



CNR: KAHC010019502019

NC: 2026:KHC:43782-DB
CRL.A No. 106 of 2019

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF AUGUST, 2026

PRESENT

THE HON'BLE MR. JUSTICE H.P.SANDESH

AND

THE HON'BLE MR. JUSTICE B.PRAMOD

CRIMINAL APPEAL NO.106 OF 2019 (A)

BETWEEN:

THE STATE OF KARNATAKA
BY INSPECTOR OF POLICE
MANGALORE EAST (KADRI) POLICE STATION
MANGALORE CITY, D.K. DISTRICT
REPRESENTED BY
STATE PUBLIC PROSECUTOR
HIGH COURT BUILDING
BENGALURU-560 001

...APPELLANT

(BY SRI SUHAS GOWDA M., H.C.G.P.)

AND:

SIDDAPPA @ SIDDU
S/O. PRAKASHA AGASIMANE
AGED ABOUT 26 YEARS
R/AT INANGOVANA KOPPA
SHIRASANGI POST, SAVADATTI TALUK
BELGAUM DISTRICT-590 016

...RESPONDENT

(BY SRI P. KARUNAKAR, ADVOCATE)

Digitally signed
by
SHARADAVANI
B

Location: HIGH
COURT OF
KARNATAKA



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THIS CRL.A. IS FILED U/S.378(1) AND (3) CR.P.C BY THE STATE P.P. FOR THE STATE PRAYING TO GRANT LEAVE TO FILE AN APPEAL AGAINST THE JUDGMENT AND ORDER OF ACQUITTAL DATED 21.08.2018 PASSED IN S.C.NO.35/2015 ON THE FILE OF III ADDITIONAL DISTRICT AND SESSIONS JUDGE, D.K., MANGALORE-ACQUITTING THE RESPONDENT/ACCUSED FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 379, 457, 380, 302 AND 392 OF I.P.C. AND SET ASIDE THE AFORESAID JUDGMENT AND ORDER OF ACQUITTAL DATED 21.08.2018 PASSED IN S.C. NO.35/2015 ON THE FILE OF THE III ADDITIONAL DISTRICT AND SESSIONS JUDGE, D.K., MANGALORE, ACQUITTING THE RESPONDENT/ACCUSED FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 379, 457, 380, 302 AND 392 OF I.P.C.

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

CORAM: HON'BLE MR. JUSTICE H.P.SANDESH
and
HON'BLE MR. JUSTICE B.PRAMOD



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ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE H.P.SANDESH)

Heard Sri. Suhas Gowda M., learned HCGP for the State and Sri P.Karunakar, the learned counsel for the respondent.

2. The present appeal is filed by the State against the judgment of acquittal dated 21.08.2018 passed in SC.No.35/2015 by the III Additional District and Sessions Judge, D.K, Mangaluru, for the offences punishable under Sections 379, 457, 380, 302 and 392 of IPC and prayed the Court to convict the accused/respondent.

3. The factual matrix of the case of prosecution is that during the intervening night of 31.07.2014 and 01.08.2014, the accused entered the house namely, 'Shreyas' bearing Door No.5-10-1012/12 situated in Bhojaraj Lane, Alake, Mangaluru City with an intention of committing theft from back door of the house and committed theft of 66.400 grams of gold jewels found on



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the person of Smt.Susheela P. Shah by murdering her with an iron rod and escaped from the place in the Car bearing No.KA-19/Z-7560 which was kept outside the house along with a iron treasury kept in the almerah of the house. During the investigation of the case, the Investigating Officer took the accused under body warrant for police custody for two days. The police after investigation, filed the charge sheet against the accused. Based on the prosecution papers, the jurisdictional Court took cognizance of the offence on 12.02.2015 and complied with the provisions of Section 207 of CrPC and committed the case to the Sessions Court. The trial Court secured the accused. The accused did not plead guilty and claimed to be tried.

4. The prosecution in order to prove its case, examined 18 witnesses as PW.1 to PW.18 and got marked 56 documents at Exhibit P1 to Exhibit P56 and also got marked 31 material objects as MO.1 to MO.31. The trial Court having recorded the evidence of prosecution



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witnesses subjected the accused for 313 statement as contemplated under the provisions of Code of Criminal Procedure. The accused did not choose to lead any evidence. However, produced the copies of the judgments passed in CC Nos.9/2015, 12/2015, 13/2015 and 15/2015 wherein he has been acquitted. He got marked documents at Exhibits D1, D2 and D2(a) by confronting the same to the prosecution witnesses.

5. The prosecution has produced the both oral and documentary evidence and mainly relies on the evidence of PW1, PW2, PW3, PW5, PW6. These witnesses have deposed that on receipt of information, visited the house of informant on 01.08.2014 and learnt about the incident. The prosecution has examined Dr.Ramesh Kunder as PW13. He has deposed regarding the post mortem conducted by him on the dead body of Smt.Susheela P. Shah on 01.08.2014 at Wenlock District Hospital, Mangalore and the nature of injuries found on the dead body. As per his opinion, the cause for death was due to



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hemorrhagic shock, as a result of trans-section of right external carotid artery. The accused has not disputed the aspect of homicidal death. Hence, the trial Court comes to the conclusion that the case is rest upon the circumstantial evidence as there are no eye-witnesses to the alleged incident. However, the prosecution mainly relies upon the recovery i.e. alleged recovery of gold ornaments of the deceased, recovery of silver items in the safe locker/treasury, weapon used for commission of the crime and clothes on the person of the accused at the time of commission, to prove the guilt of the accused. The prosecution has claimed that these items are recovered at the instance of the accused and that the accused has failed to give satisfactory explanation for its possession.

6. PW17 is the Police officer, who at the first instance visited the spot on 07.08.2011 and 22.06.2015. He has stated that on 06.10.2014 at 05.00 a.m. when PW16 and his staff produced two accused persons pertaining to Crime No.99 of 2014 of Urva Police Station and during the



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interrogation, the accused admitted about commission of offence in Crime No.139 of 2014 of Mangalore East Police Station (pertaining to this case) and gave voluntary statement before him. PW17 further stated that after obtaining permission from the District Superintendent of Police, himself and his staff took the accused to Pragathi Grameena Bank in Shirasangi on 14.10.2014. As per the information given by the accused, recovered the gold ornaments MO1 and MO2 by drawing mahazar in terms of Exhibit P30.

7. The prosecution examined the Manager of the Karnataka Vikas Grameena Bank, Shirsangi Branch, namely Sri B.A.Akki as PW15. In his evidence, stated that accused had opened a Savings Account in his bank in the year 2013 and that on 08.02.2014, borrowed a loan of Rs.80,000/- by pledging two gold bangles and a gold chain with locket, which were weighing 38.700 grams and 27.700 grams respectively. It is also his evidence that on 14.10.2014, PW17 had come to his bank along with the



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staff and the accused person and seized the gold ornaments MO1 and MO2 by drawing mahazar as per Exhibit P30 and also got marked KYC Form executed by the accused at the time of borrowing loan through this witness at Exhibit P28 and Exhibit P29. In the locker also, silver articles were found including the weapon used for commission of offence and the cloths on the person of the accused at the time of commission of the crime. To that effect, prosecution relies upon the evidence of PW7 and PW18.

8. PW18 is the Investigating Officer. In his evidence, he has stated that as per the voluntary statement given by the accused, on 12.11.2014, he visited to the quarters situated at Lalbagh along with the accused and Panchas, recovered the cloths over the accused, stolen articles and weapon used for commission of crime from the house of the deceased by drawing mahazer as per Exhibit P13. PW7 is one of the Panchas to Exhibit P13 and he reiterates with



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regard to the drawing of mahazer and also seizure of MO3, MO4 and MO26 to MO.30.

9. Hence, the trial Court having considered these materials and that too when the case is rest upon the circumstantial evidence with regard to the evidence of PW15, the recovery of MO1 and MO2 and during the course of cross-examination of PW17, the accused made an attempt to dispute his connection with the said ornaments and on going through the entire deposition of PW15 and PW17 coupled with document marked at Exhibit P29, comes to the conclusion that there are no reasons to disbelieve the statements of PW15 to PW17. However, the material question would be as to whether the gold ornaments marked at MO1 and MO2 were belong to the deceased.

10. The findings given by the trial Court, in paragraph No.28, wherein the PW.1 has stated that there were 80 grams of gold ornaments over the person of his



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mother, worth of Rs.2.15 lakhs. Whereas two gold bangles marked at M.O.1 weighing 38.700 grams and the gold chain with pendent marked at MO.2 and taken note of its value as Rs.1,35,150/- and weight is different. According to PW1, the gold ornaments was 80 grams, but found only 66.400 grams. Further, the trial Court, in paragraph No.29 having taken note of discrepancies and details or description of the gold ornaments worn by his mother was not furnished in the Ex.P1-complaint while lodging the case and so also the materials on record and admission of PW1 go to show that police had summoned PW1 to the police station only in the month of December 2014 for the purpose of identification of the gold ornaments and recorded his further statement on 13.12.2014 and hence, comes to the conclusion that in view of the subsequent statement which does not indicate he having identified the ornaments in question on the same basis. The trial Court also took a note of recovery of silver items in the same locker at the instance of the accused and also the mahazar



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Exhibit P13 which goes to show that PW18 has recovered 9 items which were allegedly in the same locker.

11. The Trial Court, taken note of in paragraph No.31 with regard to the recovery of iron rod at MO.26 as well as the evidence of the Doctor and also the evidence of PW12, though on chemical examination she had found that blood stains found in these articles were that of human blood, but she could not categorize its blood group and there is no conclusive proof on record as to whom the alleged blood stains belongs to. The trial Court also taken note of the observation of the doctor found in Exhibit P24 and also MO.26 and the nature of injuries and seizure of weapon, comes to the conclusion that the same also not helpful to the prosecution. The specimen fingerprint was also not found even though fingerprint expert was brought to the spot and on examination, no such fingerprint experts were tallies with. The report is also silent about the same and hence given the acquittal by extending the benefit in



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favour of the accused. Being aggrieved by the same, the State has preferred this appeal.

12. The main contention of the learned HCGP for the State that when the recovery is made at the instance of the accused as per Exhibits P28 to P30 to evidence the fact that this accused only has opened the Savings Account and also the document at Exhibit P29 is very clear that by pledging the gold ornaments borrowed the loan. The HCGP also vehemently contend that when the recovery is made at the instance of the accused and the disclosure statement also made by the accused, the trial Court ought to have considered the same, but it fails to appreciate the same.

13. The learned HCGP would vehemently contend from any angle, the trial Court has not at all appreciated the evidence adduced before it in all perspectives. Absolutely, there is no deliberation and discussion on the evidence available on record and the trial Court has



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reached to a wrong conclusion which has resulted in miscarriage of justice. Further, learned HCGP vehemently contend that when the prosecution has examined totally 18 witnesses as PW1 to PW18 and got marked 56 documents as per Exhibit P1 to Exhibit P56 and also got marked 31 material objects as per MO1 to MO31 and particularly MO1 and MO2 were seized at the instance of the accused and therefore contend that mere minor discrepancies in the total weight of the gold ornaments cannot be a ground to extend the benefit in favour of the accused.

14. The learned HCGP also vehemently contend that the trial Court ought to have drawn an inference under Section 114 of Evidence Act when the material available before it and accused has not rebutted the presumption when the recovery was made and also the reasoning given by the trial Court with regard to the rod marked at MO.26 used by accused for commission of the crime. But it is very clear that the same is containing the human blood



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though blood group is not ascertained, the same cannot be a ground for acquittal. Therefore, the Trial Court has failed to take note of all these materials available before it. Hence, he prayed to allow the appeal by setting the judgment of acquittal.

15. Per contra, the learned counsel appearing for the respondent accused would vehemently contend that case is based upon the circumstantial evidence and also there is no material with regard to committing murder by this accused and also robbing the gold ornaments belongs to the deceased. The counsel also vehemently contend that with regard to the gold ornaments is concerned, no details are furnished when the complaint was lodged in terms of Exhibit P1 and even subsequent statement also does not indicate the actual gold ornaments were missing.

16. The counsel also vehemently contend that trial Court considering the material available on record, and apart from that though criminal cases are registered



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against this accused in CC No.9 of 2015, CC No.12 of 2015, CC No.13 of 2015 and CC No.15 of 2015, to show that he has been acquitted in all the cases, but they are registered almost in the same year. The counsel also vehemently contend that the prosecution has to prove the same by placing cogent evidence before the Court to bring home the guilt of the accused. In order to substantiate the same, no such material is available before the Court.

17. Learned counsel would vehemently contend that even though finger print expert has been secured, no such fingerprint is collected. There is no any scientific evidence also before the Court. The trial Court also taken note of the discrepancy of the assault by the weapon at MO.26, but it will not cause such injuries. The doctor evidence also not supported the case of prosecution. The trial Court considering the material available on record has rightly acquitted the accused by extending the benefit of doubt in favour of the accused. The judgment of acquittal does not suffer from any perversity and the same does not call for



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interference of this Court. Accordingly, he prays to dismiss the appeal.

18. Having heard the learned counsel appearing for the State as well as counsel appearing for the respondent accused and also considering the material on record, the points that would arise for consideration of this Court are:

i) Whether the trial Court committed an error in acquitting the accused for the offences alleged against him?

ii) Whether the judgment of acquittal passed by the trial Court requires interference of this Court by exercising the powers of appellate Court and come to a conclusion that accused only committed the murder of deceased Susheela P. Shah and convict the accused?

19. Having heard the respective counsels appearing for the parties and also considering the material on record, this Court has already pointed out the case of prosecution and the sum and substance of the case of prosecution is that on the intervening night of 31.07.2014 and



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01.08.2014, the accused entered the house of the victim from back side and committed the murder by using an iron rod and robbed the gold ornaments. The complaint came to be registered against unknown person and this accused was secured on 06.10.2014. When he was in jail relating to other cases, body warrant was taken and during the investigation he had disclosed that he committed the murder and robbed the articles belongs to the deceased kept in the house.

20. The prosecution has mainly relies upon the evidence particularly the medical evidence and also the recovery witnesses i.e. PW15 and PW17 and also the evidence of PW18 and PW7 who are the mahazar witnesses. The main contention of the learned HCGP is that though sufficient materials are placed before the Court to prove the recovery of several articles connected to the alleged crime at the instance of the accused, but recovery was made particularly MO.1 MO.2 and other articles. It is the further contention of the learned HCGP



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that the evidence of PW15 is very clear that accused has made an attempt to dispute having visited the bank on 04.08.2014. The learned HCGP would submit that document at Exhibit P28-KYC Form is very clear that the accused only opened the Savings Account and pledged MO1 and MO2 by executing a document of Exhibit P29 and hence, depositions of PW15 and PW17 coupled with documents at Exhibits P28 to P30 establish the case of prosecution.

21. He further contend that though the accused disputes that he is not the person who opened the account and his name is 'Siddappa Prakasha Agasimane' and in document at Exhibit P29 produced before the Court discloses the name as 'Siddappa Fakirappa Agasimane' and also throughout the cross-examination of PW1, PW15 have denied the same, but the trial Court has failed to appreciate the same.



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22. It is important to note that there is difference of opinion with regard to measurement, as per MO1 and MO2, it is stated that the golden ornaments weighing 66.400 grams and its value was Rs.1,35,150/- and the complainant has stated that it was about 80 grams of gold ornaments over the person of his mother and also worth of articles as Rs.2.15 lakh. In paragraph No.29, in complaint-Ex.P1, PW1 had not furnished the details or descriptions of the gold ornaments worn by his mother and also there is no details even in the further statement of PW1 recorded by the police on 13.05.2014, which creates a doubt about the identification of ornaments.

23. In paragraph No.30, the trial Court has observed that PW.18 in his evidence, deposed that he has recovered silver items kept in the safe locker at the instance of the accused by drawing mahazar at Exhibit P13, but in the complaint, it was stated that the silver items were stolen from almerah in the room of the deceased worth of Rs.40,000/-. Therefore, there is inconsistency in the



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evidence on record. The evidence of PW18 with regard to seizure of iron rod MO-26 and the same was seized at the instance of the accused and also taken note of the evidence of the doctor and so also the evidence of PW12, in her evidence she has categorically stated that though on chemical examination she had found the blood stains in these articles were that of the human blood, but unable to find which category of the blood group and no blood group is ascertained and also comes to the conclusion that there is no conclusive proof on record as to the whom the alleged blood stains belong to and whether this weapon contains the blood group of the deceased also there is no any material before the Court. So also the trial Court having discussed with regard to the medical evidence as to the iron rod could cause the nature of injuries mentioned in the P.M. report and not tallies with the nature of injuries and also MO1 which was used for committing murder and weapons were seized at the instance of the accused comes to the conclusion that the same is doubtful.



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24. The other circumstances also taken note of with regard to the fingerprint expert having collected the fingerprint inside the car in question which was used to carry the articles which were subject matter of the robbing of the same and no expert fingerprint had found during the inspection of the Car and the same is discussed in paragraph No.34. No specimen finger print of the accused is collected during the course of investigation by the accused and no material with regard to the fingerprint and with regard to the involvement of the accused in committing this crime. The trial Court also took note of in paragraph No.35, the answer elicited from the mouth of PW18, who has not recovered any articles from the place of incident, so as to probabalise the said aspect, but only relies upon the recovery of articles at the instance of the accused. During the course of cross-examination, PW18 has stated that he had not found traces of the offender having entered the house in question by breaking open back door of the house.



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25. When the main case of the prosecution that the accused entered the house from the back door and admittedly PW18 has not recovered any articles in this case and so as to probabalise the said aspect, the same creates a doubt as to how the offender got access to the house in question. Hence, the trial Court taken note of each and every circumstances except alleged recovery of the articles at the instance of the accused, that too from the bank and also with regard to the recovery is concerned also no description of the articles which were missing from the mother was not given and also not tallies with each other. When such being the case, in a case of circumstantial evidences case must be proved by proving each chain link and establish the same. In order to establish the chain link to connect the accused person has indulged in committing the robbery as well as murder, there must be a cogent evidence before the Court and such evidence is not found and there is no any circumstances of the accused person was found along with



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the deceased. But in the case on hand, he barged into the house of the deceased and committed her murder.

26. In the background of the case, the Hon'ble Apex Court in the case of **SHANTI DEVI W/O SHANKER LAS v. STATE OF RAJASTHAN¹**, while discussing about chain of circumstantial evidences that could be established against the accused, has laid down certain principles at paragraphs No.10.1 to 10.4 which read as under:

"10.1 The circumstances from which an interference of guilt is sought to be proved must be conjointly or firmly established.

10.2 The circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused.

10.3 The circumstances taken cumulatively must form a chain so complete that there is no escape from the conclusion that with an all human probability, the crime was committed by the accused or none else.

10.4 The circumstances should be incapable of explanation on any reasonable hypothesis, same that of the guilt of the accused."

¹ 2012 (12) SCC 158



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27. This Court also would like to rely on the judgment of the Apex Court in **Mallappa and others Vs. State of Karnataka**² wherein the principles which come into play while deciding an appeal from acquittal could be summarized. The Apex Court has observed at paragraph No.42, which reads as under:

"42. Our criminal jurisprudence is essentially based on the promise that no innocent shall be condemned as guilty. All the safeguards and the jurisprudential values of criminal law, are intended to prevent any failure of justice. The principles which come into play while deciding an appeal from acquittal could be summarised as:

- (i) Appreciation of evidence is the core element of a criminal trial and such appreciation must be comprehensive — inclusive of all evidence, oral or documentary;*
- (ii) Partial or selective appreciation of evidence may result in a miscarriage of justice and is in itself a ground of challenge;*
- (iii) If the court, after appreciation of evidence, finds that two views are possible, the one in favour of the accused shall ordinarily be followed;*
- (iv) If the view of the trial court is a legally plausible view, mere possibility of a contrary view shall not justify the reversal of acquittal;*
- (v) If the appellate court is inclined to reverse the acquittal in appeal on a reappreciation of evidence, it must*

² 2024 (3) SCC 544



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specifically address all the reasons given by the trial court for acquittal and must cover all the facts;

(vi) In a case of reversal from acquittal to conviction, the appellate court must demonstrate an illegality, perversity or error of law or fact in the decision of the trial court".

In the present case, when there is no chain link is established by placing any cogent evidence, the question of interfering with the finding of trial Court doesn't arise.

28. It is a settled position of law that if any two views are possible and even if Court comes to the two views are possible, particularly, only by relying upon the evidence of PW15, this Court cannot convert the acquittal into conviction as contented by learned HCGP for State and benefit of doubt goes in favour of the accused only and unless, the cogent evidence is placed before the Court and any miscarriage of justice is found in appreciating the evidence available on record, then only the Court can convert the acquittal into conviction and the same is not warranted in the case on hand and hence answer the points in the ***negative***.



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29. In view of the discussions made above, we
pass the following:

ORDER

Appeal is ***dismissed***.

Sd/-
(H.P.SANDESH)
JUDGE

Sd/-
(B.PRAMOD)
JUDGE

MKM
List No.: 1 SI No.: 7