



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.810 OF 2018 (C)

BETWEEN:

SAMPATH
S/O. SANNA SOMAIAH
AGED ABOUT 30 YEARS
RESIDENT OF THAMMADAHALLI VILLAGE
HUNASURU TALUK
MYSURU DISTRICT.

...APPELLANT

(BY SRI AHMED S.N., ADVOCATE)

AND:

STATE OF KARNATAKA
BY BIDADI POLICE STATION
RAMANAGARA DISTRICT
THROUGH THE S.P.P.
HIGH COURT BUILDING
BENGALURU-560 001.

...RESPONDENT

(BY SMT. RASHMI PATEL, H.C.G.P.)

* * *

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374(2) OF THE CR.P.C., PRAYING TO SET ASIDE THE JUDGMENT OF CONVICTION AND ORDER ON SENTENCE DATED 19-4-2018 PASSED BY THE I ADDITIONAL DISTRICT AND SESSIONS JUDGE, RAMANAGARA, IN SESSIONS CASE NO.119 OF 2009, CONVICTING THE APPELLANT/ACCUSED FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 302 AND 201 OF IPC.

THIS CRIMINAL APPEAL IS 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 VENKATESH NAIK T

ORAL JUDGMENT

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

The appeal is preferred by the accused against the judgment and order dated 19.04.2018 passed by the Court of the I Additional District and Sessions Judge, Ramanagara, in Special Case No.119 of 2009, thereby convicting him for the offences punishable under Sections 302 and 201 of IPC.

2. The trial Court has sentenced the accused to undergo rigorous life imprisonment for the offence punishable under Section 302 of IPC and to undergo rigorous imprisonment for three years for the offence punishable under Section 201 of IPC.

3. Brief facts of the prosecution case:

The first informant PW4-Somachari and PW5-Jyothi are husband and wife. Deceased Prathvik is their two year



old son. They were residing in Mysuru along with the parents of the first informant. For Deepavali Festival, the first informant had left his wife Jyothi in the house of her parents in Kalkunike. She started working in one Morris Spinner Mill. She developed illicit intimacy with the accused, who was also working in the said Mill. Both of them along with deceased Prathvik were residing in the rented house belonging to PW1-Venkatesh at Hejjala, SVT Colony Village, Bidadi.

4. It is the case of prosecution that on 28.11.2008, at about 9.30 a.m., the accused thinking that deceased Prathvik may obstruct him having intimacy with Jyothi, assaulted him with hands, blow pipe on his stomach, thigh, hips and head and committed his murder. Thereafter, in order to screen himself from legal punishment, he claimed that the child died due to *balagraha* and thereby, committed the charged offences punishable under Sections 302 and 201 of IPC.



5. The learned Sessions Judge, based on the evidence adduced by the prosecution, particularly, relying on the evidence of PWs.1, 5, 9 and 17 held that there is consistency in the evidence of the prosecution witnesses, whereas their testimonies with regard to the accused and PW5 living together along with the child is established and further holding that the prosecution has also established that the child died on account of the injury sustained to the brain, came to the conclusion that the prosecution has established the charges levelled against the accused.

6. Assailing the impugned judgment, the learned counsel for the appellant-accused vehemently contended that the reasons assigned by the learned Sessions Judge to base conviction are not in accordance with law. There are material discrepancies in the evidence of the prosecution witnesses. The only evidence available is that of PW5, which the prosecution relies to say that the accused has assaulted the child with a plastic pipe, but the said PW5 is not an eyewitness to the incident. He



contended that the evidence of PW5 cannot be believed, because she has given different versions and her evidence clearly goes to show that she was at her workplace and according to her, she along with the accused took the child to the hospital, however, the prosecution has not placed any material to show that, to which hospital, they took the child and what were the injuries sustained at that time. He further contended that, according to PW4, it was the accused who telephoned from his mobile phone, but the prosecution has not placed any material to show that, on the date of incident, the accused had called PW4 and informed him about the incident. He contended that there are no other material or evidence adduced by the prosecution to show that it was the accused, who caused injuries to the child and on account of the said injuries, the child died. It is his further contention that the recovery of plastic pipe-MO8 is also not believable, since none of the panch witnesses have stated that it was the accused, who led the Police and showed the pipe or it was recovered at



his instance and therefore, he contended that the trial Court, without properly appreciating the evidence and material on record, has erroneously convicted the accused, resulting in miscarriage of justice.

7. Learned High Court Government Pleader, on the other hand, contended that there is ample evidence placed by the prosecution to show that the accused and PW5 were residing in the rented house of one Venkatesh-PW1 along with the child. The witnesses examined by the prosecution have stated that the accused was assaulting the child and on the date of incident, the accused and the child were in the said house, as spoken by PW5. She contended that PW5 has categorically stated that the accused brought the child telling her that the child is not feeling well and therefore, she took the child to the hospital, wherein, she came to know that the said child died half-an-hour early itself. She, therefore, contended that in the absence of any explanation from the accused as to how the child sustained injuries, based on the



evidence adduced by the prosecution, the trial Court has rightly convicted the accused for the charged offences. She has accordingly sought to dismiss the appeal.

8. Ex.P2 is the complaint lodged by PW4-Somachari. The said complaint was filed on 28.11.2008 at about 9.30 p.m. Based on the said complaint, PW13 registered an UDR. In Ex.P2, it is stated for Deepavali Festival, PW4 had left his wife, Jyothi-PW5, in her parental home and he used to visit Kalkunike. His wife was working in one Morris Spinner Mill. But about ten days prior, she suddenly disappeared along with the child. Thereafter about 4 days prior, he came to know that his wife had developed an intimacy with the accused. On 28.11.2008, when he was in Mysuru, at about 3.00 p.m., he received a call from mobile phone No.9980398542 to his mobile phone No.9731782471, wherein the caller informed him that his child is dead and if he does not take the child, he will come to Hunusuru and throw the child. When he asked the said person to give the phone to his wife, the said person



disconnected the phone call. When he called the said number, it was switched off. Therefore, he came to Kalkunike and came to know that his wife had come in an auto and left the child in the house of her grandmother. He noticed a bite mark on the face of the child. He suspected that the child was murdered.

9. On 29.11.2008, PW4 lodged one more complaint as per Ex.P3, wherein he alleged that his child might have been murdered, as there was illicit relationship between his wife-Jyothi and the accused and sought to take appropriate action against them. Based on the said complaint, PW13 registered the F.I.R. against Jyothi as well as the accused.

10. On completion of investigation, the charge-sheet was filed only against the accused for the offences punishable under Sections 302 and 201 of IPC. After committal of the case to the Court of Sessions, charges were framed, for which, the accused pleaded not guilty.



11. According to prosecution, PW5-Jyothi, after she came to her parental home in Kalkunike, she started working in one Morris Spinner Mill at Hunusuru, wherein even the accused was working. Both of them developed intimacy and they started living together along with the victim child in the rented house of PW1-Venkatesh.

12. PW1, in his evidence has stated about PW5 and the accused taking the house on rent and living together along with the child. The fact that the accused and PW5 were living together along with the child is also spoken by PWs.8 and 9. Further, according to PW17, on 28.11.2008, both the accused as well as PW5 were seen weeping stating that their child was unwell, at that time, the villagers sent the child to the hospital, but at about 12.00 noon, they came to know that the child was dead. Thereafter, they collected a sum of Rs.1,500/- to help them to go to their village. They went along with the accused, PW5 and others in a bus to Mysuru. This



evidence of PW17 also shows that both the accused as well as PW5 were weeping stating that the child was not well and the villagers sent them to the hospital. There is no material placed by the prosecution as to which hospital the child was initially taken and what was the treatment given to the child or what were the injuries sustained by the child at that point of time.

13. The crucial question is whether the accused committed the murder of the child by assaulting with a plastic pipe believing that the said child will be an obstacle to his illicit relationship with PW5-Jyothi.

14. The prosecution has got marked the Post-Mortem examination report-Ex.P8. The post-mortem was conducted by PW12-Dr. Ravi N. He has noticed the following external injuries:

"1. Four abrasions over right cheek, measuring 1 x 0.75 cm, 1 x 0.5 cm, 0.75 x 0.5cm, 1 x 0.75 cm, each injury is at a distance of 0.5 to 1 cm from the other in circular way.



2. Contusion over left cheek measuring 5 cm x 2 cm x 0.5 cm.

3. Multiple contusions over abdomen 9 in number of varying sizes with abdomen distended, circular in shape.

4. Multiple contusions over both right & left thigh (not clear) totally 13 in numbers, circular shape of varying sizes.

5. Multiple contusions over back of the body eight in number of varying sizes circular shape.

6. Both buttocks are fully contused."

The cause of death according to Ex.P8 is due to shock and heamorrhage as a result of blunt force injury to brain, liver, mesentric.

15. PW5 is a material witness in this case. She is none other than the wife of PW4 and the mother of the child. According to PW5, she was living happily with her husband, but later *galata* happened. Hence, her husband left her in her parental home at Kalkunike and did not turn up. Hence, she joined Morris Spinner Factory, wherein she developed a friendship with the accused. Later, both of



them started residing together in Hejjala, Bengaluru, in the rental premises of PW1-Venkatesh. Then accused was working in Britannia Biscuit Factory and she was doing household chores in the house of the owner. In the said premises, herself, the accused as well as her son, aged 1³/₄, were residing and they stayed there around twenty days.

16. PW5 has further deposed, on 28.11.2008, she had gone to work at about 9.00 a.m. and at that time, the accused remained in the house on account of ill health. She has stated that she used to regularly take the baby along with her, but on that day, she left the baby in the custody of the accused and went for work. The accused himself brought the baby to the place, where she was working stating that the baby is not feeling well and took her back home. They went to the hospital of Lokesh at Kumbalagudu. She came to know that baby had died half-an-hour earlier itself. Later, she took the child to Kalkunike in the bus and the accused gave her Rs.50/- at Mysuru



Bus Stand and did not accompany her further. She left the baby in the house of her grandmother and from there, she was sent away. She told them that the baby died due to *balagraha*. She has further stated that the dead body of her son was bluish in colour and neck was not proper. She went on to say that the accused murdered the baby by assaulting with a *kolave (pipe)*.

17. In Ex.P2, PW4 has stated that when he came to Kalkunike, he learnt that the child was brought in an auto by his wife, Jyothi-PW5, and left in her grandmother's house. The said evidence of PW5 thus corroborates with the averments in Ex.P2. Even PW17 has deposed that he along with the accused, Jyothi and others went to Mysuru in a bus, wherein the accused alighted from the bus and PW5 called her husband over phone and went ahead.

18. Even though PW5 has deposed in her evidence that she saw the accused committing murder of the child by assaulting with a *kolave*, it is not the case of



prosecution that she is an eyewitness to the incident. Her evidence itself shows that on the date of incident, she left the child in the house and went to work and the accused later brought the child to the place where she was working and told her that the child is not feeling well.

19. PW5 has not deposed in her evidence that when the accused brought the child saying that the child is not feeling well, she noticed any external injuries. According to her, they went to the hospital of one Lokesh at Kumbalagudu, wherein she came to know that the child died half-an-hour earlier. The prosecution has not placed any material to show as to which hospital the child was initially taken and which doctor examined the child and declared the child dead. There is no material forthcoming as to what were the injuries on the child at the time when the accused brought the child either to the workplace of PW5, or when the child was taken to the hospital.



20. From the evidence of PW5, it can be only gathered that on the date of incident, when she left for work, she left the child in the house in the custody of accused. Later the accused brought the child to the place where she was working telling that the child is not feeling well. The testimony of PW5 that later they took the child to the hospital, wherein she came to know that the child was already dead half-an-hour earlier is not at all established by any other material. In the cross-examination, it is elicited from PW5 that after returning to Hejjala, she went to the house of one Chandra and there, she learnt that baby is murdered by Chandra only, but she did not go to the Police Station along with him. She admitted that at the first instance, the Police made the accused and herself responsible for the death of the child. She further stated that she learnt from her neighbours that the accused used to assault the baby and the accused had murdered the baby as it was a hurdle for their sexual life. However, none of the neighbours are examined to



substantiate the said testimony of PW5. She further admitted that her husband was suspecting her fidelity and therefore, he left her in the house of her grandmother and for the next ten months, he never visited her. She has also stated that while going for work in Morris Spinner Mill, she used to leave the child in the house of her grandmother. She denied the suggestion that taking advantage of the absence of her grandmother in the house, her husband, PW4-Somachari, murdered the baby, as he was having ill-will against the accused and even prior a false complaint was lodged.

21. The prosecution has not placed any material to show that on the date of incident, the accused called PW4 on his mobile phone from his mobile phone informing about the death of the child. Even though in Ex.P2, it is specifically stated that at about 3.00 p.m. on 28.11.2008, the accused called from his mobile phone No.9980398542 to the mobile phone No.9731782471 of PW4 informing about the death of the child, the Investigating Officer has



not taken any interest to collect the call detail records or to verify about the said averment made by PW4 in Ex.P2.

22. From the testimony of PW4, the first informant himself, he has stated that he had left the child in the house of the grandmother as it was not in good health and he had sent his wife to her parental house as she wanted to get *tayita* (amulet) for the baby. According to PW4, after returning to grandmother's house, he noticed the dead body of the child on the *payala* (sleeping pad) of the house and there were injuries over the right cheek and stomach and by that time, the accused and his wife had escaped. However, it is the case of the prosecution that it was PW5 alone, who brought the child to the grandmother's house and left the child there and the accused had not accompanied them to the house of the grandmother. As could be seen from the evidence of PW5, when she left the baby in the house of her grandmother, she told that the baby died due to *balagraha*. Even PW5, in her evidence, has stated that the accused brought the



baby to the place, where she was working stating that the baby is not feeling well and thereafter, they went back home and then went to the hospital.

23. In Ex.P8-Post-mortem Report, though external injuries are mentioned, but there is no injury found on the head. The cause of death is due to shock and haemorrhage as a result of blunt force injury to brain, liver mesenteric. PW12, in his cross-examination, has admitted that he has not given the time of those injuries. He has stated that the death might have been caused between 24 hours and 36 hours prior to examination.

24. According to prosecution, after the accused was arrested, plastic pipe-MO8 was recovered from the spot, i.e. from the rented house belonging to PW1 under Ex.P1. The prosecution has got examined PWs.2, 3 and 7, panch witnesses, to the said mahazar.

25. We have perused the evidence of PWs.2, 3 and 7. Though the said witnesses have stated that a



plastic pipe was recovered under Ex.P1, they have not stated that it was recovered at the instance of the accused or the accused showed the place, where the said plastic pipe was kept. They have stated that the Police have seized one plastic pipe from the house. PW3 has stated that the spot was shown by PW5-Jyothi. Hence, recovery of MO8-plastic pipe does not inspire the confidence of the Court to hold that it was recovered at the instance of the accused.

26. Having re-appreciated the entire evidence on record, we find that the evidence of PW5 does not inspire the confidence of the Court as her evidence is not of a sterling quality. Further, she has stated that the child was suffering from *balagraha*, i.e. invisible demons or spirits believed in traditional Ayurveda to harm infants and children and a state of paediatric neurological disorders like convulsions or epilepsy. She has stated that she along with the accused took the child to a hospital and showed to the Doctor, wherein the Doctor declared the child dead,



however, the said Doctor has not been examined and it is not forthcoming as to which hospital, the child was taken and what were the injuries sustained by the child.

27. Having re-appreciated the entire material on record, we find that the evidence adduced by the prosecution is not sufficient to hold that the charges levelled against the accused are proved beyond reasonable doubt. The reasons assigned by the learned Special Judge for convicting the accused for the offences punishable under Sections 302 and 201 of IPC are not in accordance with law. The conviction and sentence passed against the accused is therefore not sustainable. Accordingly, we proceed to pass the following

ORDER

- i. Criminal appeal is ***allowed***.
- ii. The judgment and order dated 19.04.2018 passed by the Court of I Additional District and Sessions Judge, Ramanagara, in Sessions Case No.119 of 2009,



convicting the appellant-accused for the offences punishable under Sections 302 and 201 of the Indian Penal Code, 1860, is hereby set aside.

- iii. The appellant-accused is acquitted of the offences charged against him.
- iv. The bail bond executed by the appellant-accused shall be in force for a period of six months.

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

**Sd/-
(VENKATESH NAIK T)
JUDGE**

MN (From paragraph Nos.1 to 7
KVK (From paragraph Nos.8 till end)
List No.: 1 Sl No.: 14