HC-KAR

NC: 2026:KHC:60413-DB
CRL.A No. 1417 of 2019

CNR: KAHC010241572019

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF OCTOBER, 2026

PRESENT

THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ

AND

THE HON'BLE MR. JUSTICE B.PRAMOD

CRIMINAL APPEAL NO. 1417 OF 2019 (C-)

BETWEEN:

1. MAHADEVA NAYAKA @ MAHESHA
@ MAHADEVA NAYAKA
S/O GULINAYAKA
AGED ABOUT 39 YEARS
R/O SRIRANGARAJAPURA
BANNUR HOBLI, NARASIPURA TALUK
MYSORE-571101

2. SHANKARAPPA @ SHANKARA
S/O KADARAIH
R/O K.M. DODDI VILLAGE
HANURU HOBLI
KOLLEGALA TALUK
CHAMARAJANAGARA DIST-571439

...APPELLANTS

(BY SRI.MANJUNATH M.R.,ADVOCATE)

AND:

THE STATE OF KARNATAKA
HULIYURDURGA POLICE
TUMAKURU DISTRICT
REP BY PUBLIC PROSECUTOR
HIGH COURT , BUILDING
BANGALORE-560001

...RESPONDENT

Digitally signed by SHARADAVANI B
Location: HIGH COURT OF KARNATAKA

CNR: KAHC010241572019

(BY SRI. VIJAYAKUMAR MAJAGE, SPP II A/W;
SRI. SUDHINDRA B.S., HCGP)

THIS CRL.A IS FILED U/S.374(2) CR.P.C SET ASIDE THE JUDGMENT OF CONVICTION AND ORDER OF SENTENCE DATED 23.03.2018 PASSED BY THE II ADDITIONAL DISTRICT AND SESSIONS JUDGE, TUMAKURU IN S.C.NO.77/2016 - CONVICTING THE APPELLANT/ACCUSED NO.1 AND 2 FOR THE OFFENCE P/U/S 302 R/W 34 OF IPC.

THIS APPEAL, COMING ON FOR 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)

This appeal is preferred by accused Nos.1 and 2, assailing the judgment and order of conviction and sentence passed against them for the offence punishable under Section 302 r/w Section 34 of IPC, by the Court of II Additional District and Sessions Judge at Tumakur, in SC No.77 of 2016.

2. The learned Sessions Judge, vide impugned judgment and order dated 23.03.2018 has sentenced the appellants / accused Nos.1 and 2 to undergo rigorous imprisonment for life and to pay fine of Rs.10,000/- each for the offence punishable under Section 302 r/w Section 34 of IPC.

3. Heard the learned counsel for the appellants, learned SPP-II for the State and perused the evidence and material on record.

4. Brief facts of the prosecution case are that, the first informant-Chandrashekar @ Shankar S/o Nanjundaiah is a resident of Yadavani Village, Amruthur Taluk, Kunigal. His uncle by name Hosahalli Nagaraju had purchased a farm land near Kagganahalli. The first informant was arranging coolies and managing the farm land. The deceased Boraja was working as a coolie under him, and he was also procuring coolie workers. On 19.11.2015, the deceased brought accused Nos.1 and 2 to

work as coolies in the farm land. The deceased was demanding money and quarrelling with them to provide him liquor out of the coolie amount. Hence, with an intention to commit his murder, accused No.1 took an Axe, which was inside the farm house and while accused No.2 held the leg of the deceased, he assaulted with the said axe on the right side of his head and committed his murder.

5. Ex.P1 is the complaint lodged by Chandrashekhar, on the basis of which, a case was registered in Crime No.183 of 2015 of Huliyurdurga Police Station for the offence punishable under Section 302 r/w Section 34 of IPC. As per the complaint averments, at about 10:00 a.m. on 19.11.2015, the first informant had gone to Huliyurdurga Bus stand, in order to go to D.Hosahalli Village. He saw the deceased near the shop of one Mahadevaiah along with two coolie workers. The complainant gave a sum of Rs.200/- and the key to the deceased and told him to go to the farm house along with

the said two coolie workers. At about 01:00 p.m., the deceased made a call to the complainant from his mobile number 9741162239 informing him that they have reached the farm house. At about 07:00 p.m., complainant's uncle Nagaraju telephoned and informed him that the persons who had come for coolie work were quarreling with each other and they have assaulted the deceased. The complainant went to the farm house at about 07:30 p.m. and found the dead body of Boraja lying inside the farm house, with bleeding injuries over the ear, nose etc. The two persons who had come along with the deceased were not present. One Sannamari, a resident of Byadagere village, residing near the farm house informed him that he had seen two persons running away, while he had taken the sheep for grazing. Hence, he suspected that the said two persons who accompanied the deceased had committed his murder.

6. Both the accused were arrested on 25.11.2015. The voluntary statement of accused No.1 was recorded as

per Ex.P21. The mobile phone belonging to the deceased was seized from him. The said accused led the police and panchas to the farm house from where an axe which was concealed in the sand was seized. Upon completion of investigation, the charge sheet was filed against accused Nos.1 and 2.

7. It is the case of the prosecution that the deceased was demanding coolie amount from the accused and he was insisting them to provide him liquor out of the coolie amount. Hence, the accused committed his murder by assaulting him with an axe, in the farm house of Nagaraju-PW.4 and thereafter, accused No.1 concealed the axe in the sand, inside the farm house and took away the mobile phone of the deceased and both the accused fled away from the spot.

8. The entire case of the prosecution rests on circumstantial evidence. The prosecution is relying on the following circumstances.

i. The homicidal death of Boraja;

ii. Accused Nos.1 and 2 were seen in the company of the deceased prior to the incident;

iii. The accused running away from the spot immediately after the incident;

iv. PW.3 dropping accused No.1 near the bus stand;

v. Seizure of bloodstained axe and the mobile phone of the deceased at the instance of accused No.1.

9. The autopsy was conducted by PW.17. He has noticed the following external injuries on the dead body;

i. Three stab injuries in front of right ear placed one below the other measuring as follows;

ii. 7cms length x 1 cm width x 13 cms deep;

iii. 7cms length x 1½ cms width x 14 cms deep;

iv. 5.5 cms length x 1½ cms width x 8 cms deep respectively from above downwards;

v. Contusion measuring 7 cms length x 2 cms width present in front of right ear vertically placed.

10. PW.17 has opined that the death was due to shock and hemorrhage as a result of multiple injuries sustained.

11. The inquest report is marked as Ex.P12. The above mentioned injuries were also noticed during inquest proceedings. From the medical evidence and the inquest panchanama, the prosecution has established that Boraja died a homicidal death.

12. Admittedly, both the accused are strangers to the first informant-Sri Chandrashekar. It appears from the contents of Ex.P1 that as the two persons who accompanied the deceased were not found in the farm house and it was told by one Sannamari that he had seen two persons running away from the farm house, the complaint was lodged against the said two persons who had accompanied the deceased to the farm house. According to the prosecution, Sannamari, while grazing the sheep at about 4.30 p.m, saw two persons running

away from the farm house. Hence, entertaining a suspicion he went to the farm house, wherein he found the dead body of Boraja lying inside the farm house with bleeding injuries. Said Sannamari has been examined as PW.2. He has stated that after three days, the police brought the accused to the farm house and he identified them. He has identified the accused in the Court.

13. It is relevant to see that, the incident took place at around 4.30 p.m. on 19.11.2015. In the FIR, it is mentioned that the incident took place at about 7.00 to 7.30 p.m. The name of PW.2, who saw two persons running away from the spot, has been mentioned in Ex.P1. Even though, the complaint was registered by 00.15 hours on 20.11.2015, the FIR reached the Magistrate at about 12.15 p.m. The inquest proceedings were conducted at about 1.00 a.m. on 20.11.2015. The statement of Sannamari-PW.2 was not recorded during inquest proceedings. The statements of one Shivaramu and

Nagaraju were recorded. It is not forthcoming from their statements about PW.2 revealing to the complainant about the accused persons running away from the spot. The statement of PW2-Sannamari was recorded on 22.11.2015. Hence, PW.2 seeing the accused running away from the farm house at about 4.30 p.m. appears to be doubtful.

14. The prosecution is relying on the evidence of PW.14 to demonstrate that the deceased and the accused were seen alighting from the bus at Palleranahalli gate and proceeding towards the farm house. He has stated that the said three persons came to the tea shop, where he was drinking tea. He has stated that they had consumed alcohol and quarrelling with each other. On enquiry, they informed that they had come to work in the farm house of CW.8-Nagaraju (PW4). He has stated that while going to the farm house, they were quarrelling with each other.

15. PW.14 has stated that the police have recorded his statement and further statement near the farm house. According to him, he had seen the deceased and the accused quarrelling with each other and they informed him that they had come to work in the farm land of CW.8 (PW.4) and he has seen them proceeding towards the farm land. The Investigating Officer-PW.22 has not specifically stated as to when the statement of PW.14 was recorded. The material on record reveals that his statement was recorded after four days, i.e., on 23.11.2015 and the further statement was recorded on 25.11.2015. Admittedly, both the accused are strangers to PW.2 as well as PW.14. No attempt was made by the investigating officer to conduct the Test Identification Parade. Even though the statement and further statement of PW14 were recorded, in the cross-examination of PW.14, he has stated that he has given only one statement before the police. The evidence of PW.14 does not inspire the confidence of the Court to hold that he had

seen both the accused along with the deceased proceeding towards the farm land and quarrelling with each other.

16. After the arrest, a mobile phone was seized from accused No.1. According to the prosecution, the said mobile phone belongs to the deceased. However, no material has been placed to show that the mobile phone which was seized from accused No.1 under a mahazar-Ex.P5 belonged to the deceased. The prosecution has got examined PW.15 and PW.16, father and brother of the deceased. The said witnesses have not identified the mobile phone-MO.12 as that of the deceased. Hence, the seizure of mobile phone at the instance of accused No.1 will not incriminate him.

17. It is the case of the prosecution that accused No.1 led the police and panchas to the farm house from where the blood stained axe-MO.11, which was concealed in the sand, was seized under a mahazar–Ex.P3. PW.8 is the panch witness to the seizure of MO.11. His evidence

does not show that the voluntary statement-Ex.P15 of accused No.1 was recorded in his presence. He has deposed that the police had brought the accused near the farm house and accused No.1 removed the axe which was concealed in the mud, inside the farm house. Perusal of the evidence of Investigating Officer-PW.22 also reveals that the voluntary statement of accused No.1 was not recorded in the presence of the panch witnesses. Further, PW.22 has stated that when they went to the farm house, it was locked and the lock was opened by the complainant-PW.1 and thereafter, accused No.1 went inside the farm house and produced the axe. PW.8 has not at all stated that when they went to the farm house, it was locked and the lock was opened by PW.1. Hence, seizure of axe-MO.11 at the instance of accused No.1 also does not inspire the confidence of the Court.

18. The prosecution has not established the motive for the accused to commit the offence. None of the witnesses have stated that the accused were nurturing ill-

will against the deceased, on the ground that he was demanding money from them and insisting that they provide liquor out of the wages received by them.

19. It is contended by the learned counsel for the appellants that, if the accused had committed the murder, their clothes should have been bloodstained, but the prosecution has not found blood stains on their clothes. Admittedly, the clothes worn by the accussed at the time of incident are not seized.

20. On a careful re-appreciation of the entire evidence and material on record, we are of the view that the prosecution has failed to prove beyond reasonable doubt the circumstances relied upon by it to establish the charge levelled against the accused. Consequently, the impugned judgment and order of conviction and sentence passed by the trial Court cannot be sustained in law and are liable to be set-aside.

21. Hence, we proceed to pass the following:

ORDER

i. The appeal is **allowed**.

ii. The judgment and order dated 23.03.2018 passed by the Court of II Additional District and Sessions Judge at Tumakur, in S.C.No.77 of 2016, convicting and sentencing the appellants/accused Nos.1 and 2 for the offence punishable under Section 302 r/w Section 34 of IPC is hereby set aside and they are acquitted.

iii. The bail bonds executed by the appellants / accused Nos.1 and 2 shall stand discharged.

Sd/-
(MOHAMMAD NAWAZ)
JUDGE

Sd/-
(B.PRAMOD)
JUDGE

mkm
List No.: 1 Sl No.: 5