

IN THE HIGH COURT OF KARNATAKA  
DHARWAD BENCH

DATED THIS THE 30<sup>th</sup> DAY OF JULY 2020

BEFORE

THE HON'BLE MRS.JUSTICE M.G.UMA

**CRL.APPEAL NO.2635/2011**

BETWEEN

ABDUL LATIF ABDULLAZIZ RANGAREJ  
AGE: 47 YEARS, OCC: BUSINESS,  
R/O MARKET STREET, CAMP,  
BELAGAVI.

... APPELLANT

(By Sri.S B DEYANNAVAR, ADV.)

AND

THE STATE OF KARNATAKA  
R/BY STATE PP.  
CIRCUIT BENCH,  
DHARWAD.

... RESPONDENT

(By Sri.SHIVAPRABHU S. HIEMATH, AGA)

THIS CRIMINAL APPEAL IS FILED U/S 374(2) OF CR.P.C. SEEKING TO SET ASIDE THE JUDGEMENT AND ORDER DATED 25.03.2011 PASSED BY THE FAST TRACK IV-COURT & ADDL. SESSIONS JUDGE, BELGAUM, IN S.C.NO.11/2010 FOR THE OFFENCES P/U/S 304 PART II, OF IPC AND ACQUIT THE APPELLANT.

RESERVED FOR JUDGMENT ON: 27.07.2020.

JUDGMENT PRONOUNCED ON : 30.07.2020.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR ORDERS, COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, THE COURT PASSED THE FOLLOWING:

### JUDGMENT

The appellant/accused No.1 is before this Court seeking intervention of the Court to set aside the impugned judgment of conviction and order of sentence dated 25.03.2011 passed by the learned Fast Track IV Court and Additional Sessions Judge, Belagavi, whereunder accused No.1 was convicted for the offence punishable under Section 304(II) of IPC,

while acquitting him and accused No.2 for the offences punishable under Sections 302 and 504 of IPC.

2. The case of the prosecution in brief is that accused Nos.1 and 2 intentionally insulted the deceased Gani Gafur Jamadar and gave provocation to break public peace, thereby committed the offence punishable under Section 504 read with 34 of IPC and on 01.11.2019 at 11.15 am, when deceased Gani Gafur Jamadar was in his residential house, bearing No.2960 situated at Laxmi Nagar, Hindalaga, Belagavi, accused No.1 stabbed him with a knife on his chest and caused fatal injuries and accused No.2 assaulted with a cooker on his head and caused grievous injuries, as a result of the injuries, injured Gani Gafur Jamadar died and thereby accused Nos.1 and 2 have committed the offence punishable under Section 302 of IPC read with Section 34 of IPC.

3. Heard the learned advocate for the appellant Sri.S.B.Deyannavar, through video conference and learned AGA Sri.Shivaprabhu S.Hiremath for respondent-State. Perused the materials on record, including the trial Court records.

4. The prosecution in order to prove its contention examined 19 witnesses, got marked 18 documents and identified 7 material objects. The accused have denied all the incriminating materials available on record, in their statement recorded under Section 313 of Cr.P.C., but have not chosen to lead any evidence in support of their defence. However Ex.D1 was marked during cross examination of PW3.

5. After considering all these materials on record, the trial Court proceeded to convict accused No.1 for the offence punishable under Section 304(II) of IPC while acquitting him and accused No.2 for the offences punishable under Sections 302 and 504 of

IPC. Aggrieved by the said judgment of conviction and order of sentence passed by the trial Court, accused No.1 preferred this appeal on various grounds.

6. Learned advocate for the appellant submitted that the impugned judgment of conviction and order of sentence passed by the trial Court is illegal, perverse and the same is liable to be set aside. The trial Court erred in relying on the evidence of PWs3 and 4, as they are interested and tutored witnesses. The trial Court has not considered the fact that they are the minor children, amenable for tutoring. The trial Court has also not considered the fact that the complainant is not an eye witness, but he has given the hearsay evidence. He further stated that when PWs3 and 4 have categorically stated during cross examination that they have not given any statement before the police, their evidence cannot be relied on. The evidence of these witnesses are full of omissions

and contradictions, which go to the root of the matter. If the evidence of the prosecution witnesses are taken into consideration, there is serious discrepancies with regard to the scene of offence. The trial Court also ignored the fact that the independent eye witness i.e. PW5 has not support the case of the prosecution, so also the mahazar witnesses. Even though PW16 is said to have informed the complainant PW1 about the incident, he had also not supported the case of the prosecution. Further it is his submission that the injuries found on the head of the deceased are not explained by the prosecution. Under such circumstances, the trial Court should have acquitted the accused by extending the benefit of doubt. The trial Court committed an error in convicting the accused without any basis. Therefore he prays for allowing the appeal by setting aside the impugned judgment of conviction and order sentence and acquit

the accused for the charges levelled against him in the interest of justice.

7. Per contra the learned AGA submitted that PWs 3 and 4 are the natural eye witnesses, as they are the children of the deceased and accused No.2. Their presence at the scene of offence, cannot be denied. Even though they are the child witnesses, they are fully corroborated with each other and supported the case of the prosecution. There is no basis to term them as tutored witnesses. PWs.1, 6, 14 and 16 are the circumstantial witnesses, who have also supported the case. Evidence of the doctor examined as PW14 regarding the injuries found on the dead body, cause of death and also about the opinion regarding M.O1- the knife used in commission of the offence, is very much important. PWs.1, 3 and 4 have identified M.O1- the knife. There are no material contradictions in the evidence of the prosecution witnesses. The trial Court

properly appreciated the materials placed before it and came to the conclusion that the prosecution is successful in proving the guilt of the accused. The decision of the trial Court does not call for interference by this Court. Hence he prays for dismissal of the appeal.

8. PW1-father of the deceased, is the informant, who lodged the first information as per Ex.P1. This witness states that on 01.11.2009 at 11.15 am, when he was in his house, his neighbor Shanavaj Polawale came and informed that there is a 'galata' in the house of the deceased Gani Gafur Jamadar. Immediately he rushed to the house of his son-Gani Gafur Jamadar and found him lying dead in the kitchen. He had sustained bleeding injuries over his chest. A blood stained knife was lying near the wall. A blood stained cooker was also lying on the floor. His two grand children-Rahil and Muskan were weeping.

On enquiry with them, both the children informed him that in the morning, the deceased had picked up quarrel with his wife, who is accused No.2 and therefore accused No.2 had called her brother-Abdul Latif Rangrej i.e. accused No.1, who came and abused the deceased and stabbed him on his chest. Accused No.2 instigated accused No.1 to finish him off, as she cannot tolerate his ill-treatment. The informant further stated that his son Gani Gafur Jamadar was frequently quarreling with his wife/accused No.2 and therefore accused Nos.1 and 2 intentionally caused the death of the deceased by stabbing with a knife on his chest. Witness identified the knife used by accused No.1 for the commission of offence, as M.O1. He also stated that the spot mahazar was drawn as per Ex.P2 at the scene of occurrence.

9. During cross examination, witness stated that he does not remember the contents of Ex.P1/first

information. But stated that the same was written in the police station by his daughter. He denied the suggestion that due to ill will, he lodged false complaint against accused Nos.1 and 2.

10. PW2 is the inquest mahazar witness. The inquest mahazar is as per Ex.P3. This witness fully supported the case of the prosecution and stated that the blood stained knife and a cooker were lying near the scene of occurrence. He identified those materials as M.Os1 and 2. He also spoke about seizure of the banyan and a blue coloured pant from the scene of offence, which are as per M.Os.3 and 4 and cement pieces as per M.Os.5 and 6, under Ex.P4.

11. PW3 is the son of the deceased. This witness was aged about 16 years and the trial Court after satisfying itself about his capacity to understand the questions put to him and to give rational answer, recorded his evidence. This witness stated that the

deceased is his farther, accused No.2 is the mother and accused No.1 is his maternal uncle. Witness stated that on 01.11.2009, at 9.00 am, when he was brushing his teeth, deceased asked accused No.2 to prepare the breakfast and a quarrel began. Witness stated that he informed this fact to accused No.1 over phone. Thereafter accused No.2 prepared the breakfast and the deceased had his breakfast. Subsequently accused Nos.1 and 2 came and abused the deceased. Accused No.2 instigated accused No.1 to finish the deceased and assaulted with a cooker. In the meantime, accused No.1 assaulted the deceased on his chest with a knife, as a result of which, he died at the spot. Accused No.1 removed his blood stained clothes and wore another shirt and informed about the incident to the police. Witness stated that he along with his sister was present when the incident had taken place. He identified the blood stained knife as

M.O1 and cooker as M.O2, which were used in the commission of the offence. The blood stained shirt which was worn by accused No.1 was identified by him as M.O7. During cross examination, witness stated that he used to stay in his grand fathers house and pleaded his ignorance as to whether the deceased was a drunkard and was quarreling with accused No.2. Witness stated that he had not given the statement before the police as per Ex.D1. Witness stated that accused Nos.1 and 2 have assaulted the deceased in the kitchen and M.Os.1 and 2 were lying there itself. Accused No.1 had even talked with the police for about 15 minutes, but denied the suggestion that he is deposing falsely and he was not present at the scene of offence.

12. PW4 is the daughter of the deceased. She is also a child witness. After satisfying about her capacity to understand the question put to her and

give rational answer, her evidence was recorded before the trial Court. This witness also gave detailed account of the incident, as stated by PW3 and identified M.Os.1 to 4. During cross examination, witness stated that the deceased was not lying in the kitchen, but he was lying just in front of the bathroom. The knife used in commission of the offence was lying beneath a chair near by. She also denied the suggestion that she was not present at the scene of occurrence and that she was deposing falsely against the accused.

13. PW5 is the neighbor. He has not supported the case of the prosecution. PW6 is the sister of the deceased, who is the scribe of Ex.P1. Witness stated that she received the information about the incident and immediately rushed to the house of the deceased. She stated that when she went there, both the accused were in the house and the deceased was lying

on the ground. There were blood stains on the floor. The blood stained knife and cooker were also lying there. She learnt about the incident from PW3. She identified M.Os1 to 4

14. PW7 is the Assistant Engineer, PWD, who has drawn the spot sketch as per Ex.P6. PWs 8 and 9 are the mahazar witnesses to Ex.P7, but they have not supported the case of the prosecution. PW10 is the mahazar witness to Ex.P8. He has not supported the case of the prosecution.

15. PW11 is the photographer, who identified the photograph as per Ex.P2 and stated that he himself had taken the photo. During cross examination, witness denied the suggestion that he had not taken any photo and he is deposing falsely. PW12 is the police constable, who submitted the report Ex.P9 that the accused could not be traced. PW13 is the police constable, who shifted the dead body for post mortem

examination and brought a banyan and half pant, which were found on the dead body and handed over to the investigation officer.

16. PW14 is the doctor who conducted autopsy over the body of the deceased. Witness stated that there was stab injury over the front chest and two incised wound over the head. He issued post mortem report as per Ex.P11 and his opinion as Ex.P12. As per the post mortem report, death was due to *hemorrhage shock as a result of stab injury to the chest piercing the aorta sustained by single edged sharp cutting weapon*. As per Ex.P12, he examined the knife-M.O1 and has given his opinion that the injuries mentioned in the post mortem report could have caused by the said knife.

17. PW15 is the mahazar witness to Ex.P8. He has not supported the case of the prosecution. PW16 is said to be the witness, who informed about the

incident to PW1. But he has not supported the case of the prosecution. PW17 is the carrier of the FIR. PW18 is the investigating officer, who filed charge sheet after investigation. PW19 is the police inspector, who visited the spot on receiving the information and had received first information at the spot and registered the FIR as per Ex.P14. This witness also speaks about the drawing of inquest panchanama as per Ex.P3 and spot panchanama as per Ex.P4 and seizure of M.Os1 to 6 from the spot.

18. The first contention that was taken by the prosecution is that the deceased Gani Gafur Jamadar died a homicidal death. In order to prove this contention, the prosecution examined PW2, the inquest mahazar pancha. The inquest mahazar is as per Ex.P3. This witness gives full account of the situation at the scene of occurrence and also speaks about the seizure of material objects. The witness

spoke about the bleeding injuries and the blood stains on the knife, cooker, banyan, pant and on the floor. The prosecution also examined PWs3 and 4 as eye witnesses to the incident, who have also stated regarding the injuries sustained by the deceased. PW14 the doctor, who conducted the autopsy and described the injuries found on the dead body and issued the post mortem report as per Ex.P11. As per this document, there were three injuries found on the dead body, but the death of the deceased was due to *hemorrhage shock as a result of stab injury to the chest piercing the aorta sustained by single edged sharp cutting weapon*. All these materials together support the contention of the prosecution that the deceased died a homicidal death. I do not find any defence taken, denying the homicidal death of the deceased by the accused. Under such circumstances, I am of the opinion that the prosecution is successful in

proving its contention that the deceased died a homicidal death.

19. The next question arises as to, who is the author of the injuries caused to the deceased. As per Ex.P11 the post mortem report, the following injuries were found on the dead body:

- 1. A wedge shaped obliquely placed gaping stab wound of 3x1.5cms, cavity deep present over front of chest on left side.*
- 2. A incised wound of 1x0.3cms, muscle deep with gaping is present over left side of head 5cms above and 4cms behind left ear.*
- 3. A incised wound of 4x0.3cms, muscle deep with gaping is present over right side head, over right parietal eminence.*

20. As per the opinion, injury No.1 is the cause for the death of the deceased and it was caused by single edged sharp cutting weapon. As per Ex.P12, the opinion of PW14 regarding the knife-M.O1, it is the single edged knife with reddish brown stain on the

blade and the injuries mentioned in the post mortem report could have been caused by the said weapon. PW14 has also deposed about these facts in his evidence. Even though this witness was cross examined at length, nothing has been elicited from him to disbelieve his version. From these materials, the prosecution is successful in connecting M.O1-knife as a cause for the injury No.1 mentioned in the post mortem report-Ex.P11.

21. PWs.1 and 2 have specifically deposed before the Court about the presence of the knife-M.O1, at the scene of occurrence and seizing of the same by the investigating officer. The FSL report Ex.P18 states that the knife M.O1 was stained with human blood, even though the blood group could not be detected as the test was inconclusive.

22. Moreover we have the version of the eye witnesses-PWs3 and 4. These witnesses are the

children of the deceased and accused No.2 and admittedly the incident had taken place inside the house of the deceased and accused No.2. Even though PW3 stated in his evidence that he was staying in his grand father's house while attending the school, he specifically stated that since his grand mother was out of station, his father had brought him to the house on 26.10.2009 and the incident had taken on 01.11.2009. Both these witnesses have stated that there was a quarrel between the deceased and accused No.2 in the matter of preparation of the breakfast and accused No.2 informed about the quarrel to accused No.1, who is her brother who came the house immediately and stabbed the deceased with the knife. Both these witnesses have specifically narrated the incident that had taken place in their house. Even though these witnesses were cross examined at length, nothing has been elicited to

conclude that they are the interested or tutored witnesses.

23. It is true that both these witnesses are related to the deceased and also to accused No.2. But nothing has been placed before the Court to show that they were interested to see that the accused are convicted. Their evidence is found to be natural and it cannot be said that they are giving false version as tutored by anybody else.

24. It is trite of law that if the child witness is found competent to depose, his evidence can be relied on and the same could be the basis for conviction of the accused. The only precaution that is to be taken while appreciating the evidence of the child witness is to rule out any tutoring. This position of law is reiterated in the case of ***P.Ramesh Vs. State Rep. by Inspector of Police AIR 2019 SC 3559***, whereunder the Hon'ble Apex Court considered the

competence of the child witness and acceptance of the evidence and held as under:

*"5.... A child witness, if found competent to depose to the facts and reliable one such evidence could be the basis of conviction. In other words even in the absence of oath the evidence of a child witness can be considered under Section 118 of the Evidence Act provided that such witness is able to understand the questions and able to give rational answers thereof. The evidence of a child witness and credibility thereof would depend upon the circumstances of each case. The only precaution which the court should bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one and his/her demeanour must be like any other competent witness and there is no likelihood of being tutored."*

25. The minor discrepancies pointed out by the learned advocate for the appellant, are not material in nature and they do not go to the root of the matter. I do not find any reason to discard the evidence of these witnesses.

26. The version of the eye witnesses are fully corroborated by the evidence of the circumstantial witnesses i.e. PWs1, 2, 6, 14 and 16. But nothing has been elicited from any of these witnesses to create a cloud in the case made out by the prosecution. Even though it is contended by the learned advocate that there are material omissions and contradictions in the evidence of prosecution witnesses, no such material omissions and contradictions were brought on record, during cross examination of the witnesses. The contention of the learned advocate for the accused that the independent eye witness-PW5 and the mahazar witnesses have not supported the case of the prosecution, do not enure to the benefit of the accused in any manner. The contention of the learned advocate for the accused that the prosecution has not explained the injuries found on the head of the deceased, also is not fatal to the case of the

prosecution as it is the specific contention of the prosecution that accused No.2 had assaulted the deceased on his head with a cooker and caused injuries. Therefore, I do not find any serious discrepancies in the evidence led by the prosecution. It is also pertinent to note that this accused has not taken any specific defence, even in his statement recorded under Section 313 of Cr.PC. He has not explained any of the incriminating materials available on record.

27. Even though the appellant/accused No.1 was charged for the offence punishable under Section 302 of IPC, the trial Court after appreciating the materials on record rightly came to the conclusion that the prosecution has not made out grounds to convict accused No.1 for the offence punishable under Section 302 of IPC but the incident squarely false within exception No.1 of Section 300 of IPC, punishable

under Section 304(II) of IPC. I do not find any reason to interfere with the same. Therefore the impugned judgment of conviction and order sentence passed by the trial Court is liable to be confirmed. Hence the appeal is ***dismissed***, as devoid of merits.

SD/-  
JUDGE

KGK