



CNR: KAHC010033562019

NC: 2026:KHC:47089-DB
CRL.A No. 195 of 2019

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF AUGUST, 2026

PRESENT

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

AND

THE HON'BLE MR. JUSTICE B.PRAMOD

CRIMINAL APPEAL NO.195 OF 2019

BETWEEN:

1. THE STATE OF KARNATAKA
BY METAGALLI POLICE STATION
REP. BY STATE PUBLIC PROSECUTOR
HIGH COURT BUILDING
BENGALURU-560 001.

...APPELLANT

(BY SRI. CHENNAPPA ERAPPA, HCGP)

AND:

1. ABHISHEK @ ABHI @ KENCHA
S/O. RAVI
AGED ABOUT 25 YEARS
RESIDING AT NO.572
4TH CROSS
LOKANAYAKA NAGARA
MYSURU-570 001.

...RESPONDENT

(BY SRI. S. RUPESH KUMAR, ADVOCATE)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION
378(1) AND (3) OF CR.P.C PRAYING TO GRANT LEAVE TO

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by DEVIKA M
Location: HIGH
COURT OF
KARNATAKA



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APPEAL AGAINST THE JUDGMENT AND ORDER OF ACQUITTAL DATED 04.10.2018 PASSED BY THE I ADDITIONAL SESSIONS JUDGE, MYSURU IN S.C.NO.181/2016 ACQUITTING THE RESPONDENT OF THE OFFENCES PUNISHABLE UNDER SECTIONS 448, 302 OF IPC.

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

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

ORAL JUDGMENT

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

Heard the learned High Court Government Pleader appearing for the State and also learned counsel appearing for the respondent.

2. This appeal is filed against the judgment of acquittal passed by the Trial Court in S.C.No.181/2016 dated 04.10.2018 on the file of I Additional Sessions Judge, Mysore and prays this Court to convict the accused for the offence punishable under Sections 448 and 302 of IPC and sentence him for both the offences.

3. The factual matrix of case of the prosecution is that on 03.01.2016 at about 2.30 a.m., when the deceased was on



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duty, accused with an intention of committing theft of cash entered into the ATM room and when the deceased obstructed, the accused assaulted him with an intention of doing away with his life and throttled the deceased forcibly resulting in his death. The accused murdering the deceased, ran away taking the purse containing cash belonging to deceased and the same was witnessed by P.W.20-Harish auto-driver, who saw the accused pulling ATM machine and being suspicious, P.W.20 moved towards ATM and in the meanwhile, the accused ran away from the spot and he went to police station and informed the same. The police, who received the information informed the higher authorities i.e., P.W.19 and P.W.8-Mahadeva rushed to ATM along with a Constable by name Shekhar along with P.W.20 and found slight damage had been done to ATM and they also found the dead body of deceased lying in the rear room of ATM. The Police Inspector also came to the spot and called the Police Control Room for securing presence of fingerprint experts, dog squad and RFSL authorities. In the meanwhile, the complainant-Harish Kumar and P.W.4-Manjunath came to the spot. P.W.19-Police Inspector received



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written complaint Ex.P1 from Harish Kumar and on the basis of the said complaint, case was registered in Crime No.2/2016 and FIR was also sent to the Court. The Police Inspector sent the dead body to JSS Medical College for post mortem and he conducted inquest over the dead body in the presence of panchas as per Ex.P11. P.W.19-Police Inspector recorded the statements of blood relatives of deceased and also recorded the statement of other persons. P.W.15-Mallikarjuna, Head Constable produced the accused before P.W.19 and followed the procedure of arrest. P.W.19-Police Inspector drew the panchanama of scene of offence as per Ex.P2 and seized M.O.1-broken CCTV camera, M.O.2-purse, M.O.3-pair of chappals, M.O.4-Hawai chappals and M.O.5-stone by drawing the panchanama under Ex.P2. The Police Inspector also got the photographs of scene of offence and recorded the voluntary statement of accused as per Ex.P4 and seized M.O.6-mobile and M.O.7-currency notes of Rs.50 denomination and M.O.8-currency notes of Rs.20 denomination from possession of the accused. He also seized M.O.17-woolen guard under panchanama. The Police Inspector sent accused to fingerprint



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unit for securing fingerprint of accused. The accused was subjected to medical examination and thereafter, he was produced before the Court and obtained judicial custody.

4. On 05.01.2016, Police Inspector recorded statements of witnesses and also gave requisition to the manager of HDFC Bank to produce CCTV footage and requested PWD authorities to draw the sketch of scene of offence. That on 28.01.2016, Police Inspector received sealed bottle containing viscera from Medical Officer. On 18.03.2016, he received M.O.16-CD from P.W.4-Manjunath and seized the same under panchanamma in terms of Ex.P9. Since M.O.16-CD was taken, the Investigating Officer submitted requisition dated 11.01.2018 for purchasing another CD and on 19.05.2018, another CD, M.O.16(a) was produced. The Police Inspector collected documents pertaining to employment of deceased. The Police Inspector received RFSL report on 26.03.2016 and final opinion of Medical Officer on 31.03.2016 and after completion of the investigation, he has filed charge sheet before the Court by invoking the offence under Sections 448



and 302 of IPC. The accused did not plead guilty and claims the trial.

5. Hence, the prosecution relies upon the evidence of P.W.1 to P.W.20 and Exs.P1 to P27 and M.O.1 to M.O.17 are marked. The accused was subjected to 313 statement. However, the accused did not choose to lead any defence evidence.

6. The Trial Court having considered both oral and documentary evidence and on appreciation of the same comes to the conclusion that very case of the prosecution is doubtful and in order to connect the accused to this incident, there is no material. The Trial Court comes to the conclusion that it is a case of homicidal. However, comes to the conclusion that the articles which have been seized during the course of investigation and also the material collected by the prosecution cannot be believed. The circumstances relied upon by the prosecution cannot be accepted, particularly the evidence of witnesses is contradictory to each other. The Trial Court also taken note of the CD which was relied upon by the prosecution, in order to connect the accused, particularly in paragraph No.24



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and comes to the conclusion that when the pen drive was collected, the same is not produced before the Court and only relies upon CD M.O.16 and the same was also broken and subsequently, M.O.16(a) was produced and the same is not useful to the case of the prosecution. The evidence of P.W.16 that he saw the accused in CCTV footage cannot be accepted, since original CCTV footage which according to the prosecution was transferred to pen drive is not produced before the Court.

7. The Trial Court also taken note of evidence of P.W.16 with regard to M.O.16 as well as the fact that Certificate is not produced before the Court under Section 65B-4 of the Indian Evidence Act. The Trial Court also taken note of next circumstance of evidence of seizure of pair of chappals belonging to the accused under panchanama Ex.P2 and also the statement of P.W.1, P.W.4 and P.W.9 and also the evidence of P.W.20, who has not identified the accused and he is the only witness, who speaks about abandonment of hawai chappals by the person, who ran away from ATM room. The Trial Court also taken note of fingerprints of accused have been found on ATM and in this connection, the evidence of P.W.12 cannot be



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believed that on the date of incident at about 4.10 a.m. his presence was secured to the scene of offence and he examined ATM thoroughly and during the said examination, he found out one fingerprint on ATM and he put silver nitrate powder and fingerprint appeared and he transferred said fingerprint to a transparent paper with the aid of cellophane tape and marked the same as 'a'. On 05.01.2016, he compared the said fingerprint with the fingerprint of accused taken in a slip and found out that, fingerprint found on ATM tallied with the right thumb of accused. The Trial Court taken note of the fact that while taking the fingerprint also, photo was not taken and Investigating officer has stated that fingerprint of accused were taken on a paper and the said paper has not been marked in the evidence. The Investigating Officer ought to have taken a fingerprint of accused in the presence of panchas and panchanama ought to have been drawn. In the absence of panchanama, the self-serving statement of Investigating Officer cannot be relied upon.

8. The Trial Court also comes to the conclusion that evidence of P.W.12 that fingerprint found on ATM tallied with



the right hand thumb of accused cannot be relied upon. The Trial Court in detail discussed the material available on record and comes to the conclusion that there are inconsistencies in the evidence of prosecution witnesses and none of the seized articles, including M.O.1-broken CCTV camera and so also, CD and fingerprint report will not come to the aid of prosecution and acquitted the accused. Being aggrieved by the judgment of acquittal, the present appeal is filed before this Court.

9. The learned High Court Government Pleader appearing for the State in his argument would vehemently contend that the Trial Court committed an error in acquitting the accused and failed to consider the evidence of P.W.20 only on the ground that he has not identified the accused, but he was treated as hostile and cross-examined him and though, he has not identified, but he only set the law in motion by intimating the incident to the police and police came and inspected the spot and taken the complaint of P.W.1 and the evidence of P.W.1, P.W.4, P.W.8, P.W.12, P.W.15 and P.W.19 is very clear. He would also contend that Trial Court failed to appreciate that prosecution has produced M.O.16-CCTV



footage, wherein the presence of the accused at the ATM has been found and the same proves the very presence of the accused which is spoken by P.W.18 and P.W.19 and committed an error in coming to the conclusion that Certificate under Section 65B-4 of the Indian Evidence Act is not produced before the Court. He would further contend that Trial Court committed an error even relying upon the fingerprint report and erroneously discarded the same. Hence, it requires interference of this Court.

10. Per contra, learned counsel appearing for the respondent would vehemently contend that there is an inconsistency in the evidence of the prosecution witnesses. Though they came to the spot immediately and secured the accused on the very same day, there is no basis for securing the accused. The counsel would contend that when the CCTV footage is relied upon, the same is not clear, visible and the person cannot be identified and the same has emerged during the course of cross-examination, particularly P.W.19, who conducted the investigation in the respect of this case is concerned. The evidence available on record not inspires the



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confidence of the Court. Hence, the Trial Court rightly acquitted the accused extending the benefit of doubt in favour of the accused and it does not require any interference.

11. Having heard the learned High Court Government Pleader for the State and also learned counsel for the respondent and also on re-appraisal of both oral and documentary evidence, the points that would arise for consideration of this Court are:

- (i) Whether the Trial Court committed an error in acquitting the accused extending the benefit of doubt in his favour and there is any perversity in appreciation of evidence and whether it requires interference of this Court?
- (ii) What order?

Point No.(i):

12. Having heard the respective counsels and also the material available on record, the factual matrix of case of the prosecution is that on 03.01.2016 at about 2.30 to 3.00 a.m., the accused trespassed into HCFC Bank's ATM situated on Hebbal Main Road, Lokanayaka Nagar, Mysore with an intention



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of committing theft of cash and he committed the offence under Section 448 of IPC and in that process, he committed the murder of one Sadhananda, who was working as security by throttling him and thereby, committed an offence under Section 302 of IPC. Having perused the material available on record, there is no dispute with regard to cause of death of the deceased is concerned in terms of the post mortem report which is marked as Ex.P12 and cause of death is also an account of throttling. The Trial Court rightly accepted the cause of death by considering the evidence of the Doctor as well as post mortem report and no grounds to come to an other conclusion with regard to cause of death is concerned.

13. Now this Court has to examine whether the material available before the Court proves the circumstances to come to a conclusion that this accused himself committed the offence. The first witness which is relied upon by the prosecution is P.W.20, who found the accused closing the ATM door and he suspected the very act of the accused, who ran away from that place and immediately he informed the same to the police. The PW8 went to the spot and after confirming the said fact,



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informed the same to PW19 and PW15 and then all of them rushed to the spot. It is the evidence of PW19 that he has secured the finger print expert and rushed to the spot and noticed the dead body and the CC TV footage was also broken. It is his evidence that he was present in the spot along with finger print expert and the RFSL persons who collected the fingerprint also.

14. It is also the case of prosecution that PW18 Ramanath, who transferred the CC TV footage into the pen drive on the very date of the incident and the same is not spoken by PW19 who conducted the investigation. But he admits in the cross-examination that there was a delay in collecting MO16-CD and the same was produced on 18.03.2016 almost after two and half months. The same is taken note of by the Trial Court in paragraph No.24. It is also important to note that when the CC TV footage was transferred to the pen drive, the same was not produced before the Court. It is also important to note that MO.16 was also broken and thereafter MO.16(a) was produced on 19.05.2018 i.e. after lapse of 3 years and how MO.16(a) was prepared nothing is placed on



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record. The evidence of PW16 that he saw the accused in CC TV footage, but the same cannot be accepted, since original CC TV footage was not produced before the Court and even the same is also not visible. Further, the person who was found in the ATM also not identifiable and the same has also taken note of by the Trial Court.

15. It is also important to note that when the CC TV footage is reliable and digital evidence is placed before the Court and the same is supported by a Certificate as specified in Section 65B-4 of Indian Evidence Act, the Trial Court also took note of the principles laid in the judgment of **Anwar P.V. V/s P.K. Basheer and Others** reported in **2015 (1) SC Crimes 24** and the same is also extracted in paragraph No.24. The Trial Court also having considered other circumstances with regard to the seizure of MO.16(a) and held that same is suffered from certificate and so also with regard to the seizure of the chappals belonged to the accused under panchanama and the same was also not proved. The very evidence of PW20 is that when he found the accused, who ran away from the spot. He also not identified the accused and even with regard to



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the Hawaii Chappals which were seized at the spot. The other circumstances relied upon by the prosecution is finger print of accused is concerned, though finger print expert says that he had collected the finger print at the spot i.e. PW12 and his evidence also not believable for the reason that the slip alleged to have contained fingerprints of the accused and PW19- Investigating Officer has stated before the Court that finger prints of accused were taken on a paper and said paper has not been marked in the evidence. The Investigating Officer ought to have taken a finger print of accused in the presence of panchas and panchanama and ought to have been drawn, but the same was not done. Hence, the Trial Court also having taken note of the same, comes to the conclusion that in the absence of panchanama, the statement of Investigating Officer cannot be relied upon and even photography was also not taken. The Trial Court has also discussed in detail the other circumstances in paragraph Nos.25, 26, 27, 28.

16. Law is settled that while convicting an accused, the prosecution has to prove the case beyond reasonable doubt. But on perusal of the material available on record, there is no



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any positive evidence before the Court and there is inconsistency in the evidence. PW15 says that he went to the ATM and found the CC TV footage and thereafter apprehended the accused. But he says that incident has taken place on 05.01.2026 and according to the prosecution, the incident has taken place on 03.01.2016 and there are contradictory evidence and he claims that he arrested the accused and produced before the IO. But date is also different. Apart from that, there is no any basis for arrest of the accused though they relies upon the CC TV footage, but the CC TV footage is also not clear. The admission on the part of PW3 who deposed before the Court, categorically says that when he went to the spot, there were no any documentary proof to show that CC TV footage was there to show the very presence of the accused in CC TV footage. The very identification of the accused in CC TV footage is also doubtful and even collecting of the CD and other materials has not been explained. The evidence of PW18 is contrary to the evidence of PW19-IO and he claims that he transferred the CC TV footage into the pen drive. But pen drive is not fully recovered and they lies upon only the CD. With



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regard to the CD is concerned also, there is no any certificate. The very admission on the part of PW19 who deposed before the Court that there are two ATMs and he did not notice the CC camera footage at the time of inspecting the spot. But he admits that he came to know about the same later. He did not collect the CC TV footage even subsequent to the incident. When such admission is available before the Court, the very seizure of CC TV footage and also production of MO.16-CD is also doubtful.

17. Having taken note of all these inconsistencies in the case of evidence of prosecution and so also the material available on record, in view of the judgment of the Apex Court in the case of **MALLAPPA AND OTHERS V/s. STATE OF KARNATAKA** reported in **2024 (3) SCC 544** and while reversing the judgment of acquittal into conviction, there must be cogent and convincing evidence and only if perversity is found, the Court can reverse the same. We do not find any ground to interfere with the findings of the Trial Court. Hence, we answer the point No.(i) in the Negative.

Point No.(ii):



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

ORDER

The appeal is dismissed.

**Sd/-
(H.P.SANDESH)
JUDGE**

**Sd/-
(B.PRAMOD)
JUDGE**

ST,MKM
List No.: 1 Sl No.: 8