



CNR: KAHC010259072018

NC: 2026:KHC:39266-DB
CRL.A No. 2269 of 2018

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF JULY, 2026

PRESENT

THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ

AND

THE HON'BLE MR. JUSTICE G BASAVARAJA

CRIMINAL APPEAL NO.2269 OF 2018 (C)

BETWEEN:

THAMBUKUTHIRA POOVAIAH
S/O LATE SOMAIAH
AGED ABOUT 48 YEARS
AGRICULTURIST
RESIDING AT GARVALE VILLAGE
SUNTICOPPA HOBLI, SOMWARPET TALUK,
KODAGU DISTRICT, PIN CODE-571 201

...APPELLANT

(BY SRI. MAHADEVA R K., ADV.
V/O DATED: 28/07/2026 - SMT. ARCHANA K.M., - AMICUS
CURIAE FOR APPELLANT.)

AND:

THE STATE OF KARNATAKA
REP. BY THE CIRCLE INSPECTOR OF POLICE
SOMWARPET POLICE STATION
SOMWARPET CIRCLE,
SOMWARPET TALUK,
KODAGU DISTRICT,
PIN CODE-571 201
REP. BY STATE PUBLIC PROSECUTOR
HIGH COURT COMPLEX,
BENGALURU-560 001.

...RESPONDENT

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



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THIS CRL.A. IS FILED U/S.374(2) CR.P.C PRAYING TO SET ASIDE THE JUDGMENT AND SENTENCE DATED 01.10.2018 PASSED BY THE LEARNED I ADDITIONAL DISTRICT AND SESSIONS JUDGE, KODAGU AT MADIKERI IN S.C.NO.60/2017, CONVICTING THE APPELLANT/ACCUSED FOR THE OFFENCE P/U/S 302,201 AND 394 OF IPC.

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

CORAM: HON'BLE MR. JUSTICE MOHAMMAD NAWAZ

and

HON'BLE MR. JUSTICE G BASAVARAJA

ORAL JUDGMENT

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

Judgment and Order dated 1.10.2018 passed by the Court of I Additional District and Sessions Judge, Kodagu, Madikeri in SC No.60/2017, thereby convicting and sentencing the accused for the offences punishable under Sections 302, 201 and 394 of Indian Penal Code, is assailed in this appeal.

2. We have heard Smt. Archana K, learned Amicus Curiae for the appellant and Sri Vijaykumar K Majage, learned SPP-II for the State and perused the evidence and material on record.



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3. In brief, it is the case of the prosecution that, on 30.12.2016 at about 7:30 pm, the appellant with an intention of robbing the gold ornaments worn by Smt. Bolliyavva, went to her house situated at Gharwale Village, Somwarpet Taluk, slapped on her cheek, and when she fell unconscious, removed her ear-rings and neck chain, and strangled her with his hands and committed her murder.

4. The case of the prosecution rests on circumstantial evidence. The prosecution has mainly relied on the recovery of gold ear-rings-MO.1 and chain-MO.2, under Ex.P5, from the shop of PW13, at the instance of the accused and the evidence of PWs4 and PW12-panch witnesses, to the said recovery mahazar. The trial Judge accepted the recovery evidence relying on the testimony of PWs.1, 4, 12 and 13 and held that the ornaments MOs.1 and 2 have been identified by PW1 as that of his deceased mother. Further, holding that evidence of PWs.1 to 5, 7, 11 to 13 and 15 to 19 connects the accused with the



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murder of deceased Bolliyavva, and the prosecution has successfully proved the charges framed against accused, convicted him for the offences under Section 302, 201 and 394 of IPC.

5. It is the contention of the learned Amicus Curiae that except the recovery evidence, there is no other material to connect the accused with the crime and the recovery evidence alone is not sufficient to hold the accused guilty, since PW2, none other than the daughter of the deceased, has categorically deposed that the MOs.1 and 2 did not belong to her mother. She contended that there is no documentary evidence to show that the accused had pledged MOs.1 and 2 in the shop of PW13, as no receipt or any other document are either collected or produced by the prosecution. She therefore, contended that circumstances relied upon by the prosecution are not sufficient to hold that it is the accused, and the accused alone, who committed the murder, and on a single



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circumstance, it is not safe to convict the accused for the serious charges levelled against him.

6. Per contra, the learned SPP-II, contended that the incident took place on 30.12.2016 and till 24.01.2017, the accused was absconding. After his arrest, his voluntary statement was recorded as per Ex.P7 and based on his voluntary statement, MOs.1 and 2 were seized from the shop of PW13. He contended that PW1, the complainant and the son of the deceased has identified MOs.1 and 2 as belonging to his deceased mother and further PWs12 and 13 have also spoken about the seizure of MOs.1 and 2 under Ex.P5. He therefore, contended that the trial Court has rightly held the accused guilty of the charges levelled against him.

7. Initially, a UDR came to be registered at Somwarpete Police Station on a complaint lodged by PW1, son of the deceased, on 1.1.2017 at about 6:00 pm. The said UDR is marked as Ex.P16. It is stated by him that the



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deceased was residing alone in the house at Gharwale Village and on the morning of 1.1.2017, his relative by name Manu, informed his brother over phone about the death of his mother. It is further stated that on hearing about the incident, he went to the house and noticed his mother lying dead on the cot with bleeding injuries in the mouth and nose, and missing of gold ear-rings and chain.

8. It is not in dispute that the death of Bolliyavva is homicidal in nature. The Doctor who conducted the autopsy, is examined as PW7. Ex.P7 is the post-mortem report. Ex.P9 is the opinion furnished by the Doctor. It is stated that the death is consistent with asphyxia due to smothering.

9. According to the prosecution, the deceased Bolliyavva was a residing alone in the house. On the date of incident at about 7:30 pm, when she went to the backside of her house to wash her hands and legs, the accused went behind her house with an intention to rob



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money and gold ornaments. When the deceased questioned him as to why he had come to her house, he slapped on her cheek, as a result of which she fell unconscious. Thereafter, the accused removed her earrings and chain and strangled her with hands and after committing the murder, kept the dead body on the cot. It is the further case of the prosecution that the accused pledged the earrings and gold chain in the shop of PW13, from where it was recovered after his arrest.

10. Ex.P3 is the complaint dated 24.01.2017, lodged by PW1-B.K. Ramesh. In the said complaint, he suspected the involvement of the accused in the death of his mother. On the basis of Ex.P3, the police registered the FIR-Exhibit P14 under section 302 of IPC.

11. A perusal of the contents of Exhibit P3 reveals that it is only on suspicion, PW1 named the accused as the one who committed the murder. In UDR complaint-Exhibit P2, it is stated that one Manu informed about the incident



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to PW1. However, the said Manu cited as CW13, has not been examined. Even in Exhibit P3, it is not stated as to on what basis the name of the accused was mentioned. It is only stated that upon enquiry with the villagers and neighbours, PW1 came to know about the involvement of the accused. But the name of the person, who informed PW1 about the accused committing the murder, is not mentioned.

12. In the case on hand, except the recovery of MOs.1 and 2, there is no other material placed by the prosecution to connect the accused with the crime. According to the prosecution, after committing the murder, the accused pledged those two ornaments in the shop of PW13 and received a sum of ₹6,000/-. PW13, the owner of Mahalakshmi Stores at Madapura, has stated that on 05th January, 2017, the accused pledged the gold ornaments stating that they belong to his wife and he is in urgent need of money and he would repay the money and take back the ornaments after a few days. Therefore, he



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gave him ₹6,000/- in cash and received the gold tournaments. He has further stated that on 25th January 2017, Police came to his shop along with the accused and others and seized the said gold ornaments and he signed Exhibit-P5 Mahazar.

13. For receiving the gold ornaments and paying ₹6,000/- to the accused, PW13 has not maintained any Register and not issued any receipt to the accused. The investigating officer-PW19, has also not whispered about collecting the copy of the receipt or the Register maintained by PW13 in his shop.

14. Prosecution has got examined the two panch witnesses viz. PW4 and PW12 to the seizure mahazar Exhibit P5 under which MOs.1 and 2 were seized. PW4 has not supported the case of the prosecution. He has stated that the police did not take him anywhere except to the house of the deceased. He has stated that the accused confessed before them and the police that he committed



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the murder. However, the said confession allegedly made after the arrest of the accused in the presence of Police, is not admissible in evidence. In the cross-examination conducted by the Public Prosecutor, PW4 has denied that the accused had led the Police and others to the shop of CW14 (PW13) stating that he had pledged the ornaments of the deceased in the said shop for ₹6,000/-. PW4 has also denied about PW13 producing the said ornaments (MOs.1 and 2).

15. According to PW12, another panch witness, the police took them along with the accused to the shop of CW14 (PW13) where the gold ornaments of the deceased- Bolliyavva were pledged by the accused. A perusal of his evidence, do not indicate that accused had led the police and panchas to the shop of PW13. He has stated, it was the police who took them to the shop of PW13. It has also come in the evidence of PW4 and PW12 that there was a



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dispute between them and the accused and his wife, and they were not in talking terms with him.

16. It is the contention of the learned SPP-II that the ornaments MOs.1 and 2 are identified by PW1, none other than the son of the deceased, as the ornaments belonging to his deceased-mother. He contended that the accused has not explained as to how those two ornaments came to his possession and therefore, an adverse inference has to be taken against him.

17. In this regard, it is relevant to see that PW2, none other than the daughter of the deceased, has categorically stated in her evidence that MO.2, i.e. the Chain, does not belong to her mother. PW3, another son of the deceased, has stated that both MOs.1 and 2 did not belong to his mother. He has stated that the police showed the gold ornaments in the police station when they were seized, but MOs.1 and 2 are not the said ornaments. Hence, a reasonable doubt arises in the mind of the Court



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as to whether MOs.1 and 2 allegedly recovered from the shop of PW13, at the instance of the accused, were in fact the ornaments belonging to the deceased Bolliyavva.

18. A close scrutiny of the material on record would disclose that the circumstances relied upon by the prosecution to prove the guilt of the appellant are not complete and did not lead to the conclusion that in all human probability the murder must have been committed by him. The trial Court was therefore, not proper in convicting the accused, holding that the prosecution has proved his guilt. The reasons assigned by the trial Court for convicting and sentencing the accused are therefore, not sustainable in law.

19. Hence, we pass the following:

ORDER

- i. Appeal is **allowed**;



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- ii. The Judgment and Order dated 1.10.2018, passed by the I Additional District and Sessions Judge, Kodagu, Madikeri, in S.C.No.60/2017, convicting and sentencing the appellant/accused for the offences punishable under Sections 302, 201 and 394 of IPC is **set aside**;
- iii. Appellant/accused is acquitted of the charges levelled against him;
- iv. He shall be set at liberty forthwith, if not required in any other case;
- v. The Registry shall communicate this Order to the concerned jail authority;
- vi. The order passed by the trial Court awarding compensation to PW1 under Section 357-A of Cr.P.C. and directing the District Legal Services Authority for



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payment of compensation to PW1, is
unaltered.

20. We place on record our appreciation for the able assistance rendered by the learned Amicus Curiae, Smt.Archana K. She is entitled to an honorarium of Rs.10,000/- (Rupees ten thousand only), payable by the High Court Legal Services Committee.

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

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

LNN/TL
List No.: 1 Sl No.:26