

**IN THE HIGH COURT OF KARNATAKA
CIRCUIT BENCH AT DHARWAD**

DATED THIS THE 10TH DAY OF APRIL 2013

PRESENT

THE HON'BLE MR.JUSTICE B.V.PINTO

AND

THE HON'BLE MR.JUSTICE H.S.KEMPANNA

CRIMINAL APPEAL NO.2882/2011 (C)

BETWEEN:

Vishnu
S/O. Ramsingh Lamani @ Naik,
Age 45 Years, Occ: Railway Employee,
R/O. Banajara Colony, Gokul Road,
Hubli, District Dharwad. ... Appellant

(By Sri.G A.Holeyannavar, Advocate)

AND:

The State Of Karnataka,
Rep. By S.S.P., Circuit Bench,
(Hubli Gokul Road Police
Station, Hubli). ... Respondent

(By Sri.Y.V.Raviraj, Addl. Govt. Advocate)

This criminal appeal is filed under Section 374(2) of Cr.P.C. seeking to set aside the conviction dated 28.07.2011 and sentence order dated 05.08.2011 passed by the P.O., Fast Track Court-II, Dharwad, sitting at Hubli, in S.C.NO.163/2010 and acquit the accused/ appellant of the charge leveled against him.

This criminal appeal coming on for further Hearing this day, **H.S.Kempanna J.**, delivered the following:

J U D G M E N T

This appeal preferred by the accused is directed against the judgment and order dated 05.08.2011, passed in S.C.No.163/2010, by the Presiding Officer, Fast Track Court-II, Dharwad, sitting at Hubli, convicting him for the offence under Section 302 of IPC and sentencing him to undergo imprisonment for life and to pay fine of Rs.10,000/- in default to undergo rigorous imprisonment for six months.

2. The brief facts of the case are:-

(a) The appellant-accused came to be tried on the charge for the offence punishable under Section 302 of IPC. It is alleged that on 19.05.2010, at about 4:30 a.m., near the house bearing No.215, situated at Banjara Colony in

Hubli, coming within the jurisdiction of Gokul Road Police Station, the accused did commit murder of the deceased-Basavaraj intentionally by assaulting him on his neck with knife and thereby has committed the aforementioned offence.

(b) It is the case of the prosecution, the deceased-Basavaraj Tavaru Rathod is the elder brother of PW10-Pratap T. Rathod. He was residing along with his family members in his house situated at Banjara Colony in Hubli.

(c) PW9 is a retired Police Constable. PW5 is the son of PW9. They are residing in their house situated at Banjara Colony in Hubli. PWs.14 and 15, among whom, PW15 is the elderly person of Banjara Community are also residing in their respective houses situated at Banjara Colony in Hubli.

(d) It is the case of the prosecution, on 18.05.2010, in the evening, PW9 had arranged Tulaja Bhavani Pooja in his house. In that connection, apart from pooja, he had also arranged dinner followed by Bajana Programme through out the night i.e., intervening night on 18.05.2010 and 19.05.2010. For the said purpose, PW9 and his son PW5 had got pendal put up in front of their house and had made lighting arrangements.

(e) It is further the case of the prosecution, on that day i.e., on 18.05.2010, pooja performed in the house of PW9 was completed at 8:30 p.m. Thereafter, they served food to all the invitees of their locality, which comprised of the accused, deceased, his younger brother-PW10, PW14, PW15 and others, who are residing in their locality. After the dinner, Bajana Programme commenced, which was scheduled to go on through out the night. In

the said Bajana Programme, the deceased Basavaraj started singing Bhajan in the name of Lord Vishnu. The accused who was in the said programme, thinking that the deceased is singing the song in his name, went and picked up a quarrel saying as to why he was singing song in his name. Seeing the said quarrel, PWs.5, 9, 15, the elderly man of the Banjara Community and others, who were in the programme pacified the accused, saying that the deceased is not singing anything untoward as against him, on the other hand, he was singing bhajan in the name of Lord Vishnu. Thereafter, the accused went to his house. It was about 3:30 a.m., on the intervening night i.e., on 18.05.2010 and 19.05.2010. Thereafter, it is the case of the prosecution, the deceased stopped singing Bhajan in the programme. However, the wife of PW9, PW9 and the son-PW5 requested the deceased to continue with Bhajana

programme till morning, as the Bajana Programme was to go on through out the night. In response to the same, the deceased started singing Bhajan. Thereafter, at or about 04.00 a.m. or 04.30 a.m., the deceased stopped singing Bhajan and went near the house bearing No.215, which is situated at some distance from the place where the programme was going on to answer the first calls of nature. While he was answering first calls of nature, it is the case of the prosecution, the accused went near him, suddenly attacked him and assaulted on his neck with knife by abusing him in Lambani language saying as to why he sang Bhajan in his name due to which the deceased sustained severe bleeding injury and succumbed to the same at the spot. This was witnessed by PWs.5, 9, 10 - the brother of the deceased and PW14, one of the resident of Banjara Colony. In the mean time, PW5 on seeing the accused having

assaulted the deceased on his neck went to fetch an autorickshaw to shift him to hospital from the scene of occurrence. By the time he returned with autorickshaw, according to him, the deceased had expired. It is further the case of the prosecution the said witnesses and others who were in the programme apprehended the accused and detained him at the spot.

(f) It is further the case of the prosecution, thereafter, PW15 the elderly person of Banjara Community, on being informed about the occurrence, in turn informed the same to Gokul Road Police Station on phone. The said phone message were received by PW13, the Head Constable, who was S.H.O. of the Police Station at that time. PW13 in turn informed the same to PW16, the Investigating Officer, who was in his residence. PW16 on receipt of the information

about the occurrence from PW13 immediately came to the Police Station and accompanied by his staff, which comprised of Sub-Inspector, went to the scene of occurrence. At the spot, PW16 noticed the deceased lying dead with injuries on his neck. There PW16 received Ex.P5 from PW5 at the spot, returned to the Police Station along with Ex.P5 and also directed his Staff, the PSI to bring the accused who had been detained to the Police Station. On the basis of Ex.P5, he registered a case in Crime No.59/2010 for the offence punishable under Section 302 of IPC against the accused and issued FIR as per Ex.P4 to the jurisdictional Magistrate, which reached him on 19.05.2010 at about 12:00 noon.

3. PW16 thereafter proceeded to the scene of occurrence and there he held inquest over the dead body of the deceased and drew up the inquest

panchanama as per Ex.P7 in the presence of the pancha-PW6 and others. After completing Ex.P7, he forwarded the body for subjecting to postmortem examination along with a requisition. In response to the same, PW12, the Medical Officer conducted autopsy over the body of the deceased and issued postmortem report as per Ex.P12. In the mean time, PW16 returned to the Police Station arrested the accused and seized the clothes, MOs.2 and 3 found on the person of the accused under the panchanama Ex.P9 in the presence of the pancha PW7. Thereafter, he forwarded the accused to the Hospital for medical examination, in pursuance of which PW11, the Medical Officer examined him and issued the medical certificate as per Ex.P11. Thereafter P.W.16 on completion of the arrest formalities got him remanded to judicial custody. PW16, continuing the investigation, drew up scene of

offence panchanama as per Ex.P8 in the presence of the pancha PW6 and others and at the time of Ex.P8, he seized MOs.1, 6 and 7. After completing Ex.P8, he also recorded the statements of the witnesses examined by the prosecution and also sited in the charge sheet. Thereafter, PW16 seized MOs.4, 5 and 8 to 12, the clothes and articles found on the body of the deceased as per Ex.P10 in the presence of the pancha PW8. He also sent a requisition to the PWD Authorities to prepare a sketch of the scene of occurrence in the case. In pursuance of the same, PW1 prepared the sketch as per Ex.P1 and forwarded the same to PW16 through proper channel. Thereafter, he also forwarded all the seized articles in the case for subjecting to chemical examination to FSL Office. On completion of their examination, he received a report and articles sent for examination. PW16, thereafter on completion of the investigation

submitted final report against the accused before the jurisdictional Magistrate, who in turn committed the case of the accused to the Court of Sessions, which on receipt of the records, secured the presence of the accused, framed charge against him as aforesaid to which he pleaded not guilty but claimed to be tried.

4. The prosecution in support of its case, in all, examined P.Ws.1 to 16 and got marked Exs.P.1 to 13 and M.Os.1 to 12. The accused has not got marked any defence exhibits during the course of examination of the prosecution witnesses.

5. After the closure of the prosecution evidence, the accused denied all the incriminating circumstances put to him found in the evidence of prosecution witnesses, in his examination under Section 313 Cr.P.C. He also submitted that he has no defence evidence to

lead. Total denial of the prosecution case is the defence of the accused.

6. The learned Trial Judge, on consideration of the evidence and the documents placed on record, came to the conclusion that the prosecution has established the charge levelled against the accused and accordingly, by the impugned judgment and order, convicted and sentenced him as aforesaid.

7. The appellant/accused being aggrieved by the judgment and order of conviction and sentence is in appeal before this Court.

8. Shri. G.A.Holeyannavar, learned counsel appearing for the appellant/accused assailing the impugned judgment and order contended, the evidence of P.Ws.5, 9, 10 and 14, who are the eye witnesses according to the prosecution, is untrustworthy. In this connection, he submitted, the complaint-Ex.P.5 filed by P.W.5 does not disclose P.W.10, the brother of the

deceased, and P.W.14, an independent witness, as the persons who had come near the spot of occurrence and had seen the accused assaulting the deceased with the knife. He further contended, the evidence on record reveals that there was no light at the spot where the deceased had gone to attend first calls of nature, since it was dark, the identity of the accused is not established from the evidence of P.Ws.5, 9, 10 and 14. He further contended the evidence on record reveals all these persons had boozed fully on that night on the eve of performing Tulja Bhavani Pooja and, in that connection, they could not have known as to what exactly transpired in respect of the assault made on the deceased. He further contended, an overall view discloses as there was no light at the spot of occurrence, the case of the prosecution that these persons have seen the accused assaulting the deceased in the background in which they were placed cannot be believed. Therefore, he submitted that the impugned

judgment and order cannot be sustained, it be set aside and the accused be acquitted of the charges levelled against him. Alternatively, he also contended, since the evidence on record reveals that there was a quarrel between the deceased and the accused and in a fit of anger, he has assaulted the deceased, he had no intention to commit murder of the deceased and therefore, the act of the accused does not amount to homicidal death amounting to murder, on the other hand, it amounts to culpable homicide not amounting to murder and hence, the offence squarely falls either under Section 304 Part I or 304 Part II and to that extent, conviction of the appellant be modified and accused be sentenced accordingly.

9. Countering the submissions made by the learned counsel for the appellant/accused, Shri. Y.V.Raviraj, learned Additional Government Advocate appearing for the respondent-State, supporting the

impugned judgment and order, contended there is no reason whatsoever to discard the evidence of P.W.5 and P.W.9 who actually have seen the accused assaulting the deceased with knife on his neck and committing his murder which is also fortified from the evidence of P.W.12, the Medical Officer, who has seen the injuries on the neck of the deceased as spoken to by P.W.5 and P.W.9. He also further contended, the evidence of these witnesses is further corroborated from the evidence of P.Ws.10 and 14, who are the independent eye witnesses to the occurrence. He further contended, immediately after the occurrence, the police have been informed, in response to which P.W.16, the Investigating Officer, has come to the spot before whom P.W.5 has filed his complaint as per Ex.P.5 narrating the incident involving the accused as the culprit in the case. Having regard to the contents of Ex.P.5, which has been filed by P.W.5 within no time of the occurrence, which is corroborated from other witnesses namely his father-P.W.9, P.Ws.10

and 14 the other witnesses residing in the same locality, and as nothing has been brought on record to discredit their testimonies there is no reason to discard their evidence. Since the evidence of eye witnesses to the occurrence is consistent and cogent, the learned Trial Judge, on appreciation of the same, has come to the right conclusion in holding that the prosecution has established the charge levelled against the accused. The said finding having been based on facts and evidence on record does not suffer from any infirmity calling for interference in this appeal, hence, it be dismissed. Insofar as the alternative submission of the learned counsel for the appellant is concerned, he contended that there is nothing brought on record in the cross-examination of the witnesses to show that the deceased had provoked the accused to assault him. In this connection, he submits that earlier when the accused picked up a quarrel with the deceased when the bhajana programme was going on, he was pacified

by the persons who were in the bhajana programme which comprised of P.W.15, an elderly person of their community, and thereafter, he was sent home. It is only at about 4.30 a.m., when the deceased had gone to answer first calls of nature, accused suddenly attacked the deceased and assaulted him, at which point of time, there was no provocation whatsoever from the side of the deceased. In that view of the matter, the assault made by the accused on the deceased on his neck would clearly go to show that he has assaulted the deceased with an intention to commit his murder and therefore, the act committed by the accused squarely falls within the ambit of culpable homicide amounting to murder and therefore, there is no merit in the contention urged by the counsel for the appellant and hence, it be rejected.

10. Taking the rival contentions, the evidence and the documents on record, the points that arise for our consideration are:

- i) Whether the prosecution has established that the deceased Basavaraj.T.Rathod has died an homicidal death?
- ii) If so, whether the prosecution has established that the accused is responsible for the homicidal death of the deceased Basavaraj.T.Rathod?
- iii) Whether the impugned judgment and order of the Trial Judge calls for any interference?

11. P.W.12 is the Medical Officer, who has conducted autopsy over the body of the deceased. He, in his evidence, has stated that on 19.05.2010, he conducted autopsy over the body of the deceased. At the time of post-mortem examination, he noticed the

following external injuries, as reflected in his post-mortem report-Ex.P.12:-

“External Injuries:

- (1) Two abrasions present on inner aspect of lower lip; one is tiny at middle; another one is of $\frac{1}{2}$ cm length, narrow; placed $\frac{1}{2}$ cm to the left of above abrasion.
- (2) An incised wound present on front of neck extending from front of right ear lobule to 3 cm below left angle of jaw, placed 5 cm. below chin; just at upper border of thyroid cartilage; of total length 20 cm; breadth 2 cm at middle; shallow at ends. Thyroid cartilage clean cut at upper part with the cut part of upper piece lying in the neck. Blood vessels (Carotid artery and veins clean cut) neck muscles clean cut at same level; edges of wound are clean cut; margins are sharp; ends are acute. Depth of the wound is 7 cm at middle reaching to the cervical vertebrae.

The injuries described are fresh and ante-mortem in nature; and are reddish.”

12. He has further stated, on dissection of the body, he found all the internal organs intact. He is of the opinion that death is due to shock and hemorrhage coupled with respiratory failure consequent of the injury sustained to the neck. He has issued post-mortem report as per Ex.P.12. This evidence of P.W.12 is corroborated from the evidence of P.W.16, the Investigating Officer, who has held inquest and has drawn up inquest panchanama as per Ex.P.9. His evidence reveals that, at the time of inquest, he and the panchas have noticed the injuries on the neck of the deceased as reflected in the post-mortem report-Ex.P.12, which is further corroborated from the evidence of P.Ws.5, 9, 10 and 14 who, in their evidence, have also stated that they have seen the injuries sustained by the deceased on his neck. In the cross-examination of these witnesses, nothing has

been elicited to discredit their testimony as to the deceased having sustained injury on his neck which, according to the Medical Officer-P.W.12, has resulted in his death. On the other hand, homicidal death of the deceased was also not disputed before us. Therefore, having regard to the evidence, which is adverted to above, we are of the clear view that the prosecution has established that the deceased Basavaraj.T.Rathod has died on account of the injury sustained on his neck and accordingly, prosecution has established that he has died an homicidal death.

13. The prosecution, in order to establish that the accused is responsible for the homicidal death of the deceased, have placed reliance on the direct testimonies of P.Ws.5, 9, 10, and 14. Among the said witnesses, P.W.5 is the son of P.W.9 and he is also the complainant in the case. P.W.10 is the younger brother of the deceased and P.W.14 is a witness whose house is

situated near the place where the occurrence has taken place.

14. It is the case of the prosecution that on 19.05.2010 at about 4.30 a.m., the accused committed murder of the deceased by assaulting him with knife-M.O.1 on his neck, near the house bearing No.215 situated at Banjara Colony in Hubli. P.W.5 is the complainant. According to him, he is the son of P.W.9, who is a retired police constable, and they are residing in their house situated at Banjara Colony in Hubli. On 18.05.2010, in the evening, they had arranged Tulja Bhavani Pooja programme in their house. In that connection, according to him, they had also arranged dinner and Bhajana programme followed by the pooja. His evidence reveals, on 18.05.2010, pooja commenced at about 6.00 p.m. and ended at 8.30 p.m. Thereafter, they served food to all the invitees which comprised of accused, deceased, his younger brother-P.W.10, P.W.14,

P.W.15 – an elderly person of their community and others of their locality. After the dinner, they had arranged bhajana programme which was go through out the night till the morning of 19.05.2010. He has further stated they had put-up pendal and had made lighting arrangements for the programme. His evidence further reveals, when the bhajana programme started the deceased started singing bhajans in the name of Lord Vishnu. When he was so singing, the accused, who is called as Vishnu Ramsingh Lamani, thinking that the deceased is singing something bad in his name went near the deceased and picked a quarrel with him as to why he is singing bhajan taking out his name. This was somewhere on the intervening night of 18.05.2010 and 19.05.2010. Seeing the said quarrel, P.Ws.5, 9, 15 – elderly person of their community and others pacified the accused. Thereafter, they sent him. His evidence further reveals, thereafter the deceased stopped singing bhajan, but his mother-C.W.12 insisted to continue singing bhajan as the programme

has to go on till morning, therefore, he started signing. At about 3.45 or 4.00 a.m., as he wanted to attend first calls of nature, he stopped and went near the house bearing No.215 situated at some distance from where the bhajan programme was going on, to attend to first calls of nature. While he was so attending, the accused came from his behind armed with a knife, attacked him and assaulted him on his neck. Seeing the same, he along with his father-P.W.9 went to the said spot. By that time, the accused had already assaulted the deceased. Thereafter, he left the spot to fetch an autorickshaw. By the time he returned, the deceased had collapsed. The persons who were in the pedal had apprehended the accused and detained him. Thereafter, the police arrived on being informed by P.W.15 – elderly person of their community. P.W.5 filed the complaint before the police as per Ex.P.5. His complaint, which he has filed before the Investigating Officer, reveals the occurrence as he has testified before the Court in his evidence. In his cross-

examination, we do not find any worthwhile having been elicited to discredit his testimony and also to discard the complaint-Ex.P.5. This testimony of P.W.5 is further corroborated from the evidence of P.W.9, his father, who has testified to the same effect as that of his son before the Court. In his cross-examination also, we do not find anything elicited to discredit his testimony. The prosecution apart from the evidence of these two witnesses have also relied upon the evidence of P.Ws.10 and 14. According to the prosecution, they are also eye witnesses to the occurrence. However, we find from the first information that the names of these two persons are not found therein i.e., in Ex.P.5. Their evidence reveal that they also went near the spot and saw the deceased being assaulted by the accused. Merely because their names are not found in Ex.P.5 there is no reason to discard their testimony as Ex.P.5 is not the be all and end all. P.W.14 claims on hearing the galata, he came out of the house and at that time he noticed the deceased

having been assaulted and the accused being present at the said place. P.W.10 has also stated that he saw the accused assaulting the deceased. We do not find any worthwhile material brought on record to discredit the testimonies of these witnesses who actually have witnessed the occurrence i.e., in respect of the accused assaulting the deceased with the knife-M.O.1 on the neck. Their evidence also reveals that accused had been apprehended by the persons who were watching and witnessing the bhajan programme. Therefore, we are of the clear view from the evidence of these witnesses that the accused is the person who has assaulted the deceased with the knife-M.O.1 on the neck and has committed his murder.

15. The learned counsel for the appellant vehemently contended that the act of the accused does not amount to murder as he had no intention to commit the murder of the deceased since he attacked the

deceased under the impression that he is singing against him. We do not find any merit in the said contention. The evidence on record reveals the accused had picked up quarrel with the deceased earlier to the occurrence when he was singing bhajan and the said quarrel had been pacified by PW15, elderly person of their community along with others. After the said quarrel was pacified the accused has attacked the deceased and has assaulted him with knife MO1 and has committed his murder. At that point of time there was no provocation whatsoever from the side of the deceased. Having regard to the circumstances appearing in the case taking into consideration that the accused has suddenly attacked the deceased with knife and has assaulted him on his neck, which has resulted in his death, we do not find any merit in the alternative submission made by the counsel for the appellant to hold that the accused had no intention to commit murder of the deceased. The evidence on record clearly

reveals the act of the accused clearly amounts to culpable homicide amounting to murder. Therefore, having regard to the evidence on record we are of the clear view the prosecution has established that the accused is guilty of the offence punishable u/s.302 of IPC. The learned trial Judge on an appreciation of the entire material on record has come to the right conclusion in holding that the accused is guilty of the offence with which he is charged which finding in our view having been based on facts and evidence does not call for any interference in this appeal.

16. Accordingly, we do not find any merit in this appeal and it is dismissed.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

Vnp*/KMS