



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3RD DAY OF MARCH, 2026

PRESENT

THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ

AND

THE HON'BLE MR. JUSTICE VENKATESH NAIK T

CRIMINAL APPEAL NO.1790 OF 2018 (A)

C/W

CRIMINAL APPEAL NO.1416 OF 2019 (C)

IN CRL.A No.1790/2018

BETWEEN:

THE STATE OF KARNATAKA
BY POLICE SUB-INSPECTOR
SOMWARPET POLICE STATION
KODAGU DISTRICT
REPRESENTED BY
STATE PUBLIC PROSECUTOR
HIGH COURT BUILDING
BENGALURU-560 001.

...APPELLANT

(BY SMT. RASHMI PATEL, H.C.G.P.)

AND:

MANOJ KUMAR H.R.
S/O. H.N. RAMA
AGED ABOUT 37 YEARS
OCCUPATION: COOLIE
RESIDING AT SIDDARTHA EXTENSION
HANAGALLU VILLAGE, SOMWARPET
KODAGU DISTRICT-571 236.

...RESPONDENT

(BY SRI D.P. PRASANNA, ADVOCATE)





THIS CRIMINAL APPEAL IS FILED UNDER SECTION 378(1) AND (3) OF THE CR.P.C., PRAYING TO SET ASIDE THE JUDGMENT AND ORDER DATED 19.06.2018 AND 20.06.2018 PASSED BY THE PRINCIPAL DISTRICT AND SESSIONS JUDGE, KODAGU AT MADIKERI IN SESSIONS CASE NO.100 OF 2016 TO THE EXTENT OF NOT CONVICTING THE ACCUSED/RESPONDENT FOR THE OFFENCE PUNISHABLE UNDER SECTION 307 OF IPC BY ALLOWING THIS CRIMINAL APPEAL.

IN CRL.A NO.1416/2019

BETWEEN:

H.N. RAMA @ RAMU
S/O. NINGAIAH
AGED ABOUT 68 YEARS
RESIDING AT SIDDARTHA EXTENSION
HANAGALLU VILLAGE, SOMAVARPET
KODAGU DISTRICT-571 236.

...APPELLANT

(BY SRI PRASANNA D.P., ADVOCATE)

AND:

THE STATE OF KARNATAKA
SOMAVARPET POLICE STATION
KODAGU DISTRICT-571 236
REPRESENTED BY SPP
HIGH COURT COMPLEX.

...RESPONDENT

(BY SMT. RASHMI PATEL, H.C.G.P.)

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THIS CRIMINAL APPEAL IS FILED UNDER SECTION 454 OF THE CR.P.C PRAYING TO SET ASIDE THE ORDER PASSED BY THE PRINCIPAL SESSIONS JUDGE, KODAGU AT MADIKERI IN SESSIONS CASE NO.100 OF 2016 DATED 19-6-2018 AND 20-6-2018 IN RESPECT TO THE APPLICATION OF THE APPELLANT IS CONCERNED AND RELEASE THE GUN TO THE APPELLANT.



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

CORAM: HON'BLE MR. JUSTICE MOHAMMAD NAWAZ
and
HON'BLE MR. JUSTICE VENKATESH NAIK T

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE MOHAMMAD NAWAZ)

Crl.A.No.1790/2018 is preferred by the State, feeling aggrieved by the judgment of trial Court insofar as acquitting the accused for the offence punishable under Section 307 IPC.

Crl.A.No.1416 of 2019 is preferred by the license holder of the gun, namely the father of the accused, feeling aggrieved by the confiscation of the said gun MO.2 and rejection of his application filed under Section 457 of Cr.P.C.

2. We have heard both sides and perused the evidence and material on record.

3. The accused was charged for the offence punishable under Section 307 of IPC and Section 3 r/w 25 of the Indian Arms Act, 1959. The case of the prosecution is that on 07.03.2016, at around 1.00 a.m. when the victim - H.K. Surendra-CW.1 (PW.1) along with CW.2 Shashikumar



H.H.(PW.2), CW.3 Rajendra(PW.3), CW.4 Kaushik (PW.4), CW.5 Puttaswamy, CW.6 Dharmesh, CW.7 Amaranath, CW.8 Keerthan and CW.9 Bhavan were celebrating Shivarathri festival in front of Ambedkar Samudaya Bhavan, the accused came and picked up quarrel for the reason that he was not invited by them to the said function. At about 2.30 a.m., he once again came and picked up quarrel with CW.1 and again, at around 3.10 a.m., he came holding a gun belonging to his father, with an intention to kill CW.1/H. K. Surendra and fired at him and at that time, CW.2/H. H. Shashikumar held his hand, hence the shot misfired. It is the further case of the prosecution that the accused used the gun belonging to his father to commit the murder of CW.1-H.K. Surendra and thereby violated the license conditions as defined under Section 3 of the Indian Arms Act, 1959 and thereby committed offence punishable under Section 307 IPC and Section 25 of the Indian Arms Act, 1959.

4. In order to establish the guilt of the accused, the prosecution in all examined 16 witnesses and got marked 11 documents and MOs. 1 to 4. The defence of the accused was



one of total denial, however he did not choose to lead any evidence on his behalf.

5. The learned Sessions Judge on appreciation of the evidence and material on record came to the conclusion that the prosecution has not proved the charge under Section 307 IPC, but proved the offence punishable under Section 506 IPC and Section 25 of the Indian Arms Act, 1959. The accused was sentenced to undergo imprisonment for a period of eight months, which he had already undergone.

6. Assailing the impugned judgment, learned H.C.G.P vehemently contended that the complainant i.e., PW.1, who is the victim in this case, as well as PW.3 to PW.7, have categorically stated that the accused came to the spot armed with a gun(MO.2) and fired at PW.1, and at that point of time, PW.2, Shashikumar held his hand, thus, preventing him from causing harm to PW.1. Hence, there is ample evidence to show that the accused brought the gun with an intention to commit the murder of PW.1 and fired at him with that intention. She contended that if there was no intervention by PW.2, PW.1 i.e., the victim in this case would have sustained gunshot injuries



and died. She contended that the reasons assigned by the trial Court for not convicting the accused for the offence punishable under Section 307 IPC are not in accordance with law; the trial Court pointing out some minor discrepancies, which do not go to the root of the case has come to an erroneous conclusion to acquit the accused for the charged offence punishable under Section 307 IPC.

7. Learned counsel Sri. D.P. Prasanna, for the accused contended that there is material discrepancy in the evidence of the prosecution witnesses and the trial Court having taken into consideration the said discrepancy and by giving cogent and valid reasons has come to the conclusion that the offence under Section 307 IPC is not attracted in this case. It is his contention that MO.2 gun was not used to commit the offence, as alleged by the prosecution and the witnesses have given different versions regarding the time and use of gun. The Ballistic expert has not stated as to the time of usage of the gun and he has opined that there was no smell of gaseous products of GSR at muzzle end as well as at breech end. Hence, he contended that



the case of the prosecution that MO.2 was used by the accused at the relevant point of time is not established.

8. Learned counsel further contended that the gun/MO.2 seized in the case has been confiscated to the State and the application filed by the license holder of the gun i.e., father of the accused for release of the said gun has been erroneously rejected. It is his contention that if it is not proved that the gun was not used for commission of the offence, then confiscation of gun-MO.2 is unsustainable. Accordingly, sought to release MO.2 in favour of the appellant in Crl.A. No.1416/2019.

9. The incident is alleged to have taken place in the early hours of 07.03.2016. It is the case of prosecution that PW.1 i.e., the victim in this case and others were celebrating Shivaratri festival in front of Ambedkar Samudaya Bhavan in their Village. At around 1.00 a.m., the accused is alleged to have come to the spot and picked up quarrel with them saying that he was not invited to the said function. Once again, he returned to the spot at about 2.30 a.m. and picked up quarrel with the complainant, at that time, others consoled and sent him back and thereafter, at about 3.10 a.m., the accused came



to the spot holding a Kovi(M.O.2) aiming at PW.1 and uttering that he will commit his murder, fired at him and at that time, PW.2 Shashikumar came and held his hand, due to which, the shot misfired. Thereafter, the accused ran away from the spot.

10. Ex.P1 is the complaint lodged by PW.1 on 8.03.2016. On receiving the said complaint, PW.16-PSI registered a case and issued Ex.P9-FIR to the jurisdictional Court. He proceeded to the spot and conducted spot mahazar-Ex.P2 and seized one empty wad from the spot(M.O.1) and subjected the same to PF.No.32/2016. Accused was apprehended and his voluntary statement was recorded. At his instance, Kovi-MO.2 and empty cartridge were seized from his house. The articles seized were sent to RFSL for Ballistic Expert's opinion. Further, he seized the gun license produced by the father of the accused. He sent requisition to DC through SP, to give permission to prosecute the accused under the Arms Act. Ex.P8 is the permission letter.

11. In the case on hand, PW.1 is the victim. PW.2 to PW.7 are the other material witnesses, who were at the spot at the time of incident. It is the contention of the learned HCGP that there is ample evidence to show that the accused had an



intention to commit the murder of PW.1 and with that intention, he brought the gun from his house and fired at PW.1. She contended that, but, for the intervention of PW.2, the accused would have committed the murder of PW.1.

12. We have carefully examined the evidence of PW.1 as well as PW.2 to PW.7. In his chief examination, PW.1 has stated that at around 3.00 a.m., accused came again armed with Kovi and fired gunshot towards them and at that time, they were sitting by doing pooja. The said bullet went in air. He was partly treated hostile by the prosecution and in the cross examination, he stated that around 03.00 a.m., accused came directly near him with Kovi and by saying that 'I will kill you', fired gunshot and Shashikumar CW.2 came there and held the accused and the bullet went upwards.

13. It is relevant to see, PW.2 in his chief examination, has stated that, accused raised Kovi and fired and he pushed Kovi and hand of accused and hence the bullet went upwards and hit the Panwala tree. In the cross-examination, he has stated that accused came armed with Kovi, suddenly fired and he pushed his hand. The accused fired, when he was holding



his hand. There is discrepancy in the evidence of PW.1 and PW.2. According to PW.1, accused came directly near him holding the gun and saying that he will kill him, fired gun shot. PW.2 has not stated that when the accused fired gun shot, he uttered that he wanted to kill PW.1. If Ex-P1, the complaint is perused, Shashikumar was not present near the accused. It is stated that Shashikumar came running and held the accused, by that time, he fired at PW.1. If evidence of PW.1 is perused, he has not stated that PW.2 came running and then held the hand of the accused. This is relevant, because, according to PW.1, the accused had already fired gunshot at him and if accused had fired gunshot aiming at him and if Shashikumar was not present near PW.1, he should have sustained gun shot injuries by the time PW.2-Shashikumar came to the spot. Their testimony that accused fired aiming at PW.1 and because PW.2 held his hand, the shot misfired is therefore doubtful to accept. To appreciate the evidence of PW.1 and PW.2, it is also relevant to appreciate the evidence of other witnesses viz., PW.3 to PW.7, who according to the prosecution, were at the spot, when the incident took place.



14. PW.3 in his chief examination has stated that at about 3.10 a.m., the accused came and fired gunshot and it misfired. He has not stated that the accused fired gunshot aiming at PW.1. In the cross-examination, he has stated that, he has not seen any incident and not given any statement to the police. He has stated that when the accused came for the third time, he was inside the function hall and CW.1 and CW.2(PW.1 and PW.2) were outside, talking and dancing to the music.

15. According to PW.4, at about 3.10 a.m., accused came with the gun near Ambedkar Samudaya Bhavan and fired gunshot towards CW.1-Surendra and it misfired and hit Panwala tree and then accused left the place. He has not at all stated that, at that time, PW.2 intervened or held the hand of the accused, due to which, the gunshot misfired. Similarly, PW.5 has stated that the accused came with the gun and fired gunshot towards CW.1 and it misfired and hit the Panwala tree and then he left the place. Even the said witness has not stated that PW.2 intervened or held the hand of the accused, so as to prevent him from firing at PW.1. Similar is the evidence of PW.6 and PW.7.



16. From the above evidence on record, it cannot be held that the accused fired at PW.1, with an intention to commit his murder and at that time, PW.2 held his hand, due to which, the shot misfired. In fact, PW.1 in the chief examination has not stated that the accused by uttering that he will kill him, fired gunshot towards him. On the other hand, he has stated that accused armed with a Kovi came and fired gunshot towards them i.e., all who were present, when they were sitting and doing pooja.

17. Learned Sessions Judge while appreciating the evidence of the prosecution witnesses, has noticed the above discrepancies in their evidence, wherein the witnesses namely PW.3 to PW.7 have not at all stated that PW.2 caught hold of the accused, because of which, there was misfire. Said witnesses were not treated hostile by the prosecution.

18. Another aspect is that, it is not the case of prosecution that PW.2 after holding the hand of the accused, snatched away the gun, which he was holding. None of the witnesses have stated that accused once again attempted on the life of the complainant or did any such act to cause harm to



him with the said gun. Admittedly, the gun(MO.2) was recovered from the house of the accused, at his instance, pursuant to his voluntary statement. If there was any intention on the part of the accused to commit the murder, nothing prevented him to cause further harm to PW.1. Hence, it cannot be held that the prosecution has proved beyond doubt that the accused committed an offence punishable under Section 307 IPC. The acquittal of the accused by the trial Court for the said offence does not suffer from any infirmity or illegality.

19. We have perused the evidence of Ballistic Expert, examined as PW.12. The report issued by him is marked as Ex.P5. He has stated that, he subjected the articles sent for examination thoroughly and scientifically and gave the following opinion:-

- i) The weapon in article No.1 is a fire arm.
- ii) The SBBL gun in article No.1 bears signs of discharge, but no opinion is possible regarding actual date and time of firing.
- iii) The SBBL gun in article No.1 is a legally manufactured fire arm.
- iv) The SBBL gun in article No.1 is in working condition at the time of examination.



20. PW.12 has stated that the cartridge case in article No.2 has been fired through SBBL gun(article No.1). The red colour wad in article No.3 is component of 12 bore cartridge case which could have been fired through article No.1. He used three cartridges for test firing and he has stated that they were successfully fired.

21. The trial Court has come to the conclusion that the accused has used the gun belonging to his father, knowing fully well that it does not belong to him and misused the same to cause an alarm to the witnesses, with whom, he had a difference of opinion. Therefore, the act of the accused will squarely fall under Section 506 of IPC and not under Section 307 of IPC. Further, accused has misused the gun that belonged to his father PW.11/Ramu and therefore, contravened the provisions of Section 3 and Section 25 of the Arms Act. While convicting the accused for the offence punishable under Section 506 IPC and Section 25 of the Arms Act, the learned Sessions Judge has ordered MO.2 to be confiscated to the State. The accused was given set off for the period already



undergone by him as he had already undergone eight months of imprisonment.

22. Insofar as conviction of the accused under Section 506 IPC and 25 of the Arms Act, there is no appeal preferred by the accused. The reasons assigned by the trial Court for convicting and sentencing the accused for the said offences, are in accordance with law.

For the foregoing reasons, we pass the following:-

ORDER

Crl.A.No.1790/2018 and Crl.A.No.1416/2019 are ***dismissed.***

The order of confiscation of MO.2 to the State is made absolute.

**Sd/-
(MOHAMMAD NAWAZ)
JUDGE**

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