



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH 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. 1574 OF 2017

Between:

1. Goneppa
S/o Sangappa,
Aged about 53 years,
Occ: Agriculture

2. Sri Mahalingappa
S/o Sangappa,

(Appeal against appellant 2 abated
vide court order dated 20.09.2023)

3. Sri Nagappa @ Nagaraja
S/o Sangappa,
Aged about 40 years,
Occ: Agriculture

4. Smt. Rekhamma
W/o Late Kotreshi
Aged about 34 years,
Occ: Agriculture

All are R/o Basavankote Village,
Jagaluru Taluk,
Davanagere District-577 513.

...Appellants

(By Sri C.H.Jadhav, Senior Advocate for
Sri Chethan Jadhav, Advocate;
Vide order dated 20.09.2023 appeal
in respect of appellant No.2 is abated)

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KUMAR M

Location: HIGH
COURT OF
KARNATAKA



And:

The State of Karnataka
by Bilichodu Police Station,
Jagalur Taluk,
Davanagere District.
Represented by State Public Prosecutor,
High Court Building,
Ambedkar Veedhi
Bengaluru-560 001.

...Respondent

(By Sri Vijaykumar Majage, SPP-II)

This Criminal Appeal is filed u/s.374(2) Cr.P.C. praying to set aside the judgment and order of conviction dated 31.08.2017 and sentence dated 04.09.2017 passed by the Principal District and Sessions Judge, Davanagere, in S.C.No.59/2014 - convicting the appellant/accused 1 to 4 for the offence p/u/s 302 and 201 r/w 34 of IPC.

Date on which the appeal was reserved for judgment	21.01.2025
Date on which the judgment was pronounced	28.02.2025

This Criminal Appeal, having been heard & reserved, coming on for pronouncement this day, judgment was delivered therein as under:



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

CAV JUDGMENT

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

This appeal is by all the four accused who have stood convicted for the offences punishable under Sections 302 and 201 read with Section 34 of Indian Penal Code.

2. The accused faced trial on the allegation of having killed Bheemappa, husband of PW5-Usha, at about 12 noon on 25.02.2014 in a village, Basavanakote, which is the maternal home of PW5. Prosecution case is that Bheemappa had illicit relationship with accused No.4 who was a widow. Accused 1 to 3 are the brothers-in-law of accused No.4. PW5, accompanied by her children, went to her parents' house a few days before 25.02.2014 in connection with a car festival in her village. On



25.02.2014, Bheemappa also went to Basavanakote to see the car festival and at that time he went to the house of accused No.4 on 25.02.2014. Around 3.00 p.m on 25.02.2014, PW1-Dodda Basappa, the father of Bheemappa received a telephone call and came to know that his son had committed suicide by hanging in the house of accused No.4. Immediately he came over to Basavanakote, saw the dangling dead body of his son in the kitchen of the house of accused No.4, he brought down the dead body by cutting the saree which was used for hanging. As he saw injuries on the legs, bleeding from scrotum and protruded tongue, he suspected that accused might have killed his son. He made a report of this incident to police on 26.02.2014. Registration of FIR followed investigation and charge sheeting the accused.



3. The assessment of the evidence made by the trial court shows that the incident was a culpable homicide that amounted to murder. Rejecting the defence version that Bheemappa committed suicide, the trial court held that the accused inflicted injuries to the testicles of Bheemappa, strangled him and then hanged the dead body to a roof beam to simulate that he had hanged himself. The other specific findings of the trial court will be referred to later contextually.

4. Vide order dated 20.09.2023, death of appellant No.2 was reported and thereby the appeal against him stood abated.

5. We have heard the arguments of Sri C.H.Jadhav, learned senior advocate who argued on behalf of Sri Chethan Jadhav, advocate for the appellants No.1, 3 and 4 and Sri Vijayakumar Majage, learned SPP-II for the respondent/State.



6. It was the argument of Sri C.H.Jadhav that there were no eyewitnesses to the incident and since the case was based on circumstantial evidence, the prosecution should have established the motive. The motive projected is that Bheemappa had illicit relationship with accused No.4. Accused Nos.1 to 3 who are the brothers-in-law of accused No.4 opposed the illicit relationship and had asked Bheemappa to desist from his relationship with accused No.4. In spite of that, he visited the house of accused No.4 on the date of alleged incident and therefore all the four accused killed him. But this motive has not been proved by the prosecution. Though accused Nos.1 to 3 are the neighbours of accused No.4, their presence in the house of latter has not been proved. The prosecution examined PW10 and PW11 to prove that they saw accused Nos.1 to 3 coming out of the house of accused No.4, but they turned hostile. The trial court has just drawn



inference about their presence without there being supporting evidence. This inference should not have been drawn. It is true that the presence of accused No.4 in her house with Bheemappa cannot be denied because she herself adduced evidence as DW1. In addition the defence also examined two more witnesses in support of their case. The trial court has not at all given any importance to defence evidence even though it is a settled principle that defence evidence must be given as much importance as that of the prosecution. The testimony of DW1 clearly establishes that Bheemappa came to the house of fourth accused and tried to commit rape on her. When she protested and went out of the house telling that she would bring her brothers-in-law, Bheemappa committed suicide by hanging in the kitchen in the house of accused No.4. He had latched the door from inside. It has come in the defence evidence



that the police broke open the door. This shows that he committed suicide.

6.1. It is the prosecution case that all the accused, after killing Bheemappa, latched the door from inside the house and escaped from that place through the chimney, but neither in the spot sketch nor in the spot panchanama existence of chimney is shown. The spot panchanama also does not indicate any damage to the door. If the door was forcibly opened, that should have been indicated. PW1, PW3, PW5, PW6 and PW7 are not eyewitnesses, they have only expressed suspicion about involvement of accused Nos.1 to 4 and the trial court has held that their evidence is believable. Thus seen, there is a lot of discrepancies in the case of prosecution. There is no acceptable proof. The trial court should have given the benefit of doubt to the accused.



Therefore there is a case to interfere with the impugned judgment to set it aside.

7. Sri Vijaykumar Majage argued that the circumstances revolving around the involvement of the accused are proved. The relationship between Bheemappa and accused No.4 is proved, it becomes more clear from the evidence of DW1. She has deposed that she caused injuries to scrotum of Bheemappa. Medical evidence rules out the theory of hanging. There is no dispute that the death occurred inside the house of accused No.4. Since it was not a suicide, accused No.4 should have explained how Bheemappa met unnatural death in her house. She herself has stated that she brought accused Nos.1 to 3 when Bheemappa tried to commit rape on her. The trial court has rightly assessed the evidence to record conviction and there are no grounds to interfere with the well reasoned judgment of the trial court.



8. The trial court has drawn conclusion that the evidence on record discloses that accused Nos.1 to 3 were in the village on the date of incident. This conclusion has been drawn based on the evidence of DW1 i.e., accused No.4 who stated that she went out of the house to bring accused Nos.1 and 2 who were working in their fields and accused No.3 who was present in his shop. The defence has failed to prove that accused Nos.1 to 3 were not present in the village. The evidence given by PW13, the doctor who conducted post mortem examination rules out suicidal death and his opinion was it was a clear case of homicidal death. The presence of petechial hemorrhage shows that Bheemappa had struggled for life at the time of attack on him by all the accused. They were all defence marks. Scrotum was swollen and there was a ligature encircling the neck. These ante-mortem injuries indicated that it was not a suicide instead it was a case of homicide. The



evidence of PW5 who is the wife of Bheemappa shows that accused No.4 came and took Bheemappa with her. PW5 has clearly stated existence of illicit relationship between her husband and accused No.4. Since the death occurred in the house of accused No.4 and the presence of accused Nos.1 to 3 can be inferred, they must explain how Bheemappa met unnatural death in the house of accused No.4. Their failure to give explanation and the defence evidence being unnatural, the involvement of accused Nos.1 to 4 would get established. After killing Bheemappa they hanged the dead body, this shows their intention to destroy the evidence by simulating a situation of suicide. For these reasons offences under Sections 302 and 201 of IPC would get established.

9. Now the findings of the trial court is necessary to be assessed in the light of the



evidence brought on record by the prosecution. It is a case based on circumstantial evidence. There is no dispute that incident occurred in the house of accused No.4. In fact the evidence given by DW1 shows that Bheemappa came to her house and expressed his desire that he wanted to have a male issue through her. That apart the evidence given by PW1 and PW3 shows that their daughter-in-law i.e., PW5 had gone to her parents house at Basavanakote after visiting Kottureshwara Car Festival (Jathra). Three or four days after PW5 went to her parents' house, Bheemappa also went to Basavanakote. They received the news about death of their son Bheemappa. They went and saw the dead body of Bheemappa in the house of accused No.4. PW1 gave report to the police for registration of FIR. PW5 had also stated that her husband came to Basavanakote after visiting the Jathra at Kotturu. On the next day morning accused No.4 came and took her husband with her.



She stated that there was illicit relationship between them. After coming to know about death of her husband, she went to the house of accused No.4 and saw the hanging dead body of her husband. She also saw bleeding from private part. She stated that the police came, removed the noose and brought down the body.

10. PW6 and PW7 are the parents of PW5 and their evidence is on lines with their daughter. They stated that there existed illicit relationship between Bheemappa and accused No.4.

11. As the evidence discloses sufficient evidence about illicit relationship between accused No.4 and Bheemappa, the begging question is whether there is a sufficient evidence to hold accused Nos.1 to 3 being responsible for the death of Bheemappa just because they happened to be the brothers-in-law of accused No.4 in whose house the death occurred. To prove the



involvement of accused Nos.1 to 3 the prosecution examined PW10 and PW11. Through these witnesses, the prosecution wanted to prove that when they were standing near the house of accused No.4, they heard a quarrelling voice inside her house and some time later all the four came out, closed the door, left that place and at that time they all looked annoyed. After seeing this, they entertained suspicion, gave information to PW5, PW6 and PW7 and went inside the house of accused No.4 and saw the hanging dead body. But these two witnesses turned hostile, did not support the prosecution case and the public prosecutor made no effort to discredit them in the cross examination to prove that they turned hostile intentionally and purposefully. That means the presence of accused Nos.1 to 3 in the house of accused No.4 has not stood proved. The evidence given by PW1, PW3, PW4, PW5, PW6 and PW7 only shows their suspicion about the involvement of



accused Nos.1 to 4 just because death occurred in the house of accused No.4 and accused Nos.1 to 3 were the brothers-in-law of accused No.4.

12. Even if the defence version is seen, the presence of accused Nos.1 to 3 does not get established. The evidence of DW1 shows that when Bheemappa tried to molest her, she squeezed his testicles in anger and went out of her house saying that she would bring her brothers-in-law. When she returned to her house with her brothers-in-law i.e., accused Nos.1 to 3, they saw Bheemappa having hung himself. Though the defence version of suicidal hanging can be discarded, it does not lead to an automatic inference about the presence of accused Nos.1 to 3 and their involvement in the death of Bheemappa, for the burden is on the prosecution as to how and when accused 1 to 3 came to the house of accused



No.4. This evidence is not available, and as referred to above PW10 and 11 turned hostile.

13. Ex.P21 is the spot sketch. This does not show existence of chimney. Ex.P9 is the spot panchanama. If really the door had been broken open, the damages caused to the door should have been mentioned in it. But Ex.P9 does not indicate the condition of door. The existence of chimney is also not written in this panchanama. This is one aspect that seriously affects the prosecution version. It is true that evidence given by PW13 and the post mortem report as per Ex.P14 rule out the suicidal death, but this evidence alone cannot be based to draw a conclusion about involvement of the accused. Merely because accused No.4 admits her presence and has stated about inflicting an injury to the testicles of Bheemappa, her involvement cannot be inferred. In fact her answers in the cross examination indicate that she



might have had consensual intercourse with Bheemappa and it is highly impossible that she would have gone to the extent of inflicting injuries to the testicles. Investigation does not appear to be truthful and suppression of facts can be inferred. Therefore in our opinion the prosecution case has not stood established. Even if the reasons assigned by the trial court are acceptable, it is the other view possible. When two views can be taken, the benefit should go to the accused.

14. From the above discussion we are of the view that the conviction recorded by the trial court cannot be sustained. It must be set aside. Consequently the following:

ORDER

- i. The appeal is allowed.*
- ii. Judgment of conviction dated 31.08.2017 passed by the Principal District and Sessions Judge, Davanagere in S.C.No.59/2014 and the order of sentence*



dated 04.09.2017 imposed on the appellants/accused Nos.1 to 4 is set aside.

- iii. In view of death of accused No.2, the appeal against him stands abated.*
- iv. The accused Nos.1, 3 and 4 are acquitted of the offences charged against them.*
- v. The bail bonds and surety bonds executed by the appellants 1, 3 and 4/accused Nos.1, 3 and 4 stand cancelled.*
- vi. Send back the trial court records with a copy of this judgment forthwith.*

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

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