

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

ON THE 31<sup>ST</sup> DAY OF JANUARY, 2020

BEFORE

THE HON'BLE MR. JUSTICE RAVI MALIMATH

AND

THE HON'BLE MR. JUSTICE M.I.ARUN

CRIMINAL APPEAL No.255 OF 2014

BETWEEN:

K.N. TILAK  
SON OF LATE NINGAPPA  
AGED ABOUT 24 YEARS  
SALES EXECUTIVE  
RESIDING OF MADIVALA ROAD  
DODDAPETE  
KADDUR TOWN – 577 548  
CHIKKAMAGALUR DISTRICT

... APPELLANT

(BY SRI. HASMATH PASHA, SENIOR COUNSEL FOR  
HOSMATH PASHA ASSOCIATES)

AND:

THE STATE OF KARNATAKA  
BY KADUR POLICE STATION  
KADDUR, CHIKKAMAGALUR DISTRICT  
BY STATE PUBLIC PROSECUTOR  
HIGH COURT BUILDINGS  
BENGALURU – 560 001

(REPRESENTED BY LEARNED  
SPECIAL PUBLIC PROSECUTOR)

... RESPONDENT

(BY SRI. VIJAYKUMAR MAJAGE, ADDITIONAL SPECIAL PUBLIC PROSECUTOR)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374 (2) OF CR.P.C PRAYING TO SET ASIDE THE JUDGMENT OF CONVICTION DATED 31.01.2014 PASSED BY THE PRINCIPAL SESSION JUDGE, CHIKMAGALUR IN S.C.NO.93 OF 2012 - CONVICTING THE APPELLANT/ACCUSED FOR THE OFFENCE PUNISHABLE UNDER SECTION 302 OF IPC.

THIS CRIMINAL APPEAL COMING ON FOR HEARING, THIS DAY, RAVI MALIMATH J., DELIVERED THE FOLLOWING:

### **JUDGMENT**

The instant appeal is filed by the appellant, the sole accused, challenging the judgment of conviction and order of sentence dated 31.01.2014 passed in Sessions Case No.93 of 2012 by the Principal Sessions Judge at Chikmagalur, whereby, the appellant-accused was convicted for the offence punishable under Section 302 of Indian Penal Code, 1860 (for short 'I.P.C.') and sentenced to undergo imprisonment for life and to pay a fine of Rs.5,000/-, in default of payment of fine, he shall undergo simple imprisonment for one year.

2. The case of the prosecution is as follows:-

That the deceased - Manjunath was doing money lending business. He was a bachelor and the accused is his nephew, that is the father of the accused was the brother of the deceased. That six months prior to the incident, the accused had borrowed Rs.40,000/- from the deceased stating that he will repay it. Since, the said amount was not repaid, there was a quarrel between them. On 06.07.2012, the accused assaulted the deceased with a hammer on his head causing grievous injuries. Immediately after the incident, the deceased was taken to the hospital for treatment. About 5 to 6 days thereafter he succumbed to injuries on 14.07.2012. On a complaint being lodged by PW-1, who is the wife of the brother of the deceased, a case was lodged against the accused for the offence punishable under Section 307 of I.P.C. After the death of the deceased, the same was altered to Section 302 of I.P.C. After investigation, charge sheet was filed. The prosecution examined in all, 23 witnesses and marked Exs.P.1 to P31 (a) along with 5

material objects. Neither the witness was examined nor any document was marked on behalf of the defense. By the impugned judgment and order, the accused was convicted and sentenced as mentioned above. Aggrieved by the same, instant appeal is filed.

3. Sri. Hasmath Pasha, learned senior counsel appearing for the appellant's counsel contends that the judgment of the trial Court is erroneous and is liable to be interfered with. That not all of the witnesses have supported the case of the prosecution. The witnesses have turned hostile and even if the case of the prosecution is to be accepted, there was no intention to commit the murder of the deceased. The evidence would also indicate that a quarrel took place between the accused and the deceased, just before the incident took place and thereafter, the alleged assault has taken place. The evidence also show that the accused was present with the deceased. He was seen by the eyewitnesses. The accused also assisted in shifting the deceased to the hospital. That there was no immediate death of the

deceased. The deceased underwent treatment and died only about 5 to 6 days thereafter. Relying on the medical evidence, he contends that the cause of death is not relatable to the assault. He died for various other reasons other than for the injury which he has sustained by the alleged assault. Hence, he pleads that the trial Court committed an error in appreciating the evidence by convicting the accused.

4. The same is disputed by Sri Vijayakumar Majage, learned Additional State Public Prosecutor. He contends that the eyewitnesses who have witnessed the incident have deposed that at the time of the incident, the accused was holding the hammer and standing near the deceased Manjunath, who had fallen on the ground because of the assault made by the accused. That the accused was also questioned as to what has happened and to which he answered that he had assaulted the deceased by the hammer and thereafter, he went away from the scene. The contention of the appellant's counsel that the death was not due to the assault, cannot

be accepted because after the assault, the deceased was admitted to hospital because of the injuries sustained. Once the injuries are sustained there are possibilities that the same may lead to various complications and death may be due to such complications. However, the reason for admission to the hospital is the assault caused by the accused. Hence, he pleads that the medical evidence does not support the accused. He submits that the trial Court has passed a meticulous judgment which does not call for interference. The prosecution has proved its case beyond all reasonable doubt and hence, he prays that no interference is called for. Consequently, the appeal requires to be dismissed.

Heard, learned counsels and examined the records.

5. PW-1 is the complainant, who has deposed that her husband is the brother of the deceased. She has stated that since two years, the whereabouts of her husband are not known. Her husband had three brothers. The deceased is one of the brothers of her husband and the accused is the son of another brother

by name Ningappa. That she has four children and that the deceased was not married. He used to reside along with his mother, CW-8. The mother of the deceased had joined Brahmakumari Samaja and for this reason, this witness used to send food through CW-9 to the house of the deceased. The accused used to reside in the house of his grandmother Ningamma. The accused was working in a motor company at Shivamogga. That the accused had borrowed a sum of Rs.40,000/- from the deceased. That the deceased was earning money from rentals. He had garden land and also had money lending business. There was an agreement between the accused and the deceased that every month the accused has to pay Rs.5,000/- towards satisfaction of the loan. When the deceased demanded to return the amount, accused stated that he has to pay another sum of Rs.60,000/- and on this issue, there was regular quarrel between the accused and the deceased. On 06.07.2012 at about 5 p.m. deceased Manjunatha called on the mobile of CW-9 and asked him to bring the food as the accused has also come to his house. This witness sent food through CW-9

to the house of the deceased Manjunatha and came back. At about 7 to 7.30 p.m., CW-5 – Ajay called CW-9 – K.S.Pavan and informed that there was some quarrel near the house of the deceased and asked him to verify the same. Immediately, this witness and CW-9 went near the house of the deceased Manjunatha and they saw that the deceased had fallen on the ground facing towards the sky and blood was oozing from his head. The accused had a hammer in his hand and there were no one else in the house. The witness and CW-9 asked the accused, who was present at the spot as to what happened and he stated that he had assaulted the deceased with the hammer. Thereafter CWs-10 and 16 and neighbourers also gathered. At that time, PW.1 asked CW-9 to bring an Auto to take the deceased to the hospital. The deceased was taken to the Government Hospital at Kadur. The mother of the deceased was not in the house at that point of time. At the Kadur Hospital after examination, the doctor stated that since there was profuse bleeding, he asked them to take the deceased to some higher Hospital at Shivamogga. By that time, the



mother of the deceased also came to the hospital. Hence, CWs-8, 9 and 19 took the deceased to the hospital at Shivamogga. Thereafter, witness went to the police station and filed a complaint. The deceased was treated for about a week in Nanjappa Hospital at Shivamogga and thereafter, he died. After the death of the deceased, witness again went to the police station and gave report about the death. Nothing worthwhile was elicited in the cross-examination to disbelieve the evidence of this witness except to the extent that whether the accused was also there when the deceased was taken to Kadur Hospital. She accepted the suggestion that when the witness went to file the complaint in the police station, the accused was also there.

6. PW-2 is a witness for the inquest mahazar vide Ex.P.5. The police report vide Ex.P.6 and Ex.P.7 are the photographs. PW-3 is the son of the complainant. He was at Hoovinahadagali when the incident took place. PW-4 is another son of PW-1. He has stated that on

06.07.2012 at about 5.00 p.m., the deceased called him over mobile phone and stated that accused has come to the house and asked him to bring food and he went there and gave the food. On the same day, at about 7 p.m., PW.3 called him over phone from Shivammogga and informed that some quarrel has taken place in the house of the deceased and asked him to go and verify the same. He along with other witnesses went to the house of the deceased. They noticed that the deceased had fallen in the middle of the hall, his face was facing towards the sky and blood was oozing from his head. The deceased had sustained injuries and he also noticed that the accused was standing by holding a hammer and asked PW.1 what had happened. The accused stated that he assaulted on the head of the deceased with a hammer and went away from that place. Thereafter, the deceased was taken in an auto to Kadur Government Hospital and thereafter, the deceased was shifted to the hospital at Shivamogga. On 07.07.2012, when he had been to Shivamogga Nanjappa Hospital, the doctor called him and gave the blood stained shirt of the deceased to

hand over the same to the police. In the cross-examination, he has stated that PW-1 did not ask anything to the accused. The accused did not state anything and he did not throw the hammer and he did not run away from that place.

7. PW-5 is another witness who accompanied the other witness to the spot. He has turned partly hostile. PW-6 has turned hostile. PW-7 is a panch witness to Ex.P.2 – spot cum seizure mahazar so also PW-8 and also witness to the clothes of the deceased at Ex.P.8. He also identified the photographs taken as per Ex.P.4. He has also turned hostile. PWs-8, 9, 10, 11, 12 and 13 have turned hostile.

8. PW-14 is the doctor who treated the deceased for the first time at Kadur Hospital. He has stated that on 06.07.2012 at about 7.50 p.m., a person by name Manjunatha was brought with the history of assault. When he examined him, he found that he was having pulse rate and B.P. and he was unconscious. There was a fracture on his head and the brain was exposed. After

first aid, he referred to take him to a higher hospital at Shivamogga. The said fact was intimated to the police. There is nothing worthwhile elicited in the cross-examination to disbelieve him.

9. PW-15 is another doctor, working as Assistant Professor in Shivamogga Institute of Medical Sciences, Shivamogga. She has stated that blood sample of the deceased was sent for the purpose of blood culture. She has opined that the said blood was containing "Klebsiella pneumoniae isolated". She has stated that if that bacteria is found in the blood which is dangerous to the human body and the said blood was infected. There is no cross-examination of this witness.

10. PW-16 is another doctor, working as Assistant Professor in Forensic Medicine in Shivamogga Institute of Medical Sciences, had conducted post mortem and has given the report. He has stated that he noticed as many as seven injuries and also injuries to the skull and he found that a portion of skull measuring 11 c.m. x 9 c.m. (Stellate shaped) is missing over the right temporo -

partieto occipital region and the defect is based by continuously sutured duramater etc. He submitted his report in term of Ex.P.18. There is nothing worthwhile in the cross-examination to disbelieve him.

11. PW-17 is the PWD Engineer, who has prepared the sketch of the scene of offence. PW-18 has turned hostile. PW-19 is a Nuero Surgeon at Nanjappa Hospital, Shivamogga. He has stated that on 06.07.2012, at about 11.00 p.m. the deceased was brought by PW-3 with a history of alleged assault by the accused. He noticed a fracture on the right side of the scalp which were multiple in nature and partly sutured and the brain was coming out. He has submitted report in terms of Ex.P.23.

12. PW.20 is an auto driver and nothing worthwhile has been elicited in his examination. The deceased was taken to the hospital at Kadur in his auto. PW-21 is a Head Constable at Jayanagar Police Station, Shivamogga. He has deposed that Ex.P.21 is the complaint upon which FIR was lodged. PW-22 is the

Station House Officer at Kadur Police Station. He received the death intimation from Nanjappa Hospital, Shivamogga. He sent the same to Kadur Police Station. PW-23 is the C.P.I. working at Kadur Police Station. He recorded the complaint in terms of Ex.P.1, registered a case in crime No.137 of 2012 and issued the FIR. On 07.07.2012, he apprehended the accused and produced the report at Ex.P.26. He has narrated the manner in which investigation was conducted by him. He has marked the relevant reports and the material collected by him.

13. Based on all these evidences, the trial Court convicted the accused for the offence punishable under Section 302 of IPC.

14. We have considered the evidence in detail. The evidence on record would indicate that the deceased and accused were not strangers. They were blood relatives. The deceased was well settled and a man having rental income from various properties. He had garden land and was also doing money lending business.

He had advanced a sum of Rs.40,000/- to the accused. The accused had to repay Rs.5,000/- every month to him. He had not done so. Hence, on this issue, there were frequent quarrels between the accused and the deceased. On the day of the incident namely, on 07.06.2012, the accused went to the house of the deceased. The evidence on record would indicate that the deceased telephoned CW-9 and asked him to bring food since the accused was also present in his house. Accordingly, food for two people was taken to the house of the deceased. Thereafter, evidence of PW-6 who was one of the neighbours heard some galata in the house of the deceased. There was none else in the house of the deceased except the accused and the deceased. The mother of the deceased was not present in the house. Since she had joined Brahmakumari samaja and at that point of time, PW-3 Ajay CW-5 called CW-9 and stated that there was some galata and asked to go there. CW-9 and CW-4 when they went to the scene of the offence the deceased was in a pool of blood. Accused was holding a hammer in his hand and when asked what he has done,

he has stated that he assaulted the deceased with the hammer on his head.

15. Thereafter, the accused went away. The further case of the prosecution is that the deceased was immediately shifted to the Kadur Government Hospital. Due to the seriousness of the injuries sustained, he was referred to a higher Hospital at Shivamogga. Six days later he died. The post-mortem report indicates that there was an assault on the head of the deceased. That he died due to various other complications. It is the further case of the prosecution that one of the motives to commit the offence was that, on the death of the deceased, the accused and his mother being the legal heirs would inherit all the properties of the accused.

16. On considering the evidence, it could be seen that there was only one single assault made by the accused with MO-2, Hammer, on the head of the deceased. It is not the case of the prosecution that multiple assaults were inflicted by the accused. Even if the evidence of the witnesses is to be accepted, the same



would not indicate that there was more than one assault on the deceased. Keeping in mind the evidence of the prosecution that there was some galata between the accused and the deceased which had to the assault being committed by the accused on the deceased, it cannot be said that the accused had any intention to commit murder.

17. Admittedly, the deceased was the uncle of the accused. Even though there was a money transaction between them, they were related to one and another. It was not an enmity to such extent that the accused intended to do away with the life of the deceased. The nature of the assault also requires to be considered. When the accused had a weapon in his hand, MO-2, it was quite possible for him to inflict multiple injuries on the deceased. However, he has not done so. There was only one assault committed by him on the head of the deceased. Therefore, even if the entire prosecution evidence is to be accepted, we find that there is absence of mens-rea to commit the offence punishable under

Section -302 of IPC. That the assault was ofcourse committed. But there was no intention to commit murder. The evidence of PW-1 would also indicate that the accused accompanied the witnesses to carry the deceased to the hospital at Kadur. Secondly, the accused even after committing the assault on the deceased did not run away from the scene of the offence. He was standing there more in a state of shock than as an accused. Therefore, for all these reasons even without discounting the evidence of the prosecution, the same does not lead to the conclusion that there was any intention on the part of the accused to commit the murder of the deceased. There is absence of mens-rea to commit murder.

18. Under these circumstances, we are of the view that the appreciation of the evidence by the learned trial judge calls for a relook. That based on the evidence and material on record, we are of the view that the conviction of the accused under Section-302 of IPC is inappropriate. Therefore, we deem it just and proper that

the accused be convicted for the offence punishable under under Section-304, Part-II of the Indian Penal Code.

19. So far as the sentence is concerned, it is submitted that the accused is already in custody for a period of seven years. Therefore, we find that so far as the imprisonment is concerned, it is suffice to hold that the sentence be awarded for the period he has already undergone detention.

20. So far as the fine is concerned, keeping in mind the fact that the entire cause of the incident was a sum of Rs.40,000/- it will only be just and appropriate that a fine of Rs.50,000/- (Rupees Fifty Thousand Only) be paid by the accused. Since the very allegation of the prosecution is that the accused being one of the legal representative of the deceased and he will inherit the property of the deceased, it would not be proper to direct the fine amount to be paid to the family of the deceased. Justice demands that the said amount be paid in the trial court, which shall be appropriated by the State.

21. Therefore, we pass the following order:

Criminal Appeal No.255 of 2014 is partly allowed.

i. The judgment of conviction and the order of sentence dated 31.01.2014, in S.C.No.93 of 2012 passed by the Principal Sessions Judge at Chikmagalur for the offence punishable under Section-302 of Indian Penal Code, is set-aside. The appellant-accused is convicted for the offence punishable under Section-304, Part-II of Indian Penal Code. He is sentenced to undergo imprisonment for the period already undergone by him.

ii. The accused shall pay a fine of Rs.50,000/- (Rupees Fifty Thousand Only) with the Trial Court within a period of eight weeks from the date of receipt of a copy of the order. On such deposit being made, the same shall stand credited to the State account, for the State to defray the expenses. In default of payment of fine by the accused within a period of eight weeks as stated above, he shall undergo detention for a period of two years.

The Jail Authorities are directed to release the appellant-accused forthwith, if he is not required in any other case/s.

Registry to communicate the operative portion of this order to the concerned Jail Authorities, forthwith.

Sd/-  
JUDGE

Sd/-  
JUDGE

MH/- & JJ