



CNR: KAHC010417442019

NC: 2026:KHC:43835-DB
CRL.A No. 1541 of 2019

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF AUGUST, 2026

PRESENT

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

AND

THE HON'BLE MR. JUSTICE B.PRAMOD

CRIMINAL APPEAL NO.1541 OF 2019

BETWEEN:

1. THE STATE OF KARNATAKA
BY THE POLICE INSPECTOR
KOLLUR POLICE STATION
REPRESENTED BY STATE PUBIC PROSECUTOR,
HIGH COURT BUILDING,
BENGALURU-560 001.

...APPELLANT

(BY SRI. MOHAMMED AYUB ALI, ADDL. SPP)

Digitally signed
by DEVIKA M
Location: HIGH
COURT OF
KARNATAKA

AND:

1. MOHAN KUMAR @ ANAND @ RAJESH K
S/O. LATE. MAYILAPPA MUGER
AGED ABOUT 49 YEARS
PRESENT: R/AT BERAKE MANE
BELMA VILLAGE, DERALAKATTE
MANGALURU TALUK
D.K. DISTRICT-575 001.

PERMANENTLY:
R/AT BEHIND KANYANA JUNIOR COLLEGE
HOUSE NO.2-152-L
KANYANA VILLAGE



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BANTWAL TALUK
D.K. DISTRICT-574 211.

...RESPONDENT

(BY SMT. P.V. KALPANA, ADVOCATE)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 378(1) AND (3) OF CR.P.C PRAYING TO GRANT LEAVE TO APPEAL AGAINST THE JUDGMENT AND ORDER OF ACQUITTAL DATED 29.01.2019 ON THE FILE OF THE VI ADDITIONAL DISTRICT AND SESSIONS JUDGE, D.K., MANGALURU IN S.C.NO.135/2012, ACQUITTING THE ACCUSED/RESPONDENT FOR THE OFFENCE PUNISHABLE UNDER SECTIONS 366, 376, 328, 392, 394, 417, 302, 201 OF IPC.

THIS APPEAL COMING ON FOR 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)

This matter was heard in part earlier and today, both learned Additional SPP for appellant and learned counsel for the respondent have made their respective submissions.



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2. This criminal appeal is filed against judgment of acquittal passed in S.C.No.135/2012 and prays this Court to set aside the judgment of Trial Court and convict the accused for the offence punishable under Sections 366, 376, 328, 392, 394, 417, 302 and 201 of IPC.

3. The factual matrix of case of the prosecution against this accused is that on 09.11.2006, the accused himself introduced to one Shantha of Kudukorigudde, Kankanady, Mangalore, stating his name as Rajesh K. and he belongs to Mundala caste, gave belief her that he would marry her and told her while coming wear gold ornaments and took her from Mangalore to Kollur and she believed that he would marry her and he took her to Room No.120 of Lalithambika Guest House and had sexual intercourse with her. Then, as per pre-plan, told her to keep the jewels in the room, she kept the jewels in the room, then he took her stating to go to temple near Swarnamukhi Mantap behind Kollur Temple, where he acted realize, as he had sexual intercourse with her and stated there may be chance of becoming pregnant and gave cyanide as contraceptive medicine with an intention to kill her. Then, as



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per his pre-plan, went to room and took the gold ornaments of deceased and vacated the room. Then, he sold the robbed jewels i.e., 1 pair golden bangle, 1 gold necklace, 1 gold chain, 2 gold rings, 1 gold bendole to Robert K. Castelino, owner of Sona Bankers and utilized the amount for himself. Having considered the material collected by the Investigating Officer, the above offences are invoked against him. The accused was in judicial custody and hence, charge was framed, but he did not plead guilty and claims the trial.

4. Hence, the prosecution examined P.W.1 to P.W.53 and got marked the documents Ex.P1 to Ex.P86 and M.O.1 to M.O.24. The accused was subjected to 313 statement.

5. The Trial Court having considered both oral and documentary evidence comes to the conclusion that prosecution failed to prove the charges leveled against the accused and acquitted him, in coming to the conclusion that evidence of the prosecution does not substantiate the allegations made against him. Being aggrieved by the judgment of acquittal, the present appeal is filed before this Court.



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6. Sri Mohammed Ayub Ali, learned Additional SPP for the appellant in his argument would vehemently contend that this accused is a serial killer and he used to pretend with girls that he is going to marry and used to have sexual favour and thereafter, kill them and rob their gold ornaments. In order to prove the charges leveled against the accused, relies upon the evidence of P.W.1 to P.W.53 and voluminous documents and the same have not been properly considered by the Trial Court while appreciating the evidence. The Trial Court failed to consider the material whether the death in question was a homicidal death. The Court has erred in not discussing about the said aspect on the basis of medical evidence placed before the Court. The Trial Judge has also not considered the evidence of P.W.26-Doctor, who has conducted post-mortem on the body of the deceased immediately after the death in its right perspective. The post-mortem report at Ex.P38 would disclose that blood was oozing from the nose and that the same was bright cherry red in colour. The Investigating Officer has obtained an opinion regarding whether there were any symptoms of cyanide poison as per Ex.P43. The said witness



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has given his opinion as per Ex.P42 that as the colour of the blood was very bright cherry red, this might suggest cyanide poisoning. The prosecution also got examined P.W.13, who has given his clarification as per Ex.P65 which clearly states that as the body was found in decomposed state, upon examination, cyanide poison could not be detected. When such opinion is given because body was decomposed, the Trial Court ought to have taken note of the said fact into consideration. The material collected by the prosecution is very clear that death of the deceased was unnatural and considering the nature of bleeding on the body of the deceased, it is clear that it was homicidal death.

7. It is contended that the findings of the Trial Court cannot be accepted as there is sufficient evidence led by the prosecution. He would also contend that P.W.1 and P.W.2 have categorically deposed before the Court that the accused was visiting the deceased, where the deceased was working. He would further submit that P.W.3 is the brother, who gave he complaint subsequently and his evidence is also material. Though, he had not suspected the accused immediately on the



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death of the deceased, but P.W.3 categorically identifies the gold ornaments which belongs to the deceased. He also contend that gold ornaments of the deceased was not only identified by P.W.3 and even identified by P.W.8, P.W.38 and P.W.41 that the same belongs to the deceased. He would vehemently contend that recovery is made at the instance of the accused and the evidence of P.W.21, P.W.22 and P.W.23 is very clear that gold ornaments belonging to the deceased were pledged with P.W.23, P.W.1 is the Appraiser of the gold ornaments and P.W.22 is the witness for recovery. He would vehemently contend that P.W.9 and P.W.11 speak about the conduct of the accused and P.W.6 and P.W.7 are the employees of Guest House of the temple, who also identify the photo of the accused. It is also contended that P.W.16 is a material witness and the report of P.W.16, who is the Handwriting Expert is very clear with regard to handwriting of Rajesh, in whose name the lodge was taken. P.W.11-Archak also identified the photo of accused and there was an extra-judicial confession.



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8. Learned Additional SPP would vehemently contend that though there was long delay in registration of the case, during investigation, the Investigating Officer made all his efforts to prove the guilt of the accused, who is a serial cyanide killer and he used to kill the girls developing relationship with them for sexual favour on the pretext that he is going to marry and thereafter, he used to rob the gold ornaments belonging to the victims. Hence, the Trial Court has committed an error in considering the evidence and the same is not considered in a proper perspective. Therefore, it requires interference and the Court has to take note of conduct of the accused and the accused is a rogue to the society and this Court has to re-appreciate and re-apprise the material available on record.

9. The accused is in custody. Hence, this Court appointed Amicus Curiae on behalf of the respondent to assist the Court. The Amicus Curiae, who was appointed on behalf of the accused in her argument would vehemently contend that though P.W.1 and P.W.2 depose before the Court that accused was visiting the deceased, but there is no proximity to cause of death is concerned. The counsel would vehemently contend



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that according to the prosecution, death has taken place on 09.11.2006 and this accused was arrested in 2010, that too, in connection with other crime. The very evidence placed before the prosecution is very weak piece of evidence before the Court and though, learned counsel appearing for the accused would submit that prosecution examined P.W.1 to P.W.53 and relied upon the documents and those documents will not connect the accused to prove that he himself committed the murder. The counsel would vehemently contend that evidence of P.W.3 is very clear that even when the body of his sister was found, she was cremated and body was also exhumed. The admission of P.W.3 is very clear that he suspected against some other person and not suspected the role of this accused, that too, in 2009 after 3 years and the evidence of P.W.3 is also not helpful to the case of prosecution. The counsel would vehemently contend that there is discrepancy in the evidence of P.W.6 and P.W.7 and one witness says that both of them came to the Guest House at 12.30 p.m. and left at around 1.45 p.m. and another witness says that they vacated the Guest House on the next day and there is inconsistency in the evidence of P.W.6



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and P.W.7, though documents of Ex.P12 and Ex.P14 are marked.

10. The counsel also vehemently contend that P.W.17, arrested the accused in connection with Crime No.92/2005 and in respect of other crime is concerned, he was released when he had accompanied a girl and since the girl did not come forward to give any complaint, he was released. The material collected by the Investigating Officer with regard to seizure of the articles are also concerned, the same not tallies to connect the accused and though P.W.3, P.W.8, P.W.38 and P.W.41 identifies the jewels, but they have given different descriptions of the jewels and when the body of sister of P.W.3 was exhumed, they have not given details of description of missing gold ornaments immediately and only recovery is made and P.W.21 is the Appraiser of the gold ornaments. The prosecution case is that gold ornaments were pledged with P.W.23. The counsel would vehemently contend that P.W.22 is an independent witness and his evidence is also not helpful to the prosecution with regard to recovery is concerned. Though, learned Additional SPP appearing for the State would submit



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that the Court has to take note of conduct of P.W.9 and P.W.11, who speak about the very conduct of the accused and there is no sufficient material and consistent evidence before the Court to reverse the findings of the Trial Court from acquittal to conviction.

11. Having heard learned Additional SPP appearing for the State as well as learned Amicus Curiae appearing for the respondent, who gave assistance to this Court in disposal of the appeal, the points that would arise for consideration of this Court are:-

- (i) Whether the Trial Court committed an error in acquitting the accused in disbelieving the evidence of the prosecution witnesses and whether this Court can come to an other conclusion that it is a case for conviction and there is perversity in appreciating the evidence?
- (ii) What order?



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Point No.(i)

12. Having considered the case of prosecution, the very offences invoked against the accused are substantive offences under Sections 366, 376, 328, 392, 394, 417, 302 and 201 of IPC. The main case of the prosecution is that this accused was having modus operandi in getting contact with woman and he used to make promise that he is going to marry her and instruct the ladies to come along with gold jewels and used to kill them by providing cyanide and thereafter, he used to rob the gold ornaments belonging to the deceased. The main allegation of the prosecution is that he took deceased Kum. Shantha from Mangalore to Kollur and compelled her to marry him. Hence, taking the deceased amounts to the ingredients of offence under Section 366 of IPC and it is also the case of the prosecution that he had subjected her for sexual act in Kollur at Room No.120 of Lalithambika Guest House and forcibly had sexual intercourse with her and pretended that he is going to take her to temple and he would marry her and insisted her to keep the jewels in the room. Thereafter, he had sexual intercourse with her and pretended that he has brought



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contraceptive to avoid pregnancy and made her to consume the same, wherein he gave cyanide which has resulted in her death and he came back and robbed gold ornaments belonging to the deceased. In order to substantiate the same, the prosecution mainly relies upon the evidence of P.W.1 and P.W.2, who are the co-employees of the deceased.

13. Having perused the evidence of P.W.1 and P.W.2, no doubt, both of them say that accused was visiting the deceased, the main evidence of P.W.1 is that one day, she noticed that accused came and met her i.e., in the month of October, 2006 and he had visited two to three times in the month of October, 2006. When he came and enquired with C.W.7, she witnessed him talking with the accused. But, in order to connect this accused on the particular date of incident, no material evidence is placed before the Court and only she says that once, she had received phone call of Kum. Shantha and he pretended that he is the son of maternal uncle and victim Kum. Shantha informed her that she is going to marry him and not to abuse him. But, her evidence is that she was missing from 09.11.2006 and she found in the paper that she



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was murdered. But, only in 2010, Police came and recorded her statement to that effect. It is also her evidence that Police called her to identify the accused and hence, Test Identification Parade was conducted and accordingly, she identified the accused. Except this evidence, no other evidence with regard to proximity to the date of death as well as incriminating evidence that this accused itself committed the murder.

14. The evidence of P.W.2 is also similar. In the cross-examination of P.W.2, she only says that in 2009, Police came and enquired and she has stated nothing with the family of victim when the family members came to her in 2006.

15. The other witness is P.W.3-brother of the victim. Though P.W.3-brother in his evidence says that he came to know about this incident subsequently when the Police came and drawn the mahazar and exhumed the body once again for examination and only says that while going, his sister went along with gold chain, necklace, two rings and he identified those articles. But, in the cross-examination, he admits that he has not suspected the role of this accused and he suspected only the role of one KPCL employee Sudhakar and also auto



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driver-Suresh Kumar i.e., in 2009. Till the arrest of accused, he has not given any complaint against this accused and he only says that on 09.11.2006, he went to Kollur Police Station and identified the photo, clothes and also the things belonging to his sister. The evidence of P.W.3 is also not helpful to the prosecution and he says that M.O.3 to M.O.7 were shown to him by the Kollur Police on 27.03.2010 and he identified the same.

16. The other witnesses the prosecution relies upon are P.W.6 and P.W.7. P.W.6 is the Receptionist of Kollur Mookambika Temple. He says that on 09.11.2006 at 12.00 p.m. to 12.30 p.m., accused came along with a lady and they took Room No.120 and identifies the mahazar Ex.P12 and also the Register i.e., Sl.No.6 in Page No.20, where there is a mention that accused and victim were there in the said room and also speaks about the accused had disclosed that she is his wife and later, he came to know that at around 2.30 p.m., they vacated the room.

17. The evidence of P.W.7 is contradictory to the evidence of P.W.3, who claim to be the employee of



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Lalithambika Guest House and he had seen the accused on 09.11.2006 and he vacated the room at around 1.30 p.m. and the evidence of these witnesses are also contradictory. When the document at Ex.P12 was confronted, wherein a reference was made that he vacated the room on 10.11.2006 at 6.30 p.m., the same is found in the chief evidence and with regard to the discrepancy is concerned, P.W.7 is also examined and the evidence of these 2 witnesses not inspires the confidence of the Court.

18. The other witness the prosecution mainly relies upon is P.W.11, who is the Archak. In his evidence, he says that on 19.06.2009, Police came and enquired him and he revealed that the accused came and enquired him to do pooja for 'Sthree Hathye Dosha Parihara Pooja' and he replied that there is no such pooja and he identifies the accused that he came and enquired with him. But, in the cross-examination, this witness says that before identifying him, he was shown by CID police and also says that before arresting him, he had seen him in the photo, T.V. as well as newspaper. Hence, his evidence is also not helpful to the prosecution.



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19. The other witness is P.W.17, P.S.I, who identifies the accused and says that he registered the case in Crime No.92/2005 for the offence under Sections 109 and 116(3) of Cr.P.C. But, in the cross-examination, he categorically says that the girl, who was with him has not given any complaint and hence, her statement was not recorded and there was no circumstance to enquire Gangamma and he was released.

20. The other witness is P.W.21 and his evidence is only with regard to appraising the gold ornaments. The prosecution mainly relies upon this witness, wherein he says with regard to he went to jewelry shop of P.W.23 and appraised the gold ornaments which were seized from P.W.23 and the cross-examination, he says there were two Police persons along with him while drawing the mahazar.

21. The other witness is P.W.22 and he says that recovery is made from the shop of P.W.23 and Police have drawn the mahazar. He further says that he did not make any statement that accused himself disclosed that where he has sold the same and his evidence is also not helpful to the prosecution.



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22. The other witness is P.W.23. He says that normally when the people come and sell the gold jewels which were pledged and got released from the bank, they used to purchase the same and accused was brought to his shop and accused told that he sold the bangles, necklace and gold chain weighing about 32 grams and the same were seized by drawing mahazar in terms of Ex.P36 and his signature is marked as Ex.36(c). But in the cross-examination, this witness categorically says that for having purchased gold from the accused, he is not having any document and also not given any document that those gold ornaments were earlier pledged. When such evidence is placed before the Court that no documentary proof to the effect that he had sold the same, the case of the prosecution is that he had robbed the gold ornaments in 2006 after committing the murder. But, he was brought to the shop in 2010 after 4 years and the Court also cannot expect that the person, who purchased the gold ornaments in 2006 will keep the gold ornaments for a period of 4 years as it is.

23. The other witness before the Court is P.W.50. According to the prosecution, the accused used to purchase



cyanide from his shop. But, he has not supported the case of prosecution. Though, P.W.52 also deposes to that effect, the same not substantiates the case of prosecution.

24. Having perused the overall evidence of the prosecution case, no medical evidence before the Court that deceased died on account of consuming cyanide. The FSL report is also not clear about the same and the only evidence before the Court is the evidence of the Doctor which says that she might have died on account of consuming cyanide. But, there is no definite and positive evidence before the Court that she died on account of consumption of cyanide. Having reassessed the material available on record before the Court, we do not find any consistent evidence before the Court, in order to come to a conclusion that the accused himself committed the murder of Kum. Shantha by taking her and subjecting her for sexual act. With regard to sexual act also, there is no evidence collected by the prosecution and with regard to committing the murder, no circumstantial evidence before the Court.



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25. When the case rests upon circumstantial evidence, each circumstances must be proved and established and unless the same is proved and established, question of linking the accused to the crime does not arise. While reversing the judgment of acquittal, it is settled principle in the judgment of the Apex Court in **MALLAPPA AND OTHERS v. STATE OF KARNATAKA** reported in **(2024) 3 SCC 544** that if any perversity is found in the reasoning of the Trial Court while appreciating the evidence of the prosecution, then only the Court can reverse the same and the principles laid down in the judgment referred supra is very clear that if the Court comes to two views, then also, the benefit of doubt goes in favour of the accused and not in favour of the prosecution. The evidence of the prosecution must be very clear while reversing the finding that the accused himself committed the murder of the victim and also the evidence available on record is not properly appreciated which has resulted in miscarriage of justice and then only the Court can reverse the findings of the Trial Court. The said circumstance is not warranted in the case on hand. Hence, we do not find any ground to come to a conclusion that



it is a case for conviction reversing the acquittal and benefit of doubt goes in favour of the accused and linking evidence to connect the accused to the crime is missing, since he was arrested in 2010 and alleged recovery is also not proved that it belongs to the victim only and there is no positive evidence before the Court to come to a other conclusion.

26. The very contention of learned Additional SPP appearing for the State is that the accused is a serial cyanide killer and he used to pretend with innocent ladies that he is going to marry and thereafter, used to take them and subject them for sexual act and then, used to rob the gold jewels belonging to the deceased on the guise that he will marry them. The said allegation made against the accused is not substantiated by the prosecution by producing linking evidence to each circumstance. Under the circumstances, we answer point No.(i) as 'negative'.

Point No.(ii):

27. In view of the discussion made above, we pass the following:



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ORDER

- (i) The appeal is dismissed.
- (ii) The Registry is directed to pay an amount of Rs.10,000/- to the Amicus Curiae, appointed on behalf of the respondent, who assisted the Court in disposal of the appeal.

**Sd/-
(H.P.SANDESH)
JUDGE**

**Sd/-
(B.PRAMOD)
JUDGE**

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List No.: 1 Sl No.: 9