

Babu vs State of Kerala

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Court : Kerala

Decided On : May-30-2024

Judge : Honourable Mr. Justice P.B.Suresh Kumar, Honourable Mrs. Justice M.B. Snehalatha

Appeal No. : CRL.A/127/2017

Appellant : BABU

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR & THE HONOURABLE MRS. JUSTICE M.B. SNEHALATHA THURSDAY, THE 30TH DAY OF MAY 2024 / 9TH JYAISHTA, 1946 CRL.A NO. 117 OF 2017 AGAINST THE JUDGMENT DATED 07.01.2017 IN SC NO.1017 OF 2013 OF ADDITIONAL SESSSIONS COURT, IRINJALAKUDA ARISING OUT OF THE ORDER/JUDGMENT DATED IN CP NO.56 OF 2013 OF JUDICIAL MAGISTRATE OF FIRST CLASS ,IRINJALAKUDA APPELLANT/ACCUSED NO.3:

PRADEEP @ KANNAN AGED 37 YEARS, S/O.BALAN, KONAKKATTIL HOUSE, VILANGANTHODU DESOM, PORATHISSERY VILLAGE, THRISSUR DISTRICT. BY ADVS. R.ANIL R B.RAMAN PILLAI (SR.)(R-260) M.SUNILKUMAR(K/926/1989) SUJESH MENON V.B.(S-1613) T.ANIL KUMAR(K/101/2006) THOMAS ABRAHAM (NILACKAPPILLIL)(K/857/2011) THOMAS SABU VADAKEKUT(KL/001082/2017) MAHESH BHANU S.(K/1620/2018) RESSIL LONAN(K/1251/2020) RESPONDENT: STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM-682031. BY SRI.E.C.BINEESH -PUBLIC PROSECUTOR THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 21.5.2024 , ALONG WITH CRL.A.127/2017, THE COURT ON 30.5.2024 DELIVERED THE FOLLOWING: CrI.A.Nos.117 & 127 of 2017 2

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR & THE HONOURABLE MRS. JUSTICE M.B. SNEHALATHA THURSDAY, THE 30TH DAY OF MAY 2024 / 9TH JYAISHTA, 1946 CRL.A NO. 127 OF 2017 AGAINST THE JUDGMENT DATED 07.01.2017 IN SC NO.1017 OF 2013 OF ADDITIONAL SESSIONS COURT, IRINJALAKUDA ARISING OUT OF THE ORDER/JUDGMENT DATED IN CP NO.56 OF 2013 OF JUDICIAL MAGISTRATE OF FIRST CLASS ,IRINJALAKUDA APPELLANTS/ACCUSED NOS.1 AND 2: 1 BABU

AGED 44 YEARS, S/O.SANKARAN, KOTTAPPURATH HOUSE, KORINCHERRY NAGAR, PORATHISSERY DESOM, VILLAGE, THRISSUR DISTRICT. 2 ANEESH AGED 22 YEARS, S/O.CHATHU, KOTTAPPURATH HOUSE, KORINCHERRY NAGAR, PORATHISSERY DESOM, VILLAGE, THRISSUR DISTRICT. BY ADVS. SRI.PADMALAYAN.P.P. SRI.P.RAHIM SRI.P.A.JOSEPH (J-1448) RESPONDENT/COMPLAINANT: STATE OF KERALA THROUGH INSPECTOR OF POLICE, IRINJALAKUDA, REPRESENTED BY

PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM
(CRIME NO.1979/2011 OF IRINJALAKUDA POLICE STATION,
THRISSUR DISTRICT.) BY SRI.E.C.BINEESH -PUBLIC PROSECUTOR
THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
21.5.2024, ALONG WITH CRL.A.117/2017 THE COURT ON 30.5.2024
DELIVERED THE FOLLOWING: CrI.A.Nos.117 & 127 of 2017 3 CR
P.B.SURESH KUMAR & M.B.SNEHALATHA, JJ.
----- CrI.Appeal Nos.117 & 127 of 2017
----- Dated this the 30th May, 2024

JUDGMENT

M.B.Snehalatha, J In these two appeals filed under Section 374(2) of the

Code of Criminal Procedure [for brevity, 'Cr.P.C'] the appellants, who are accused Nos.1 to 3 in SC No.1017/2013 on the file of Additional Sessions Court, Irinjalakkuda, assail the impugned judgment whereby they were convicted and sentenced to suffer imprisonment for life and fine for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code [for brevity, IPC].

2. CrI.A No.127/2017 is the appeal preferred by A1 and A2. CrI.A.No.117/2017 is the appeal by A3. As both these appeals arise from the very same judgment, appeals are disposed of by this common judgment. CrI.A.Nos.117 & 127 of 2017 4

3. Prosecution case in brief is as follows:- Victim in

this case is one Jayaraj @ Rajesh @ Aliyan Rajesh. PW18 Geetha is his wife and she is the sister of A1 Babu. There was marital discord between the victim and his wife and the victim was not looking after the affairs of his wife and children and on account of the same, A1 who is the brother of PW18 had enmity towards the victim. Due to the said enmity, on 27.11.2011 at around 8.30 pm., while the victim along with his friends were consuming liquor in a house which was under construction situated at Nirmithi Colony at Porathissery, A1 along with A2 and A3 who are the relatives of A1 with intent to commit murder attacked the victim with

chopper and caused fatal injuries. It is alleged by the prosecution that on 5.5.2012 the victim died due to the injuries sustained in the said incident. The accused thereby committed the offence under Section 302 IPC.

4. Initially, based on Ext.P1 statement of PW1, crime was registered for the offence under Section 307 read with Section 34 IPC. Subsequently, when the injured died on CrI.A.Nos.117 & 127 of 2017 5

5.5.2012, Section 302 IPC was also incorporated. After investigation, the Investigating Officer filed final report before the Judicial First Class Magistrate Court, Irinjalakkuda. The learned Magistrate received the same as C.P.No.56/2013 and after complying the legal formalities under Section 207 the Cr.P.C, the case was committed to the Court of Sessions, Thrissur and the Sessions Court, Thrissur made over the case to Additional Sessions Court, Irinjalakkuda for trial and disposal. The learned Additional Sessions Judge framed charge against the accused for the offence under Section 302

IPC r/w Section 34 of IPC. Charge was read over and explained to the accused. All the accused abjured guilt, alleged false implication and claimed to be tried.

5. To substantiate the charge levelled against the

accused, prosecution examined PWs 1 to 23; marked Exts.P1 to P30. Material objects were marked as MO 1 to 18. After closing the prosecution evidence, accused were examined under Section 313 (1)(b) Cr.P.C. All the accused maintained that they are innocent and were falsely implicated. As the CrI.A.Nos.117 & 127 of 2017 6 trial court found that it was not a fit case for acquittal under Section 232 Cr.P.C, the accused were called upon to enter on their defence and to adduce any evidence, which they might have in support thereof. But no defence evidence was adduced by the accused.

6. Based on the evidence adduced in the case, the

learned Sessions Judge found accused 1 to 3 guilty for the offence punishable under Section 302 read with Section 34 IPC and by the impugned judgment dated 07.01.2017 A1 to A3 were convicted and sentenced to undergo imprisonment for

life and to pay a fine of Rs.75,000/- each for the offence under Section 302 IPC with default custodial sentence to undergo rigorous imprisonment for 6 months each. Out of the fine imposed, an amount of Rs.1,50,000/- was ordered to be paid as compensation to PW15, viz. the mother of the deceased under Section 357(1) Cr.P.C.

7. The learned Senior Counsel for the appellants assailed the impugned judgment of conviction on the ground that the prosecution has not succeeded in establishing that Crl.A.Nos.117 & 127 of 2017 7

the death of the victim was a case of homicide and failed to establish that accused committed murder of victim and according to the learned Senior Counsel, in the absence of proof regarding the same, the finding of guilt rendered by

the Trial Court is erroneous and unsustainable both on facts

and law. It is further contended that since the prosecution failed to prove that the death of the victim was homicidal and death was due to the injuries allegedly sustained on 27.11.2011, the so called oral dying declaration alleged to have made by the victim to PW12 and PW13 and Ext.P25

statement of the victim allegedly recorded by the Investigating Officer under Section 161 Cr.P.C, are not admissible evidence under Section 32(1) of the Indian Evidence Act and therefore according to the learned counsel for the appellants, absolutely there is no evidence to connect the accused with the crime alleged and the trial Court went wrong in treating the said statements as dying declaration under Section 32(1) of the Evidence Act.

8. Per contra, the learned Public Prosecutor submitted Crl.A.Nos.117 & 127 of 2017 8

that there is sufficient evidence on record to show that on 27.11.2011 at around at 8.30 pm., the victim sustained injuries and there is sufficient evidence to show that the said injuries were caused by the accused. It is further contended by the learned Public Prosecutor that the evidence adduced by the prosecution would sufficiently establish that the death of the victim on 5.5.2012 was caused by the

complications naturally flowing from the injuries sustained by him on 27.11.2011 in the assault and the casual connection is proximate. So, according to the learned Public Prosecutor a clear case of homicide was made out by the prosecution. It is further contended by the Public Prosecutor that on the way to the hospital, the injured had mentioned to PW12 and PW13 as to how he sustained injuries and had also stated the name of the assailants and therefore the said statement of the victim amounts to dying declaration, which is admissible

under Section 32(1) of the Evidence Act. It is further contended that Ext.P25 statement namely, the statement of the victim recorded by the Investigating Officer under CrI.A.Nos.117 & 127 of 2017 9 Section 161 Cr.P.C is also admissible under Section 32(1) of the Evidence Act as held by the trial court and thus the prosecution could establish the case against the accused beyond any reasonable doubt and therefore there are no reasons at all to interfere with the impugned judgment.

9. Now let us consider whether the prosecution has succeeded in establishing that the accused committed murder of the victim Jayaraj @ Rajesh.

10. As stated above, to substantiate the prosecution

allegation, prosecution examined PWs 1 to 23. PW1 is a relative of the victim, who laid Ext.P1 FI statement. He turned hostile to the prosecution and testified that upon getting information that the victim sustained injuries in an accident, he had gone to Medical College Hospital, Thrissur. PWs 2 to 6 cited as occurrence witnesses also turned hostile to the prosecution and did not support the prosecution case and they testified that they have not witnessed the incident. PW11 was the Sub Inspector of Police, Irinjalakkuda Police Station. He, in his evidence testified that on 27.11.2011 at

CrI.A.Nos.117 & 127 of 2017 10 8.45 p.m upon getting information regarding the incident, which occurred at Porathissery Nirmithi Colony, he along with his Police party had reached there. Upon reaching there, they could see the victim lying injured in front of the house of the

Ashraf, which was under construction. PW11 has further testified that he saw the injured in the candle light; that empty liquor bottles and glass were seen at the scene. PW12 and PW13 were the Police Officers of the Irinjalakkuda Police Station and they testified that on 27.11.2011 at 8.45 p.m, they had accompanied PW11, the Sub Inspector of Police to the spot; that the police took the injured to the hospital in a jeep; on the way to hospital, injured had stated the name of the assailants who attacked him. PW12 recorded Ext.P1 FI statement given by PW1, pursuant to which Ext.P4 FIR was registered by PW11. PW15 is the mother of the victim. According to her, the incident occurred in the night of 27.11.2011; that on the next day of the incident she had reached the hospital and met her son in the ICU. She further testified that three days thereafter when her son regained

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police. It is a material omission which amounts to contradiction. PW17 testified that it was he who took the injured to the hospital. He was also declared as hostile to the prosecution. PW18, who is the wife of the deceased, also turned hostile to the prosecution and stated that she did not know anything about the incident. She has further testified that herself and her husband were in cordial terms. PW22

was the Deputy Surgeon of Medical College Hospital, Thrissur, who examined the victim on 27.11.2011 and issued Ext.P28 Wound Certificate. PW23 is the Doctor of the Medical College Hospital, Thrissur, who conducted postmortem on the body of the deceased on 06.05.2012 and issued Ext.P30 postmortem certificate. PWs 8, 10, 14 & 16 are witnesses to various mahazars prepared by the Investigating Officer. PW21 is the Investigating Officer, who conducted the investigation, arrested the accused and laid charge-sheet

Crl.A.Nos.117 & 127 of 2017 12 against the accused.

11. Ext.P28 wound certificate coupled with the version

of PW22 Doctor would reveal that the victim sustained the following injuries: 1. Lacerated wound 12x3x1.5 cm extending from the left malar prominence to left temporal region.

2. Lacerated wound 2x1x0.5 cm on the right side of chin.

3. Lacerated wound 8x2x1.5 cm on forehead 2 cms above right eye brow.

4. Lacerated wound 10x2x1.5 cm above left eye brow.

5. Lacerated wound 8x2x1.5 cm parallel to wound 4, extending to vertex.

6. Lacerated wound 15x2x1.5 cm above right ear, extending to posterior aspect of upper neck.

7. Lacerated wound 12x1x1.5 cm behind left ear, horizontal.

8. Lacerated wound 4x1x1.5 cm to the left side of vertex.

9. Lacerated wound 1x1x1 cm on left side of chin.

10. Lacerated wound 1x0.5x0.5 cm frontal aspect of scalp.

11. Lacerated wound 2x1x2 cm right side of back of chest 7 cm to the right of midline.

12. 3x1x2 cm Lacerated wound 7 cm to left of midline at level of spine of scapula.

13. Lacerated wound 3x1x1cm right supra scapular region. CrI.A.Nos.117 & 127 of 2017 13

14. Multiple abrasions flank and back of chest.

15. 6x1x1cm Lacerated wound nape of neck.

16. Lacerated wound 2x1x0.5 cm 10 cm above left iliac crest.

17. 3x1x1cm Lacerated wound 10 cm to left of midline in back of abdomen left.

18. Multiple linear abrasion back of left shoulder.

19. Irregular shaped 8x5x2 cm Lacerated wound on the left fore arm exposed tendons and tissue loss.

12. The evidence adduced by the prosecution would

reveal that on 27.11.2011, at around 8.30 pm, the victim Jayaraj @ Rajesh sustained injuries and upon getting information regarding the same, the police party led by PW11 viz. the Sub Inspector of Police, Irinjalakkuda reached the spot and took the injured to Medical College Hospital, Thrissur.

13. Thus, it stands established that on 27.11.2011 the victim Jayaraj @ Rajesh sustained injuries as mentioned in Ext.P28 Wound Certificate.

14. The next aspect for consideration is whether the prosecution established the culpability of the accused in the matter of causing such injuries to the victim. As stated CrI.A.Nos.117 & 127 of 2017 14

earlier, all the witnesses cited by the prosecution as eye witnesses turned hostile to the prosecution and did not support the prosecution case. PWs 1 to 6 have categorically testified that they have not witnessed the incident and they do not know anything about the incident. The remaining evidence is the version of PW12 & PW13 viz. the Police officials who took the injured to the hospital on the spot where he was found lying injured. According to PW12, who was the Grade ASI of the Irinjalakkuda Police Station, the injured was taken to the hospital in a jeep; that on the way to the hospital the injured stated to him that it was Babu, Aneesh and Kannan, who attacked him. PW13 who is another Police official of Irinjalakkuda Police Station testified that he had also accompanied the injured to the hospital along with PW12; that on the way to the hospital, injured

told PW12 that it was Babu, Aneesh and Pradeep who attacked him.

15. It is to be borne in mind that the alleged incident was on 27.11.2011 and the death of the victim was on CrI.A.Nos.117 & 127 of 2017 15

05.05.2012, ie. more than five months after the incident on 27.11.2011. The learned Public Prosecutor contended that Ext.P29 case sheet made available from the Medical College Hospital, Thrissur would reveal that the victim died due to the injuries sustained in the incident.

16. The learned Senior Counsel for the accused

submitted that the contents in the said case sheet were not proved; that no evidence was adduced to show that death was due to the injuries sustained in the accident on 27.11.2011.

17. It is to be borne in mind that the contents in

Ext.P29 case sheet were not proved in accordance with law by examining the doctor/doctors. There is no acceptable evidence to show that the death of the victim on 05.05.2012 was as a result of the injuries sustained on 27.11.2011. PW23 Doctor who conducted the postmortem examination on the body of the victim and who issued Ext.P30 postmortem certificate has not spoken to regarding the ante-mortem injuries, postmortem findings and cause of death.

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18. In *Munshi Prasad and Others v. State of Bihar* [2002 KHC 1095 : 2002 (1) SCC 351 : AIR 2001 SC 3031 :

2002 SCC (Crl) 175 : 2001 Cri LJ 4708] the Apex Court held

that the postmortem report is a document which by itself is not a substantive evidence, but, it is the Doctor's statement in Court which has the credibility of a substantive evidence and not the report. The report in normal circumstances ought to be used only for refreshing the memory of the Doctor who comes as a witness or to contradict whatever he might say from the witness box.

19. The learned Sessions Judge convicted the accused

for the offence under Section 302 of IPC by relying on the statement allegedly given by the victim to PW12 police officer while he was taken to the hospital in a

jeep as well as by placing reliance on Ext.P25 statement of the victim recorded by PW12 under Section 161 Cr.P.C. The Trial Court has found that the statement allegedly given by the victim to PW12 mentioning the name of the assailants who attacked him on 27.11.2011 and Ext.P25 statement given by the

Crl.A.Nos.117 & 127 of 2017 17 victim to the Investigating Officer which was recorded by the Investigating Officer under Section 161 of Cr.P.C are admissible under Section 32(1) of the Evidence Act.

20. In this context, it would be apposite here to have look into the provisions of Section 32(1) of the Evidence Act.

"32. Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant. Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the Court unreasonable, are themselves relevant facts in the following cases:--

(1) when it relates to cause of death. --

When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

21. Section 32(1) of Evidence Act renders a statement relevant which was made by a person who is dead, in cases, Crl.A.Nos.117 & 127 of 2017 18

in which cause of his death comes into question, but its admissibility depends upon one of the two conditions, i.e. either such statement should relate to cause of

his death or it should relate to any of the circumstances of transaction which resulted in the death.

22. Unless the statement of a dead person would fall

within the purview of Section 32(1) of Evidence Act, there is no other provision under which the same can be admitted in evidence. In order to make a statement of a dead person admissible in law, (written or verbal), the statement must be as to the cause of death or with regard to any of the circumstances of the transaction which resulted in the death, in cases, in which cause of death comes into question.

23. In *Inderpal v. State of M.P.* reported in [(2001)

10 SCC 736] the Honble Supreme Court held that unless the statement of a dead person would fall within the purview of Section 32(1) of the Evidence Act, there is no other provision

under which the same can be admitted in evidence. In order

to make the statement of a dead person admissible in law, CrI.A.Nos.117 & 127 of 2017 19 the statement must be as to the cause of his/her death or as to any of the circumstances of a transaction, which resulted in his/her death, in cases in which the cause of death comes into question.

24. In *Sukhar v. State of U.P.* reported in

MANU/SC/0626/1999: [(1999) 9 SCC 507], it was held by Apex Court that when the prosecution did not make any attempt to establish how the deceased died or whether his death was in any way connected with the injuries sustained to him on the relevant date of occurrence, the statement given by the injured to the Investigating Officer is not admissible as dying declaration under Section 32 of the Evidence Act.

25. In para 2 of the decision cited supra the Apex Court observed as follows:

"2. The prosecution case in nutshell is that Nakkal appeared at the police station on the date of occurrence at 9.40 a.m. and narrated the incident as to how he was injured by the accused. The police then treated the said statement as First Information Report and started investigation. The informant was then taken to the hospital for medical examination.

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As per the FIR, the accused Sukhar is the nephew of Nakkal and had cultivated the land of Nakkal forcibly. When Nakkal demanded batai, Sukhar abused Nakkal and refused to give any batai. Thus, there was enmity between Nakkal and Sukhar. On the fateful day during the morning hours, while Nakkal was going on the road, Sukhar caught hold of his back and fired a pistol shot towards him. Nakkal raised an alarm on account of which Ram Kala and Pitam reached the scene of occurrence and at that point of time, Nakkal fell down and the accused made his escape. The two witnesses, Pitam and Ram Kala, brought Nakkal to the police station whereupon the police recorded the statement of Nakkal and started investigation. The said Nakkal was examined by PW 5, the Doctor who was on duty at the Primary Health Centre and gave the injury report, Exh. Ka-6. On completion of investigation, the police submitted the charge-sheet and ultimately the accused stood his trial. During trial, the prosecution witnesses, PW 1 and 2 merely stated as to what they heard from the injured at the relevant point of time and according to PW 2, the injured had told him that the assailant, Sukhar had fired upon him. It is to be stated that while the trial was pending the injured Nakkal died but the prosecution did not make any attempt to establish how he died or his death is in any way connected with the injury sustained by him on the relevant date of occurrence. Even it is not known as to when he died. The learned Sessions Judge was of the opinion that the FIR recorded by the Investigating Officer and the statement of Nakkal recorded under Section 161 of the Code of Criminal Procedure was admissible under Section 32 of the Evidence Act and relying upon the said material as well

as the statement of PW 1 to the effect that the injured told him that the accused, Sukhar has fired at him, the learned Sessions Judge convicted the

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accused/appellant under Section 307 IPC and sentenced him to undergo rigorous imprisonment for five years. On an appeal, the High Court came to the conclusion that the FIR as well as the statement given by the injured to the Investigating Officer is not admissible as dying declaration under Section 32 of the Evidence Act and in our view, the said conclusion is unassailable. The High Court further came to the conclusion that the statement of the injured under Section 161 of the Code of Criminal Procedure could not be held admissible in evidence under Section 33 of the Evidence Act and we do not see any infirmity with the said

conclusion.."

26. In Moti Singh and Another vs. State of

Uttarpradesh reported in AIR 1964 SCC 900 , the Honble Apex Court held that when the prosecution failed to prove that the victim died as a result of the injuries received in an incident, his statement cannot be said to be a statement as the cause of his death or as to any of the circumstances of the transaction which resulted in his death.

27. The learned Sessions Judge relied upon Ext.P25

statement of the injured recorded by the Investigating Officer under Section 161 of Cr.P.C as dying declaration admissible under Section 32(1) of the Evidence Act. For rendering the finding of guilt, the Trial Court also relied on Crl.A.Nos.117 & 127 of 2017 22 the version of PW12 and 13, viz. the police officials who testified before the Court that on 27.11.2011 when they took the injured to the hospital, he had stated the names of the assailants who attacked him.

28. The provisions of Section 32(1) are in the nature

of an exception and onus of establishing the circumstances that would bring a statement within any of the exceptions contemplated by Section 32 of the Evidence Act lies clearly upon that party who wishes to avail the said statement.

29. It is an admitted case that the victim sustained the

injuries on 27.11.2011 noted in Ext.P28 wound certificate, subsequently the victim died on 05.05.2012 ie. nearly six months after the incident. On an analysis of the evidence adduced in this case we can see that the prosecution has miserably failed to bring on record by acceptable evidence the cause of the death of the deceased on 05.05.2012 or as to any of the circumstances of the transaction which resulted in his death.

30. Therefore, we are of the opinion that the Court Crl.A.Nos.117 & 127 of 2017 23

below went wrong in treating Ext.P25 as dying declaration in as much as there is nothing to show that the victim who died on 05.05.2012 died due to the injuries sustained by him on 27.11.2011. Prosecution has failed to bring on record the cause of death of the deceased or as to any of the circumstances of the transaction which resulted in his death. Therefore, Ext.P25 statement of the victim recorded by the Investigating Officer is not admissible under Section 32(1) of the Evidence Act. Ext.P25 statement of the victim recorded under Section 161 Cr.P.C is inadmissible in evidence. Therefore, the learned Sessions Judge went wrong in treating the same as dying declaration as provided under Section 32(1) of the Evidence Act. As discussed above, the witnesses of fact examined by the prosecution turned hostile to the prosecution and there is absolutely no evidence to connect the accused with the crime alleged and the prosecution failed to establish that on 27.11.2011 accused attacked the victim and caused injuries. The prosecution also failed to establish that the victim died on account of the

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injuries sustained by him on 27.11.2011. Hence, the accused are found not guilty for the offence punishable under Section 302 read with Section 34 of IPC and they

are acquitted under Section 235(1) Cr.P.C. CrI.A.Nos.117/2017 and 127/2017 stand allowed; the impugned judgment of conviction and sentence passed against the accused set

aside and the accused are set at liberty. They shall be released forthwith unless their detention is wanted otherwise. Registry is directed to communicate a copy of this

judgment forthwith to the Superintendent of Jail, wherein

the appellants/accused are undergoing incarceration. Sd/- P.B.SURESH KUMAR, JUDGE Sd/- M.B.SNEHALATHA, JUDGE sp/ab

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