



**IN THE HIGH COURT OF KARNATAKA
KALABURAGI BENCH**

DATED THIS THE 24TH DAY OF FEBRUARY, 2026

PRESENT

THE HON'BLE MR. JUSTICE R.NATARAJ

AND

THE HON'BLE MR. JUSTICE TYAGARAJA N. INAVALLY

CRIMINAL APPEAL NO. 200043 OF 2020

BETWEEN:

DEVAJI KALE
S/O PANCHAPPA KALE,
AGE: 58 ABOVE YEARS,
OCC: AGRI.,
R/O: DUDDANAGI, TQ:AFZALPUR,
DIST: KALABURAGI - 585 301.

...APPELLANT

(BY SRI SHIVALING N.PADSHETTY, ADVOCATE)

AND:

THE STATE THROUGH,
AFZALPUR POLICE STATION,
TALUKA AND DISTRICT KALABURAGI
REPRESENTED BY
ADDL. SPP., HIGH COURT OF KARNATAKA,
KALABURAGI BENCH - 585 301.

...RESPONDENT

(BY SRI SIDDALING P.PATIL, ADDL. SPP)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374 (2) OF CR.P.C PRAYING TO ALLOW THIS APPEAL AND SET ASIDE THE JUDGMENT AND ORDER PASSED IN S.C.NO.238 OF 2018 ON THE FILE OF FIRST ADDL. SESSIONS JUDGE KALABURAGI DATED 07.02.2020 (ORDER OF SENTENCE DATED 10.02.2020) CONVICTING THE ACCUSED/APPELLANT FOR OFFENCES OF 504, 506, 302 OF IPC AND ACQUIT THE ACCUSED/APPELLANT FOR THE ABOVE SAID OFFENCES, IN THE INTEREST OF JUSTICE.





THIS CRIMINAL APPEAL, COMING ON FOR HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE R.NATARAJ
and
HON'BLE MR. JUSTICE TYAGARAJA N. INAVALLY

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE R.NATARAJ)

This appeal is filed by the accused challenging the judgment of conviction dated 07.01.2020 and order of sentence dated 10.02.2020 passed by the I Additional Sessions Judge, Kalaburagi (henceforth referred to as 'the trial Court') in S.C.No.238/2018 by which he was convicted for the offences punishable under Sections 302, 504 and 506 of Indian Penal Code (IPC) and to undergo life imprisonment for the offence punishable under Section 302 of IPC with fine of Rs.10,000/- and other sentences for other offences.

2. (i) The case of the prosecution was that PW-1 informed the police in writing on 05.05.2018 that on 30.04.2018 at 5:30 p.m. when she and her husband were working in their land, at that time the accused went to the spot with a tractor taken on hire and tried to remove a bund between the two properties. The husband of PW-1 warned him



not to remove the bund but the accused went ahead to remove the bund which resulted in fisticuffs between them. Later at 6 O'clock in the evening, the accused went to the hut (metagi) and bought a knife and quarreled with her husband. He thereafter pulled out the knife and stabbed him and caused grievous injuries. She claimed that she and the tractor driver and other owners of adjoining land tried to stop the fight between the two. The husband of PW-1 who was seriously injured, was taken on a motorcycle to Afzalpur. PW-1 called her relative PW-6 in Afzalpur. The husband of PW-1 was thereafter taken to Kalaburgai where he was treated at Ganga Hospital. She claimed that the Doctor at Ganga Hospital performed an operation but his condition worsened day by day and later died on 04.05.2018.

(ii) Based on this, the police registered Crime No.117/2018 for the offences punishable under Sections 504 and 302 of Indian Penal Code (IPC) and took up investigation. The police after conducting the post mortem and recording relevant inquest and spot mahazars, arrested the accused and recovered a knife. Thereafter, the police laid a charge sheet for the offences punishable under Sections 504, 506 and 302 of



IPC. The copies of the charge sheet were furnished to the accused. The trial Court after considering the charge sheet and the materials produced therewith took cognizance and issued process. Thereafter, it framed charges for the offences punishable under Section 302, 504 and 506 of IPC. The accused pleaded not guilty and claimed to be tried.

3. In support of the case of the prosecution, PW-1 to PW-19 were examined and ExP-1 to P-27 were marked. A material object was marked as MO-1. The document was marked by the accused as Ex.D-1 through PW-16-CPI.

4. Based on the oral and documentary evidence, the trial Court held that PW-1 was an eyewitness to the incident and she supported the prosecution. It also held that PW-2 spoke events prior to the incident. PW-6 is the relative of PW-1, who was informed by PW-1 that the deceased was shifted to Afzalpur. She also spoke about the dispute between the deceased and the accused relating to a bund between their properties. The trial Court considered the evidence of PW-7, who was the driver of the tractor, who also spoke about the dispute between the deceased and the accused. The trial Court



considered the evidence of the Doctor, who conducted the post mortem, who deposed that the deceased was brought to his hospital with injuries on the left side of the abdomen and on the left shoulder and that he gave him treatment and advised the injured to be taken either to Solapur or to Kalaburagi for higher treatment. PW-13 was the Doctor at Ganga Hospital who deposed that the injured was brought to the hospital with a history of the deceased falling on a sharp object in the field. It also noticed the evidence of PW-12 who deposed that he knew the accused and the deceased and that he saw the accused producing a knife that he had used to assault the deceased. PW-11 is the witness to the spot mahazar who supported the prosecution. The trial Court therefore held that all the independent witnesses had supported the prosecution and the evidence pointed towards the involvement of the accused in the case in the commission of the offence. The trial Court therefore convicted the accused for the offences as punishable under Sections 302, 504 and 506 of IPC and sentenced him to undergo life imprisonment with fine of Rs.10,000/- and in default of payment of fine to undergo simple imprisonment for a period of one year. Likewise, it sentenced him to pay a fine of



Rs.1,000/- and Rs.2,000/- respectively for the offences punishable under Sections 504 and 506 of IPC. Being aggrieved by the said judgment and order of sentence, the accused is before this Court in this appeal.

5. (i) The learned counsel for the accused submitted that the incident allegedly occurred on 30.04.2018 but PW-1 informed the police only on 05.05.2018. He contends that there is no explanation for the delay in lodging the complaint. He therefore submits that the trial Court should not have lightly considered this circumstance.

(ii) He further submits that PW-6 was the relative who purportedly was informed by PW-1 when the deceased was shifted to Afzalpur. PW-6 in her deposition stated that the deceased was gored by a bullock and that the deceased was shifted to Afzalpur. He contends that PW-8 is the Doctor at Afzalpur who also deposed that the deceased reported to him with the history of being gored by a bullock. He submits that PW-8 deposed that he had cleaned the injuries and sutured the wound. He contends that PW-13 is a Doctor at Ganga Hospital, Kalaburagi, who deposed that on 01.05.2018, the deceased



was brought by his relatives to the hospital with a history of injury on the left side of the abdomen, caused due to accidental fall over a sharp object in the field. This witness examined the deceased and found a sutured wound over the left side of the abdomen. He therefore contends that the prosecution has given two different versions about the injuries suffered by the deceased and PW-1 had given a different version when she informed the police about the incident. He therefore submits that the trial Court failed to consider this crucial evidence which established beyond doubt that the prosecution had failed to prove the homicidal death of the deceased. He further contends that PW-9 was the Doctor who conducted the post mortem and he deposed that the death was due to septicemia as a result of perforation of small intestine and time since death was 12 to 24 hours prior to post mortem. Ex.P-4 is the post mortem report which shows that the examination was conducted between 5:00 to 6:30 p.m. on 05.05.2018. He therefore contends that the incident must have happened on 04.05.2018 in view of what is mentioned in Ex.P4. Thus, he contends that the accused is not guilty of the offence and that trial Court committed an error in ignoring relevant evidence and convicting the accused. He



further contended that none of the witnesses had supported the prosecution but the trial Court selectively quoted some evidence to hold that the accused had committed the offence. He contends that PW-3, PW-5, PW-6 and PW-16 have turned hostile and did not support the case of the prosecution but the trial Court proceeded to convict the accused for the aforesaid offences. He contended that PW-3 deposed that CW-5 and CW-6 were seated along with him in the house of CW-5 and at that time CW-6 received a phone call and he was informed that the deceased was gored by a bullock. He deposed that CW-6 went to the hospital and saw the deceased. He also deposed that police did not enquire with him and did not record his statement. Therefore, he turned hostile. PW-5 is the scribe of the complaint who deposed that he wrote the complaint as per the say of the police and that PW-1 did not narrate the contents of the complaint. Thus, he contends that these evidences showed beyond doubt that the accused was not responsible for the murder of the deceased and hence the trial Court committed an error in convicting the accused for offence punishable under Section 302 IPC. Besides this, he contends that PW-9 – Dr.Deepak deposed that the injuries are ante



mortem but the injuries were stapled and sutured. He deposed that a stitch wound was present over the small intestine and the death was due to septicemia as a result of perforation of the small intestine. Thus, he contends that the deceased died due to some injury to the intestine which was not treated properly which resulted in septicemia and the consequent death. The trial Court instead of weighing the evidence of the prosecution in the right perspective, assumed the evidence of the prosecution against the accused and wrongly convicted the accused for the said offence. He therefore prays that the impugned judgment of conviction and order of sentence be set aside and the accused be acquitted.

6. *Per contra*, the Additional State Public Prosecutor submitted that PW-1, PW-6 and PW-3 have deposed about the boundary dispute between the accused and the deceased. He contends that PW-1 did not accompany the deceased when he was shifted to Afzalpur and therefore, the information given to PW-3 that the deceased was gored by a bullock was by someone else. He contends that PW-1 was an eyewitness to the incident and therefore her evidence could not be rejected. He contends that PW-1 in her complaint at Ex.P-1 has specifically



stated the reason for the delay in lodging the complaint. He therefore submits that the evidence before the prosecution was sufficient for convicting the accused for the offence punishable under Section 302 of IPC. Besides this, he also contends that the knife which was used for the commission of the offence was recovered at the instance of the accused and his confession statement also showed that it was he who stabbed the accused, which resulted in his death. He therefore submits that the trial Court was justified in convicting the accused for the offence punishable under Section 302 of IPC.

7. We have considered the submissions of the learned counsel for the accused and the learned Additional State Public prosecutor. We have also perused the records of the trial Court as well as its judgment and order of sentence.

8. The only point that arises for consideration in this appeal is;

"Whether there was sufficient evidence to convict the accused for the offences punishable under Sections 302, 504 and 506 of IPC?"



9. PW-1 had lodged a complaint as per Ex.P-1 on 05.05.2018 at 9:00 a.m. that her husband was stabbed by the accused on 30.04.2018. In the information provided by her at Ex.P-1 she mentioned that she discussed the issue with her children and thereafter lodged a complaint. PW-9 is the Doctor who conducted a post mortem on the deceased and he deposed that the deceased had suffered the following injuries:

- i) A vertically placed stapled wound present over the anterior abdominal wall measuring 21 cms x intact staples. It is placed 24 cms below sternal notch.*
- ii) A horizontally placed stitched wound present over the right side of abdomen measuring 2cms x intact sutures. It is placed 49 cms from the right shoulder.*
- iii) An obliquely placed stitched wound present over left abdomen on lateral aspect measuring 1.5 cms x intact sutures. It is placed 38 cms from left shoulder. On dissection, it is continued over 10th inter costal space.*
- iv) A horizontally placed stitched wound present over the left side of the abdomen measuring 2cms x intact sutures. It is placed 9 cms below and medial to injury No.3.*



10. He also deposed that there was a stitched wound over the small intestine measuring 1 cm in length. He was of the opinion that the death was due to septicemia as a result of perforation of small intestine. Though the above injuries are ante mortem, there is nothing to show that the deceased died due to the injuries allegedly caused by the accused. There is no palpable evidence to establish that it was a homicidal death. The complainant was examined as PW-1. She deposed in her cross-examination that the police did not record her statement. She was blissfully unaware of the fact that her husband was taken to Afzalpur in a tractor and that she had not mentioned the same in the complaint at Ex.P-1. She also did not answer the question whether the accused threatened to kill her, if she came in the way. She also was unable to disclose who owned the tractor and who was its driver. She admitted that there was a tin shed in her land and that at some places the tin sheet was sharp.

11. PW-2 is the person who allegedly took the deceased to Afzalpur. He deposed that the deceased and the accused were quarreling with each other over the bund between their properties. He also deposed that about a year back when he



was fetching water, he saw the accused leveling the bund with a tractor and that the deceased, accused and PW-1 were quarreling. He deposed that he pacified all of them and the accused and deceased went to their homes. He deposed that after 15 minutes again he heard some noise from the land of the deceased and when he went there the deceased and the accused were standing while the deceased had suffered bleeding injuries on his stomach and shoulder. He deposed that he took the deceased on his motorcycle to Afzalpur Government Hospital, where he was treated. Thereafter, he called CW-5 who took him to Ganga Hospital, Kalaburagi. He deposed that the accused was responsible for the murder of the deceased. In his cross-examination, he admitted that PW-1 was her maternal aunt. PW-2 was not an eyewitness to the incident but he reached the spot after the incident had allegedly happened. This witness claimed that he took the deceased to the government hospital at Afzalpur but PW-8 is a private practitioner at Afzalpur who deposed that PW-2 brought the deceased to his hospital for treatment. If PW-2 was an eyewitness, it is not known as to how he informed PW-8 that the deceased was gored by a bullock. PW-3 who purportedly



was an eyewitness, turned hostile and he denied his statement at Ex.P.2. PW-4 is the nephew of the accused, who deposed that PW-1 had informed him that the deceased had suffered injuries when he came in contact with a tin sheet. He was treated hostile. PW-5 is the scribe of the complaint. He deposed that he wrote Ex.P-1 as instructed by the police and that PW-1 did not inform him to write the complaint and that he did not write the complaint as per her say. Therefore, this witness also was of no help to the prosecution. PW-6 is the relative of PW-1 who deposed that on 30.04.2018, PW-2 informed CW-5 over phone that deceased was gored by a bullock and he was being shifted to Afzalpur. He deposed that he went to a private clinic and saw that the deceased had suffered injuries on his right shoulder and left abdomen. The deceased was then shifted to Ganga Hospital in Kalaburagi where the doctors were told that the deceased suffered injuries when he came in contact with the tin shed. This witness was also treated hostile and he did not support the case of the prosecution. PW-7 was the tractor driver who deposed that the accused stabbed the deceased with a knife and that the deceased was shifted on a motorcycle by PW-1 and PW-2. PW-10 is the inquest witness who



supported the prosecution. PW-11 is the witness to the spot panchanama at Ex.P.11 through whom the photographs at Exs.P-12 and P-13 were marked. PW-12 is the witness to the recovery mahazar who deposed that MO-1 was stained with blood and that accused claimed that he had washed it. He supported the case of the prosecution. PW-14 is the junior engineer who drew the sketch of the spot while PW-15 is the driver of the jeep who allegedly shifted the deceased from Afzalpur to the hospital at Kalaburagi. He however turned hostile. PW-16 is the police constable who took the FIR – Ex.P.22 to the Court. PW-17 is the PSI who received the complaint and registered Crime No.117/2018 and drew up FIR in Ex.P-22. He deposed that there is no reference of PW-2 in the complaint lodged Ex.P-1. PW-18 is the head constable who arrested the accused as per the arrest memo at Ex.P.24. PW-19 is the police inspector who did inquest panchanama as per Ex.P-6 and handed over the body for post mortem. He recorded the statement of PW-1 as well as PW-5. He also recorded the statement of PW-12. He also visited the spot on 06.05.2018 and drew up Ex.P-11 and recorded the statements of CW-2, CW-6 to CW-11 as per Exs.P-2 and P-3. He also recorded the



confession statement of the accused and recovered the knife used for the offence under mahazar at Ex.P-27 in the presence of CW-18 and CW-19. He thereafter filed a charge sheet for the offence under Section 302 of IPC.

12. The above evidence would go to show that the prosecution was unsure about the way in which the deceased suffered injuries. There is also no clear evidence to link the accused to the injuries sustained by the deceased. The prosecution witnesses have given contradictory statements about the place where the deceased was first taken and the way in which the deceased suffered injuries. Therefore, we are of the opinion that the trial Court committed a serious error in convicting the accused for the offences punishable under Sections 302, 504 and 506 of IPC. The evidence adduced before the trial Court was extremely doubtful inasmuch as there is nothing to show that the accused was responsible for the commission of the offence.

13. In that view of the matter, we are of the opinion that the impugned judgment and order of sentence passed by



the trial Court deserves to be interfered with. Hence, we proceed to pass the following

ORDER

- i) Appeal is ***allowed***.
- ii) The judgment of conviction dated 07.01.2020 and order of sentence dated 10.02.2020 passed in S.C.No.238/2018 by the I Addl. Sessions Judge at Kalaburagi, convicting the accused for the offences punishable under Sections 302, 504 and 506 of IPC is set aside and the appellant/accused is acquitted of the aforesaid offences.
- iii) The concerned jail authority is directed to release the appellant/accused forthwith, if his presence is not required in any other case.
- iv) Office is directed to communicate this order to the concerned Jail authority for releasing the appellant/accused forthwith.



- v) Office is also directed to return the trial Court records along with copy of this judgment.

Sd/-
(R.NATARAJ)
JUDGE

Sd/-
(TYAGARAJA N. INAVALLY)
JUDGE

sn
List No.: 1 Sl No.: 49