



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 6TH DAY OF JULY, 2022

BEFORE

THE HON'BLE Dr. JUSTICE H.B. PRABHAKARA SASTRY

CRIMINAL REVISION PETITION No.911 OF 2012

BETWEEN:

Thippeswamy @ Kunta

..Petitioner

(By Sri. C.N. Raju, Advocate)

AND:

State by Challakere Police,
Represented by SPP,
High Court of Karnataka,
Bangalore: 01.

.. Respondent

(By Sri. K. Nageshwarappa, High Court Govt. Pleader)

This Criminal Revision Petition is filed under Section 397 r/w. 401 of the Code of Criminal Procedure, 1973, praying to set aside the judgment of conviction passed in C.C.No.898/2010 dated 09-01-2012 on the file of the JMFC at Challakere, in

Crl.A.No.31/2012 dated 10-07-2012 on the file of the District and Sessions Judge at Chitradurga, against the petitioner, and acquit the petitioner by allowing this petition in the interest of justice.

This Criminal Revision Petition, having been heard through physical hearing/video conferencing hearing and reserved on **30-06-2022**, coming on for pronouncement of orders, this day, the Court made the following:

ORDER

The present petitioner was accused in C.C.No.898/2010, in the Court of the Judicial Magistrate First Class at Challakere, (hereinafter for brevity referred to as "the Trial Court"), who, by the judgment of conviction and order on sentence dated 09-01-2012 of the Trial Court, was convicted for the offences punishable under Sections 457 and 380 of the Indian Penal Code, 1860 (hereinafter for brevity referred to as "the IPC") and was sentenced accordingly.

Aggrieved by the same, the accused preferred an appeal in Criminal Appeal No.31/2012, in the Court of the Principal District and Sessions Judge at Chitradurga, (hereinafter for brevity referred to as the "the Sessions Judge's Court"),

which, after hearing both side, dismissed the appeal, confirming the impugned judgment of conviction and order on sentence passed by the Trial Court in C.C.No.898/2010. It is challenging the judgments passed by both the Trial Court as well the Sessions Judge's Court, the accused/revision petitioner has preferred the present revision petition.

2. The summary of the case of the prosecution in the Trial Court was that, on the date 03-06-2010, during night, the accused by removing the tiles of the roof of the house of CW-1 - Nagaraj, situated at I Cross, near Veerabhadra Lodge on Bellary Road, Challakere, entered into the said house and committed theft of silver articles and cash kept in the Almirah and that on the date 13-06-2010 at 11:00 a.m., CW-7 to CW-11, conducted a raid and apprehended the accused. The Investigating Officer recovered several of the stolen articles from the accused, including the one which were stolen in the instant case, as such, charge sheet was filed against the

accused for the offences punishable under Sections 457, 380 and 75 of the IPC.

3. The accused appeared in the Trial Court and contested the matter through his counsel. The accused pleaded not guilty. As such, in order to prove the alleged guilt against the accused, the prosecution got examined in all seven (7) witnesses from PW-1 to PW-7, got marked documents from Exs.P-1 to P-6 and produced Material Objects from MO-1 to MO-3. However, neither any witness was examined nor any documents were got marked on behalf of the accused.

4. The respondent - State is being represented by the learned High Court Government Pleader.

5. The Trial Court and the learned Sessions Judge's Court's records were called for and the same are placed before this Court.

6. Learned counsel for the accused/revision petitioner and learned High Court Government Pleader for the respondent - State are physically appearing in the Court.

7. Heard the arguments from both side. Perused the materials placed before this Court including the impugned judgments passed by both the Courts and also the Trial Court and learned Sessions Judge's Court's records.

8. For the sake of convenience, the parties would be henceforth referred to as per their rankings before the Trial Court.

9. After hearing the learned counsels for the parties, the only point that arise for my consideration in this revision petition is:

Whether the concurrent finding recorded by the Trial Court as well as the Sessions Judge's Court that, the accused has committed the alleged offences punishable under Sections 457 and 380 of the Indian Penal Code, 1860, warrants any interference at the hands of this Court?

10. The learned counsel for the revision petitioner, in his argument submitted that, he would not deny or dispute the alleged incident of theft in the house of PW-1, however, his only contention is that, the alleged recovery at the instance of the accused, is not proved. He further submitted that, mere tallying of a 'Chance Fingerprint' cannot be the sole basis for conviction of the accused.

In his support, he relied upon a judgment of the Hon'ble Apex Court in the case of **Digamber Vaishnav & Anr. Vs. State of Chhattisgarh** reported in **Law Finder Doc Id#1385623** and a judgment of the Division Bench of this Court in the case of **Maliappa Basappa Ihole Vs. The State of Karnataka** reported in **Indian Kanoon -<http://indiankanoon.org/doc/141408122/>**.

11. Learned High Court Government Pleader for the respondent, in his brief argument, submitted that, the recovery of the articles at the instance of the accused has been established. The accused has failed to give any

explanation as to how come the stolen articles at MO-1 to MO-3 came into his possession.

Stating that the Fingerprints recovered from the spot would scientifically establish the involvement of the accused in the commission of the crime, learned High Court Government Pleader relied upon a judgment of the Hon'ble Apex Court in the case of ***B.A. Umesh Vs. Registrar General, High Court of Karnataka*** reported in ***(2011) 3 Supreme Court Cases 85***.

12. PW-1 (CW-1) - Nagaraju, S/o. Channappa is the complainant in the case. In his evidence, he has stated that on the night of the date 03-06-2010, a theft had taken place in his house. The robbers had entered the house by opening the tiles of the roof and had stolen a silver plate, two silver cups (kumkuma Battalu - ಕುಂಕುಮ ಬಟ್ಟಲು) and one small silver pitcher (pot like) (kalasha - "ಕಳಶ"). They were costing together a sum of ₹7,800/-. The accused, by breaking open the Almirah, had taken those articles. He has stated that in

that connection, he has lodged a complaint with the Police as per Ex.P-1. Thereafter, the Police had visited the spot and drawn a scene of offence panchanama as per Ex.P-2. Though the witness has identified the alleged stolen articles at MO-1 to MO-3 in the Court, but specifically stated that, he does not know as to who had stolen them and from whose possession those articles were recovered.

Since this witness did not speak anything about the involvement of the accused in the alleged crime, the prosecution got him treated as hostile and cross-examined him. In his cross-examination, the witness admitted that MO-1 to MO-3 were seized in his presence but stated that he was not aware as to whether the accused present in the Court was the one who was shown to him by the Police as the accused in the Police Station and that MO-1 to MO-3 were seized in his presence from the possession of the accused in the Police Station.

13. PW-2 (CW - 2) - G.V. Manjunatha has stated that the scene of offence panchanama as per Ex.P-2 was drawn in his presence. He has also stated that the tiles of the roof of the house were removed and the articles inside the house were scattered here and there.

14. PW-3 (CW-4) - Manjunatha, S/o. Veerabhadrappa has stated that the Police had summoned him stating that they had caught hold of a thief and certain articles were to be recovered from his possession. Accordingly, in his presence, the Police seized MO-1 to MO-3. However, he specifically stated that the Police had not shown him any person as the thief.

15. PW-4 (CW-10) - Niranjana Murthy, the Head Constable has stated that, based on suspicion, on the date 13-06-2010, he apprehended the accused in the Bus Stand at a place called Ullarty. He brought him to the Police Station and on enquiry with that person, they came to know that he

had committed theft in the present case and also involved in a chain snatching case.

16. PW-5 (CW-13) - H.S. Ananda Murthy, the then Police Sub-Inspector of complainant Police Station has stated that, on the date 04-06-2010, he received a complaint in this case and after registering it, submitted the First Information Report. On the same day, he requested the Dog Squad, Chitradurga, to visit the place. Accordingly, the Dog Squad visited the place. Fingerprint experts lifted few Fingerprints from the place. He has also stated that he drew a panchanama in the spot. He has further stated that the F.T.B. gave him the information that the Fingerprint taken from the spot corresponds to the left thumb Fingerprint of the present accused whose Fingerprint was available in the H.S.R. He has further stated that based on suspicion, joined by his team, he apprehended the accused on the date 13-06-2010 and produced him before CW-11, who recorded his (accused's)

voluntary statement and based upon the said statement, CW-11 followed the accused to his (accused's) wife's house at Chikka Ullarty village and seized MO-1 to MO-3 produced by the accused. The witness further stated that since he was further entrusted with the investigation in the matter, he recorded the statements of CW-1 and after completion of investigation, filed charge sheet against the accused in the Court. He has identified the Material Objects seized at MO-1 to MO-3; complaint at Ex.P-1, scene of offence panchanama at Ex.P-2, First Information Report at Ex.P-4 and report of Fingerprint Unit at Ex.P-5.

17. PW-6 (CW-12) - B. Ismail, the then Police Sub-Inspector in Fingerprint Unit, Davanagere, has stated that he examined the 'Chance Fingerprints' collected from the staff of the Fingerprint Unit, Chitradurga. He further stated that at the request of the Superintendent of Police, Chitradurga, he examined the said Fingerprints and noticed that the said

'Chance Fingerprint' was tallying with the left thumb Fingerprint of the present accused - Thippeswamy @ Kunta Tippe S/o. Gadi Boraiah, whose Fingerprints were stored in their computer system with respect to few other crimes of different Police Stations. In that regard, he has submitted his report as per Ex.P-5. He has also identified the copy of the Fingerprint of all the ten fingers of the accused at Exs.P-6 and P-7, stating that those Fingerprints of the accused were stored in their computer system. He was subjected to a detailed cross-examination.

18. From the above evidence, it is clear that the evidence of PW-1 that, on the night of the date 03-06-2010, an incident of theft in his house took place wherein the culprits are said to have stolen a silver plate, two silver cups, one silver small pitcher ('pot' like) has not been specifically denied or disputed. The evidence of PW-5 also goes to show that, in that regard, on the very next morning i.e. on the

date 04-06-2010, PW-1 had lodged a complaint with them as per Ex.P-1.

19. The evidence of PW-2 would further go to show that, while acting as a pancha to the scene of offence panchanama at Ex.P-2, he noticed that, in the place of offence, which was the house of the complainant, few tiles of the roof were taken away and several of the articles inside the house including the sarees were found scattered and the door of the Almirah was found opened. Thus, the evidence of PW-1, PW-2 and PW-5 on this aspect establishes beyond doubt that, on the night of the date 03-06-2010, an incident of lurking house-trespass had taken place wherein three silver articles were found stolen. Since PW-1 has identified the alleged stolen articles, at MO-1 to MO-3 stating that, they were the silver articles stolen from his house, it also stands established that the stolen articles were MO-1 to MO-3 and they were silver articles.

20. The next question would be whether it was the accused and accused alone who had committed the alleged offence of lurking House trespass and theft.

Admittedly, the entire case of the prosecution is based upon the circumstantial evidence. The sole circumstance based upon which the prosecution accuses that it was the accused and accused alone who has committed the alleged offences is, the tallying of all the 'Chance Fingerprints' with that of the accused's and alleged recovery of MO-1 to MO-3 at the instance of the accused.

21. PW-5 - the Investigating Officer has stated that when he visited the spot after registering the crime, he had also summoned the Dog Squad. He further stated that the said Dog Squad and also the personnel from F.T.B. also visited the place and F.T.P. had collected some Fingerprints for investigation (the witness at one place has called as "F.T.B." and in another place has stated as "F.T.P."). He has also

stated that, on the date 05-06-2010, the F.T.B. gave him some information stating that the Fingerprint collected was tallying with the left thumb of the accused, who was in the old H.S.R. of his Station. Admittedly, this witness, nowhere in his evidence has stated as to who had summoned F.T.P. to the spot to search for 'Chance Fingerprints' and to collect them. He has not stated as to who lifted the 'Chance Fingerprints' and from which particular location of the spot and in what manner. Thus, there are no details as to the manner and method adopted in identifying the 'Chance Fingerprints' and method of collecting the 'Chance Fingerprints' and the source from where the alleged 'Chance Fingerprints' were collected. Though PW-6 - Fingerprint Expert has stated about developing the said Fingerprints and tallying the same with that of the left thumb Fingerprint of the accused, but when the very collection of the 'Chance Fingerprints' itself is not safe to believe, it's further development or enlarging and comparison would go to the background.

22. It is in this connection, the learned counsel for the revision petitioner (accused) is relying upon the Division Bench decision of this Court in ***Mallappa Basappa Ihole's case (supra)***, wherein a Division Bench of this Court, in a similar circumstance of alleged comparison of the 'Chance Fingerprints' was pleased to observe that it was not proper to accept the Fingerprint expert's report at Ex.P-14 and the annexures appended thereto for several reasons, including the reason that the evidence of the Fingerprint expert was not specific with regard to its date and time when he lifted the alleged 'Chance Fingerprint'. Secondly, the said 'Chance Fingerprint' was not produced before the Court. Thirdly, the Beer bottle from which the 'Chance Fingerprint' was said to have been lifted was not seized. Lastly, the evidence of the Fingerprint expert was silent as to the manner in which he lifted the 'Chance Fingerprint'.

23. In the case of ***Digamber Vaishnav & Anr.Vs. State of Chhattisgarh (supra)***, with respect to offences under

Sections 302 read with Section 34 and Section 394 read with Section 34 of the IPC, wherein also, the evidence of Fingerprint expert was one of several aspects involved, the Hon'ble Apex Court was pleased to observe that, the expert who examined the articles at the place of occurrence and found some Fingerprints, was not examined. The person who took the sample Fingerprints also was not examined. There was no explanation as to why the articles were just left at the scene after developing the Fingerprints and why they were not seized and sent for analysis on the same day. Further, no prints were found on the doors or the steel almirah to substantiate the robbery. Hence, it opined that the process of lifting the Fingerprints was suspicious.

24. In ***HARI OM ALIAS HERO VS. STATE OF UTTAR PRADESH*** reported in ***(2021) 4 Supreme Court Cases 345***, where the offences involved were of dacoity, killing four persons and attempt of throttling a child and the evidence

collected by the Investigating Officer was said to have included Fingerprints and the opinion of the Fingerprint expert, the Hon'ble Apex Court, under Section 45 of the Indian Evidence Act, 1872, reiterated that the opinion of the Fingerprint expert is not a substantive evidence and as such, the opinion can only be used to corroborate some items of substantive evidence which are otherwise on record. It was further observed by the Hon'ble Apex Court that, the presence of Fingerprints at the scene of crime was not material, when there was no clarity in the process adopted by the investigating machinery for lifting fingerprints from the scene of crime and further analysis made thereafter.

25. In the case of ***B.A. Umesh Vs. Registrar General, High Court of Karnataka (supra)***, which was relied upon by the learned High Court Government Pleader for the respondent, in a case involving the offences punishable under Sections 376, 302 and 392 of the IPC, where the evidence

collected also included the Fingerprints, the Hon'ble Apex Court, after observing that the Fingerprints lifted from crime scene was by a Fingerprint expert by adopting the proper procedure of taking the sample and also perusing the report of the Fingerprint expert, held that, the Fingerprint of the accused found on the handle of the almirah lying in the room which was scientifically established beyond doubt that, the accused was present in the room where the incident had occurred and that along with the evidence of other witnesses established that, it was the accused who committed the crime.

26. In the instant case also, as observed above, neither PW-5 - Investigating Officer nor PW-6 - Fingerprint expert, has, anywhere, stated as to from which spot or from which article the 'Chance Fingerprint' was lifted, and by whom and in what manner. The person who is said to have lifted the Fingerprint was not examined by the prosecution for the reasons best known to it. The alleged 'Chance Fingerprint'

and also the article from which it might have been lifted also have not been produced before the Court. In such a circumstance, it is not safe to rely upon the mere report of the Fingerprint expert that the 'Chance Fingerprint' given to him for examination was corresponding to the fingerprint of the accused and proceeding to convict the accused.

27. In such a circumstance, when there are several gaps in the case of the prosecution as to the description of the place and the article from which the fingerprint was lifted, as to who lifted the Fingerprint, as to the manner adopted in lifting the fingerprints and also in the absence of seizing and producing the article from which the Fingerprint was said to have been lifted, the same would make it unsafe to rely upon the report given upon the examination of such an alleged Fingerprint by the Fingerprint expert.

28. The second major point of contention is the alleged recovery of the Material Objects at MO-1 to MO-3, at the instance of the accused.

Admittedly, in the instant case, it is only PW-3 and PW-7 who have spoken about the alleged recovery of the articles at MO-1 to MO-3. PW-3 was a person working in a Bakery. He has stated that while he was going near Taluk office, the Police summoned him and requested him to be a pancha for a seizure panchanama. In his presence, the Police seized MO-1 to MO-3. Further, this witness categorically stated in his examination-in-chief that the Police had not shown him the accused stating that he was the one who had committed the theft. In his cross examination, he has stated that, he was taken to a place called Kelagalahatti near Chikka ullarti. The Police Sub-Inspector (PW-7) and himself had been there. However, this witness has not stated whether the accused had led them to the said place or whether those three articles were

produced by the accused in the said place. Therefore, the evidence of PW-3 is not safe to believe.

29. The other witness, who speaks about the recovery is PW-7, who is the Investigating Officer. He has stated that after the accused was produced before him on 13-06-2010, he recorded his voluntary statement. The witness stated that since the accused stated before him that he had kept the stolen silver articles in his mother-in-law's house, these people went to the said house and seized those silver articles by drawing the panchanama as per Ex.P-3.

The said evidence of PW-7, even if it is taken at its face value, no where mentions as to what exactly the words accused has stated before him in his alleged voluntary statement.

Secondly, this witness who is a Police Sub-Inspector, has, no where stated in his evidence that, the accused had led

them to his mother-in-law's house, from where the silver articles are alleged to have been seized.

Thirdly, the witness has not stated at which place the alleged house of mother-in-law of the accused was located.

Fourthly, the witness has not stated whether the panchas had accompanied them to the said place.

Lastly, the witness has not stated, at whose instance, the silver articles were given to their possession, under the seizure panchanama. Was it at the instance of the accused, or was it at the direction of this witness or was it voluntarily by the inmates of the said house, is not clear. Therefore, being the Investigating Officer, the witness has not given the basic necessary and essential details of the alleged recovery, as such, the evidence of PW-7 also does not inspire confidence to believe in them.

30. In the said circumstance, when the Fingerprint expert's report regarding tallying of the fingerprints does not

inspire confidence to believe upon and the alleged recovery is also not established by the prosecution, the major links in the chain of events are to be held as disappearing, as such, in a criminal case, where it is purely based upon the circumstantial evidence every link of the chain of events is required to be established by the prosecution. The absence of linkage of major events like alleged recovery and matching of fingerprints leave a major lacuna in the case of the prosecution. In such a case, it is not safe to convict the accused for the alleged offences.

31. However, both the Trial Court and the Sessions Judge's Court did not appreciate the evidence on the Fingerprints and the recovery in their proper perspective, on the other hand, accepting the contention of the relevant witnesses, without properly analysing them, both the Courts have hastily jumped to a conclusion, which resulted in holding the accused guilty of the alleged offences. Since the said

finding is now proved to be a perverse and erroneous one, interference by this Court in the impugned judgments of both the Courts is warranted and the prosecution has to be held that, it failed to prove the alleged guilt against the accused beyond all doubts.

Accordingly, I proceed to pass the following:

ORDER

[i] The Criminal Revision Petition stands ***allowed;***

[ii] The impugned judgment of conviction and order on sentence dated 09-01-2012, passed by the Court of the Judicial Magistrate First Class, at Challakere, in C.C.No.898/2010, holding the present petitioner (accused) guilty for the offences punishable under Sections 457 and 380 of the Indian Penal Code, 1860, which was further confirmed by the judgment and order dated

10-07-2012, passed by the Principal District and Sessions Judge at Chitradurga, in Criminal Appeal No.31/2012, are hereby set aside;

[iii] The revision petitioner (accused) - Thippeswamy @ Kunta Thippaga, S/o. Gadi Boraiah, Aged about 47 years, Chikkaullarthy, residing at Rahimnagar, Challakere Taluk, Chitradurga District. Pincode: 54401, stands acquitted of the offences punishable under Sections 457 and 380 of the Indian Penal Code, 1860;

[iv] However, the order of the Trial Court making absolute the order regarding interim custody of MO-1 to MO-3 stands, without any interference.

Registry to transmit a copy of this order to both the Trial Court and also the Sessions Judge's Court along with their respective records immediately.

**Sd/-
JUDGE**

BMV*