



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 5TH DAY OF MARCH, 2026

PRESENT

THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ

AND

THE HON'BLE MR. JUSTICE VENKATESH NAIK T

CRIMINAL APPEAL NO.639 OF 2018

BETWEEN:

1. JAGA G.T.
S/O LATE H.K. THANIYAPPA
LABOURER
RESIDING AT GONDIBASAVANAHALLI VILLAGE
KUSHALNAGAR
KODAGU-571 234
(THIS ACCUSED HAS DIED DUE TO
CARDIAC ARREST ON 03.06.2017)
2. JOHNSON G.T. @ JOHNY
S/O. LATE H.K. THANIYAPPA
DRIVER
RESIDING AT GONDIBASAVANAHALLI VILLAGE
KUSHALNAGAR
KODAGU-571 234.

...APPELLANTS

(BY SRI C.N. RAJU, ADVOCATE FOR APP-2;
VIDE ORDER DATED 20-8-2024, APPEAL AGAINST APP-1 STANDS ABATED)

AND:

STATE OF KARNATAKA
REPRESENTED BY THE
CIRCLE INSPECTOR OF POLICE
KUSHALNAGAR CIRCLE

...RESPONDENT

(BY SMT. RASHMI JADHAV, ADDITIONAL SPP)

* * *

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374(2) OF
CR.P.C PRAYING TO SET ASIDE THE JUDGMENT AND ORDER OF

Digitally
signed by
ANJALI M
Location:
High Court
of Karnataka



CONVICTION DATED 29-5-2017 PASSED BY THE I ADDITIONAL DISTRICT AND SESSIONS JUDGE, KODAGU AT MADIKERI IN SESSIONS CASE NO.39 OF 2016 - CONVICTING THE APPELLANT/ACCUSED NO.1 AND 2 FOR THE OFFENCE PUNISHABLE UNDER SECTION 302 READ WITH 34 OF IPC.

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

CORAM: HON'BLE MR. JUSTICE MOHAMMAD NAWAZ
and
HON'BLE MR. JUSTICE VENKATESH NAIK T

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE MOHAMMAD NAWAZ)

The judgment and order dated 29.05.2017 passed by the Court of I Additional District and Sessions Judge, Kodagu at Madikeri, in Sessions Case No.39/2016 is assailed in this appeal.

2. Vide impugned judgment, the learned Sessions Judge has convicted accused Nos.1 and 2 for the offence punishable under Section 302 read with Section 34 of Indian Penal Code, 1860 (for short, "IPC") and sentenced them to undergo rigorous imprisonment for life and to pay fine of Rs.15,000/- each.



3. We have heard the learned counsel for the appellants, learned Additional State Public Prosecutor for the State. Perused the evidence and material on record.

4. It is submitted by the learned counsel for the appellants that appellant No.1/accused No.1 died on 03.06.2017 due to Cardiac arrest.

5. The factual matrix of the prosecution case are as under:

After divorcing her husband Rajeeva (PW1), deceased Kavitha was residing with accused No.2 since ten years. For about one and a half years prior to the incident, she was residing separately. Accused No.2 had developed intimacy with one Uma and in this connection, deceased was quarrelling with accused No.2. She had also lodged a complaint at Kushalnagar Police Station against accused No.2. Since the deceased was quarreling with accused No.2 as well as his brother accused No.1, on 19.01.2016 at about 8.30 p.m., when Kavitha was proceeding by walk in front of the house of accused No.1



situated at Gondibasavanahalli village, both accused Nos.1 and 2 with a common intention, picked up quarrel with her. Accused No.1 went inside the house and brought a Kathi - MO1 and when Kavitha started running towards her house, accused No.1 holding MO1 and accused No.2 holding a nylon rope - MO2, chased her towards a vacant space in Survey No.1/1 of reserve forest area situated behind the house of accused No.1. She was assaulted by accused No.1 with MO.1 - Kathi on neck, face, etc. and accused No.2 tied the nylon rope around her neck and strangled her.

6. Ex.P1 is the complaint lodged by PW1-Rajeeva. On the basis of the said complaint, PW15-PSI of Kushalnagar Police Station registered the case against accused Nos.1 and 2 and forwarded the FIR - Ex.P23 to the jurisdictional Court. He handed over the investigation to the C.P.I - PW14.

7. PW14-C.P.I took over the investigation and proceeded to the spot and conducted inquest mahazar and



gave requisition to the Doctor for conducting the post-mortem examination. Accused Nos.1 and 2 were arrested and their voluntary statements were recorded. At the instance of accused No.1, his blood-stained clothes as well as MOs.1 and 2, knife and nylon rope, were recovered. On completion of investigation, charge sheet was filed.

8. The learned Sessions Judge framed charges against accused Nos.1 and 2 for the offence punishable under Section 302 read with Section 34 of IPC, for which the accused pleaded not guilty and claimed for a trial.

9. In order to establish the case, the prosecution in all examined 15 witnesses and got marked 23 documents and MOs.1 to 9. The defence of the accused was one of total denial, however they did not lead any evidence on their behalf.

10. In Ex.P1, PW1 has stated that deceased Kavitha was married to him about 15 years prior to the date of incident and in the wedlock, they have 3 children. Since 10 years she developed intimacy with accused No.2.



Hence, due to marital discord, they took divorce and he started living separately along with his children. Kavitha was residing with Johnson (accused No.2) however, since he had intimacy with some other woman, Kavitha was quarrelling with him, which the complainant came to know from the villagers. In this connection, Kavitha had filed a complaint against accused No.2 and one Uma at Kushalnagar Police Station.

11. It is further stated by PW.1 in Ex.P1 that at about 9 p.m., one Rafeeq (PW2) telephoned to him stating that Kavitha and Johnson (accused No.2), as well as Jaga (accused No.1), have quarreled and accused No.1 Jaga has murdered Kavitha. Immediately, he along with the villager by name Prakash (PW3) and one Jagadeesh (PW4), went to the spot and saw the dead body of Kavitha lying in the land with injuries on her face, chin, neck, etc. It is alleged in Ex.P1 that since Kavitha was objecting the illicit relationship of accused No.2 with another woman, accused No.2 with the help of his brother, accused No.1,



picked up quarrel with her and committed her murder and accused No.2 instigated accused No.1 to commit the murder.

12. The post-mortem report is marked as Ex.P12. PW9, who conducted the autopsy, has noticed the following injuries on the dead body:

1. *"Incised wound of 6 x 1.5 c.m. muscle deep, horizontally placed, present near the left jaw, 1.5 c.m. inferior to angle of mouth, just away from midline, margins of wound are sharp.*
2. *Incised wound present on left side of neck, in the anterior triangle, horizontal placed (5.5 x 1 c.m.).*
Abrasion present over the upper part of neck, 3 in number each 0.5 c.m. apart from each other and described as under.
3. *Abrasion (a) measuring 2 x 0.5 c.m.*
4. *Abrasion (b) measuring 1.5 x 0.1 c.m.*
5. *Abrasion (c) measuring 2.5 x 0.1 c.m.*



6. Abrasion present on manubri sternum, 4 c.m. from sternal angle measuring 4 x 1 c.m.

7. Incised wound 3 x 1 c.m. present over the anterior part of right shoulder."

13. PW9 has opined that the cause of death is due to asphyxia as a result of strangulation. PW9 has also given opinion with regard to the nylon rope (MO.2) and chopper with wooden handle (MO.1), stating that the ligature mark found on the deceased could be caused by the said material-MO.2 and injuries Nos.1 and 2 mentioned in the post-mortem report could be caused by the said weapon-MO.1. His opinion is marked as Ex.P13.

14. The inquest is conducted by PW14. The inquest report is marked as Ex.P8. From the PM report as well as the inquest report, the prosecution has established that Kavitha sustained incised wounds mentioned in the PM report by means of MO.1-knife and cause of death was



due to asphyxia as a result of strangulation by means of MO2-nylon rope.

15. In Ex.P1, PW1 has stated that at about 9 p.m., he was informed by one Rafeeq about the incident. The said Rafeeq is examined as PW2. We have perused the evidence of PW2. According to the said witness, he received a phone call from one Jagadish (PW4) about the incident stating that Kavitha was murdered near his house and asked him to come to the police station. PW2 has stated that he did not see the dead body and the police obtained the signature on some documents as per the direction of Jagadish - PW4.

16. The prosecution has treated PW2 as hostile and cross-examined him. However, he has completely denied the prosecution case. There is nothing elicited in his cross-examination conducted by the prosecution to indicate that he is an eyewitness to the incident.

17. According to PW4 - Jagadish, he came to know about the murder committed in the field behind the house



of the accused at Gondibasavanahalli village. He has only gone to the spot, seen the dead body with the injuries. He has not deposed in his evidence that he has informed about the incident to PW2. He too was treated hostile by the prosecution and cross-examined. From his testimony there is nothing elicited to show that he is an eyewitness to the incident.

18. Similarly, PW3 and PW5 have also turned hostile and their evidence is not helpful to the prosecution.

19. On perusal of the evidence of above witnesses, it is seen that none of them have seen the incident in question. They are only hearsay witnesses who have come to know about the incident from others. It is not forthcoming as to who informed them about the incident or as to who saw the incident, i.e., the accused committing the murder by stabbing the deceased with knife and strangulating with a nylon rope.

20. PW6 is the sister of PW1. She is also not an eyewitness to the incident. She has stated that she came



to know about the incident from his brother, i.e., PW1, who called her over phone at 10.30 p.m. Thereafter, she went to the spot and saw the dead body in the field behind their house and noticed injuries on the dead body. According to her, it was PW1 who informed that accused Nos.1 and 2 committed the murder and the said fact was informed to PW1 by PW2. He has stated that PW2 was present at that time.

21. A perusal of evidence of PW6 goes to show that it was PW1 who informed her that accused Nos.1 and 2 committed the murder and the same was informed to PW1 by PW2. However, PW1 informing this witness about the murder is only on the basis of the statement made by PW2 and the said PW2 himself has not deposed in his evidence that he has seen the incident. Hence, the evidence of PW6 is also not helpful to the case of prosecution.

22. In the cross-examination conducted by the defence, PW6 has stated that she came to know about the incident only from her husband - CW10 (PW8) and no one



else informed her and this admission goes contrary to her chief examination wherein, she has stated that she came to know about the incident from PW1.

23. PW.7 is a close friend of PW.1. He is also not an eye witness to the incident. He has stated that PW.1 called him over phone on 19.01.2016 at about 10:30 p.m. and informed him that Kavitha has expired and asked him to come to the spot. Accordingly, he went to the spot and saw the dead body which was lying in the field, behind the house of accused No.1.

24. The learned Additional SPP vehemently contended that PW.7 has stated that he has heard PW.2 giving his statement before the police that accused No.1 chased the deceased and committed her murder. Therefore, the said evidence is sufficient to establish the guilt of accused No.1.

25. We are unable to accept the contention of the learned Additional SPP. According to PW.7, he heard PW.2 giving his statement before the police about accused No.1



chasing and committing the murder. However, PW.2 himself, alleged to be an eye-witness has turned hostile and not supported the prosecution case. Even, PW.7 has not stated as to when PW.2 gave such statement before the police.

26. PW.8, Krishna. H. B., his evidence is totally contradictory since he has stated that there are about 20 houses around the house of accused No.1 and the police had arranged for alternate clothes to accused No.1, however, he has not stated as to from where and how the police had arranged alternate clothes for accused No.1.

27. Insofar as the illicit relationship between accused No.2 and deceased is concerned, PW.1 in his evidence has stated that after obtaining divorce, deceased started staying with accused No.2 and he came to know that she had given a complaint against accused No.2 alleging that he was having an affair with one Sudha.

28. PW.6, sister of PW.1, has stated that Kavitha left her brother PW.1 and stayed with accused No.2 for



about 9 years. Accused No.2 had an illicit relationship with one Uma. Hence, accused No.2 and Kavitha were quarrelling with each other for the said reason. PW.7, friend of PW.1 has stated that he came to know that since accused No.2 had an illicit relationship with another lady, there were frequent quarrels between accused No.2 and the deceased. PW.12, sister of the deceased has however denied any relationship between accused No.2 and the deceased and therefore, she has been treated hostile by the prosecution.

29. There is some discrepancy with regard to the name of person with whom accused No.2 later developed intimacy. According to PW.1, accused No.2 developed intimacy with one Sudha. PW.7 has stated that accused No.2 developed intimacy with one Uma. However, from the evidence of PWs.1, 6 and 7, it can be gathered that accused No.2 was having an intimacy with the deceased and after she got divorce from her husband i.e., P.W.1, she was residing with him. Further, the witnesses have



also stated that accused No.2 and the deceased were quarrelling since the deceased had objected the intimacy between accused No.2 and another woman.

30. Merely because accused No.2 and the deceased were staying together and they were quarrelling, by that itself it cannot be held that prosecution has established beyond reasonable doubt that the said accused has committed the murder. Admittedly, the dead body was not found in the house, but in a vacant space in a sugarcane field, situated behind the house of accused No.1. According to prosecution both accused Nos.1 and 2 picked up quarrel with the deceased and chased her and committed the murder by assaulting with MO.1-knife and also by strangulating with nylon rope-MO.2. However, PW.2, a material witness has not supported the prosecution case and there is no other evidence on record placed by the prosecution to show that the accused Nos.1 and 2 have chased the deceased and assaulted her in the field situated behind the house of accused No.1. The



murder is alleged to have been committed in a vacant space of reserve forest area and the incident took place at about 09:00 p.m i.e., during night hours on 19.01.2016.

31. Further PW.1 admits that he was not aware of photographs at Ex.P2 and that he had not seen the photograph on that day. More importantly, one Venkatesha, Ramakrishna and another person, who were present in the locality, working in the stone quarry and residing in the house of CW.2, were not examined who were cited as witnesses. As such there are no eye witnesses to the alleged incident and therefore, the evidence of PW.1, who had grudge against appellant No.2/accused No.2 who was responsible for his divorce with the deceased, has reasons to implicate accused No.2 in this case.

32. Learned Additional SPP contended that blood stained clothes and weapons are recovered in this case and as per the FSL report / serology report, articles were stained with B- group blood.



33. PW.14 - I.O. has stated that after the accused were arrested, their voluntary statements were recorded and at the instance of accused No.1, his blood stained clothes as well as knife-MO.1 and nylon rope-MO.2 were recovered. The learned Additional SPP contended that accused No.2 has confessed before the police that he has strangled the deceased with the nylon rope.

34. From the evidence of PW.14 it is seen that the statement of accused No.2 was not marked since same was not admissible, under Section 24 and 25 of the Evidence, as there is no recovery affected on the basis of his confessional statement.

35. PW.8 is the panch witness to the seizure of blood stained shirt and pant from accused No.1, under Ex.P9, marked as MOs.5 and 6, seizure of sickle and nylon rope under Ex.P10, marked as MOs.1 and 2. That is the only incriminating evidence we find against accused No.1. PW.8 has supported the case of prosecution. The motive is attributed only against accused No.2, against whom, we



find that except the said motive aspect and the illicit relationship, there are no other material to connect him with crime or to hold that the crime was committed by him.

36. The learned Sessions Judge based on the ocular evidence of PWs.1 and 5 to 8 coupled with medical evidence of PW.14, and the RFSL report, at Ex.P.15, has held that the prosecution has established the charge against both the accused. However, having re-appreciated the entire evidence and material on record and for the foregoing reasons, we are of the view that, the evidence on record is not sufficient to hold that the prosecution has established the charges against the accused beyond reasonable doubt. Though the materials on record hold some suspicion, but the prosecution has failed to elevate its case from the realm of "may be true" to the plane of "must be true" as is indispensably required in law for conviction on a criminal charge. It is trite to state that in a criminal trial, suspicion, however grave, cannot substitute



proof. Accused are therefore, entitled to benefit of doubt.

For the foregoing reasons, we pass the following:-

ORDER

i) Appeal is ***allowed***.

ii) Judgment and order dated 29.05.2017 passed by the Court of I Additional District and Sessions Judge, Kodagu at Madikeri, in S.C.No.39/2016, convicting and sentencing accused Nos.1 and 2 for the offence punishable under Section 302, read with Section 34 of IPC is hereby ***set aside***.

iii) Accused are acquitted of the charges. The fine amount deposited, if any, shall be refunded.

Sd/-
(MOHAMMAD NAWAZ)
JUDGE

Sd/-
(VENKATESH NAIK T)
JUDGE