



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7TH DAY OF JANUARY, 2026

PRESENT

THE HON'BLE MR. JUSTICE H.P.SANDESH

AND

THE HON'BLE MR. JUSTICE VENKATESH NAIK T

CRIMINAL APPEAL NO.219 OF 2020

BETWEEN:

1. VINESH SHETTY
AGED ABOUT 47 YEARS
S/O KARUNAKARA SHETTY
R/AT KANIKUMAR, SHIRVA POST
UDUPI TALUK AND DISTRICT-574 116.

...APPELLANT

(BY SRI. ASHOK KUMAR SHETTY K., &
SMT. HALEEMA AMEEN, ADVOCATES)

AND:

1. THE STATE OF KARNATAKA
BY DEPUTY SUPERINTENDENT OF POLICE
SUB-DIVISION
MANGALURU TALUK, D.K.
REP. BY STATE PUBLIC PROSECUTOR
HIGH COURT COMPLEX
BENGALURU-560 001

...RESPONDENT

(BY SMT. RASHMI PATIL, HCGP)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION
374(2) OF CR.P.C PRAYING TO SET ASIDE THE ORDER DATED
13.12.2019, PASSED BY THE VI ADDITIONAL DISTRICT AND





SESSIONS JUDGE, D.K., MANGALURU IN S.C.NO.101/2013, CONVICTING THE APPELLANT/ACCUSED NO.6 FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 120B, 143, 147, 148, 341, 302 R/W 149 OF IPC.

THIS APPEAL COMING ON FOR FURTHER ARGUMENTS THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE H.P.SANDESH
and
HON'BLE MR. JUSTICE VENKATESH NAIK T

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE H.P.SANDESH)

This appeal is filed praying this Court to set aside the judgment of conviction and sentence passed in S.C.No.101/2013 on the file of VI Additional District and Sessions Judge and MACT, Dakshina Kannada, Mangaluru dated 13.12.2019 for the offences punishable under Sections 109, 120B, 143, 147, 148, 341, 302 read with Section 149 of IPC and acquit the appellant.

2. The factual matrix of case of the prosecution is that this appellant is one of the accused along with others having committed murder of Pruthvipal Rai, Venugopal Nayak by assaulting them with long (machhu), swords and damaged the car and this incident has occurred to take revenge in



connection with murder of their son. It is the case of the prosecution that accused No.1 by name Chandraprabha Rai had sold a site bearing No.14 measuring 30 x 40 feet situated in Sy.No.236/1 of Balepuni Village standing in the name of one Chandraprabha Rai by executing a General Power of Attorney in the name of owner, with a dishonest intention by impersonating herself as Chandraprabha Rai, sold the same for a sum of Rs.30,000/- to C.W.12 i.e., Alphonsa D'Souza. Out of the said amount of Rs.30,000/-, she paid Rs.20,000/- to supari Killer i.e., the present accused/appellant-Vinesh Shetty as supari and hatched up a plan by making conspiracy to kill Venugopal Nayak and Santhosh Shetty. Accordingly, on 05.03.2003 at about 07.00 p.m. at Mudipu-Mulur Road in a lonely place, the accused persons came in a white Maruthi 800 car bearing registration No.KA-19-N-1771 and formed an unlawful assembly, parked the car across the said road with an intention to obstruct the way of Venugopal Nayak and Santhosh Shetty. It is the prosecution case that they were waiting for their arrival by carrying weapons. During that time, when the said Venugopal Nayak and Santhosh Shetty came from their quarry side towards Mudipu in their Armada Jeep bearing registration



No.KA-19-U-3605, accused No.1-Vinitha B. Rai as per their pre-plan, gave a signal by lighting a cracker, by that time, accused No.2-Balakrishna Rai had kept big stones on the road to wrongfully restrain them and the other five accused persons, who were waiting near their car, by hearing the sound of cracker, got alert, when they came near the place in a jeep, attacked them, accused-Vinesh Shetty i.e., this appellant fired with revolver on both Venugopal Nayak and Santhosh Shetty. Other accused persons including accused Lokesh Bangera attacked the deceased persons with swords and long (machhu) and caused damage to the jeep. After attacking them, they pushed victim's jeep back side and escaped from the scene along with weapons. In view of the said incident, complaint was lodged by Thimmappa Nayak, who is the brother of Venugopal Nayak. Based on the complaint, case was registered invoking the above offences.

3. The Police have investigated the matter and filed the charge sheet against accused Nos.1 and 2, later accused Nos.3 to 5 were arrested and additional charge sheet was filed showing accused Nos.6 and 7 as absconding. The Magistrate



having received the charge sheet took cognizance and committed the case for trial. The Trial Judge had taken up S.C.No.12/2004 and conducted the trial. During the trial, accused No.2 died, hence case against him was abated and proceeded to consider the matter against accused Nos.1 and 3 to 5 and acquitted accused Nos.1 and 3 to 5 vide judgment dated 22.04.2006. The accused Nos.6 and 7 were not secured during trial and when the trial was conducted against accused Nos.1 and 3 to 5, they were secured subsequently and charge sheet was filed separately against accused Nos.6 and 7, since they were absconding at the time of investigation. Having filed the charge sheet, cognizance was taken and matter was committed for trial. After receipt of records, S.C.No.101/2013 was registered against accused No.6 and S.C.No.37/2011 was registered against accused No.7 and both of them are tried together. The accused have not pleaded guilty and claimed for trial.

4. The prosecution relies upon the evidence of P.Ws.1 to 38 and got marked the documents as Exs.P1 to P92 and



M.Os.1 to 22 are also marked. The defence also got marked documents Exs.D1 to D4.

5. The accused persons were subjected to 313 statement, but not led any defence evidence. The Trial Court considering the material available on record comes to the conclusion that death of Venugopal Nayak and Santhosh Shetty is homicidal one and also comes to the conclusion that prosecution has proved the case beyond reasonable doubt and the accused persons with a common object being a member of an unlawful assembly, caused rioting with deadly weapons by wrongfully restraining both of them when they were proceeding in a Armada Jeep. Being aggrieved by the judgment of conviction and sentence passed in S.C.No.101/2013, present appeal is filed by appellant/accused No.6.

6. The main contention of learned counsel appearing for the appellant is that split up trial is conducted exclusively against accused Nos.6 and 7 and the incident has taken place on 05.03.2003. The counsel also vehemently contend that Trial Judge acquitted accused Nos.1 and 3 to 5 in S.C.No.12/2004 on merits and two split-up cases are registered against this



accused as well as accused No.7. It is the case of the prosecution that accused No.6 i.e., appellant herein was not available during the initial investigation. But, he was arrested in 2007 by Mumbai Police in LAC No.20/2007 under the Arms Act, an entirely unrelated case. He was subsequently brought to Karnataka only around 2013, resulting in a split-up trial nearly 10 years after the alleged incident. The counsel would vehemently contend that the Trial Court relied upon oral testimony of P.W.4 and P.W.16, both of them have projected as chance eye witnesses and recovery of a firearm in Mumbai in 2007 has no ballistic nexus with the present case. The counsel also vehemently contend that there is no direct, physical, scientific, forensic, medical, ballistic, documentary or recovery based evidence connecting this accused to the alleged crime. The counsel also vehemently contend that when the evidence of these witnesses i.e., P.W.4 and P.W.16 were not accepted by the Trial Court in S.C. No.12/2004 and in the present case, the Trial Court committed an error in relying upon identical evidence without any new, independent or corroborative material which is legally impermissible. The case of the prosecution is that this accused fired at Venugopal Nayak and



Santhosh Shetty from close range near Sindadagudde as a part of group attack.

7. The counsel would vehemently contend that prosecution mainly relies upon the evidence of P.W.4, P.W.16, P.W.32, P.W.33, P.W.34 and P.W.35. But, the witnesses P.Ws.32, 33, 34 and 35 are Mumbai Police Officers relating to Arms Act case. P.W.36 is the Investigating Officer and none of these witnesses provide independent, scientific or contemporaneous proof of involvement of this appellant. The conviction is based solely on unreliable chance witnesses i.e., P.W.4 and P.W.16, who are claimed to have been present on the road coincidentally at the time of incident. The counsel would contend that material omissions and contradictions in the statement of P.W.16 as per Exs.D1 to D3 were ignored by the Trial Court and regarding illegality of reversing earlier findings on identical evidence, the counsel would contend that these two witnesses are also examined in the main trial as P.W.5 and P.W.4 respectively in S.C.No.12/2004. The Trial Court in S.C.No.12/2004 found that evidence of these witnesses were unreliable, contradictory and untrustworthy. But, in the present



case, relies upon their evidence and there are major improvements, omissions, contradictions and new developments adversely affecting their credibility. The Trial Court without any fresh evidence, accepted the same witnesses, who are previously rejected, leading to contradictory conclusions on identical facts and evidence, violating well-established criminal law principles. The counsel would contend that in split-up trials, earlier findings have persuasive value and in the absence of any new evidence, contrary conclusions are unsustainable. Relying on unreliable evidence of chance witnesses leads to miscarriage of justice and their evidence is also not corroborated. The counsel also vehemently contend that no Test Identification Parade was conducted in respect of this accused and witnesses claimed that they had earlier seen accused No.6 once in a hotel, which is far too vague to identify a gunman in a sudden, violent, dusk-time attack. They introduced a new person, Shivaprasad Shetty, who is not charge-sheeted and not examined and he was never figured in the original case and this destroys the reliability of their account.



8. The counsel would further contend that evidence of P.W.19 contradicts the evidence of P.W.4 regarding earlier disclosures and material inconsistency ignored by the Trial Court. It is also contended that there is no motive, no conspiracy and no supari. Hence, prosecution case collapses having considered the evidence of P.W.10, P.W.25 and P.W.26. The motive, if at all, is in existence is only between accused Nos.1 and 2 and the deceased and not against accused No.6. No evidence either oral or documentary or circumstantial which shows that there was a prior enmity between accused No.6 and other accused or the deceased and no proof that accused No.6 was paid any supari. The Trial Court assumed the conspiracy without any primary or corroborative evidence. The counsel also vehemently contend that no link that this accused had committed the offence either forensic, recovery, ballistic and medical evidence and no weapon was ever recovered at the instance of accused No.6. Bullets recovered from the deceased were not matched to any weapon associated with him. The firearm recovered in Mumbai is wholly irrelevant and the same pertains to a different FIR and Ballistic Expert confirms no connection to the present case and firing time/duration cannot



be determined. In the absence of Ballistic Expert evidence, there cannot be any conviction and P.W.38- Doctor admitted, he cannot opine on firing distance or weapon characteristics and medical evidence does not support the prosecution case.

9. The counsel would vehemently contend that alleged absconcence, weak and unreliable circumstances that accused No.6 is living in Mumbai does not amount to absconding. There is no evidence that he knew that he was wanted in connection with this case and the Trial Court ever stated this non-existing circumstance. The counsel would vehemently contend that Trial Court committed a fundamental error in ignoring earlier acquittal and failed to appreciate contradictions between old and new depositions and relied on unsafe dock identification after a decade. In the absence of any material with regard to conspiracy, presumed the conspiracy without proof and misused unrelated Mumbai recovery to infer bad character and also ignored the material contradictions, omissions, and improvements. The counsel would vehemently contend that when two inconsistent versions exist, the version favouring the accused must prevail and benefit of doubt must be extended in



favour of the accused and conviction cannot rest on unreliable chance witnesses. First of all, Dock identification without prior Test Identification Parade after long delay is worthless and acquittal of co-accused on identical evidence extends benefit of doubt and even split-up trials require fresh, independent evaluation and suspicion cannot replace proof beyond reasonable doubt. The counsel also vehemently contend that conspiracy must be proved not presumed and there must be motive to commit murder and particularly, lack of ballistic and scientific evidence is fatal in a shooting case and the Trial Court ignored the material available on record.

10. Learned counsel for the appellant would further contend that evidence of P.W.35 is in respect of Mumbai Arms Act case and there is clear admission that the evidence of P.W.35 is not pertaining to this case. The counsel also would vehemently contend that though P.W.32 is examined, he deposed before the Court that voluntary statement was recorded, but not placed any material before the Court that accused has confessed his act and no confession statement is produced before the Court. Learned counsel also would submit



that Trial Court committed an error in considering the evidence of P.W.4 and P.W.16 and their evidence do not inspire the confidence of the Court and the very evidence of the said witnesses was relied upon in the earlier judgment when split up case was considered and the Court comes to the conclusion that their evidence not inspires the confidence of the Court and the said finding given by the Trial Court is not correct and the same is not properly appreciated.

11. Per contra, learned High Court Government Pleader appearing for the respondent-State would vehemently contend that prosecution mainly relies upon the evidence of P.W.4 and P.W.16. The Trial Court also considered the evidence of P.W.4 and P.W.16, since both of them have witnessed the incident. P.W.4 categorically says that he was having acquaintance with accused as well as the victim and specifically narrated how the incident had taken place in the chief evidence. She would also submit that even in the cross-examination, nothing is elicited from the mouth of P.W.4 to disbelieve the case of prosecution. She also relied upon the evidence of P.W.16 and contend that this witness categorically says that he had witnessed the



incident of accused firing on both the victims i.e., Santhosh Shetty and Venugopal Nayak. First, this accused fired Santhosh Shetty and then fired Venugopal Nayak 2 to 3 times which was also witnessed by another person. This witness specifically deposes before the Court that this appellant only gunshot both the victims and he was having acquaintance with other accused as well as victims. He also deposes that having witnessed the incident, he suddenly ran away from the spot and informed the same to Vijay, who is his friend and on the next day, Vijay informed the same to Police and brought Police to his house and he gave the statement. She would also submit that this evidence inspires the confidence of the Court. In the cross-examination, nothing is elicited to disbelieve the evidence of this witness. She would also vehemently contend that bullets are seized from the body of both the deceased and the same is also evident from the FSL report and Post-Mortem report and the same supports the case of the prosecution.

12. Having heard learned counsel appearing for the appellant and learned High Court Government Pleader appearing for the respondent-State and also considering the



material available on record, the points that would arise for consideration of this Court are:

- (1) Whether the prosecution proved the case against this accused, who is accused No.6 that he himself fired both the deceased/victims beyond reasonable doubt?
- (2) What order?

Point No.(1)

13. We have perused both oral and documentary evidence available on record. Admittedly, accused Nos.1 and 3 to 5 have been acquitted by the Trial Court and the same is not challenged by the prosecution and the same has attained its finality. The accused No.7 has filed Criminal Appeal No.216/2020 and the same has abated on account of his death. Now, only accused No.6 remains, who is the appellant herein before this Court.

14. The main contention of learned counsel appearing for the appellant before this Court is that Trial Court relied upon the evidence of P.W.4 and P.W.16 and those two witnesses are star witnesses to the prosecution. The prosecution mainly relies



upon seizure of bullets from the body of both the deceased and no dispute with regard to recovery of bullets from the body of both the deceased. But, fact remains before the Court is whether the evidence of P.W.4 inspires the confidence of the Court that this accused itself fired with a revolver on both the deceased. The evidence of P.W.4 is that he was having acquaintance with both the accused as well as the victims and also narrated how an incident has taken place. He also states that he saw the accused Lokesh Bangera and other two accused persons. In the cross-examination, it is elicited from the mouth of P.W.4 that he was not aware of the accused when the incident had taken place and when he witnessed the incident. But, in the chief evidence, he says that he was having acquaintance with both the accused as well as the victims. Though, he says that on that day, he witnessed this accused, but says that before the Court itself he is seeing him. But, categorical admission was given that incident has taken place 15 years ago and now, he cannot say that whether they are the accused persons or not. Apart from this admission, though he claims that he had shown the place where the accused Vinitha B. Rai cracked and incident has taken place at 6.45 p.m. and



also though he deposes with regard to particular overt act, but in the cross-examination, he categorically admits that he cannot tell which accused inflicted injury and in the further evidence when suggestion was made that these accused persons were responsible for this incident, he did not deny the same, but only says that he is not aware of the same and categorically admits that when he heard the screaming sound and he turned up, at that time, the persons who were there at the spot ran away. But, he categorically admits that he is not having any acquaintance with other accused Lokesh Bangera prior to this incident. When these answers are elicited from the mouth of P.W.4 with regard to very presence of the accused is concerned, the very admission that he was having acquaintance with accused as well as victim persons cannot be believed and the same not inspires the confidence of the Court.

15. The other witness is P.W.16 which the prosecution mainly relies upon. No doubt, this witness in the chief evidence deposes before the Court as to how an incident has taken place, he also states that he witnessed the incident and this accused himself fired at the first instance on Santhosh Shetty



and thereafter to Venugopal Nayak and having witnessed the said incident, he ran away from the spot and informed the same to Vijay and Vijay came along with the Police on the next day and he gave statement to Police that he witnessed the incident. He also admits that he identified the accused Ganesh, Lakshman and another, but not identified the appellant. But, in the cross- examination, answer is elicited from the mouth of this witness that he has not given the statement in terms of Exs.D1, D2 and D3 and those statements of this witness was confronted and when he denies the same, the same are marked as exhibit 'D' series.

16. It is also important to note that when question was put to him when was deposing that he is going to his friend Prashanth Shetty's house, he says that he cannot tell in which village Prasanth Shetty's house is located, but, says that it is in Muluru and also says that other houses are not located by the side of each house. It is also his evidence that on the date of incident, he had taken half day leave and also says that he went to Muluru by bus, but he is not aware of the bus number. He also categorically says that when the statement was made



before the Police that on 05.03.2003 when he was proceeding to his uncle's house, he did not make any statement and the same is marked as Ex.D2. But, he says that when he did not get the bus, he went by walk and even he says that he cannot remember the place where he was proceeding, since many years had been elapsed and he could not remember the same. In the cross-examination made by the counsel, who appears on behalf of this appellant, answer is elicited that he identified two persons in the Court and also says that though he had witnessed the car which was found at the spot, he did not notice the vehicle number, but the car was in white colour. But he categorically says that having witnessed the incident, he suddenly left the place. He also says that he cannot say the distance between Mudipu and the place of incident and also cannot tell the distance between Mudipu to the place of incident. When all these answers are elicited from the mouth of this witness, he was unable to give any topography of the place of incident and also the distance. Apart from that, though the documents exhibit 'D' series i.e., Ex.D2 is marked, he could say where the house of his friend Prashanth Shetty is located. When such evidence is available before the Court, the Trial



Court committed an error in relying upon the evidence of P.W.4 and P.W.16 in coming to the conclusion that they are the eyewitnesses to the incident and the answers elicited from the mouth of these two witnesses do not inspire the confidence of the Court and not trustworthy and no Test Identification in respect of this appellant.

17. No doubt, learned High Court Government Pleader appearing for the State would contend that bullets are recovered from the body of the victims and no dispute with regard to the recovery and the same is also evident from the FSL report. But, the very case of the prosecution is against this accused that he only fired on the victims. It is also the case of the prosecution that this accused was apprehended in 2007 and incident has taken place in 2003. Even after seizure of revolver at Mumbai, Ballistic Expert is also examined before the Court, but, his evidence is also not helpful to the prosecution, since the witness says that in respect of this incident is concerned, there is no ballistic report. Apart from that, though bullets are recovered and seized from the body of victims and whether that empty cartridges are fired from the very same revolver



which was seized was also not subjected to any scientific evidence that accused had used the very same revolver for firing the victims and there are lapses in conducting the investigation and the evidences which are being relied upon by the prosecution do not corroborate with each other. Though the prosecution claim that P.W.4 and P.W.16 are the eyewitnesses to the incident, we have meticulously perused the evidence of P.W.4 and P.W.16 and their evidence do not inspire the confidence of the Court.

18. Hence, we do not find any force in the contention of learned High Court Government Pleader appearing for the State. However, there is a force in the contention of learned counsel appearing for the appellant that there is no scientific evidence with regard to revolver was seized and particularly, the revolver was not marked as a material object before the Court. When the case of the prosecution is that accused himself fired at the deceased and when there is no scientific evidence with regard to revolver, the evidence of P.W.4 and P.W.16 do not inspire the confidence of the Court. The Trial Court lost sight of all these factors into consideration while convicting the



accused. Therefore, we are of the opinion that Trial Court committed an error in relying upon the evidence of P.W.4 and P.W.16 and other material evidence available on record and there is no chain link between the evidence available on record and once the Court comes to the conclusion that evidence of P.W.4 and P.W.16 do not inspire the confidence of the Court, who claims to be the eyewitnesses, their evidence is not sufficient to convict the accused and other circumstantial evidence also not bring home the guilt of the accused for the offences and charges levelled against him. Apart from that, already case registered against accused No.7 was abated and Trial Court has already given benefit of doubt in favour of accused Nos.1 and 3 to 5 and not relied upon the evidence of these witnesses i.e., P.W.4 and P.W.16 in coming to the conclusion that P.W.4 and P.W.16, who have been examined as P.W.4 and P.W.5 in S.C.No.12/2004 do not inspire the confidence of the Court. When such being the case, the Trial Court ought not to have convicted the accused only on the basis of weak piece of evidence available on record. Accordingly, we answer point No.(1) as 'negative'.



Point No.(2):

19. In view of the discussion made above, we pass the following:

ORDER

- (i) The criminal appeal is allowed.
- (ii) The judgment of conviction and sentence passed by the Trial Court in S.C.No.101/2013 on the file of VI Additional District and Sessions Judge and MACT, Dakshina Kannada, Mangaluru dated 13.12.2019 for the offences punishable under Sections 109, 120B, 143, 147, 148, 341, 302 read with Section 149 of IPC is set aside.
- (iii) The accused is set at liberty and the Jail Authority is directed to release him forthwith.

**Sd/-
(H.P.SANDESH)
JUDGE**

**Sd/-
(VENKATESH NAIK T)
JUDGE**

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List No.: 1 Sl No.: 21