



IN THE HIGH COURT OF KARNATAKA, AT DHARWAD
DATED THIS THE 30TH DAY OF JANUARY, 2026
PRESENT
THE HON'BLE MR. JUSTICE R.DEVDAS
AND
THE HON'BLE MR. JUSTICE B. MURALIDHARA PAI
CRIMINAL APPEAL NO. 100027 OF 2022 (C)

BETWEEN:

1. ISMAILSAB @ SHARIFSAB @ SHAFI,
S/O. MOHAMMADSAB NADAF,
AGE: 34 YEARS, OCC: MASON,
R/O. MARUTI NAGAR,
KUSUGAL VILLAGE, TQ. HUBBALLI,
DIST. DHARWAD-580023.
2. FAKKIRAPPA @ PRAKASH
S/O. MAILARAPPA GUDDANNAVAR,
AGE: 37 YEARS, OCC: LORRY DRIVER,
R/O. MARUTI NAGAR,
KUSUGAL VILLAGE, TQ. HUBBALLI,
DIST. DHARWAD-580023.

...APPELLANTS

(BY SRI. N. R. KRISHNAPPA, ADVOCATE FOR APPELLANT
NO.1 APPEARED THROUGH V.C.,
SRI. K. L. PATIL, ADV. FOR APPELLANT NO.2)

AND:

THE STATE OF KARNATAKA,
THROUGH-P.I.,
HUBBALLI RURAL POLICE STATION,



DIST. DHARWAD,
NOW REP. BY S.P.P.,
HIGH COURT OF KARNATAKA,
DHARWAD BENCH.

...RESPONDENT

(BY SRI. M. B. GUNDAWADE, ADDL. S.P.P.)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374(2) OF CR.P.C., PRAYING TO CALL FOR RECORDS IN S.C. NO.186/2019 ON THE FILE OF THE V ADDITIONAL DISTRICT AND SESSIONS JUDGE, DHARWAD, SITTING AT HUBBALLI AND ALLOW THIS APPEAL AND SET-ASIDE THE JUDGMENT AND ORDER OF CONVICTION AND ORDER OF SENTENCE DATED 22.10.2021 IN SESSIONS CASE NO.186/2019 ON THE FILE OF THE V ADDITIONAL DISTRICT AND SESSIONS JUDGE, DHARWAD, SITTING AT HUBBALLI AND THEREBY ACQUIT THE APPELLANTS/ACCUSED NOS.1 AND 2 FOR THE OFFENCE PUNISHABLE UNDER SECTION 302 READ WITH 34 OF IPC, 1860, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS CRIMINAL APPEAL, HAVING BEEN HEARD AND RESERVED ON 06.11.2025, COMING ON FOR 'PRONOUNCEMENT OF JUDGMENT', THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: THE HON'BLE MR. JUSTICE R.DEVDAS
AND
THE HON'BLE MR. JUSTICE B. MURALIDHARA PAI



CAV JUDGMENT

(PER: THE HON'BLE MR. JUSTICE B. MURALIDHARA PAI)

1. Accused Nos.1 and 2 in S.C.No.186/2019 on the file of learned V Additional District and Sessions Judge, Dharwad, sitting at Hubballi have preferred this appeal questioning correctness of the judgment of conviction and sentence dated 22.10.2021 passed therein and to acquit them from the alleged offences by allowing the appeal.

2. Brief facts leading to this appeal are as under:

On 18.06.2019 Smt. Mamta lodged a complaint with Hubballi Rural Police stating that on 18.06.2019 at about 1:00 p.m. when she returned from Hubballi to her home at Kusugal she learnt that the corpse of her husband namely Rehiman Sab was lying in drainage in Sandranagar and accordingly on visiting the spot, she found the dead body of her husband lying in open drainage with injuries on head and face of the dead body of her husband. As such, she sought for legal action against the culprits on the ground that it appears some miscreants have murdered her husband by assaulting him



with stone or some other weapon with some object and the crime appears to have been committed on 18.06.2019 between 00.30 am to 6.00 am.

3. Based on the said complaint, the jurisdiction police registered a case in Crime No.101/2019 and took up investigation in the case. The Police Inspector of Hubballi Rural Police Station conducted investigation and upon its conclusion laid a charge sheet against the accused herein for the offence under Section 302 read with Section 34 of IPC.

4. Pursuant to filing of the charge sheet, the jurisdictional magistrate took cognizance, registered a case in C.C.N0.789/19 and committed the case for trial. On receipt of the committal record, the case in S.C.No.186/2019 was registered and the case was made over to learned V Additional District and Sessions Judge, Dharwad, sitting at Hubballi, for trial.

5. The trial court secured the presence of the accused persons and framed charge against them on 29.08.2020 for the alleged offence. The accused pleaded not guilty and



claimed to be tried. Then the prosecution adduced their evidence to prove the accusation made against the accused persons. They have examined altogether 17 witnesses and got marked 45 documents and 15 material objects.

6. Afterwards, the statements of Accused Nos. 1 and 2 were recorded under Section 313 of Cr.P.C. During such statement the accused have denied all the incriminating materials appearing against them as false. They have not adduced their defense evidence.

7. Subsequently, the trial court heard both sides, considered the materials placed on record and proceeded to hold the accused guilty of the offence punishable under Section 302 read with Section 34 of IPC. Accordingly, the trial court passed the impugned judgment of conviction and sentence.

8. Being aggrieved by the said judgment of conviction and sentence, the accused have preferred this appeal praying to set aside the impugned judgment and for their acquittal from the alleged offences mainly on the ground that it is



contrary to the materials available on record and that the trial court has not appreciated the legal nuances involved in the case in their proper perspective.

9. During the course of arguments Sri N.R. Krishnappa, learned Counsel appearing for the Accused vehemently contended that the trial court failed to properly appreciate several vital aspects of the case. It was submitted that the prosecution has not produced reliable evidence to establish the "last seen" theory, which in itself is a weak form of evidence unless supported by other corroborative material. It was further urged that the prosecution has not proved any motive for the commission of the crime, nor has it established a complete and consistent chain of circumstances leading unerringly to the guilt of the accused.

10. Per contra, Sri M.B. Gundawade, learned Additional Special State Public Prosecutor for Respondent/State supported the findings recorded by the trial court, contending that the evidence of PW-8 and PW-9 read in conjunction with the testimony of PW-5 and the DVD



marked as Ex.P8, conclusively demonstrates that the deceased was in the company of the accused near the MSIL MRP Wine Shop, Kusugal (hereinafter referred to as "the Wine Shop"), on 17.06.2019, between 6:40 p.m. and 8:30 p.m. It was further submitted that on the following day, i.e., 18.06.2019, the dead body of the deceased was discovered in the open drainage situated behind the said Wine Shop. Considering the narrow time gap between the deceased last being seen with the accused and the discovery of the body, an adverse inference arises against the accused, who failed to offer any plausible explanation. The learned Prosecutor also relied upon the recovery of blood-stained stones, allegedly used in the assault, and the seizure of blood-stained clothes at the instance of the accused, supported by the RFSL report marked as Ex.P45, to contend that these incriminating circumstances together form a cogent chain linking the accused to the offence. Hence, it was argued that no valid grounds are made out to warrant interference with the judgment of conviction.



11. As per the prosecution, the incident occurred on 17.06.2019, between 9:00 p.m. and 9:30 p.m., when Accused Nos.1 and 2 were consuming liquor behind the Wine Shop at Kusugal along with the deceased and CW-9. During this time, the deceased is said to have confronted Accused No.1 regarding his alleged illicit relationship with his wife and abused Accused No.2 for supporting Accused No.1 in that regard. Enraged by these accusations and apprehending that the deceased might create further complications, the accused persons, sharing a common intention to eliminate him, pushed the deceased into the open drainage. Thereafter, Accused No.1 is said to have assaulted the deceased on the head with a stone, declaring that he would not abandon her, and Accused No.2 also struck the deceased on the head with another stone, uttering not to leave the deceased and thereby causing his death at the spot.

12. Upon careful consideration of the evidentiary material on record and submissions advanced on both sides, it stands undisputed that the deceased - Rehiman Sab, met



his death during the intervening night of 17.06.2019 and 18.06.2019, at a place located behind the Wine Shop at Kusugal.

13. It is the case of the prosecution that on 17.06.2019 at about 6:40 p.m., Accused Nos. 1 and 2 along with the deceased and PW-8, purchased liquor from the Wine Shop at Kusugal and consumed it in an open space situated behind the said shop. The prosecution contends that the accused were last seen in the company of the deceased at that location. To substantiate this contention, the prosecution has examined PW-8 Channabasaiah, PW-9 Moulasab, PW-2 Basavaraj, and PW-5 Pavan Kumar Naik, and has also produced a DVD/CD marked as Ex.P8 said to contain CCTV footage obtained from the wine shop.

14. PW-5 namely Sri Pawan Kumar, the manager of the said wine shop, deposed that at about 6:40 p.m. on 17.06.2019, he sold liquor to the accused and the deceased. PW-8 and PW-9 similarly affirmed the presence of the deceased along with the accused persons at the wine shop at



the relevant time. PW-2 Basavaraj also supported this version; however, his evidence is primarily based on his viewing of the CCTV footage rather than personal observation, as he admitted in cross-examination that he had left the shop at 5:30 p.m. that evening.

15. The testimony of PW-5 and PW-16, the Investigating Officer reveals that the CCTV footage was not collected following proper investigative procedures. The Investigating Officer merely received a copy of the footage from PW-5, who produced it at the police station. Moreover, there exists a discrepancy regarding the medium in which the footage was provided: while PW-5 stated that he had supplied it on a pen drive, the prosecution produced a DVD/CD marked as Ex.P8, claiming it to be the same material. Even otherwise, the footage said to merely depicts the presence of the accused and the deceased near the wine shop and their purchase of liquor at 6:40 p.m. Whereas, the ocular testimony of PW-8, PW-9 and PW-12 clearly establishes that



the deceased was in the company of the accused at the relevant time and place.

16. The prosecution has further contended that PW-8 and PW-9 were the eye-witnesses to the alleged crime. However, both witnesses did not support this version. PW-8 stated that after purchasing liquor, the accused and the deceased proceeded toward a nearby field while he returned home. PW-9 stated that when he went to the open space behind the wine shop to consume liquor, the accused, the deceased, and PW-8 were already present there, and that he left the place around 7:45 p.m. while they remained at the place. Since PW-8 and PW-9 resiled from their earlier statements, they were declared hostile and cross-examined by the prosecution, including by confronting them with their statements recorded under Section 164(5) Cr.P.C. Both maintained in their depositions before the Court that their Section 164 statements were made at the behest of the police. As held by the Hon'ble Supreme Court in ***Ram Kishan Singh Vs Harmit Kaur*** reported in ***(1972) 3 SCC 280***,



statements under Section 164 Cr.P.C. are not substantive evidence and may be used only for corroboration or contradiction. Accordingly, when both witnesses have not adhered to their earlier versions, their Section 164 statements cannot be relied upon, and it must therefore be held that there is no eye-witness to the occurrence. Nevertheless, from the consistent evidence of PW-5, PW-8, and PW-9, it stands established that the deceased was in the company of Accused Nos. 1 and 2 behind the Wine Shop of Kusugal on 17.06.2019 until PW-9 allegedly left the spot. The prosecution has thus successfully proved that the deceased was last seen alive in the company of the accused persons at the said location.

17. In ***Satpal Vs State of Haryana*** reported in ***(2018) 6 SCC 610***, the Hon'ble Supreme Court of India reiterated that the 'last seen' theory constitutes a weak form of evidence and cannot, by itself, form the sole basis for conviction. However, when supported by other incriminating circumstances—such as temporal proximity between the last seen occurrence and the discovery of the dead body, or other



corroborative evidence forming a complete chain—conviction may lawfully follow.

18. No doubt, the evidence on record shows that on the next day, i.e. on 18.06.2019, the dead body of the deceased was found in the open space located behind the wine shop at Kusugal. However, the prosecution has not brought on record who first noticed the corpse at that place. In her complaint, PW-10 stated that on 18.06.2019 at about 1:00 p.m. when she returned home, one Krishna Vasudeva Sulada of her village informed her that the dead body of her husband was lying in the open drainage of Sandranagara, whereupon she went to the spot. The place in question was in a layout situated behind the wine shop in Kusugal and it was at a distance of about 200 meters from the shop. Therefore, in all probability at least some local residents would have seen the body before PW-1 reached there. PW-14, Head Constable-Sri Basavaraj Fakirappa Madhurakar, who received the complaint from PW-10 and registered the case, has stated



that the police had no prior information about the incident before PW-10 came to lodge the complaint.

19. The principal case of the prosecution is that when the deceased questioned Accused No.1 about his alleged illicit relationship with PW-10, the wife of the deceased, and abused Accused No.2 for supporting Accused No.1 in that regard, both accused sharing a common intention to commit murder and jointly perpetrated the crime. On a careful scrutiny of the record, it becomes evident that the prosecution has failed even to probabalise the alleged illicit relationship between Accused No.1 and PW-10. To prove this aspect, the prosecution examined Smt. Bheemavva as PW-6. In her evidence, PW-6 categorically stated that she did not know the accused and was unaware of how PW-10's husband died. She was declared hostile and subjected to lengthy cross-examination. But, the suggestions put to her only indicate that she was not aware of any alleged illicit relationship during the lifetime of the deceased and that she came to know of such allegations only after his death. Thus,



even if PW-6 had heard of any alleged relationship between Accused No.1 and PW-10, it would at best amount to hearsay and not to knowledge based on personal observation. It is also significant that although the wife of the deceased was examined as PW-10, the prosecution did not choose to question her either about any alleged illicit relationship with Accused No.1 or about any misunderstanding between herself and the deceased on that score. No other witness has been examined to support the prosecution version regarding motive. Consequently, it must be held that the prosecution has failed to prove the alleged motive for the crime namely the supposed illicit relationship between Accused No.1 and the wife of the deceased.

20. Another circumstance relied upon by the prosecution is the alleged recovery of weapons of the crime and bloodstained clothes at the instance of the accused persons. It is alleged that after making voluntary statements admitting their involvement, both accused led the Investigating Officer to the place of the crime and showed the



stones used in the crime and then took them to their respective houses and produced the clothes worn at the time of the incident. The prosecution places strong reliance on the contents of seizure mahazar produced at Ex.P19 and the RFSL Report marked at Ex.P45 to contend that it implicates the accused.

21. It is contended that during the course of investigation, the accused persons led the Investigating Officer to the recovery of stones allegedly used in the commission of the offence. According to the prosecution, Accused No.1 produced a stone lying near a culvert or cement platform situated about twenty-five feet from the scene of occurrence, while Accused No.2 produced another stone found by the side of the same culvert. Both stones were stated to contain dried blood stains. The prosecution narrative further discloses that a quarrel ensued between the accused and the deceased while they were consuming liquor in an open area. It is alleged that when the deceased questioned the accused regarding his illicit relationship with the deceased's wife, and



the support extended by the other accused thereto, the deceased was pushed into an open drainage and assaulted with the said stones. Having regard to this version, it appears reasonable to infer that all three persons, i.e., the deceased and the two accused, were under the influence of alcohol at the relevant time. In such circumstances, if the assault had indeed been carried out using stones, it would be natural for the assailants, in their intoxicated state, to abandon the weapons of offence at the very place of incident. The description of the stones contained in Ex.P35 and as seen in the photographs marked as Ex.P12 and Ex.P15 show that the stones are considerably big in size. Hence, it is improbable that the accused, after the assault, would have carried such heavy stones away from the spot merely to discard them at a nearby location.

22. A notable discrepancy also arises concerning the seizure and documentation of these stones. The prosecution has produced two photographs, Ex.P3 and Ex.P9, purportedly depicting the scene where the deceased's body was found. A



close examination reveals that the two photographs appear to have been taken at different locations. In Ex.P3, one can clearly identify a rectangular stone and several smaller stones, along with a water bottle lying inside the open drainage. However, in Ex.P9, the drainage appears comparatively clean and devoid of such objects. As per the prosecution, these photographs were taken on 18.06.2019 and 20.06.2019 respectively. In ordinary circumstances, there should not have been such major changes at the place within so short a span. Furthermore, a comparison between the rectangular stone seen in Ex.P3 and the stone shown in Ex.P12 suggests that they may, in fact, be the same object.

23. It is undisputed that the body of the deceased was found lying inside the open cement drainage. The Investigating Officer, notably, did not draw a spot mahazar or even take contemporaneous photographs of the place before shifting the body to the hospital for post-mortem, which was a material omission. Should the spot in Ex.P3 represent the place of occurrence, it cannot be ruled out that the deceased



might have sustained injuries due to a fall inside the drainage. Although PW-15, Dr.Sofia Dasari, in cross-examination, denied such a possibility, the nature and distribution of injuries recorded on the body do not entirely exclude the probability of accidental injuries resulting from a fall.

24. The post-mortem report, marked at Ex.P33, under the head "Cranium and Spinal Canal" records a skull fracture on the left side above and behind the left ear measuring 4 inches by 5 inches, and a fracture of the occipital bone measuring 2 inches by 3 inches. The brain was found intact though congested, with exposure at certain points. Under the heading "External Appearance," the doctor notes (1) a deep lacerated wound measuring 5 inches by 2 inches above the right eyelid, (2) a cut lacerated deep wound measuring 4 inches by 5 inches on the left side above and behind the ear, and (3) a deep lacerated wound measuring 3 inches by 1 inch, located 4 inches above the left ear.



25. The prosecution has relied upon Ex.P35 - the weapon examination report, wherein it is opined that the injuries described in the post-mortem report could have been caused by the two stones produced by the accused. However, the report does not specify which particular stone corresponds to any specific injury.

26. It is also significant that the Doctor, who conducted the post-mortem, did not express any provisional or final opinion regarding the cause of death in Ex.P33 and explicitly reserved her opinion pending receipt of the FSL report. Though the case file shows correspondence between the Investigating Officer and RFSL, Belagavi, regarding the viscera examination, the prosecution has not produced the corresponding FSL report before the trial court. The document at Ex.P34, described as the final opinion, merely states that the death was due to brain haemorrhage caused by injuries to the skull bone mentioned in Ex.P33. The record shows that the post-mortem was conducted on 18.06.2019, and the report produced at Ex.P33 was received by the Investigating



Officer on 10.07.2019. PW-15 stated that on 20.02.2021, the Investigating Officer submitted a requisition along with the RFSL report seeking her final opinion, which she furnished on 05.05.2021 as per Ex.P34. Yet, the relevant RFSL report has not been produced before the court.

27. In the backdrop of these factual inconsistencies, material omissions and lack of corroborative scientific evidence, it becomes difficult to conclusively rule out the possibility of the deceased sustaining the head injuries due to an accidental fall. The deceased was admittedly intoxicated at the time of the incident. The photograph at Ex.P3 depicts the open cement drainage approximately two feet deep with hard surfaces on all sides. Considering these physical features, coupled with the absence of definitive linkage of the stones to any specific injury, non-production of the viscera analysis report, and the uncertain basis of the final medical opinion, the probability of the deceased suffering fatal injuries on account of a self-fall cannot be wholly excluded.



28. With regard to the alleged recovery of blood-stained clothes at the instance of the accused, it is noted that in Ex.P19(c) and Ex.P19(d), it is recorded that the clothes produced by both Accused Nos. 1 and 2 bore visible blood stains. However, the RFSL report produced at Ex.P45 presents a contradictory finding. It specifically states that the shirt and pant marked as Item Nos. 7 and 8 by the Investigating Officer were not stained with blood. This material contradiction casts a serious doubt on the veracity of the alleged recovery and weakens the prosecution's claim that the recovered clothes were incriminating articles connecting the accused to the offence.

29. It is a settled principle of criminal jurisprudence that in cases resting on circumstantial evidence, the prosecution must establish each circumstance relied upon and further demonstrate that all such circumstances are so interlinked as to form a complete and unbroken chain leading only to one conclusion - the guilt of the accused. Each link in this chain must be proved beyond reasonable doubt, and the



cumulative effect of all established circumstances must be such that in the ordinary course of human conduct, there can be no plausible hypothesis consistent with the innocence of the accused. The circumstances relied upon must not only be consistent with the guilt of the accused but should also be wholly incompatible with any other reasonable explanation, including the possibility of innocence.

30. In the present case, the prosecution which rests its case upon circumstantial evidence has failed to establish a complete and unbroken chain of circumstances leading solely and inevitably to the guilt of the accused. The material on record does not disclose any convincing evidence to establish the alleged illicit relationship between Accused No.1 and the wife of the deceased, nor does it provide satisfactory proof linking the injuries found on the deceased to the alleged cause of death, or connecting the purported weapon of offence and the bloodstained clothes allegedly recovered at the instance of the accused with the commission of the crime. Likewise, the prosecution has not convincingly excluded the



reasonable possibility of the deceased having sustained the injuries accidentally, owing to a fall. The circumstances relied upon are neither cogent nor consistent with the only hypothesis pointing to the culpability of the accused. Upon a careful and independent reappraisal of the entire evidence, we are of the considered view that the trial court erred in recording a finding of guilt, and hence, the impugned judgment warrants interference by this Court.

31. In the result, this Court proceeds to pass the following:

ORDER

- i) The Criminal Appeal is **allowed**.
- ii) The judgment of conviction and sentence recorded by learned V Additional District & Sessions Judge, Dharwad, sitting at Hubballi vide its judgment dated 22.10.2021 passed in S.C.No.186/2019 is hereby set aside. Consequently, the accused are acquitted from the



charge framed against them for the offence punishable under Section 302 read with Section 34 of IPC.

iii) The accused shall be set at liberty forthwith, unless they are required for any other case.

iv) The Registry is directed to return the trial court record to concerned court along with a copy of the judgment.

**Sd/-
(R.DEVDAS)
JUDGE**

**Sd/-
(B. MURALIDHARA PAI)
JUDGE**

VB
CT:AN
LIST NO.: 19 SL NO.: 4