



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9TH DAY OF APRIL, 2025

PRESENT

THE HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MR JUSTICE K. V. ARAVIND

CRIMINAL APPEAL NO. 2024 OF 2022

Between:

Sri Manjunath P.,
S/o Late Putta Chikkegowda
Aged about 43 years
R/at Bandiganavilli Grama
Nagamangala Taluk
Mandya – 571 432.

...Appellant

(By Sri Tejas N., Advocate)

And:

State of Karnataka
By Subramanyapura Police Station
Bengaluru – 560061.

(Represented by Learned
State Public Prosecutor
High Court of Karnataka
Bengaluru – 560 001)

...Respondent

(By Sri Vijay Kumar 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 28.03.2014 and sentence dated 09.04.2014 passed in Sessions Case No.29/2011 on the file of the Hon'ble Fast Track Court No.VIII, Bengaluru City, for the offence p/u/s 302 of IPC.

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by VEERENDRA
KUMAR M
Location: HIGH
COURT OF
KARNATAKA



Date on which the appeal was reserved for judgment	12.02.2025
Date on which the judgment was pronounced	09.04.2025

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 by accused assails his conviction for the offence under section 302 IPC, and punishment for life imprisonment with fine of Rs.15,000/-.

2. The incident that led to his prosecution is like this:
Accused is a distant relative of the deceased namely Somamma. PW1 is the son of the deceased and an autorickshaw driver. On 10.07.2010, about 5.00 p.m. accused called PW1 and asked his address as he wanted to visit his house. As the accused had made a call from a coin booth situate at some distance from the residence of PW1, he, instead of giving his address, went to the place



from where the accused had made a call and brought the accused to his house. Both spent some time in the house, and in the meantime Somamma offered him coffee also. As the accused wanted to stay in the house of PW1 that night, PW1 left home around 7.00 p.m. for plying his autorickshaw telling that he would return soon. PW1 returned home at 9.30 p.m. and saw the main door of the house being latched from outside. Unlatching the door, he went inside and saw the dead body of his mother. He found injury on her neck, with profused bleeding which had stained her clothes, cot, bed and mosquito net. Blood had spilled on the floor also. As the accused was the only one who was present in the house when PW1 left home at 7.00 p.m., he suspected the accused and made a report of the incident to the police at 10.30 p.m. Investigation resulted in accused being charge sheeted and facing prosecution for the offence under Section 302 of IPC. The Sessions Court has recorded the following findings on assessment of evidence both oral and documentary:



There are no eyewitnesses. The evidence of PW1 shows that he left home around 7.00 p.m. to ply his autorickshaw leaving his mother and the accused in the house, and the accused was not seen inside the house when he returned home. PW2 and PW3 are spouses, they being the neighbours of PW1 saw the accused when he was talking with PW1 in the evening and going away from the house of PW1 at 8.30 p.m. At that time he looked agitated. Immediately PW2 went inside the house of the deceased and saw the dead body. PW3 and PW10 have also established the fact of having seen the accused in the house of the deceased. Their evidence cannot be rejected. That apart there was recovery of knife and blood stained clothes at the instance of accused. Though those material objects were recovered from the house of the deceased, they had been kept on the attic in the kitchen which was not known to anybody until accused himself showed that place. FSL report and medical evidence also support. Therefore all the circumstances are proved beyond reasonable doubt.



3. Sri. Tejas N., learned advocate for the accused, argued that the findings recorded by the Sessions Court do not stand to any reason. PWs 2, 3, 10 and 11 are projected as witnesses to a circumstance of having seen the accused in the house of the deceased, but their evidence is full of contradictions and inconsistencies. PW1 has stated that accused is his relative, but no proof was produced. PW1 has stated that accused contacted him over the phone before coming to his house, and in this regard call records should have been produced. More than everything, PW1 has stated that he saw an iron rod at the spot, but that was not recovered and what was recovered was a knife.

3.1. Accused was identified in the police station, it was necessary that TIP should have been held for identification of the person who might have committed the offence. As regards recovery, it was his argument that the investigating officer has clearly answered that he had taken sniffer dog with him to the spot and that the entire



house was searched. At that time knife and blood stained clothes were not found. For this reason recovery after the arrest of the accused becomes doubtful. Motive is not proved at all. There was delay in sending seized articles to FSL. Thus looked it cannot be said that prosecution was able to prove its case. Accused was entitled to acquittal and now the appeal is therefore to be allowed and conviction judgment is to be set aside.

4. Per contra, Sri. Vijay Kumar Majage, SPP-II, argued that the testimonies of PW1, PW2, PW3 and PW10 cannot be discarded at all. They have not been discredited in the cross examination. PW2, PW3 and PW10 have corroborated the evidence of PW1 that accused had come to the house of PW1. Moreover all the three saw accused going away from the house of PW1. This part of evidence fully supports the prosecution. As regards not seizing the iron rod, investigating officer has given explanation; actual weapon used was knife, not iron rod. The doctor has opined that injury found on the neck could be caused from



knife only. It is true that knife and blood stained clothes were recovered after the arrest of the accused. The investigating officer could not find them at the time of his first visit because the accused had kept them on the attic of the kitchen. Recovery from that place was at the instance of accused only and it cannot be discarded. Added to this accused only should explain as to how his clothes stained with human blood, and he has no explanation. FSL report shows presence of human blood stains in MO6 to MO8. Therefore all the circumstances are proved.

5. If the evidence is assessed again keeping in mind the contentions of both sides, the obtaining picture is this. The case is based on circumstantial evidence. The prominent circumstances to be proved are, (i) accused being found in the house of the deceased soon before the death and (ii) recovery of incriminating articles at his instance. The medical evidence and the FSL report may be referred to incidentally.



6. To prove that accused came to the house of the deceased in the evening of the day of occurrence, the prosecution has relied on the evidence given by PWs1, 2, 3 and 10. PW1 is the son of the deceased. His evidence is that about 15 days before the incident his mother had come to his house from the village as his wife had gone to her maternal home. On 10.07.2010 around 5.00 p.m he received a call from the accused, his relative, who wanted to visit his house. Learning that the accused had made a call from a nearby place, PW1 took his autorickshaw and brought him to his house. The deceased-Somamma gave coffee to the accused. Accused said that he would stay overnight as it was likely to rain. Therefore PW1 asked the accused to remain in his house and he would go out for a few hours to ply his autorickshaw. PW1 left home at 7.00 p.m and returned at 9.30 p.m. He found the door of his house being latched from outside. He opened the latch, went inside the house and saw his mother having fallen down sustaining bleeding injuries. There was a cut



injury on her neck. Her clothes, the cot and the bed were stained with blood. Blood stains were also there on the mosquito net. Accused was not found in the house. He thought that accused might have killed his mother. Therefore he went to the police station and reported the incident to police.

7. PW2 is the landlord of the house where PW1 was living. His evidence also shows that deceased had come from her village about 15 days prior to the date of incident to stay with PW1 as the latter's wife had gone to her maternal home. His evidence further shows that one day about a year before his examination in the court, he saw PW1 bringing accused to his house in his autorickshaw. At that time the deceased came to his house for buying milk and told that a relative had come to the house. Around 8.00 p.m he and his wife were taking the cows to tether them inside the cowshed as it started raining at that time. He saw accused going out of the house of PW1. He called the deceased loudly by her name. There was no response



from her. Around 8.30-9.00 p.m PW1 returned home and immediately told him that the neck of his mother had been cut. A month later accused was brought by the police to the house of PW1 and at that time the accused said that he had killed the deceased.

8. PW3 is the wife of PW2. She too has also spoken on lines with PW2. Her specific evidence is that when the deceased did not respond, she and her husband went inside the house and seeing the deceased having fallen down on the cot, they felt frightened, came out and then latched the door. By that time one Pape Gowda and others came to that place.

9. PW10 is the son of PW2 and PW3. He corroborates the testimonies of PWs2 and 3 and has specifically stated that on 10.07.2010 around 4.30 p.m he saw PW1 standing in front of the house with one person. At that time he asked PW1 about the person with whom he was speaking, and to which PW1 replied that he was his relative. He has further stated that when his father and



mother were taking the cows to the shed, they told him that the accused ran out of the house of PW1. He too saw accused running away from that place agitatedly. Then he went inside the house of PW1 and saw the deceased being dead sustaining injuries. He noticed an injury on the neck. He made a call to PW1 and informed him that the relative who had come to his house had killed his mother. PWs2, 3 and 10 identified the accused in the court.

10. The accused was arrested on 20.08.2010. PW16-the investigating officer stated that the accused gave a confession statement before him and at that time he disclosed that he would show the place where he had hidden the knife and his blood stained clothes. Accordingly the accused took him to the house of PW1 and going to the kitchen, he removed the knife and the blood stained clothes kept on the attic and produced the same before PW16. Ex.P3 is the panchanama drawn at that time in the presence of PW4 and PW6. These two



witnesses have supported the testimony of PW16 about recovery of MO6 to 8 which are a knife, a shirt and pant.

11. Ex.P2-the spot mahazar may also be referred here. It shows that the bed, cot, pillow and the mosquito net were all stained with blood. There were blood stains on the floor also. Drawing up of Ex.P2 is supported by PW4.

12. PW8 is the doctor who conducted post mortem examination. He noticed three external ante mortem injuries. They are (i) cut injury measuring 8 x 3 x 4 cms on the neck. (ii) two abrasions on the right breast measuring 2 x 2 cms. and 2 x 3 cms. Ex.P6 is the post mortem report. PW8 is of the opinion that death was due to shock and hemorrhage as a result of injury to the neck.

13. Ex.P15 is the FSL report which shows that blood stains of human origin of 'AB' group blood were found on items 3, 7, 8, 10, 12 and 13. Item No.6 is the knife which



also contained blood stains. Items No.7 and 8 are the shirt and the pants of the accused.

14. Before assessing the evidence given by these witnesses in their chief examination with reference to their answers in the cross examination, the decisions that Sri Tejas has cited may be referred here. The case of ***Sharad Birdhichand Sarda vs State of Maharashtra***¹ sets out the principles to be applied while appreciating the evidence in a case based on circumstantial evidence. In ***Rambraksh alias Jalim vs State of Chhattisgarh***² it is held that conviction cannot be recorded merely on the ground of proof with regard to last seen theory. The judgment in ***Anjan Kumar Sarma and Others vs State of Assam***³ also states that the links in the chain of circumstances are to be proved satisfactorily, and the circumstance of accused being last seen with the deceased is only a relevant circumstance.

¹ [(1984) 4 SCC 116]

² [(2016) 12 SCC 251]

³ [(2017) 14 SCC 359]



15. Probably the case of ***Pannayar vs State of Tamil Nadu By Inspector of Police***⁴ is cited for the reason that the defence can take advantage if motive is not established in a case based on circumstantial evidence. The last judgment in the case of ***Sukhadev vs State of Karnataka***⁵ of the coordinate bench of this court is to buttress the proposition that abscondence of the accused is not a ground to draw an adverse inference against him.

16. With regard to appreciation of evidence in cases based on circumstantial evidence, the law is well settled now. Unless the links in the chain of circumstances are established, accused cannot be held guilty. There cannot be second word with the propositions in the cited judgments, but in criminal cases a circumstance which appears to be relevant in one case may appear to be irrelevant in another case of same nature. That means decision has to be taken based on facts and the evidence

⁴ [(2009) 9 SCC 152]

⁵ [2017 SCC Online Kar 6794]



brought on record. It can also be stated that there is no fixed formula that a certain number of circumstances are to be proved, again the facts of that particular case decide as to what are the circumstances to be established.

17. As observed above the main circumstances in this case are only two. So far as accused coming to the house of PW1 is concerned, it is established from the evidence of PW1. It is true that initially PW1 suspected the involvement of the accused in the death of his mother because accused who wanted to stay overnight in the house of PW1 was not seen when he returned home at 9.30 pm. It is quite natural to entertain a doubt like that. The evidence of PW1 is sought to be impeached because of one sentence in Ex.P1, the report of the incident made by him. It is stated there that accused killed the deceased with a sharp edged iron rod and PW1 admitted that it is written so in Ex.P1. But the investigating officer did not seize the iron rod, instead what was seized was a knife, MO6. I.O has given an explanation that he did not seize



iron rod because the investigation showed that knife had been used for cutting the neck. Mere non-seizure of iron rod does not take away the value in the evidence of PW1. When he made a report to the police it was his impression that accused might have used an iron rod. The doctor's clear evidence is that cut injury found on the neck could be caused if knife had been used. Even without the help of doctor's opinion, it can be opined applying common sense that an injury of the measurement 8 x 3 x 4 cms can happen only when a weapon like knife is used. If the edge of the iron rod is sharp it is unlikely that this kind of an injury will occur, possibility in that event is the occurrence of a piercing injury. Moreover blood stains were found on the knife-MO6. Mere one sentence in Ex.P1 about iron rod does not completely take away the evidentiary value in the testimony of PW1. PWs2, 3 and 10 have buttressed the evidence of PW1. Especially PW10 has stated he saw the accused coming with PW1 in the autorickshaw. All these three witnesses saw the accused leaving the house of PW1 around 8.00 p.m and at that



time he looked very annoyed and disturbed. Because PWs2, 3 and 10 belong to the same family and were the immediate neighbours of PW1, they must have seen the accused. These witnesses have also given the reason as to what made them observe the accused at that time. They have stated that it was raining and therefore PWs2 and 3 were taking the cows to the shed and at that time they saw the accused. This explanation is quite convincing. These three witnesses have not been discredited in the cross-examination and therefore there are no reasons to discard their testimonies. With the evidence of PWs1, 2, 3 and 10 the presence of accused in the house of the deceased and PW1 was proved.

18. So far as the recovery is concerned, though Sri Tejas made an attempt to demonstrate that the evidence in this regard has to be discarded because the recovery was made after a month, it is to be stated that the recovery was at the instance of the accused who was arrested on 20.08.2010. There was no delay in as much



as the recovery was at the instance of the accused. The evidence of PWs 4 and 6 support the evidence of PW16 in regard to recovery and their evidence has not been discredited. But Sri Tejas made it a point of argument that if really the accused had kept the knife and his blood stained clothes on the attic in the kitchen, PW16 should have traced them as his evidence is that he searched the entire house at the time of drawing up of spot panchanama and at that time he had taken the sniffer dog also. No doubt this kind of an argument is possible. But this cannot be a reason for discarding the recovery especially when the independent witnesses PWs 4 and 6 have fully established the recovery in their presence. If the knife and clothes had been kept on the attic invisibly, and if PW16 did not find them at the first instance, subsequent recovery at the instance of accused cannot be disbelieved. Moreover accused has no explanation as to how his clothes stained with blood. FSL report clearly shows presence of blood stains on the knife and the clothes of the accused.



19. Therefore in our opinion, the only two circumstances clearly point to the involvement of the accused. As has been held by the Supreme Court in the case of ***Sharad Birdhichand Sarda (supra)***, accused must be the one who had killed the deceased. There is no reason for taking a view other than the one taken by the trial court. Hence, for all these reasons appeal is dismissed.

Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE

Sd/-
(K. V. ARAVIND)
JUDGE

CKL
List No.: 1 Sl No.: 3



25.04.2025
(VIDEO CONFERENCING / PHYSICAL HEARING)

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

ORAL ORDER ON 'FOR BEING SPOKEN TO'

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

Sri Tejas N, learned counsel for the appellant, submits that in the connected appeal, i.e., Criminal Appeal 1966/2022, this court while pronouncing judgment set aside the order of the trial court to the effect that the appellant is not entitled to remission. In the case from which this appeal has arisen the trial court passed an order that the appellant was not entitled to remission while sentencing him to life imprisonment. Appellant in both the cases is the same person. In the case on hand though the appellant is sentenced to life, a restriction that he is not entitled to remission cannot be imposed by trial court. Granting of remission is left to the discretion of the appropriate Government. Therefore observation made by



the trial court that the accused is not entitled to remission
is set aside. It is left to the discretion of the Government.

Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE

Sd/-
(K. V. ARAVIND)
JUDGE

CKL
List No.: 1 Sl No.: 1