



CNR: KAHC010157062019

NC: 2026:KHC:45032-DB
CRL.A No. 1052 of 2019

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF AUGUST, 2026

PRESENT

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

AND

THE HON'BLE MR. JUSTICE B.PRAMOD

CRIMINAL APPEAL NO.1052 OF 2019 (A)

BETWEEN:

S. PRABHUSWAMY
S/O. LATE SIDDAPPA
AGED ABOUT 49 YEARS
R/OF DODDINDUVADI VILLAGE
KOLLEGAL TALUK
CHAMARAJANAGAR DISTRICT

...APPELLANT

(BY SRI A. N. RADHAKRISHNA, ADVOCATE FOR
SRI A. H. BHAGAVAN, ADVOCATE)

AND:

1. CHANDRAPPA @
PUTTAMADAPPA
S/O. LATE MAHADEVAPPA
AGED ABOUT 40 YEARS
R/OF ANGALE VILLAGE
YALANDUR TALUK
CHAMARAJANAGAR DISTRICT
2. STATE OF KARNATAKA
BY YALANDUR POLICE, YALANDUR
CHAMARAJANAGAR DISTRICT
REPRESENTED BY

Digitally signed
by
SHARADAVANI
B



Location: HIGH
COURT OF
KARNATAKA



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THE STATE PUBLIC PROSECUTOR
HIGH COURT BUILDINGS
BENGALURU-560 001

...RESPONDENTS

(BY SRI CHENNAPPA ERAPPA, H.C.G.P., FOR R-2;
SRI M. SHARASS CHANDRA, ADVOCATE FOR R-1)

THIS CRL.A. IS FILED U/S.372 CR.P.C BY THE ADVOCATE FOR THE APPELLANT PRAYING TO SET ASIDE THE JUDGMENT OF ACQUITTAL DATED 16.04.2019 PASSED BY THE PRINCIPAL DISTRICT AND SESSIONS JUDGE, CHAMARAJANAGAR IN S.C.NO.46/2016 - ACQUITTING THE RESPONDENT/ACCUSED FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 302 AND 201 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 Sri. A N Radhakrishna learned counsel appearing on behalf Sri. A H Bhagavan, advocate on record for the *de facto* complainant-appellant, Sri. M. Sharass Chandra, learned counsel appearing for respondent No.1 and Sri. Chennappa Erappa, learned



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HCGP for respondent No.2-State appearing for the respondent/accused.

2. This appeal is filed against the acquittal order dated 16.04.2019 passed by the Principal District and Sessions Judge, Chamarajanagara, in Sessions Case No. 46/2016 for the offence punishable under Sections 302 and Section 201 of IPC and prayed this Court to reverse and convict the accused persons by setting aside the acquittal order.

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

a) While invoking Sections 302 and 201 of IPC against the accused-respondent No.1 by the prosecution that accused is the husband of the deceased victim and their marriage was solemnized on 30.10.2014 and the alleged incident has occurred on 18.05.2016 at 11.00 a.m. When the person who found getting the fire from the house of the deceased victim, immediately rushed to the



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spot, kicked the door and saw the body victim lying on the floor. But the case of the prosecution is that when the deceased victim went to their old house, this respondent/accused No.1 followed her at around 11.30 a.m. and quarreled with her and gave a blow on her cheek and when she fell down, he closed her nose and mouth, made her to lose her life and thereafter he set fire and escaped from the said house and hence, invoked the offence punishable under Sections 302 to 201 of IPC.

b) The police have investigated the matter and filed the charge sheet. The accused did not plead guilty and claimed the trial. The prosecution examined witnesses PWs.1 to 40 and also got marked documents as per EXs. P1 to P47(a). During the course of cross-examination of PWs.1 and 26, document from Exs. D1 to D4 are also confronted and marked. The prosecution mainly relies upon the MOs. 1 to 14.



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c) The trial Court having considered both oral and documentary evidence available on record particularly the evidence of PW.1-father of the victim and PW.4- mother of the victim and PW.25-the sister of the victim and PW.26- is brother of PW.1 and also considering the documents at Exs. P1, P33 and P25, wherein the opinion was given that it appears to be of smothering and also found post mortem burn injuries and comes to the conclusion. In order to come to such a conclusion when the doctor has been examined before the trial Court with regard to the cause of death is concerned, his opinion is not firm and only based on the RFSL report, he gave the cause of death. But the person who gave the RFSL report, i.e. author of the FSL report has not been examined before the Court to come to a conclusion that it is a case of smothering and thereafter burnt the deceased victim. No materials are also placed before the court whether the burn injuries are subsequent to the causing death of victim or those injuries are prior to the death and there is no positive opinion and having



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taken note of all these materials, the trial Court, particularly in paragraph nos. 57 and 58 in detail discussed about the summary of anatomical findings and coments in paragraph no.56 and cause of death in paragraph no. 16 with regard to the same is pending and based on the FSL report only, the final opinion was given and cause of death could not be determined due to post mortem burns present over the body. However, findings in the respiratory system suggest that it could be due to asphyxial death (most likely smothering). No positive evidence was placed before the Court with regard to the same and hence the same is discussed in paragraph nos.59, 60 and 61 and taken note of the fact that cause of death is given and also there is no any further positive evidence that it is a case of homicidal and comes to the conclusion that when there is no any evidence that it is a homicidal death and the role of the accused is also not established. Having considered the material on record i.e.



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prosecution witnesses, the trial Court acquitted the accused. Hence, this appeal.

4. This appeal is filed by the *de facto* complainant. The ground which has been urged in the appeal particularly is that the accused -respondent No.1 is the husband of the deceased, Kavya. The death was also taken place within 1 year of the marriage and burden is on the accused/respondent No.1 to explain the fact of death under Section 106 of Indian Evidence Act, 1872. That has not been done. Learned trial judge has failed to see that there is evidence to show that accused had illicit relationship with his brother's wife and motive for killing. The accused-respondent No.1 was ill-treating the deceased for various reasons and primarily for the reason of her objection to his illicit relationship with his brother's wife.

5. The testimony of parents of the deceased in the nature of dying declaration of the deceased victim and the



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explanation is *prima facie* falls/false in view of the testimony of the doctor who conducted the post mortem examination. The doctor has clearly stated that deceased has sustained 95% burn injuries and all those burn injuries were post mortem in nature. The doctor also stated that the deceased has been done to death by smothering, which again shows that it is a homicidal death. The trial judge has committed an error.

6. Learned counsel appearing for the *de facto* complainant-appellant mainly relies upon the evidence of PWs.1, 4, 25 and 26 and those witnesses are the father, mother, sister of the deceased and also the brother of PW1. He contends that the document at Exs. P.33 and P.35 also to be taken note of. He further contend that PW.35-doctor who was examined before the trial Court gave the opinion that it is a case of smothering, but, he fairly admits that the person who gave the FSL report has not been examined. However, he would vehemently contend that the trial Judge has committed an error in



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coming to the conclusion that no material is placed on record to show that it is a case of homicidal and no role has been played by the accused-respondent No.1. Learned counsel also vehemently contend that the informant of death of the daughter of PW.1 is by a third person and not by the accused-respondent No.1 and he could have given the information, but, when he called the accused No.1, he did not disclose except calling him to his house. Therefore, he seeks to allow this appeal.

7. Learned HCGP Sri. Chennappa Erappa appearing for the respondent No.2-State also submits that the trial Court has not committed any error in relying upon the evidence of PWs.1, 4, 25 and 26 so also the doctor who has been examined as PWs.35 and so also the evidence of PW.36 and seeks interference of this Court by allowing this appeal.

8. Per contra, learned counsel appearing for the respondent-accused No.1 would vehemently contend that



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motive for committing the murder an attempt is made by PWs.1 and 4 i.e., parents with regard to an anonymous letter which was addressed to the PW.1 and the same was spoken by PWs.1 and 4. PW.25 who is the sister of the deceased victim has not spoken anything about the receiving of that letter. But PWs.1 and 4 have categorically admitted that while giving the complaint nothing is stated with regard to the said letter and the same is not mentioned by either PWs.1 or PW.4 also. The document of Exs. D-series of D1 and D2 is elicited from the mouth of PW1, so also in the cross-examination of PW.26, Exhibits-D3 and D4 are marked. He also brought to the notice of this Court that the evidence of PWs.6 and 32. That as per Ex. P32-sketch, it is very clear that front door was locked and that is the only door to the said house and the same was locked and key was also inside of the door. The said door was broken while entering the house of the victim. Hence, it is very clear that it is a case of suicidal and not homicidal or case of the self-suicide by the victim and the



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same was taken note of by the trial Court. Further, learned counsel for the respondent-accused No.1 with regard to the homicidal is concerned, submits that there is no any positive evidence before the Court and hence the trial Court rightly acquitted the accused. Hence, he prays for dismissal of this appeal.

9. Having heard the counsel appearing for the *de facto* complainant-appellant as well as learned counsel appearing for the accused-respondent No.1 and the learned HCGP appearing for the respondent No.2-State and also on perusal of the material available before the Court, the points that would arise for the consideration of this Court are:

"i) Whether the trial Court has committed an error in acquitting the accused, in disbelieving the evidence of prosecution and whether it requires interference of this Court, and to convict the accused converting the same as conviction from acquittal?

ii) What order?"

Point No.(i):



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10. Having heard the learned counsel appearing for the respective parties and also on perusal of the entire material on record, it is the specific case of the prosecution that accused-respondent No.1 only committed the murder and thereafter set the fire and he ran away from the house. In order to substantiate this, any proof or material evidence is concerned, no one speaks about the same. So also the motive attributed is with regard to the fact that there was an illicit relationship between the accused-respondent No.1 and his sister-in-law. In order to substantiate the same also, none of the witnesses speaks about except parents of the deceased victim i.e., PWs.1 and 4.

11. Thereafter, on the allegation of having received an anonymous letter also only PWs1 and 4 speak about the same, but not PW.25, who is the sister of deceased victim. Further, Ex. D series is also confronted and elicited from the mouth of DWs.1 and DW2 with regard to the anonymous letter is concerned. When such being the case



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with regard to the motive is concerned, there is no substantive material. Before considering the fact of motive also, this Court has to examine whether any positive evidence is produced before the Court, whether it is a case of homicidal or not and case of the prosecution is that it is a case of smothering, but, that opinion is given based on the opinion of the FSL report. The doctor who conducted the post mortem, has kept the opinion pending and based on the FSL report only he gave that opinion.

12. In that view of the matter, in the case on hand, it is unfortunate that the author of the FSL report has not been examined before the Court. The prosecution failed to examine the said witness to that effect. Even The trial Court also lost sight of the same. It is the duty of all, i.e., the Investigating Officer, prosecution agency and also the Court to participate in quest for truth, that is for unearthing the truth, but the same is not done. There is a lapse in the part of the prosecution agency also in not



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examining the author of the FSL Report and also judge should not be a mute spectator while conducting the trial and involve in conducting the trial also, But in the present case, it is not found.

13. In order to come to a positive conclusion that this is a case of homicidal, there is no any positive evidence before the Court, in Exhibits P33 and P35, though it is stated that the burn injuries were found, Whether these burn injuries are subsequent to the committing the murder also, no opinion is given either by the official/expert as well as by producing any medical evidence before the Court. When such being the case, when there is no material before the Court except the evidence of PWs.1, 4, 25 and 26 and their evidence also does not point out the very role of the accused-respondent No.1 and none of the other witnesses' evidence comes to the aid of the prosecution.



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14. The law is settled that while converting the acquittal case to conviction, there must be a positive evidence and also to take note of the reasoning given by the trial Court that if finding is erroneous and perverse, then only this Court can reverse the finding of the acquittal to conviction, but, the said circumstance is not warranted in the case on hand. The very homicidal, cause of death is also not proved and also the very role of the accused-respondent No.1 is also not proved by placing any cogent evidence before the Court. When such being the case, in view of the settled position of law in a case of reversal of acquittal case into conviction, there must be a cogent and intrinsic evidence before the Court to come to only one conclusion, not different conclusion. If the finding is not perverse, the question of reversing the same doesn't arise in view of law laid down by the Hon'ble Supreme Court in the case of **RAJESH PRASAD V. STATE OF BIHAR**, reported in **2022 (3) SCC 471**. Hence, we do not find such circumstances in the case on hand to reverse



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the finding of the trial Court and the point is answered in the ***negative***.

Point No.(ii):

15. In view of the discussions made hereinabove, we pass the following:-

ORDER

Appeal is ***dismissed***.

Sd/-
(H.P.SANDESH)
JUDGE

Sd/-
(B.PRAMOD)
JUDGE

Bsv
List No.: 1 Sl No.: 17