



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 13<sup>TH</sup> DAY OF FEBRUARY, 2025**

**PRESENT**

**THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR**

**AND**

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

**CRIMINAL APPEAL No. 1137 OF 2021 (C)**

**BETWEEN:**

1. NAGARAJA,  
S/O UCHCHENGEPPE,  
AGED ABOUT 38 YEARS,  
R/AT HUNASEKATTE VILLAGE,  
DAVANAGERE TALUK,  
DAVANAGERE DISTRICT-577556.

...APPELLANT

(BY SRI S. G. RAJENDRA REDDY, ADVOCATE)

**AND:**

1. THE STATE OF KARNATAKA,  
BY RURAL POLICE,  
DAVANAGERE-577556.  
REPRESENTED BY ITS SPP,  
KARNATAKA HIGH COURT BUILDINGS,  
HIGH COURT,  
BENGALURU-560001.

...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 APPELLANT PRAYING TO SET  
ASIDE THE JUDGMENT OF CONVICTION DATED 20.02.2021  
AND ORDER OF SENTENCE DATED 23.02.2021 PASSED BY THE

Digitally signed  
by VALLI  
MARIMUTHU  
Location: High  
Court of  
Karnataka



I ADDITIONAL DISTRICT AND SESSIONS JUDGE, DAVANAGERE  
IN S.C.No.79/2018 - CONVICTING THE APPELLANT/ACCUSED  
FOR THE OFFENCE P/U/S 302 OF IPC.

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. 79/2018 has preferred this appeal against the judgment of conviction and order on sentence dated 20.02.2021, passed by the I Additional District and Sessions Judge, Davanagere, whereby the accused has been convicted for the offence punishable under Section 302 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC' for brevity) and sentenced to undergo life imprisonment along with fine of ₹25,000/- and in default of fine, to undergo one year imprisonment.

2. The case of the prosecution is that the accused had married Smt. Sudha approximately nine years prior to the incident. Before this marriage, he was married to



Smt. Nayana, from whom he subsequently obtained a divorce. Smt. Nayana had filed a petition for maintenance. The accused and the deceased frequently quarreled over the pending matrimonial dispute concerning Smt. Nayana. On 20.10.2017, at approximately 2:00 a.m., the deceased questioned the accused regarding the payment of maintenance to his first wife instead of saving money for their two children. During the ensuing altercation, the accused took a wire, sat on Smt. Sudha, and strangled her by tying the wire around her neck for 5–6 minutes. As a result, Smt. Sudha succumbed to death despite her struggle to survive.

3. The police registered an FIR based on the report of PW-6. Upon investigation, the prosecution filed charge sheet against the accused for the offence punishable under Section 302 of IPC.

4. The trial court, based on the evidence of PWs-6, 9, 17, and other material witnesses, concluded that the prosecution had proved the charge against the accused



beyond reasonable doubt. Consequently, the accused was convicted for the offence punishable under Section 302 of the IPC.

5. Heard Sri.S. G. Rajendra Reddy, learned counsel for the appellant and Sri. Vijaykumar Majage, learned SPP-II for the respondent-State.

6. Sri S. G. Rajendra Reddy, learned counsel for the appellant, submits that the conviction has been recorded primarily based on the testimony of the child witness, PW-9. He contends that the trial court has relied on evidence of hearsay witnesses. There was no motive for the accused to kill the deceased.

6.1 The learned counsel further submits that the deceased was the second wife of the accused and was aware of the pending matrimonial dispute with his first wife. He argues that the deceased frequently provoked the accused by raising trivial issues. The incident, according to the learned counsel, occurred due to provocation by the



deceased and was a result of sudden impulse, without any premeditation or intent to kill.

6.2 The learned counsel in alternative submits that if this Court holds that the accused caused the death of the deceased, the case falls within the exceptions to Section 300 of the IPC. Accordingly, he pleads that the conviction under Section 302 of the IPC, as recorded by the trial court, be modified to one under Section 304 Part II of the IPC.

7. Sri Vijaykumar Majage, learned SPP-II appearing for the respondent-State, submits that the evidence of PW-9, along with the testimonies of other witnesses, conclusively establishes that the accused caused the death of the deceased. He contends that the act was premeditated and that the nature of the weapon used for strangulation demonstrates the prior preparation by the accused.

7.1 The learned SPP-II further argues that the present case does not fall within the exceptions to Section 300 of



the IPC. Accordingly, he submits that the conviction recorded under Section 302 of the IPC is justified. With these submissions, he prays to uphold the order of the trial court without interference.

8. Having considered the submissions of the learned counsel for both parties and upon meticulous examination of the records, this Court finds that PWs-3, 4, 6, 9, 13, 17, 25, and 26 are prominent witnesses.

9. PW-3, the uncle of the deceased, deposed that he had seen the dead body in the house of the accused and observed marks on the neck of the deceased. However, the other statements are hearsay information. PW-6, the complainant and younger brother of the deceased, corroborated the presence of marks on the neck of the deceased. He further stated, based on the information provided by PW-9, that the accused was quarreling with the deceased, after which he sat on her stomach and strangled her, he reported to police as per Ex.P14-complaint.



10. PW-9, the daughter of the deceased and an eyewitness, is a minor. She testified about the quarrel between the accused and the deceased and stated that the accused subsequently sat on the stomach of the deceased and strangled her using a rope. She identified the rope as MO-1, stating that it was used to commit the offence. The defense extensively cross-examined PW-9. However, throughout her cross-examination, she remained consistent in her testimony. Her evidence unwaveringly supports the prosecution case, establishing that the accused and the deceased were quarreling, following which the accused sat on the stomach of the deceased and killed her by strangulating with the rope.

11. PW-13, the father of the accused, is a hearsay witness to the incident. The prosecution treated him hostile and cross-examined him to establish the marriage of the accused with his first wife. PW-17 is the doctor who conducted the autopsy on the deceased. He observed external injuries on the body, and as per the post-mortem



report (Ex.P27), the cause of death was certified as ligature strangulation around the neck. PW-25, the first wife of the accused, admitted to the existence of a pending matrimonial dispute and the awarding of monthly maintenance. She also deposed that she has two children born from their marriage. However, she is a hearsay witness to the incident.

12. PW-9 is the sole eyewitness to the incident, while PW-17 is an expert witness. The incident occurred inside the house, and apart from PW-9, no other witnesses had direct knowledge of the occurrence. As of the date of recording her testimony, PW-9 was nine years old. She has provided a detailed account of the incident, which is corroborated by the other prosecution evidence. Despite being subjected to extensive cross-examination, PW-9 remained consistent in her deposition. She consistently narrated that on the date of the incident, the accused and the deceased were engaged in a quarrel, during which the accused sat on the stomach of the deceased and



strangled her with a rope. She further deposed that despite the deceased screaming, he continued to constrict her neck with the rope, ultimately causing her death. The evidence of PW-9 conclusively establishes that the accused caused the death of the deceased by strangulation. Her testimony is further corroborated by the medical evidence of PW-17 and the post-mortem report marked as Ex.P27.

13. The assessment of the evidence adduced by the prosecution, it stands proved that the accused caused the death of the deceased by strangulation.

14. The learned counsel for the appellant has advanced arguments on the proportionality of the sentence. It is the case of the appellant that there was neither preparation nor premeditation to cause the death of the deceased. The incident occurred due to sudden provocation by the deceased during a sudden quarrel. It is further contended that the accused did not have any undue advantage over the deceased. In light of the submissions made by the learned counsel for the appellant, it is necessary to



examine the applicability of the exceptions provided under Section 300 of the IPC.

15. PW-9, the sole eyewitness present in the house at the time of the incident, consistently testified that the accused and the deceased were engaged in a quarrel. During the altercation, the accused sat on the stomach of the deceased and strangled her to death. PW-25, the first wife of the accused, admitted to their divorce and the pending matrimonial dispute concerning maintenance for herself and their children. Similarly, PW-13, the father of the accused, admitted that the deceased was the second wife of the accused. According to the prosecution, the quarrel between the accused and the deceased began at approximately 2:00 a.m., during late-night hours. PW-9 deposed that she had slept alongside the accused and the deceased after dinner, and the alleged incident occurred around 2:00 a.m.

16. The testimonies of various witnesses, particularly PW-25, indicate the existence of a dispute regarding the



payment of maintenance to the first wife and her children. The accused, was a lorry driver. He was bound to pay maintenance in compliance of court order, which naturally impacted the financial resources available for the deceased and her children. It is not uncommon for a wife to raise concerns about financial contributions by her husband to his divorced wife. Notably, the prosecution has not alleged that the accused was demanding money from the deceased. Instead, the evidence suggests that the deceased initiated a quarrel over the financial obligations of accused towards his first wife. That this issue was raised during odd hours when the accused was asleep. It is plausible that he initially attempted to pacify the deceased, and upon failing to do so, a sudden quarrel ensued, leading to the accused acting under sudden provocation in the heat of passion.

17. These circumstances indicate that the provocation was caused by the deceased, and she was not at an undue disadvantage. There is no evidence of premeditation,



preparation, or motive on the part of the accused to kill the deceased. Furthermore, MO-1, the object used for strangulation, is a household item readily available in any residence. There is no evidence to suggest that the accused procured MO-1 in advance as part of a premeditated plan to commit the offence. Hence case is made out to apply exception No.1 to Section 300 of IPC.

18. The trial court was justified in recording conviction of the accused. However the evidence on record is not sufficient to convict the accused for offence under Section 302 of IPC.

19. Upon reconsideration of the evidence as recorded by the trial court, it is evident that the order of conviction and sentencing the accused to undergo life imprisonment is disproportionate. Once it is established that the case falls within one of the exceptions to Section 300 of the IPC, it becomes imperative for the court to examine the applicability of Section 304 of IPC. A careful evaluation of the evidence on record indicates that the incident occurred



due to sudden provocation, in the heat of passion, and without premeditation or undue advantage on the part of the accused.

20. The evidence on record further establishes that the accused has four children, two from his first wife and two from the deceased. The welfare of these children is a relevant mitigating factor to be considered by the court while determining the appropriate sentence under Section 304 of the IPC. In light of the aforementioned reasoning, this Court is of the considered opinion that while the accused, in the act of strangulating the deceased, had the knowledge that such an act was likely to cause death, however there is no evidence to prove that he had the intention to cause death. In the absence of such intent, but with the presence of knowledge of the likelihood of death, the case falls within the ambit of Part II of Section 304 of IPC. Hence the order of conviction under Section 302 of the IPC is modified to Section 304 Part II of the IPC. As evident from the record, the accused is serving



sentence and has completed seven years and three months imprisonment.

21. In view of the foregoing, the following order is passed:

**ORDER**

- (i) Appeal is partly allowed.
- (ii) The judgment of the trial court convicting the accused for the offence punishable under Section 302 of Indian Penal Code, 1860 and the sentence imposed thereon is set aside. Instead the accused is held guilty of the offence punishable under Section 304 part II of Indian Penal Code, 1860 and he is sentenced to imprisonment for the period that he has already spent in jail. He is also directed to pay fine of Rs.10,000/- in default of which he shall undergo further imprisonment for a period of one month.



(iii) The accused shall be set at liberty forthwith if  
his presence is not necessary in any other case.

Communicate this order to the jail authorities  
forthwith.

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

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