of IPC.

5. Assailing the impugned judgment, the learned counsel for the appellant has vehemently contended that the motive alleged by the prosecution is flimsy as no person would venture to take away the life of another for the said motive projected by the prosecution. He contended that the evidence of PW3, the alleged eyewitness is also not believable, as he has not given a

clear picture of the incident in question and other witnesses are hearsay witnesses, who came to the spot after the alleged incident and their evidence does not lend any support to the evidence of PW3.

6. The learned counsel for the appellant further contended that, PW5 has categorically admitted in his cross-examination that the police had collected the CCTV footages, however, the said CCTV footage has been deliberately suppressed by the prosecution. If the footage were to be produced, then it would have given a clear picture of the incident.

7. The learned counsel further contended that even accepting the case of the prosecution, death is not the direct result of the injuries, on the other hand, the cause of death is septicemia. He contended that on overall appreciation of the material on record would clearly establish that the accused had no intention to cause the death and therefore, at any stretch of imagination, the

offence allegedly committed by the accused would not attract the ingredients of Section 300 of IPC.

8. Per contra, the learned SPP-II contended that PW3 is an eyewitness to the incident. He was also working in the washing section along with the deceased. His presence at the spot is natural and believable. His evidence is corroborated by the evidence of PWs 1, 2, 4 and 5. There was no reason for the witnesses to falsely implicate the accused. The medical evidence coupled with the evidence of the above witnesses clearly establish that the deceased died on account of the act committed by the accused and the fact that the accused had inserted the air compressor to the anal part of the deceased, itself shows that he had the intention and knowledge that such act would result in his death. Hence, sought to dismiss the appeal.

9. The complainant, Sri. Shantakumar is the brother-in-law of the deceased. He was working as an

electrician at Honnasiri Motors Service Centre, Tumkur. His complaint at Ex.P1 reveals that about 2 months prior to the date of incident, the deceased Vijaykumar started working in the said service center. The accused was also working in the service centre. The deceased was liked by other co-workers, hence, the accused was indifferent towards the deceased and used to quarrel with him. In the complaint, it is stated that the accused had warned the complainant that he would kill the deceased. On 30.04.2018 at about 09:00 a.m., the accused as well as the deceased came to work in the service station. At about 04:30 p.m., on hearing the commotion, the complainant rushed to the spot and by that time the accused had pressed the air compressor nozzle to the anal part of the deceased and the deceased was writhing in pain.

10. The deceased was initially taken to THS Hospital, wherein, PW.7 provided him first aid treatment. In his deposition, PW7, Dr.Prabhakar G.N., has deposed that at around 05:30 p.m. on 30.04.2018, Vijaykumar was

brought to the hospital by the co-labourers with a history of pain in abdomen and distension of abdomen. He was semi-conscious and irritable. His vital parameters were within the normal range. He suspected injury to the large intestine and hence, after giving primary aid, referred him to Siddaganga Hospital for further management.

11. PW7 has stated that, he sent MLC intimation to the police, marked as Ex.P11 and also issued a letter referring the patient for further management to higher centre, marked as Ex.P12. He administered Roman IV fluid to the patient with pain killers as a primary treatment prior to referring him to higher Centre.

12. In Ex.P12, it is stated that Vijaykumar had come to the hospital with alleged history of rectal puncture by air compressor at his workplace. First aid was given and then referred to higher/other centre for further treatment.

13. The prosecution has examined PW.8, Dr. Chandrashekhar M., Medical Officer working in the Surgery

Department at Siddaganga Hospital and Research Centre, Tumakuru. He has deposed that on 30.04.2018 at about 07:00 p.m., the injured by name Vijaykumar was referred from THS Hospital, Tumakuru, for further management in respect of injury said to have been caused by compressed air nozzle insertion into anal part. When examined, he was irritable and abdomen was grossly distended (enlarged). As the patient was gasping, he was put on ventilators. The CT scanning of the abdomen revealed that there was perforation in the large intestine at rectosigmoid junction. Immediately, he was taken to surgery at about 08:10 p.m. and on opening the abdomen, there was around 200 ml of blood traced in the abdominal cavity and there was perforation at rectosigmoid junction with multiple serosa injury on the rectum. He was given antibiotics and other medical requirements and then shifted to medical ICU.

14. PW8 has further deposed that on 01.05.2018 the BP of the patient was found fluctuating. He was put on inotrops. On the second morning, the patient was found

not responding and mottling was seen on the abdominal planks, the urine output was decreased. They gave medication for all the problems. At about 05:30 p.m. in the evening, the patient had a cardiac arrest and for 15-20 minutes, they tried to revive the patient, but they could not succeed.

15. PW9 is the Doctor, who conducted the autopsy over the dead body. He has furnished his final opinion regarding the cause of death, stating that the death was due to septicemia as a result of injury to bowel (small and large intestine). The final opinion is marked as per Ex.P16. PW9 has issued further opinion as per Ex.P17 with reference to the letter issued by the Investigating Officer, stating that possibilities of sustaining injuries and causing death are there under the circumstances mentioned in the letter. PW8 has also given his opinion as per Ex.P13 stating that the immediate cause of death is septic shock, acute kidney injury and acidosis.

16. The deceased was not in a position to speak when he was shifted to the hospital. This we can gather from the evidence of PW5, working as Commercial Service Manager in the service centre. In the cross-examination, he has stated that when he rushed to the spot, he found the deceased was struggling with pain and was not in a position to speak. PW7-Dr.Prabhakar G.N., has stated in the cross-examination that the patient was capable of speaking being in semi-conscious state, but he was irritable, not answering properly and talking irrelevant things.

17. PW.10, the PSI who went to the THS Hospital at about 06:45 p.m., on receiving the MLC, has stated that he enquired with the doctor as to whether the injured Vijaykumar was in a position to give any statement. The doctor informed him that he was not in a position to give any statement. The endorsement issued by the doctor is marked as Ex.P18. None of the witnesses have stated that the deceased was in a position to speak or revealed as to

how the incident took place. Hence, the case of the prosecution rests on the oral testimony of PW1 to PW.6, who were all working at Honnasiri Mahindra H.D. Motors.

18. PW1, the complainant is none other than the brother-in-law of the deceased. He was working as an electrician in the service centre. PW2 was working as a driver, PW3 was working in the washing section, PW4 was the Floor Manager and PW5 was working as a Commercial Service Manager. PW2 is a witness to the spot mahazar-Ex.P2. The evidence of PW1, PW4 and PW5 goes to show that they are not the eyewitnesses, but came to the spot after the incident. Hence, the case of the prosecution with regard to the actual incident, depends on the evidence of PW3, an eyewitness to the incident.

19. It is the contention of the learned counsel for the appellant that, PW3 could not be an eyewitness, as he did state the manner in which the incident had taken place and he, being one of the co-workers, was also nurturing ill

will against the deceased and therefore, his evidence is not believable.

20. We have perused the evidence of PW3. He has deposed that on 30.04.2018 at about 04:30 p.m., the deceased and himself were working in the washing section and they had attended the duty at about 10:00 a.m. When he was washing the back of the car, the accused took an air pipe and inserted into the anal part of the deceased. As a result of which, the deceased fell down and started writhing in pain. Being scared, he called other workers Shanthakumar (PW1) and others came and shifted the deceased to the hospital.

21. It is not disputed that PW3 was also working in the Honnasiri Service Centre and he was working in the washing section, where the deceased was also working. We find corroboration to the evidence of PW3 from the evidence of PW4 and PW5. PW4, working as Floor Manager in the service centre, has deposed that, on hearing the

screaming, he rushed to the spot and found the deceased struggling. He has stated that Vinoda (PW3) and the accused were present at the spot and when he enquired with Vinoda (PW3), he informed him that the accused had kept the air compressor pipe into the anal part of the deceased. Thereafter, they shifted Vijaykumar to THS Hospital, wherein he was provided first aid and the doctor advised them to shift him to Siddaganga Hospital.

22. Similarly, PW5, working as Commercial Service Manager in the service centre has also deposed that on 30.04.2018 at about 04:20 p.m., Vinod (PW3) came running and informed him regarding the incident and immediately they shifted the Vijayakumar to THS Hospital and from there to Siddaganga Hospital, wherein he died on 02.05.2018. PW5 has stated that, on enquiry with Vinod PW3, he came to know that the accused had inserted the air compressed air nozzle into the anal part of the deceased.

23. The accused took a defense that the deceased sustained injuries due to inhalation of nitrogen gas. The said suggestion was denied by the witnesses. Except the bald suggestion, no material was placed to justify said defense raised by the accused. In fact the suggestion put to PW.8, the doctor who treated the deceased at Siddaganga Hospital that the injuries referred in Exs.P13 and 14 are possible if a person inhales nitrogen gas, has been denied by him. Further, PW8 has denied that if a person falls on a hard substance and if the abdomen comes in contact with a hard object, such injuries are possible and stated that, if a person falls by slip and suffers any injury to his lower portion of back, possibility of sustaining injury to intestine is ruled out.

24. It is the contention of the learned counsel for the appellant that, there were CCTV cameras installed in the service centre and PW5 has admitted that he had handed over the footages to the Investigating Officer, but the said footages were not produced and therefore, the

genesis of the incident has been suppressed. It is contended by him that in view of suppression of the material evidence, the benefit of doubt should go to the accused.

25. PW5, the Commercial Service Manager, working in the service centre has admitted in the cross-examination that in every section of the service centre, they had installed CCTV cameras. He has stated that the police had collected the CCTV footages of the incident. Admittedly, the CCTV footages are not produced. The Investigating Officer examined as PW12, in his cross-examination has also admitted that the CCTV cameras were installed in Honnasiri Service Centre. However, he has stated, he had made an attempt to collect the footages and in-spite of issuance of notice, the CCTV footages were not provided to him.

26. The evidence of PW12-Investigating Officer is contrary to the evidence of PW5, who has categorically

stated in the cross-examination that the police had collected the CCTV footage, whereas, PW12 has stated that despite issuing notice, the CCTV footages were not provided to him. However, that by itself is not a ground to disbelieve the entire case of the prosecution, in view of the evidence of PW3, an eyewitness to the incident. It is not suggested to PW.3 that he was nurturing animosity against the accused. There was no reason for PW3 to depose against the accused. Hence, non-collection or production of CCTV footage is not fatal to the prosecution.

27. The trial Court held the accused guilty of the offence punishable under Section 302 of IPC, observing that the accused was a senior workman in the service centre and he knows the weight of the air compressor machine and also the pressure of air which comes out from its pipe and thus he definitely knew that if it is kept in the anus, there will be every chance of death of the person.

28. It is relevant to see that, the deceased as well as the accused came to work in the service centre at about 08:29 a.m., as deposed by PW6, in his cross-examination. PW3 has stated that normally the work would start in the service centre at 09:00 a.m. and it will close at 06:00 p.m. The deceased was working since two months prior to the date of incident. According to the prosecution, the deceased was liked by other co-workers and therefore, the accused was jealous and used to quarrel with him. Even though the prosecution tried to contend that the accused had given a letter admitting his guilt, the said letter has not been produced. However, PW4 has denied the suggestion that the accused was not quarrelling with the deceased. From the material on record, it can be gathered that both the accused and the deceased came to the service centre for work at about 08:29 a.m. on 30.04.2018. The incident took place at about 04:30 p.m. None of the witnesses have stated as to what prompted the accused to insert the compressed air nozzle to the anal

part of the deceased. This assumes importance, because if the accused had any intention to take away the life of the deceased, he would have done so, as soon as he had arrived for work.

29. PW.3 has deposed in the chief-examination itself that there used to be petty quarrels between the accused and the deceased and the Floor Manager used to reprimand and advise both of them. An oral appreciation of the entire evidence on record goes to show that on the date of incident there was a quarrel between the accused and the deceased and without any premeditation or intention, the accused inserted the compressed air nozzle into the anal part of the deceased without knowing the serious consequences. The evidence of PW1 shows that when they rushed to the spot, the accused was present at the spot. He was seen disturbed and frightened and admitted the guilt. Hence, we are of the view that the death caused by the accused was not premeditated. The accused had no intention to cause the death of the

deceased. Hence, the instant case would fall under Exception 4 to Section 300 of IPC. Though the accused had no intention to cause the death, he had the intention to cause such bodily injury as was likely to cause death. Hence, the offence committed by the accused is punishable under Section 304 Part I of IPC.

30. The accused was aged about 25 years at the time of incident. It is submitted that he was in custody as an under trial prisoner from 01.05.2018 to 03.07.2019 i.e. for a period of 1 year 2 months and 2 days and from the date of judgment i.e. from 17.01.2023 until 11.11.2026 i.e. for a period of 3 years 9 months 24 days. In all, he has undergone imprisonment for a period of 4 years 11 months and 26 days. He has no bad antecedents.

31. In the facts and circumstances, the sentence of seven years imprisonment with enhancement of the fine amount would meet the ends of justice. Accordingly, we pass the following:

ORDER

i. The appeal is **allowed-in-part**.

ii. The Judgment and Order of conviction and sentence dated 17.01.2023 passed by the Court of the Principal District and Sessions Judge, Tumakuru, in S.C. No.113 of 2018, convicting and sentencing the accused for the offence punishable under Section 302 of IPC, is set aside.

iii. The accused/appellant is convicted for the offence punishable under Section 304 Part I of IPC.

iv. He is sentenced to undergo Rigorous Imprisonment for a period of seven years and to pay a fine of Rs.1,00,000/- (Rupees One Lakh only) and in default of payment of fine, he shall undergo SI for a period of one year.

v. If the fine amount is deposited/recovered, the same shall be paid as compensation to the parents of the

deceased i.e. CW2-Lakshminarayanappa and CW3-Yellamma, on proper identification.

vi. The order passed by the trial Court for referring the matter to DLSA, Tumakuru, for payment of compensation under the Victims' Compensation Scheme shall be intact.

vii. The accused is entitled to the benefit of set-off for the period of imprisonment already undergone by him.

Sd/-
(MOHAMMAD NAWAZ)
JUDGE

Sd/-
(B.PRAMOD)
JUDGE

HB,MKM
List No.: 1 Sl No.: 11