

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF AUGUST, 2026

PRESENT

THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ

AND

THE HON'BLE MR. JUSTICE G BASAVARAJA

CRIMINAL APPEAL NO.371 OF 2019

BETWEEN:

MALATHESHA @ MALATHESHA,
S/O HANUMANTHAPPA,
AGED ABOUT 24 YEARS,
LABOURER,
R/O THYAVEREKOPPA VILLAGE,
SORABA TALUK, SHIVAMOGGA DISTRICT,
PIN CODE: 577401.

...APPELLANT

(BY SMT. SUVARNA R., ADV.
FOR SRI. SURESH H.S., ADV.)

AND:

THE STATE OF KARNATAKA
BY ANAVATTI POLICE STATION,
SHIVAMOGGA DISTRICT,
REP. BY THE S.P.P., HIGH COURT BUILDING,
BANGALORE-560001.

...RESPONDENT

(BY SRI. VIJAY KUMAR MAJAGE, SPP-II)

THIS CRL.A IS FILED U/S.374(2) OF CR.PC PRAYING
TO SET ASIDE THE JUDGMENT DATED 03.04.2017
PASSED BY THE III ADDITIONAL SESSIONS JUDGE AT
SHIVAMOGGA IN S.C.NO.38/2016, CONVICTING THE
APPELLANT/ACCUSED FOR THE OFFENCE P/U/S 302 AND
201 OF IPC.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 03.08.2026 AND COMING ON FOR "PRONOUNCEMENT OF ORDERS" THIS DAY, THE COURT, DELIVERED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE MOHAMMAD NAWAZ
and
HON'BLE MR. JUSTICE G BASAVARAJA

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE G BASAVARAJA)

This appeal is preferred by the Appellant/Accused, against the Judgment of conviction and order on sentence dated 03.04.2017 passed in SC No.38/2016 by the III Additional Sessions Judge, at Shivamogga (for short "the trial Court").

2. For the sake of convenience, the parties herein are referred to with their status and rank before the trial Court.

3. Facts in brief leading to this appeal are that, on 11.08.2015 at 10.30 am complainant lodged a complaint before the Anavatti Police Station. The gist of the complaint is that, accused-Malathesha married Divya and their marriage was a love marriage. Since then they are residing in the same village. Further it is alleged that

accused used to quarrel with the deceased frequently for flimsy reasons and in that regard, the elders of the village had convened panchayath several times, but the accused did not mend his way, as such, three months prior to the incident deceased-Divya left the house of accused and went to her parental house. Again accused took her back to the village and on 10.08.2015 at about 8.00 am, when he was coming from Anavatti and proceeding in front of the house of accused, he heard the hue and cry from the house of accused; the deceased and mother of the accused were inside the house and they were crying for help. Since it was normal and regularly happening in the house of accused, he did not bother much about the same and went to his house. On the next day at about 6.00 am, when he was with Hazrath Ali in front of his house, the grand father of the accused came there and informed that the accused had murdered his wife on the previous night. On hearing the same, himself and Hazrath Ali went to the house of accused along with other neighbours and they found wife of the accused was lying dead in a pool of

blood. Immediately, they informed the incident to the Anavatti Police Station through phone and also informed to the family members of the deceased. It is the further case of prosecution that accused had confessed before his grandfather Erappa about the commission of crime and on the basis of that said Erappa informed the complainant about the incident. On receiving telephonic message, immediately the CPI, Sorab visited the place of incident, and after receiving the complaint, registered the FIR in Cr.No.141/2015 for the offences punishable under Sections 302 and 201 of IPC and conducted spot mahazar in the presence of panch witnesses, seized the handle of Axe and blood stained mud and sample mud from the place of incident in the presence of panch witnesses. The body of the deceased was shifted to Government Hospital. The seized articles were sealed. Thereafter, the Taluka Executive Magistrate conducted inquest mahazar on the dead body in the presence of witnesses, after inquest mahazar the body was sent for postmortem examination to Government Hospital, Sorab.

4. During the course of investigation, the police have arrested the accused and at the instance of accused, they have seized sickle under mahazar, in the presence of panch witnesses. The accused was produced before the Court and remanded to judicial custody.

5. The police have sent the seized articles for chemical examination to the RFSL, Davanagere, and received the postmortem report and inquest mahazar and after the completion of investigation, the Circle Inspector of Police, Sorab Circle, filed charge sheet against the accused for the offences punishable under sections 302 and 201 of IPC and submitted the charge sheet before the Civil Judge and JMFC, Court, Sorab. After committal of the case to Sessions Court, it was registered as SC No.38 of 2016.

6. Upon hearing before charges, the trial Court framed charges for the offences punishable under Sections 302 and 201 of IPC. The accused abjured his guilt and claimed to be tried.

7. To bring home the guilt of the accused, the prosecution, in all, examined 12 witnesses as PWs1 to 12 and got marked documents Ex.P1 to P16 and material objects as MOs1 to 8. After completion of prosecution side evidence, the statement of the accused under Section 313 of Code of Criminal Procedure was recorded. The accused denied all the incriminating circumstances brought in the evidence against him, but has not led any defence evidence. After hearing the parties, the trial Court convicted the accused for the offences punishable under Sections 302 and 201 IPC and sentenced him to undergo imprisonment for life and to pay fine of Rs.50,000/- for the offence punishable under Section 302 of IPC, in default to undergo two years of imprisonment. The accused is further sentenced to undergo simple imprisonment for a period of three years and to pay fine of Rs.10,000/-, in default to pay fine, to undergo simple imprisonment for six months. The trial court has further ordered that out of the fine amount recovered, Rs.50,000/- shall be paid in favour of the female child who is under care and custody of PW3.

Being aggrieved by the impugned judgment of conviction and order on sentence, the accused has preferred this appeal.

8. Learned counsel appearing for the appellant/accused, would submit that Court below gravely erred in convicting the appellant without properly analyzing the proper facts and circumstances of the case though the prosecution failed to establish that the appellant is responsible for the commission of the offence alleged against the appellant. She would further contend that the impugned judgment and order of conviction and sentence passed by the trial Court is incorrect and improper and it is contrary to the law and facts and evidence available on record and as such, the same is liable to be set aside.

9. Learned Counsel would further submit that there is no believable direct witness or the evidence against the accused and the prosecution has not proved the guilt of the accused beyond reasonable doubt. As such, the appellant is entitled for an order of acquittal.

Hence, viewed from any angle the impugned judgment of conviction and sentence is illegal, erroneous and same is liable to be set aside. On all these grounds it is sought to allow the appeal. In support of the submissions, learned counsel has relied on the following decisions:

- i. SURESH CHANDRA TIWARI AND OTHERS v. STATE OF UTTARKHAND - RENDERED IN CRL.APPEAL NO.1902 OF 2013 DECIDED ON 28.11.2024;
- ii. ANAND JAKKAPPA PUJARI @ GADDADAR v. STATE OF KARNATAKA RENDERED IN CRL. APPEAL NO.1864 OF 2024 decided on 27.04.2026.

10. On the other hand, learned SPP-II appearing for the respondent-State, would support the impugned judgment of conviction and order on sentence and would submit that the trial Court has properly appreciated the oral and documentary evidence placed before it, in its proper perspective and has accordingly convicted the accused, and the same does not call for interference in this appeal. Accordingly, he prays for dismissal of the appeal.

11. Having heard the learned counsel appearing for the parties and on perusal of material on record, the following points would arise for our consideration:

1. Whether the appellant-accused has made out a ground to interfere with the impugned judgment of conviction and order on sentence?
2. What order?

12. Our answer to the point No.1 is in the negative, for the following:

REASONS

13. In the case on hand, it is the case of the prosecution that based on the complaint made by Sri Somashekharappa, case came registered in Crime No.141 of 2015 against the accused. In the complaint it is stated that accused-Malathesha married Divya and their marriage was a love marriage. Since then they are residing in the same village. Further, it is alleged that accused used to quarrel with the deceased frequently for flimsy reasons and in that regard, the elders of the village had convened

panchayath several times, but accused had not mended his way, as such, three months prior to the incident deceased-Divya left the house of accused and went to her parental house. Again accused took her back to the village. That on 10.08.2015 at about 8.00 am, when he was coming from Anavatti and while proceeding in front of the house of accused, he heard the hue and cry from the house of accused; the deceased and mother of the accused were inside the house and they were crying for help. Since it was regularly happening in the house of accused, he did not bother much about the same and went to his house. On the next day at about 6.00 am, when he was with Hazrath Ali in front of his house, the grand father of the accused came there and informed that the accused had murdered his wife on the previous night. On hearing the same, himself and Hazarath Ali went to the house of accused along with other neighbours and they found the wife of the accused was lying dead in a pool of blood. Thus the accused committed alleged offence.

14. To prove the guilt of the accused, prosecution has examined 12 witnesses as PWs1 to 12, marked 16 documents as Exs.P1 to P16 and 8 material objects as MOs1 to 8.

15. The case arise out of the complaint filed by one Somashekharappa as per Ex.P1 on 11th August 2015 at 10:30 am. On that basis, police registered Crime No.141 of 2015 against the accused for commission of offence under Section 302 IPC. FIR was submitted to the court on 11th August 2015 at 9:43 pm. The complainant-Somashekharappa is examined as PW1. He has deposed in his statement that he knows about the background of the accused and his family. About 4 to 5 years back, accused married the deceased and it was a love marriage. After the marriage, accused started to reside with the deceased at Thayavarekoppa, in a separate house, wherein he started to torture her by suspecting her fidelity. In that regard, the elders of the village had convened panchayat and advised the accused. However, the accused did not change his conduct. When the

situation worsened, i.e. three months prior to the date of incident, deceased left the House of the accused and went to her parental house. Accused came there and took her back. Accused again started to torture the deceased for one or the other reason. As such, on the previous day of the incident, accused and his mother took the deceased to Anavatti Hospital for treatment since the accused had assaulted her on the previous night. Further, he has deposed that on the day of the incident, when he was going in front of the house of the accused at about 8 pm, he heard noise from the house of the accused. Accused was assaulting the deceased and his mother. On the next day at about 6 am, when he was talking with PW6 in front of their House, Erappa came there and informed that the accused told him that he had killed his wife. On hearing that, he immediately telephoned to Anavatti Police Station. Then, Police came to the place of incident and found that the wife of the accused was lying dead in a pool of blood in the hall of the house. Near the body, the handle of an axe was found. Since no relatives of the deceased were there

in the village, he has lodged the complaint with the police. Police conducted mahazar as per Ex.P2 and seized material objects MOs1 to 5. The same day police arrested the accused and brought him to his house. Accused has produced "*kandli*" which was hidden in the bathroom. Police have seized the same under Ex.P3.

16. PW2 Murugesh said to be the attester to the mahazar Exs.P2 to 4, has deposed regarding the mahazar conducted by the police in his presence and also seizure of MOs1 to 5.

17. PW3-Yellamma, mother of the accused, has deposed in her evidence that the accused had married the deceased without their consent and brought her from Karwar. Their marriage was a love marriage and after the marriage, accused started to reside separately in the same village. Further, she has deposed that the accused is addicted to alcohol and under the influence of alcohol, he used to quarrel and assault the deceased. Therefore, the deceased left the house and went to her parents house at Karwar. Accused again brought her back from Karwar.

On the day of incident, in the morning, she took the deceased to Anavatti Private Hospital to give treatment and the accused had also accompanied them. Further, she has deposed that deceased sustained injuries on her body and was suffering from fever. After treatment, they came to the house. Accused came home at 8.00 pm and started assaulting the deceased with hands. When she tried to intervene, accused threatened her stating that he will assault her also. Being scared, she left the house. On the next day, accused came to the house and informed about the death of his wife. Then she visited the house of the accused and found scattered vessels in the house and the deceased was lying in a pool of blood. Police have enquired her. This witness is partly treated as hostile and cross-examined by the public prosecutor.

18. PW4-Erappa, grandfather of the accused, has deposed that the accused is his grandson. Accused had married the deceased and it was a love marriage. Accused started to reside in a separate house in the same village. He has stated that he does not know how was the

relationship between the accused and the deceased. On the next day of the incident, accused came to his house and told him that he killed Divya. Then he informed the same to CW1 and 6.

19. PW5-Hazrat Ali, has stated that accused used to assault and torture the deceased under the influence of alcohol. In this regard, the villagers have convened panchayat and advised the accused, but accused did not heed to their advice. Being unable to bear the torture, the deceased left the house and went to her parental house. But accused again brought her back to his place. Accused used to assault the deceased suspecting her fidelity. Further, he has deposed that he stays opposite to the house of CW1. On the date of incident in the morning between 6.00 and 6:30 am, when they were standing in front of their house, CW1-grandfather of the deceased came there and informed that previous night accused has committed the murder of the deceased. Immediately, he and CW1, informed the same to the police they went to the spot along with the police and found the dead body of

Divya lying on the floor and also noticed several injuries on the body. Then the Police shifted the body of the deceased to the Government Hospital, Soraba. He has further stated that the handle of axe was lying at the place of incident. In the hospital, Tahsildar conducted inquest mahazar as per Ex.P4. He has identified MO2, the handle of axe and MOs6 to 8, the clothes and ornaments of the deceased.

20. PW6-Dr K.N. Satish, has deposed in his evidence as to the post-mortem conducted by him on the dead body of the deceased as per Ex.P6. He has also deposed as to the opinion given by him as per Ex.P7 and further to the FSL reports Exs.P8 and 9.

21. PW7-Kavitha Yogappanavar, is the Taluka Executive Magistrate who conducted the inquest mahazar on the body of the deceased. She has deposed that on 11.08.2015, at the request of CPI, Sorab, she had conducted the inquest mahazar on the body of the deceased. She has stated that at the time of inquest

panchanama, she recorded the statements of CWs2, 3, 6, 8 and 9.

22. PW8-Raghavendra is the Police Sub-Inspector of Anavatti Police Station and PW9, Ganesh Appa is the Circle Inspector of Police, Soraba. They have stated as to the respective investigation conducted by them.

23. PW10-Dr. Lingegowda, Scientific Officer of Regional Forensic Science Laboratory, Gulbarga has deposed in his evidence as to the issuance of Exs.P8 and P16.

24. PW11-Sunanda, mother of the deceased has stated that accused was working as Coolie at Karwar and at that time he came into contact with her daughter and they married about 4 to 5 years back. Thereafter, they started to reside in the village of the accused. The deceased, unable to bear the torture given by the accused, two years back came to her house. Accused again came to their house and took her back. Then she came to know about the death of her daughter.

25. PW12-Shivanand Malladi, is a Police Constable. He has deposed that on 11.08.2015 at about 2:30 pm, he received the first information report and then visited the office of CPI, Sorab, where CPI directed himself and Police Constable-Lokesh, to produce the accused along with remand application before the Court, after his medical examination. He has further deposed that he took the accused to Sorab Government Hospital and later after medical examination, produced him before the Civil Judge and JMFC, Sorab at 9:40 pm.

26. On careful examination of the entire material on record, it is crystal clear that the case of prosecution is mainly relying on the last seen theory, extra judicial, confession, recovery of weapons, and the conduct of the accused, before and after the crime. The alleged incident took place on 10.08.2015 at 8.00 pm. Complaint came to be filed on 11.08.2015 at 10:30 am. On the basis of the complaint, Ex.P1 filed by PW1-Somashekharappa, PW8-Raghavendra, PSI Anavatti Police Station, registered Crime No.141 of 2015 against the accused for the commission of

offence under Section 302 and 201 of Indian Penal Code and submitted the FIR Ex.P1 to the Court on 11.08.2015. Thereafter, the investigating officer has visited the spot on the same day and conducted the spot mahazar in the presence of panchas between 11:30 am and 1.00 pm as per Ex.P2. The Investigating Officer arrested the accused on 11.08.2015.

27. PW8 has deposed that the accused was arrested on 11.08.2015 at 1.00 pm and produced him before the station house officer as per Ex.P11. PW9-Ganesha has recorded the voluntary statement as per Ex.P13. On the basis of voluntary statement, PW9 has seized the *kandli* (MO1) which was used for the commission of offence and hidden in the bathroom of the house of the accused. In this regard, the investigating officer conducted a mahazar as per Ex.P3 and thereafter, investigating officer had produced accused before the Court along with the remand application and thereafter, investigating officer recorded the statement of witnesses. That on 28.08.2015 the Taluk Executive Magistrate conducted the inquest panchanama

as per Ex.P4. Thereafter, he obtained the post-mortem report issued by PW6-Dr. K.N. Satish. PW6-Doctor has also deposed as to 21 ante-mortem injuries found on the dead body of the deceased. After obtaining FSL report, the investigating officer submitted the charge-sheet against the accused.

28. The Hon'ble Apex Court in Criminal Appeal No.1902 of 2013 decided on 28.11.2024 rendered in the case of SURESH CHANDRA TIWARI AND ANOTHER v. STATE OF UTTARAKHAND reported in 2024 SCC ONLINE SC 3531, relying on the decisions in the cases of SHARAD BIRDHICHAND SARDA v. STATE OF MAHARASHTRA reported in (1984)4 SCC 116; HANUMANT GOVIND NARGUNDKAR v. STATE OF MADHYA PRADESH reported in AIR 1952 SC 343; SANTOSH @ BHURE v. STATE (G.N.C.T.) OF DELHI reported in 2023 SCC OnLine SC 538, has summarised the legal principles as to when on strength of circumstantial evidence an accused can be convicted. The same are as under:

- i) the circumstances from which the conclusion of guilt is to be drawn should be fully established;
- ii) the circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused;
- iii) the circumstances taken cumulatively should form a chain so far complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused;
- iv) the circumstances should be consistent only with the hypothesis regarding the guilt of the accused; and;
- v) they must exclude every possible hypothesis except the one which is sought to be proved.

29. Further, at paragraphs 20 to 22, the Hon'ble Supreme Court has observed as under:

"20. Adding on to the aforesaid legal principles, in Devi Lal vs. State of Rajasthan, a three-judge bench of this Court held that in a case based on circumstantial evidence where two views are

possible, one pointing to the guilt and the other to his innocence, the accused is entitled to the benefit of one which is favorable to him.

21. Besides that, before recording conviction, the court must be satisfied that the accused 'must be' and not merely 'may be' guilty. In Shivaji Sahabrao Bobade vs. State of Maharashtra, this Court, elaborating upon the above principle, observed that the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions. Therefore, even if the prosecution evidence generates strong suspicion against the accused, it cannot be a substitute for proof.

22. Bearing in mind the aforesaid legal principles, we would examine and consider – (a) whether the circumstances relied by the prosecution have been proved beyond reasonable doubt; (b) whether those circumstances are of a definite tendency unerringly pointing towards the guilt of the accused; (c) whether those circumstances taken cumulatively form a chain so far complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused; (d) whether they are consistent only with the hypothesis of the accused being guilty; and (e) whether they exclude every possible hypothesis except the one to be proved."

30. PW1-Somashekharappa, PW2-Yellamma and PW5-Hazrat Ali, neighbours of the accused, have clearly deposed in their evidence that soon after the incident, they have informed the same to the police and that there is no delay in filing the FIR. PW1 has further deposed that on the fateful night of 11.08.2015 at about 8.00 pm when PW1 was moving in front of the house of accused, he heard the hue and cry of the deceased and mother of the accused from inside the house. There was shouting for help. Since it was routine as the accused, under the influence of alcohol, used to assault his wife, he went to his home.

31. PW3-mother of the accused, has deposed that on the date of incident, the accused and herself took the deceased to Anavatti Private Hospital to provide treatment since she had sustained injuries on her hand and was suffering from fever. Then she came back with the deceased to the house and the accused went outside and came back at about 8.00 pm in the night complaining that, in spite of providing treatment she is not working, and

started assaulting the deceased. When she tried to pacify him, he threatened her and being scared, she went back to her father's house i.e. the house of PW4-Erappa. Then she came to know about the death of the deceased on the next morning through her father, and she has stated that accused had told about the incident to her father. On the next day she went to the house and found scattered vessels and also the floor was sodden with blood.

32. PW4-Erappa, the grand-father of the accused, has clearly deposed in his evidence that on the next day of the incident, accused came and told him that he killed Divya. Even in his cross-examination which was done after a lapse of fifteen days from the date of examination-in-chief, he has stated that he do not know how the deceased died and who had killed her. But when it was suggested, he has specifically stated that he came to know about the death of the deceased only after the accused told him about it.

33. It is submitted by the learned counsel for the appellant that as per the case of prosecution, PWs3 and 4

are the prime witnesses. PW3-Yellamma, is the mother of the accused and PW4-Erappa is the grand-father of the accused. Though they have supported the case of the prosecution in their evidence in chief, but during cross-examination, both of them have deposed in different version. Therefore, the evidence of PWs3 and 4 is not reliable and the Court cannot act upon such evidence to record guilt of the accused. On careful examination of the entire evidence on record, we do not find any material omissions and contradictions as to the alleged assault by the accused prior to the death of the deceased and also that there is no material contradiction as to the extra-judicial confession made before PW4-Erappa. Therefore, in this regard, the argument advanced on behalf of the appellant cannot be accepted. The trial Court has rightly appreciated the evidence as to the last seen theory, extra-judicial confession, recovery of weapon and the conduct of the accused, prior to and after the crime and convicted the accused for the alleged commission of offence .

34. On re-appreciation/re-examination and re-consideration of the entire evidence on record, we do not find any legal or factual error in the impugned judgment of conviction and order on sentence passed by the trial Court. Hence, we answer point No.1 in the negative.

35. For the foregoing reasons and discussions, we proceed to pass the following:

ORDER

Appeal is dismissed.

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

**Sd/-
(G BASAVARAJA)
JUDGE**

Inn