HC-KAR
NC: 2026:KHC:61479-DB
CRL.A No. 1546 of 2021
CNR: KAHC010370542021

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 5TH DAY OF NOVEMBER, 2026

PRESENT

THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ

AND

THE HON'BLE MR. JUSTICE B.PRAMOD

CRIMINAL APPEAL NO. 1546 OF 2021 (C)

BETWEEN:

SELVA @ SETU
S/O MADESH,
AGED ABOUT 23 YEARS,
R/O BILIGUNDLU VILLAGE,
PENNAGARAM TALUK,
DHARMAPURI DISTRICT,
TAMILNADU STATE-636 810.

...APPELLANT

(BY SRI. SURESH H.S., ADVOCATE)

Digitally signed by LAKSHMI T
Location: High Court of Karnataka

AND:

THE STATE BY MM HILLS
POLICE STATION, KOLLEGAL
REPRESENTED BY SPP, HCK,
BANGALORE-560 001.

...RESPONDENT

(BY SRI. VIJAYKUMAR MAJAGE, SPP-II ALONG WITH
SMT. SOWMYA R., HCGP)

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

THE JUDGMENT AND ORDER OF CONVICTION AND SENTENCE PASSED BY THE ADDITIONAL DISTRICT AND SESSIONS JUDGE, AT CHAMARAJANAGAR, SITTING AT KOLLEGALA DATED 01.04.2021 IN S.C.NO.5171/2018 FOR THE OFFENCES PUNISHABLE UNDER SECTION 302, 323, 506 OF I.P.C.

THIS APPEAL, COMING ON FOR FINAL 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, assailing the Judgment and order dated 01.04.2021 passed by the Court of the Additional District and Sessions Judge, Chamarajanagara (Sitting at Kollegala) in S.C.No.5171/2018, wherein he is convicted for the offences punishable under Sections 302, 323 and 506 of IPC.

2. For the offence punishable under Section 302 IPC, accused is sentenced to undergo imprisonment for life and to pay fine of Rs.15,000/-.

3. For the offence punishable under Section 323 IPC, accused is sentenced to pay fine of Rs.1,000/-, in default to pay the said amount, to undergo S.I. for a period of 1 month.

4. For the offence punishable under Section 506 IPC, accused is sentenced to pay fine of Rs.4,000/-, in default to pay the said amount, to undergo S.I. for a period of 3 months.

5. The first informant, Mary, is the wife of deceased Suresh. They were residing at Aalambadi Village, Gopinatham. The accused is first informant's brother. On 25.11.2017 at about 08:00 p.m., the accused visited the house of his sister at Aalambadi village. At that time, his sister and her husband Suresh were engaged in a heated argument over their family matter. At that juncture, the

accused got annoyed with their behavior and fisted his sister on her face, causing simple injuries. He threatened his brother-in-law Suresh, picked up a wooden club (hittina Donne) and assaulted him on his head, face and neck. As a result, Suresh sustained bleeding injuries and collapsed on the ground. Since the place occurrence was an interior forest area and as there was no suitable facilities available to shift the injured to the hospital, on the next day, at 10:00 a.m., Suresh was shifted to Ponnagaram Government Hospital. After providing first aid, he was taken to Dharmapuri Government Hospital and from there shifted to Mangalam Government Hospital in Salem District. However, he succumbed to the injuries while undergoing treatment in the said hospital, on 29.11.2017 at about 02:00 p.m.

6. On a complaint lodged by Mary, wife of the deceased, initially a case was registered against the accused for the offences punishable under Sections 323,

307 and 504 of IPC. After the death of Suresh, Section 302 of IPC was incorporated in the place of Section 307 of IPC. Upon completion of investigation, the charge sheet was filed.

7. Charges were framed against the accused for the offences punishable under Section 302, 323 and 506 of IPC. Based on the oral and documentary evidence on record, the trial Court convicted him for the offences charged against him.

8. The complaint lodged by Smt.Mary, wife of the deceased, is marked as Ex.P11. A perusal of the averments reveals that when a quarrel was taking place between herself and the deceased, the accused who had visited their house, started abusing both of them and assaulted the complainant with his hands on her face. Thereafter, he picked up a wooden club (hittina Donne) and assaulted the deceased with the said club, stating that

he was troubling his sister. Due to the said assault, the deceased sustained bleeding injuries to his head and ear and collapsed to the ground. When the complainant screamed, one Chinna residing in the neighboring house came and pacified the quarrel. It is stated that as it was dark, they could not go to the hospital on the same day. On the following day, i.e., on 26.11.2017 at about 10:00 a.m., with the help of her parents in law, they shifted her injured husband to the Government Hospital in Tamil Nadu.

9. The complainant examined as PW15 has not supported the case of the prosecution. She has been declared hostile. She has denied the entire incident. It is relevant to mention that the complainant had also taken treatment for the injuries sustained by her. The wound certificate is marked as Ex.P14, as per which, she had sustained i) abrasion over upper lip below the nose; ii) contusion and swelling around the left eye and cheek

measuring 7 x 5 x 2 cms; iii) contusion over right eye, redness of eye.

10. PW.17 is the doctor who treated PW15 and issued the wound certificate Ex.P14, as per which the injuries sustained by PW15 are simple in nature. PW17 has stated that on 26.11.2017 at about 07:00 p.m., he examined Mary (PW15), resident of Alambadi Village who was brought to the hospital by the police, with a history of assault.

11. The prosecution has got examined Chinna, the person who was residing near the house of the deceased. As per the complaint, he pacified the quarrel and shifted the deceased to the hospital. However, he has also turned hostile to the prosecution.

12. The trial Court relied on the evidence of PW3 and PW.4 holding that both the said witnesses have consistently deposed with regard to the nature of injuries sustained by the deceased as a result of the assault by the

accused. The trial Court further held that both the witnesses have consistently deposed that the deceased had sustained injuries on his forehead/head and ear and was also profusely bleeding. That apart, both the witnesses have categorically deposed that when they tried to intervene to control the situation, the accused had in fact seriously attempted to assault them with the same weapon and therefore, both of them ran away from the house. Further, both the witnesses have clearly identified MO3/wooden club (hittina Donne) and therefore, there is clear nexus between the nature of injuries sustained by the deceased ultimately leading to his death and the crime weapon.

13. We have perused the evidence of PW.3 and PW.4. PW3 is the father of the deceased. In the chief-examination, he has stated that the incident took place at about 08:00 p.m. There was a quarrel between her son, Suresh and his wife, Mary. The accused, who came to their house, assaulted Suresh with a club, stating that he was

giving trouble to his sister and therefore, he should not be alive. He assaulted him on his face, head and the ear, due to which Suresh started bleeding from his ear and collapsed to the ground. The accused kicked him and his wife and therefore, being scared, they went away. Further stated that, Chinna (PW1) came and pacified the quarrel. PW3 has identified the weapon, MO3.

14. In the cross-examination, PW3 has denied the case of the prosecution stating that he had not witnessed the actual incident. He has stated that his house is situated far away from the house of the deceased. Further stated that, he had not seen as to who was present in the house of the deceased, when the incident took place.

15. PW4, mother of the deceased, in her chief-examination has deposed that at about 8.00 - 8.30 p.m. when her son and his wife were quarrelling, the accused assaulted his sister Mary on her face and then took a wooden club and assaulted her son, Suresh on his head

and ear. Her son screamed and fell down. When she and her husband tried to intervene, the accused tried to assault them and therefore, they ran away from the spot. Thereafter, one Chinna (PW1) came and pacified the quarrel. She has further stated that, on that night, they could not shift their son to the hospital. After her another son Sendhil came, he along with Rajini shifted Suresh to Pennagaram Government Hospital and from there shifted him to Dharmapuri Hospital in an ambulance. However, after 2-3 days her son died. She has identified MO3 as the club with which the accused assaulted her son, Suresh.

16. The learned counsel for the appellant vehemently contended that in Ex.P11, the complainant has clearly stated that there were only three persons present in the house, when the incident took place i.e. She, her husband and the accused. Therefore, contended that PW3 and PW.4 witnessing the incident is doubtful, as they have admitted in the cross-examination that their house is situated far away from the house of the deceased. He

contended that the complainant, examined as PW15 has turned hostile to the case of the prosecution and therefore, there is no other material to establish that the accused had committed the charged offences. The learned counsel further contended that the motive is also not proved, as both the witnesses have stated that they are not aware as to for what reason, the quarrel took place.

17. In the chief-examination, both PW3 and PW4 have categorically stated that when there was a quarrel taking place between the complainant and her husband Suresh, the accused, who had come to their house, assaulted the complainant with hands and assaulted the deceased with a wooden club. The chief-examination of PW3 was conducted on 23.02.2019. In his cross-examination, conducted on 20.06.2019, he has stated that he was not present in the house when the incident took place. The said cross-examination was conducted after nearly four months from the date of chief-examination.

Insofar as PW4 is concerned, she has supported the case of the prosecution. In the cross-examination, she has denied that she was deposing falsely. Merely because she admitted that she was not aware as to for what reason the quarrel took place, that itself is not a ground to disbelieve her entire evidence.

18. As per the P.M. Report, Ex.P10, the deceased had sustained the following external injuries:

i. A Curvilinear surgically made stapled wound M-27 cms over left fronto parieto occipito temporal regions.

ii. A horizontal abrasion M-6X3 cms over right side of forehead.

iii. A abrasion M-4X3 Cms over right side of right eye.

iv. Abrasion M-1X1 Cms over right elbow.

v. M-1X1 Cms over middle of forehead.

vi. M-5X3 Cms over right side of neck.

vii. M-6X6 Cms over left side of left eye.

viii. M-6X5 Cms over left side of Cheek.

ix. M-5X3 Cms over outer aspect of left elbow.

x. M-5X3 Cms over back of left side elbow.

xi. Contused laceration of left ear with dried blood stained.

xii. Contusion M-15X10X soft tissue deep over back of left side of neck.

19. The autopsy was conducted by PW14. As per the final opinion furnished by him, the cause of death was due to complications of multiple injuries.

20. A careful perusal of the entire evidence and material on record goes to show that on the date of incident i.e. on 25.11.2017 at about 08:00 p.m., the accused had visited the house of his sister Mary. At that time, he noticed his sister and her husband Suresh quarrelling with each other. It appears that, being enraged, all of a sudden, the accused assaulted on the face of his sister with his hands and then picked up a wooden club which was lying there and assaulted the deceased on his head and ear. As a result of which, the deceased sustained bleeding injuries and collapsed. It has come in evidence that the deceased was shifted to the

hospital on the next day at about 10:00 a.m. Thereafter, he was taken to the different hospitals for treatment. However, he died while undergoing treatment on 29.11.2017 at about 02:00 p.m.

21. It is not the case of the prosecution that when the accused visited the house of the deceased, he was carrying any weapon in his hand. There is no any animosity between the accused and the deceased. No strong motive is attributed against the acussed to commit the murder of deceased, his brother in law. The material on record shows that the incident took place in a fit of rage and in the heat of moment. As per prosecution, the accused picked up a wooden club and assaulted the deceased. The said wooden club-MO.3 was seized from the spot at the time of conducting the spot mahazar-Ex.P1. In our considered view, the act committed by the accused would fall under Exception 4 to Section 300 of IPC. The injuries inflicted by the accused were not with the

intention of causing death. However, the accused had the intention to cause such bodily injury which was likely to cause death. Hence, the act committed by the accused is punishable under Section 304 Part I of IPC. Insofar as the accused causing simple injuries to the complainant-PW15, she has not supported the case of the prosecution. She has not stated that the accused had threatened or assaulted her. Hence, the charges under Section 323 and 506 of IPC are not established beyond doubt.

22. The accused was arrested on 27.11.2017. He is under incarceration for 8 years 11 months and 11 days. He was aged about 23 years at the time of incident. He has no bad antecedents. Hence, the sentence of imprisonment already undergone by the accused can be held to be sufficient sentence.

23. For the foregoing reasons, we proceed to pass the following:

ORDER

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

ii. The judgment and order dated 01.04.2021 passed by the Court of Additional District and Sessions Judge, Chamarajanagara (Sitting at Kollegala), in SC 5171 of 2018, convicting the accused/appellant for the offences punishable under Section 302, 323 and 506 of IPC are set aside. The accused is acquitted of the said offences.

iii. The accused is convicted for the offence punishable under Section 304 Part I of IPC and sentenced to the period of imprisonment already undergone by him.

iv. He shall pay a fine of Rs.15,000/- and in default of payment of fine, shall undergo SI for a period of three months.

v. If the fine amount is deposited / recovered, the same shall be paid to PW4-Madamma, as compensation.

vi. The order passed by the trial Court for payment of compensation to the parents of the deceased by the District Legal Services Authority, Chamarajanagara, is confirmed.

Sd/-
(MOHAMMAD NAWAZ)
JUDGE

Sd/-
(B.PRAMOD)
JUDGE

HB,MKM
List No.: 1 Sl No.: 16