



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. 1966 OF 2022

Between:

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

...Appellant

(By Sri Mahesh Y.L., Advocate)

And:

State of Karnataka
By Subramanyapura Police Station
Represented by Public Prosecutor
High Court of Karnataka
Bengaluru - 560001

...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 of conviction dated 28.03.2014 and order on sentence dated 09.04.2014 passed in Sessions Case

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Location: HIGH
COURT OF
KARNATAKA



No.28/2011 by the Hon'ble Fast Track Court No.VIII, Bengaluru City and further be pleased acquit the appellant for the offence p/u/s 302 of IPC.

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)

The conviction judgment in S.C.No.28/2011 on the file of Fast Track Court – VIII, Bengaluru, has given rise to this appeal by the appellant.

2. The prosecution case is about homicidal death of a woman by name Gowramma on 14.05.2010. PW1



Shashidhar is her son. She was living separately in a house situate near the house of PW1. On 14.05.2010 at about 4.00 p.m., when PW1 was near Konanakunte Cross, he received a call from his wife i.e., PW2 and came to know that his mother had fallen down from the cot. Immediately he rushed to his mother's house. He saw blood stains on the bed sheet. The ear studs, bangles and the chain worn by his mother were found missing. Initially he suspected that somebody known to his mother might have come to house and committed the crime. Therefore he made a report of the incident to the police on the same day at 18.30 hours. Investigation resulted in accused being charge sheeted.

3. The prosecution examined 18 witnesses and got marked the documents as per Exs.P1 to P13 and the material objects as per MOs1 to 5. Ex.D1 is a contradiction that defence got marked.

4. Upon appreciation of evidence, the trial court found the accused guilty of the offence under Section 302



of IPC and sentenced him to life imprisonment without remission and fine of Rs.15,000/-.

5. The trial court has believed the testimonies of PWs1, 2, 4, 11 and 13 to hold that the links in the chain of circumstances are established. It was not necessary to hold the test identification parade as the accused was identified by the prominent witnesses. The testimony of PW4 about seeing the accused in front of the house of the deceased and identification of the accused by him in the court fixes the accused in the commission of crime. The testimonies of PWs11 and 13 in regard to recovery of the ear studs of the deceased from the house of one Lakshmamma at Kudligi village further strengthens the prosecution case. Though Lakshmamma was not examined, it did not affect the prosecution case in any way because of impeccable evidence given by PWs11 and 13. Therefore prosecution case has stood proved beyond reasonable doubt.



6. We have heard the argument of Sri. Mahesh Y.L., learned counsel for the appellant and Sri. Vijay Kumar Majage, SPP-II for the State. We have perused the entire evidence and the records.

7. We need to examine whether the findings of the trial court are sustainable. Only from the circumstances it is to be examined whether prosecution case has been established or not. PW1 to PW4 are the prominent witnesses in establishing the nexus between the accused and the crime, and recovery of jewellery at the instance of accused is another circumstance in connection with which PW11 and PW13 are independent witnesses. PW7 is the doctor and PW17 is investigating officer. Before discussing the evidence of PW1 to PW4, the evidence of PW7 may be referred.

8. PW7 conducted autopsy in between 10.35 and 11.50 a.m. on 15.05.2010 and found the following external injuries.



- i. Contusion over upper part of left side neck measuring 1 x 1 cms.*
- ii. Contusion over middle of left side neck 1 x 1 cms.*
- iii. Contusion over right side of neck measuring 2 x 1.5 cms.*

9. PW7 also noticed swelling of left cheek and dried blood stains around mouth and nostrils. After dissection of the neck, he noticed that subcutaneous tissues and muscles on front and both sides of neck were contused. Ex.P5 is the post mortem report. PW7 is of the opinion that asphyxia as a result of throttling was the cause for death. In the cross examination of PW7 it was suggested to him that the blood stains found on the mouth and nose could be due to accident, and of course this suggestion was not accepted by PW7. A clear inference can be drawn that death was homicidal.

10. The accused was a stranger to the deceased as also to PW1 and PW2. The prosecution case discloses that the deceased was living alone and PW1, who is her son



was living in a nearby house. PW2 is the wife of PW1. In Ex.P1, the report of incident given by PW1 to the police it is written that somebody known to him and the deceased might have killed Gowramma, i.e., the deceased. He came to know about incident around 4.00 p.m. on 14.05.2010 when his wife PW2 made a call and informed him. Immediately he came to the house of his mother and saw the dead body. He noticed bleeding on the lip and blood stained bed sheet. He also noticed missing of gold bangle, two gold chains and a pair of ear studs that his mother was wearing. Then he saw the purse of his mother lying beside the dead body, there was no money in it. The almirah was open and all the clothes were scattered. But his specific evidence is that when he left home around 2 O'clock on 14.05.2010 after having lunch, he saw someone standing in front of his house. About three months after the incident, the police called him to the station and showed him one person. At that time, PW1 identified him saying that he was the one who was found standing in front of his house on the date of incident. He



then identified the accused in the court also. He also identified in the court the ear studs, MO1, of his mother.

11. The evidence of PW2 shows that on 14.05.2010 she went to the house of the deceased in between 10.00 and 12.00 noon to meet her. At about 12.30 p.m. her husband PW1 came to the house to have lunch and at that time he told her that somebody was standing near the compound of the house. Since the food was not ready, PW1 left home and came to the house again at 1.30 p.m. He had lunch and left the house for work at 2.00 p.m. While going PW1 told her again that the same person was found standing near the bus stop. She thereafter went to a shop and while returning home she too saw one person standing near the compound. Around 2.30 p.m. PW3 Raju came to her house and went away. But around 2.45 or 3.00 p.m. PW3 again told her that he had gone to the house of the deceased. The house of deceased was open. When he called the deceased, he did not hear any voice and therefore went inside the house and saw the deceased



having fallen down from the cot. As he gave this information to PW2, she also went to the house of the deceased. She tried to speak to the deceased, but there was no response. She tried to make her drink water, but the deceased did not drink. There was blood on the lips and the bed sheet. She did not find the jewellery being worn by the deceased. Thinking that deceased might have become unconscious she sprinkled water on her face. She then made a call to her husband PW1. Some time later PW1 came and seeing his mother he said that she was dead. She too identified the accused in the court.

12. The evidence of PW3 shows that the deceased had given him a mixer for repair. Since the mixer was not yet repaired, he went to the house of deceased at about 3.30 or 4.00 p.m. to inform her about it and at that time he saw Gowramma, i.e., deceased having fallen down. Immediately he went to the house of PW2 and gave information. Thereafter PW2 and PW3 came to the house of the deceased together.



13. PW4 was the owner of a medical shop from where the deceased was buying medicines. He used to give door delivery of the medicines to the deceased. His evidence is that on 14.05.2010 around 2.15 p.m. when he was going to his house for having lunch he saw one person coming out of the house of the deceased. At that time that person looked very disturbed and agitated. At about 4.00 p.m. when he was going to his medical shop he saw the police and the gathering of people in front of the house of the deceased. He went there and came to know that somebody had killed the deceased. On 21.08.2010, the police asked him to come over to police station. When he went there, he was shown a person and at that time he told that he was the very same person whom he saw coming out of the house of the deceased on 14.05.2010. Again he identified the accused in the court. PW5 is another son of the deceased. His evidence is of no consequence.



14. PW17 is the investigating officer. His evidence shows that after the arrest of the accused on 20.08.2010 in Mangaluru, the accused was brought to police station. At the time of giving confession statement he disclosed that the jewellery belonging to the deceased were sold by him to a woman by name Lakshmamma of Kudligi, Bellary District and he would show the house of Lakshmamma if he was taken there. Accordingly PW17 took accused to the house of Lakshmamma along with the panchas. He has stated that Lakshmamma produced the ear studs as per MO1. PW11 and 13 are the witnesses to panchanama drawn as per Ex.P8 in regard to recovery of the ear studs from Lakshmamma at the instance of the accused. They have clearly stated that the accused himself took them and the police to the house of Lakshmamma at Kudligi village and asked Lakshmamma to produce the ear studs. Accordingly she produced them.

15. The main circumstances are identification of the accused by PWs1, 2 and 4, and recovery of the ear studs



at the instance of the accused. But the argument of Sri. Mahesh was that the accused was arrested on 20.08.2010 in connection with another incident in Crime No.366/2010. In Ex.P1 the name of the accused is not mentioned. There is no cogent evidence with regard to identification of the accused. It is quite impossible that PWs1,2 and 3, even if it is assumed that they had seen some person on the date of incident, would be able to remember his face and identify him again. The identification of the accused was in the police station on the say of the police. Therefore such an identification cannot be believed. Test Identification parade (TIP) should have been held. In the absence of TIP no reliance can be placed on the testimonies of PWs1 to 3. He also argued that there is inconsistency in the evidence of PWs1 and 2 in the sense that if it is the clear statement of PW2 that her husband had come to the house at 12.30 p.m. for having lunch and again came to house at 1.30 p.m., PW1 has stated in the cross examination that before 1.30 p.m. he had not gone to his house for the purpose of having lunch. Therefore



the evidence of PW2 that her husband saw one person standing in front of the house cannot be believed.

16. As regards the testimony of PW4 it was commented by Sri. Mahesh that if really he had seen the accused on the date of incident nothing prevented him from disclosing the same before the police on the first day itself. There was delay in recording his statement and this makes his testimony unreliable. Many people had gathered as per the statements of PWs1, 2 and 3 and therefore the investigating officer could have examined the independent witnesses.

17. With regard to recovery it was his argument that in the absence of evidence of Lakshamma, who was not examined at all, the evidence of PWs11 and 13 cannot be believed. Therefore there are many infirmities in the prosecution case. The circumstances are not proved and thereby the accused becomes entitled to acquittal.



18. Sri. Vijay Kumar Majage refuted the argument of Sri. Mahesh by submitting that the testimony of PWs1 and 2 is corroborated by PW4. Both PWs1 and 2 have specifically stated that they saw some person standing in front of their house and later on they identified him in the police station also. The evidence of PW4 supports the evidence of PWs1 and 2. TIP could have been held, but merely for the reason that it was not held the testimonies of PWs 1, 2 and 4 cannot be discarded. There is no rule that identification of the accused in the police station should be disbelieved always. The circumstance of recovery of ear studs has been proved by PWs11 and 13. Non examination of Lakshmamma was not fatal. Therefore the trial court has correctly appreciated the evidence.

19. Now if the testimonies of PWs1 to 4, 11, 13 and 17 are put to scrutiny with reference to their answers in the cross examination, it is possible to state that all of them have established the prosecution case. It is true



that the evidence of PWs1 and 2 shows that they saw one person standing in front of their house. At that time they did not know the accused as the offence had not yet taken place. It is true that in Ex.P1 it is written that a known person might have committed the crime. For this reason alone an inference cannot be drawn that accused was not the person who committed crime. It is true that in the cross examination of PW1 he has stated that he went home only at 1.20 p.m. for the purpose of having lunch and before that he had not gone to the home. But PW2 has stated that PW1 first came at 12.30 p.m. and since the food was not yet ready, he went out again, and came back at 1.30 p.m. This is not a contradiction at all. Though it appears like inconsistency in the evidence, it does not shake the prosecution case in as much as PW1 and 2 are not eye witnesses. Their evidence is that they saw the movements of a stranger in front of their house and to this extent their evidence is believable. The evidence of PW3 is incidentally relevant in the sense that it was he who gave information to PW2 which made PW2 go



to the house of the deceased and give information to her husband.

20. It is the evidence of PW4 that is very important. Though his evidence is sought to be impeached by eliciting from him that he had no licence to run a medical shop and that he did not hand over list of medicines that the deceased wanted to be supplied, the answers in this regard do not come in the way of believing the core of his evidence that the person whom he saw at 4.00 p.m. coming out of the house of the deceased was the accused himself. His evidence that he could see the accused coming out of the house when he was returning to his medical shop is very much believable.

21. So far as identification of the accused is concerned, the investigating officer PW17 could have taken a decision to arrange for TIP. Merely for the reason that TIP was not held, it cannot be said that identification of the accused in the police station and later on in the court should be discarded outrightly. If PWs1, 2 and 4



have given evidence that upon a disclosure made by police that the accused was the person who had committed crime and thus they were able to identify the accused, it was not a proper identification at all. But their evidence is that when they went to police station, they were all shown a person and asked as to who he was. At that time they said that he was the person whom they had seen on the date of incident and later on it was disclosed that he was the one who was involved in the killing of the deceased. That means the police did not tell them in the beginning itself that the accused was the one who had killed the deceased and later on they identified the accused. In this view the identification of the accused in the police station cannot be said to be improper. All the witnesses identified the accused later on in the court also.

22. So far as the recovery is concerned, the evidence of independent witnesses PW11 and 13 is fully believable. The ear studs were recovered on the disclosure made by the accused. If Lakshamma had



been examined by the prosecution, it would have further strengthened the case. Her non-examination has not affected the prosecution case in anyway in view of consistent evidence given by PWs11, 13 and 17. The ear studs were identified by PWs1 and 2 stating that they belonged to the deceased.

23. Therefore though the circumstances are only two in number, they point to none other than the accused in the involvement of homicidal death of Gowramma. The trial court has come to right conclusion to hold the accused guilty of the offence under section 302 of IPC.

24. But Sri. Mahesh has referred to the judgment of the Supreme Court in the case of **Narendra Singh @ Mukesh @ Bhura Vs. State of Rajasthan [(2022) SCC Online SC 1993]** to argue that the trial court has erred in sentencing the accused for life without remission. The trial court has taken this decision in view of the conviction recorded against the accused in another case S.C.No.29/2011 for the offence of section 302 of IPC. The



trial court has observed that the accused is a menace to the Society.

25. The Honb'le Supreme Court in the case of ***Narendra Singh (supra)***, modified the sentence for life imprisonment extending for the remainder of the life of the accused following the Constitution Bench judgment in ***Union of India Vs V.Sriharan [(2016) 7 SCC 1]***.

26. Power to grant remission to an accused involved in an offence of 302 lies within the discretion of the Government. It is true that the accused is involved in more than one case for the offence under Section 302 of IPC and as per the orders passed by the Government periodically with respect to grant of remission, appropriate decision may be taken by the Government. Therefore only to this extent, order on sentence can be modified.

27. In the result appeal fails. The judgment of conviction and sentence passed by the trial court is confirmed. However the observation made by the trial



court that accused is not entitled to remission is set aside
and it is left to the discretion of the appropriate
Government.

Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE

Sd/-
(K. V. ARAVIND)
JUDGE

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