



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 6TH DAY OF MARCH, 2026

PRESENT

THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ

AND

THE HON'BLE MR. JUSTICE VENKATESH NAIK T

CRIMINAL APPEAL NO. 99 OF 2018 (C)

BETWEEN:

SRI VENKATARAVANA @ VENKTARAMA
S/O LATE GANGARAJAPPA,
AGED ABOUT 48 YEARS,
R/O PUTTENAHALLI VILLAGE,
MULBAGIL TALUK,
KOLAR DISTRICT-563 131.

...APPELLANT

(BY SRI. VEERANNA G. TIGADI, ADVOCATE (P/H))

AND:

STATE OF KARNATAKA
REP BY SUB-INSPECTOR OF POLICE,
NANGALI POLICE STATION,
KOLAR DISTRICT,
REP BY STATE PUBLIC PROSECUTOR,
HON'BLE HIGH COURT OF KARNATAKA,
BENGALURU-560 001.

...RESPONDENT

(BY SMT. RASHMI JADHAV, ADDL. SPP FOR STATE (P/H))

THIS CRL.A. IS FILED U/S.374(2) CR.P.C., PRAYING TO
ALLOW THE APPEAL BY SETTING ASIDE THE IMPUGNED
JUDGMENT OF CONVICTION DATED 30.11.2017 AND
IMPUGNED ORDER OF SENTENCE DATED 05.12.2017 IN



SESSIONS CASE NO.201/2015 PASSED BY THE LEARNED PRINCIPAL DISTRICT AND SESSIONS JUDGE, KOLAR AND BY ACQUITTING HIM OF ALL THE CHARGES LEVELLED AGAINST HIM.

THIS APPEAL, COMING ON FOR 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)

This appeal is preferred by the accused against the Judgment and order of conviction and sentence passed against him by the Court of Principal Sessions Judge, Kolar dated 30.11.2017 and 05.12.2017, whereby the learned Sessions Judge has convicted him for the offence punishable under Section 302 and 201 of IPC. He was sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.10,000/- for the offence punishable under Section 302 IPC and in default to pay the fine amount, to further undergo SI for a period of 6 months. He was sentenced to undergo RI for a period of 2 years and to pay



a fine of Rs.1,000/-, in default to pay the fine amount, to further undergo SI for a period of 3 months.

2. Heard the learned counsel for appellant, learned Additional SPP for the State and perused the evidence and material on record.

3. The case of prosecution is that deceased Babamma after deserting her husband and children, developed illicit relationship with the accused, a resident of Puttenahalli Village and thereafter started residing with him. Both of them used to go to Bengaluru for coolie work from Puttenahalli and whenever they visited their village they used to pick up quarrel and they were also addicted to alcohol. On 28.06.2015, at about 03.30 p.m., accused quarrelled and assaulted the deceased suspecting her fidelity and in the night at about 09.00 p.m., he made the deceased to drink alcohol and caused burn injuries on her forehead, chin, below the neck, on the chest, on the left and right shoulders and other parts of the body and near the private part, with a burning firewood and shoved the



hittu kolu (used for preparing ragi ball) into her private part and strangled her to death. Further, after committing the murder, with an intention of screening himself from legal punishment, he burnt the clothes of the deceased near his house and thereby, committed the charged offences punishable under Section 302 and 201 of IPC.

4. According to prosecution, the incident took place on 28.06.2015 at about 09.00 p.m. Brother of the deceased by name Somappa(PW1) lodged a complaint on 30.06.2015, marked as ExP1. Based on the said complaint, PW14-PSI, Nangali Police Station registered a case in Crime No.81/2015 and transmitted the FIR-ExP14 to the jurisdictional Court.

5. In Ex.P1, it is stated that after the deceased had deserted her husband and children, she had developed intimacy with the accused and she was living along with him for the last 6 to 7 years in the house of one Venkatarama. Both of them were visiting Bengaluru for



coolie work and whenever they returned to the village, they used to quarrel among themselves and they were also consuming alcohol. On 28.06.2015 at about 03.30 p.m. after returning from Bengaluru, deceased and accused stayed in their house and at about 09.00 p.m., they quarrelled with each other and accused assaulted the deceased, brought her clothes outside the house and burnt it and committed her murder, closed the door and went away.

6. As per ExP1, on 29.06.2015 at about 05.30 p.m., a neighbour by name Reddamma (PW2) raising suspicion, as there were dogs near the house, went and peeped through the door and noticed the dead body of Babamma lying inside the house with bleeding injuries. She informed the matter to the villagers and one Narayanappa bin Thippanna informed the same to the complainant.

7. It is the specific case of the prosecution that the deceased and the accused were living together in



Puttenahalli village, in the house of one Venkatarama and they used to go to Bengaluru for coolie work and return to the village. They were addicted to alcohol and both of them were quarreling with each other. The accused was suspecting the fidelity of his wife and on the date of incident, at about 03.30 p.m. after returning from Bengaluru, he quarreled with the deceased and on the same night at about 09.00 p.m., he picked up quarrel and assaulted her and caused burn injuries on her chin, cheek etc., and shoved a hittu kolu (used for preparing ragi ball) into her private part and strangled her to death. Further, he burnt the clothes and fled the scene.

8. The learned counsel for appellant would contend that the trial Court has not properly appreciated the overall documentary evidence adduced by the prosecution and it has failed to consider the material omissions and contradictions in the evidence of the prosecution. In fact, the material witnesses have turned hostile. Further, the trial Court has failed to see that PW1-



Somappa, PW8-Lakshmamma, PW13-Shymalamma, who are the brother, sister-in-law and cousin of the deceased, have not supported the case of prosecution in totality. The trial Court has also not properly appreciated the oral evidence of PW2-Reddamma, PW3-Manjunatha, PW4-Balakrishna, PW5-Venkatramappa, and PW9-Venkatesh as they turned hostile to the case of prosecution. Further, the trial Court has totally disbelieved the evidence of prosecution witness.

9. The learned Additional SPP contended that the evidence of the above witnesses not only shows that the accused and deceased were living together, but the accused was also quarreling with the deceased. Drawing the attention of the Court to the evidence of PW7 and PW10, she contended that the said witnesses have stated that the deceased and accused were quarreling with each other, and the accused had a grouse against the deceased since he was suspecting her fidelity. Relying on the evidence of PW13, she contended that the accused and



deceased were quarreling with each other after consuming alcohol and the accused committed murder since he was suspecting that the deceased was having an illicit relationship with another person in Bengaluru.

10. To establish that the deceased and the accused were living together in puttenahalli village, the prosecution relies on the evidence of PWs2 to 10, 12 and 13, apart from the evidence of the complainant/PW1.

11. PW1 in his evidence has stated that his sister i.e., the deceased after deserting her husband was initially residing in his house and thereafter, she developed intimacy with the accused and started residing with him. She was going for coolie work to Bengaluru and other places. He has stated that she died in the house where both of them were staying. But he is not aware as to how she died. PWs2 to 5 and 8 have turned hostile and not supported the case of prosecution. However, a perusal of their evidence goes to show that the deceased and accused were living together.



12. None of the witnesses including PW1, except PW13 have spoken about the illicit relationship between the deceased and another person in Bengaluru, as alleged by the prosecution. Even a perusal of the evidence of PW13 shows that she has not mentioned as to who is the said person with whom the deceased was having an illicit relationship. However, the prosecution has been able to establish that the deceased was residing along with the accused in puttenahalli and both of them were consuming alcohol and quarreling with each other.

13. To establish that the accused has committed the murder by strangulating the deceased after causing burn injuries to her and also by showing a hittu kolu (MO.8) into her private part, it is necessary to peruse the post mortem Report, marked as ExP25. It is vehemently contented by the learned counsel for the appellant that in the case on hand post mortem Report does not indicate as to the cause of death and even in the final opinion, the cause of death is not furnished. Therefore, contented that



the prosecution has failed to establish that the deceased died a homicidal death. He further contented that the doctor who conducted the autopsy and issued ExP25 is also not examined and the same has caused serious prejudice to the case of defence.

14. The learned Additional SPP has pointed out that ExP25 was marked with the consent of the defence. However, learned counsel for the appellant contended that even though it is marked with the consent of the accused, the call for not examining the doctor has been taken by the prosecution, as per the order sheet of the trial Court.

15. We have perused the Post Mortem Report marked as Ex.P8, as well as the final opinion-ExP25. As per ExP8, the following injuries were noticed on the dead body.

"Abdomen distended (gaseous) faecal matter coming out from rectum. She was multiple burnt (antemortem) mark present about 3 different sizes (not clear) m. 6. 1/2 x 1.1 / 2 cm forehead, cheek, chin. Abrasion over 2 x 1 cm nose. Abrasion over upper lip 1 x 1 cm. Burnt



mark over upper chest 20-25 cm. 3 different size 1.1/2 x 1.1/2 , 3 x 2 , 2 x 4 cm and over abdomen 18-20 cm upper thigh on either side 5-6 cm back scapular and supra scapular region 5-6 cm below neck horizontal burnt mark 6 x 2 cm over sternum. 4 x 3 cms (not clear) of mark reddish brown with scab formation. Age >48 hrs. No injuries over vagina. (not clear) over face, no hair or foreign body."

The final opinion was kept pending the receipt of report of chemical examiner.

16. Final opinion is as under:- After detailed examination cause of death undermined, however, FSL report positive for ethyl alcohol in Article Nos.1, 2 and 3. Multiple burnt injuries present all over the body.

17. From the post mortem Report and final opinion, it is clear that no clear opinion regarding cause of death has been furnished in this case. Further no injuries are seen over vagina. Hence, there is a considerable force in the arguments of the learned counsel for the appellant that the injuries found on the dead body including the burn injuries could not have caused the death. When there



is no specific finding with regard to the cause of death, it is difficult to hold that the deceased died on account of any injuries sustained by her or on account of strangulation.

18. It is also contented by the learned counsel that as per the final opinion based on the FSL report, ethyl alcohol contents were found and therefore, the possibility of deceased dying on account of excess consumption of alcohol due to respiratory failure is not ruled out.

19. The Learned Additional SPP contended that the prosecution has established that the deceased and accused were living together in the same house, where she was found dead with injuries on her body and on her person. Further, accused was absconding from the house from the date of incident and this is a strong circumstance against him. She contended that PW7 has stated that on the date of incident, the accused and the deceased were quarreling with each other, which establishes that the accused was very much present in the house and thereafter, he absconded.



20. None of the witnesses except PW7 has stated that the accused and the deceased were present in the house on the date of incident i.e., on the night of 28.06.2015. Hence, the authenticity and reliability of his testimony require meticulous examination.

21. It is the case of prosecution that accused and deceased were going to Bengaluru for coolie work. PW1 in the cross examination has stated that the accused used to go to Bengaluru for coolie work. Even PW13 has admitted that the accused used to work in Bengaluru as a mason. Though the said witness has denied the suggestion that the accused was permanently staying in Bengaluru and not returning to Puttenahalli, however, when it is the case of prosecution that the accused was visiting Bengaluru for coolie work, it has to be established that he was present in the house along with the deceased, on the date of incident.

22. PW7 has stated that the accused and the deceased were living in the same house and their relationship was cordial. However, they used to quarrel



with each other. Accused used to go to Bengaluru for coolie work and about 15 days prior to election, deceased had quarrelled with the accused and gone to Bengaluru, but the accused had brought her back. Thereafter, they were cordial. He has stated that on the date of incident accused and deceased were quarreling and he ignored them, thinking that it is the usual quarrel. On the next day accused was not present in the house.

23. In the cross examination, PW7 has stated that on the date of incident at about 10.00 p.m., the accused and deceased were quarreling with each other and at that time he was present near the shop of one CW9-Krishnamurthy which was at a little distance from the house of deceased. He has stated that there were about 10 more people present near the shop. He admitted that the police have not taken his statement.

24. The evidence of PW7 goes to show that the police have not recorded his statement. He was not cross-examined by the prosecution on that aspect, to show that



he gave his statement to the police during investigation. Further, according to PW7, he heard the quarrel between the deceased and accused at about 10.00 p.m., when he was near the shop of Krishnamurthy. The said person is not examined. He has stated 10 more people were at the shop, but none of them are examined and their statements were not recorded during investigation. The evidence of PW7 that he heard the galata between the deceased and accused at about 10.00 p.m., on the night of incident is therefore, doubtful. According to him the police have not recorded any statement. Hence, for the first time before the Court he has deposed that he heard the galata between the deceased and accused on the date of incident at about 10.00 p.m. Hence, the prosecution has not established the presence of accused in the house, on the relevant point of time, beyond reasonable doubt.

25. The learned Additional SPP contended that the deceased was residing along with the accused in the same house and the accused was absconding. He has not given



an explanation while recording the statement under Section 313 Cr.P.C., as to how the incident took place. Therefore, in view of Section 106 of the Evidence Act, an adverse inference has to be drawn against the accused.

26. The initial burden to establish the case is on the prosecution. We have held that the presence of accused on the date of incident has not been established by the prosecution, beyond reasonable doubt. Further, the cause of death is also not established by the prosecution to show that the deceased died a homicidal death. Except that there were abrasions and burnt mark present on the dead body, there is no opinion given by the doctor that the said injuries or burnt marks were the cause of death. Further, there is no medical opinion to show that the deceased died due to strangulation.

27. To secure conviction for murder under Section 302 IPC or Section 103 of BNS, the prosecution must prove that the death was homicidal and not due to natural cause, accident or suicidal one. Without the cause of death



being established, it is difficult to prove the death was intentional or caused by the accused. In murder case, failure to furnish the cause of death and non-examination of the doctor who conducted the post mortem examination creates a significant gap to the prosecution's case, which would often lead to benefit of doubt in favour of the accused, which can result in his acquittal or setting aside of the conviction. While the non-examination of doctor is not automatically fatal, if other strong, independent evidence exists, the absence of this testimony combined with unknown cause of death, severely weakens the case for homicide. If the post mortem report is not properly proved or the doctor is not examined to explain it, the Court may conclude that the prosecution has failed to prove its case beyond reasonable doubt, especially in a case of circumstantial evidence. Further, if the doctor who conducted the autopsy is not examined, the report may not be accepted as substantive evidence, unless its genuineness is unchallenged or it falls under specific



exceptions i.e., if the doctor is dead or he has gone abroad. Therefore, the non-examination of the material witness i.e., Medical Officer who conducted autopsy of the deceased can lead to assume that it is fatal to the case of prosecution.

28. The learned Additional SPP contended that after the arrest of the accused, MO8-stick used for preparing ragi ball and MO9-one firewood were recovered at his instance. She contended that the deceased was beaten with MO9 and MO8 was inserted into the private part of the deceased.

29. We have noticed, in the post mortem Report there are no any such injuries on the private part of the deceased. Insofar as recovery of MOs.8 and 9 are concerned, except the Investigation Officer, none of the witnesses speak about the said recovery of MOs.8 and 9 at the instance of the accused. The said MOs.8 and 9 were seized under ExP21. One of the panch witnesses, Balakrishna bin Narayanappa has been examined as PW4.



He has not at all stated anything about the seizure of MOs.8 and MO9 at the instance of the accused. Even the prosecution has not put any question to the said witness about the seizure of the weapons.

30. The learned Sessions Judge while convicting the accused has come to the conclusion that the prosecution has proved that the deceased died an unnatural death and her dead body with injuries was found in the house where the accused and deceased lived as husband and wife. Accused in his statement under Section 313 Cr.P.C, except taking the stand of denial has not explained as to how the dead body was found in the house with injuries and he has merely denied the case of prosecution, the witnesses examined by the prosecution having their evidence categorically deposed that the accused was residing in puttenahalli house with the deceased Babamma since 6 to 7 years as husband and wife.

31. However, we find from the evidence on record that the prosecution has not established that the deceased



Babamma died a homicidal death, the presence of accused in the house at the relevant point, recovery of MO8 and MO9 at his instance. The prosecution case only creates a suspicion against the accused.

32. The Apex Court in ***Sujit Biswas Vs. State of Assam 2013(12) SCC 406*** and ***Raja alias Rajinder Vs. State of Haryana 2015(11) SCC 43*** has propounded that while scrutinising the circumstantial evidence, a Court has to evaluate it to ensure the chain of events is established clearly and completely to rule out any reasonable likelihood of innocence of the accused. The underlying principle is whether the chain is complete or not, indeed it would depend on the facts of each case emanating from the evidence and there cannot be a straight jacket formula which can be laid down for the purpose. But the circumstances adduced when considered collectively, it must lead only to the conclusion that there cannot be a person other than the accused who alone is the perpetrator of the crime alleged and the circumstances



must establish the conclusive nature consistent only with the hypothesis of the guilt of the accused.

33. On an analysis of the overall fact situation in the instant case, and considering the chain of circumstantial evidence relied upon by the prosecution to prove the charge is visibly incomplete and incoherent to permit conviction on the basis thereof without any trace of doubt. Though the materials on record hold some suspicion, but the prosecution has failed to elevate its case from the realm of "may be true" to the plane of "must be true" as is indispensably required in law for conviction on a criminal charge. It is trite to state that in a criminal trial, suspicion, howsoever grave, cannot substitute proof.

34. The prosecution is also relying on ExP5 the spot from where ash was seized from the front of the house of deceased. According to the prosecution, after committing the murder, the accused burnt the clothes of the deceased



and under Exp5, the spot mahazar, MOs.1 to MO7 were seized.

35. It is not the case of prosecution that at the instance of the accused, the said ash which contained the burnt clothes substances were seized. The said articles were seized at the time of spot mahazar, prior to the arrest of the accused. Further, there is no evidence to show that it was the accused who burnt the clothes in front of the house.

36. Having re-appreciated the entire evidence and material on the record, we are of the considered view that the prosecution has not established the chain of circumstances beyond reasonable doubt.

37. It is settled that, in a case of circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn should be fully established and the facts, so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they



will not be explainable on any other hypothesis except that the accused is guilty. The circumstances should be conclusive in nature and they should exclude every possible hypothesis, except the one to be proved, and the chain of evidence should be so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused. In the instant case, the prosecution has failed to prove the chain of circumstances, so as to establish, they are consistent only with the guilt of the accused.

38. Insofar as invoking Section 106 of the Indian Evidence Act, the prosecution must first establish that there was any fact within the special knowledge of the accused. In a case of circumstantial evidence, the accused being the master of the crime alone knows the circumstance which lead to death. This Section mandates the facts that are within the exclusive knowledge of accused shall be explained by him, and non-explanation of incriminating circumstances will lead to an inference that



accused and the accused alone is the author of the crime. However, in the instant case, the prosecution is not able to establish that at the relevant time, accused was present in the house on 28.06.2015 at 09.00 p.m., and the accused assaulted her and caused her death. Prosecution case is not established beyond doubt that the deceased and accused were in the house at the relevant point of time, they quarreled with each other. Hence, the benefit of Section 106 of the Evidence Act cannot be extended to the prosecution. The accused is entitled to benefit of doubt. For the reasons stated, the conviction and sentence passed by the trial Court is liable to be set aside. Accordingly, the following:

ORDER

- i. Appeal is **allowed**.
- ii. The Judgment and Order dated 30.11.2017 and 05.12.2017 passed by the Court of Principal Sessions Judge at Kolar in Sessions Case



No.201/2015, convicting and sentencing the accused for the offence punishable be under Section 302 and 201 of IPC is hereby set aside.

- iii. Accused is acquitted of the said offence.
- iv. Fine amount, if any deposited, shall be refunded to the accused.
- v. The bail bonds executed by the accused shall be in force for 6 months.

Sd/-
(MOHAMMAD NAWAZ)
JUDGE

Sd/-
(VENKATESH NAIK T)
JUDGE