

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 01st DAY OF FEBRUARY, 2025

PRESENT

THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MR. JUSTICE K. V. ARAVIND

CRIMINAL APPEAL No.1357/2018

BETWEEN:

1 . MEHABOOB PASHA @ BABU
@ MEHABOOB,
S/O MAHAMMED KHALEEL,
AGED ABOUT 33 YEARS,
R/O HUNASANAHALLI VILLAGE,
KODIHALLI HOBLI,
KANAKAPURA TALUK,
RAMANAGARA DISTRICT - 560204.

...APPELLANT

(BY SRI TEJAS N., ADVOCATE)

AND:

1 . STATE OF KARNATAKA,
BY KODIHALLI POLICE,
KANAKAPURA TALUK,
RAMANAGARA DISTRICT - 560204.
REPRESENTED BY THE
STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING,
BANGALORE - 560001.

..RESPONDENT

(BY SRI VIJAYKUMAR MAJAGE, SPP-II)

THIS CRL.A. IS FILED UNDER SECTION 374(2) OF CR.P.C BY THE ADVOCATE FOR THE APPELLANT PRAYING TO SET ASIDE THE JUDGMENT AND ORDER OF CONVICTION AND SENTENCE DATED 13.07.2018 PASSED BY THE II ADDITIONAL DISTRICT AND SESSIONS JUDGE, RAMANAGARA, TO SIT AT KANAKAPURA IN S.C.No.5001/2016 - CONVICTING THE APPELLANT/ACCUSED FOR THE OFFENCE P/U/S 302 OF IPC.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT, COMING ON FOR PRONOUNCEMENT THIS DAY, JUDGMENT WAS PRONOUNCED AS UNDER:

CORAM: HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR
and
HON'BLE MR. JUSTICE K. V. ARAVIND

C.A.V. JUDGMENT

(PER: HON'BLE MR. JUSTICE K. V. ARAVIND)

This appeal by the accused is against the judgment and sentence dated 13.07.2018 in S.C.No.5001/2016 on the file of the II Additional District and Sessions Judge, Ramanagara, sit at Kanakapura. The accused is convicted for offence punishable under Section 302 of Indian Penal Code, 1860 ('IPC' for short) besides fine of Rs.50,000/-, in default, to undergo rigorous imprisonment for one year.

2. The case of the prosecution is that the deceased, Sikandar Beig, and his brother, P.W.15, visited Shivalingeshwara Hotel for lunch on 18.06.2015 at about 1.45 p.m. At the same time, the accused entered the

hotel and seated himself at a table opposite to the deceased. The deceased started teasing the accused by making comments about the accused's wife, Isha Taj, allegedly showing affection for him. Despite the accused repeatedly asking the deceased to refrain from making such remarks, the deceased persisted in his taunts. Meanwhile, P.W.15 had stepped outside to take a phone call. In response to the deceased's continuous provocation, the accused, who had been carrying a knife, stabbed the deceased. The victim Sikandar Beig was taken to Kanakapura Government Hospital around 2:45 P.M. in a Tata Sumo vehicle, however, he died.

3. The prosecution filed a charge sheet on 04.09.2015, accusing the accused of an offence punishable under Section 302 of IPC. Upon thorough examination of the evidence, the trial Court convicted the accused under Section 302 IPC and sentenced him to rigorous imprisonment for life, along with a fine of Rs. 50,000/-, in default of payment of the fine, the accused was directed to undergo one year rigorous imprisonment.

4. Shri Tejas, learned Counsel appearing for the appellant, submits that the entire prosecution case is based on the evidence of P.W.15-complainant, the deceased's brother. P.W.15 is an interested witness and cannot be relied on. It is further submitted that P.W.15 has not witnessed the accused stabbing the deceased. P.W.15 has deposed for his presence at the place of the incident and the conversation between the deceased and the accused.

4.1 It is submitted that P.Ws.1 to 5 were treated as eyewitnesses. The prosecution case is on the statements of P.Ws.1 to 5. These witnesses have turned hostile.

4.2 It is submitted that P.Ws.6 to 12 are spot and recovery panch witnesses. The prosecution case is on the recovery of M.O.1 alleged to have been used by the accused to stab the deceased. These witnesses have not supported the case of prosecution.

4.3 It is further submitted that there are contradictions and omissions with reference to the description of the

knife. P.W.15 has stated the knife with a wooden handle. The knife sent to Forensic as per Ex.P14 has a plastic handle. There is no description to the knife in the forensic report as per Ex.P34. As per Ex.P31, the property list submitted to the court, a knife with a plastic handle is stated. P.W.21 has admitted the knife with a wooden handle. As per Ex.P9, knife with a brick colour plastic handle is seized by P.W.20. P.W.20 admitted M.O.1 with a wooden handle as a seized article. In view of the above inconsistencies and contradictions, the use of an alleged knife is not proved by the prosecution.

4.4 It is further submitted that the alleged incident took place in the hotel premises owned by P.W.1. P.W.1, in his examination, denied having given a statement to the police, as well as the reason for the death of the deceased. The identity of the accused to the incident itself is denied.

5. Shri Vijaykumar Majage, learned SPP-II submits that the incident of stabbing the deceased in Shivalingeswara hotel is not in dispute. The evidence of P.W.21 would

establish the death of the deceased due to stabbing with M.O.1.

5.1 Ex.P9 was drawn, and M.O.1 was recovered at the instance of the accused. The description of the knife matches with the stab injuries as per Ex.P10 and Ex.P34. The presence of blood stains on M.O.1 is proved as 'AB' group.

5.2 It is submitted that the description to M.O.1 knife to its length is not in dispute. The discrepancy pointed out is to the handle as to plastic or wooden. The said discrepancy has no significance.

6. We have heard learned Counsel for the parties and perused the record. We have thoughtfully considered the submissions by the counsels.

7. Before examining the correctness of the conviction and sentence, the evidence has to be reassessed.

8. P.W.1, the employee of Shri Shivalingeshwara Hotel where the incident occurred, stated in his statement

recorded under Section 161 of the Cr.P.C. that the deceased provoked the accused by making comments about the accused's wife. The accused requested the deceased not to make such comments, but the deceased continued. The accused stabbed the deceased with a knife that he was carrying. However, P.W.1 has turned hostile during the trial.

9. P.W.2, in his statement recorded under Section 161 of the Cr.P.C., stated that he witnessed the accused stabbing the deceased. The other details provided by P.W.2 were consistent with the statement of P.W.1. However, P.W.2 also turned hostile during the trial.

10. P.W.3 in his statement under Section 161 of Cr.P.C., has stated to have witnessed the deceased suffering injuries. However, his statement on the incident is on hear-say. P.W.3 has turned hostile.

11. P.Ws.4 and 5, in their statements under Section 161 of the Cr.P.C., testified that the deceased was making comments about having a relationship with the accused's

wife and that the accused had advised him not to do so. They further stated that they witnessed the accused stabbing the deceased. However, both P.Ws.4 and 5 have turned hostile during the trial.

12. P.Ws.6 to 10 have not supported the prosecution.

13. P.W.15, the brother of the deceased, deposed that he, along with the deceased, went to Rudrappa's Hotel for lunch, where the accused, accompanied by his friends, also arrived. The deceased, in an attempt to tease the accused, made comments about the accused's wife. Despite the accused's repeated requests for the deceased to stop, the deceased continued his remarks, resulting in the accused stabbing him twice on the left side of the stomach. P.W.15 further stated that the deceased, Sikandhar Beig, succumbed to his injuries on the way to Kanakapura Government Hospital. He identified the knife used in the stabbing, marked as M.O.1. During cross-examination, the defense rigorously questioned P.W.15 on various aspects, including the incident, the presence of the

accused, the spot mahazar, and the seizure of the knife, but P.W.15 remained consistent in his testimony.

14. P.W.20- Investigation Officer has explained the investigation and collection of evidence. This witness has further explained the spot mahazar, Ex.P6 and seizure mahazar Ex.P9. It is stated that at the instance of the accused, the M.O.1 was recovered in the presence of the witnesses. P.W.20 has stated about the injury to the accused on his right hand index finger, which, according to the accused, was caused while stabbing the deceased. P.W.20 has withstood the cross-examination except for the minor discrepancies regarding the M.O.1.

15. P.W.13, the doctor who conducted the post-mortem on the deceased, testified about two injuries found on the stomach, measuring 3x2x10 cms. and 10x5x10 cms. The doctor identified M.O.1 as the weapon that caused the injuries. During cross-examination, no contradictory evidence was brought out to challenge his testimony.

16. P.W.21 testified regarding the examination of the sample sent for forensic analysis. During cross-examination, it was confirmed that M.O.1 was sent for examination and the blood stains found on M.O.1 were certified as human blood. No contradictory evidence was elicited during the cross-examination.

17. The prosecution has successfully established that Sikandhar Beig died as a result of being stabbed in the stomach with a knife at Shivalingeshwara Hotel. The evidence further confirms the presence of both the deceased and the accused at the hotel prior to the incident. P.W.15 provided testimony regarding the heated exchange between the accused and the deceased at the hotel. Statements recorded under Section 161 of Cr.P.C. from P.Ws.1 to 5 corroborate the presence of the accused at the scene. Additionally, these witnesses described the deceased's teasing comments about the accused's wife. Furthermore, P.Ws.1, 2, 4, and 5 initially stated that they witnessed the accused stabbing the deceased. However, during trial, all these witnesses have turned hostile,

disavowing any knowledge of the incident and the prior conversation between the deceased and the accused.

18. P.Ws.1 and 2, who are employees at Shivalingeshwara Hotel, identified both the accused and the deceased in their statements recorded under Section 161 of Cr.P.C., where they described the exchange of words between the two. These statements were made on 19.06.2015, while their testimonies were recorded on 18.02.2017. Despite both witnesses turning hostile and claiming ignorance of the incident, their ignorance claimed in the trial cannot be accepted as credible. Given that the incident occurred in the hotel owned by P.Ws.1 and 2, it is highly improbable that they were unaware of it. Various factors may explain their failure to support the prosecution's case. However, upon perusing the statements of P.Ws.1 to 5 under Section 161 of Cr.P.C., it is difficult to believe that P.Ws.1 and 2 were not present or unaware of the incident. The layout of the hotel suggests that the conversation between the accused and the deceased would have been audible to anyone in the

vicinity. The circumstances would not persuade this Court to accept their ignorance to the incident.

19. Moreover, Ex.P9, the seizure mahazar, documents the recovery of M.O.1 (the weapon) based on the accused's statement. When considered alongside P.W.15's testimony, this establishes, beyond reasonable doubt, that the accused used M.O.1 to fatally stab the deceased.

20. P.W.15 was present at the scene of the incident alongside the deceased, which is supported by the testimony of P.W.15 itself. The presence of P.W.15 is further corroborated by the Section 161 statements of P.Ws.1 to 5. P.W.6 was also present when Ex.P6, the spot mahazar, was conducted. The testimony of P.W.15 remained consistent and unchallenged during cross-examination. When P.W.15's statement is considered alongside the testimonies of P.W.20 and P.W.21, it is clear that the accused was present at the scene and fatally stabbed the deceased with M.O.1. This evidence can be safely relied upon.

21. The discrepancy in the description of M.O.1, particularly regarding the nature of the handle being plastic or wood, does not significantly impact the prosecution's case. The description of the knife provided by P.W.15, P.W.20, P.W.21, Ex.P9, Ex.14, and Ex.P31 remains consistent. This minor discrepancy regarding the handle does not alter the material facts, especially when considering other corroborative evidence, such as the blood stains, the knife's measurements, the nature of the wounds, and the potential for cause of death resulting from the stabbing with M.O.1. In this context, the testimony of P.W.21 is reliable.

22. P.W.20 records recovery of M.O.1 at the instance of accused. Ex.P9 also records the description of M.O.1 which corroborates with the evidence of P.W.21, Ex.P10 and Ex.P34.

23. The trial court, after thoroughly considering the evidence of P.Ws. 15 and 20, correctly concluded that the accused caused the death of the deceased by stabbing him twice in the stomach with M.O.1, the knife. Upon

re-assessing the evidence, this court arrives at the same conclusion. No errors or deficiencies have been identified in the trial court's reasoning. Therefore, this court sees no reason to disagree with the trial court's judgment.

24. Though case is made out for conviction, in the attending circumstances, it is necessary to examine whether the offence is punishable under Section 302 of IPC.

25. It is the case of the prosecution that the deceased and P.W.15 were having lunch at a hotel on 18.06.2015 at 1:45 P.M. The accused, along with his friends, arrived at the same hotel and sat at an opposite table. The deceased, in turn, started teasing the accused by making comments about his relationship with the accused's wife, insinuating her inclination towards the deceased. The accused repeatedly requested the deceased to refrain from such remarks. Deceased was persistent in his comments. The accused stabbed the deceased twice with the knife, due to which the deceased died.

25.1 In these circumstances, it can be reasonably concluded that the incident was not premeditated. The meeting between the deceased and the accused at the hotel was coincidental and not planned. The deceased's provocation led to a reaction from the accused. The incident occurred in the heat of the moment, with no prior intention to kill.

25.2 It is a natural human reaction to become intolerant when personal and uncomfortable matters, such as family issues, are discussed publicly. In this instance, the deceased made remarks about the accused's wife and her character, prompting the accused to warn the deceased not to continue the discussion.

26. The surrounding circumstances in this case clearly brings the incident within the scope of Exception 4 to Section 300 of the IPC. The incident occurred without any premeditation, during a sudden altercation, in the heat of passion, and the offender did not take undue advantage of the deceased. Given that Exception 4 to Section 300 is applicable, the offence does not amount to

murder under Section 300 of the IPC. As such, the charge of murder under Section 302 IPC would not be sustainable in this context.

27. In the present case, Section 304 of IPC is applicable. Upon careful assessment of the evidence and circumstances, it is evident that the accused did not have the intention to cause the deceased's death. However, it is clear that the accused had knowledge that his actions were likely to result in death. Therefore, this case falls under the second part of Section 304 of the IPC, which applies to culpable homicide not amounting to murder.

28. These principles are enunciated by the Hon'ble Supreme Court in the case of *N.Ramkumar Vs. The State Rep. by Inspector*, 2023 SCC OnLine SC 1129. It reads as under:

"16. It requires to be borne in mind that the test suggested in the aforesaid decision and the fact that the legislature has used two different terminologies, 'intent' and 'knowledge' and separate punishments are provided for an act committed with an intent to cause bodily injury which is likely to cause death and for an act committed with a knowledge that his act is likely to cause death without intent to cause such bodily injury as is likely to cause death, it would be unsafe

to treat 'intent' and 'knowledge' in equal terms. They are not different things. Knowledge would be one of the circumstances to be taken into consideration while determining or inferring the requisite intent. Where the evidence would not disclose that there was any intention to cause death of the deceased but it was clear that the accused had knowledge that his acts were likely to cause death, the accused can be held guilty under second part of Section 304 IPC. It is in this background that the expression used in Penal Code, 1860 namely "intention" and "knowledge" has to be seen as there being a thin line of distinction between these two expressions. The act to constitute murder, if in given facts and circumstances, would disclose that the ingredients of Section 300 are not satisfied and such act is one of extreme recklessness, it would not attract the said Section. In order to bring a case within Part 3 of Section 300 IPC, it must be proved that there was an intention to inflict that particular bodily injury which in the ordinary course of nature was sufficient to cause death. In other words, that the injury found to be present was the injury that was intended to be inflicted."

29. The Hon'ble Supreme Court in the case of *Pulicherla Nagaraju @ Nagaraja Reddy Vs. State of Andhra Pradesh*, (2006) 11 SCC 444 has observed thus:

"Therefore, the court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls under Section 302 or 304 Part I or 304 Part II. Many petty or insignificant matters — plucking of a fruit, straying of cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such

cases. There may be no intention. There may be no premeditation. In fact, there may not even be criminality. At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable under Section 302, are not converted into offences punishable under Section 304 Part I/II, or cases of culpable homicide not amounting to murder, are treated as murder punishable under Section 302. The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances : (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any premeditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention. Be that as it may."

30. The assessment of facts and evidence shows that the deceased provoked the accused by making offensive comments about a supposed relationship between the

deceased and accused's wife. The deceased further stated that he had visited the accused's house earlier that morning and spent time with his wife and he also questioned whether the accused's wife had asked about him.

31. It is natural for someone to become emotional and upset when the conduct of their spouse is discussed in front of others. The accused had already asked the deceased to refrain from making comments about his wife. It was only when the deceased persisted in making such comments, in the heat of the moment that the accused acted and stabbed the deceased. When considering the circumstances of the incident, it is clear that there was no premeditation and the deceased was not in a disadvantaged position at the time of the attack.

32. Considering the facts, this case warrants a reduction of the charge from Section 302 to Section 304 Part-II of the Indian Penal Code, 1860. The incident occurred on 18.06.2015. Although the accused was on bail during the trial, he has been in custody since his conviction in July

2018, having served over 6½ years of rigorous imprisonment. At the time of the incident, the accused was 31 years old. The loss of life was a tragic consequence of a rash and impulsive act. These mitigating circumstances are to be considered by this Court.

33. Taking into account the surrounding circumstances and the material evidence on record, this Court is of the opinion that while upholding the conviction of the appellant, the sentence imposed should be modified to the period of sentence already served by him. Hence, to that extent, the Judgment of conviction and sentence passed by the trial Court deserves to be modified.

34. Hence, we pass the following:

ORDER

- (i) The appeal is partly allowed;
- (ii) The judgment of conviction and order of sentence dated 13.07.2018 passed by the II Additional District and Sessions Judge, Ramanagara, sit at Kanakapura in S.C.No.5001/2016 stands modified;

- (iii) The accused is held guilty of the offence punishable under Section 304 Part II of IPC instead of Section 302 of IPC;
- (iv) For the offence punishable under section 304 Part-II of IPC, the accused is sentenced to rigorous imprisonment for the period he has already spent in jail;
- (v) The fine of Rs.50,000/- is modified to Rs.25,000/- and in default of payment of fine amount, the appellant shall further undergo simple imprisonment for a period of three months;
- (vi) The fine amount in excess of Rs.25,000/- shall be refunded to the appellant after due verification.
- (vii) The accused shall be set at liberty forthwith, if his presence is not required in any other case/s.
- (viii) Registry is directed to send back the trial court records with a copy of this judgment.

Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE

Sd/-
(K. V. ARAVIND)
JUDGE