

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30th DAY OF JUNE 2018

PRESENT

THE HON'BLE MR. JUSTICE K.N.PHANEENDRA

AND

THE HON'BLE MR. JUSTICE H. T. NARENDRA PRASAD

CRL.A.No.624 OF 2013

BETWEEN:

1. Sri Ananda Naika,
S/o.Sri Gopi Naika,
26 years,
R/o.Kollur Village,
Shimoga Tq. & Dist.
 2. Sri Ravi Naika,
S/o.Sri Somya Naika,
25 years,
R/o.Kollur Village,
Shimoga Tq. & Dist.
- ... Appellants

(By Sri Vishwanatha Poojary, Advocate)

AND:

State of Karnataka,
By Thunga Nagar Police
Station, Shimoga,
Represented by learned Public
Prosecutor, High Court Building,
Bangalore – 560 001.

... Respondent

(By Sri Chetan Desai, HCGP)

This criminal appeal is filed under Section 374(2) Cr.P.C., praying to set aside the judgment and order dated 9/15.11.2012 passed by the Presiding Officer, Fast Track Court-II, Shimoga in S.C.No.2012 – convicting the appellants accused for the offences punishable under Sections 448, 302 of IPC and are sentenced to undergo imprisonment for life and pay fine of Rs.5,000/- and in default of payment of fine to undergo SI for three months for the offence punishable under Section 302 of IPC and sentenced to undergo RI for one year for the offence punishable under Section 448 of IPC and etc.

This criminal appeal, coming on for hearing, this day, **K.N.PHANEENDRA J**, delivered the following:

J U D G M E N T

The appellants, who are aggrieved by the judgment of conviction and sentence passed by the Fast Track Court-II, Shimoga, in S.C.No.20/2012, are before this Court. The Trial Court has convicted the accused persons for the offences punishable under Section 302 of IPC and also under Section 448 of IPC and sentencing them to undergo imprisonment for life and to pay a fine of Rs.5,000/-, in default, to undergo sentence of simple imprisonment of three months for the offence punishable under Section 302 of IPC and also sentencing them to undergo

one year rigorous imprisonment for the offence punishable under Section 448 of IPC.

2. Before advertng to the grounds urged before this Court, as elaborated by the learned counsel for the appellants, it is just and necessary to have a brief factual matrix of this particular case.

3. A lady, by name Baby, wife of Jayaram, resident of Kallur Village has lodged a complaint on 04.05.2011, at about 10.20 a.m. before the respondent Police. The brief allegations are that, the husband of the complainant and herself with their three children were residing in Kallur Village. On 03.05.2011, at about 9.30 p.m., accused No.1 Ananda Naika and his sister Lalitabai had some quarrel with each other with regard to some dowry and due to which the said Lalitabai, sister of the accused No.1 came to the house of the complainant and alleged that, accused No.1 was attempting to assault her and she requested for some drinking water. Then the complainant gave some water to her. By that time, accused No.1 Ananda Naika dragged his wife Prema and started assaulting her. However, the

complainant and her husband kept quiet because the accused and the complainant were not in talking terms. Thereafter, the said Lalitabai, accused No.1 and Prema went back to their house. At that time, the accused No.1 threatened the complainant and her husband with dire consequences.

4. In the above-said context, it is further alleged that on the next day, i.e., on 04.05.2011, in the morning, at about 7.30 a.m., when the complainant and her husband were in their house, accused No.1 Ananda Naik and accused No.2 Ravi Naika (appellants herein), along with about five persons, came in a white Maruti Omni bearing registration No.KA-14/M-2645, near the house of the complainant and all have got down from the vehicle, calling the name of the husband of the complainant and virtually trespassed into the house of the complainant, dragged her husband Jayaram and started beating him with clubs. Particularly, it is alleged that accused Nos. 1 and 2, who were holding clubs in their hands, pushed the deceased Jayaram into a drain and mercilessly assaulted him and kicked him, due to which, the deceased Jayaram sustained serious injuries on the

head and other parts of the body due to the impact the deceased became unconscious in the drain. At that time, the brother of the deceased by name Jagadish and other witnesses by name Parashurama, Sarojamma and Shivanna who were present, also tried to resolve the dispute and stopped the quarrel and thereafter shifted the injured to McGann Hospital at Shimoga at about 9.00 a.m. The doctor at McGann. Hospital given the initial treatment and advised them to shift the injured to any sophisticated hospital. Immediately, the injured was shifted to Nanjappa Hospital but there the injured succumbed to the injuries. Therefore, it is categorically alleged that the appellants, along with others, with previous ill- will and hatred, with an intention to kill Jayaram, husband of the complainant, assaulted him mercilessly and caused death of that person.

5. On the above-said complaint, police have registered a case in Crime No.154/2011 for the offences punishable under Sections 143, 144, 147, 148, 307, 443 r/w. Section 149 of IPC and investigated the matter and submitted the charge-sheet. After securing the presence of the accused persons, the Trial

Court has framed the charges for the above-said offences and tried the accused persons. The prosecution, in order to bring out the guilt of the accused, examined as many as 18 witnesses as PWs. 1 to 18 and got marked the documents as Exs. P1 to P17 and P17(a) and material objects MOs. 1 to 7. During the course of cross-examination, Exs. D1 to D3 were also got marked. The accused persons were also examined under Section 313 Cr.P.C., explaining the incriminating materials found in the evidence of the prosecution witnesses, to the accused. The accused were also called upon to enter into the defence evidence, if any. However, the accused did not choose to lead any evidence on their side. After hearing the arguments of the learned counsel for the accused and the learned Public Prosecutor, the Trial Court has delivered the judgment, convicting accused Nos. 1 and 2 for the above-said offences as noted earlier however, acquitted accused Nos. 3 to 5, against which the present appeal is preferred.

6. Elaborating his arguments on the grounds urged in the memorandum of appeal, the learned Amicus Curiae, Sri

Vishwanatha Poojary. strenuously submitted before this Court that this case is based on or revolves around the eyewitnesses version. But there are serious discrepancies in the evidence of the prosecution witnesses. He contends before this Court that some of the eyewitnesses were close relatives of the deceased and they were interested. Therefore, their evidence has to be very carefully scrutinized and the said evidence of the eyewitnesses does not repose any confidence. Therefore, the Trial Court has committed a serious legal error in accepting the evidence of the eyewitnesses. He further contends before this Court that, there are serious investigation lapses in this case, with regard to the seizure of the clubs and seizure of the blood stained clothes of the deceased and as well as the other articles, which were found at the spot like blood-stained mud and unstained mud, etc. There is serious lapse on the part of the investigating agency in not examining the doctor who treated the injured at the first instance at McGann Hospital. The prosecution has not examined other witnesses to know what exactly is the version given by the wife of the deceased at the time when the injured was first admitted to the Hospital. Even

considering the injuries on the body and as well as the articles, seized there is no connection between the same and the prosecution has failed to connect the seized articles with that of the accused. Therefore, for all these reasons, the learned counsel pleads for acquittal of the accused.

7. Per contra, the learned High Court Government Pleader Sri Chetan Desai submits that, even considering some lapses on the part of the investigating agency, they are not sufficient to over-turn the entire case of the prosecution. Though the lapses may be there on the part of the investigating officer which partake the nature of the minor discrepancies and not the major discrepancies, which are not sufficient to go to the root of the prosecution case. The case has been relied upon by the prosecution on the strong basis of eyewitness version. If the Court accepts the eyewitness version, then there is no need for the prosecution to establish any other circumstance. In this particular case, the evidence of the eyewitnesses, though some of the witnesses are relatives, but there is no material elicited during the course of cross-examination that they are so

interested to falsely implicated the accused, particularly, wife of the deceased (PW2) who is the last person to screen the real culprits and to implicate falsely another person. The learned Government Pleader submits that there is no room to interfere with the judgment and sentence passed by the Trial Court.

8. On the above-said factual aspects and the rival contentions raised, the points that would arise for consideration to us in this case are,

(i) Whether the prosecution has proved the guilt of the accused beyond all reasonable doubt?

(ii) Whether the Trial Court has committed any serious legal error or factual error in convicting and sentencing the accused?

9. In order to appreciate the factual aspects pleaded and the charges framed against the accused, it is just and necessary, as an first Appellate Court, to re-evaluate the evidence on record. Of course, the entire case, in our opinion, revolves around the version of the eyewitnesses. If the Court places reliance on the version of the eyewitnesses, then nothing

remains for the accused in this case. Therefore, we prefer to first evidence the witness of the eyewitnesses in this case.

10. PW1 is none other than the wife of the deceased. We have already said that, she has no grievance against the accused persons to falsely implicate them, except some matrimonial disputes amongst themselves. She deposed before the court in a candid manner, stating as to what happened on 03.05.2011. She deposed that she knew about the accused Nos. 1 and 2 Ananda Naik and Ravi Naika. She does not know about the other accused persons. Therefore, she did not identify them. Even she has not disclosed their names at any point of time before the police. She has stated before the Trial Court that on 03.05.2011, at about 9.00 p.m., the sister of accused No.1 Lalitabai came to the house of PW1 and asked for water. PW1 gave water to her and at that time Ananda Naika started assaulting his wife Prema in front of the house of PW1 in respect of some dowry. PW1 and her husband did not raise any voice, they kept quite. The said accused No.1 has raised the grievance on the ground that PW1 has given drinking water to Lalitabai. He

threatened them with dire consequences and went home. She further deposed before the Court that on 04.05.2011 at about 7.30 a.m. when herself and her husband were in the house, accused Nos.1 and 2 (appellants herein) came to their house and called the name of husband of PW1 and entered into the house of PW1 and dragged the deceased out of the house and started beating him with clubs. The other accused persons, who were present, also assaulting the deceased with their hands and legs and thereafter, at that time, PW2 Jagadish, brother of the deceased also came there and tried to rescue his brother. The accused persons also attempted to assault the said Jagadish and on seeing the other persons accused persons, ran away from the spot. She further deposed that she, along with the other witnesses, shifted her husband, who was injured, to Mc.Gann Hospital and then to Nanjappa Hospital, and then to Manipal Hospital, where he was declared, brought dead. She identified the accused persons before the Court and also the clubs, which were seized by the police during the course of investigation.

11. Though in the course of cross-examination, some questions have been put to PW1 with regard to the location of the house and place of incident, she has been consistent in explaining all those questions. It is the case of the accused in the course of cross-examination that on the previous day, the husband of PW1, and PW2 have assaulted the mother of Ananda Naika and she was admitted to the hospital and since long there was some enmity between Ananda Naika and the family of the complainant. It is admitted that, the mother of Ananda Naika was admitted to the hospital, she denied the allegations that her husband has assaulted the said lady. The other defence was also put to the mouth of this witness that there was some ill-will and hatred between the family members of the accused and the complainant. But the same has been denied to some extent. She has admitted that the sister of the deceased by name Chandrika was given in marriage to the second accused Ravi Naika and there was some matrimonial dispute between Ravi Naika and his wife and in that context there was some advise for compromise given by both the families and an amount of Rs.5,000/- was directed to be given to Chetana by Ravi Naika,

etc. All these have been though suggested, except admitting the relationship, she did not accede to any of those suggestions made in order to bring home that there was ill-will and hatred between accused and deceased. Except these things, there is nothing in the course of cross-examination.

12. One more defence that has been taken by the accused in the evidence of this witness is that on that particular day, the deceased himself has fell down in a drain made up of stone slabs and because of that, he sustained severe injuries and he was admitted to the hospital, taking advantage of the situation, a false case has been foisted. Here, one thing is clear from the suggestions made by the accused that the deceased sustaining the injuries while falling into the drain and dying due to the injuries. The same is not disputed in the course of cross-examination. According to the evidence of this witness, she has very consistently stated about the involvement of the accused persons on that particular day.

13. PW2 Jagadish is also one more eye witness, who is none other than the brother of the deceased. He also in his

examination-in-chief has categorically stated about the accused persons assaulting the deceased and about some incident taken place on the previous day as stated by PW1. In the examination-in-chief he fully corroborated the evidence of PW1. He further deposed that on the next day, i.e., on 05.05.2011, the police had visited and collected bloodstained and unstained mud from the spot which were marked as Mos. 3 and 4 and also the clubs, thrown by the accused persons immediately after the incident as MOs. 1 and 2.. Again similar questions have been put in the course of cross-examination on the same defence taken by the accused.

14. What is mainly concentrated in the evidence of this witness is that he has wrongly stated about the date, that, on 05.05.2011 the police come to the spot, the mahazar drawn as per Ex.P3. But it was drawn on 04.05.2011 itself. The other witnesses have also stated that the mahazar was drawn on 04.05.2011 itself. Merely because a date has been wrongly stated by this witness, the evidence of all other witnesses cannot be disbelieved when the same has been corroborated by the

other evidence. The other suggestions made to this witness also clearly disclose that the deceased was a drunkard and he himself fell into the drain and sustained the injuries. Those suggestions have also been denied by this witness. Therefore, there is no reason to disbelieve these two witnesses merely because they are the close relatives of the deceased. The interestedness or relativeness, themselves are not sufficient to throw out the evidence of such witness unless it is shown in the evidence that the interestedness and the relativeness only played a dominant role in falsely implicating the accused. Why and how the accused persons were falsely implicated is not at all established during the course of cross-examination. Therefore, nothing is there to disbelieve these two witnesses.

15. The other two witnesses, who are independent witnesses, are also eyewitnesses to the incident. Their evidence also play a dominant role.

16. PW4 Shivanna, PW7 Vishalakshamma are the other two eyewitnesses. Shivanna is also none other than the husband of PW7 Vishalakshamma. Though he turned hostile to some

extent, he was the witness to the seizure mahazar drawn by the police as per Ex.P5. So far as the other part of the evidence is concerned, he fully supported the factual aspects narrated by PWs 1 and 2. He has stated that he is well conversant with deceased Jayaram and accused No.1 Ananda Naika. He also deposed about the incident happened on 03.05.2011 and assault by accused No.1 on his wife and mother-in-law and Lalitabai going to the house of PW1 and asking for drinking water and after consuming water, accused No.1 threatening them with dire consequences. He has also specifically stated as to what happened on the next day at about 7.30 a.m. He deposed that on that day he was going towards the house of the deceased and he was at a distance of 25 ft., he saw the accused Nos. 1 and 2 coming with other persons. Accused assaulted the deceased with clubs and he identified those clubs as MOs. 1 and 2 and in fact he has stated that, accused also chased PW2 Jagadish and as some people gathered there accused persons throw away the clubs and ran away from the spot. At that time, one Babanna, Sarojamma were also present. In the course of cross-examination, particularly, nothing has been elicited that as to

why this witness has to say falsehood against the accused persons. It is suggested that there is ill-will and hatred between this witness and the accused, therefore, he is deposing falsely. But evidence of this witness, if it is analyzed in a proper manner, he has only supported with reference to the happening of the incident but he has not supported the case of the prosecution with regard to the police coming to the spot at about 3.30 or 4.30 p.m. and seized the clothes of the deceased. That clearly discloses that this witness is neither supporting the case of the prosecution fully nor supporting the case of the accused. Irrespective of the consequences, he has deposed truth before the Court. Therefore, though some minor discrepancies elicited during the course of cross-examination, the prosecution case as such is not disturbed.

17. PW7 Vishalakshamma is the wife of PW4 Shivanna. She also categorically stated about the incident as to how it has happened on the morning and even she has stated about the relationship between the sister of the deceased by name Chandrika and that of Ravi Naika, etc. This witness also

narrated about the assault by the accused persons, their specific overt-acts and the deceased sustaining the injuries and shifting the injured to the hospital. Similar suggestions have been made that there was a quarrel between accused No.1 and the deceased Jayaramu and in that quarrel Gangibai, mother of accused Nos. 1 and 2 was injured and was shifted to the hospital and that deceased Jayaram sustained injuries by falling himself into the drain, etc. But the said suggestions have been denied. Nothing more has been elicited in the course of cross-examination of this witness. Though some questions have been put with reference to the factual aspects, to that, there is some discrepancy here and there but she consistently reiterated about the incident, even in the course of her cross-examination.

18. PW5 Ramappa is also another witness, who also stated that he is also actually near the incident. He also spoken about the incident that has taken place on 03.05.2011 and he has specifically stated that the accused persons assaulted the deceased at 7.30 a.m. on 04.05.2011 and thereafter deceased was shifted to the hospital. But he did not go to the rescue of

the deceased. He is a third person, who is nowhere connected or related to the accused, and the deceased, but he is a neighbour of the deceased and the accused, and irrespective of the consequences, he has categorically stated about the incident. Again in the course of cross-examination, similar type of suggestions have been made. However, it is elicited that the clothes of the deceased were stained with blood and the police have seized the clubs. He also deposed that on the same day, police have visited the spot and seized the clubs, etc. Therefore, his evidence differs from the evidence of PW2 in so far as the seizure of the articles are concerned. We have already stated that the same is not sufficient to come to such a conclusion that the version of the prosecution witnesses, particularly the eyewitnesses is devoid of any consideration.

19. PW6 Babu is an auto rickshaw driver. He is the person who shifted the deceased to the hospital, i.e., Mc.Gann Hospital on that particular day. He has stated that PW1, Sarojamma and others have shifted the deceased to the McGann Hospital. He turned hostile to the prosecution in so far as other matters are

concerned. He was also an eyewitness to the incident. He saw the accused persons throwing the clubs at the spot and running away from the spot. He denied the suggestion made by the prosecution to that extent. But he narrated to the effect that, he has shifted the deceased to the hospital along with others. In the course of cross-examination, it is elicited that when he visited the spot, at that time, the deceased has already sustained injuries and he was lying in a drain. Immediately, he went and brought the auto and shifted the deceased to the hospital. The other eyewitnesses have also stated that this witness (PW6) was also an eyewitness, and helped to shift the deceased to the hospital.

20. PW8 Harish is a lorry driver, who has present at the time of conducting the spot mahazar and seizure of certain articles. Ex.P3 is the mahazar drawn at the spot and the police have seized MOs. 1 to 4 i.e., blood stained mud and unstained mud and two clubs on 04.05.2011, at about 12.00 noon. Of course, as learned counsel has submitted that, there is some discrepancy with regard to the evidence of PW2 and this witness

with regard to the time and date of drawing up of the mahazar, in our opinion, it is not so. There is no major discrepancy so as to deprecate the case of the prosecution itself.

21. In so far as the other witnesses are concerned, are not so relevant to be considered by this Court .

22. PW9 Girish is a person who took the clothes of the deceased to the police station after the postmortem examination and the said clothes were seized under mahazar Ex.P5 which are marked at Mos. 5 to 7. Though there is some discrepancy in so far as these aspects are concerned, there is some lapse on the part of the investigating officer because of the simple reason that, there is no explanation as to when these clothes were seized and how this witness came to the possession of those articles. When the deadbody was shifted to the hospital, the doctor himself should have removed the clothes and sent it to the police. Though some lapse is there on the part of the investigating officer, as we have already said, the same is not sufficient to uproot the entire case of the prosecution.

23. PW.10 Dr.Vikram Palimar, conducted the postmortem examination on the deadbody of the deceased on 05.05.2011 between 10.20 a.m. to 12.00 noon. He has stated that the deceased has sustained many injuries on his head and other parts of the body. He examined the body by dissecting the same and thereafter he gave the opinion, as per Ex.P7 that, the death of the deceased was due to trauma as a result of blunt force to the head. The evidence of this doctor has not been seriously subjected to cross-examination with regard to the death of the deceased. Except putting suggestions that, if a person is hit with club there is chances of swelling to the head and it is denied by this witness and he has not examined the clubs, etc. The doctor has only given authoritative opinion that by using clubs like Mos. 1 and 2, such types of injuries and other injuries found on the dead body could be caused. The doctor cannot say that those injuries are definitely caused by means of said clubs. The opinion of the doctor has to be looked into by this Court in corroboration with the other materials on record. As we have examined the evidence of other witnesses particularly eyewitnesses, they have identified MOs. 1 and 2 and state that,

they were in the hands of accused Nos. 1 and 2 and they assaulted the deceased. Therefore, the evidence of the doctor is also corroborated and the prosecution has proved beyond reasonable doubt that, the deceased died a homicidal death.

24. PW11 Krishnanaika is the person who spoke about the Maruti Omni car which was used by the accused persons on that particular day.

25. PW12 John D'souza is a retired ASI. He has stated that, he apprehended the accused persons and produced them before the CPI on 07.05.2011 and the accused persons were arrested by the investigating officer.

26. PW13 H.Shafiulla, PSI has deposed that, he has recorded the statement of PW1 on 04.05.2011 and registered Crime No.154/2011 and dispatched the FIR to the Court and its official superiors. He has also visited the spot which is shown by PW2, drew up the spot mahazar as per Ex.P3. He has also seized MOs.5 to 7 which were produced by one Mr.Jagadish. Of course, there is some discrepancy with regard to the production

of these clothes before the investigation officer which we have already considered.

27. PW14 Lingaraju CPC is the person who subjected the deadbody to postmortem. After postmortem examination, he acknowledged the same as per Ex.P11.

28. PW15 Bheema Naika was the ASI working there at that time. He has conducted the inquest proceedings on the deadbody of the deceased in the presence of the witnesses as per Ex.P4. There is no dispute or doubt expressed during the course of cross-examination with regard to conducting of the inquest on the deadbody of the deceased.

29. PW16 Venkatesh Mudaliar is the person who was a witness to Ex.P14 under which police have seized a Maruti Omni van belonging to accused No.1.

30. PW17 Dr.Sachin is the doctor working at Nanjappa Hospital at Shivamogga and treated and examined the deceased Jayaram. He has deposed that, on 04.05.2011 when he was working at Nanjappa Hospital, the deceased Jayadeva was

admitted to the hospital. At that time he was unconscious. He examined and found that there were as many as four injuries and observed oozing out of the blood from right ear, etc. He has given wound certificate as per Ex.P15. On perusal of Ex.P15, in fact it also corroborates the case of the prosecution. At the earliest point of time when this injured was admitted to the hospital, PW1 has stated before the doctor with regard to the culprits, i.e., accused Nos. 1 and 2. It is mentioned there that some accused persons have also used steel iron rod. The presence of accused Nos. 1 and 2 and their assault has been expressed by PW1 even at the earliest point of time before the doctor. This is also one of the strong reasons to believe the eyewitness version. Again in the course of cross-examination, nothing has been elicited to disbelieve the version of this witness. A suggestion has been made to this witness that if a person falls on a cement slab such injuries could be caused. The doctor has admitted the same, but no foundation has been laid so far as this suggestion is concerned, mere making suggestions without any basis is of no avail.

31. PW18 Siddalingappa is the CPI, who completed the investigation and submitted the charge-sheet. Except submitting the charge-sheet and conducting the investigation, nothing worth has been elicited in the course of cross-examination of this witness to disbelieve the evidence of other witnesses. In the course of cross-examination it is suggested to this witness that though this witness had come to the conclusion that, the deceased died as he fell down in a drain and sustained injuries, a false case has been foisted and that the deceased was a drunkard and due to the drunkenness, he fell down into the drain. Except this, nothing worth has been elicited.

32. Therefore, on overall reevaluation of the entire materials on record, we are of the opinion, though there are some minor discrepancies, in the evidence of the witnesses here and there, but they are not sufficient to uproot the entire case of the prosecution. When the eyewitness version is so strong enough to be believed by the Court, the other circumstances, motive and recovery, process of seizure everything will go to the backseat. Therefore, under the above-said circumstances, we

do not find any strong reasons to interfere with the judgment of conviction and sentence passed by the Trial Court. Hence, appeal is devoid of merit and the same is liable to be dismissed. Accordingly we pass the following order:

The appeal is dismissed.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

Cm/-