



CNR: KAHC010033912019

NC: 2026:KHC:42733-DB
CRL.A No. 188 of 2019

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF AUGUST, 2026

PRESENT

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

AND

THE HON'BLE MR. JUSTICE B.PRAMOD

CRIMINAL APPEAL NO. 188 OF 2019 (A)

BETWEEN:

STATE OF KARNATAKA BY
POLICE INSPECTOR,
MANGALORE SOUTH POLICE STATION,
REP. BY STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING,
BENGALURU-560 001.

...APPELLANT

(BY MR. MOHAMMED AYUB ALI, ADDL. SPP)

AND:

1. MOHITH KUMAR
S/O. UMESHA POOJARI,
AGED ABOUT 26 YEARS,
R/AT NEAR AVINASH YUVAKA MANDALA,
ADYAR PADHAVU, NEERMARGA,
MANGALORE-575 001.
2. JITHIN
SON OF RAMAIAH BHANDARY,
AGED ABOUT 26 YEARS,
R/AT KAKKEBETTU,
THARIPADPU, KULASHEKHARA,
MANGALORE-575 001.

...RESPONDENTS

(BY SRI. G.C. SRI HARSHA, ADVOCATE FOR

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by
SHARADAVANI
B

Location: HIGH
COURT OF
KARNATAKA



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SRI. NISHIT KUMAR SHETTY, ADVOCATE
FOR R1 & R2)

THIS CRL.A. IS FILED U/S. 378(1) AND (3) OF THE CR.P.C PRAYING TO GRANT LEAVE TO APPEAL AGAINST THE JUDGMENT AND ORDER OF ACQUITTAL DATED 21.02.2018 PASSED BY THE COURT OF THE I ADDITIONAL DISTRICT AND SESSIONS JUDGE, D.K., MANGALORE IN S.C.NO.11/2013, ACQUITTING THE RESPONDENTS / ACCUSED OF THE OFFENCES P/U/S 302, 201, 404, 394 READ WITH SECTION 34 OF IPC.

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

ORAL JUDGMENT

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

Heard the learned Additional State Public Prosecutor appearing for the appellant-State and also learned counsel appearing for the respondent - accused.

2. The brief factual matrix of the case of the prosecution is that:



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a) While invoking the offences punishable under Sections 302, 201, 404, 394 and Section 34 of IPC, the case of the prosecution is that on 24.09.2012, during night hours, accused Nos. 1 to 3 with a common intention of committing robbery, at about 10.30 p.m., entered into the house of Ganesh Ram Suvarna, situated at Valencia, Gorigudde, Mangaluru City. The house property was owned by CW15 and assaulted the deceased with knife over his neck and eyes and caused severe injuries and killed him. Thereafter dragged the dead body to the kitchen and concealed the dead body and robbed the golden chain, golden finger ring along with mobile phones and used the motorcycle bearing registration number KA.19/V.8329, to flee away from the place of incident.

b) During the course of investigation, the IO has recovered the golden chain, finger ring, mobile phones and motorcycle. The last was seized. The police having investigated the matter and made recovery of the instance



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of the accused, have filed the charge sheet and accused No.2 is a minor and he is a juvenile and therefore, accused Nos.1 and 3 were subjected to the trial before the trial Court, since the accused Nos.1 and 3 did not plead guilty, they claimed the trial.

c) The prosecution examined PWs1 to 32 witnesses and got marked documents at Exs.P1 to 60(a). The accused persons were subjected to Section 313 Cr.P.C., statement but did not lead any defence evidence. The prosecution mainly relies upon MOs.1 to 23.

d) The trial Court having considered the materials on record , comes to the conclusion that case rests upon the circumstantial evidence and each link has not been established and the case of the prosecution is also doubtful and though recovery is made at the instance of PW.27, drawn the mahazar at Ex. P43 and the same is not helpful since the accused No.2 was not subjected to the trial before this Court.



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e) The evidence of PW.15 who is the recovery witness, his evidence is also not accepted and the trial Court comes to the conclusion that based on the evidence of PW.15 only, the accused cannot be convicted and further comes to the conclusion that evidences of PW6 and PW11 that they have not specifically stated what are all the material objects which were worn by deceased and missing at the time of the incident. The trial Court also comes to the conclusion that there is no any incriminating evidence to connect accused Nos.1 and 3 in the offence committed and there is no any last-seen theory of witness and also there is no any FSL report with regard to though the knife was allegedly recovered at the instance of accused No.1 who is said to have shown the place where the knife was shown and so also the key of the motorcycle as well as key of the house was recovered. There is no linking evidence before the Court. Therefore, it comes to the conclusion that though number of witnesses are examined and evidence of PWs.1 to 7 shows that they



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decided to offer prayer to the Lord Ganesha by placing their prayer for the blessing of God Ganesha in connection with the performance of Ganesha Utsava in the next succeeding year. But when they come to know about this and their evidence is also not helpful and evidence of PW.5-scientific officer on examination who gave the opinion in terms of Exs. P51, P52 and P57 after subjecting the properties submitted for scientific examination and properties seized during the spot mahazar, the same will not establish the guilt of the accused persons that they have indulged in such act. When there is no direct evidence before the Court and also comes to the conclusion that with regard to the fact that golden ring was recovered at the instance of the accused and there is no appraisal report before the Court that the same is a gold ring and to that effect also nothing is placed on record and given the benefit of doubt in favour of the accused persons that the prosecution failed to prove the case of the prosecution.



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3. Learned Addl. State Public Prosecutor, Sri. Mohammed Ayub Ali in his arguments vehemently contend that though the incident was taken place in the house of PW.8 on 24.09.2012 at 10.30 p.m., nobody was there at that time. But the case is rest upon the circumstantial evidence. He would contend that the golden ring, mobile phones and bike were missing and key of the house was also missing and after committing the offence, they left the house by locking the house of the PW8.

4. Learned Addl. SPP would vehemently contend that a gold thayatha was also recovered at the instance of PW.27, with whom the same was sold to PW.27 by the accused No.2, who is a minor. He also vehemently contends that mobile phone belonging to the deceased was recovered at the instance of accused No.1. He also further submits that accused No.1 pointed out the motorcycle key as well as the house key and he only showed the place where he had thrown the same.



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5. Learned Addl. SPP would further contend that the evidence of PWs.6 and 11, who are the daughter and son-in-law of the deceased, their evidence is also very clear that the ornaments seized belonged to the deceased were robbed. Both of them have identified the mobile, gold ring as well as bike key and also the house key. The counsel also vehemently contended that PW.15 is the recovery witness. He has supported the case of prosecution regarding recovery is concerned not only with respect to recovery of bike key, house key the knife and also the recovery of the gold thayatha from PW.27. All these materials support the case of the prosecution, but the trial Court has committed an error in disbelieving these evidence and comes to the conclusion that chain link is not established and hence, he prays that this Court has to reverse the finding of the trial Court by allowing the appeal.



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6. Per contra, learned counsel appearing for the respondent would submit that according to the prosecution, bike which was recovered belongs to the deceased near the temple and PW.7 categorically deposes that there was a CCTV and CCTV is also examined by the IO. But, the IO who has been examined before the Court, says that he did not examine the CCTV and ought to have recovered the CCTV footage to establish the role of the accused persons. The same is missing here.

7. Further, learned counsel for the respondent - accused persons would submit that though PWs.6 and 11 who have been examined before the Court i.e. daughter and son-in-law and they have not specifically stated what are all the gold ornaments that were missing from the body of the deceased and also not stated before the police that the same belong to the deceased and also the evidence of PW.15 cannot be an evidence to come to the conclusion that accused persons only have committed the



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offences and they indulged in committing such an act. He also vehemently contend that when the knife was seized, no report is produced before the Court i.e., FSL report or the like and nothing contains the class of the blood stains of the accused were recovered and sent to the FSL and these are the materials that are required to be proved. When the case rests upon the circumstantial evidence, there must be a chain link to be established and the same is not established before the appellate Court and hence the appellate Court rightly acquitted the accused persons and it does not require any interference of this Court and prays for dismissal of this appeal.

8. In support of his contention, learned counsel appearing for respondent-accused also brought to the notice of this Court with regard to recovery is concerned, a decision of the Hon'ble Supreme Court in the case of ***SUBRAMANYA v. STATE OF KARNATAKA***, reported in



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(2023) 11 SCC 255, at paragraph no.77, wherein the Apex Court while discussing the same, has held as under:

"The first and basic infirmity in the evidence of all the aforesaid prosecution witnesses is that none of them have deposed the exact statement said to have been made by the appellant herein which ultimately led to the discovery of a fact relevant under Section 27 of the Evidence Act."

9. Learned counsel for the respondents - accused also brought to the notice of this Court to the fact that while making the recovery also, for each and every recovery, there must be a first part and second part of recovery and must disclose the same before the panch witnesses by the accused and that they are going to do the recovery and it is with the exclusive knowledge of the accused persons.

10. Having heard the learned Addl. SPP appearing for the appellant-State and also the learned counsel appearing for the respondents-accused and also considering the offences invoked against the accused, i.e.,



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for the offences punishable under Sections 302, 201, 394, 404 r/w 34 of IPC and this Court would like to make it clear at the beginning itself has mentioned that accused No.2 is a minor and he was tried before the JJ Court and he did not face any trial before the trial Court. Having taken note of the same, the points that would arise for the consideration of this court are

i. "Whether the accused Nos. 1 and 3 have committed the offences which have been invoked and whether the trial Court committed an error in acquitting the them for the offences punishable under Sections 302, 201, 404, 394 and 364 of IPC and whether it requires interference of this Court to convict the respondents by reversing the judgment of acquittal?

ii. What Order?"

11. Having heard the respective counsel and also on perusal of the entire material available on record, no doubt the prosecution examined witnesses as PWs.1 to 32, got marked documents at Exs. P1 to P60(a) and material



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objects as MOs.1 to 23. The incriminating evidences before the Court with regard to the recovery of material objects, i.e., MOs. 18, 19 and 20, particularly with regard to the recovery of the mobile of the deceased at the instance of the accused is concerned, the prosecution has not placed any material before the appellate Court like the CDR report that this mobile was used by the accused and the said mobile also belongs to the accused and when such material is placed before the Court, the question of connecting the accused that mobile belongs to the deceased, i.e., MO.20 but nothing is placed on record to prove the same.

12. Furthermore, the other weapon MO.19 was also seized at the instance of the accused according to the prosecution and PW.15 deposes before the Court in that regard, but, there is no any FSL report that the very same weapon was used in committing the murder and mere recovery at the instance of the accused allegedly it was deposed by PW.15 is not enough. There must be



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incriminating evidence before the Court to connect the accused.

13. It is also the case of the prosecution that house key was also recovered at the instance of the accused and so also the motorcycle key. But motorcycle key is not marked before the Court as a material object. But case of the persecution that motorcycle key as well as the house keys were also thrown and the same is recovered at the instance of the accused. No doubt, PW.15 deposes before the Court with regard to the recovery is concerned and except this material before the Court, no other material is available before the Court to connect the accused and to prove the chain of each chain link to establish in a case of circumstantial evidence.

14. The Apex Court in the case of ***PRASAD vs THE STATE OF BIHAR AND ANOTHER***, reported **(2022) 3 SCC 471**, has categorically held that in case of reversal of judgment of acquittal into a conviction in paragraph



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number In paragraph no.30, laid down the principles with regard to where incontrovertible evidence has been rejected by the High Court based on suspicion and surmises, which are rather unrealistic and taken note of the judgment of and taken note of the judgment of **State of Rajasthan v. Sukhpal Singh, AIR 1984 SC 207**, and also considered the principle that where the intrinsic merits of the testimony of relatives, living in the same house as the victim, were discounted on the ground that they were 'interested' witnesses and also where testimony of witnesses had been disbelieved by the High Court, on an unrealistic conjuncture of personal motive on the part of witnesses to implicate the accused, when in fact, the witnesses had no axe to grind in the said matter and the same also to be taken note and also the Apex Court in the said judgment took note of the principles in a case of where acquittal would result in gross miscarriage of justice also to be considered and also to take note of the circumstantial evidence based when the case rests upon



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the circumstantial evidence each link must be established and appeal against acquittal, the circumstances under which Hon'ble Supreme Court may entertain appeal against order of acquittal and pass order of conviction. Principles also summarized in paragraph no 31.

15. Having taken note of the same into consideration and also in a case of circumstantial evidence, when the case rests upon the circumstances, each link must be established. In the case on hand, except the evidence of PW15, no other material is available before the Court. The trial Court also taken note of with regard to the gold articles which were seized, particularly, the gold thayatha is recovered at the instance of accused No.2 and the same is not relevant to the present case, as he was juvenile offender and not before this Court.

16. In respect to the seizure of motorbike is concerned, that the same was not seized at the instance of the accused and the same was lying and the same was



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seized having noticed the same by some person on 29.09.2012, which is brought to the notice of the police and the same was seized.

17. The other article i.e., gold ring is concerned also the trial Court having taken note of the fact that the same is not apprised by any appraiser, that the same belongs to the deceased and the same is also a gold article. No doubt, whether it is gold article or of any metal, which was recovered at the instance of the accused and the same is immaterial. But Court has to take note of the fact that there must be chain linked. In the case on hand, except the evidence of PW15, no other material is available before the Court to connect the same and even CCTV which was discussed by the trial Court that there was a CCTV in the temple where the motorcycle was lying and the same was also inspected by the prosecution i.e., IO, which is spoken by PW.7 and PW.31 says that he did not notice the CCTV



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and such CCTV footage is also not collected and placed before the Court.

18. In order to establish the chain link to connect the accused persons have 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 persons were found along with the deceased. But in the case on hand, they barged into the house of the deceased and committed his murder and the learned counsel appearing for the defence also brought to the notice of this Court that IO recorded the statement of autorikshaw driver. According to the prosecution, the said autorikshaw belongs to PW.9 and PW9 has also not supported the case of prosecution that accused persons went in his autorikshaw and though he made the statement before the police according to the prosecution, but he has turned hostile and he has not supported the case of prosecution.



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19. Even the evidence of PW.14 also does not come to the aid of the prosecution with regard to the recovery of gold chain and he also has not supported case of the prosecution. When such being the material available on record, when there is no chain link is established by the prosecution to connect the accused persons that both of them have indulged in committing the crime of murder as well as robbed the golden articles and also motorcycle belonging to the deceased, the question of interfering with the findings of the trial Court does not arise.

20. In the above circumstances, the Hon'ble Supreme Court in the case of **SHANTI DEVI W/O SHANKER LAS v. STATE OF RAJASTHAN**, reported in **(2012) 12 SCC 158**, 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.



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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."

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

21. 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 Addl. SPP 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



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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 point as ***negative***.

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

ORDER

Appeal is ***dismissed***.

Sd/-
(H.P.SANDESH)
JUDGE

Sd/-
(B.PRAMOD)
JUDGE

Bsv
List No.: 1 Sl No.: 11