

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.114/2018

BETWEEN:

- 1 . SRI H. V. VENKATACHALAPATHY @
CHALAPATHY,
S/O VENKATARAYAPPA,
AGED 52 YEARS,
R/O K. HOSAHALLI,
SRINIVASPURA TALUK,
KOLAR DISTRICT-563135.

...APPELLANT

(BY SRI VEERANNA G. TIGADI, ADVOCATE)

AND:

- 1 . STATE OF KARNATAKA ,
REP. BY SUB-INSPECTOR OF POLICE,
SRINIVASAPURA POLICE STATION,
KOLAR DISTRICT,

REPRESENTED BY THE
STATE PUBLIC PROSECUTOR,
HON'BLE HIGH COURT OF KARNATAKA,
BENGALURU-560001.
2. MANJUNATH,
S/O LATE RAMAKRISHNAPPA,
CARPENTER, YELDOOR VILLAGE,

SRINIVASAPURA TALUK,
KOLAR DISTRICT-563135.

...RESPONDENTS

(BY SRI VIJAYKUMAR MAJAGE, SPP-II FOR R1;
SMT. VEENA RAO, ADVOCATE FOR R2)

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 20.12.2017 AND ORDER OF SENTENCE DATED 22.12.2017 PASSED BY THE II ADDITIONAL SESSIONS JUDGE, KOLAR IN SPL.S.C.No.02/2013 - CONVICTING THE APPELLANT/ ACCUSED No.2 FOR THE OFFENCE P/U/S 302 OF IPC AND SECTION 3(2)(v) OF SC/ST (PREVENTION OF ATROCITIES) ACT.

<i>DATE ON WHICH THE APPEAL WAS RESERVED FOR JUDGMENT</i>	17.01.2025
<i>DATE ON WHICH THE JUDGMENT WAS PRONOUNCED</i>	28.02.2025

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT, COMING ON FOR PRONOUNCEMENT THIS DAY, JUDGMENT WAS PRONOUNCED AS UNDER:

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

C.A.V. JUDGMENT

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

This appeal by the accused No.2 is against the judgment and order of sentence dated 20.12.2017 in Spl.S.C.No.02/2013 on the file of the II Additional Sessions Judge, Kolar. Accused No.1 is acquitted, while accused No.2 is convicted for an offence punishable under Section 302 of the Indian Penal Code, 1860 ('IPC' for short) and sentenced to imprisonment for life, with a fine of Rs.10,000/- and in default, further imprisonment of six months and one year imprisonment for Section 3(2)(v) of SC/ST (Prevention of Atrocities) Act, 1989.

2. The case of the prosecution is that accused No.2 and deceased Lakshmiddevamma were in an illicit relationship. About two years back, she discontinued her relationship and she developed illicit relationship with accused No.1. Deceased and accused No.2 were having adjacent shops. The deceased was abusing accused No.2

and his family members. In the meantime deceased discontinued her relationship with accused No.1 and developed contact with another person. Due to these developments, accused Nos.1 & 2 decided to kill Lakshmiddevamma. When the deceased went to her daughter Pramila's house on 16.06.2012 and while she was sitting below a banyan tree in Srinivasapura Town at 6.45 P.M., the accused No.2 took her in Hero Honda two-wheeler bearing No.KA-05-W-9536 as a pillion rider through Lakshmisagara to the land of Jayappa at 7.45 P.M. Accused No.1 joined accused No.2 and made the deceased to drink beer. Thereafter, accused No.2 caused grievous injury with a knife on her neck and accused No.1 burnt her face and leg with a cigarette and committed her murder.

3. The Srinivasapura Police Station registered the complaint for offence punishable under Section 302 of IPC and FIR was submitted to the Court. The trial court, after the charge sheet was filed, framed charges for offence punishable under Section 302 read with Section 34

IPC. As the deceased was a member of the SC/ST community, the charge was also framed for an offence punishable under Section 3(2)(v) of the SC/ST (Prevention of Atrocities) Act, 1989.

4. The trial court, on assessment of the evidence and material available on record, based on circumstantial evidence, convicted accused No.2 for the offences punishable under Section 302 of IPC and Section 3(2)(v) of SC/ST (Prevention of Atrocities) Act, 1989.

5. This court by order dated 06.12.2018, suspended the sentence imposed by the trial Court and the appellant was released on bail upon his executing a personal bond for a sum of Rs.1,00,000/- and depositing the fine amount.

6. Heard Shri Veeranna G.Tigadi, learned Counsel appearing for the appellant-accused, Shri Vijaykumar Majage, learned SPP-II for respondent No.1-State and Smt.Veena Rao, learned Counsel for respondent No.2.

7. Shri Veeranna G.Tigadi, learned Counsel appearing for the appellant submits that as per the prosecution, the

motive of accused No.1 and 2 was the same. As per the prosecution, the deceased was in illicit relationship with accused No.2; thereafter, she developed relationship with accused No.1. Later the deceased developed relationship with another person, ignoring accused Nos.1 and 2. Hence, accused Nos.1 and 2 decided to kill the deceased. However, the trial Court has acquitted accused No.1, and on the same grounds and evidence, the conviction of accused No.2 is incorrect.

8. The recovery of M.O.1-knife was not at the instance of the accused. As per Ex.P4-seizure mahazar, a pair of ear rings was seized on 20.06.2012, whereas in the list of properties sent to the Magistrate as per Ex.P47, the said ear rings were not produced before the court.

8.1. Learned counsel further submits that mere recovery of the knife at the instance of the accused is insufficient to declare the accused guilty of the offence unless other corroborative evidence is available. The prosecution has not proved that the blood stains on M.O.1-knife and

M.Os.17, 18 & 19 - clothes, have matched with the blood group of the deceased.

8.2. Learned counsel further submits that Ex.P40-post mortem report would establish that the injuries causing death were not inflicted by M.O.1-knife as alleged by the prosecution.

8.3. It is further submitted that P.W.1, son of the deceased, has stated that M.O.1-knife was seized at the place of the incident, whereas as per Ex.P14, M.O.1 was recovered at a distance as identified by the accused. It is further submitted that though the mobile phone, clothes, and knife were recovered, there is no scientific evidence for traces of the deceased's blood.

8.4. It is submitted that though accused No.1 was charge-sheeted on the same evidence, his acquittal is not challenged by the State and for the same reason, accused No.2 is to be acquitted. The findings recorded by the trial Court are bereft of reasons and evidence.

8.5. The recovery of ear rings as per Ex.P4 from the accused, belonging of the same to the deceased, is not proved. Though an attempt is made to establish that the motive was the dispute over joint ownership of the shop, no evidence is produced to prove such a motive.

8.6. As alleged by the prosecution, the deceased was made to drink beer but no toxics were found in Ex.P40-P.M. report.

8.7. Learned Counsel for the appellant further submits that the appellant-accused No.2 was not involved in the alleged offence of killing the deceased, and hence the conviction and punishment under Section 302 of IPC and Section 3(2)(v) of SC/ST (Prevention of Atrocities) Act, 1989, is not sustainable. As alleged by the prosecution, the motive was not because the deceased was a member of a scheduled caste or scheduled tribe community.

9. Shri Vijaykumar Majage, learned SPP-II submits that accused No.2 and the deceased had adjacent shops. Accused No.2 had advanced Rs.2,00,000/- to the

deceased. When the deceased developed a relationship with accused No.1, he insisted on a refund of the advance. Further, the deceased was a lessee under accused No.2. The motive to eliminate the deceased was a dispute over shops.

9.1. Learned SPP-II further submits that as the offences are punishable under IPC with imprisonment for a term of ten years or more, the deceased was a member of SC & ST community and the ingredients of Section 3(2)(v) of SC/ST (Prevention of Atrocities) Act, 1989 are attracted. Hence, the trial Court has rightly convicted the accused for the said offence.

9.2. As per Ex.P4, the ear rings of the deceased, the Hero Honda motorcycle used for the crime and the M.O.1-knife used in the crime were recovered at the instance of accused No.2. The ear rings are identified by P.W.18-mahazar witness. It is further submitted that as per Exs.P13 and 14, the accused does not explain the blood stains found on the clothes and knife.

9.3. P.W.24-the doctor deposed that the injuries found on the dead body could be caused with M.O.1-knife. Learned SPP-II, referring to FSL Report dated 27.09.2012 in the trial court record on page No. 105, which is not marked, submits that the presence of human blood stains of 'A' Group was detected on blood-mixed mud, knife, shirt, pant and panche. On seizure of the knife, learned SPP-II submits that it was seized from the close area of the crime scene, and hence, there is no contradiction in the testimony of P.W.1.

10. Smt.Veena Rao, learned counsel appearing for respondent No.2 reiterated the submissions of SPP-II.

11. We have heard the learned counsel for the parties and perused the record.

12. The death of deceased Lakshmiddevamma due to the injuries inflicted on her body is not in dispute. However, assessment of evidence is required to find out the connection that accused No.2-appellant had in inflicting the said injuries. Before proceeding to examine the

findings recorded by the trial court, it would be relevant to assess the evidence on record.

13. P.W.1- The son of the deceased is examined to establish the motive. As per the testimony of P.W.1, the deceased was a lessee under accused No.2. Accused No.2 and the deceased were in an illicit relationship. He was informed that his mother had been killed near Kolathur gate. He filed a complaint as per Ex.P1. He testified regarding the police visiting the crime scene, preparing the panchanama and ascertaining the caste of accused Nos.1 & 2. P.W.1 further speaks of the seizure of a knife, a beer bottle and mud samples. The defence extensively cross-examined P.W.1 wherein he admitted that there is no document for leasing the shop by accused No.2 in favour of his mother. He further stated that his mother owned the shop. He denied the suggestion that his mother was not a lessee under accused No.2. He further admits that there are no documents to prove that complaint was registered against accused No.2 by her mother. The defence questioned P.W.1 as to with whom

his mother was residing. P.W.1 has not answered and remained silent.

13.1. P.W.2 is the son-in-law of the deceased. This witness testified that the deceased had taken the shop for lease for Rs.2,00,000/- from accused No.2. Illicit relationship of the deceased with accused No.2 is admitted. He stated about filing a complaint with Srinivasapura Police. He stated that police informed him about the death of the deceased. P.W.2 denied the suggestion of the defence that there was no lease transaction between accused No.2 and the deceased. Further, he denied the suggestion that they had no illicit relationship. It is further stated that accused No.2 took the shop on lease for Rs.2,00,000/- and allowed the deceased to continue her business. There was a dispute on the lease amount of Rs.2,00,000/- between them. However, he admitted that there are no documents or other evidence to prove the lease and money transaction. The contradictions can be found in the testimonies of P.Ws.1 and 2. As per P.W.1, the deceased was running

business in a shop owned by accused No.2. But, as per P.W.2, accused No.2 took the shop on lease, and the deceased was carrying on her business. Both P.Ws.1 & 2 admit that there are no documents in regard to lease transaction of the shop.

13.2. P.W.3 is a witness to Ex.P3-inquest report. This witness has turned hostile. The prosecution has cross-examined. However, no worthwhile information is elicited. P.W.4 is another panch witness to Ex.P3.

13.3. P.W.5 is another son of the deceased Lakshmiddevamma. He admitted the illicit relationship of the deceased with accused No.2 and the existing dispute over the shop. He stated that the shop where his mother was carrying on business was earlier owned by her and later it was transferred in favour of accused No.2. However, he admits that he has no document to prove the same.

13.4. P.W.6 is examined as panch witness to Ex.P3. He has turned hostile. In the cross-examination, he denied

the suggestion of deposing falsehood to help the accused. P.Ws.7 to 12 have turned hostile and not supported the prosecution case. P.W.13 is a panch witness to Exs.P11 to 13 (seizure mahazars). P.Ws. 14 and 18 are panch witnesses to Ex.P14, which records the seizure of a knife. They have stated that they also seized ear rings. P.W.15 has testified to identifying the deceased. P.W.16 is a photographer at the crime scene. P.W.17 is the mahazar witness to Exs.P11 and 12. He has turned hostile. Though cross-examined, no valuable information was elicited. P.W.19 is a forensic witness. As per Exs.P23 & P24, no poisonous chemicals were detected in the articles. Further, he has certified traces of ethanol in beer bottle.

13.5. P.W.24 is a doctor in the General Hospital at Srinivasapura. He conducted post-mortem of the dead body. It is the testimony of this witness that death was due to hemorrhage and shock caused by sharp instrument. This witness explained the nature of the injury found on the dead body. He testified that there is a

possibility that injuries found on the dead body of Lakshmidevamma were caused by M.O.1. P.W.24 issued post-mortem report as per Ex.P40 and the certificate, Ex.P42. Though this witness was subjected to cross-examination and suggestions were made, no material information was elicited.

13.6. P.W.25 is a doctor who examined the dead body to find any sexual assaults. It is opined that there was no sexual assault on the deceased.

13.7. P.W.26 is the Investigation Officer. This witness testifies the course of investigation, recording of voluntary statement from accused No.1, discovery and recovery of clothes, ear rings and two wheeler. He testifies the recording of the voluntary statement of the accused and recovery of material objects. Though this witness was cross-examined, no contrary evidence is elicited.

(i) **MOTIVE:**

14. According to the prosecution, there are two motives for the murder of the deceased. Again there are two

versions to first motive. In the first version, the deceased was allegedly involved in an illicit relationship with accused No.2. During this period, accused No.2 had leased out his shop for Rs.2,00,000/-. Another version suggests that accused No.2 had taken the shop on lease and allowed the deceased to run her business there. When the deceased ended her relationship with accused No.2 and became involved with accused No.1, accused No.2 demanded the return of the lease amount and asked her to vacate the shop. As per the prosecution witnesses, this dispute was brought to the police station. However, the prosecution has not provided any evidence to substantiate the alleged dispute over the shop. Meanwhile, the deceased later ended her relationship with accused No.1 and became involved with another individual. This turn of events was allegedly intolerable to both accused Nos.1 and 2, leading them to conspire to eliminate her. In execution of this plan, she was taken to the scene of the incident and murdered using M.O.1.

14.1. In the absence of any evidence adduced by the prosecution to establish the dispute over the shop, it would not be safe to conclude that the said dispute constituted the motive for the murder of the deceased. Moreover, the testimonies of P.W.1 and P.W.5, sons of the deceased, and P.W.2, the deceased's son-in-law, are inconsistent and contradictory. P.W.1 deposed that the deceased was a lessee under accused No.2, whereas P.W.2 stated that accused No.2 had taken the shop on lease and permitted the deceased to conduct her business there. Contrarily, P.W.5 testified that the shop was purchased by the deceased and was subsequently transferred in favor of accused No.2. These assertions remain unsubstantiated by any documentary evidence. In the absence of cogent and corroborative evidence, the claim of prosecution that the dispute over the shop served as the motive for the murder of the deceased, Lakshmidevamma, is difficult to believe.

14.2. Another motive put forth by the prosecution is that the deceased was allegedly involved in an illicit

relationship with accused No.2. During this relationship, she is said to have received financial support through the lease of the shop. Subsequently, the deceased distanced herself from accused No.2 and entered into an illicit relationship with accused No.1. Later she further distanced both accused Nos.1 and 2 and developed an illicit relationship with another person. This turn of events, according to the prosecution, displeased both the accused, leading them to conspire together to eliminate the deceased.

14.3. The prosecution's theory is without any foundation. The evidence of prosecution is consistent regarding the illicit relationship between the deceased and accused No.2. Furthermore, accused No.1 was charge-sheeted for the offence, with the alleged motive being the deceased distancing from him and her involvement in an illicit relationship with another person. However, the trial court acquitted accused No.1. As rightly pointed out by the learned Counsel for the appellant, if, as per the prosecution's case, the motive for both accused Nos.1 and

2 was the same, the acquittal of accused No.1 would logically benefit accused No.2, insofar as the shared motive is concerned. Even it is to be held that this was the motive behind killing of deceased, the said motive is unavailable to prosecution, having regard to the acquittal of accused No.1 for the same motive and offence.

14.4. This motive is considered as one of the circumstantial evidence. However, the acquittal of accused No.1 and the conviction of the appellant/accused No.2 cannot lead to the conclusion that the prosecution has established the guilt of accused No.2 beyond reasonable doubt.

(ii) **LAST SEEN THEORY**

15. Another piece of circumstantial evidence relied upon by the prosecution is the "last seen" theory. According to the prosecution, the deceased was sitting under a banyan tree in Srinivasapur Town at 6:45 P.M. on 16.06.2012, when accused No.2 took her as a pillion rider on his Hero Honda motorcycle bearing registration No. KA-05-W-9536. To substantiate this, the prosecution examined P.Ws. 10 to

12, who were supposed to testify that they had seen the deceased last in the company of accused No.2 on his motorcycle. However, these witnesses did not support the prosecution case and turned hostile. There are no corroborative evidence to prove the last seen theory and it cannot be believed that P.Ws.10 to 12 are withholding the truth. The prosecution has failed to record any evidence suggesting that these witnesses were intentionally withholding the truth. There is no sufficient reason to credit the testimony of these witnesses. Consequently, the prosecution has not established that the deceased was last seen alive with accused No.2. In the absence of such evidence, the "last seen" theory, as a circumstantial piece of evidence, cannot be relied upon by the prosecution to prove the guilt of accused No.2.

(iii) **RECOVERY OF MATERIAL OBJECTS:**

16. The recovery of material objects at the instance of the accused is one of the circumstances on which the prosecution has developed its case. The most important recovery is M.O.1-knife. Here it is necessary to refer to

Ex.P40- P.M. report to examine the alleged injuries caused due to stabbing with M.O.1. The P.M. report reads as under:

"Neck on the left side showed a penetrating injury measuring 15cm in length, 6 cm wide at its middle part and 60cm deep along the anterior border of left sternocleidomastoid muscle at its upper 1/3 causing laceration and penetrating injury to surrounding muscles including left carotid artery, left great auricular artery and left external jugular vein causing a rent in the left thoracic inlet with laceration of left pleura and apex of left lung soft clothed blood amount to around 3000 ml was noted in left pleural cavity. Heart was empty including the great vessels.

The dead body of Lakshmidhevamma showed multiple superficial burn injuries over face, near genitalia, over left leg and a deep penetrating injury over the upper part of left side of neck causing massive haemorrhage into the left pleural cavity with a chopped / lacerated wound over the right side of neck indicating massive haemorrhage and shock caused by a violent injury from a sharp edged instrument with burn injury at certain places.

With the above findings tentatively I am of the opinion that the death could be due to haemorrhage and shock caused by sharp instrument. However the final opinion as to the cause of death shall be given after the chemical analysis report from FSL."

16.1. Based on the above findings, P.W.24 concluded that the cause of death was due to hemorrhage and shock resulting from injuries inflicted by a sharp instrument.

According to Ex.P14, M.O.1, the knife, was found in the bushes near the crime scene. The knife is described as having a total length of 11 inches, with the green plastic handle measuring 4½ inches and the remaining 6½ inches comprising the sharp blade of M.O.1.

16.2. According to the testimony of P.W.24, the doctor, a chopped wound was found on the neck, with a penetrating injury extending to the surrounding muscles, reaching up to the apex of the left lung. However, when the findings in Ex.P40, the post-mortem report, are compared with the testimony of P.W.24, it becomes doubtful that the alleged injury was inflicted by M.O.1, the knife. The post-mortem report does indicate that the injury was caused by a sharp-edged instrument. Considering the nature of the injury as recorded in Ex.P40, the post-mortem report, it is difficult to accept that the injury was caused by M.O.1, the knife. It is a well settled principle of law that guilt cannot held to be proved merely on suspicion.

16.3. In view of the finding of this court that the alleged injury resulting in death of Lakshmiddevamma might not

have been caused with the M.O.1-knife, the recovery of M.O.1 and the voluntary statement of accused resulting in recovery would assume less importance.

16.4. Further, the recovery of M.O.1 as recorded in Ex.P14 cannot be considered as material evidence. P.W.14 is the mahazar witness to the recoveries. This witness though supported the prosecution, is not of much assistance to prove the prosecution case.

16.5. The prosecution relied on the recovery mahazar, Ex.P4, to establish the recovery of a pair of ear rings. However, the prosecution has failed to prove that these ear rings belonged to the deceased. Additionally, the recovery of bloodstained clothes belonging to accused No.2 is also relied upon by the prosecution. The learned Counsel for the appellant argued that there is no FSL report to confirm the presence of blood stains on the clothes. However, learned SPP-II, referring to the record, pointed out that the FSL report dated 27.09.2012 confirms the presence of human blood stains on the knife, shirt,

pants, and panche. The experts have identified the blood group as 'A'.

16.6. The mere recovery of bloodstained clothes and knife at the instance of the accused cannot be regarded as conclusive evidence to support the prosecution's case, unless the blood group of the deceased is established and the bloodstains match the deceased's blood group. Furthermore, the prosecution failed to test the blood group of accused No.2.

16.7. It is apt to refer to the Judgments of the Hon'ble Supreme Court on relevancy and extent of reliance on blood stained material objects.

17. In *Madhav Vs. State of M.P., (2021) 17 SCC 600*, it is held as:

29. *Apart from the fact that the witnesses in whose presence the seizure of the weapons was allegedly effected, had turned hostile, there was also one more thing. There is nothing on record to show that the bloodstains said to have been present in those weapons, matched with the blood of the deceased. Unfortunately, the High Court proceeded on a wrong premise that there was scientific evidence to point to the guilt of the accused, merely because as per Ext. P-25 (FSL Report), the knife and lathis said*

to have been seized by the police, contained stains of human blood. The prosecution has not established either through the report of FSL or otherwise, that the bloodstains contained in the knife and lathis were that of the deceased.

30. *We are conscious of the fact that there is a divergence of views on this aspect. In Raghav Prapanna Tripathi v. State of U.P. [Raghav Prapanna Tripathi v. State of U.P., 1962 SCC OnLine SC 34 : AIR 1963 SC 74] , a Constitution Bench of this Court by a majority held that, "... that it would be far-fetched to conclude from the mere presence of bloodstained earth that that earth was stained with human blood and that the human blood was that of the victims...". In Kansa Behera v. State of Orissa [Kansa Behera v. State of Orissa, (1987) 3 SCC 480 : 1987 SCC (Cri) 601] , this Court acquitted the appellant on the ground that though the serologist report found the shirt and dhoti recovered from the possession of the appellant to be stained with human blood, there is no evidence to connect the same with the blood of the deceased. In Surinder Singh v. State of Punjab [Surinder Singh v. State of Punjab, 1989 Supp (2) SCC 21 : 1989 SCC (Cri) 649] , the bloodstains found on the knife allegedly used for the commission of the offence, were established to be human blood. But this Court rejected the prosecution theory on the ground that those bloodstains on the knife were not shown to be of the same group as the blood of the deceased. In Raghunath v. State of Haryana [Raghunath v. State of Haryana, (2003) 1 SCC 398 : 2003 SCC (Cri) 326] , this Court held that the bloodstain, though of a human blood, is not conclusive evidence to show that it belongs to the blood group of the deceased. In Sattatiya v. State of Maharashtra [Sattatiya v. State of Maharashtra, (2008) 3 SCC 210 : (2008) 1 SCC (Cri) 733] , this Court found the credibility of the evidence relating to the recovery of the object used for the commission of the crime, substantially dented, on account of the fact that the bloodstains, though found to be of*

human source, could not be linked with the blood of the deceased.

31. *In contrast, this Court held in State of Rajasthan v. Teja Ram [State of Rajasthan v. Teja Ram, (1999) 3 SCC 507 : 1999 SCC (Cri) 436] , that at times the serologist may fail to deduct the origin of the blood, either because the stain is too insufficient or because of haematological changes and plasmatic coagulation. After referring to the Constitution Bench decision in Raghav Prapanna Tripathi [Raghav Prapanna Tripathi v. State of U.P., 1962 SCC OnLine SC 34 : AIR 1963 SC 74] , this Court held in Teja Ram [State of Rajasthan v. Teja Ram, (1999) 3 SCC 507 : 1999 SCC (Cri) 436] that it is not as though the circumstances arising from the recovery of the weapon would stand relegated to disutility, in all cases where there was failure of detecting the origin of the blood. This Court indicated in Teja Ram [State of Rajasthan v. Teja Ram, (1999) 3 SCC 507 : 1999 SCC (Cri) 436] that, "... the effort of the criminal court should not be to prowl for imaginative doubts..." and that the doubts should be of reasonable dimension, which a judicially conscientious mind entertains with some objectivity.*

18. In **Raja Naykar v. State of Chhattisgarh, (2024) 3 SCC 481**, it is held as:

"29. *It can thus be seen that, the only circumstance that may be of some assistance to the prosecution case is the recovery of dagger at the instance of the present appellant. However, as already stated hereinabove, the said recovery is also from an open place accessible to one and all. In any case, the blood found on the dagger does not match with the blood group of the deceased. In Mustkeem v. State of Rajasthan [Mustkeem v. State of Rajasthan, (2011) 11 SCC 724 : (2011) 3 SCC (Cri) 473 : 2011 INSC 487] , this Court held that sole circumstance of recovery of bloodstained*

weapon cannot form the basis of conviction unless the same was connected with the murder of the deceased by the accused. Thus, we find that only on the basis of sole circumstance of recovery of bloodstained weapon, it cannot be said that the prosecution has discharged its burden of proving the case beyond reasonable doubt.

30. *As already discussed hereinabove, merely on the basis of suspicion, conviction would not be tenable. It is the duty of the prosecution to prove beyond all reasonable doubt that it is only the accused and the accused alone who has committed the crime. We find that the prosecution has utterly failed to do so.*

31. *Insofar as the finding of the High Court that the appellant has failed to give any explanation in his statement under Section 313CrPC is concerned, we find that the High Court has failed to appreciate the basic principle that it is only after the prosecution discharges its duty of proving the case beyond all reasonable doubt that the false explanation or non-explanation of the accused could be taken into consideration. In any case, as held by this Court in Sharad Birdhichand Sarda [Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116 : 1984 SCC (Cri) 487 : 1984 INSC 121] , in a case based on circumstantial evidence, the non-explanation or false explanation of the accused under Section 313CrPC cannot be used as an additional link to complete the chain of circumstances. It can only be used to fortify the conclusion of guilt already arrived at on the basis of other proven circumstances."*

19. Merely relying on the blood stains found on the clothes seized from accused No.2 cannot be considered conclusive evidence to convict the accused, especially when other surrounding circumstances do not support the

case of the prosecution. The prosecution has failed to establish the "last seen" theory. Furthermore, the allegation that the injuries resulting in the death of the deceased were inflicted with M.O.1, the knife, has not been proved. In such circumstances, blood stained clothes cannot be attached with higher significance.

20. The prosecution has heavily relied on the presence of beer bottles at the crime scene, recovered as M.Os.6 to 9 and 11 to 13, to suggest that the accused made the deceased to consume beer as part of the preparation for committing the murder. This contention is to establish one of the circumstances. However, this argument cannot be accepted for two reasons. Firstly, the post-mortem report, Ex.P40, is silent regarding the presence of any toxic substances in the deceased's body. Secondly, this claim was initially made against accused No.1, who was subsequently acquitted by the trial court. The prosecution has accepted the acquittal of accused No.1, and therefore, it is not open for the prosecution to raise this argument against accused No.2.

21. As per testimony of P.W. 18, accused No.2 sustained injuries to his finger. In such circumstances, the identification of the blood group of both accused No.2 and the deceased becomes significant.

22. The conclusion drawn by the trial Court for convicting accused No.2 can be summarized as under:

- a) Circumstantial evidence;
- b) Illicit relationship between accused No.2 and deceased as a motive;
- c) Financial dispute between accused No.2 and deceased;
- d) Last seen theory; and
- e) Recovery of blood stained knife, clothes and motor cycle.

23. The reasons provided by the trial court to convict accused No.2 for causing the death are lacking in substance and unsupported by conclusive evidence that would firmly establish the guilt of accused No.2. All the reasons considered by the trial court are either

presumptive or based on inferences. A conviction cannot be based solely on inferences unless the guilt of the accused is proven beyond a reasonable doubt. As concluded by the trial court, the alleged monetary transactions between accused No.2 and the deceased are without any substantiated basis. The prosecution, apart from the testimony of oral witnesses, has failed to present any other evidence to establish the existence of such a dispute that could be considered as motive. Although the trial court has recorded a finding that the prosecution has proven that a complaint was registered at Srinivasapura Police Station, the evidence considered by the trial court is silent on this matter. In the absence of other circumstantial evidence implicating the accused in the commission of the offence, the mere recovery of the knife and bloodstained clothes is insufficient and unsafe to be relied upon to convict the accused. Finally, the trial court has recorded a finding that the "last seen" theory has been proven. However, the statement that "accused No.2 was taking the deceased on his two-wheeler" is unsupported and lacks any factual basis. The witnesses examined by

the prosecution to substantiate this last seen theory turned hostile and no corroborative evidence has been established to support this claim. In the totality of the facts, the reasons assigned by the trial Court for conviction of accused No.2 for offence punishable under Section 302 of IPC is not sustainable.

24. The trial court has also convicted accused No.2 for an offence punishable under Section 3(2)(v) of the SC/ST (Prevention of Atrocities) Act, 1989. However, the trial court has not recorded any evidence, nor has the prosecution presented any material evidence to establish that accused No.2 is guilty of an offence under Section 3(2)(v) of the SC/ST Act. It appears that the trial court ordered the conviction under this section solely based on the language of the provision. In light of the earlier finding that the prosecution has failed to establish beyond a reasonable doubt that accused No.2 caused the death of Lakshmidevamma, the conviction under Section 3(2)(v) of the SC/ST Act cannot be sustained.

25. In the light of aforesaid discussions and reasons, the following :

ORDER

- i) The appeal is *allowed*;
- ii) The judgment of conviction and order on sentence dated 20.12.2017 passed in Spl.S.C.No.2/2013 by the II Additional Sessions Judge, Kolar, is set-aside;
- iii) Appellant-accused is hereby acquitted of the charges leveled against him for the offences punishable under Section 302 of IPC and Section 3(2)(v) of SC/ST (Prevention of Atrocities) Act, 1989;
- iv) The bail and surety bond submitted by the appellant-accused is cancelled. If the accused has deposited fine amount with the trial Court, it shall be refunded upon proper identification;
- (v) The Registry is directed to communicate this order to the concerned Jail Authorities.

- (vi) Registry is directed to send back the trial court records with a copy of this judgment.

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

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

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