



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF AUGUST, 2024

PRESENT

THE HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MR JUSTICE UMESH M ADIGA

CRIMINAL APPEAL NO. 943 OF 2018

Between:

The State by Panambur Police Station
Represented by
State Public Prosecutor
Bengaluru

...Appellant

(By Smt. Rashmi Jadhav, Addl. SPP)

And:

1. Ajju @ Ajju Pradan @ Kalia
S/o Bhikkari Pradan,
Aged about 26 years,
Coolie by work,
R/at Badapalli, Golagonda Palli,
Near Bhayaramba Market,
Bania Panchayath, Ganjam District,
Orissa State,
Now R/at Narasimha Ithal,
Compound Building Upstair,
Room No.1, Meenakaliya,
Panamboor Village,
Mangaluru Taluk – 575001.
2. Brundavan Pradhan
S/o Raghu Nandhan,
Aged about 41 years,
Coolie by work,
R/at Badapalli, Golagonda Palli,

Digitally signed
by VEERENDRA
KUMAR K M
Location: HIGH
COURT OF
KARNATAKA



Near Bhayaramba Market,
Bania Panchayath, Ganjam District,
Orissa State,
Now R/at Narasimha Ithal,
Compound Upstair,
Room No.1, Meenakaliya,
Panamboor Village,
Mangaluru Taluk – 575001.

...Respondents

(By Sri Dinesh Kumar Rao K, Advocate for R1 and R2)

This Criminal Appeal is filed under Section 378(1) and (3) of Cr.P.C., praying to grant leave to appeal against the judgment and order of acquittal dated 26.04.2017, passed by the Learned VI Additional District and Sessions Judge, D.K., Mangalore in Sessions Case No.69/2015 acquitting the respondents-accused for the offence punishable under sections 457, 376, 511 and 302 read with 34 of IPC.

This Criminal Appeal, coming on for final hearing, this day, judgment was delivered therein as under:

CORAM: HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR
and
HON'BLE MR JUSTICE UMESH M ADIGA

ORAL JUDGMENT

(PER: HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR)

The State has preferred this appeal questioning the correctness of acquittal judgment in S.C.No.69/2015 on the file of VI Additional



District and Sessions Judge, Dakshina Kannada,
Mangaluru.

2. The respondents being the accused faced trial for the offences punishable under Sections 457, 376 read with Section 511 and Section 302 read with Section 34 of IPC.

3. The prosecution case is that PW1, his wife Kalpana and PW5 Ravishankar were living in house No.6 on the first floor of the building called Narasimha Aithal compound situated at Meenakaliya, Panambur village, Mangaluru. All the three had domiciled to Mangaluru from North India in search of their livelihood. On 12.01.2015 these three people returned home at 4.00pm after finishing their duty in the construction company where they were working. Around 5.00pm, PW10 made a call to PW1 and asked him and PW5 to come and work in the night shift because of some urgency. Leaving Kalpana at home, PW1 and PW5



left for work and they returned home at 7.00am on 13.01.2015. When they went inside the house, they saw the mat, bed-sheet and other articles being scattered. They saw the blood also. When they went inside the kitchen they saw Kalpana being dead and saw the injuries on her body. There was a big size stone on her chest. PW1 informed the matter to PW10 who immediately went there and after seeing the dead body he informed the police over the phone. The police came at 09.00am and took statement from PW1 as per Ex.P1 based on which FIR was registered. After the arrest of the accused, investigation was completed and charge sheet was filed.

4. The prosecution examined 28 witnesses, and relied on documents as per Ex.P1 to P36 and material objects MO1 to MO39. The defence got marked the contradictions as per Ex.D1 to D3.



5. The trial court found that the evidence placed by the prosecution was insufficient to record conviction inasmuch as the prosecution failed to establish the circumstances pointing to the involvement of the accused.

6. We have heard the arguments of Smt. Rashmi Jadhav, learned Additional SPP for the appellant/State and Sri K.Dinesh Kumar Rao, learned counsel for respondents 1 and 2 / accused Nos.1 and 2.

7. The case is based on circumstantial evidence. The prominent witnesses are PWs.1, 2, 4, 5, 10 and 12. PW1 is the husband of the deceased. His evidence shows that he and PW5 left their residence at 6.00pm on 12.01.2015 for work after receiving call from PW10. His wife Kalpana was alone in the house. He has stated that when they were living in the house, the accused who were residing in the same building



asked them as to where they were going. Further he has stated that after he and PW5 left that place, the accused entered his house and tried to commit rape on his wife Kalpana; as she resisted, both of them killed her and then placed a big size stone on her chest.

8. PW5 has also given evidence in the same way, but he does not state that the accused asked them as to where they were going.

9. PW2 is the owner of the building and PW4 is the daughter of PW2. Their evidence shows that on 13.01.2015, around 09.00am they came to know about the murder and then went to the house of PW1 and saw the dead body.

10. PW10 Sandeep Devadiga states that he made a telephone call to PW1 and PW5 around 6.00pm on 12.01.2015 and asked them to work in the night shift because of shortage of labourers.



He stated that PW1 and PW5 attended the work and returned home on the next day morning. Around 7.00am on the next day morning PW1 telephoned him and informed about the death of his wife. He went to the house of PW1 and saw the dead body and then gave information to the police.

11. PW12 has stated that around 2.30am he came out of his house to attend nature call and saw two persons running in the road. He stopped and asked them as to where they were going, but without answering they went away from the place and got into a lorry going towards Surathkal. Next day morning he came to know about the death of a woman. In the open court he identified the accused stating that they were the persons whom he saw in the midnight.

12. The evidence given by PW23, the investigating officer shows that after the arrest of



the accused, based on their voluntary statements he was able to recover blood stained clothes of the accused. PW18 and 25 are the witnesses for the panchanama drawn in this regard as per Ex.P11. MOs.22 to 27 are the material objects seized at that time. MO22 is a Jeans pant, MO23 is a shirt, MO24 is a shawl and MO25 is another shirt. PW18 and PW25 have supported the prosecution.

13. During investigation the seized articles were sent to examination of FSL and the report shows detection of 'B' group human blood on some seized articles.

14. Smt. Rashmi Jadhav argues that the articles seized from the residence of the accused were blood stained clothes of the accused and they tested positive for the presence of human blood. Both the accused were living in another house in the same building. The evidence of PW1 clearly shows that they asked him about the place where



they were going. Coming to know that deceased was alone in the house, both the accused entered her house and tried to commit rape on her. As she resisted, they resorted to killing her with a chopper (MO2) which was also seized. So in this case recovery itself is a strong circumstance indicating the involvement of the accused. PW12 has stated that he saw both the accused going to catch a lorry in the midnight. This shows their conduct. In view of this evidence the trial court should have convicted the accused and therefore the appeal deserves to be allowed and the accused convicted.

15. Sri Dinesh Kumar Rao opposes the appeal by submitting that recovery itself is not sufficient. Just because PW1 has stated that the accused asked him in the evening when he and PW5 were leaving home, it cannot be said that accused killed the deceased when their attempt to rape her



failed. This only leads to suspicion based on which no conviction can be drawn. There is no evidence indicating that the accused entered the house of deceased. No witness speaks in this regard. Therefore the trial court has rightly acquitted the accused.

16. We have re-assessed the evidence. There is no evidence indicative of the accused entering the house of the deceased when PW1 and PW5 went out of the house. The evidence available is that of PW1 who has just stated that the accused enquired him as to where they were going in the evening hours. If PW1 has given evidence like this, same is not corroborated by PW5. The incident appears to have taken place in the midnight and anybody might have entered the house of the deceased. The evidence of PW12 about seeing the accused in the midnight does not help the prosecution just because of identification



of the accused by him in the court. Then what remains is recovery of blood stained clothes at the instance of accused. It is true that PW18 and 25 have supported and FSL report also confirms the presence of human blood on their clothes. This itself cannot be a concrete evidence to hold the accused guilty of the offence. Convincing evidence is not available and therefore the benefit should be made available to the accused. We do not find any infirmity in the acquittal judgment passed by the trial court. Hence appeal is ***dismissed***.

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

**Sd/-
(UMESH M ADIGA)
JUDGE**