



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF SEPTEMBER, 2024

PRESENT

THE HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MR JUSTICE UMESH M ADIGA

CRIMINAL APPEAL NO. 427 OF 2017 (A)

BETWEEN:

THE STATE OF KARNATAKA,
BY H.D. KOTE POLICE STATION,
REPRESENTED BY
STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING,
BENGALURU - 560 001.

...APPELLANT

(BY SMT. RASHMI JADHAV, ADDL.SPP)

AND:

NARAYANA,
S/O LATE GOVINDEGOWDA,
30 YEARS, KARIGALA 'B' VILLAGE,
H.D. KOTE TALUK - 571 114.

...RESPONDENT

(BY SRI. N.S. SAMPANGI RAMAIAH, AMICUS CURIAE)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 378(1) AND (3) OF CR.P.C. PRAYING TO GRANT LEAVE TO APPEAL AGAINST THE IMPUGNED JUDGMENT AND ORDER OF ACQUITTAL DATED 29.08.2016 PASSED BY THE III ADDL.SSESSIONS JUDGE, MYSURU IN S.C.NO.64/2014, THEREBY ACQUITTING THE RESPONDENT-ACCUSED OF THE OFFENCE PUNISHABLE UNDER SECTION 302 OF IPC.



THIS APPEAL, HAVING BEEN RESERVED FOR JUDGEMENT,
COMING ON FOR PRONOUNCEMENT THIS DAY,
UMESH M. ADIGA, J., PRONOUNCED THE FOLLOWING:

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

CAV JUDGMENT

(PER: HON'BLE MR JUSTICE UMESH M ADIGA)

This appeal is by the State against judgment passed in S.C.No.64/2014, on the file of learned III Addl.Sessions Judge, Mysuru, (for short `trial Court'), dated 29th August 2016.

2. We refer to the parties as per their ranks before the trial court.

3. It is the case of the prosecution that PW-1 Siddegowda has three daughters. His second daughter- Manjula was married to Suresh and in the said wedlock, she had a son by name Madan. Some years after the marriage, Smt.Manjula left her husband Suresh and started residing with her parents in their house along with



her son Madan. She got a job at Mysore and hence she alone was residing at Mysore and used to come to her mother's house every weekend. Her son Madan was residing in her parents house at Karigal village and he was going to school. At the time of incident, Madan was aged about 5 to 6 years. The third daughter of PW-1 by name Smt.Susheela – PW-5 was married to accused and she had two sons, aged about four years and two years respectively. Accused was residing in the same village & his house was situated after two to three houses from the house of the parents of Susheela. Both Smt.Susheela and her husband lived happily for some years. He was driver of a tractor. Few years after the marriage, he started drinking alcohol and ill-treating Susheela. She got an appointment as a teacher in Anganawadi, at Karigal. It appears that accused was not happy with the same. He was insisting on her to leave the said job and started suspecting her character and fidelity. He used to quarrel with her on trivial issues and beat her. About fifteen days prior to the incident, he threatened her



of dire consequences if she continues to work in Anganawadi. Being fed up with the behaviour of the accused, she left his house and started residing with her parents along with her two children.

4. Both accused as well as PW-5 did not bother each other and they did not contact each other for about 15 days. Thereafter one day in the evening, accused came to the house of PW-1 and asked to give the key of his house. PW-5 Smt.Susheela did not want to meet him and hence she told Madan to tell her husband that she had no key of house of the accused. Madan informed the same to the accused. Accused left the house of PW-1 and a few minutes after, again he came back to the house of PW-1 and called his children. PW-1 told him that they were sleeping and Madan alone was with him. Accused requested PW-1 to send Madan along with him and he would purchase biscuits for his children and Madan from near by petty shop and give it to Madan and took Madan with him. Madan didn't return even after about 30 to 45



minutes. Hence PW-5 told PW-1 to go near the petty shop and bring Madan. PW-1 went to petty shop and didn't find both accused and Madan. He enquired with shop owner, who told PW-1 that both Madan and accused left his shop a few minutes back after purchasing biscuits and both went towards the house of accused. Thereafter, both PW-1 and 5 started searching for Madan in and around their house. PW-1 went to the house of accused. Accused was standing in front of his house by locking it. PW-1 enquired him about Madan. The accused told PW-1 that after taking the biscuits, Madan went towards agricultural land of PW-1. Thereafter, PW-1 along with some other villagers went towards his agricultural land in search of said Madan.

5. It is further the case of prosecution that the accused was telling loudly to PW-11 Somegowda, PW-7 Manju, PW-8 Shivalingegowda, PW-9 Mahadevegowda, PW-10 Chikkegowda, PW-12 Kempegowda, PW-13 Ganesh and PW-14 Channegowda that he had anger against PW-5 i.e., his wife and in order to take revenge against her and



teach a lesson, he killed Madan by strangulating him. It appears, PW-5 overheard the said conversation. She held accused and questioned him about Madan. Accused told her that he killed him. PW-5 asked him to show the dead body. She informed the same to PW-1 who was searching for Madan near his agricultural land. Then, PW-1 returned from the land and both PW-1 and PW-5 along with villagers went to backyard of the house of the accused and found dead body of Madan.

6. PW-1 after seeing the dead body, sent information to the police about the murder of Madan by accused. The SHO of the Heggadadevanakote (for short, 'H.D.Kote') Police Station came to Karigala Village and recorded the statement of PW-1 as per Ex.P-1 and on the basis of said information, registered a case in Crime No.373/2013 of H.D.Kote Police Station for the offence punishable under Section 302 of IPC.

7. PW-22 Shivaswamy, the then Circle Inspector of Police, investigated the case and charge sheeted the



accused for the offence punishable under Section 302 of IPC and submitted the same before the competent J.M.F.C. Court. Thereafter, the said case was committed to the Court of Sessions by the learned J.M.F.C. and that was registered as Sessions Case No.64/2014.

8. The learned Sessions Judge after hearing both the parties, framed the charges for the offence punishable under Section 302 of IPC. The accused pleaded not guilty and claimed to be tried. Hence, prosecution was given an opportunity to prove its case. The prosecution in support of its case, examined PW-1 to PW-22 and got marked Exs.P-1 to P-41 and MO-1 and MO-2 and closed its evidence.

9. Accused was examined under Section 313 of Cr.P.C., and his answers were recorded. The accused did not offer defence evidence when called upon.

10. The trial court after hearing both the parties and appreciating evidence available on record, found the accused not guilty of the offence punishable under Section



302 of IPC and acquitted him by the impugned judgment dated 29.08.2016. That is challenged by the State on the grounds mentioned in the appeal memo, in the present appeal.

11. We have heard the arguments of the learned Addl.SPP for the State, as well as learned *Amicus Curiae* appointed by the court on behalf of the accused.

12. The following question arises for our determination :

Whether the learned trial Judge is justified in acquitting the accused of the offence punishable under Section 302 of IPC?

13. We answer the above point in the negative for the following reasons :

There are no eye witnesses to the incident. The accused charge sheeted on the basis of the circumstantial evidence.



The prosecution has to prove following circumstances, to prove the guilt of accused :

(a) PW-5 and accused are husband and wife; Their relationship was strained and 15 days prior to the incident, PW-5 left the house of the accused along with her children and residing in the house of PW-1.

(b) On the day of incident when accused approached for the key of his house, PW-5 even did not talk to him and conveyed message through Madan that she had no key of his house.

(c) The deceased Madan was last seen in the company of accused and within a short proximity of time, dead body of Madan found in the back yard of accused.

(d) The death of Madan was homicidal.

14. PW-1 and PW-5 have stated in detail about the marriage of PW-5 with accused and having two children from the wed lock. PW-5 has stated that a few years after the marriage i.e., after the birth of second child, accused



started drinking alcohol, ill-treating her, quarrelling with her on trivial issues and beating her. She got an appointment as teacher in Anganwadi. Thereafter, accused was suspecting her character and fidelity and insisting her to give resignation to her job, for which she did not agree, because of which, accused was very much angry against her. Fifteen days prior to the incident, accused quarrelled with her and gave threat to her life. Therefore, she left his house and started residing in the house of PW-1 with her children. In the cross-examination of PWs.1 and 5, these facts are not seriously disputed.

It is also not in dispute that on the date of incident, accused came to the house of PW-1 to take the key of his house and he was told that PW-5 didn't have key of his house. Accused asked PW-1 to send his children to buy biscuits for them and since they were sleeping, he took Madan with him to buy biscuits for Madan and his children.

15. PW-1 and PW-5 have stated in their evidence that after accused took Madan, he did not return home for



more than 30 to 45 minutes. The said petty shop was situated very near to or opposite to the house of PW-1. Therefore, both PW-1 and PW-5 were worried and PW-5 requested PW-1 to enquire in the petty shop. PW-1 went to petty shop belonging to Somegowda (PW-11) and enquired him, so also with Ganesh, Kempegowda and Channegowda who were found near the shop of Somegowda. The said witnesses informed him that some time back, the accused came to the shop of Somegowda and purchased biscuits and left the shop along with Madan and went towards his house. PW-1 has stated that he went to the house of the accused and his house was locked, but he was standing in front of his house. He enquired with accused about Madan. Accused told him that Madan took two packs of biscuits and ran towards agricultural land belonging to PW-1. He doubted the truth in the information given by the accused and went towards his agricultural land in search of Madan along with few villagers. They did not find Madan near agriculture lands of PW-1. While returning home, he got an information



from PW-5 that accused had murdered Madan and his body was found at back yard of house of accused. In the detailed cross-examination, nothing was brought out to discard the evidence of PW-1. There are some minor contradictions between his statement given to police and evidence before court. It cannot be called as an improvement.

16. PW-1 has stated that he went to the house of the accused. Some villagers along with, Puttanna, Ganesha, Puttegowda and Kempanna assembled in front of the house of the accused. The said persons took him to the spot where the dead body was found. Accused was near his house, he held him and enquired. Accused confessed that he murdered Madan to take revenge against his wife. PW-1 has stated that he telephoned to the police and police came to spot in the night and arrested the accused and took him to H.D.Kote police station. He also went along with police and lodged the complaint as per Ex.P-1.



17. PW-5 in her evidence has stated that after PW-1 left in search of Madan, she was also waiting for them outside her house; in the meanwhile, she over heard conversation of accused with others, who were present in front of shop of Somegowda stating that he killed Madan to teach a lesson to his wife. Immediately, she went and held the accused and on enquiry, accused told her that "he strangled and murdered Madan and kept the dead body behind his house". Accused took her, as well as others to his house and showed the body of Madan at backyard of his house near the fence. Finding the dead body of Madan at back yard of house of accused and his brother, is also not in serious dispute.

18. It is not in dispute that Madan died on 07.10.2013. PW-2 - the doctor conducted post mortem on 08.10.2013 around 10.10 a.m. During the evidence, he stated that death was caused due to strangulation and the said boy Madan died about 12 to 24 hours prior to conducting the post mortem. The death of Madan was a



homicidal death. PW-2 in his examination-in-chief, as well as in cross-examination has explained regarding the injuries sustained by the deceased and how he assessed that the death was caused due to strangulation. PW-2 denied the suggestion of accused regarding causing death of Madan. Nothing was brought out to show that it was an accidental death. Evidence of PW-2 and Exs.P-12 and P-13 undoubtedly proves that it was a homicidal death.

19. PW-22 is the Investigating Officer. He has narrated the investigation done by him and submitted the charge sheet. In his cross-examination, nothing is brought out to show that there are any lapses in the investigation causing prejudice to the case of the prosecution. His evidence is consistent, corroborative and reliable to believe that accused had murdered Madan due to his dispute with PW-5.

20. PW-6 to 20 have turned hostile to the case of the prosecution. None of them is eye witness to the incident. The accused is said to have confessed before PWs.11 to 14



that he killed Madan. Other witnesses are not at all much relevant witnesses to connect the accused with the guilt. Therefore, they turned hostile to the case of prosecution and this does not damage the case of prosecution. PWs.6 to 20 are residents of Karigal village where poor boy aged about 6 years was murdered. It is not the case of said witnesses that they were not in town on that day. PW-22 has stated that he enquired them and recorded their statements. It shows that deliberately they have not deposed true facts. As already stated above, it will not affect the credibility of evidence of PWs.1 and 5. It appears that the learned Public Prosecutor unmindfully examined the witnesses wasting the precious time of the court. If their evidence has got any relevance or helps the case of the prosecution or assists the court to arrive at a just conclusion, then only, such witnesses shall be examined. The prosecution has to prove its case by qualitative evidence and not by quantitative evidence. There is no need to discuss the evidence of PWs.6 to 20 in detail.



21. The evidence of PWs-1, 2, 5 and 22 reveals the facts in issue. PWs.1 and 5 have stated that on the date of the incident, around 7.00 p.m., accused came to the house of PW-1, asking for key of his house from PW-5. But, PW-5 did not meet him and told deceased Madan to inform accused that she had no key of his house. Accused left the house of PW-1 and within five to ten minutes, he came back on the pretext that he want to buy the biscuits for his children. By that time, his children were sleeping. Therefore, accused took Madan stating that he would purchase biscuits for the children and send it through Madan. Around 7.10 p.m., he took Madan. The Madan did not return home and PW.1 and PW-5 started searching for the Madan. Within a short period, they came to know that Madan was dead and his body was available behind the house of accused. These facts are not seriously disputed. Within a short period of time from taking of said Madan by the accused, the said Madan was dead. The accused has not offered proper explanation as to where did Madan go



after giving biscuits to him. No acceptable explanation was given by the accused.

22. The evidence of PW-1 regarding information he got from PW-11 that accused and deceased went towards the house of the accused after purchase of the biscuits and he met accused nearby his house and information given by the accused that deceased had gone towards land of PW-1 which was stated by PW-1 are reliable. Otherwise, there was no need for PW-1 to go towards the house of the accused or towards his lands during the night around 8.00 p.m. along with villagers in search of Madan.

23. In the cross-examination of PWs.1 and 5, it was not brought out that for going from the petty shop to the house of PW-1, one has to cross the house or backyard of the accused. As per the evidence of PWs.1 and 5, there were no lights in the spot where the dead body was found. These facts indicate that a boy aged about five to six years would not go to such a place to attend the nature call, as



suggested to PWs.1 and 2 by the accused. The said suggestion is not probable.

24. It came in the evidence of PWs.1 and 5 that relationship between accused and PW-5 was strained and she left his company and started residing with PW-1 a few days prior to the incident. This fact was not seriously disputed. From the conduct of accused, it appears that he wanted to take revenge against PW-5. If really accused intended to buy biscuits from nearby petty shop to give to his children, there was no necessity for him to take the children/Madan along with him. According to the evidence of PW-1 and PW-5, the petty shop was situated nearer to the house of PW-1. The said facts indicate his intention that he wanted to take Madan and cause harm to him to teach a lesson to PW-5.

The above said circumstances leads to a conclusion that accused is responsible for causing death of Madan.



25. In the case of ***State of U.P. –vs- Satish***¹ the Hon'ble Apex Court while dealing with circumstantial evidence of last seen together held at Para-22 of its judgment that,

" 22. The last seen theory comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime, becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is long gap and possibility of other persons coming in between exist. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases. In this case there is positive evidence that the deceased and the accused were seen together by witnesses PWs.3 and 5, in addition to the evidence of PW 2."

The facts of the above said case are also similar to the facts in the present case and hence principle of law laid down in the above said case is applicable to the facts of the present case. By the above said materials on

¹ (2005) 3 SCC 114,



record, it is proved by the prosecution that the accused committed the murder of an innocent six year old young boy Madan due to his anger against PW-5.

26. The trial court considering that most of the witnesses turned hostile, and there were no evidence to prove the circumstances, acquitted the accused. The trial court has not appreciated the evidence in right perspective. The trial court did not consider the law laid down in the case of ***Bodhraj @ Bodha and others -vs- State of Jammu and Kashmir***², which is referred at page No.31 of the impugned judgment, which is similar law laid down in the case of ***State of U.P. -vs- Satish (supra)*** and without any reasons held that the said law is not applicable to the facts of the present case.

27. Learned counsel for the respondent-accused would submit that since the relationship between PW-5 and accused was strained, therefore, her evidence is not reliable and she is an interested witness; she deposed

² (2002) 8 SCC 45,



falsely before the court to implicate the accused in this case. The trial court has considered these facts properly and rightly acquitted the accused of the alleged offences, that do not call for interference.

28. Per contra, learned Addl.SPP would submit that PW-1 and PW-5 knew that accused had taken Madan along with him and Madan did not return home nearly for about 30 to 45 minutes. Therefore, both of them were worried and PW-1 went in search of Madan, but, he did not get him. PW-5 has stated that she overheard the conversation between the accused along with Somegowda, Ganesh, Kempegowda etc., that he killed Madan. Therefore, she went and enquired with the accused who was trying to escape from the spot along with his uncle, as well as his younger brother on a motorcycle. On serious enquiry, the accused confessed that he murdered Madan to take revenge against her and kept the dead body behind his house. Thereafter, she along with others went along with accused to his house and she found the dead body of



Madan at the backyard of his house near the fence and she informed this fact to PW-1. Therefore, the evidence of PW-1 and PW-5 in this regard is corroborative and consistent. PW-1 and 5 had no enmity against accused to falsely implicate him and they would not get any benefit by the same. Accused is son-in-law of PW-1 and husband of PW-5. In their cross-examination, except suggestions, it was not brought out that both PW-1 and PW-5 were intended to falsely implicate accused in the crime and they would get any profit out of the same. The defence of accused is just denial. Hence, contention of appellant that they are interested witnesses is not acceptable.

29. The learned counsel for the respondent-accused vehemently contended that as per the evidence of PW-11, the accused brought his two children and deceased Madan with him. After purchase of the biscuits, all the three returned home. It clearly shows that Madan had returned home along with children of accused. Therefore, accused is not responsible for death of Madan. The said contention



is not acceptable. It is nobody's case that two children of accused, as well as Madan went along with the accused to purchase the biscuits. It is the evidence of PWs.1 and 5 that both the children of accused were sleeping, therefore, he took Madan with him under the pretext of buying biscuits and sending them through Madan. Even accused has not made any such suggestions in the evidence of PWs.1 and 5. Moreover, PW-11 has turned hostile to the case of the prosecution. Prosecution has declared that he was giving false evidence before the court. Therefore, his evidence is not reliable.

30. The trial court has not appreciated evidence of the witnesses properly. PWs.1 and 5 are rustic villagers and illiterates. While appreciating the evidence, the court has to keep in mind the said facts. Merely there is some inconsistency in the examination-in-chief of said witnesses, as well as, the statements of the said witnesses recorded by the police, they are not sufficient to disbelieve and discard their evidence. The evidence of PWs.1 and 5



recorded on the day of the incident, as well as on the next day. Member of their family i.e., boy aged about six years was murdered. Due to the shock and grief, they may not be in a position to give the statement before the police about the details of the incident. Their evidence was recorded after two years from the date of the incident. Under these circumstances, chances of inconsistencies or minor contradictions are quite natural. Only on that basis, their evidence cannot be discarded.

31. The facts and circumstances stated above clearly indicates that except the accused, nobody was responsible for the death of said Madan. There were no enemies to PWs.1, 5 or even Smt.Manjula. Accused took the deceased Madan around 7.10 p.m., and death of the said boy came to the knowledge of PW-5 around 8.00 p.m. Accused has not given any explanation about the deceased Madan after purchase of the biscuits as to where did the said Madan go. There is also evidence to prove the strained relationship between the accused and PW-5.



PWs.1 and 5 have stated that accused was telling to the villagers that he would teach a lesson to PW-5. These facts indicates that accused was responsible for the death of Madan.

32. The trial court has not appreciated the evidence properly. The reasons assigned for acquittal of the accused are not proper and justifiable. Therefore, it needs interference by this court.

33. We are aware that while reversing the judgment of acquittal, the appellate court has to take proper care and caution. If the trial court has committed any grave error, then only appellate court can interfere in such findings of acquittal. If two views are possible, then, the view taken by the trial court or the view which is favourable to the accused, is to be accepted. In this case, as discussed above, only one view is probable and that is accused committed the murder. The reasons assigned by the trial court to acquit the accused are not in accordance with law. The Hon'ble Apex Court time and again held



that in appropriate cases where injustice or miscarriage of justice appears to have occurred to the victims, or the findings of the trial judges is against the provision of law and perverse, the appellate court shall interfere and reverse the said findings of acquittal.

34. In the case of **Guru Dutt Pathak –vs- State of Uttar Pradesh³**, the Hon'ble Apex Court has held that:

" Each and every ground on which trial court acquitted accused was elaborately dealt with by High Court. On reappraisal of entire evidence on record, High Court specifically concluded that findings recorded by trial court were perverse. Therefore, High Court was right in interfering with judgment and order of acquittal passed by trial court and convicting accused under Ss. 302/34 IPC. No interference with impugned judgment and order passed by High Court is warranted herein. Hence, conviction of accused under Ss. 302/34 IPC, stands confirmed".

35. In the case of **Siju Kurian –vs- State of Karnataka⁴**, it is held that (we quote):

³ (2021) 6 SCC 116

⁴ 2023 SCC Online SC 429



" 16. It need not be restated that it would be open for the High Court to re-appraise the evidence and conclusions drawn by the Trial Court and in the case of the judgment of the trial court being perverse that is contrary to the evidence on record, then in such circumstances the High Court would be justified in interfering with the findings of the Trial Court and/or reversing the finding of the Trial Court. In Gamini Bala Koteswara Rao v. State of Andhra Pradesh, (2009) 10 SCC 636, it has been held by this Court as under:

" 14. We have considered the arguments advanced and heard the matter at great length. It is true, as contended by Mr.Rao, that interference in an appeal against an acquittal recorded by the trial court should be rare and in exceptional circumstances. It is, however, well settled by now that it is open to the High Court to reappraise the evidence and conclusions drawn by the trial court but only in a case when the judgment of the trial court is stated to be perverse. The word "perverse" in terms as understood in law has been defined to mean "against the weight of evidence". We have to see accordingly as to whether the judgment of the trial court which has been found perverse by the High Court was in fact so."

17. The Appellate court may reverse the order of acquittal in the exercise of its powers and there is no indication in the Code of any limitation or



restriction having placed on the High Court in exercise of its power as an Appellate court. No distinction can be drawn as regards the power of the High Court in dealing with an appeal, between an appeal from an order of acquittal and an appeal from a conviction. The Code of Criminal Procedure does not place any fetter on exercise of the power to review at large the evidence upon which the order of acquittal was founded, and to reach the conclusion that upon that evidence the order of acquittal should be reversed.

18. In the case of Sheo Swarup v. King Emperor, AIR 1934 PC 227, the Privy Council held as under:

" But in exercising the power conferred by the Code and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as:

- a) The views/opinion of the trial judge as to the credibility of the witnesses;*
- b) The presumption of innocence in favour of the accused;*
- c) The right of the accused to the benefit of any doubt; and*
- d) The slowness of an appellate court in disturbing a finding of fact arrived at by a judge who had the advantage of seeing the witnesses.*



36. In the case of ***Chandrappa and others –vs- State of Karnataka***⁵ reiterated the legal position as under:

'42.... (1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

⁵ (2007) 4 SCC 415: (2007) 2 SCC (Cri) 325



(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.'

The principle of law laid down in the above said judgments is applicable to the facts of the present case. We have kept in mind the law laid down in this regard before reversing the judgment.

37. For the aforesaid discussion, we proceed to pass the following :



ORDER

[i] Criminal Appeal is ***allowed.***

[ii] The judgment dated 29th August 2016,
passed by the learned III Addl.Sessions Judge,
Mysuru, in S.C.No.64/2014, is set aside.

[iii] The accused is found guilty for the offence
punishable under Section 302 of IPC.

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

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



SHKJ & UMBAJ:

20.09.2024

ORAL ORDER ON SENTENCE

(PER: HON'BLE MR JUSTICE UMESH M ADIGA)

Learned counsel for the appellant - State i.e. Addl. SPP Smt. Rashmi Jadhav and Sri N S Sampangiramaiah, Amicus curiae are present. The accused is produced under NBW by Sri. G.V. Gowrishankar, Sub-Inspector, H.D. Kote Police before the court. The accused submits that he is working as a coolie and earning Rs.200/- per day. His wife has left him and nobody is there to look after him. Amicus curiae submits that there are no antecedents against the accused. Looking at his age and his financial status, lenient view may be taken. Learned Addl. SPP submits that maximum punishment may be imposed against the accused.

Since this is not a fit case for imposing death penalty, only life imprisonment and fine can be imposed.

Accused is sentenced to undergo imprisonment for life and pay fine of Rs.15,000/- in default of payment of



fine, he shall undergo further imprisonment for a period of one year for the offence under section 302 IPC.

For the purpose of section 432 Cr.P.C., the period already spent by him in the jail shall be considered.

Registry to issue conviction warrant accordingly.

High Court Legal Services Committee is directed to pay Rs.15,000/- as honorarium to the amicus curiae Sri.N.S. Sampangiramaiah .

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

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