



IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 21ST DAY OF JANUARY 2026

PRESENT

THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ

AND

THE HON'BLE MRS JUSTICE GEETHA K.B.

CRIMINAL APPEAL NO. 100309 OF 2022 (C)

BETWEEN:

BHIMAPPA S/O. RAMAPPA DURGI,
AGE: 37 YEARS, OCC: FARMER,
R/O. BALOBAL, TQ: GOKAK, DIST: BELAGAVI.

...APPELLANT

(BY SRI. V.M. BANAKAR AND SRI. K. ANANDKUMAR, ADVOCATES)

AND:

STATE OF KARNATAKA,
THROUGH PSI GHATAPRABHA P.S.,
REPRESENTED BY S.P.P.
HIGH COURT OF KARNATAKA,
DHARWAD BENCH, DHARWAD.

...RESPONDENT

(BY SRI. M.B. GUNDAWADE, ADDITIONAL SPP)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374(2) OF CR.P.C. SEEKING TO CALL FOR THE RECORDS AND SET ASIDE THE JUDGMENT DATED 29.03.2022 PASSED BY THE XII ADDL. DISTRICT AND SESSIONS JUDGE BELAGAVI SITTING AT GOKAK IN S.C. NO.8002/2020 AND CONSEQUENTLY ACQUIT THE APPELLANT FROM THE OFFENCES PUNISHABLE UNDER SECTION 302 IPC IN THE INTEREST OF JUSTICE AND EQUITY.

THIS CRIMINAL APPEAL COMING ON FOR FINAL HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM:

HON'BLE MR. JUSTICE MOHAMMAD NAWAZ

AND

HON'BLE MRS JUSTICE GEETHA K.B.

BHARATHI
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BHARATHI H M
Location:
HIGH COURT OF
KARNATAKA
DHARWAD BENCH
DHARWAD



ORAL JUDGMENT

(PER: THE HON'BLE MRS JUSTICE GEETHA K.B.)

This is the appeal filed under Section 374 of Cr.P.C. praying for setting aside the judgment of conviction dated 29.03.2022 and order of sentence dated 31.03.2022 passed in S.C.No.8002/2020 on the file of the learned XII Additional District and Sessions Judge, Belagavi sitting at Gokak, for the offence punishable under Section 302 IPC and sentencing him for life and for a fine of ₹1,000/-, in default of payment of fine to undergo simple imprisonment for 10 days.

2. The parties would be referred with their ranks as they were before the Trial Court for sake of convenience and clarity.

3. The case of prosecution in nutshell is that, accused and deceased are brothers. PW.4 is the wife of accused and they are having children. The deceased was unmarried. Accused was suspecting that deceased was having illicit relationship with his wife. Further, he had no intention to share the property with his younger brother and thus, he was having motives to commit the offence. It is the case of prosecution that there were frequent



quarrels between accused and deceased. On 28.06.2020 at 05.30 p.m. in the quarrel that took place between accused and deceased, accused assaulted deceased with sickle on his forehead and neck and thereby murdered him. It is the case of prosecution that P.W.4-the wife of accused informed complainant's son that her husband and deceased were quarreling with each other, and in turn son of complainant informed it to the complainant, who along with P.W.2 and P.W.3 went to the spot of incident and while going there, they met with accused who was holding a sickle in his hand, which was stained with blood and his baniyan was also stained with blood. Accused told them that he killed his younger brother-Basavaraj and then they went to the spot i.e., in front of the house of accused and deceased, wherein they saw that deceased was lying on the floor and blood was oozing out from his neck and he was already dead.

4. According to the case of prosecution, some public have informed these facts to the concerned police station and accordingly, P.W.13-P.S.I. of the police station came to the spot, and at the time, P.W.1 lodged a written complaint at the spot at



10.30 p.m. and he received it and then went to police station and registered the case in Crime No.142/2020 and thus the criminal law was set into motion.

5. After conducting thorough investigation, the I.O. has filed charge sheet against accused alleging the offence punishable under Section 302 of IPC.

6. On behalf of prosecution, total 16 witnesses were examined apart from marking Exs.P.1 to 47(a) and M.Os.1 to 10(a).

7. After completion of evidence of prosecution side, statement of accused under Section 313 Cr.P.C. was recorded by putting questions incriminating against him. In that statement, accused accepted his relationship with deceased P.W.1 to 3, however, denied all other incriminating evidence put against him. He has not given any statement of defence and not led any defence evidence. After recording statement under Section 313 Cr.P.C and hearing arguments of both sides, both oral and written, the learned Session Judge has convicted the accused under Section 302 IPC on the grounds that accused and



deceased along with P.W.4 and P.W.5 were residing under the same roof; even though, the deceased was murdered at about 05.30 p.m., accused absconded from the spot and traced only on the next day at 08.00 a.m. From the evidence of doctor and F.S.L. report, it is clear that the death was homicidal. The F.S.L. report establishes that the clothes found on deceased as well as on the accused, the weapon recovered at the instance of accused were stained with 'A' group blood.

8. Aggrieved by the said judgment of conviction and order of sentence, the appellant/accused is before this Court.

9. Heard arguments of both the sides.

10. Learned counsel Sri V.M. Bankar would submit that except the official witnesses, none has supported the case of prosecution. The recovery of the weapon and clothes of accused at his instance is not proved. The spot panchanama and inquest panchanama are not proved in accordance with law because none of those witnesses have supported the case of prosecution.

11. Learned counsel for accused would further submit that there are several contradictions in the evidence of P.W.1 to



P.W.3 and P.W.15. According to P.W.1, P.W.4 has made phone call to P.W.15 and P.W.15 informed it to him and hence, P.W.1 along with P.W.2 and P.W.3 had been to the spot, but according to P.W.4 and P.W.15, P.W.4 has not made any phone call to anyone and P.W.15 has not received any phone call. The I.O. also has not made any efforts to collect the phone numbers of both P.W.4 and P.W.15 and Call Detail Records (CDRs.) of those two phones. According to the case of prosecution, the motive is the suspicion of accused about illicit relationship between deceased and P.W.4, which is not at all established. As per the case of prosecution, accused has given extra judicial confession before PWs.1 to 3, but none of them have deposed on said point. Hence, the second motive, i.e. sharing of property with deceased is also not established by producing any cogent evidence. However, the learned Sessions Judge has not verified any of these aspects and convicted the accused and thus, finding of learned Sessions Judge is erroneous and it requires interference.

12. The learned Additional S.P.P. Sri M.B. Gundawada would submit that the relationship between parties is not in dispute. The deceased is none other than the younger brother of



the accused and he is unmarried. P.W.1 has specifically deposed about receipt of phone call from P.W.4 to P.W.15, who in turn informed it to P.W.1., P.W.1 to P.W.3 have deposed that they had been to the spot after receipt of such information and immediately after the incident, they have seen the deceased lying on the floor with fatal injuries on his neck. P.W.3 had deposed that on the way to spot, they have seen the accused. Furthermore, the post-mortem report, the opinion of doctor about the weapon used for commission of offence clearly establishes the homicidal death of deceased. The F.S.L. report corroborates the case of prosecution. Because all the private witnesses are closely related to the accused, they have not supported the case of prosecution and merely because they turned hostile, the case of prosecution cannot be discarded in toto. All the official witnesses have supported the case of prosecution. The investigation conducted by the I.O. in proper manner categorically establishes the case of prosecution beyond reasonable doubt. Except accused, none could have committed these offences and he absconded from the spot, which substantiates the case of prosecution. Considering these aspects, rightly the learned Sessions Judge has convicted the



accused and it needs no interference. Hence, prayed for dismissal of the appeal.

13. Having heard the arguments of both sides, perused the records of the appeal and the Trial Court records, the points that arise for consideration are as follows:

- i) Whether the prosecution is able to establish beyond reasonable doubt that accused has committed the murder of his younger brother-Basavaraj Ramappa Durgi by using sickle (Kurapi) on 28.06.2020 at 05.30 p.m. in front of his house situated at, Balobal, Tq: Gokak and thereby committed the offence punishable under Section 302 IPC?*
- ii) Whether the judgment of conviction of accused and order of sentence passed against accused by learned Sessions Judge is justifiable and the reasons assigned are in accordance with law?*
- iii) Whether the judgment of Trial Court requires interference?*

14. Finding on the above points No.1 & 2 is in NEGATIVE and on point No.3 is in AFFIRMATIVE for the following:



REASONS

15. The case of prosecution in nutshell is that, accused and deceased are brothers. Accused and P.W.4 are husband and wife and they are having children and deceased was unmarried. Accused had a suspicion that deceased was having illicit relationship with his wife and had no intention to share the property with his younger brother and thus, he was having motives to commit the offence. It is the case of prosecution that there were frequent quarrels between accused and deceased. On 28.06.2020 at 05.30 p.m. in front of their house in the quarrel that has taken place between accused and Basavaraj Ramappa Durgi, accused with the intention to kill his brother, assaulted with a sickle on the forehead and neck of his brother- Basavaraj Ramappa Durgi and thereby murdered him.

16. To substantiate the case of prosecution, prosecution relies upon the evidence of P.W.1 to P.W.3 and official witnesses PWs.12 to 14 & 16. P.W.1 is the complainant; P.W.2 & P.W.3 accompanied the complainant to the spot of incident; P.W.4 is the wife of the accused; P.W.5 is the daughter of the accused; PWs.6 & 10 are said to be the inquest panch witness; PWs.7 &



11 are said to be the panch witnesses to the spot mahazar and drawing of rough sketch and seizure of M.O.1 to 4; P.W.8 & 9 are said to be panch witnesses for Exs.P.18 to 20-panchanamas i.e., seizure of M.O. No.5 to 10; P.W.12 is the doctor, who conducted Post-Mortem (P.M.) on deceased on 29.06.2020 from 07.45 to 9.10 a.m. P.W.13 is the P.S.I. of concerned police station who received the complaint from P.W.1 and registered the case and also apprehended the accused on the direction of I.O.-P.W.16; P.W.14 is the Scientific Officer of F.S.L., Belagavi, who examined MOs.1, 2, 5, 6, 8, 9 & 10; P.W.15 is the son of P.W.1; P.W.16 is the I.O.

17. There are no eyewitnesses to the incident. Hence, the case is based on circumstantial evidence. Therefore, the prosecution has to prove the following:

- i. the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned must or should and not may be established;*
- ii. the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;*
- iii. the circumstances should be of a conclusive nature and tendency;*



- iv. *they should exclude every possible hypothesis except the one to be proved; and*
- v. *there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.*

18. In this case, as per the case of prosecution, the chain links to connect accused to this case are as follows:

- i) Firstly, P.W.4 informed the quarrel between accused and the deceased to P.W.15 through phone. In turn, P.W.15 informed it to P.W.1 who has taken P.W.2 & P.W.3 and had been to the spot i.e., in front of the house of accused and deceased; and they have seen the dead body of deceased.
- ii) Secondly, on the way to the said spot, P.W.1 to P.W.3 have met accused with the weapon and accused made extrajudicial confession before P.W.1 to P.W.3 that he himself has murdered his brother.
- iii) Thirdly, drawing up of spot panchanama and spot sketch and seizure of MOs.1 to 4 from the spot of incident.



- iv) Fourthly, post mortem (P.M.) report and the doctor certified that death of deceased is homicidal.
- v) Fifthly, seizure of blood stained clothes of deceased.
- vi) Sixthly, arrest of accused and afterwards seizure of his blood stained cloth.
- vii) Seventhly, accused has taken the I.O. and panchas and produced the weapon used for commission of offence which was also blood stained.
- viii) Eighthly, F.S.L. report stating that the articles seized at the spot i.e. blood stained mud, clothes of deceased, cloth of accused and the weapon were stained with human blood of 'A' group.

If all the above chains are established, then the prosecution can prove the complete chain of link. Furthermore, according to the case of prosecution, accused was having two motives. One is he was suspecting the fidelity of his wife and deceased i.e. their illicit relationship and second one is to avoid giving share to the deceased who was unmarried. This motive plays an important



role in case of murder that too based on circumstantial evidence.

19. Now, we have to analyse whether prosecution is able to establish all or any of these links.

20. All private witnesses including complainant turned hostile and were cross-examined by learned PP. However, merely because they turned hostile, their evidence cannot be discarded in toto; but is to be analysed with great care and caution. When the alleged offence is heinous in nature; the degree of proof should also be high.

21. From the evidence of P.W.1, we can only gather that his son-P.W.15 received a phone call from P.W.4 that accused and deceased were quarreling and immediately, P.W.15 informed it to P.W.1 and thus P.W.1 while going to the house of accused and deceased had taken P.W.2 and P.W.3 along with him and when they reached the spot, Basavaraj was lying dead in front of his house and people had gathered. Thus, it is clear that P.W.1 has not seen the incident. The evidence of P.W.1 on the point that his son received a phone call from P.W.4 is not supported by



the evidence of P.W.4 and P.W.15. P.W.4 has deposed that she has not made any phone call to anyone and P.W.15 has deposed that he has not received any phone call from anyone and has not given any information to P.W.1.

22. From the evidence of P.W.2, we can only gather that he had been to the spot along with P.W.1 & P.W.3 and they saw Basavaraj lying dead on the floor and blood was oozing from his neck and there was an injury on his neck.

23. From the evidence of P.W.3, we could gather the above fact and also that he accompanied P.Ws.1 & 2 to the spot and saw the dead body of Basavaraj and blood had oozed and further on their way to the spot, P.W.3 saw the accused and according to him, accused did not tell anything.

24. P.W.4, who is the wife and P.W.5, who is the daughter of accused are closely related to accused and thus naturally have not supported the case of the prosecution. Thus, the prosecution cannot depend on their evidence to establish its case.



25. PWs.6 & 10 are the inquest panch witnesses. They, except admitting their presence at the spot by identifying themselves in the photographs, have not supported the case of prosecution. Nothing was elicited in their cross-examination to believe that they have seen the injuries on the dead body.

26. P.W.7 & P.W.11 are said to be the panch witnesses to Ex.P-16-spot mahazar and of rough sketch at Ex.P-17. According to the case of the prosecution, M.Os.1 to 4 were recovered from the spot in their presence. However, they have not supported the case of the prosecution regarding seizure of M.Os.1 to 4 from said spot.

27. P.W.8 & P.W.9 are said to be the witnesses for recovery of clothes of the deceased, baniyan of accused in the police station and at their instance, IO has recovered M.O.10-weapon (sickle) from the lands of one Appayya Patil, which is adjacent to the lands of the accused. However, they have not supported the case of prosecution on these facts in their examination-in-chief. Hence, they were treated as hostile. In the cross-examination by learned PP, P.W.8 has admitted the entire case of prosecution but again in the cross-examination by



the learned counsel for the accused, he has deposed that he does not know anything about these two panchanamas. But, nothing was elicited in the cross-examination of P.W.9 by the learned PP to believe that in his presence M.O.9 & 10 were seized. Thus the evidence of P.W.8 & P.W.9 is not sufficient to show that in their presence, accused has produced his banian; took them to the land of one Appayya Patil and produced M.O.10-weapon.

28. The evidence of the Investigating Officer cannot be discarded in toto only because it is not corroborated by independent witnesses. However, his evidence needs to be looked into with great care and caution to accept his evidence without corroboration.

29. In the instant case, evidence of P.W.13-PSI reveals that he apprehended the accused on the next day of the incident, as per the oral direction of P.W.16, at Naka No.1 of Gokak at 08.00 a.m. and produced before P.W.16 at 08.30 a.m.

30. According to the case of prosecution, P.W.16 arrested the accused and recorded his voluntary statement as per



Ex.P.37, wherein the admissible portion under Section 27 of the Evidence Act “ಕೊಲೆ ಮಾಡಲು ಉಪಯೋಗಿಸಿದ ಕುರ್ಪಿ ಮುಚ್ಚಿಟ್ಟಿರುತ್ತೇನೆ, ನನ್ನ ಸಂಗಡ ಬಂದರೆ ತೋರಿಸಿ ಹಾಜರ ಪಡಿಸುತ್ತೇನೆ” and based on it, he has called the panchas i.e. P.W.8 & P.W.9 to the police station and along with them had been to the lands of one Ayyappa Patil in the police jeep as per the directions of accused and in that spot, the accused produced the weapon-MO.10-sickle in presence of panchas. However, as discussed above, those panchas have not supported the case of prosecution. Further, the alleged weapon seized from an open space in the neighbouring lands of accused and deceased. Thus, said place is accessible to public.

31. Under those circumstances, seizure of the weapon at the instance of accused is doubtful.

32. According to the evidence of P.W.3, he had seen the accused while going to the spot but PWs.1 & 2 have not sated so. Further, P.W.3 has not deposed that he had seen the accused with the weapon. Under these circumstances, the evidence of P.W.3 is of least importance to prove the case of prosecution.



33. The evidence of P.W.14 establishes that Article Nos.1, 5, 6, 8 to 10 were stained with "A" group human blood. However, the prosecution has not produced any material to show that the blood group of deceased or accused was "A" group to connect those articles to this case. Furthermore, seizure of those articles is under suspicion because none of the seizure witnesses of these articles have supported the case of prosecution. Under these circumstances, the evidence of Investigating Officer needs corroboration which is lacking in the present case.

34. Furthermore, as per the averments in the complaint, P.W.15 has received the phone call from P.W.4. But, Investigation Officer has not made any efforts to collect the phone numbers of P.W.4 and P.W.15 and to obtain CDRs of those phone numbers to establish the said fact.

35. According to the evidence of the Investigating officer, he has seized M.O.10 in the presence of panchas and his staff accompanied him to the said spot. However, none of his staff were examined to substantiate this fact.



36. Furthermore, as per the case of prosecution, the weapon was recovered from the landed property of one Ayyappa Patil. Said witness is not examined by the prosecution. It is recovered from the open space. Hence, it cannot be said beyond reasonable doubt that the accused had hid the weapon in that place. There is every possibility that some other person could conceal the weapon in the said place. Furthermore, seizure of it is also not proved as discussed above.

37. Without proving the seizure of weapon at the instance of accused and without proving the seizure of blood stained cloth of accused at his instance, mere producing the FSL report saying that they were stained with human blood of 'A' group is of no use in proving the guilt of accused.

38. Furthermore, according to the complaint, CW.14 is its scribe. But according to P.W.1 it was written by the police. Under those circumstances, examination of the scribe was very important. But he was not examined on behalf of the prosecution.



39. The case of prosecution is that, P.W.4 had last seen accused and deceased quarelling with each other. However, as discussed above, P.W.4 has not deposed so. As discussed above, it is P.W.4 who gave this information to P.W.1 through P.W.15. But, both P.W.4 & 15 have not deposed so. Thus, there is no chain link to connect accused to the case.

40. According to the case of prosecution, accused was suspecting the fidelity of his wife and suspecting that she had illicit relationship with the deceased, who is none other than his brother. But, none of the prosecution witnesses deposed on this point. Hence, motive for the accused to murder his own brother is not established.

41. As discussed above, only, when prosecution proves all the links and completes the chain of circumstances against accused, then, the case of prosecution is to be considered as proved.

42. At this stage, the learned Additional SPP would contend that immediately after the incident, the accused



absconded from the spot and he was traced only on the following day and his conduct itself substantiates the case of prosecution.

43. The abscondence of accused from the spot is quite natural, as FIR was lodged against him. The Hon'ble Apex Court in the case of ***Paramjeet Singh alias Pamma v. State of Uttarakhand*** reported in ***(2010) 10 Supreme Court Cases 439*** with regard to 'abscondence of accused' has held as follows:

"Abscondence of accused

31. *In Matru v. State of U.P., this court repelled the submissions made by the State that as after commission of the offence the accused had been absconding, therefore, the inference can be drawn that he was a guilty person, observing as under:*

"19. The appellant's conduct in absconding was also relied upon. Now, mere abscondence by itself does not necessarily lead to a firm conclusion of guilty mind. Even an innocent man may feel panicky and try to evade arrest when wrongly suspected of a grave crime such is the instinct of self-preservation. The act of absconding is no doubt relevant piece of evidence to be considered along with other evidence but its value would always depend on the circumstances of each case. Normally the courts are disinclined to attach much importance to the act of absconding, treating it as a very small item in the evidence for sustaining conviction. It can scarcely be held as a determining link in completing the chain of circumstantial evidence which must admit of no other reasonable hypothesis than that of the guilt of the accused. In the present case the appellant was with Ram Chandra till the FIR was lodged. If thereafter he felt that he was being wrongly suspected and he tried to keep out of the way we do not think this circumstance can be



considered to be necessarily evidence of a guilty mind attempting to evade justice. It is not inconsistent with his innocence."

32. *A similar view has been reiterated by this Court in Rahman v. State of U.P. [(1972) 4 SCC (N) 6 : AIR 1972 SC 110] , State of M.P. v. Paltan Mallah [(2005) 3 SCC 169 : 2005 SCC (Cri) 674] and Bipin Kumar Mondal v. State of W.B. [(2010) 12 SCC 91 : JT (2010) 7 SC 379]*

33. *Abscondence by a person against whom FIR has been lodged, having an apprehension of being apprehended by the police, cannot be said to be unnatural. Thus, mere abscondence by the appellant after commission of the crime and remaining untraceable for a period of six days itself cannot establish his guilt. Absconding by itself is not conclusive proof of either guilt or of a guilty conscience."*

44. Respectfully relying on the above principles, we are of the opinion that merely because accused was not there at the spot from the night of the day of incident till next day morning, it cannot be said that he with guilty mind absconded from the spot of incident.

45. The evidence of doctor coupled with PM Report only establishes that death of deceased was homicidal and not accidental or suicidal. However, to connect the accused to this, it needs corroboration from the evidence of witnesses, which is not available in the instant case.



46. The evidence of official witnesses only establishes the procedure of investigation. Their evidence is not sufficient to connect the accused to the offence of murder of his own brother. There shall be strong motive for the accused to kill his brother, which is not at all established in this case.

47. The above discussion reveals that except proving that the death of Basavaraj Ramappa Durgi is homicidal, the prosecution has failed to establish the motive of accused, seizure of articles from relevant spots under different panchanamas and extrajudicial confession of accused with P.W.1 to 3. In the case of present nature, the evidence of official witnesses requires corroboration, which is lacking.

48. Thus, the prosecution has failed to prove the charge leveled against the accused beyond reasonable doubt that on 28.06.2020 at 5:30 p.m., the accused assaulted his younger brother with a sickle on his neck and forehead and caused bleeding injuries and because of it, Basavaraj died at the spot. However, the learned Sessions Judge has not appreciated the evidence in a proper manner in accordance with law and the reasons assigned by him are not justifiable. Hence, the



impugned judgment of conviction and order of sentence is liable to be interfered with.

49. Accordingly points 1 to 3 are answered and we proceed to pass the following:

ORDER

The appeal filed under Section 374(2) of the Code of Criminal Procedure is allowed by setting aside the judgment of conviction and order of sentence passed in S.C. No.8002/2020 dated 29.03.2022 on the file of the learned XII Additional District and Sessions Judge, Belagavi, sitting at Gokak.

The accused is acquitted of the offence punishable under Section 302 of the Indian Penal Code. The bail bond executed by the accused shall be in force for a period of six months as required under Section 437-A of Cr.P.C.

**Sd/-
(MOHAMMAD NAWAZ)
JUDGE**

**Sd/-
(GEETHA K.B.)
JUDGE**