



IN THE HIGH COURT OF KARNATAKA,

DHARWAD BENCH

DATED THIS THE 10TH DAY OF DECEMBER, 2024

PRESENT

THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MR. JUSTICE T. G. SHIVASHANKARE GOWDA

CRIMINAL APPEAL NO. 100005 OF 2021

(374(Cr.PC)/415(BNSS))

BETWEEN:

1. SMT. RENAWWA W/O. CHANDRAPPA GADDAD
AGED ABOUT 46 YEARS, OCC: HOUSEHOLD WORK,
R/O. BHANTANUR, TQ. MUDHOL,
DIST. BAGALKOT – 587101.
2. SMT. KASHAWWA W/O. UMESH ARAKERI,
AGED 28 YEARS, OCC: HOUSEHOLD WORK,
R/O: BHANTANUR, TQ. MUDHOL,
DIST. BAGALKOT-587101.

- APPELLANTS

(BY SRI. P.V. GUNJAL, ADVOCATE FOR
SRI RAMACHANDRA A. MALI, ADVOCATE)

AND:

THE STATE OF KARNATAKA
REPRESENTED BY MUDHOL POLICE,
DIST. BAGALKOT,
NOW REPRESENTED BY ITS
STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
DHARWAD BENCH, DHARWAD 580011.

- RESPONDENT

(BY SRI M.B. GUNDAWADE, ADDL. SPP.)



THIS CRIMINAL APPEAL FILED UNDER SECTION 374(2) CODE OF CRIMINAL PROCEDURE, PRAYING TO, SEEKING TO CALL FOR THE RECORDS AND SET ASIDE THE JUDGMENT AND ORDER OF CONVICTION AND SENTENCE DATED 23.12.2020 MADE IN S.C. NO.82/2019 ACCUSED NO. 1 AND 2 FOR THE OFFENCE PUNISHABLE U/S.120B AND 302 R/W 34 OF IPC PASSED BY THE I ADDITIONAL DISTRICT AND SESSIONS JUDGE, BAGALKOT TO SIT AT JAMAKHANDI AND ACQUIT THE APPELLANTS OF THE ALLEGED OFFENCES.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 06.11.2024 COMING ON FOR 'PRONOUNCEMENT OF JUDGMENT', THIS DAY, T.G.SHIVASHANKARE GOWDA J., PRONOUNCED THE FOLLOWING:

CORAM: THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR
AND
THE HON'BLE MR. JUSTICE T. G. SHIVASHANKARE GOWDA

CAV JUDGMENT

(PER: THE HON'BLE MR. JUSTICE T. G. SHIVASHANKARE GOWDA)

In this appeal, accused Nos.1 and 2 have challenged the judgment dated 23.12.2020 passed in S.C.No.82/2019 by I Addl. District and Sessions Judge, Bagalkot sitting at Jamakhandi, as they have been convicted for the offences punishable under Section 120B and 302 read with Section 34 of IPC and sentenced to undergo life imprisonment and



fine of Rs.10,000/- each and in default, to undergo simple imprisonment for six months.

2. One Chandrappa (in short, 'deceased') is the resident of Bhantanur. Accused No.1 is his wife, accused No.2 is the daughter, accused No.3 is the sister of accused No.1 and accused No.4 is the worker under the deceased. There was a dispute between the deceased and his wife in the matrimonial life. The deceased was having illicit relationship with several ladies and he was forcing accused No.1 to give consent for his second marriage. The deceased was threatening the accused No.1 that if she did not give consent and sign the letter permitting him to take second marriage, he would kill her. By this act of the deceased, accused Nos.1 and 2 being the mother and daughter thought of threat to their life in the hands of the deceased, they joined hands with accused No.3 and 4, hatched criminal conspiracy to commit the murder of the deceased. On 08.01.2019, the deceased came to the farmhouse situated in R.S.No.82 of Bhantanur village and



sleeping there. At 1.00 a.m. on 09.01.2019 the accused No.2 held his both legs, accused No.3 squeezed his private part and accused Nos.1 and 3 by means of towel strangled him and committed his murder. After committing the murder of the deceased, in the morning accused persons alarmed the relatives that the deceased died on account of heart attack. On arrival PW-1, the sister of the deceased noticed the unnatural conduct of the accused No.1 and 2 and also the injuries on the body of the deceased, reported the matter to the police under Ex.P-1 complaint and set the law into motion. PW-16 Sri Lingappa Punnappa Lamani, ASI on receipt of Ex.P-1 registered FIR in Ex.P-32. PW-17 Kariyappa, the CPI investigated the matter.

3. The investigation led to filing of the charge sheet against the accused persons. During trial, prosecution examined 17 witnesses as PW-1 to PW-17 and got marked 67 documents as per Exs.P-1 to P-67. M.Os.1 to 14 were the material objects marked by the



prosecution. On behalf of the accused No.1, one witness has been examined as DW-1 and no documents came to be marked.

4. On appreciation of the evidence, the Trial Court recorded acquittal of accused Nos.3 and 4 and convicted the accused Nos.1 and 2 and sentenced them as referred supra. Aggrieved by the order of conviction and sentence, the accused Nos.1 and 2 are before this Court on various grounds.

5. We have heard the arguments of Sri Ramachandra A. Mali, learned counsel for appellants/accused and Sri M.B. Gundawade, learned Addl. SPP for respondent-State.

6. It is the contention of the learned counsel for accused Nos.1 and 2 that the complainant is not an eyewitness to the incident. The entire case is based on circumstantial evidence. The material witness examined on behalf of the prosecution in the form of PW-6, the sister



of the deceased is only a hearsay witness. PW-7/Lachchappa, the adjoining landowner, turned hostile. PW-13 Maruti, who first saw the dead body of the deceased, PW-8 Muttappa is the cousin of the deceased, PW-9 Shravanakumar is the scribe of the complaint, PW-10 Suresh is the relative of the deceased, PW-14 Kariyappa is the husband of the accused No.3, all have turned hostile. The entire case rests on the evidence of PW-5, the grandson of the deceased who is a chance witness and it is the police who informed him that his grandfather was killed by the accused. The death of the deceased is not in dispute but there is no chain of circumstances demonstrated by the prosecution which point out the accused, rather cross-examination of PW-1 and other prosecution witnesses has brought out that deceased was having illicit relationship with several ladies, he has been warned by the family members of those ladies that the deceased had destroyed their matrimonial life. There is a dispute regarding priesthood among the deceased and his cousins, road dispute with fellow villagers, there were



earlier several act of assault against the deceased, the deceased was having enemies around him because of his bad character and activities and the same has been not appreciated by the Trial Court. The totality of the evidence clearly points out two hypotheses that the deceased had bad character indulging in illicit relationship with several ladies and he himself invited enemies on account of other dispute. These are the circumstances which made him unnatural death. Trial Court failed to appreciate the evidence from this angle and committed error in not giving benefit of doubt in favour of the accused Nos.1 and 2.

7. *Per contra*, learned Addl. SPP has contended that the postmortem report at Ex.P-33 and opinion report of the doctor as per Ex.P-34 which is not disputed by the defence clearly points out that the cause of death of the deceased was due to asphyxia secondary to strangulating the neck with towel. Ex.P-35 is the opinion regarding ligature material which caused death as noticed in the neck of the deceased. Ex.P-38 is final opinion regarding



cause of death. The defence contention that the deceased died on account of heart attack is incorrect and the prosecution has proved the homicidal death of the deceased.

7.1 The evidence of PW-5 clearly points out the presence of accused together soon before the death in the farmhouse. PW-5 is child witness, his qualitative evidence clearly demonstrates that the accused persons went inside the farmhouse soon before the death where accused did not explain circumstances in which the deceased sustained homicidal death. PWs-1, 6, 8, 9, 10 and PW-14 are the relative witnesses who came to know about the alleged incident though they have turned hostile which will not go to the root of the case. In the absence of any explanation and the deceased sustaining homicidal death points out towards the accused and the Trial Court has rightly recorded the reasons for convicting the accused and sentencing them adequately and he argued in support of the impugned judgment.



8. We have given anxious consideration to the arguments addressed on behalf of both sides and we have perused the entire evidence.

9. The Trial Court has extended the benefit of doubt in favour of accused Nos.3 and 4 and only convicted the accused Nos.1 and 2. The reason assigned by the Trial Court in acquitting the accused Nos.3 and 4 is that the ingredients of offences have not been proved against them.

10. PW-9 Shravankumar scribed Ex.P-1, complaint leading to registration of FIR against the accused. PW-1 Rangavva is the sister of the deceased who filed the said complaint. On perusal of the contents of Ex.P-1 we can notice that the deceased was the husband of accused No.1, and had 3 daughters and one son. He was residing in the farmhouse and his wife and children were residing in the village in a separate house. There was a difference of opinion between the deceased and the accused No.1, there were frequent quarrels between the couple for the



last 15 years but still they were leading marital life. It also points out that the deceased had a road dispute with one Muttappa Siddappa Gaddad who is his relative. Such being the case, on 09.01.2019 she was informed by one Suresh/PW-10 about the death of the deceased due to heart attack. Hence, she went to Bhantanur farmhouse, noticed the ligature mark on the neck of the deceased, the injuries on the forehead, abrasion on the knees and froth coming from the mouth. She enquired with the accused No.2 and ascertained that on previous night the deceased after having dinner went outside the house and started talking over the phone. She and her mother slept and in the morning at 7.00 O' clock they came to know that her father was found dead. Hence, they alerted the relatives. She called all the relatives to the spot and after noticing injuries on the dead body, she along with PW-9 went to the police station, with the assistance of PW-10 she got scribed Ex.P-1 and presented to the police prompted investigation.



11. We have also scrutinized the evidence of PWs- 6, 7, 8, 9, 10, 13 and 14. None of these witnesses has supported the prosecution except stating that they came to the house of the deceased after hearing that the deceased had died on account of heart attack.

12. The testimony of PW-6 does not point out anything against any of the accused persons except stating that she came to know from Lokapur Police that the accused had committed the murder of deceased by squeezing his private part and also strangulating his neck. The cross-examination of PW-6 demonstrated that there was a road dispute between the deceased and Muttappa. Deceased had given Rs.5,00,000/- to his daughter CW-13 for purchase of land and as she did not purchase the land, there was a quarrel in the family. PW-6 except expressing opinion that the death of the deceased was unnatural, nothing has been demonstrated which would point out towards accused as proposed by the prosecution.



13. PW-7 Lachchappa is adjoining landowner. He has stated that he went to the house of the deceased to see the dead body in the morning. In his cross-examination he denied of having seen accused No.3 going to the house of the deceased and accused No.4 was watering the land on the previous day. He did not know anything about the cause of death of the deceased.

14. PW-8 is the cousin brother of the deceased. He resides in the village and he too came to know from the police about the alleged incident and he was not aware of anything.

15. PW-9 Shravankumar, PW-10 Suresh, PW-13 Maruti, and PW-14 Kariyappa have not assisted the prosecution in any manner which would point out the accused. Their evidence is of no assistance to the prosecution. PW-9 scribed the complaint at the instance of PW-1. Though he is the relative of the deceased, his evidence did not demonstrate anything in support of the prosecution.



16. PW-3 Mounesh and PW-4 Prakash, who are panch witness and who have spoken to in regard to drawing spot mahazar in the house of the accused and inquest mahazar and seizure of ligature material M.O.8.

17. The entire case of the prosecution is based on the evidence of PW-5. We have carefully scrutinized his testimony. PW-5 is a child witness, aged 8 years, studying in second standard. Whose evidence points out that he was residing with his grandfather at farmhouse along with accused Nos.1 and 2. He knows accused No.3 as well as accused No.4. A day before the incident at 4.00 p.m., he returned home from the school and saw that the deceased in the house. Thereafter accused Nos.3 and 4 came to the house and later they went out at 9.00 p.m. After taking his dinner, he slept and in the morning he came to know about the death of his grandfather. His grandfather was alive till he slept. He was called to the police station to inform that accused persons had committed murder of his grandfather. Except this, nothing is demonstrated from his



mouth. The cross-examination of PW-5 clearly points out that the deceased was residing at farmhouse where accused Nos.1 and 2 were residing in the village which is 3 km away from the farmhouse. Though the deceased was also residing in the village house, but he used to stay in the farmhouse as and when there was work in the land.

18. It is important to note that there was a dispute between the deceased and his cousins who were demanding the deceased to give up the right of priesthood as he had no male issues and as his sole son was dead. In this connection, there was a quarrel assault against the deceased in the hands of cousins and for this reason the deceased was leading his life under threat. The deceased was also having illicit relationship with one Lakkavva Salahalli of Lachchigundi village. The sons of Lakkavva had quarreled against the deceased questioning his illicit relationship with their mother. The deceased was also having illicit relationship with one Balavva Gasti of Lokapur. The husband and children of the said Balavva



assaulted the deceased questioning his illicit relationship with Balavva Gasti. This clearly goes to show that the deceased had enmity with his cousins Muthappa, children of Lakkavva of Lachchigundi and husband and children of Balavva of Lokapur. He was living under life threat from their cousin who was demanding to give up the right of priesthood as he had no male issues.

19. The defence is able to bring out from the mouth of PW-1 that in the complaint, she did not mention directly the names of the accused but she specifically mentioned that someone had committed the murder of her brother. Accused No.2 after the marriage was residing in her matrimonial home, accused No.3 was residing in her home. The accused No.1 and the deceased though quarreling with each other, they had good relationship.

20. Nothing has been brought out from the mouth of PW-1 but there was a quarrel as the deceased was insisting accused No.1 to give her consent for his second marriage. None of the witnesses examined on behalf of



the prosecution including relatives has stated about quarrel between the couple regarding second marriage of the deceased.

21. Now from the prosecution witnesses, we can make out that the deceased died homicidal death. The deceased was commanding bad reputation and character as he had illicit relationship with several ladies viz., Lakkavva and Balavva etc., he had also having enmity with his cousin brothers regarding priesthood and also he and quarrel with one Muttappa regarding road dispute which clearly shows that the deceased was having enmity in the village. In spite of the deceased having illicit relationship and maintaining so many enemies but had a good relationship with his wife. Then foundation of the prosecution that the motive for the alleged incident was that the deceased was insisting accused No.1 to consent for his second marriage falls to the ground. Nothing is brought out from the prosecution witnesses that the deceased was intending to marry second wife when he



was commanding illicit relationship with several ladies. Under such circumstances, as rightly contended by the learned counsel for accused that there is a doubt in the prosecution evidence that whether the deceased was died on account of assault by his own enemies or in the hands of the accused.

22. We have carefully perused the judgment of the Trial Court. Learned trial Judge has recorded that the deceased had illicit relationships with ladies and there was a family dispute, road dispute with Muttappa and his cousin brothers. The prosecution witnesses through turned hostile recorded that the evidence of PW-1 in the examination-in-chief is not refuted. As referred supra, the admissions of PW-1 in the course of cross-examination that she has specifically admitted that she has not mentioned the names of accused or she suspected them behind the death of the deceased, rather she admits enmity of the deceased with others, which clearly points that that the deceased Chandrappa was having enormous



enemies around him, he was leading his life under threat in the hands of his enemies. The Trial Court has recorded that there is no evidence connecting accused Nos.3 and 4 though specific overt acts attributed against them. Prosecution evidence has to be appreciated in same standard.

23. The investigation did not bring out any incriminating material being seized at the instance of the accused persons. The grandson of the deceased was unaware about what had transpired in the house after he slept. If accused Nos.3 and 4 entered the house of the deceased, and went away will not indicate as incriminating circumstance that there was conspiracy among the accused to eliminate the deceased. Their coming and going is not demonstrated as unnatural. When the deceased and accused No.1 were in good rapport in spite of bad character of the deceased, we do not find any logic in the reasons assigned by the Trial Court in holding that



the accused Nos.1 and 2 are guilty of the charged offences.

24. The prosecution evidence clearly points out several circumstances where there is a chance of the deceased being attacked by his enemies for the reason of road dispute, priesthood dispute and dispute regarding illicit relationship with other ladies. Hence, the defence is able to demonstrate two views, second view gives rise to a doubt the involvement of accused. Benefit of doubt has been extended in favour of the accused Nos.3 and 4. We do not find any qualitative evidence which will connect and point out conclusively that accused Nos.1 and 2 were responsible for the death of the deceased in the early morning of 09.01.2019. We do not find any reason to ratify the judgment of the Trial Court. Accused Nos.1 and 2 are entitled to benefit of doubt as extended to the accused Nos.3 and 4. Appeal merits consideration, impugned judgment and conviction calls for our interference. In the result, the following:



ORDER

Appeal is allowed.

The impugned judgment and conviction passed by the Trial Court is hereby set aside.

The accused Nos.1 and 2 are acquitted of the offence punishable under Sections 120B and 302 read with Section 34 of IPC.

The accused Nos.1 and 2 shall be set at liberty forthwith.

**Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE**

**Sd/-
(T. G. SHIVASHANKARE GOWDA)
JUDGE**