



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF JANUARY, 2025

PRESENT

THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MR. JUSTICE K. V. ARAVIND

CRIMINAL APPEAL No. 1921 OF 2018 (C)

BETWEEN:

1. SHIVAIAH,
S/O ANJINAPPA,
AGED ABOUT 31 YEARS,
R/O MUDDENAHALLI VILLAGE,
KODIGENAHALLI HOBLI,
MADHUGIRI TALUK,
TUMKURU DISTRICT-572175.

...APPELLANT

(BY SRI U. KARTHIK YADAV, ADVOCATE FOR
SRI S.K. VENKATA REDDY, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA,
BY KODIGENAHALLI POLICE STATION,
REPT. BY STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING,
BENGALURU-560 001.

...RESPONDENT

(BY SRI VIJAYKUMAR MAJAGE, SPP-II)

THIS CRL.A IS FILED UNDER SECTION 374(2) OF CR.P.C
BY THE ADVOCATE FOR THE PETITIONER PRAYING TO SET
ASIDE THE JUDGMENT OF CONVICTION AND ORDER OF
SENTENCE DATED 03.10.2018 AND SENTENCE DATED

Digitally signed
by VAI P T
MARIMATHU
Location: High
Court of
Karnataka



28.08.2018, PASSED BY THE 4TH ADDITIONAL DISTRICT AND SESSIONS JUDGE AT MADHUGIRI, IN S.C.No.5026/2017, CONVICTING THE APPELLANT FOR THE OFFENCE P/U/S 307 AND 302 OF IPC, 1860 AND ETC.

THIS APPEAL COMING ON FOR HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR
and
HON'BLE MR JUSTICE K. V. ARAVIND

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE K.V. ARAVIND)

The accused in S.C.No.5026/2017 before the 4TH Additional District & Sessions Judge at Madhugiri, has preferred this appeal against the judgment of conviction and order on sentence dated 28.08.2018, whereby he is convicted and sentenced to life imprisonment for offence punishable under Section 302 of IPC with fine of Rs.5,000/- and in default of fine, to undergo three months imprisonment. He is further sentenced to term sentence of seven years for offence punishable under Section 307 of IPC with fine of Rs.5,000/- and in default of fine, to undergo three months imprisonment.



2. The case of the prosecution is that, on 27.04.2017 at about 4.00 a.m., the accused suspecting that his wife Smt. Laxmi @ Laxmidevi had illicit relationship with deceased Rajesh, attempted to kill his wife by smothering her with a pillow. Noticing that the neighbours were approaching, he rushed to the house of the deceased Rajesh, who was sleeping, assaulted him with a knife while also throwing chilli powder into his eyes. In an attempt to escape, Rajesh ran towards Babanna's land, but, near Babanna's grave, the accused again attacked Rajesh with a knife, causing grievous injuries on the stomach and the neck at about 4.10 a.m. and due to this attack Rajesh suffered injuries and succumbed to the injuries suffered.

3. The police registered the case and filed the charge sheet. The prosecution examined 32 witnesses, marked 39 exhibits and presented 21 material objects. The trial court, based on the evidence of eyewitnesses and other circumstances, found that the accused was guilty of



the offence of causing the death of Rajesh and attempting to kill his wife Laxmi and convicted the accused for the offences under Sections 302 and 307 of IPC and imposed sentence of life imprisonment and seven years rigorous imprisonment respectively besides fine.

4. Heard Sri U. Karthik Yadav, learned counsel for Sri S.K. Venkata Reddy, learned counsel for the appellant-accused and Sri Vijaykumar Majage, learned SPP-II for the respondent-State.

5. Sri U. Karthik Yadav, learned counsel appearing for the appellant submits that the prosecution has set up a false case against the accused. It is further submitted that, the deceased had warned Laxmi not to reveal their illicit relationship. He was annoyed with Lakshmi for revealing their relationship to the accused. The deceased went to Laxmi along with the knife to attack her. The accused tried to save his wife from the deceased. The deceased, while escaping from the accused, suffered injuries and died. The injuries causing the death of the



deceased were not inflicted by the accused, whereas the injuries were self-inflicted by the deceased himself.

5.1. Learned Counsel further submits that the prosecution case is based on eyewitnesses. There are serious contradictions and omissions in the testimonies of the eyewitnesses. The benefit of the contradictions or omissions should enure to the benefit of the accused.

5.2. Learned counsel further submits that there are many eyewitnesses whose testimonies are accepted by the court. One eyewitness does not disclose the presence of another eyewitness. This omission raises serious doubt on the acceptability of the testimony and the presence of the witnesses to the incident of the alleged eyewitnesses.

5.3. It is further submitted that the motive to kill the deceased Rajesh was the illicit relationship of the deceased with the wife of the accused. None of the witnesses has spoken about the illicit relationship. The prosecution has not proved the existence of motive.



5.4. In the alternative, learned counsel submits that the wife of the accused was in illicit relationship with the deceased Rajesh. The accused has seen both his wife and deceased together. When the accused confronted his wife, she gave an unacceptable explanation. The incident of seeing the deceased and his wife together gave a sudden provocation to injure his wife. When he could not execute due to interference from neighbours, his anger shifted towards the deceased, who was sleeping very close by. The intention was to cause injuries and not to kill him. Hence, the learned counsel prays this court to modify the order by convicting the accused of offence under Section 302 to 304 Part-II of IPC.

6. Sri Vijaykumar Majage, learned SPP-II for the respondent-State submits that the prosecution has proved the guilt of accused with the aid of eyewitnesses' evidence. The suspicion of the accused that his wife had illicit relationship with the deceased was the motive for causing injuries to his wife and killing the deceased. All



the eyewitnesses have consistently deposed that the accused killed the deceased with a knife. The injured wife is an eyewitness to the injuries inflicted upon her with the M.O.1-knife. It is submitted that although the defence attempted to establish the theory that the deceased caused injuries to the wife of the accused, and later self-inflicted injuries, resulted in his death, there is no supporting evidence for this theory.

7. Heard learned counsel for the parties and perused the material on record.

Assessment of Evidence:

8. PWs.1 and 7 are eyewitnesses, who are the neighbours of the accused and grandparents of the deceased. Both have stated that they saw the accused smothering his wife with a pillow and then attempting to slit her throat. Alarmed by them, the accused rushed towards Rajesh and stabbed him under the right arm and threw chilli powder into his eyes. In an attempt to escape,



Rajesh ran towards Babanna's grave however, the accused chased him, slit his throat, and stabbed him on the stomach, leading to his death. The accused then immediately fled the scene. The villagers took the wife of the accused to the hospital. The defence has cross-examined these witnesses, however, no contrary evidence was elicited.

8.1. PW.2 is the mother of the deceased Rajesh and the complainant as per Ex.P2. Her testimony is similar to that of PW.1. She was also cross-examined, however, no contrary evidence was elicited.

8.2. PW.3 is a neighbour of both the accused and the deceased. The testimony of this witness is similar to that of PWs.1 and 2. The alleged illicit relationship between the wife of accused and the deceased has been denied.

8.3. PW.4 is an injured eyewitness and the wife of the accused. She was examined to establish the motive,



preparation and incident. She stated that on 27.04.2017, they visited the house of the sister of accused at Kanchisamudra to celebrate the Deepa Festival. During the visit, the accused and his sister insisted on obtaining Rs.50,000/- from her parents for the construction of a house, which she refused. The accused and PW.4 returned home the same day. As their younger son was unwell, they took him to the hospital in Hindupur and returned between 9:00 p.m. and 9:30 p.m., after which they went to sleep. At that time, the accused insisted her to sleep with him, but she refused as she was attending to their ill son. Sometime later, the accused brought a pillow to smother her while his mother was present. He covered her mouth with a saree and inflicted cut injuries on her throat. She also sustained injuries on her lips and left palm. Furthermore, she stated that her mother-in-law assisted the accused in the act. She was later taken to the hospital for treatment. She gave statement as per Ex.P6, and her statement under Section 164 Cr.P.C., before the Magistrate was recorded as per Ex.P7.



She admitted that she could identify all the material objects except the knife. Although she was subjected to cross-examination, she withstood the same.

8.4. P.W.5 is the father of the deceased Rajesh. This witness was examined to establish the motive. It was stated that the motive was a business rivalry, as both the accused and the deceased were plying auto-rickshaws. The prosecution treated this witness hostile and cross-examined him however no worthy evidence was elicited.

8.5. The evidence of PWs. 9, 10, 11, and 12 (driver) pertains to admitting Smt.Laxmi @ Laxmidevi to the hospital on the date of the incident.

8.6. PW.13 is the mother of the injured Smt. Laxmi @ Laxmidevi. She is a hearsay witness and a witness to Ex.P15. PW.14 is a witness to Exs.P16, P17, P18, and P19 (inquest mahazar). PW.15 is the wife of the deceased Rajesh. She is a hearsay witness and has denied the suggestion of illicit relationship between the deceased and



the wife of accused. PWs.20 and 21 are mahazar witnesses to Exs.P20, P21, and P15. PW.26 treated PW.4, Laxmi @ Laxmidevi. As per Ex.P29, three injuries were certified, an injury on the neck measuring 14 x 2 x 1 cm, an injury measuring 5 x 1 cm on the left palm and an injury measuring 4 x 2 cm on the right cheek. It is further certified that M.O.1 could have caused these injuries. This witness also conducted the post-mortem examination and found 10 injuries. The certified cause of death was due to injuries and excessive bleeding. The presence of chilli powder on the dead body was also noted. Additionally, this witness certified presence of injury on the hand of accused. PWs.27, 29 and 32 are police officials who deposed on the investigation conducted.

9. The present case involves two incidents, causing injuries to Laxmi @ Laxmidevi and the death of Rajesh. The prosecution has charged the accused with both offences. The case is primarily based on testimony of eyewitness. While examining the correctness of the



conclusions drawn by the trial court, it is necessary to re-evaluate the evidence.

10. P.Ws.1 to 5 and 7 are eyewitnesses, with P.W.4 being an injured eyewitness who sustained grievous injuries. PWs.1, 2, 3 and 7 witnessed both incidents. All the eyewitnesses have consistently stated that the accused attempted to smother his wife with a pillow and when she raised an alarm, he inflicted injuries on her neck. Upon noticing the approaching eyewitnesses, the accused fled the scene and proceeded towards the place where Rajesh was there. The defence extensively cross-examined the witnesses, but their testimonies remained consistent and unshaken. The evidence of PW.26, the treating doctor, confirms that the three injuries sustained were inflicted with MO.1-knife. Ex.P29, the medical certificate, details the following injuries;

"i) Incise wound over front and Right side of neck measuring 14 x 2 x1 cms below the level of thyroid cartilage.



ii) Incised wound over left palm 5 x 1 x into muscle deep.

iii) Incised wound over right cheek 4 x 2 x deep into mucosa."

11. The testimony of eyewitnesses and evidence of PW.26 and Ex.P29 corroborates.

12. Ex.P6 is the voluntary statement of injured Laxmi recorded while under treatment after suffering injuries. As per the statement, the accused suspected her fidelity and was accusing her of having an illicit relationship with deceased Rajesh. Her statement further reveals that on 27.04.2017 at about 3.20 a.m., he attempted to smother her with a pillow and thereafter inflicted injuries with a knife, and thereafter, he rushed towards Rajesh. While in the hospital, she came to know that Rajesh had been killed by her husband. This statement corroborates the testimony of eyewitnesses PWs.1 to 3, 5 and 7.



13. The blood-stained clothes of injured Laxmi were seized as per Ex.P15. The FSL report proves the presence of 'A' group of human blood on the clothes.

13.1. Another aspect requiring consideration is that P.W.4, the wife of the accused, sustained injuries while in the company of accused. The injuries suffered by P.W.4, certified in Ex.P29, are undisputed. P.W.4, an injured witness, has explicitly attributed the cause of her injuries to the accused. Consequently, the burden shifts to the accused to explain how his wife sustained injuries in his presence. An attempt has been made to assert that the injuries were inflicted upon P.W.4 by the deceased Rajesh. However, this theory remains unsubstantiated. Furthermore, the recovery of the knife-(M.O.1) at the instance of the accused is established through the testimony of P.W.20 and corroborated by Ex.P21. The presence of M.O.1 under the mat while the accused was sleeping is indicative of preparation, motive and intention.



14. The trial court, upon due consideration of the aforementioned aspects, has rightly concluded that the accused has committed an offence punishable under Section 307 of the IPC.

15. The second incident considered by the trial court is the death of the deceased Rajesh due to the injuries inflicted by the accused with MO.1-knife. PWs.1 to 3, 5 and 7 are eyewitnesses to the incident of stabbing deceased Rajesh while he was asleep in front of his house and thereafter causing multiple injuries near the grave of Babanna, where he died. The defence has taken a stand that the deceased Rajesh was in illicit relationship with the wife of the accused. Rajesh went to the accused wife to warn her not to reveal their relationship. This was noticed by the accused. At that time, deceased Rajesh inflicted injuries to the wife of the accused and while escaping from the accused, he suffered injuries. This stand is unsupported by any evidence. Whereas the evidence on record unequivocally establishes that the death of



deceased Rajesh was due to the injuries inflicted by the accused.

16. The allegation that the wife of the accused had illicit relationship with the deceased Rajesh is not supported by any witness. On the other hand, all the eyewitnesses are consistent in their testimony that the accused attempted to smother his wife with a pillow and upon failing, inflicted injuries on her neck and palm. Thereafter, he proceeded towards Rajesh and stabbed him under the arms. When Rajesh attempted to escape and ran towards the grave of Babanna, the accused chased him and inflicted multiple stab wounds, resulting in bleeding and his eventual death. Despite extensive cross-examination by the defence, the testimony of these witnesses has remained consistent and unshaken.

17. The recovery of MO.1-knife, as per Ex.P21, at the instance of the accused, along with the recovery of the cloths of the accused as per Ex.P18, substantiates the guilt of the accused. Furthermore, these exhibits corroborate



the FSL report, which confirms the presence of human bloodstains of group 'O.' The presence of bloodstains of group 'O' on M.O.1-knife has been duly established. Ex.P30, the post-mortem report, details the injuries on the dead body of the deceased and the testimony of PW.26, the doctor, affirms that the injuries recorded in Ex.P30 could have been caused by M.O.1. Additionally, the evidence of PW.26 and Ex.P30 further corroborates the presence of chilli powder as alleged by the prosecution.

18. The incident occurred on 27.04.2017. The prosecution recorded the statements of P.Ws.2, 3, 4, 5, 7, and 8 under Section 164 of Cr.P.C. before the Magistrate on 10.07.2017. All these witnesses, in their voluntary statements under Section 164 of Cr.P.C., have explicitly stated that their depositions were made voluntarily and without any compulsion. Further, these witnesses maintained consistency when examined before the Court. There is no indication of force or coercion in obtaining their statements under Section 164 of Cr.P.C. Accordingly, this



Court finds no material or justification to discredit their testimonies. All the witnesses have consistently pointed to the accused as the perpetrator who inflicted grievous injuries upon the deceased Rajesh, ultimately causing his death.

19. The contention raised by learned counsel for the accused that the eyewitnesses did not explicitly confirm each other's presence and therefore their testimonies cannot be relied upon, is untenable. The incident occurred at approximately 3:20 a.m., and when Laxmi raised an alarm, it was a natural human reaction for the eyewitnesses to focus on the unfolding events rather than on each other's presence. Expecting them to first acknowledge one another before responding to the situation is neither reasonable nor practical. Moreover, it is improbable for the eyewitnesses to have observed each other, as their immediate attention was on Laxmi, while the accused simultaneously proceeded towards Rajesh and inflicted injuries upon him. Additionally, while some



witnesses attended to Laxmi and assisted her hospitalization, the eyewitnesses followed the accused first to Rajesh's house and thereafter to the land of Babanna, where he was fatally stabbed. The entire sequence of events transpired during the early hours of the morning. The witnesses, in their statements, have consistently focused on narrating the incident as it unfolded. Insisting that they specifically depose regarding the presence of other eyewitnesses would be unreasonable, as such precise recollection would require an exceptional photographic memory and that expectation cannot be imposed on every witness.

20. The trial court, after duly considering the testimonies of the eyewitnesses and other incidental witnesses, in conjunction with the corroborative evidence from the recovery of material objects and scientific reports, rightly concluded that the prosecution has established beyond all reasonable doubt that on 27.04.2017, the accused inflicted grievous injuries on



Smt. Laxmi @ Laxmidevi by attacking her neck and attempted to cause her death.

21. Furthermore, the trial court held that the prosecution had successfully proved that the accused proceeded to the residence of Rajesh, assaulted him by stabbing with a knife, and threw chilli powder into his eyes. Thereafter, he chased Rajesh to Babanna's land, where he inflicted multiple grievous injuries by repeatedly stabbing him and ultimately slit his throat, resulting in his death.

22. The conviction of the accused recorded for the offences punishable under Sections 307 and 302 of IPC by the trial court is well-founded. The sentence imposed to undergo life imprisonment for the offence under Section 302 of IPC, along with seven years rigorous imprisonment for offence under Section 307 of IPC and fine of Rs.5,000/- for each offence and further three months imprisonment in default of payment of the fine is justified. No valid



grounds exist and no infirmities are pointed to interfere with the impugned judgment.

23. Hence, the appeal is merit less and it is accordingly ***dismissed.***

24. This Court records its appreciation for the efforts and valuable assistance rendered by Sri. U. Karthik Yadav, learned counsel for the appellant.

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

**Sd/-
(K. V. ARAVIND)
JUDGE**